INDEX.

PAGE

Petition of Appeal 1

Answer and Counterclaim 5

Schedule "A," Attached to Answer 30

Schedule "B," Attached to Answer 36

Reply 38

Foreclosure Bill 39

Replication 50

Schedule, Attached to Replication 64

Testimony 67

Decision 1072

Final Decree 1101

Notice of Appeal 1108

Answer to Petition of Appeal 1111

WITNESSES FOR COMPLAINANT:

Florence E. Murphy:

Direct 68

Cross 73

CALLED IN REBUTTAL FOR COMPLAINANT:

Frank T. Matthes:

Direct 455

PAGE

Cross 468
Re-direct 484
Re-cross 485
Re-re-direct 487
Re-re-cross 487
Re-re-re-direct 489

Rasmus P. Miller:
Direct 491
Cross 496
Re-direct 497
Re-cross 498

Harry Longstreet:
Direct 600
Cross 601
Re-direct 602

Chatham F. Bedell:
Direct 602, 885
Cross 613, 887
Re-direct 624

Florence A. Hazard:
Direct 650
Cross 703, 1025
Re-direct 742
Re-cross 742

Elmer C. Hazard:
Direct 754
Cross 837, 964

Bowden Hazard:
Direct 861
Cross 874

PAGE

John F. Joyce:
Direct 890
Cross 921
Re-direct 952

Mrs. Helen F. H. Beadleston:
Direct 954
Cross 958
Re-direct 962

Harry L. Powers:
Direct 1014
Cross 1017

Georgie Hazard:
Direct 1018
Cross 1022

Isabel Gentleman:
Direct 1026

John V. Green:
Direct 1036
Cross 1039
Re-direct 1048
Re-cross 1050
Re-re-direct 1051

WITNESSES FOR DEFENDANTS:

Harry L. Powers:
Direct 78
Cross 200

PAGE

Re-direct 364
Re-cross 374

(Recalled)
Direct 1053, 1059, 1067
Cross 1055

Floyd W. Davis:

Direct 383
Cross 386
Re-direct 397
Re-cross 398

Charles G. Ferris:
Direct 399
Cross 407
Re-direct 420
Re-cross 426

Henry Dickensheets:
Direct 428
Cross 438
Re-direct 449
Re-cross 450

Florence A. McAnerney:
Direct 452
Cross 454

Henry Kohl:
Direct 501

Henry C. Traute:
Direct 505
Cross 513

PAGE

William D. Lawler:
Direct 515
Cross 523
Re-direct 524

Chandos Weddle:
Direct 524
Cross 529

Elizabeth Powers:
Direct 531
Cross 579, 624
Re-direct 638
Re-cross 644

(Recalled)
Direct 1056
Cross 1058

Edmund Wilson:
Direct 1061, 1071
Cross 1065

COMPLAINANT'S EXHIBITS:

C1—Bond from H. L. Powers to F. A. Hazard, dated March 13, 1913, marked in evidence at page 69.

C2—Mortgage to secure above bond, same date, marked in evidence at page 69.

C—For Identification 1113

C9—For Identification 1114

PAGE

C4—Bill of Sale..... 1118

C5—Bill of Sale..... 1118

P13—Typewritten List of Personal Property 1118

H—Certified Copy of Petitions and Schedules in Matter of E. C. Hazard & Co., Bankrupt 1117

C21—Miscellaneous Checks Made by E. C. Hazard 1117

C22—Miscellaneous Checks Signed by E. C. Hazard 1117

C20—Miscellaneous Checks Signed by E. C. Hazard 1117

Exhibit B—Letter dated December 27, 1911—E. C. Hazard Co. to Mrs. H. L. Powers 1115

DEFENDANTS' EXHIBITS:

D1—Agreement, between F. A. Hazard and H. L. Powers, dated Feb. 5, 1913, marked in evidence at page 92.

D2—Envelope containing 18 labels, marked in evidence at page 99.

D3—Contract of Sale, dated Feb. 5, 1913, marked in evidence at page 103.

D4—Letter, dated Aug. 28, 1913, from H. B. Coulter to H. L. Powers, marked in evidence at page 108.

PAGE

D5—Letter sent out by Elmer Hazard, dated Nov. 20, 1913, marked in evidence at page 114.

D6—Letter, dated Sept. 9, 1913, H. J. Meyer & Co. to H. L. Powers, marked in evidence at page 114.

D7—Letter, dated Sept. 12, 1913, same as D6, marked in evidence at page 120.

D8—Inventory of the E. C. Hazard Co., marked in evidence at page 133.

D9—Memorandum of Disbursements by H. L. Powers, marked in evidence at page 143.

D10—Photograph of Factory, marked in evidence at page 150.

D11—Papers served in various actions against H. L. Powers, marked for identification at page 154.

D12—Letter and Registry Receipt, marked in evidence at page 160.

D13—Bill for Stenographer's Minutes in Other Case, marked in evidence at page 166.

IN CHANCERY OF NEW JERSEY.

Petition of Appeal from Final Decree in Court of Chancery.

Between

FLORENCE H. MURPHY,

Complainant-Appellee,

—and—

HARRY L. POWERS, et al.,

Defendants-Appellants.

On Bill, etc.

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

The petition of Harry L. Powers, one of the defendants in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, bearing date July 24th, 1919, in the above entitled cause, in this respect, to wit:

1. Because said decree adjudges that the complainant is entitled to have the principal sum of $30,000 with lawful interest thereon from the

New Jersey State Library

13th day of September, 1913, to the 20th day of June, 1919, amounting to $10,400, making a total amount of $40,400, with interest from the date of said decree, upon which sum is to be credited the sum of $4,919.65 with interest from June 20th, 1919, together with costs of suit, raised and paid out of the premises decribed in mortgage referred to in said cause; whereas it should have been adjudged in and by said decree that complainant was entitled to have and receive so much of the aforesaid sum, if any, as shall remain after deducting amount due the defendant under his set-off and counter-claim.

2. Because said decree adjudged that the defendant, Harry L. Powers, is not entitled to set-off and counter-claim against the amount due on the aforesaid mortgage, the amount claimed by him in his said set-off and counter-claim except the aforesaid sum of $4,919.65; whereas it should have been adjudged in and by said decree that the said petitioner was entitled to set-off and counter-claim against the amount due on the aforesaid mortgage the amount claimed by him in his aforesaid set-off and counter-claim, to wit, the sum of $48,800, and that the aforesaid complainant or Florence A. Hazard be decreed to pay to your petitioner the difference between the sum claimed under said set-off and counter-claim and the amount due upon said mortgage.

3. Because said decree adjudged that the sum of $30,000 on deposit with the Clerk of this Court with accrued interest thereon be paid by

the Clerk of this Court to the complainant or her solicitors, and be applied toward the payment of the said sum of money due the complainant; whereas it should have been adjudged in and by said decree that the said sum of $30,000 with accrued interest should be paid by the Clerk of this Court to your petitioner, having due regard to the petitioner's set-off and counter-claim.

4. Because said decree adjudged that so much of the estate and premises covered by said mortgage as will be sufficient to raise and satisfy the said debt, interest and costs be sold, and that a writ of *fieri facias* issue for that purpose out of this Court, directed to the Sheriff of the County of Monmouth, commanding him to make sale, according to law, of so much of said mortgaged premises as will be sufficient to satisfy the balance of debt, interest and costs; whereas it should have been adjudged in and by said decree that the amount due to the defendant, Harry L. Powers, by way of set-off and counter-claim, was in excess of the amount due on the aforesaid mortgage, and that complainant was not entitled to have said premises sold to raise and satisfy said debt, interest and costs, or to have a writ of *fieri facias* for that purpose, and that the defendant was entitled to have judgment entered and writ of execution issued against the said complainant and Florence A. Hazard, or one of them, to satisfy the difference between the amount claimed by your petitioner under his aforesaid set-off and the amount due for principal and interest on said mortgage.

5. Because said decree adjudged that there be allowed by the solicitors of complainant a counsel fee of $1,000; whereas it should have been adjudged in and by said decree that solicitors of complainant were not entitled to any counsel fee.

And your petitioner further prays that the said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

EDMUND WILSON,
Solicitor of petitioner,
Of counsel with petitioner.

IN CHANCERY OF NEW JERSEY.

Answer and Counterclaim and Set-off.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, et al.,

Defendants.

On Bill to Foreclose.

The answer of the defendants Harry L. Powers and Elizabeth R. Powers, his wife, and the counterclaim and set-off of Harry L. Powers against the complainant, Florence E. Murphy, and Florence A. Hazard.

These defendants, Harry L. Powers and Elizabeth R. Powers, his wife, answering the bill of complaint, say:

1. Paragraphs 1 to 4, inclusive, are admitted.

2. These defendants deny that the said mortgage contained the agreement mentioned in paragraph 5 of the bill of complaint, and say that the said Florence A. Hazard never requested these answering defendants, either before the execution of said mortgage, nor at its delivery, or at any time thereafter, to take out fire insurance upon

the buildings located on the mortgaged premises as collateral security for the payment of the mortgage debt; that the aforesaid mortgage was subject and subsequent to a mortgage of $30,000 executed by these defendants covering the said land and premises, and these defendants were obliged to, and did, cause the buildings aforesaid to be insured against loss or damage by fire in safe and responsible insurance companies, and assigned policies to the amount of $15,000 as collateral security for the payment of said first mortgage debt of $30,000; that the said mortgage to Florence A. Hazard contained the usual printed fire insurance paragraph, but no amount was inserted in said paragraph, and that the said paragraph in said mortgage was allowed by mistake and inadvertence to remain in said mortgage, and not for the purpose of compelling or obligating these defendants to insure said buildings as collateral security for the payment of said mortgage debt; that the said Florence A. Hazard never demanded nor requested these defendants to take out insurance as collateral security for the payment of said mortgage debt, and no mention was made of fire insurance by the said Florence A. Hazard until after the buildings on said mortgaged premises had been destroyed by fire as hereinafter detailed; that the said mortgage to Florence A. Hazard was given to secure a part of the purchase price of said mortgaged premises sold and conveyed by the said Florence A. Hazard to this defendant, Harry L. Powers, and at the time of the conveyance and execution of said mortgage, the said buildings were insured in the amount of $7,000 only.

3. Paragraph 6 is admitted.

4. Paragraph 7 is admitted, but these defendants say that the said Florence E. Murphy is the daughter of Florence A. Hazard, and they charge and aver that said bond and mortgage were assigned to the said Florence E. Murphy without consideration, and with the purpose of harassing, annoying and defrauding these defendants, and these defendants further aver and charge that the said Florence E. Murphy has no financial interest in said mortgage and accompanying bond and is holding the same in trust for her mother, Florence A. Hazard; that the said Florence A. Hazard, since the said mortgage was assigned to the said Florence E. Murphy, has collected and received from this defendant, Harry L. Powers, interest due upon said bond and mortgage, the same having been received by the said Florence A. Hazard with the consent, knowledge and approval of the said Florence E. Murphy.

These defendants further charge and aver that if in fact the said Florence E. Murphy took by assignment said bond and mortgage for a good and valuable consideration, and is in fact entitled to have and receive the amount due and owing thereon, she took and now holds the same subject to all claims, demands and set-offs of this defendant Harry L. Powers against the said Florence A. Hazard, and subject to all the equitable defenses now existing between this defendant Harry L. Powers and the said Florence A. Hazard, and particularly subject to all the claims, demands, counterclaims and set-offs herein elsewhere particularly mentioned.

These defendants further charge and aver that the said Florence A. Hazard during a great part of the period between the giving of said mortgage and the present time has resided with the said Florence E. Murphy, and that the said Florence E. Murphy at the time of the execution and delivery of said assignment had full knowledge of all claims, demands, counterclaims and set-offs of the said Harry L. Powers against the said Florence A. Hazard, as hereinafter set forth, and had full knowledge of all the facts and circumstances in connection with the sale of said mortgaged premises by her mother to this defendant Harry L. Powers and the giving of the aforesaid bond and mortgage and of all facts and circumstances which grew out of or in any wise related to the aforesaid sale, and of the deceit, breach of contract and warranty by reason of which the defendant suffered injury and loss, all of which is hereinafter fully set forth.

5. These defendants admit that the buildings on the mortgaged premises were insured as mentioned in paragraph 8 of the bill of complaint, but aver, as hereinafter fully set forth, that said insurance was procured and paid for by this defendant, Harry L. Powers, without the knowledge, assent or assistance of the said Florence A. Hazard and the complainant. These defendants admit that the buildings were destroyed by fire, as alleged in said paragraph 8, and that in consequence the value of the property was depreciated by said fire, and that a sum of money was ultimately paid to this defendant by the said

insurance companies in satisfaction of the policies then outstanding. These defendants, however, aver that the sum so collected was applied first in the amount of $15,000 to a first mortgage, a lien upon the property, and that substantially the entire balance was deposited as herein elsewhere set forth, in the Court of Chancery, there to abide an adjudication of the amount due, if anything, upon the complainant's mortgage.

6. These defendants deny, as hereinbefore mentioned, that they, as alleged in paragraph 9, agreed to assign said policies of insurance to complainant as collateral security for the payment of said mortgage debt, and they admit that they have refused, and do refuse, to pay the money or any part thereof received from said policies of insurance to complainant in discharge or on account of said mortgage or to the payment of interest thereon, because the said Florence A. Hazard is indebted to this defendant, Harry L. Powers, in a much greater sum than the amount remaining unpaid on said mortgage, and because this defendant is entitled to counterclaim and off-set his said debt against the claim and demand of the said Florence E. Murphy for the amount remaining unpaid on said mortgage. The facts and details of such counterclaim and set-off are herein elsewhere particularly detailed.

7. These defendants admit paragraph 10 and aver and charge that they agreed to deposit and did in fact deposit the said sum of $30,000 with the Clerk of this Court in order that the respec-

tive claims of the said Florence A. Hazard and Florence E. Murphy against this defendant, Harry L. Powers and the counterclaim of this defendant, Harry L. Powers, against Florence A. Hazard might be determined by this Honorable Court. And these defendants further aver that the orders in the Court of Chancery touching the deposit of said money were not resisted by this defendant, Harry L. Powers, but were consented to in open Court, not because the said Florence A. Hazard or the said complainant was entitled to have the money so impounded as a matter of right, but because the said Harry L. Powers was willing that the insurance fund, when collected, should be conserved for the purpose of satisfying whatever might thereafter be adjudicated as due and owing upon said bond and mortgage.

8. Paragraphs 11, 12, 13, 14, 15, 16 and 17 are admitted.

9. They admit that John J. Travers, as alleged in paragraph 18, filed a lien claim in the Monmouth County Clerk's Office, but deny that it covers or is a lien upon the mortgaged premises.

10. They admit that Arthur G. Sickles, as alleged in paragrph 19, filed a lien claim in the Monmouth County Clerk's Office, but deny that it covers or is a lien upon the mortgaged premises.

11. They admit that George W. Sewing, as alleged in paragraph 20, filed a lien claim in the Monmouth County Clerk's Office, but deny that it covers or is a lien upon the mortgaged premises.

12. They admit that Charles Dunfee, trading as the Mitchell Floor Co., as alleged in paragraph 21, filed a lien claim in the Monmouth County Clerk's Office, but deny that it covers or is a lien upon the mortgaged premises.

13. Paragraph 22 is admitted.

By way of counterclaim and set-off against the complainant, Florence E. Murphy, and against Florence A. Hazard, a third party not made a party either complainant or defendant in the bill of complaint, the defendant Harry L. Powers, says:

1. That on and prior to the 13th day of March, 1913, Florence A. Hazard was seized in fee simple of the land and premises described in the bill of complaint; that on said 13th of March, 1913, this defendant purchased said land and premises, together with certain personal property, from the said Florence A. Hazard, and received from her a warranty deed dated on that day, and afterwards recorded in the Clerk's Office of Monmouth County on the 15th of March, 1913, in Book 949 of Deeds, page 148.

2. That simultaneously with the delivery of the said deed by the said Florence A. Hazard to this defendant, this defendant executed and delivered to the said Florence A. Hazard the bond and accompanying mortgage particularly set forth in the complainant's bill of complaint; that this defendant had before that time negotiated with the

said Florence A. Hazard for the purchase of said land and premises, together with certain personal property, for which he bargained to pay the sum of $71,400; that the mortgage aforesaid and accompanying bond was intended to represent and did in fact represent a portion of the purchase money, and must therefore be treated at all times as a purchase money mortgage.

3. That the initial negotiations for the purchase aforesaid (of both land and personal property) which antedated the 13th of March, 1913, were embodied in two certain contract in writing signed by the said Florence A. Hazard and this defendant; copies of said contracts are hereto attached and are hereby made a part of this answer, counterclaim and set-off, and are marked respectively Schedule A and Schedule B. By contract embodied in Schedule A it was provided in substance that the said Florence A. Hazard would sell and convey by deed of warranty, free from all encumbrances, on or before the 19th day of February, then next, for the consideration of $60,000, the mortgaged premises, as well as all such personal property in and upon said premises (except household furniture) as had not been theretofore transferred and granted to the said Florence A. Hazard by E. C. Hazard Co. as security for a loan theretofore made by the said Florence A. Hazard to E. C. Hazard Co., said $60,000 to be paid in the following manner: $500 on the execution of the agreement, $29,500 in cash, and $30,000 by a mortgage which was to be subordinated to a first mortgage on said property of a like amount,

$30,000; further that this defendant, Harry L. Powers, might enter into and upon the mortgaged premises on the day of closing said contract for the preservation of the property.

By contract embodied in Schedule B it was provided in substance that this defendant, Harry L. Powers, would pay out of the purchase price of said mortgaged premises at the closing of title two judgments theretofore entered against Florence A. Hazard, one in favor of the Nassau Bank of New York, amounting to $7,000, or thereabouts, and one in favor of the Red Bank Second National Bank for $4,100, said judgments being then liens against said mortgaged premises; further, that this defendant, Harry L. Powers, would execute four notes of like amount, payable in four, five, six and seven months, without interest, to the order of said Florence A. Hazard for the amount so paid by the said Florence A. Hazard in satisfying said judgments, and that the said Florence A. Hazard would, in consideration of the payment by this defendant of the aforesaid two notes, assign to this defendant, Harry L. Powers, the security that had been given to her by the E. C. Hazard Company on account of loan theretofore made by Florence A. Hazard to E. C. Hazard Company, such security being the personal property that had been theretofore transferred by E. C. Hazard Company to the said Florence A. Hazard.

4. That this defendant was importuned by the said Florence A. Hazard, who was then heavily involved financially, and harassed by judgments,

to purchase the property, both real and personal; that he undertook and agreed to make said purchase with the definite understanding that he should acquire simultaneously not only the real estate, but all the personal property as well which was referred to in said contracts and which related to and had been used in connection with a certain manufacturing industry conducted on the premsies, all of which will be hereafter more particularly set forth; that the land had located upon it a certain factory and kindred buildings which had been used during the ownership of the said Florence A. Hazard for the purpose of manufacturing and canning certain food products, and the personal property which this defendant bargained to purchase, and which the said Florence A. Hazard bargained to sell, was all the personal property used in connection with that business, consisting of machinery, tools, appliances, and all equipment used in said business, together with all stock, boxes, barrels, receptacles of all kinds and all stock then on hand either manufactured or in process of manufacture, and also a certain laboratory and its contents; that this defendant bargained to purchase said property, as the said Florence A. Hazard well knew, for the purpose of continuing the manufacturing business theretofore conducted, and that he was unwilling to purchase the real estate and buildings and the trade and other fixtures contained in said buildings unless he was able to also purchase the personal property above enumerated; that the bargain made between the parties was one

which comprehended the acquisition by this defendant of the property aforesaid both real and personal, to the end that he, this defendant, might at once enter upon the business of canning and manufacturing food products.

5. That this defendant and the said Florence A. Hazard met (after certain postponements) at the office of the Fidelity Trust Company in the city of Newark on the 13th day of March, 1913, for the purpose of carrying out the agreements aforesaid which she and this defendant had entered into; that at that time and also shortly prior thereto, this defendant learned that the said Florence A. Hazard, after the signing of the two contracts aforementioned, had conveyed by bills of sale certain personal property (which she had bargained to sell to this defendant) to Little Silver Sauce Company, body corporate of the State of New Jersey, and one Frank T. Matthes; that said bills of sale had been delivered and recorded; that they purported to convey the greater part of the personal property particularly described and referred to in the contracts aforesaid; that this defendant having learned of the existence of these bills of sale, asked the said Florence A. Hazard for an explanation; that explanation was asked for on the 13th of March aforesaid, and once prior thereto; that on both occasions she replied that the property was hers; that she would convey the same to this defendant as she had bargained to do, and that the bills of sale had been executed by her merely for the purpose of keeping her title good, so that the property

therein described could not be reached by her various creditors; that prior to any knowledge upon the part of this defendant of the existence of these said bills of sale, and prior to the 13th of March aforesaid, he had advanced to the said Florence A. Hazard large sums of money on account of the purchase price of the property aforesaid, real and personal, which he had bargained to take from her; that when this defendant met with the said Florence A. Hazard as aforesaid, at the office of the Fidelity Trust Company in Newark, such advancements then aggregated approximately the sum of $29,000, and that prior to his first knowledge of the existence of the bills of sale, he had advanced to her or on her account as a part of the purchase money aforesaid, the sum of approximately $19,000; that this defendant upon the occasion of the meeting aforesaid at the office of the Fidelity Trust Company, insisted that something must be done to relieve the personal property from the lien or cloud of title which resulted from said bills of sale; that the said Florence A. Hazard again assured him that the said bills of sale had been executed and delivered as a mere convenience to her and for the purpose of protecting the property from her creditors; that she would the next day secure from both the Little Silver Sauce Company and Matthes a return of the property to her, and would then perfect his, this defendant's title, in accordance with the original agreements; that this defendant thereupon said he was unwilling to take this risk and pay the entire purchase price, viz: $71,400; that he would, however, pay

$60,000 for the real estate, including the personal property mentioned in the agreement embodied in Schedule A, and would leave the consummation of the purchase of the personal property described in Schedule B until after the bills of sale had been eliminated, the said Florence A. Hazard then representing that the personal property mentioned in Schedule A had not been described in the said bills of sale; that the said Florence A. Hazard thereupon said that she would not carry out one of the agreements unless both were consummated at the same time. She did not, however, offer, nor was she able at that time to reimburse this defendant for the various sums of money aggregating approximately $29,000, which he prior to that date had advanced either to her or on her account; that this defendant, yielding to the force of circumstances thus presented, agreed with her then and there to carry out both agreements with the modification that instead of receiving a bill of sale or receipt for the personal property described in Schedule B, he would accept the promise of the said Florence A. Hazard to consummate the sale in respect to such personal property upon the following day, when she undertook to procure a transfer and quit-claim of the recorded (but, as she claimed, not actual) interest of the said Little Silver Sauce Company and Frank T. Matthes. The defendant, Harry L. Powers, thereupon gave the said Florence A. Hazard his note drawn in the amount of $11,400, with a memorandum endorsed thereon to the effect that it was not to be negotiated,

collected, or treated as a chose in action until after he, this defendant, had been put in possession and had his ownership confirmed in the personal property last above referred to; that before entering into this arrangement, this defendant insisted upon having the unqualified assurance of the said Florence A. Hazard that he, this defendant, should be put in immediate possession of the property comprehended in the purchase, including all the personal property; that the said Florence A. Hazard assured him that he might take possession immediately, and thereupon executed an affidavit in which she declared that the real estate which she then and there conveyed was free and clear of any lease or any tenancy of any person or corporation, and that this defendant was entitled to immediate possession, and that if any person or corporation claimed to be entitled to the possession of said premises, such person or corporation was doing so without any right and without any authority derived from her, the said Florence A. Hazard; that thereupon the deed aforesaid was delivered, as was also the said purchase money mortgage and accompanying bond, and the small balance due on the cash payment of $30,000 was satisfied.

6. That on the 14th day of March, 1913, and before this defendant had taken possession, the said Florence A. Hazard informed this defendant that he must not take possession of the property; that she had leased the same for a period of three years to her son, Elmer C. Hazard; this defendant asked to see the lease; thereupon she informed this defendant that there was no written lease;

that it was a verbal agreement. The next morning, to wit, on the 15th of March, 1913, this defendant went to the factory building and was denied admission by one Wilson, who represented himself as the agent of Florence A. Hazard and of Elmer C. Hazard; that thereupon this defendant took forcible possession, and remained in possession until the buildings and contents were destroyed by fire as herein elsewhere set forth.

7. That all the personal property above mentioned was contained in the factory and factory buildings adjacent to the main building; that shortly after this defendant took possession as aforesaid, suits were instituted against him to recover either the possession or value of a portion of the said personal property. These suits were instituted both at law and in equity; that in addition, upon the complaint of the said Florence A. Hazard or her son, Elmer C. Hazard, or others acting for her and with her knowledge, this defendant was indicted by the Grand Inquest of Monmouth County and was charged with the crime of assault and battery committed at the time when he, this defendant, took possession as aforesaid, and also with other crimes alleged to have grown out of his possession and control of a portion of the personal property aforesaid; that claims of ownership as to the personal property aforesaid or some of it were set up in the civil suits aforementioned by Frank T. Matthes, the Little Silver Sauce Company, Elmer C. Hazard and E. C. Hazard & Company; but that none of the suits aforesaid or the indictments was ever brought to trial, being apparently abandoned.

8. That this defendant remained in the possession acquired as aforesaid, and at once embarked upon the business of canning and manufacturing food products; that when he took possession and received the deed as aforesaid, there was no insurance upon the property aforesaid, real or personal; that he thereupon procured insurance upon the buildings, machinery, equipment, and appliances, aggregating the sum of approximately $51,250, and also procured insurance covering personal property, stock and such equipment and machinery as were regarded as personal property, and also upon stock, manufactured and in process of manufacture, until, as the manufactured stock on hand and marketable goods increased and grew in volume, the insurance was increased to the aggregate of approximately $50,250.

That while so in possession and while the property, real and personal, was so insured, and after the season's work in the factory had been completed, and before the manufactured stock had been disposed of, a fire occurred on the 13th day of February, 1914, by which all the buildings with their contents were destroyed.

That thereupon, and before said insurance had been collected, and indeed before proofs of loss had been filed with the companies which had issued the various policies of insurance, three suits were instituted against this defendant in the Court of Chancery of this state, to wit, a suit by the Little Silver Sauce Company, a suit by Elmer C. Hazard, and a suit by Frank T. Matthes. The bills of complaint in the respective causes set forth that certain personal property owned by the

respective complainants had been insured by this defendant; that the insurance was for the benefit of the respective complainants; that the said Powers was endeavoring to collect insurance money for loss occasioned by reason of the destruction of such property. Each of the complainants sought relief by impounding the insurance money to be paid and impressing a trust thereon for the benefit of the respective complainants, according as their respective right and ownership in the personal property aforesaid was established and proved. The personal property, however, which was made the basis of the respective suits was personal property which the said Florence A. Hazard had bargained and sold to this defendant, and which passed to him with the delivery of the deed aforesaid, and was personal property which she agreed to deliver to him under the circumstances already premised on the day following the 13th of March, 1913.

9. That the personal property which was the subject matter of the three suits aforementioned was the same personal property in respect to which other suits at law and in equity had previously been instituted but not pressed and hereinbefore set forth.

10. That issue was joined in each of the Chancery suits aforesaid instituted after the said fire and the issues therein raised were tried out in the Court of Chancery; that subsequently and after hearing, decrees were entered in the respective suits whereby it was adjudged that the Little

Silver Sauce Company was the owner at the time of said fire of personal property destroyed by fire to the value of $11,400; that Frank T. Matthes was the owner at the time of said fire of personal property destroyed by fire to the value of $600; and that said insurance fund must contribute the above amounts under an equitable apportionment to the said Little Silver Sauce Company and Frank T. Matthes. It was also adjudged that the said Elmer C. Hazard had no property which had been in the possession of this defendant and which had been destroyed by fire.

11. That this defendant interposed his defense to the three suits aforesaid in good faith; that he had reasonable ground for believing that each of said suits had no foundation in equity, and that no one of the above named complainants should prevail in the litigation; that he relied on the assurances and representations of the said Florence A. Hazard and upon her warranty of ownership and title as to personal property described in both contracts shown in Schedules A and B, and upon her promise to deliver possession to him; that when his proofs of loss were filed with the respective companies which had issued the policies aforesaid, he declared and sought to recover merely for the buildings and permanent and trade fixtures which were destroyed, together with such personal property only as he had acquired after taking as aforesaid on the 15th day of March, 1913, and which he had not acquired through the said Florence A. Hazard; that the proofs of loss were designedly so framed in order to relieve himself from the unjust claims

of the complainants, and also because the personal property acquired by him since March 15th, 1913, was of a value in excess of insurance on personal property outstanding at the time of the fire; that quite independent of these considerations, this defendant was, however, obliged to defendant said suits, and did defend said suits because of the inordinate, fraudulent and excessive values placed upon the property claimed by the respective claimants, even assuming said complainant had a valid claim of ownership; that the said Little Silver Sauce Company claimed property to the value of $46,356.96; that Elmer C. Hazard claimed property to the value of $3,610.78; that Frank T. Matthes claimed property to the value of $2,971.78; that if these claims had prevailed to the amount set forth in the respective bills of complaint, the insurance covering personal property would have been exhausted, and this defendant would have been left without payment or compensation from the insurance companies (except possibly in some small proportion) for personal property to the value of $45,984, which he had acquired after taking possession on the 15th day of March, 1913, all being personal property which in no way related to or constituted a part of the property acquired by him from the said Florence A. Hazard. The value of the personal property so owned and acquired by the defendant was fixed (as of the time of the fire) in the Chancery decrees aforesaid at $45,984.

12. That on the trial of the Chancery causes

aforementioned, the said Florence A. Hazard appeared as a witness against this defendant; that she denied that she had sold personal property to him as above set forth, or had bargained to sell the same; that she undertook by her testimony to support the claim and alleged ownership of the above named complainants, and even asserted that the said Elmer C. Hazard, Frank T. Matthes and Little Silver Sauce Company, one or more of them, were entitled to the possession of the property, real and personal; that she also joined in a fraudulent effort to establish the excessive and inordinate value of the goods so claimed. This defendant charges that said suits were instituted and prosecuted with her knowledge, approval and procurement, and were designed and joined in by her to harass, injure and defraud this defendant, and that her conduct was in direct violation of her representations and warranty, and in violation of all the solemn contracts and undertakings she had entered into with this defendant, and that in consequence this defendant sustained great loss and injury in his property and credit, and sustained damage to the amount of $20,000, and was in addition obliged to expend and did in fact expend in defending said suits by way of preparation, witness fees, counsel fees and other necessary charges the sum of $15,000.

13. That the Chancery cases aforesaid were not heard and the decrees entered until the 4th day of November, 1915; that said suits were speeded by every reasonable effort of this defendant, but that the long interval of time which elapsed

before their determination, during which this defendant was unable to collect the insurance money aforesaid or any part thereof, impaired the credit of this defendant and prevented him from prosecuting his business, and resulted in great financial injury to him.

14. That after decrees had been entered in the three Chancery suits aforesaid, an adjustment was reached by this defendant with the various insurance companies who had issued policies as aforesaid, but that a few days before it had been arranged to perfect the settlement, E. C. Hazard & Co. instituted a suit in the Court of Chancery and joined as defendants this defendant and the various insurance companies above referred to; that by said suit it was sought to enjoin this defendant and said insurance companies from adjusting said insurance; that the bill of complaint sets forth that personal property of E. C. Hazard & Co. to the value of $63,204.46 was covered by said insurance, and that the said company was entitled to collect insurance money to that amount, the alleged equities of the bill and the theory of the relief being the same, and the language nearly identical with that to be found in the three bills of complaint aforementioned; that the personal property upon which this claim was predicated was the same personal property sold as aforesaid by the said Florence A. Hazard to this defendant; and in part at least the same personal property claimed in the Chancery suits aforesaid of Little Silver Sauce Company, Frank T. Matthes, and Elmer C. Hazard; that in consequence the settlement of

the said insurance companies with this defendant then pending was obstructed and prevented, and that subsequently he was obliged to pay, and did pay to E. C. Hazard & Co. the sum of $1,800; that if said payment had not been made and the obstruction occasioned by said suit thus removed, no payments would have been made by the insurance companies who were made parties to the Chancery proceeding, and if this defendant had elected to defend said suit and try out the issues raised in due course, his property, real and personal that remained to him would have been exhausted and sold by creditors who were then pressing and importunate, and in addition, his business prospects would have been destroyed.

15. This defendant charges that the said Florence A. Hazard caused the institution of said suit; that it was designed by her to further harass, injure and defraud this defendant; that her sole purpose in causing said suit to be instituted was to force this defendant to pay a substantial sum in settlement thereof, which she herself would receive and enjoy, and that she was well aware that if settlement was not made, it was impossible for this defendant to collect from the said insurance companies, and that it was essential that he should receive the money due from said companies at that time in order to save himself from financial ruin and bankruptcy; that the said Florence A. Hazard was a large stockholder in E. C. Hazard & Co., and that she alone received the $1,800 so paid as aforesaid by this defendant, or directed or controlled the distribution thereof;

that the wife of this defendant, Elizabeth R. Powers, is the daughter of the said Florence A. Hazard; that she is a stockholder in the said E. C. Hazard & Co., and owns stock in the said company to the amount of 229 shares; that she had no knowledge of the institution of said suit and was not consulted as to its prosecution or settlement; that she received no notice of any meeting at which it was determined by the directors or other officers of the company to institute and prosecute said suit, and that no portion of the $1,800 so paid as aforesaid has ever reached her hand.

16. That the said Florence A. Hazard conveyed the land and premises aforementioned to this deponent by warranty deed in usual form, with full covenants, on the 13th day of March, 1913; that at the time of the delivery of said deed an attachment was outstanding a lien against said property, at the suit of one Frederick Eiseman; that the said Florence A. Hazard verbally promised at the time of the delivery of said deed to indemnify this defendant against said attachment (her attention being called to the fact that her covenant of warranty covered this lien) and also promised subsequently to remove said lien. Relying upon the covenant contained in said deed and the representation so made by the said Florence A. Hazard this defendant took the deed and paid the full purchase money as above set forth, to wit, $30,000 in cash, and a purchase money mortgage of $30,000, the same being the mortgage set forth in the bill of complaint; that subse-

quently a judgment was entered upon said attachment, and that ultimately and thereafter, to wit, on the 25th day of August, 1916, this defendant through the Fidelity Trust Company, was obliged to pay and did pay $3,929.02, in satisfaction of said judgment.

That accordingly, from the insurance money aforesaid ultimately collected by this defendant, there was paid to Little Silver Sauce Company the sum of $11,400, and to Frank T. Matthes the sum of $600, and to E. C. Hazard & Co. the sum of $1,800; that these payments were made from collections on insurance policies where this defendant had made no claim for loss upon any personal property, except such as he, this defendant, had acquired independent of his purchase from the said Florence A. Hazard, and since the 15th of March, 1913, the date when he took possession as aforesaid; that in consequence insurance moneys to which this defendant was entitled on account of loss by fire of personal property so owned and acquired by him were applied in satisfaction of the demands of the Little Silver Sance Company, Frank T. Matthes, and E. C. Hazard & Co.; that this defendant accordingly sustained a loss in money aggregating the last aforementioned amounts, namely, the sum of $13,800, and that this sum he would otherwise have collected and used and been entitled to enjoy except for the deceit and fraud of the said Florence A. Hazard and her breach of warranty in the sale of said personal property to this defendant.

This defendant therefore prays:

1. That said complainant may answer this counterclaim and set-off without oath and each statement herein contained.

2. That Florence A. Hazard may be made a defendant herein, and that she may without oath answer this counterclaim and set-off.

3. That a writ of subpoena may issue, commanding the said Florence A. Hazard to answer this counterclaim and set-off, and to abide by such decree as this Court may make in the premises.

4. That said complainant and said Florence A. Hazard may be decreed to pay to this defendant the amount so due him as aforesaid, or

5. If the Court shall find that the principal of the complainant's mortgage is now due, then that the amount due this defendant may be credited on said mortgage debt; and if the amount so due this defendant shall exceed the amount of said mortgage debt, then that the complainant or the said Florence A. Hazard may be decreed to pay to this defendant the excess.

EDMUND WILSON,
Solicitor for and of counsel with defendants, Harry L. Powers and Elizabeth R. Powers, his wife.

Schedule "A."

ARTICLES OF AGREEMENT, made the 5th day of February, in the year of our Lord, one thousand nine hundred and thirteen, between Florence A. Hazard, wife of Edward C. Hazard, deceased, of the Borough of Brooklyn, County of Kings, City and State of New York, party of the first part, and Harry L. Powers, of the Borough of Manhattan, City, County and State of New York, party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Sixty thousand ($60,000) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part part that she, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance on or before the 19th day of February, next ensuing the date hereof:

FIRST PARCEL: All those buildings and all that form, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New Jersey on the northerly side of the public highway leading from the Village of Shrewsbury through Rumson;

BEGINNING in the center of the aforesaid highway at the southwest corner of lands now or for-

Schedule A, Attached to Answer.

merly Joseph Shepherd, deceased, thence /1/ north one degree and fifteen minutes east forty-four chains and fifty-four links to the center of a brook thence /2/ south eighty-five degrees and twenty minutes west ninety-six links along the center of said brook, thence /3/ north one degree and twenty-five minutes west three chains and forty-two links along the west side of a ditch and along lands of Lewis White, thence /4/ north eighty-seven degrees fifteen minutes west six chains and ninety-five links along said White's line, thence /5/ south five degrees and thirty minutes west one chain and eighty-one links to the Rail-road and the same course continued, one chain and eighty-six links to lands now or formerly of Henry B. Parker, thence /6/ south four degrees and fifteen minutes west five chains and seventy-two links along said Parker's land to a stone and stump, thence /7/ south eighty-seven degrees and fifteen minutes east one chain and sixty links along the Sickles Homestead farm to a stone, thence /8/ south one degree and fifteen minutes west thirty-eight chains and sixty-three links along the line of said Sickles Homestead farm to the center of the aforesaid highway, thence /9/ south eighty-eight degrees and thirty minutes east seven chains and twenty-seven links along the center of the aforesaid highway to the place of beginning.

Containing thirty-five and 36/100 acres. Being intended to be all the land and premises conveyed to Edward C. Hazard by deed of Gordon Sickles, et al., bearing date March 30th, 1883, recorded in the office of the clerk of Monmouth County in Book 365 of deed, on pages 144, &c. Excepting

Schedule A, Attached to Answer.

and reserving from this conveyance all the part of the above described land conveyed to the New York and Long Branch Railroad Company by deed bearing date December 31st, 1873, recorded in the aforesaid County Clerk's office in Book 259, on page 218.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances, to the same belonging or in any wise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same and of in, and to every part and parcel thereof.

All personal property not covered by an assignment as security by E. C. Hazard Co. to the party of the first part is included in this sale.

(H. L. Powers, F. A. Hazard.)

SECOND PARCEL: All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New Jersey, in the Village of Shrewsbury, on the north side of the public road leading through the Village of Shrewsbury to Little Silver Railroad Station and Rumson, adjoining the westerly side of land now owned by the said Florence A. Hazard.

BEGINNING at the center of said public road at the southwest corner of the land now owned by the said Florence A. Hazard and running thence (1) northerly along the westerly line of the said

Schedule A, Attached to Answer.

Hazard Farm, Twenty-five hundred and Sixty-three feet more or less to the point where the north line of the land now or formerly of John R. Sickles intersects the said westerly line of the said Hazard Farm, thence (2) westerly along the said Sickles land and land now or formerly of Capt. H. B. Parker, Two hundred and Twenty-seven feet to the marble monument set for the northwest corner of the land hereby conveyed, thence (3) southeasterly Twenty-five hundred and Fifty-eight feet more or less to a marble monument set in the north line of the aforesaid Public Road, and continuing the same course Thirty feet to the center of the aforesaid Public Road, thence (4) easterly along the center of the aforesaid Public Road, One hundred and Twenty-five feet to the place of beginning, containing Ten acres, be the same more or less.

AND the said Harry L. Powers, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part the said sum of Sixty thousand ($60,000) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

Five hundred dollars on the execution and delivering of this agreement, the receipt whereof is hereby acknowledged	$ 500.00

Schedule A, Attached to Answer.

Thirty thousand dollars by executing and delivery his bond for that amount secured by a purchase money mortgage on said premises, principal payable in three years with interest at 5% per annum, payable semi-annually, and said bond and mortgage to contain full clauses. The vendee to pay any recording charges. The vendor agrees to subordinate said thirty thousand dollar mortgage to any first mortgage that might be placed on said property up to the amount of $30,000.....	30,000.00
Twenty-nine thousand, five hundred dollars in cash or certified check on the delivery of the deed.....	29,500.00
	$60,000.00

AND IT IS FURTHER AGREED by the parties to these presents, the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the day of closing this contract, for the preservation of said property.

IT IS FURTHER AGREED that the party of the first part retains the ownership of all personal property, such as furniture, etc., contained in the big house, and shall have the right to remove same.

AND IT IS FURTHER AGREED by the parties hereto, that the said deed shall be delivered and re-

ceived at the office of John F. Joyce, Esq., at No. 20 Vesey Street, in the Borough of Manhattan, City of New York, between the hours of ten in the forenoon and five o'clock in the afternoon on the said 19th day of February, next ensuing the date hereof.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum paid on the contract to the party of the first part, or any expenses the purchaser may have for examination of title, which they hereby fix and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

HARRY L. POWERS (Seal).
FLORENCE A. HAZARD (Seal).

Signed, sealed and delivered
In the presence of
JOHN F. JOYCE.

Schedule "B."

THIS INDENTURE, made this 5th day of February, 1913, between Florence A. Hazard of the Borough of Brooklyn, County of Kings, City of New York, party of the first part, and Harry L. Powers of the Borough of Manhattan, City, County and State of New York, party of the second part,

WITNESSETH, That whereas, the said Florence A. Hazard did heretofore endorse two certain notes for the firm of E. C. Hazard & Company. That said notes were protested and judgment obtained against said Florence A. Hazard, to wit: The Nassau Bank of New York approximating $7,000 and the Red Bank Second National Bank for $4,100.00. That said judgments are now liens against certain property located at Shrewsbury, New Jersey, which property was this day contracted to be sold by the said party of the first part to the said party of the second part.

NOW, THEREFORE, the said party of the second part agrees to pay both of said judgments heretofore mentioned out of the money received from the sale of said Shrewsbury property on the closing of title, and the said party of the second part agrees to execute four notes of like amount payable in four, five, six and seven months without interest to the order of Florence A. Hazard for the amount so paid by the said Florence A. Hazard in satisfying said judgment.

IT IS FURTHER AGREED that the party of the first part assign to the party of the second part any

security that was given to her by the E. C. Hazard Company for the payment of the aforesaid two notes.

IN WITNESS WHEREOF, we have hereunto set our hands this 5th day of February, 1913.

FLORENCE A. HAZARD (L. S.)
HARRR L. POWERS (L. S.)

In presence of
JOHN F. JOYCE.

IN CHANCERY OF NEW JERSEY.

Reply of the Defendants, Harry L. Powers and Elizabeth R. Powers, his wife, to the Answer of Complainant and Florence A. Hazard to the Counterclaim and Set-off of the Defendant, Harry L. Powers.

Between

FLORENCE E. MURPHY,
Complainant,

—and—

HARRY L. POWERS, et al.,
Defendants.

On Bill, etc.

The defendants, Harry L. Powers and Elizabeth R. Powers, his wife, join issue on the answer of Florence E. Murphy, complainant, and Florence A. Hazard to the counterclaim and set-off of Harry L. Powers.

EDMUND WILSON,
Solicitor for and of counsel

with defendants Harry L. Powers
and Elizabeth R. Powers, his wife.

Foreclosure Bill.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Florence E. Murphy, of the City of New York, respectfully shows that:

1. On March 13th, 1913, Harry L. Powers, being indebted to Florence A. Hazard in the sum of Thirty Thousand Dollars, executed to her a bond of that date to secure that sum, payable on March 13th, 1916, with interest at the rate of Five Percentum, per annum, payable quarterly from the date of the bond.

2. To secure the payment of the bond, said Harry L. Powers and Elizabeth H. Powers, his wife, executed to said Florence A. Hazard a mortgage of even date with the bond and thereby conveyed to her in fee the land hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was recorded in the Clerk's Office of the County of Monmouth in Book 452 of Mortgages on pages 423, &c.

3. The mortgaged premises are described as follows:

All those buildings and all that farm, tract or parcel of land, including trees and premises here-

inafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New Jersey, on the Northerly side of the Public Highway leading from the Village of Shrewsbury through Rumson.

Beginning in the centre of the aforesaid Highway at the Southwest corner of lands now or formerly of Joseph Shepherd, deceased; thence (1) North One Degree and fifteen Minutes East forty-four chains and fifty-four links to the centre of a brook; thence (2) South eighty-five degrees and twenty minutes west ninety-six links along the centre of said brook; thence (3) North one degree and twenty-five Minutes west three chains and forty-two links along the west side of a ditch and along lands of Lewis White; thence (4) North eighty-seven degrees fifteen minutes west six chains and ninety-five links along said White's line; thence (5) South five degrees and thirty minutes west one chain and eighty-one links to the Railroad and the same course continued, one chain and eighty-six links to lands now or formerly of Henry B. Parker; thence (6) South four degrees and fifteen Minutes west five chains and seventy-two links along said Parker's land to a stone and dump; thence (7) South eighty-seven degrees and fifteen minutes east one chain and sixty links along the Sickles Homestead farm to a stone; thence (8) South one degree and fifteen Minutes West thirty-eight chains and sixty-three links along the line of said Sickles Homestead farm to the centre of the aforesaid highway; thence (9) South eighty-eight degrees

and thirty minutes east seven chains and twenty-seven links along the centre of the aforesaid highway to the place of beginning.

Containing thirty-five and 36/100 acres, being intended to be all the land and premises conveyed to Edward C. Hazard by deed of Gordon Sickles, et al., bearing date March 30, 1883, recorded in the office of the Clerk of Monmouth County in Book 365 of Deeds on pages 144, &c.

Excepting and reserving from this Conveyance all the part of the above described lands conveyed to the New York and Long Branch Railroad Company by deed bearing date December 31st, 1873, recorded in the aforesaid County Clerk's Office in Book 259 on page 218.

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. Second Parcel: All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New Jersey, in the Village of Shrewsbury, on the North side of the Public Road leading through the Village of Shrewsbury to Little Silver Railroad Station and Rumson, adjoining the Westerly side of land now owned by the said Florence A. Hazard.

Beginning at the centre of said Public Road at the Southwest corner of the land now owned by the said Florence A. Hazard and running thence (1) Northerly along the Westerly line of the said Hazard Farms, Twenty-five Hundred and

Sixty-three feet, more or less, to the point where the North line of the land, now or formerly of John R. Sickles, intersects the said Westerly line of the said Hazard Farm; thence (2) Westerly along the said Sickles land and land now or formerly of Capt. H. B. Parker, Two Hundred and Twenty-seven feet to the marble monument set for the Northwest corner of the land hereby conveyed; thence (3) Southeasterly Twenty-five Hundred and Fifty-eight feet, more or less, to a marble monument set in the North line of the aforesaid Public Road, and continuing the same course thirty feet to the centre of the aforesaid Public Road; thence (4) Easterly along the centre of the aforesaid Public Road, one hundred and twenty-five feet to the place of beginning. Containing Ten Acres, be the same more or less.

4. Both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for thirty days after the same shall fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, her representatives or assigns become immediately due.

5. The mortgage also contained an agreement that the mortgagor, his heirs and assigns would keep the buildings erected and to be erected upon the mortgaged premises insured against loss or damage by fire in some safe and responsible insurance company or companies, in a sum not less than the principal of the mortgage debt, and would assign the policy of insurance to the mort-

gagee, her representatives or assigns as collateral security for the payment of the mortgage debt; and in default of so doing that the mortgagee, her representatives or assigns should be entitled to effect such insurance, and the premium and premiums paid for the same by the mortgagee or her assigns should be a lien on said mortgaged premises added to the amount of the mortgage debt and secured by the said mortgage, and payable on demand with legal interest.

6. The mortgage was given by said Harry L. Powers as security for the payment of part of the purchase price of the premises covered by it.

7. By written assignment, dated March 21, 1913, said Florence A. Hazard assigned said bond and mortgage to complainant, who was then Florence E. Auresperg, but who has since married and whose name is now Florence E. Murphy. Said assignment was recorded in the Monmouth County Clerk's Office in Book 65 of Assignments of Mortgage at page 445, &c.

8. That there was situate on said mortgaged premises a large factory building, which constituted a large part of the value of the said mortgaged premises; that said Harry L. Powers kept the buildings on said land, including the factory building, insured against loss or damage by fire in several insurance companies to an amount of $51,250; that on the 13th day of February, 1914, the said factory building and certain outbuildings were totally destroyed by fire, in consequence of which the value of the property covered by said

mortgage was greatly depreciated, and the said Harry L. Powers collected from the insurance companies on the policies of insurance covering the buildings destroyed by fire as aforesaid, a sum of money in excess of the amount of complainant's mortgage.

9. Harry L. Powers, notwithstanding his express agreement to assign the said policies of insurance to complainant as collateral security for the payment of said mortgage debt, neglected so to do and refused to pay the money or any part thereof received from said policies of insurance to complainant in discharge or on account of said mortgage or to the payment of the interest due thereon.

10. Thereupon on the 13th day of May, 1914, complainant filed a bill in chancery to restrain said Harry L. Powers from collecting such insurance money above the sum of $15,000, the amount due first mortgagee, and on October 21st, 1914, secured an order restraining said Harry L. Powers from collecting said money from the insurance companies until he had filed a bond in the Court of Chancery in the penal sum of $30,000 executed by himself and the Fidelity Trust Company, body corporate, of New Jersey; that on September 12th, 1916, said order was amended whereby said Harry L. Powers was restrained from collecting said money from the insurance companies until he filed a bond for $30,000 executed by himself and said Fidelity Trust Company with the Clerk of the Court of Chancery, or in lieu of said bond,

upon the collection of said insurance money he forthwith deposited with the Clerk of said Court the sum of $30,000 to be disposed of as the said Court shall direct; that on the 21st day of September, 1916, said Harry L. Powers deposited with the Clerk of the Court of Chancery the sum of $30,000.

11. On December 13, 1915, one-quarter of a year's interest fell due on complainant's bond and mortgage, and was unpaid and remained unpaid for more than 30 days thereafter; and as each successive quarterly payment became due it was not paid and no part of the said interest has been paid on said mortgage since September 13, 1913.

12. On March 13, 1916, the mortgage became due and was not paid, and the whole of the principal sum of the said bond and mortgage, together with interest thereon at the rate of five per centum per annum from the thirteenth day of September, 1913, is due upon complainant's bond and mortgage.

13. Said Harry L. Powers is married and his wife's name is Elizabeth R. Powers. Any claim or interest she may have by way of inchoate of dower, or otherwise, is subject to complainant's mortgage.

14. On December 22, 1914, the Colonial Bank of New York secured a judgment in the New Jersey Supreme Court against Harry L. Powers

for the sum of $6,264.29. Any claim or interest said The Colonial Bank may have in said lands by reason of said judgment or otherwise is subject to complainant's mortgage.

15. On December 22nd, 1914, the Second National Bank of Red Bank, body corporate, secured a judgment in the New Jersey Supreme Court against Harry L. Powers for the sum of $17,150.29. Any claim or interest said Second National Bank of Red Bank may have in said lands by reason of said judgment or otherwise is subject to complainant's mortgage.

16. On December 22nd, 1914, the Red Bank Trust Company of Red Bank, New Jersey, secured a judgment in the New Jersey Supreme Court against Harry L. Powers for the sum of $5,171.49. Any claims or interest said Red Bank Trust Company may have in said lands by reason of said judgment or otherwise is subject to complainant's mortgage.

17. On August 16, 1916, the Creamery Package Manufacturing Company, body corporate, secured a judgment in the Monmouth County Common Pleas Court against Harry L. Powers for the sum of $354.89. Any claim or interest said Creamery Package Manufacturing Company may have in said lands by reason of said judgment or otherwise is subject to complainant's mortgage.

18. On November 16, 1916, John J. Travers filed a lien claim in the Monmouth County Clerk's

Office on the building lot and curtilage of land owned by said Harry L. Powers and Elizabeth R. Powers, and being part of the premises covered by said mortgage, for the sum $224.10. Any claim or interest said John J. Travers may have in said lands by reason of his said lien or otherwise is subject to complainant's mortgage.

19. On November 16, 1916, Arthur G. Sickles filed a lien claim in the Monmouth County Clerk's Office against said building, lot and curtilage of land owned by said Harry L. Powers and Elizabeth R. Powers, and being a part of said premises covered by complainant's mortgage, for the sum of $167.69. Any claim or interest said Arthur G. Sickles may have in said lands by reason of his said lien or otherwise is subject to complainant's mortgage.

20. On November 28, 1916, George W. Sewing filed a lien claim in the Monmouth County Clerk's Office against the building, lot and curtilage of land owned by Harry L. Powers and Elizabeth R. Powers, and being a part of the premises covered by complainant's mortgage, for the sum of $1,490.64. Any claim or interest said George W. Sewing may have in said lands by reason of his said lien or otherwise is subject to complainant's mortgage.

21. On December 15, 1916, Charles Dunfee, trading as the Mitchell Floor Company, filed a claim in the Monmouth County Clerk's Office on the building, lot and curtilage of land owned by

said Harry L. Powers and Elizabeth R. Powers and being a part of the premises covered by said mortgage for the sum of $538.75. Any claim or interest said Charles Dunfee, trading as the Mitchell Floor Company, may have against the premises covered by said mortgage by reason of said lien or otherwise, is subject to complainant's mortgage.

22. Said Harry L. Powers and Elizabeth R. Powers, his wife, have always been in possession of the said mortgaged premises.

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

1. That Harry L. Powers and Elizabeth R. Powers, his wife, the Colonial Bank of New York, the Second National Bank of Red Bank, New Jersey; the Red Bank Trust Company of Red Bank, New Jersey; the Creamery Package Manufacturing Company, body corporate; John J. Travers, Arthur G. Sickles, George W. Sewing, Charles Dunfee, trading as the Mitchell Floor Company, who are defendants to this suit, may answer this bill of complaint and each statement therein.

2. That an account may be taken of the amount due on complainant's mortgage.

3. That a decree may be made for the payment to complainant of the $30,000 deposited in this Court as aforesaid on account of complainant's said mortgage, or

Foreclosure Bill.

4. That the defendants or one of them may be decreed to pay complainant the amount so found due, with interest and costs, by a short day, to be appointed by this Court, and that in default of such payment, they and each of them be debarred and foreclosed of all equity of redemption in said lands; or

5. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the balance of any amount so found due on her mortgage, with interest and costs;

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

Solicitor and Counsel with Complainant.

Replication.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, et als.,

Defendants.

On Bill.

The complainant joins issue on the answer of the defendant:

As to the counterclaim contained in said answer, complainant and Florence A. Hazard say:

1. Paragraph 1 is admitted, with the exception that the complainant does not want it understood that the expression "certain personal property" refers to any fixed property.

2. Paragraph 2 is denied, except that it is admitted that the negotiations between Harry L. Powers and Florence A. Hazard for the purchase of the land and premises are embodied and set forth in the copy of the paper writing attached to the counterclaim and referred to as Schedule A, and that the mortgage referred to in complainant's bill of complaint was given as part payment of the consideration price of the real estate referred as Schedule A.

Replication.

The expression "certain personal property" in paragraph 2 of the counterclaim does not refer to any fixed property.

3. Paragraph 3 is denied, except that it is admitted two contracts, which are designated in the counterclaim as Schedules A and B were entered into between said Harry L. Powers and Florence A. Hazard, reference thereto being had and obtained, the tenor and purport of said contracts may be accurately ascertained.

Complainant and Florence A. Hazard say that the first mortgage mentioned in Paragraph 3 of the counterclaim is not a valid lien against said premises in that it was made without consideration.

4. Paragraph 4 is denied.

5. Paragraph 5 is denied. Complainant and Florence A. Hazard say in reference thereto that Florence A. Hazard met Harry L. Powers at the office of the Fidelity Trust Company in the City of Newark on the 13th day of March, 1913; that prior thereto, although Harry L. Powers well knew what title said Florence A. Hazard had to the personal property in said factory building, as she told him she had assigned to Elmer C. Hazard and Frank T. Matthes her interest in certain personal property situate in the said factory building and said Harry L. Powers on numerous occasions between the date of the signing of said agreement and the 13th day of March, 1913, visited said factory building and saw Elmer

C. Hazard and Frank T. Matthes working in said factory building, and when Elmer C. Hazard asked him said Harry L. Powers, whether he, said Harry L. Powers, would give them, said Elmer C. Hazard and Frank T. Matthes reasonable time to get their property out of said factory, he, said Harry L. Powers, assured them he did not want immediate possession of the factory building and offered to allow Elmer C. Hazard and Frank T. Matthes to use his team of horses to assist in drawing and carting a carload of coal which had recently arrived and which was to be used by said Hazard and Matthes in their manufacturing business in said factory building.

That on the 13th day of March, 1913, complainant and Florence A. Hazard say that Florence A. Hazard told said Harry L. Powers she could not on that day deliver title to certain of the personal property which she had theretofore conveyed to Hazard and Matthes and Harry L. Powers had also been so advised by his representatives at the time of closing of title to the real property; and the said Florence A. Hazard informed said Harry L. Powers that if she could get title to the said property which Hazard and Matthes claimed, she would be willing to turn it over to said Harry L. Powers, thereupon the said Harry L. Powers did separate the said personal property transaction from the real estate transaction, and let the real estate transaction go through without the other, and the said Harry L. Powers having been informed by said Florence A. Hazard that if she could get title to the personal property from Hazard and Matthes she

would turn it over to him, gave to Florence A. Hazard a promissory note with the following endorsement thereon:

> "This instrument shall not be considered as evidence of indebtedness or a chose in action accruing to the payee or her assigns, until the title to goods in payment for which this note is given is legally vested in the maker or his assigns. When such title is vested by bill of sale or assignment thereof, then a new note of like tenor and effect bearing the same date is to be executed by the maker of this note, or his heirs or assigns.
>
> (Signed) HARRY L. POWERS."

all of which was consented to by said Harry L. Powers and he, the said Harry L. Powers, was perfectly willing that the contracts mentioned in the said schedules A and B should be carried out in the manner hereinbefore stated.

Complainant and Florence A. Hazard further say that said real estate was well worth $60,000 which said Harry L. Powers agreed to pay for same; that at that time he, the said Harry L. Powers, not only knew that said Elmer C. Hazard and Frank T. Matthes held title to the personal property which he, the said Harry L. Powers, endeavored to have Florence A. Hazard convey to him, but before the first day of March he was made acquainted with the fact that Elmer C. Hazard and Frank T. Matthes had recorded

their bills of sale for the said personal property and at that time, namely, March 13, 1913, the said Harry L. Powers had paid but Five Hundred Dollars on account of the purchase price of the real estate and knew the exact situation as to the title to the personal property. That later he, the said Harry L. Powers, advanced other moneys on account of the purchase price of the real estate, but instead of complying with the terms of his agreement as mentioned in Schedule B, by paying the judgment of the Nassau Banking Company of New York and the Second National Bank of Red Bank, New Jersey, he, the said Harry L. Powers, endeavored to harrass and embarass said Florence A. Hazard by taking an assignment of said judgment, although the amount paid by Harry L. Powers when he took assignments of the said judgments was deducted from the moneys due Florence A. Hazard at the time of the closing of title to the real estate, and he, the said Harry L. Powers, in a subsequent foreclosure proceeding against property situate in the Borough of Red Bank, N. J., wherein Edmund C. Frazee and Alexander M. Frazee, Jr., executors, &c., were complainants and Florence A. Hazard was defendant, he, the said Harry L. Powers, appeared before the Master appointed to take testimony personally and by counsel and claimed that he held by assignment the judgments of the Nassau National Bank of New York and the Second National Bank of Red Bank, New Jersey, and that they were valid liens against property being foreclosed in the above mentioned proceeding, and that there was due on the said

judgments a large sum of money, to wit: $12,548.45, with interest, and that the said sum of money should be paid from the surplus, if any, out of the money arising from the sale of the properties under foreclosure. That it was necessary for Florence A. Hazard to appear, employ counsel, subpoena witnesses and take testimony before the Master in order to show that the claim of said Harry L. Powers against her was fraudulent, and in truth and fact he had no interest nor claim in the judgments above mentioned, the same having been paid by said Florence A. Hazard, by the amount being deducted by said Harry L. Powers from the $30,000 cash due her at the closing of title to the real estate.

The said complainant and Florence A. Hazard further say that at no time was the said Harry L. Powers by reason of any advancement of money to her, placed in such position that it was necessary for him to go through with the closing of title to the real estate, as alleged by him, for he, the said Harry L. Powers, took assignments of the judgments at the closing of title and took the property subject to a number of liens, which he allowed to exist against the property and for which he deducted the amount thereof from moneys due said Florence A. Hazard; that at the time of closing of title to the real estate said Harry L. Powers knew that Florence A. Hazard could not deliver title to the personal property mentioned in Schedule B and that an agreement was appended to said agreement between said Florence A. Hazard and Harry L. Powers in reference to the personal property

mentioned in Schedule B, wherein Florence A. Hazard agreed to turn over to said Harry L. Powers the said personal property if she could secure same from Elmer C. Hazard and Frank T. Matthes, and upon the strength of this new agreement and note above mentioned, the endorsement contained on the said note was made by the said Harry L. Powers to the said Florence A. Hazard. In fact, as evidence of her good faith in the matter at the time of closing title to the said real estate she offered to endorse to him the note which she held of Hazard and Matthes for the sale of the said personal property and the said Harry L. Powers refused to take it, saying he would rather have Florence A. Hazard secure title from Elmer C. Hazard and Frank T. Matthes and when she secured such title he would give the note specified in the memoranda above mentioned, that the said Florence A. Hazard was perfectly willing to endeavor to get title to the said property from Elmer C. Hazard and Frank T. Matthes and turn the property over to said Harry L. Powers, and she believed she would have been able to do so but for the subsequent unlawful acts of said Harry L. Powers; that the said Harry L. Powers on the 15th day of March, 1913, in an unlawful and high handed manner violently, forcibly and against the wills of said Elmer C. Hazard and Frank T. Matthes took forcible possession of the said personal property mentioned in Schedule B, when he, the said Harry L. Powers, well knew that he had not purchased same, nor had he any title to said property, the title being in the said Elmer C. Hazard

and Frank T. Matthes; that by reason of said wrongful taking possession of the said goods she, the said Florence A. Hazard, could not get title to the property from Elmer C. Hazard and Frank T. Matthes, they feeling the yhad been aggrieved by the unlawful action of said Harry L. Powers and violation of his agreement with them when he agreed that they should have sufficient time to remove their goods from said factory building, instead of which he took forcible, wrongful and unlawful possession of their goods and they, the said Elmer C. Hazard and Frank T. Matthes, being aggrieved by the unlawful and the high handed action of the said Harry L. Powers refused to enter into negotiations with the said Florence A. Hazard for the return of said property to her as the said Harry L. Powers had acted in the manner hereinbefore stated, and for this reason said Florence A. Hazard was unable to comply with her subsequent agreement in reference to the transfer of the title to the property mentioned in Schedule B.

6. Paragraph 6 is denied. In reference to which conplainant and Florence A. Hazard say that at no time has Florence A. Hazard or complainant demanded possession of said real estate from Harry L. Powers; that acting upon her agreement she would endeavor to secure from Elmer C. Hazard and Frank T. Matthes the personal property mentioned in Schedule B and turn it over to Harry L. Powers on the 14th day of March, 1913, Florence A. Hazard journied to Shrewsbury, where her son, Elmer C. Hazard,

was living in the Manor House, situate on said property, and she, with her son Elmer C. Hazard, his wife, Harry L. Powers and his wife spent a social evening; that it was her purpose in going to Shrewsbury to take the matter up with her son Elmer and if possible secure a return to her of the personal property that as she arrived at the Manor House in the evening of the 14th it was her intention to take the matter up the following day; that all that evening Harry L. Powers did not make any demand for immediate possession of the said property, although he had the deed therefor; that he knew Elmer C. Hazard and his wife and others were occupying the said building; that Elmer C. Hazard and Frank T. Matthes had employees working in the factory building, one of whom was a man named Wilson, and that on the following morning, March 15th, unknown to Florence A. Hazard, the said Harry L. Powers, together with his employees and agents, went to the factory as the employees of Elmer C. Hazard and Frank T. Matthes were about to go to work and forcibly took possession of all property mentioned in Schedule B, ejecting the employees of Elmer C. Hazard and Frank T. Matthes from the said factory building and at all times thereafter notwithstanding repeated demands made upon him, refused to return the property of the said Elmer C. Hazard and Frank T. Matthes.

7. Paragraph 7 is denied and Florence A. Hazard in reference thereto says she did not at any time enter any suit against the said Harry L. Powers, nor has any proceeding of any nature

been taken against him by her or on her behalf.

8. Paragraph 8. Complainant and Florence A. Hazard admit that said Harry L. Powers has been in possession of the premises conveyed to him by her; that at the time he took possession of the premises he had a deed therefor and thereafter he insured the buildings and personal property therein contained; that a fire occurred, but they insist that the possession held by said Harry L. Powers of the personal property mentioned in Schedule B was wrongful.

Complainant and Florence A. Hazard admit that after the fire three suits were instituted in the Court of Chancery; one by the Little Silver Sauce Company, one by the E. C. Hazard & Company and a third by Frank T. Matthes, but deny that the subject matter of said suits was the property that Florence A. Hazard had conveyed to said Harry L. Powers; in fact, the subject matter of the said suit of the Little Silver Sauce Company was the identical goods mentioned in Schedule B, of which the said Harry L. Powers obtained wrongful possession.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied, and complainant and Florence A. Hazard say that said Harry L. Powers knew at the time he had taken wrongful possession of the property mentioned in Schedule B, that he, by his own unlawful methods, had prevented said Florence A. Hazard from carrying out their substitutionary agreement in reference to said property and deny that there was good

faith in the motives which prompted him in his dealings with the said Florence A. Hazard as displayed by his actions in the various matters pertaining thereto.

Complainant and Florence A. Hazard say that Florence A. Hazard had no control over, nor was she in any way bound by the actions of the Little Silver Sauce Company and others in instituting proceedings against Harry L. Powers, nor the claims made upon him by the said Little Silver Sauce Company, Elmer C. Hazard and Frank T. Matthes; that these claims were brought about by the unlawful actions of the said Harry L. Powers; that had he not taken wrongful possession of the property as aforesaid the said property would not have been destroyed by fire, nor would there have been any claim for the value of the same upon any insurance moneys due him by reason of said fire; that the fact he was engaged in litigation was brought about by his own unlawful and high handed manner in dealing with the personal property mentioned in Schedule B, for which he knew he had not paid; that Florence A. Hazard had no title to the property; that she never has been able to deliver title to him and that he never paid one cent therefor; in fact, admitted at the time of closing title to the real estate, months before, that the title to the personal property mentioned in Schedule B was in persons other than Florence A. Hazard and that was the reason he delivered to said Florence A. Hazard the memoranda that he would pay for the same when she could deliver the title to him. She at no time has delivered title to him

because his subsequent acts in relation to the said personal property mentioned in Schedule B made it impossible for her to obtain the title from the rightful owners thereof, which acts of said Harry L. Powers were unlawful, wrongfully frustrating the attempts of the rightful owners to obtain possession of their goods which he retained in his building in which the fire occurred that totally destroyed them, and by reason of these acts on his part he was called upon to make payment in damages thereof.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied. It is, however, admitted that decrees were not entered until November 4th, 1915.

14 and 15. Paragraphs 14 and 15 are denied. Complainant and Florence A. Hazard admit that proceedings were instituted in the Court of Chancery by E. C. Hazard & Co., but deny that Florence A. Hazard was in any way interested in the same and further say that if said Harry L. Powers voluntarily settled any suit or proceedings brought by E. C. Hazard & Co. they should not be charged with such voluntary settlement by said Harry L. Powers.

16. Paragraph 15 is denied. Complainant and Florence A. Hazard admit that on March 13, 1913, a judgment was outstanding and a lien against the said property at the suit of one Frederick Eiseman, but deny that she the said Florence A. Hazard verbally at the time of the deliv-

ery of the deed promised to indemnify said Harry L. Powers against the said judgment. Complainant and Florence A. Hazard admit that the attention of Florence A. Hazard was called to the judgment at the time of the closing of title, and at that time Florence A. Hazard informed Harry L. Powers and others present that the Eiseman attachment was founded upon a judgment obtained in New York; that the judgment in New York was under appeal; that until the determination of the appeal in New York she did not believe the attachment in New Jersey should be paid, thereupon the said Harry L. Powers entered into an agreement with her (a copy of which is hereto annexed and marked Schedule C); that she, the said Florence A. Hazard, has in all things lived up to her agreement; that she employed counsel in New Jersey to have the collection of the judgment in New Jersey restrained pending the appeal in New York; that this was done and the decision was handed down by the Appellate Division of the Supreme Court reversing the judgment in the Supreme Court upon which the attachment in New Jersey was founded and thereupon application for the quashing of the attachment in New Jersey was made, but owing to the fact that an appeal was taken from the decision of the Appellate Division to the Court of Appeals the motion to quash was continued pending the decision of the Court of Appeals of New York and that later the Court of Appeals of New York reversed the decision of the Appellate Division, thus putting in force the

original judgment upon which the attachment in New Jersey was based.

Complainant and Florence A. Hazard admit that Harry L. Powers did recently pay the amount due upon the said Eiseman judgment, which amount should be deducted from the amount due upon complainant's mortgage. And complainant and Florence A. Hazard deny that Florence A. Hazard in any of her negotiations or transactions with said Harry L. Powers practiced any fraud or deceit upon him; that in all things she lived up to her agreement with him and that on the contrary he, the said Harry L. Powers, endeavored to embarrass and charge her with the result of his own unlawful wrongful actions which have caused whatever litigation and trouble he, the said Harry L. Powers, has had from others, for all of which said Florence A. Hazard was in no wise responsible, but on the contrary has lived up to her undertakings with him, the said Harry L. Powers.

Complainant and Florence A. Hazard say that Florence A. Hazard never received from said Harry L. Powers any money for the property mentioned in Schedule B; therefore he, the said Harry L. Powers, is not entitled to any claim or deduction for $11,400 paid the Little Silver Sauce Company and $500 paid to Frank L. Matthes, because he, the said Harry L. Powers, wrongfully deprived the Little Silver Sauce Company and Frank T. Matthes of their property; that the sum of $1,800 should not be deducted from the amount due on said mortgage because this sum was voluntarily settled in a suit brought by

Replication.

E. C. Hazard & Co. against Harry L. Powers, in which Florence A. Hazard was neither a party nor interested therein.

Solicitor of Complainant
and Florence A. Hazard.

SCHEDULE "C."

This agreement made this thirteenth day of March, in the year of our Lord one thousand nine hundred and thirteen:

Between Florence A. Hazard, widow, of Shrewsbury, Monmouth County, in the State of New Jersey, of the first part, and Harry L. Powers, of the same place, of the second part;

Witnesseth, whereas Florence A. Hazard has conveyed premises at Shrewsbury Township, Monmouth County, this day unto Harry L. Powers, and

Whereas, said premises are encumbered by an attachment obtained by Frederick F. Eiseman in the sum of Twenty-eight hundred Dollars and costs against said Florence A. Hazard; and

Whereas said Harry L. Powers has refused to accept title to said premises subject to the lien of said attachment unless said Harry L. Powers should be indemnified by said Florence A. Hazard; and

Replication.

Whereas said Harry L. Powers has agreed to accept the note of said Florence A. Hazard in the sum of Three Thousand Dollars, which said note upon its face calls for interest at the rate of six percentum per annum as indemnity against loss in case said attachment should be perfected and be and remain a valid lien in law against the premises so conveyed.

Now, therefore, this agreement witnesseth, that in consideration of the premises and of the sum of One Dollar lawful money of the United States of America good and valuable consideration paid by the party of the first part to the party of the second part the parties hereto agree as follows:

The said party of the second part agrees to accept said note and clear up the lien of said attachment and have same discharged from the record; the said party of the first part agrees to pay interest on said note at the rate of six percent per annum in case it shall be found necessary in the judgment of said Harry L. Powers to discount said note and use the proceeds thereof to extinguish the lien of said attachment of record, the said Harry L. Powers further agrees to renew said note in case it shall be found necessary because of the non-determination of the facts at issue between the attachment creditor, Frederick F. Eiseman or his assigns and the defendant Florence A. Hazard by the proper Court of last resort of the State of New Jersey before the date of maturity of said note; and further, that in no event shall the funds obtained by discounting said note or the note itself be paid to Frederick

F. Eiseman or his assigns in satisfaction of said attachment unless it shall have been determined the only course possible because of the final decision of the Court of last resort of the State of New Jersey.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

FLORENCE A. HAZARD
HARRY L. POWERS

Signed, Sealed and Delivered
in the presence of
HENRY G. DICKENSHEET.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, et als,

Defendants.

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Town Hall, Red Bank, New Jersey, on Monday, April 22nd, 1918, at 10:15 a. m.

Appearances:

Mr. Charles F. Sexton and Mr. Joseph O. Skinner for complainant.

Messrs. Wilson & Smock and Mr. M. T. Rosenberg for defendants.

Court: Complainant admits that whatever amount may be found to be due here, there is to be credited thereon the sum of $3929.02.

Mr. Wilson: On the sixth of October, 1913, we deposited with the Fidelity Trust Company, as an indemnity against this Eiseman judgment, the sum of $4,000. Subsequently, when the Fidelity Trust Company

satisfied that judgment, after extended litigation, they paid in satisfaction of it $3,929.02. I have here the statement of Mr. Lafferty of the Fidelity, which we all be concluded by. We ask interest on the $4,000 from the sixth of October, 1913, the date we put it up.

Mr. Sexton: That we admit he is entitled to.

Court: It is agreed by counsel that on any amount that may be found due the complainant, there is to be credited to the defendant the sum of $4,000, which he deposited with the Fidelity Trust Company on October 6th, 1913, and interest thereon from that date, at the rate of six per cent to the date of the final decree; and that on the amount so found due him there is to be credited the sum of $371.98, being interest paid to the defendant Powers by the Fidelity Trust Company on his deposit.

FLORENCE E. MURPHY, complainant, sworn.

Direct examination by Mr. Sexton:

Mr. Sexton: By the pleadings the execution of the bond and mortgage and assignment are admitted.

Q. I show you, Mrs. Murphy, a paper which is a bond from Harry L. Powers to Florence A.

Hazard, bearing date the 13th day of March, 1913, and drawn in the penal sum of $60,000, given to secure the sum of—it says $60,000, but it should be $30,000, with interest from the 13th day of March, 1913, at 5%, the interest payable quarterly, the mortgage payable in three years, and ask you if that is the bond upon which this foreclosure proceeding has been begun? A. Yes, sir.

Mr. Sexton: I offer the bond in evidence.
(Marked Exhibit C 1.)

Q. I show you, Mrs. Murphy, a mortgage, purporting to be given to secure the bond already shown you, from Harry L. Powers and Elizabeth Powers, his wife, to Florence A. Hazard, bearing date the 13th day of March, 1913, covering property at Shrewsbury and given for the sum of $30,000, with lawful interest thereon at the rate of 5%, payable quarterly, and ask you if that is the mortgage upon which this suit is brought? A. Yes, sir.

Mr. Sexton: I offer the mortgage in evidence.
(Marked Exhibit C 2.)

Q. What was your name just prior to your marriage? A. Auersperg.

Q. You are now married and your name is Murphy? A. Yes.

Q. I show you, Mrs. Murphy, an assignment of mortgage bearing date the 21st day of March, 1913, which assigns bond and mortgage for $30,-

000, given by Harry L. Powers and Elizabeth Powers, his wife, to you, and ask you if that is the assignment of the mortgage referred to, upon which this suit is brought? A. Yes.

Q. And executed by Florence A. Hazard? A. Yes.

Court: Florence A. Hazard being your mother?

Witness: Yes.

Q. How much is there due upon this mortgage, Mrs. Murphy—this bond and mortgage? A. $30,000.

Q. With the deduction of the item claimed that we have already spoken of? A. Yes.

Q. And interest from when? A. From when the property was sold.

Court: Is there an endorsement of the payment of interest?

Mr. Sexton: No.

Q. May I add September 13, 1913: has any interest been paid you upon the mortgage since that time? A. Two payments of interest—two or three.

Court: Have you any personal knowledge as to the date to which interest is paid?

Witness: Every three months the interest was to be paid.

Q. Have you any knowledge as to how much was paid? A. It was paid every three months.

Q. How often? A. Three times, two or three.

Court: You can prove it by another witness, if necessary. She thinks two or three payments on account of interest were made.

Q. What was the consideration between your mother and yourself for the assignment of the mortgage? A. In the first place, it was to secure my mother from signing lots of notes; her property was all getting away from her, and my sister and all of them received $3,000, and I did not.

Q. And had you advanced any money to your mother at the time of the assignment? A. Yes.

Q. How much, about? A. I cannot tell you exactly, because I gave it to her as she needed it.

Court: You say your sister and all of them; to whom do you refer?

Witness: My brothers, every one of them, $3,000.

Q. How many are there in the family? A. Seven.

Q. And each of them had recceived about $3,000? A. Yes, except my sister, Mrs. Bedleson and myself.

Q. And except yourself? A. Yes.

Q. What other considerations or payments were there? And you at that time paid money to your mother? A. Yes, $375 and $400, and different times she needed it to pay inteest on her mortgages.

Q. Do you know what the total of those pay-

ments amounted to? A. I never kept track of them; two or three or four thousand dollars, I don't know.

Mr. Sexton: That is all with this witness. If it appears there were three payments made, we will admit it.

Q. What do you mean, whether your mother was liable on the notes or got the notes? A. As you can see from the testimony, everybody used her for everything and—she got into such trouble and I felt sorry for her, and I felt it was the only way to protect her.

Q. How do you mean to protect her? A. If she didn't have it, she could do it; she couldn't give it to them and she couldn't go on notes for them.

Q. You mean if you took an assignment of the mortgage? A. She gave me that.

Q. You held it for yourself in part or in part for her, or entirely? A. She gave me that, as you might say, love and affection, and at the time, I hadn't any home and I wasn't married and no one to look after me.

Q. It was a gift, then, in addition to the other payments you have spoken about, from your mother to you? A. Yes.

Mr. Sexton: Default has been made in the interest; is that admitted?

Court: Is that true?

Mr. Wilson: Mr. Powers stopped paying interest when this controversy arose, and we are in doubt as to whether there were

two or three payments, but we will ascertain what the fact is, and whatever the fact is, credit will be made accordingly.

Cross-examination by Mr. Rosenberg:

Q. You say you advanced to your mother at one time $375? A. Yes.

Q. When? A. I don't know: at different times; I gave her money often.

Q. Do you mean to say that this was one amount of $375, or various amounts that aggregated that amount? A. No, I mean $375 at a time.

Q. At one time? A. Yes.

Q. When was that one time? A. You might ask her that.

Court: If you don't know, say so.

Witness: I cannot remember.

Q. How do you remember it was $375? A. Because it was a mortgage made out to Elizabeth Hert and she had to have the money.

Q. How much? A. $375.

Q. On what was that mortgage? A. On 74 Grove Street.

Q. New York City? A. Yes, sir.

Q. And the mortgage was for $375? A. Yes.

Q. And you paid the $375? A. I gave my mother that and she paid it.

Q. And you don't remember when that was? A. No.

Court: How many years ago?

Witness: It is often; it was only about a year ago or six months ago.

Q. It was a year ago or six months ago? A. A number of times the same amount.

Q. How many times did you pay $375, do you know that? A. No.

Q. Then all you can say is that sometime or other you paid $375; the last time was when? A. I told you you will have to ask my mother that.

Court: If you cannot answer, say so.

Witness: I cannot remember.

Q. Then one payment was as recent as a year ago? A. Yes.

Q. And there was a payment about a year ago, was there? A. Yes.

Q. And when was the payment before that? A. About six months, I suppose, before that.

Q. And how much was that? A. The same amount.

Q. Each time? A. Sometimes I gave her, you might call it Christmas $100, at different times like that, whenever I felt that she needed it.

Q. When did you take this assignment of mortgage? A. I don't know when; I don't remember that.

Q. Was the assignment delivered to you by your mother? A. Yes.

Q. Where was it delivered to you? A. I think it was in Shrewsbury.

Q. When? A. About three or four years ago I think it was.

Court: Were you living at home with your mother?

Witness: Yes.

Q. When were you married? A. The first day of May, three years ago.

Q. That would be the first day of May, 1915? A. Yes.

Q. At that time you were living with your mother? A. Yes.

Q. Did you have any money of your own? A. Yes, I was getting my interest money from my father's estate, which my brother paid me.

Court: You were married to Mr. Murphy three years ago?

Witness: Yes; before that I was living home.

Q. You were unmarried, you hadn't been married before that? A. Oh, yes.

Court: When was the date of your marriage to Mr. Murphy?

Witness: Three years ago, the first of May, 1915.

Q. You had been married before that? A. Yes.

Q. A widow? A. Divorced.

Q. Who was your first husband?

Q. You were then living with your mother before you married Mr. Murphy? A. Yes.

Q. You say you were getting moneys from your brother out of your father's estate A. Yes.

Q. What was your father's name, Edward C. Hazard? A. Yes.

Q. How much were you getting from your brother? A. $66 and $100 at a time.

Q. And how many times? A. A number of times, every month, I should say about a year it was.

Q. Every month? A. Probably longer than that. It is so long ago.

Q. How much? A. You will have to get some of my brothers to refresh my memory.

Q. How long ago was that? A. It was while I lived at Shrewsbury.

Q. As much as ten years ago? A. Five years.

Mr. Sexton: The fact that the mortgage was assigned, if you are trying to show that there was not consideration in Mrs. Powers sufficient that you cannot charge Mrs. Hazard's money with it—we will admit it.

Mr. Rosenberg: We want to show what this witness's real interest is. Whatever she actually advanced in good faith on this mortgage, without notice, it is a question in our minds whether she ought not to have it. She is to a certain extent a trustee for Mrs. Hazard. That is admitted.

Mr. Sexton: That is admitted, because there were certain sums that she had given her—$2,000 or whatever it was, at the time she took the mortgage.

Mr. Rosenberg: She doesn't say so, but if we can simplify that matter, we will be very glad to. Evidently she doesn't know anything about this matter at all. It doesn't appear affirmatively that she actually did put in any money on the faith of the assignment.

Court: Except as she said, $375, and other payments, may aggregate three or four thousand dollars. How much do you claim is due the complainant herself and how much to Mrs. Hazard?

Mr. Sexton: If she cannot testify, we cannot; so it seems it is only fair to the Court to open the door and say that if Mr. Powers is entitled to any money off this mortgage, he shall have it.

Mr. Wilson: Without regard to whether now the ownership, in whole or in part, is in Mrs. Murphy?

Mr. Sexton: Yes.

Mr. Rosenberg: That ends my cross-examination.

Court: It is agreed by the complainant that if it is found that Mr. Powers is entitled to any deduction from the amount of this mortgage by reason of any claim against the complainant herself or Mrs. Hazard, or both, that such deduction shall be made?

Mr. Sexton: Yes.

Court: Without regard to what consideration passed between the complainant and her mother for the assignment of the bond and mortgage in question to her.

Mr. Sexton: We rest.

Florence E. Murphy—Cross.

HARRY L. POWERS, defendant, sworn.

Direct examination by Mr. Wilson:

Q. You are the defendant in this cause, are you? A. Yes.

Q. And are you related to Florence Hazard and Mrs. Murphy? A. By marriage.

Q. And how by marriage? A. I married Mrs. Hazard's daughter and Florence Murphy's sister.

Q. When, if ever, did you begin to negotiate, or did Mrs. Hazard begin to negotiate with you, with a view of purchasing the canning factory business at Shrewsbury? A. November and December of 1912.

Q. And were you then married to Mrs. Hazard's daughter? A. Yes.

Q. And where were you living at that time? A. At Shrewsbury, New Jersey, in the summer time, and New York in the winter time.

Q. Whereabouts in Shrewsbury were you living? A. Right adjoining this property.

Q. Adjoining the property which was subsequently purchased? A. Yes.

Q. Who opened these negotiations? A. Mrs. Hazard.

Q. And at the time these negotiations were opened what was the condition of the business formerly owned by E. C. Hazard; what was the general condition of it? A. Generally stopped; there wasn't much business there; creditors were coming in every minute.

Q. When did Mr. Hazard die, if you recall? A. I believe it was in 1905, in February.

Q. And for how many years prior to that had he conducted this business of manufacturing food products at Shrewsbury? A. A great many.

Q. Generally what was the character of the plant that he had there? A. A brick building about 450 feet long and 150 feet wide, three stories on the rear and one on the front part of it.

Q. Were there any buildings that were adjacent to it and ancillary to it? A. Yes, a platform and storage warehouse, glass shed and attendants' house and the residence.

Q. Do you know, of your own knowledge, what became of the business after Mr. Hazard's death; what was done in respect to it; you say he died in February, 1905? A. It was run as a copartnership with a man named Mr. Green, Mr. Hazard's former partner.

Q. How long did that continue?

Mr. Sexton: That is objected to.

Mr. Wilson: It is part of the res gestae and leads up to the negotiation; it is for the purpose of showing the condition of the business.

Court: I will take it.

Q. You say there was a copartnership and that continued for how long, approximately? A. I cannot give the exact date.

Q. Then what happened? A. They made a corporation, one in New York and one in Jersey.

Q. Do you know what became of the partnership? A. It failed, broke up.

Q. Were there bankruptcy proceedings, if you know? A. Yes, bankruptcy proceedings in New York City.

Q. Then you say there were two corporations incorporated? A. Yes.

Q. Do you know what they were? A. One was the Hazard Shrewsbury Manufacturing Company, at Shrewsbury, and the other was the E. C. Hazard Company, in New York.

Q. Did the business continue to be operated by one or both of those companies for a period? A. Both of them, yes, sir.

Q. What was the status of the business, and who, if anyone, was running it when Mrs. Hazard, you say, opened these negotiations with you in November or December, 1912? A. Elmer Hazard.

Q. Who was he? A. Mrs. Hazard's son, the president of this company, at the time.

Q. President of which company? A. Of this E. C. Hazard Company and the Shrewsbury company.

Q. What do you mean by the Shrewsbury company? A. The Shrewsbury factory here at Shrewsbury which I purchased.

President of both companies, was he?
Witness: Yes.

Q. When you speak of the Shrewsbury company, you mean the Little Silver Sauce Company? A. There was no Little Silver Sauce Company. It was the Hazard Shrewsbury Manufacturing Company that manufactured food products here at Shrewsbury.

Q. That was the only company you knew of? A. The only company I had any knowledge of.

Q. At the time she opened these negotiations with you was her financial condition disclosed to you by her, in the late fall of 1912? A. A great many obligations, a great many judgments, very much worried about them, talked over them continuously, the condition of foreclosure, losing the property, no money to pay them.

Q. What were her preliminary suggestions as to your taking over the property; what did she say in what connection? A. "You have a business in New York, and your family lives here; it would be very much better for you to buy this business from me, instead of building a house as you intend to do on this other property, take this house and live in it, and have your business and your home all together, and you are married to my daughter, and I would rather have her have the house and you as her husband have this business than anyone else."

Q. The property that you were living upon at Shrewsbury, was that adjacent to this Hazard property? A. It adjoins us on the westerly line.

Q. Go on; what further passed in those preliminary negotiations; was price discussed? A. The price was discussed at about $75,000 or $80,000.

Q. Suggested by whom? A. Mrs. Hazard, and I said, "That is too much." Then all action was stopped, as far as negotiations were concerned, because of someone else making a larger offer, and then later on it was taken up again.

Q. When was it taken up again; who took it up? A. Mrs. Hazard. The other people had

dropped out; they had had an option on these properties.

Q. Did she tell you what that option price was? A. I think it was $80,000.

Q. At any rate there came a time when she told you that the option hadn't been acted upon? A. Yes.

Q. And was it then that she took up again with you the negotiations? A. Yes.

Q. And what occurred at that time? A. She asked $75,000 or $80,000, to start with, and I said, "No, that is entirely too much." I said, "I cannot afford to carry it at that price." She then put the price at $61,000. I said, "No, I will do this; I will give you $60,000 for the real estate, house, grounds, factory, factory equipment, name and label Shrewsbury, and all equipment which Mr. Hazard left to you from his will at his death," and there was no knowing then the exact amount of this debt which she owed in this bank, as to how much the interest and principal was, but whatever that amount was, it was to be on this personal property—which turned out to be $11,400, making all the price——

Mr. Sexton: Will you fix the time?

A. (Continuing). Making the entire price $71,400.

Court: About when did this option expire? When were these negotiations resumed with you by Mrs. Hazard?

Witness: Just prior to February 5, 1913, when we got into a final settlement.

Q. Did you reach a point in her negotiations where this plan of purchase was assented to by her? A. Yes, sir.

Q. You say that was just shortly before February 5, 1913? A. Yes, sir.

Q. And where was that conference and talk? A. At my house.

Q. Where? A. In 97th Street, just off Broadway, New York City.

Q. Were you occupying a house in New York in the winter and this place in Shrewsbury in the summer to which you have already referred? A. Yes.

Q. In this interview which you just referred to, you have referred to judgments as though you had made reference to them before; what judgments were they, bank judgments? A. The National Nassau Bank and the Second National Bank of Red Bank.

Court: Against whom?

Witness: Judgments against Florence A. Hazard.

Q. Did she explain how those judgments arose, whether upon her debt or the debt of the Hazard Company, or how? A. Debt of the Hazard Company—endorsement on notes for them.

Q. Which she had endorsed? A. Yes.

Q. And judgments had been entered against her? A. Yes, sir.

Court: When you say Hazard Company, I suppose you mean one or both of the

companies you have mentioned, of which Mr. Elmer Hazard was president?

Witness: I believe the one in New York went out of existence, and this was the only one in existence at this time.

Court: When you say Hazard Company you mean the company?

Witness: Yes.

Mr. Wilson: He refers to what is known as E. C. Hazard & Company.

Witness: Yes.

Court: From now on I will understand he is referring to E. C. Hazard & Company.

Q. You say she had endorsed the notes and judgments had been entered against her? A. Yes.

Q. And she was being harrassed under those judgments? A. Yes, the property was being levied on.

Q. Did she explain to you at that time or any other time that she had any security, she had taken any security or had any property in place of those judgments, to indemnify her for those judgments? A. Yes.

Q. What did she say in that connection? A. She said, "I have the list of goods, of the inventory of this factory."

Q. I am directing your attention, not to February 5, nor any event subsequent to February 5, but prior to February 5, the general negotiation where you say you led up generally to an arrangement.

Court: While she was telling you about her liability for these judgments against

the company, did she mention anything of the nature of the security that she held, and if so, what was the security she spoke about?

Witness: The property of her husband, left by him in his will to her, the name of the E. C. Hazard Company, the trade-mark which had gone on record at Washington, the one name Tomatoketchup and Burnt Onion Sauce, and the general business which her husband had left her in his will.

Q. She agreed to sell you that for how much? A. For $60,000.

Q. What were you to get in addition to that, if anything? A. I was to get the goods which represented this $11,400 which E. C. Hazard & Company had given her to reimburse her for her endorsement on these notes.

Q. In those two banks? A. Yes, sir.

Q. You reached that basis, did you? A. Yes.

Q. And that made the entire purchase price, then, $71,400? A. Yes.

Q. How soon after that basis of adjustment was reached did you meet to do anything definite about the purchase? A. On the fifth day of February I was called on the phone in the morning and asked for Mrs. Powers and I went to meet Mrs. Florence Hazard at the Astor House downtown, the old Astor House.

Q. New York? A. New York City.

Q. In those negotiations to which you refer, was your wife present upon any of those occasions? A. All of them.

Q. You got this telephone message on the fifth of February asking you to meet at the Astor House; did you go down there? A. Yes, sir.

Q. Whom did you meet? A. I stopped in the corridor to telephone. Mrs. Powers went upstairs ahead of me to the upper parlor; I followed her up; there was Mrs. Hazard, Elmer Hazard, Matthes and Mrs. Powers just ahead of me.

Court: Matthes, was he a relative of the family?

Witness: No.

A. (Continuing). There was quite some excitement about a judgment Eisemann had taken against Mrs. Hazard, and she was finding considerable fault with it, and after the preliminary of that had worn off we got into the question of the purchase of this factory.

Q. Was that the same Eisemann judgment that you subsequently satisfied through the Fidelity Trust Company? A. Yes, sir.

Q. Then when that was over you say you got into these negotiations; what was agreed upon: what was said or done in respect to it? A. Just as we started off Mr. Joyce came in.

Q. Who was Mr. Joyce? A. He was her attorney. He said, "Mrs. Bedleson has called me on the phone and asked me to come down and attend to Mrs. Hazard's affairs, or protect Mrs. Hazard's interest."

Q. He was there at any rate as her attorney? A. Yes.

Court: Mrs. Bedleson is Mrs. Hazard's daughter?

Witness: Yes.

Mr. Wilson: Still another one.

Q. What passed between you at the Astor House, if anything, in respect to the purchase of this property? A. She said, "I propose to sell you the house, grounds, factory, factory equipment, the label Shrewsbury that was left, or whatever personal property was left to me by my husband, and grounds the factory and building is on, and property that I own." Then the question of the personal property—she wasn't sure about the amount of it, but whatever these judgments were I had to pay up.

Q. What do you mean, personal property generally? A. This very personal property that E. C. Hazard had given her as security for these notes.

Q. What was said about them? A. She said, "This was given to me as security." I spoke up and I said, "Do you own this property?" She said, "It has been reduced to my ownership on the minutes of the books."

Q. How much were you to pay for these two groups—— A. $71,400 for the entire property.

Q. Was Matthes present? A. Yes.

Q. And Mr. Joyce was present? A. Yes.

Court: Was the total divided in any way, the $71,400?

Witness: At what time?

Mr. Wilson: Not at that time.

Q. Was any memorandum made by Mr. Joyce as her attorney as to the character of the premises and the scope of them? A. There was a small round table there; Mr. Joyce went over to the table and started writing. I said, "If you are going to make up a memorandum, you want to separate this personal property, such as goods, that is going in on the endorsement of these notes, from the other transaction, because the Fidelity of Newark does not guarantee personal property," and subsequently she told me that she had inventory of this personal property, nad I said, "You don't want to put it in as one paper; I want to have an opportunity to go down and find out about it."

Q. You then expressed a wish to have a separate paper covering this property she had as security from E. C. Hazard & Company? A. Yes.

Q. Did you agree upon those terms among yourselves? A. Yes.

Court: While you were there?
Witness: Yes.

Q. Then and there, as I understand? A. Yes.

Q. And what, if anything, was to be done after that day about the matter; did Mr. Joyce make out a memorandum? A. Yes.

Q. Of this proposed sale? A. Yes.

Court: Was it signed by you and Mrs. Hazard?

Mr. Wilson: All in one as I understand.

Q. Then what happened? A. We all went in to lunch except Mr. Elmer Hazard, and he went out, and Mr. Joyce went out to his office to prepare these other papers; as Elmer Hazard went out of the room, Mrs. Hazard said, "Elmer's heart is broken." We went into the dining room and had luncheon; there was a general conversation of what I expected to do with this business, who expected to join me in it and how I expected to run it, and what I expected to do, and after lunch was over we went down——

Q. Were both Elmer and Matthes in the Astor House when these details of the purchase, including your purchase of the property she held as security from the E. C. Hazard Company, were discussed; when she agreed to make that sale to you, were they both present? A. Yes.

Court: And Mr. Joyce also?
Witness: Yes, sir.

Q. Did Elmer or Matthes, by word or suggestion of any kind, hold out the idea that they had any claim or interest in that property or that anybody else had?

Objected to as leading.

A. None whatsoever.

Q. Did they say anything about it? A. Not a word; Elmer only said, "Mamma, you are selling $80,000 worth of goods for $11,400."

Q. That was said in your hearing? A. Yes.

Q. And in the presence of Mr. Matthes? A. Yes.

Q. Did Mr. Matthes make any statement? A. He said, "Mrs. Hazard, I am the only one that is the loser; I put $600 in this business." He said, "I seem to be used very shabbily."

Q. Was that all that either of these men said by way of comment? A. That is all—wait a minute, they did say that they had been working down there, working at these goods to put them in cash for Mrs. Hazard.

Q. Working on what goods? A. These very goods.

Court: What one said it?

Witness: Jointly; it was a matter of conversation, that whatever cash—I understood they were doing it for Mrs. Hazard, and whatever cash came out of there was to be taken out of this $11,400; in other words, they were to reduce this obligation by selling the security.

Q. And whatever was sold should be applied to the $11,400? A. Yes.

Q. Which should reduce the price? A. Yes. There is one other thing. In one of these contracts I insisted that I take possession of that factory at once upon the signing of this contract, and it was assented to.

Court: Was this before lunch?

Witness: Before lunch, yes, sir; and the only thing that stopped it was that Elmer Hazard and Matthes said that "Every dollar we pull out of this thing reduces these

notes." I said, "If that is the case, I have no objection, because it is Mrs. Hazard's money up to $11,400."

Q. Were you insisting upon having possession immediately upon signing the contract? A. Yes, if you call this a contract.

Q. You came to the contract that day? A. Yes.

Q. The contracts were drawn that day and signed that day? A. Yes.

Q. The contracts will specifically show what you agreed upon at the Astor House? A. Yes.

Q. During that conference? A. Yes.

Q. Who drew those contracts? A. Mr. Joyce.

Q. And what arrangement, if any, was made about his drawing them and about their execution; what was said and done about that matter? A. After lunch Mrs. Hazard and Mrs. Powers and myself went down to Mr. Joyce's office, which is just down a block from the hotel, and he had these two papers ready, and after looking over the paper——

Q. Had he received his instructions for drawing these two papers while you were together in this room in the Astor House and had reached this basis of negotiation? A. Yes.

Q. And he had left you, had he? A. Yes.

Q. With the understanding that he would prepare the contract? A. Yes.

Q. Then you had your lunch? A. Yes.

Q. And then went to his office? A. Yes. In looking over these papers, I said, "I don't see where Mrs. Hazard is transferring to me the per-

New Jersey State Library

sonal property she received from her husband's will or through his death," and thereupon he took one of the contracts and interlined it in handwriting, which I understood at the time was the machinery in the factory, the general equipment of the factory, and it was the name Shrewsbury, and the right to use E. C. Hazard & Company, and the labels, and the only thing exempted out of the sale was the furniture in her house.

Mr. Wilson: These original contracts were used as exhibits in the former case and in the shuffle seem to have been lost, but there is no doubt about the copies. Copies are attached to our answer.

Have you your copy of the original?

Mr. Sexton: Yes.

Court: You may use that.

(Papers produced by Mr. Sexton.)

Q. When you went to Mr. Joyce's office after you had your lunch you say he had two papers prepared? A. Yes.

Q. I show you this paper and ask oyu if that is one of them? A. Yes, sir.

Q. That is one of the originals, is it? A. Yes.

Mr. Wilson: I offer in evidence the paper which the witness has just identified, which purports to be an agreement entered into the fifth day of February, 1913, between Florence A. Hazard and Harry L. Powers, and expressing a consideration of $60,000, and referring to the transfer of real estate and personal property.

(Marked Exhibit D-1.)

Q. Directing your attention to Exhibit D-1, which I have in part read in your hearing, I notice on page 3 certain words, to wit: "All personal property not covered by an assignment as security by E. C. Hazard Co. to the party of the first part is included in this sale." I notice these words are interlined in ink; do you know in whose handwriting? A. In Mr. Joyce's handwriting.

Q. Who was acting as her counsel? A. Yes.

Q. I notice your initials on the margin opposite this interlineation? A. Yes.

Q. Did you write your name there? A. Yes.

Q. I notice the name of F. A. Hazard; did Mrs. Hazard write her name there? A. Yes.

Q. How did those words come to be put in the contract? A. Because in reading the contract over, I said, "I dont' see anywhere that the property which you received from the will of Mr. Hazard appears in this contract."

Q. And had she previously told you what property she claimed as coming to her from her husband's estate? A. The furniture and machinery of that factory, the name of E. C. Hazard & Company, the name of Shrewsbury, the name of the Burnt Onion Sauce trade-mark.

Q. When you speak of the name of Shrewsbury —he didn't own Shrewsbury, even though he lived there—what do you mean by that? A. I mean to say Shrewsbury was the name of a label—Shrewsbury Tomatoketchup. The word Shrewsbury, particularly, was used in all the goods.

Q. The word Shrewsbury as applied to his trade-mark and trade goods? A. Yes, everything

was Shrewsbury; Hazard's Burnt Onion Sauce and Shrewsbury Ketchup—and the word "Ketchup" as explained to me was the first make-up of ketchup of this class, and Mr. Hazard had had that word copyrighted and it was of great value.

Mr. Sexton: Was this all explained at the time?

Witness: Many times.

Mr. Sexton: At this time?

Witness: No.

Court: This is what he had in mind when he had this talk and this interlineation was made. He said he called her attention to the fact that the contract as drawn did not include the property which he understood she had gotten from Mr. Hazard's estate.

Witness: And I asked what that property was which she represented there at that time and which——

Q. You are now enumerating? A. Yes.

Q. When you raised that objection were these interlined words added to the instrument? A. Yes.

Q. And by Mr. Joyce in his handwriting? A. Yes.

Q. Going back from this occasion, this time, February 5th, what, if anything, had she ever said to you as an incident of the negotiations, as to the value of the trade-mark and the name of Shrewsbury Tomatoketchup as bearing upon her negotiation; what, if anything, had she ever said to you about that? A. This business my husband

has spent a great deal of time over it; it has been very widely advertised; it is a wonderful business; he has made a great deal of money; my children have put it out of business; you can take it, with your energy, and carry it to success; no reason why you should not make half a million dollars out of it in a short time. The labels are the best labels that have ever been made, costing the most money. The word "Tomatoketchup" cannot be used by any other concern, and he could have at one time——

Court: Wasn't that word spelled differently there?

Witness: Yes, it was.

Court: It was spelled all in one word?

Witness: Yes. There is the label given to me as a sample (producing label).

Q. In that connection did she show you or tell you what approval or disapproval had been put upon the output of the factory by the federal authorities—by the food authorities? A. The conversation was that Dr. Wiley when he was in office had tested thirty-some different makes of ketchup.

Q. Is that what Mrs. Hazard told you? A. Yes, and he had pronounced this ketchup the only pure, unadulterated, free from any coloring matter, of any ketchup in the country, and that Mr. Hazard had been offered so much money by the Government at one time for the same service, to send it down to the Spanish-American War, and he refused to do it.

Mr. Sexton: Are you talking about ketchup or trade-mark?

Witness: The label, the goods.

Court: He is answering Mr. Wilson's question as to whether Mrs. Hazard at any time had said anything as to the value she attached to the trade-marks—to the labels.

Q. Did she upon any occasion when she was negotiating with you for the purchase of this property show you any communication that had been received from Dr. Wiley or any of the other Government authorities? A. It was at her home prior to this sale that Elmer Hazard and she in the presence—produced these papers.

Q. What were the papers? A. Stating that out of a test of ketchups made—I think it was thirty-six——

Q. What was the nature of it: was it a communication from someone? A. Yes, Dr. Wiley; he was the United States Food Commissioner at Washington.

Court: Did he address Mr. Hazard or Mrs. Hazard?

Witness: No, it was E. C. Hazard & Company.

Court: What was the purport of that communication which she showed you?

Witness: That out of so many tests of tomato ketchup, that this was the standard, both for purity and in color matter, and free from any adulteration of so many tests of different kinds.

RECESS.

Q. At the moment of adjournment I was asking you what representations, if any, she made to you as an incident of your purchase, in respect to trade-marks, labels, and things of that sort, and you were saying in a general way what she said. Do you remember any particular occasion prior to February 5th, or on February 5th, whether this matter was mentioned? A. Yes, at her house and at my home in 96th Street, New York City.

Court: When was that?
Witness: Prior to the sale.

Q. How long prior? A. Just within a week or two.

Court: Of February 5th?
Witness: Yes, of February 5th, just a few days prior to that.

Q. What, if anything, was said on February 5th about the matter? A. That she was selling me the entire business and equipment.

Q. What, in particular, if anything, was said about trade-marks and labels on that occasion? A. That she was selling me the name of E. C. Hazard & Company and the trade-mark Shrewsbury especially.

Q. Was that said on the fifth of February? A. Yes.

Q. I think you have already said that she made mention of some examination of the Shrewsbury Tomatoketchup that had been made by the federal authorities? A. Yes.

Q. On any of those occasions prior to February 5th did she show you any samples of labels? A. Yes, those (indicating).

Q. Labels which disclosed the trade-mark? A. Those labels there (indicating).

Q. And you are referring to this group of labels I have in my hand? A. Yes.

Q. You look them over, please; how did they get in your possession? A. Through Mrs. Hazard.

Court: She gave them to you?

Witness: Yes.

Q. When did she give them to you? A. Prior to the sale, in 96th Street.

Q. About how long do you fix that prior to the sale? A. Sometime—just during the week of the fifth.

Q. What day of the week was the fifth on? A. I cannot tell you that.

Mr. Sexton: Was this before or after the option?

Witness: This was after that option.

Court: Had expired?

Witness: Yes.

Court: An option to a third party?

Witness: Yes.

Court: And before the making of your contract?

Witness: Just prior to this sale.

Q. Without being able to fix the precise time, was it a matter of a few days or weeks or how long? A. A few days.

Q. And you say that she handed you those? A. Yes.

Q. That you hold in your hand? A. Yes.

Q. Which are generally samples of labels, are they? A. Yes, sir.

Q. What, if anything, did she say to you at that time in connection with the matter? A. That these are the labels which Mr. Hazard had spent a great deal of time over, taking out verses of Shakespeare and putting them on his labels, and the cost of them was considerable, but elaborately gotten up, and he was the first one to get out what they call a "Love Apple," which was known as a canned tomato, and how much money he had made at it, and why it should not go on.

Q. What do you mean "go on?" A. Why it should not go on with me under the conditions under which she knew me.

Q. Was it at that time that she handed you these labels? A. Yes, and talked about each one of them generally before.

Mr. Wilson: There are in this group sixteen labels which I offer in evidence, and suggest that they be marked as eighteen labels under one exhibit in this envelope.

(Envelope containing eighteen labels, marked Exhibit D 2.)

Q. Directing your attention to these labels, what, if anything, did she make by way of particular comment on this label which I now hand you, on which appear the words "Hazard's Shrewsbury Tomatoketchup"? A. That it was

copyrighted at Washington under the two words, the words "Tomato" and "ketchup," that no other concern could use that word.

Q. Run in as one word? A. Yes.

Mr. Wilson: The former question has relation to one of the eighteen labels, and is now marked Exhibit A of Exhibit D 2.

Q. I show you another of those labels—which for identification I now ask to have marked Exhibit B—and ask you what comment, if any, she made in respect to that? A. The same one in reference to the name Tomato and Shrewsbury Ketchup.

Q. Is that a label of a different size and style? A. A different size; it belongs to the larger size bottle.

Q. But descriptive of the ketchup? A. Yes.

Q. Were there any other of those labels in respect to which she made any special comment? A. The Burnt Onion Sauce label.

Q. Will you select the one from the bundle? A. "The only class of goods made in this country of this kind."

Q. Did she tell you that? A. Yes.

Mr. Sexton: All on this occasion?

Witness: Yes, all on the occasion when she handed me these labels at my house.

Q. You have now in your hand one of those eighteen exhibits—which I will ask to have marked Exhibit C of Exhibit D 2—tell us all that she said in respect to that. A. That that

was the same quotation of Shakespeare which he had put on many of his labels.

Q. You are directing attention to what words upon the label? A. "Let Onion Atoms lurk within the bowl, and half suspected animate the whole."

Q. And this label, like the others, she owned the name of E. C. Hazard & Co.? A. Yes.

Q. Do you recall any comment that she made upon any of these other labels, any special comment. A. No, sir. There was one other thing that took place just at that time, that this ketchup had won the Paris award.

Court: At this interview in your home in 96th Street?

Witness: That this ketchup had won the Paris award, and that is the reason Mr. Hazard had put a tablet in the front part of this factory, and on the other side were the words "Shrewsbury Tomatoketchup."

Q. Did she tell you that at that time? A. Yes, sir.

Q. How far, if at all, did her representations in respect to the value of the trade-mark and these labels and your ability to conduct this business, enter into your willingness to purchase from her this entire property at the aggregate price of $71,400? A. That the labels and the permission to use the labels and the name, the right to use the names and the name on this factory was of great value, and the condition on which I bought it.

Q. Did you know, of your independent knowledge, something of the quality and value and

standing of these products in the market? A. I talked to many people in New York City in the grocery trade.

Court: How long had you been married into the family at that time?

Witness: Five or six years—five years.

Court: You had frequently visited the factory during that time?

Witness: A great many times.

Q. And had you conferred with these people in the trade in New York with a view of ascertaining the relative value of the trade mark and labels between the time when she opened her negotiations with you and the time when you agreed upon terms? A. Yes, sir.

Q. It was in that interval, was it? A. Yes, sir.

Court: Were you engaged in a similar line of business at the time?

Witness: No, sir.

Q. What was your business? A. I was manufacturing carpets and rugs.

Q. Did you give that business up when you went into this business? A. Yes, I put the money into this factory.

Q. To go back now to the events of February 5th, in which respect you were being interrogated when shown Exhibit D 1, when the discussion arose in respect to these trade-marks. I ask you what was the other paper which Mr. Joyce prepared ready for your signature after you had your lunch on February 5th? A. Contract of sale of

this personal property represented by the endorsement of Mrs. Hazard on the notes of E. C. Hazard & Company.

Q. I show you a paper and ask you if that is the paper to which you referred? A. Yes.

Q. You signed it and she signed it? A. Yes.

Q. And that was the paper prepared by Mr. Joyce that day? A. Yes, sir.

(Offered and marked Exhibit D 3.)

(Mr. Wilson reads same.)

Witness: They filled in $4,100 as they didn't know what it would be.

Q. Was her undertaking and agreement to deliver to you under the terms of this paper, all the property given to her as security by the E. C. Hazard & Company—was it in any way qualified, changed, altered or modified, except as expressed in that paper? A. Not in the least.

Court: You mean at the time?

Mr. Wilson: At the time or any other time?

Witness: No other time.

Q. Was Elmer Hazard present when you met Joyce after dinner? A. No, sir.

Q. Was Elmer Hazard present at any of the negotiations in respect to this purchase that preceded the signing of the papers on the fifth of February? Was he present on any of those occasions? A. Once at Mrs. Hazard's house in Brooklyn, one evening, he was there when we went over this same talk.

Court: He was at the Astor House, too?

Witness: Yes.

Mr. Wilson: I mean other than the Astor House.

(At this point Floyd W. Davis and Frank T. Matthes were sworn on behalf of defendants, and their testimony appears at pages 339 and 424 respectively.)

Continuation of testimony in the foregoing cause, before Hon. John E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, on Tuesday, April 23rd, 1918, at 10:15 A. M., in the presence of counsel as before stated.

HARRY L. POWERS, recalled for further

Direct examination by Mr. Wilson:

Q. At the moment of interruption you were being interrogated in respect to the use of the trade mark and labels. After you had taken possession of this property, real and personal, did you proceed to conduct the business of manufacturing food products there at Shrewsbury? A. Yes, sir, after a general repair of the factory.

Q. Did you manufacture food products which you had on hand for sale and did have on hand for sale up to the time of the fire in February, 1914? A. Yes, sir.

Q. Were you interrupted in the use of the trade mark and labels by anybody? A. Yes, sir.

Q. By whom? A. By Elmer Hazard and Matthes.

Q. How was that interruption expressed; how did it reach you; what happened to you? A. First, the night of the fifteenth I was arrested for having stolen goods in my possession.

Court: Fifteenth of what?

Witness: Of March, 1913.

Q. Don't go into the incident of the arrest; I want you to tell now what were the various interruptions, if any, that came to you in the use of this trade-mark and label. You say something happened on that night; what? A. When this constable came I saw Elmer Hazard was with him; it was the first time I had seen him since I took possession of the factory, and he gave me notice that I wasn't to use the machinery, goods or any equipment in that factory, names or labels or anything that was in the factory, that it belonged to him.

Court: Was this the night following the day of closing the title?

Witness: Yes, sir.

Mr. Wilson: Yes, sir; he took possession on the morning of the fifteenth.

Mr. Rosenberg: This was practically the second night; the closing was the thirteenth and fourteenth, and this interruption was on the fifteenth.

Q. Did you suffer any loss or inconvenience in disposing of your manufactured product by reason

of the fact that you were unable to use the trade-mark and E. C. Hazard name? A. Yes, sir.

Q. Did you receive orders for ketchup? A. Yes, sir.

Q. In quantities? A. Yes.

Q. And in bulk and otherwise? A. Yes.

Q. Were there orders that you were unable to fill because you couldn't use the name? A. Yes.

Mr. Sexton: I object as leading.

Court: It is suggestive and at the same time he can answer it yes or no. Try and avoid the objection that Mr. Sexton makes, Mr. Wilson.

Q. I show you a letter from Herbert B. Coulter, also from M. J. & H. J. Meyer & Co., also from Shander Welle, dated respectively August 28, 1913; September 9, 1913; September 12, 1913, and December 10, 1913, and ask you whether these letters had reference to such orders as you have just referred to in your testimony? A. Yes, sir.

Q. I call your attention to the first of those letters, apparently written by Herbert B. Coulter to you, addressed Harry Powers, Little Silver, New Jersey, and dated August 28, 1913, and ask you, did you receive that in the ordinary course of business?

Mr. Sexton: Objected to as not properly proved. We don't know how it came there.

Court: Your objection goes to its weight and not to its competency?

Mr. Sexton: The authenticity of the let-

ter should be first proved. We are put in the position, unless he follows that up, by bringing that man here, that he has sustained a damage by a letter which we don't know where it came from, and he will make a claim for damage on the strength of that letter.

Court: That all goes to the weight, whether I attach any significance to that letter. I may agree with you that that letter doesn't go far to establish the claim he makes for compensation. If he wants me to believe what that letter says, he should corroborate it by bringing the man forward to prove it. That is a proper comment for you to make on the weight of the testimony. I will permit the question.

A. Yes.

Mr. Wilson: I will ask to have it marked for identification.

(Marked Exhibit D 4 for identification.)

Q. Did you know Herbert B. Coulter at that time, know who he was? A. Yes, sir, I was acquainted with him.

Q. What was his business? A. He was selling agent for manufacturers' goods.

Q. Of this character? A. Yes.

Mr. Wilson: I now offer the letter in evidence.

Mr. Sexton: I object.

Court: I will let it go in; your objection will be noted.

(Letters heretofore marked D 4 for identification, is now marked Exhibit D 4.)

Mr. Wilson: (Reading.)

"New York, August 28th, 1913.

Mr. Harry Powers,
Little Silver,
New Jersey.

Dear Mr. Powers: I found one of my old customers to-day who expects to place a ontract to-morrow for several hundred barrels of pure tomato catsup. I believe, that I can sell him at 31cts. delivered. Are you in position to submit a sample, and make me a price? If so, please 'phone or wire me to-morrow morning without fail, and oblige

Very truly yours,

H. B. COULTER."

Q. What, if anything, did you do in respect to this inquiry? A. I went to call on Mr. Coulter——

Q. What did you ascertain? A. —at his offce in Hudson street; I told him—

Court: I think I will allow it. Suppose taking his theory of the case, that you did interfere with the trade-marks, which I will assume for the moment were purchased by him, and the trade-names and trade rights, and that as a result of that interference he was prevented from exercising his ordinary

business of manufacturing these food products and was obliged to tell this man, "I cannot fill your order," or something else, and in consequence lost trade from your interference, I don't see why it is not competent. I will let it go in, solely on the idea of showing your interference with him, in his supposed ownership of the trade-marks and trade-names, caused him to suffer loss, and he is going to recite now how that loss arose, or circumstances, from which it can be inferred that he suffered a loss.

A. (Continuing)—I told him that I was prohibited from putting out the Shrewsbury Ketchup in bottle lots as he wanted, on account of this controversy which we were having here at this factory.

Q. Did he want the Shrewsbury Ketchup? A. He wanted the Shrewsbury Ketchup. You cannot pack first grade ketchup without benzoate—

Mr. Sexton: That is objected to.

Court: The benzoate you refer to is a preservative?

Witness: Yes. That can only be used in barrel goods.

Court: Had you learned that fact at that time?

Witness: I knew that for a good many years; I heard about it for a long time.

Mr. Sexton: It is immaterial as to any question of loss on this particular letter;

what has benzoate in the ketchup to do with it?

Court: I will allow it.

A. (Contiuing) This man wanted a pure ketchup and I explained to him—

Q. By pure ketchup, do you mean ketchup with no preservative? A. Yes, and it must be packed in some sort of a package that would stand processing.

Q. Was the Shrewsbury tomato ketchup a ketchup that had no preservative in it? A. Yes.

Q. You testified yesterday that was one of the characteristics? A. Yes, sir.

Q. And do I understand you to say that it was that type of ketchup that Coulter wanted? A. Yes, sir.

Q. What did you tell him?

Court: Was it usually marketed in bulk or in bottles?

Witness: Shrewsbury Ketchup was always marketed in bottles.

Court: And for the reasons that you have just indicated?

Witness: Yes, and on account of the name Hazard's Shrewsbury goods.

Q. What passed between you and Coulter, what did you tell him? A. I told him I couldn't put it out under the name of Shrewsbury. This man wanted the name Hazard and Shrewsbury on these goods. He was a customer of long standing and had known these goods for a good many years.

Q. Did you have in stock at that time a quantity of ketchup that had been made without a preservative? A. Yes, sir, we had the pulp ready to make the ketchup.

Q. Small quantities or in large quantities? A. A large quanity of it, in five and ten gallon packages.

Q. Why did the fact that you were prevented from making use of the trade-mark and the trade-name prevent you from filling the order that Coulter talked with you about? A. I couldn't fill it.

Court: Was the sole prevention that was imposed upon you merely the direction or order of Dr. Hazard on the night of the fifteenth—was that the only thing that happened to prevent you between the night of the fifteenth of March and this date in August?

Witness: Yes.

Court: What else prevented you?

Mr. Wilson: Shall I go into that?

Court: Yes.

Q. You have indicated the direcaion that you received from Dr. Hazard; what else, if anything, was said to you by Dr. Hazard, or anyone representing the Little Silver Sauce Company or the Hazard Company, with respect to the use of this trade-mark, which you say prevented you from using it? A. I was served with suits prohibiting me from using this.

Court: You understand that was the effect of the suits?

Witness: Yes, sir, I was served with papers and I was told that I couldn't use these names on goods until this controversy was settled.

Court: Who told you that?

Witness: My attorney—until these controversies were over.

Court: All that occurred before these letters that Mr. Wilson has directed your attention to?

Witness: Yes.

Q. I show you a paper which I will have marked now for identification Exhibit D 5, and ask you if that reached your hand? A. Yes, sir.

Q. How didi it reach your hand? A. It was sent back to me; I wrote out some letters of inquiry to the trade for the Shrewsbury goods before this controversy started.

Q. Do you mean by inquiry offering your goods? A. Offering the goods. I made a general letter to the trade, that I purchased the E. C. Hazard and Shrewsbury goods, and would be glad to hear from them and do business, and after a time I—

Q. Was that after Elmer had forbidden you, as you say he had, to make use of the trade-mark—that occurred on the fifteenth; after the fifteenth, this was the letter that you spoke of that you wrote to the trade—was your letter written to the trade after—A. It had gone out.

Q. Go on with your explanation as to how you received this paper which you have in your hand, marked Exhibit D 5 for identification. A. I got

a letter back stating that this had been a communication received from E. C. Hazard or E. C. Hazard & Company, and they couldn't do business with me on account of they could see that there was a chance of litigation if they accepted these goods from me.

Q. Where is that letter that came and you say followed this and your correspondence generally relating to that period of your business? A. I cannot say, I haven't seen it since that fire; I don't know how this one got separated from it.

Q. And this exhibit that you have just had in your hand, D 5 for identification, and these other letters to which your attention has just been directed a few monents ago, how did you happen to have those in your possession; where did you find those? A. They happened to be down at my home.

Court: You said some of these papers had been destroyed in the fire.

Wtness: Yes.

Q. Were the papers generally that related to your business in the factory at the time of the fire? A. Generally, yes.

Q. And was everything consumed? A. Yes, sir.

Q. You say you received this particular paper through the mail from someone to whom you had offered your goods? A. Yes.

Q. This paper is dated November 20, 1913? A. Yes, sir.

Q. What was the date at which you had made the general offer of your goods to the trade: how long before that letter? A. I had two or three

forms of letters sent out; I first tried to use the name of E. C. Hazard & Company.

Q. Two or three times, you say? A. Yes.

Q. You are not able to say what particular customer sent this back to you? A. No, sir.

Q. Did you receive more than one of these through the mail in response to your trade offers? A. I heard of many of them, but none of them were ever returned. I heard of many places where I had gone afterwards to see them, and they told of the letter received.

Q. Did you receive letters from the trade that you had solicited, which are now destroyed by that fire, in which your attention was called to the fact that your right to use the name had been challenged? A. Many of them, and many of them verbally by my visiting them in the City—Austin Nichols, Francis H. Leggett.

Mr. Sexton: I object as not responsive.

Court: I will permit it.

Q. What was the result of your personal solicitation? A. Charles Gulden, mustard people, they were taking up the matter of putting some of these goods on the market for me, but they got this letter and that stopped them; they said they were not going into any litigation.

Q. What about Francis Leggett and the other trader, Austin Nichols? A. The same.

Mr. Wilson: I offer this Exhibit D 5 for identification in evidence.

(Marked Exhibit D 5.)

Mr. Wilson: (Reading.)

"Shrewsbury, N. J., Nov. 20, 1913.

Gentlemen:

We are informed that one H. L. Powers, trading unlawfully as 'The Hazard's Shrewsbury Manufacturing Company" is representing that he is the manufacturer of the 'original Shrewsbury products and specialties.'

This statement is positively fraudulent and is a misrepresentation of facts. Mr. Powers bought the factory building formerly leased to E. C. Hazard & Company, and nothing else.

Mr. Powers has absolutely no right to use the name 'Hazard' or any combination of words containing the name 'Hazard and Shrewsbury,' or any trade marks of this firm in the sale of food products, and any such representation is absolutely illegal, and we will use every effort to stop the fraud being perpetrated upon the public.

Any information that you can favor us with, regarding the matter, will be greatly appreciated.

Very truly yours,

E. C. HAZARD & COMPANY,
E. C. HAZARD, President."

Mr. Sexton: I object at this time to all this line of testimony, particularly the reading of the letter, in that what any other person may have done it is not binding on the complainant in this case.

Court: I think the objection will be well founded, unless it is connected up later, and I assume there is to be a connection somewhere to show its signficance and relevancy here.

Mr. Wilson: We expect to bring it home to them, but even though we should fail, and in order that the *bona fides* of the offer may be understood, it is our theory of the case that it is quite immaterial whether Elmer and Matthes knew of it or not, and even quite immaterial whether Mrs. Hazard ever knew of it or not. If she sold us this trade mark, and if afterwards, as the testimony will appear, she had definite knowledge of the fact that his right to the use of that trade mark was being challegend and interrupted by others, we are in a position where we think in law we can hold her responsible for the deceit and fraud. Our proofs will show that subsequently certain circumstances arose from which the court will be invited to conclude that she not only had knowledge of this transaction, but approved of it.

Court: It seems to me you will have to show something more than mere knowledge on her part. You will have to show either acquiescence or approval or instigation on

her part, to make her responsible. Suppose that some man—Dr. Hazard, we will say—out of some grievance, real or imaginary, against Mr. Powers, issued this circular on his own accord, in order to injure him and affect his trade and kill it if possible. It seems to me that you will have to connect Mrs. Hazard in some way.

Mr. Wilson: We propose doing that, but I say, even though we should fail in doing that, there are other facts in the case which we think are controlling. Now, what are they? It is the circumstance that, under our proof, she made sale of this to us when we paid the $60,000 for the real estate and whatever personal property went with it; and it is now already in evidence in this case that she gave a bill of sale to Matthes, and by it she undertook to pass to them the trade mark; and that bill of sale was recorded on the nineteenth of February, the very day that we were to close our contract, and that very trade mark she had agreed to sell to us on the fifth of February; and we say that from those two circumstances her fraud may be inferred; and that from those two circumstances, if the proof rose no higher, we are in a position to ask her to answer for any interruption that arose from her solemn act in giving a bill of sale.

Court: Unless the burden may be put upon you to show she had knowledge of it when you closed.

Mr. Wilson: That would go to the final weight of the evidence.

Court: That is why I say you will have to in some way tie this up to Mrs. Hazard before you close your case if you are going to ask for a reduction on your claim; and that is the basis of your (Mr. Sexton) objection?

Mr. Sexton: Yes, and when counsel say whether we do or not, I think he should say now that he can connect it up.

Court: I will let it in, but it is a question whether I will attach any importance or significance to it unless it is brought home to Mrs. Hazard. I will give you the benefit of your objection on the record.

Mr. Wilson: Of course, there is the further consideration: here was a breach of title, a circumstance in itself, and in the absence of even fraud, if you please, we would be entitled to an abatement of consideration under all the circumstances presented here. A grantor cannot have two conveyances running for the same thing, without being responsible to everybody who was a grantee under her.

Court: Except there are two questions in my mind: apparently, Mr. Powers at the time of the closing having knowledge of these two bills of sale which were said to be conflicting, but which he said she said she could always dispose of, and if necessary taking them by the neck to make them reconveyed to her, might possibly be

regarded as having waived some of his rights—I don't say he has—and then the other branch of the case, that after giving the mortgage and after this situation had been developed, he paid two of the installments of interest as they accrued.

Mr. Sexton: I have looked it up and I believe it is three.

Court: I would like the definite payments when they were made, if possible. I will permit this testimony, and your objection will be noted.

Mr. Wilson: I have read the letter into the record.

Q. I show you two other letters which you have already identified in a general way, dated respectively, September 9, 1913, and September 12, 1913, apparently from Meyer & Co., Franklin Street, New York; did these letters relate generally to the proposed purchase of your products? A. Yes, sir.

Q. And were you prevented from taking up the negotiations and sale outlined in these letters? A. Yes, sir.

Q. And why? A. Because I wasn't permitted to use the words "Shrewsbury Green Pepper Sauce."

Court: Being prevented in the same way as you have indicated about the others?

Witness: Yes.

Mr. Wilson: I offer these in evidence.

(Letter dated September 9, 1913, marked Exhibit D 6.)

(Letter dated September 12, 1913, marked Exhibit D 7.)

Mr. Sexton: I make the same objection. The record should show who is doing the preventing.

Mr. Wilson: I think it is sufficiently shown. (Reading.)

"Sept. 9, 1913.

Mr. Harry G. Powers,
Shrewsbury, N. J.

Dear Sir:

Kindly send me at once 3 doz. bottles of Shrewsbury Whole Green Pepper Sauce, kindly make an effort to ship this at once, informing us what price it is generally sold at. We are still awaiting samples of Catsup, cannot understand your silence.

Yours very truly,

M. J. & H. J. MEYER CO.

M.

Ship us 5 Bbls. English Sauce at once. Mark Bbls. English Sauce."

Q. I think you said why you were not able to do any business in consequence of that letter? A. Yes.

Q. You referred to the letter as having relation to the pepper sauce; it appears also to contemplate a purchase of catsup? A. Yes.

Mr. Wilson: I will read another letter:
(Exhibit D 7)

"New York, Sept. 12, 1913.

Mr. Harry G. Powers,
Shrewsbury, N. J.

Dear Sir:

We are indeed surprised that you do not answer any of our letters or let us hear from you, you promised faithfully to have samples of Catsup to us, we have succeeded in interesting a few people who are bothering the life out of us every day in regard to samples and you also promised that you would send us a check immediately for the benzoate of soda that we shipped you, and we are looking forward to receive same by return mail.

Also advise us how soon you can ship the 5 barrels of English Sauce ordered. Thanking you to give this your attention, we remain,

Yours very truly,

M. J. & H. J. MEYER CO.,
M. J. Meyer."

Q. Were you able to take up the business proposition contained in that letter? A. No, sir.

Q. And why not? A. On account of the label of Shrewsbury and E. C. Hazard & Co. not being on the bottles and being prohibited by this notice and these suits which they commenced.

Q. Did you have any talk with Mrs. Hazard

about your interrupted use of this trade mark, and if so, when and where? A. The particular conversation was sometime prior to—the night of taking possession of the factory; I didn't agree with what they said there in the house; I wouldn't accept their explanation that there was anybody permitted in the factory, that there was any lease on it.

Q. Without going into detail as to other things which occurred on that occasion, to which we will come back after a while, what, if anything, was said that night by her about your use of this trade mark? A. Not that night.

Q. What were you going to say occurred that night about the use of the trade mark? A. The use of everything there, generally—trade mark was mentioned, but the use of everything.

Q. What did she say? A. She said that she had rented it to Elmer until 1916 without rent.

Q. What did she mention at that time as having been rented or turned over to Elmer? A. This factory and machinery equipment and the general goods in it.

Q. What, if anything, was said about the trade mark at that time? A. That he and this Matthes were putting up these goods of E. C. Hazard and Shrewsbury and that they had possession of it, and she had rented the factory to them, and I had no right to take the thing from them.

Q. You haven't yet answered my question, what if anything she said about the use of the trade mark and the business name, on that night? A. To the best of my recollection that night—then one of her sons got in trouble up in Providence——

Mr. Sexton: I object.

Court: Listen to the question. He is confining your attention for the moment to that night.

Q. Our inquiry is what Mrs. Hazard did, if anything, to prevent you from using this trade mark after you say you bought it; it now appears that you saw her the night that you closed your deal in Newark, and that was at Shrewsbury, was it? A. Yes.

Q. And without going into all the details of the things that happened there, what did she say to you about Elmer Matthes or anyone else having a right to make use of the business name and the trade mark: what did she say about that that night?

Court: If she said anything.

A. She prohibited me the use of the factory, saying that she had rented it, and that Elmer and Matthes were putting up these goods for her, and that——

Q. Did she say what goods? A. The E. C. Hazard, the Shrewsbury goods—and that she rented it to him for three years, and they were putting out these goods—this tomatoketchup and other goods, under these labels, and I was prohibited from taking possession of it.

Court: Did she offer any explanation at that time in that connection—after having sold you the property, she prohibited you from using it?

Witness: Not then. After I referred to her affidavit in the Fidelity——

Q. What did she say? A. She said, "I rented to Elmer for three years without rent," and I said, "I don't agree to that at all."

Q. Did you ask her if there was a lease? A. The Fidelity——

Q. No, that night in her house, did you ask her if there was a lease? A. Yes.

Q. What did she say? A. I said, "Is it a written lease, is it here?" She said, "No." I asked to see the lease, "Is it written?" "No," she said, "It is printed." I said, "I don't agree with that at all."

Q. When, if at all, did this question of the use of this trade mark come up with Mrs. Hazard? A. The day that she came over to thank me for taking her son Arnold out of jail in Providence.

Mr. Sexton: I object. Let him give the date.

Court: No harm will be done if you wait until the answer is finished and then make your objection.

Q. And when was that? A. During the latter part of December, 1913, just before Christmas.

Q. Where did she come to? A. To the Shrewsbury house.

Q. Your house where you were residing? A. Yes.

Court: If they question the accuracy of the date, I will allow the answer to stand

as to taking her son Arnold out of jail in Providence.

Q. Between the time when you had this closing scene with Mrs. Hazard on the night of March 14 and this time when she came to your house in December following, had your relationship with her been of a friendly character? A. No, sir, I had not seen or had any conversation with her.

Q. This night in December she came to your house, you say? A. In the afternoon, in December.

Q. What was the occasion of her coming; what prompted her coming, if you know, or if she stated? A. To thank me for taking her son Arnold out of the Providence jail.

Q. On that occasion what, if anything, was said in respect to this trade mark and the use of the business name by her or you? A. I said to her, "If you are so thankful about that——

Q. Did she say she was thankful? A. Yes, sir, she said she was thankful for this act which I performed. I said, "If you are so thankful to me, put me in possession of these goods and this name and this Shrewsbury factory and these goods and stop this litigation which you are forcing me into—which I did for you some time ago—and give me the right to do business here, as I am entitled to." She said, "I will go away and attend to it at once and see that you get these bills of sale that I promised you."

Q. What, if anything, was said by her at that time as to your having been interrupted in the use of the trade mark and the business name;

what did she say about her knowledge of it? A. I said to her that it had been impossible for me to do business; "you know that my whole capital is invested in this place and I haven't been able to make a living for my family"——

Q. What if anything—— A. ——and the consequence was that I said——

Q. Wait a minute; you must put your mind on these questions.

Q. What, if anything, was said by her at that time as to your having been interrupted in the use of the trade mark and the business name; what did she say about her knowledge of it? A. I said I had many orders for goods of the Shrewsbury make and hadn't been able to fill them.

Mr. Wilson: Do you think you have answered the question?

Court: You were not asked what you said; the question was what did she say as to her knowledge that you had been interrupted in the use of the trade name and the trade business.

Mr. Sexton: That is objected to as leading.

Court: He is directing his attention to the conversation, if it occurred; it is not suggestive or leading.

Q. (Last question repeated.) A. She told me Elmer and Matthes were putting up these goods down at Branchport; I told her of the letters that I had received from the trade; that I couldn't do the business, and that she was ac-

quainted with the fact that he was putting out these goods.

Q. Did she say she was acquainted with the fact? A. She said she knew that they were doing it.

Q. What else did she say in that connection? A. This happened five years ago, and it was just on those lines—there were plenty of words said, but it don't come very clear to me; it was a general conversation that Elmer and Matthes were carrying on the business of E. C. Hazard and were interfering with the mail at Shrewsbury and she knew it.

Court: What did she say that showed that she knew of it, if she said anything?

Q. Did she say that she knew that they were interfering with the mail at Shrewsbury; is that what you mean to say? A. I directed her attention to it, and she said yes, that she heard of such a thing, that she heard that they were taking the mail from Shrewsbury down to Long Branch.

Q. What kind of mail? A. Mail for E. C. Hazard & Company, that was, orders coming to this factory.

Q. And mail that was responsive to your course of business? A. Yes, sir, from my letters that had been sent out.

Q. Did she tell you that she had knowledge of that? A. Yes.

Court: What did she tell you?

Witness: She told me that she had vis-

ited down there and been around at this place at Branchport and had conversation with him, and then she tried to say that we had no right to that name.

Court: You interrupted yourself. Complete your answer to my question. You said she had a general conversation with Elmer and Matthes about this property.

Q. What else passed between you at that time, about this matter? A. I don't recall anything more than that.

Q. Did she say anything about whether she had made any attempt to relieve you of this trouble? A. She said that she would go down to Elmer Hazard and procure the bills of sale and bring them back to me—which she had given Matthes—and put me in possession of these goods and this name and these trade marks.

Q. Did she ever do it? A. No, sir.

Court: Where was Mrs. Hazard then living?

Witness: Over on the Rumson Road, over toward Sea Bright.

Q. Who was present and heard that conversation? A. Mrs. Powers.

Q. That is your wife? A. Yes, sir.

Q. Going back in the trend of your narrative—you have already identified the two papers that were executed on the fifth of February, and described the circumstances that led up to them and their execution. Did I ask you where they were signed: where were they signed, in point of fact? A. Mr. Joyce's office.

Q. How long was the interval of time between the time when you left Mr. Joyce, or Mr. Joyce left you at the Astor House, to the time you went to his office; what was the interval of time? A. I suppose about an hour, not more than that.

Q. Why had you gone to Mr. Joyce's office? A. To sign these papers.

Q. Had he undertaken to get them ready? A. He had left us at the Astor House and gone to his office to prepare these contracts.

Q. And when you got to his office, were both papers prepared? A. Yes, sir.

Q. And the correction that you already called attention to, made, and then signed by the parties, were they? A. Yes, sir.

Court: Was the $500 paid at that time?

Witness: The $500 was paid at the Astor House, I believe.

Court: Before you went to his office?

Witness: I am not certain; either at the Astor House or at his office.

Court: Anyhow, it was paid at that time?

Witness: Yes, sir.

Court: After the papers were signed what became of them?

Witness: I put them in my pocket.

Court: You took both of them away with you?

Witness: Yes.

Q. They were in duplicate, were they not? A. Yes.

Mr. Wilson: I might say that between the former trial and this we have lost our originals and we have used in the case here the originals kindly loaned us by Mr. Sexton.

Q. There were two contracts? A. Two sets.
Q. And they were made in duplicate? A. Yes.
Q. And you kept one set and she kept the other? A. Yes.

Court: Who else was in Mr. Joyce's office besides you and Mrs. Hazard and Mr. Joyce?
Witness: Mrs. Powers.

Q. When the papers were signed? Yes.
Q. And no one else? A. No.
Q. Elmer was not there? A. No.
Q. Matthes was not there? A. No, sir.

Court: Did you pay the $500 by check?
Witness: Yes.

Q. I want to direct your attention to a series of events between the fifth of February and the thirteenth of March. The contract apparently called for the closing of the contract on the nineteenth of February at the Fidelity; was it closed then? A. No, sir.
Q. Why not? A. They said too many judgments were appearing and they could not get the title.
Q. Whom do you mean by "they"? A. The Fidelity.

Q. And the Fidelity represented you in the transaction? A. Yes.

Q. And the matter was continued and when was it finally closed? A. On the thirteenth of March, 1913, at night.

Court: Did part of it go over until the fourteenth?

Witness: Yes, sir.

Q. In that interval did you see Mrs. Hazard? A. Yes, sir, many times.

Q. I am directing your attention now to the period between the fifth of February and the thirteenth of March; did you see Mrs. Hazard? A. Yes, sir.

Q. Where did you see her? A. She came to my house to dinner on the night of the fifth of February after signing these contracts.

Q. Who else was there at dinner that night? A. Mrs. Powers, Mrs. Hazard and a trained nurse who was in the house at the time.

Q. Was there an occasion upon which Mrs. McAnerny was present? A. A former occasion, but not that night.

Q. Do you remember an occasion, even before the fifth of February, when you and your wife met with Mrs. Hazard and Mrs. McAnerny, when this matter was discussed? A. About a week prior to that we had a little dinner at the house and Mr. and Mrs. McAnerny and Mrs. Hazard and Mrs. Powers and myself were present.

Q. A week before the fifth of February? A. Yes.

Q. Was that after you and Mrs. Hazard had agreed upon terms of sale? A. No, we were simply talking over the terms of sale.

Q. Was there any occasion after the fifth of February, when Mrs. McAnerny was present, when you had any conversation with Mrs. Hazard? A. The night of the fifth of February we went to Mr. and Mrs. McAnerny's apartment after dinner and spent the evening.

Q. After you had your dinner at your house with Mrs. Hazard on the night of the fifth of February, you all went to the McAnerny house, is that it? A. That is correct.

Q. What, if anything, was said by Mrs. Hazard in your hearing to Mrs. McAnerny about the sale? A. Mrs. Hazard said to Mrs. McAnerny and all present, "I have sold this day—sold the house, grounds, factory building, equipment, business, Shrewsbury goods, Shrewsbury labels, and everything down there to Harry Powers." They commented and asked if the grade of the goods was going to be the same and run under the same name and under the same labels, and she said "Yes."

Q. Did Mrs. Hazard at any time give you a list of goods that she said were goods that she had taken as security from the E. C. Hazard Company and which she then owned? A. Yes.

Q. When was it she gave this to you? A. About two days after the signing of these two contracts.

Q. About two days after February fifth? A. Yes, I met her at Mr. Joyce's office and she handed this list over.

Q. And I ask you if this is the paper to which you refer? A. Yes, sir.

Q. Do you know in whose handwriting it is? A. Elmer Hazard.

Mr. Wilson: I offer it in evidence.

(Marked Exhibit D 8.)

Q. You have examined this list carefully, have you? A. Yes.

Q. Speaking from your knowledge thus acquired, and as a matter of convenience for us, I ask you whether in that list there is any mention of any trade mark, business name, or anything of that sort? A. No, sir.

Q. In making this purchase as you did—as you say you did on the night of the thirteenth of March—did you rely upon the representation which she had made to you in respect to the trade name and business name of the concern, and the representations that she had made by and through this Exhibit D 8? A. Absolutely.

Court: Who gave you the paper Exhibit D 8?

Witness: It was in Mr. Joyce's office, between the two of them—I don't remember which one handed it to me.

Court: What was said to you?

Witness: "Here is the inventory of these goods which is the security for the endorsement on these notes."

Court: The E. C. Hazard notes?

Witness: Yes.

Q. Did she say whether or not she owned that property at that time? A. At the Astor House she said that it had been reduced to her owner-

ship on the minutes of the books of this concern.

Q. And then she handed you the list under the circumstances that you have described? A. Yes.

Q. From your examination of this list did you discover that the contents of the laboratory was included in the list; did you observe that? A. Yes.

Q. Did you examine the list and make that discovery at or about the time it reached your possession? A. Yes, sir, about that time.

Q. And before the thirteenth of March? A. Yes, sir. I went down there many times to have that——

Mr. Wilson: I haven't come to that.

Mr. Sexton: I think you should ask when did you discover this. I object to the form of these questions as leading.

Q. After you took posession of this property were you called upon to defend one or more suits by Elmer Hazard? A. Yes.

Q. In which he attempted to set up ownership in this very laboratory and its contents? A. Yes, sir.

Q. Did Elmer Hazard between the fifth of February and the thirteenth of March know that you had this inventory in your possession? A. Yes, sir.

Q. How did he know it? A. I went down to the factory at least four or five times to check the goods off in this factory with him.

Q. You mean check the goods on this list? A. Yes, on this list in that factory.

Q. Where did you find Elmer Hazard? A. At this factory at Shrewsbury.

Q. Did you tell him where you got the list? A. Yes, sir.

Q. And did you tell him what your purpose was? A. Absolutely; he knew it from the Astor House; he was there during the——

Q. I understand that; I am talking about what passed between you at Shrewsbury. A. Absolutely. I told him, "These goods are the goods which your mother has given me—which is the security for the notes given by the E. C. Hazard Company, which she has turned over to me for taking these notes up, and I want to check this list off."

Court: Did you check them up with him?

Witness: No, he made the excuse, he said he didn't have time, would I excuse him today and come another day.

Q. You went how many times for that purpose? A. Five times.

Q. Did he at that time or at any other time before the fifth of February, between the fifth of February and the thirteenth of March—did he at any time suggest that he had any right, title or interest in this property or any part of it, or that there was any ownership in the Little Silver Sauce Company or anybody else adverse to you, claiming under your mother? A. Absolutely none.

Q. When did you first hear of any such claim upon his part or upon the part of anybody else?

A. On his part was the night when I was arrested, when he gave notice at the door that these goods I must not use.

Q. That was March 15? A. Yes.

Q. You had notice on the morning of the fifteenth, didn't you? A. I didn't know they claimed the goods then, even; I didn't know until the sheriff come in and arrested me for stolen goods, and I didn't know I had any stolen goods. The night of the nineteenth, or the next day or so after, I got a telephone conversation from Mr. Davis down town that there had been two bills of sale put on.

Q. When Matthes was at the Astor House, as you say, on the fifth of February, did Matthes at that time pretend or suggest in any way that he had any interest in these goods you were bargaining for, or that there was any interest outstanding in the Little Silver Sauce Company or anyone else? A. No, he said he had spent $650 and he thought he was treated pretty shabbily.

Q. That is all he said? A. That is all he said.

Court: Was he present and standing close?

Witness: Right in the corner; it was on one settee.

Court: When you were discussing with Mrs. Hazard about buying the personal property and the real estate?

Witness: Mrs. Hazard and Elmer and Matthes were right in the corner and the little table was drawn up and Mr. Joyce was there with two pieces of paper.

Court: Were you talking sufficiently loud for all in the party to hear what was said?

Witness: Absolutely; they all joined in the conversation.

Q. When was the first intimation that you received that there were bills of sale, one or more, outstanding, affectinfg this property that Mrs. Hazard took as security from the E. C. Hazard Company? A. Sometime just after the nineteenth, I think it was the twentieth or somewhere along there, just a few days after the nineteenth, I was called on the telephone and told that these two bills of sale had been put on file running to Matthes; I think they said one for $2,000 and one for $10,000.

Court: You say Mr. Davis gave you that information?

Witness: Yes.

Court: The witness we had here yesterday?

Witness: Yes, sir.

Q. After you got that information from him, what, if anything, did you do by way of communicating with Mrs. Hazard? A. I called her up on the phone, I said, "What is the meaning of these two bills of sale which I have just heard have been put on by the Fidelity?" She said, "Don't mind that, that is nothing: that is only to protect you and my interest in this case, so I can give you a good title to them."

Q. Did you have any more talk with her about the bills of sale until you met at the Fidelity; did you see her in that interval between the time you talked with her over the telephone and talked with her face to face? A. Yes, but there was nothing apparently come out of it; it didn't seem as if it was of any importance.

Q. The question is, after you had that talk with her on the telephone and before you met at the Fidelity, did you in talking with her face to face refer to that matter again? A. The same thing over again.

Q. Where did you meet her in that interval? A. At my house, in her house; she used to come over and visit us quite often, and we talked over the matter, and she said that Elmer and Matthes were down there doing these goods up to get her cash out of these goods.

Mr. Sexton: When was this?

Court: Between the nineteenth or twentieth of February and the twentieth of March, at various times.

A. (Continuing.) That any money derived from these goods were to reduce these notes. For instance, if the amounts amounted to $11,400, and they come up with a thousand dollars, it would be a thousand reduction, and if the goods were not there when I checked them off, the money must be there representing it.

Q. Directing your attention to the occurrences of March 13, did you meet for the purpose of closing this matter at the Fidelity? A. I did.

Q. Who was present? A. Mrs. Hazard, Mrs.

Powers, Mr. Dickensheets and Mr. Davis and myself.

Q. Anybody else? A. There may have been a stenographer.

Q. Were either of the Hazard boys there? A. Fred Bowden Hazard.

Court: Was Mr. Joyce there?
Witness: Yes, and Mr. Joyce.

Q. What, if anything, was said about these bills of sale upon that occasion by her and by you; tell the thing in your own way. A. We had quite some argument as to the phases of closing all this property, and she had tendered me then this note of Elmer and Matthes; I said, "I am not buying any note, I am buying these goods," and I refused to take the note.

Court: What note do you refer to?
Witness: This $12,000 note, or $11,400 note of Elmer and Matthes.

Q. She had such a note? A. She tendered the note; Mr. Joyce took it from her and tendered it to me, and I said, "No, I am not buying a lawsuit; I will not take a note."

Q. What did you say and what did she say about the bill of sale, and about your willingness to go ahead with the transaction? A. I tried then to get her to close the real estate property pending this other personal property; it was getting late, we had been there a long, long time.

Q. What do you mean by the real estate property and this other personal property? A. The real estate property was the property of the real estate and the equipment of this factory and the labels and the name of E. C. Hazard & Company and the trade marks and such as that——

Q. Did she ever say to you in her negotiations where that class of property named in the real estate contract came from, where she got it from? A. That came from her husband.

Q. Did she say so? A. Yes, it came from her husband.

Q. What was it you wanted to do, what part of the bargain did you want to close? A. I wanted to close that contract that had a description of the property in, where the interlineation is.

Q. Being how much? A. $60,000.

Q. What did you want to do with the other part of the contract? A. To hold it in abeyance until she could either get the goods or I could fathom out what was really the situation.

Q. What did she say? A. She said, "I won't close one without the other."

Q. What did she say, if anything, about giving you possession of this other personal property that she held as security? A. No mention about that.

Q. What did she say? A. She said wouldn't give me that without I took the other.

Q. You told us that once; what did she say about ever giving you possession of the personal property that she said she had acquired from the E. C. Hazard Company as security? A. Representing the $11,400?

Court: The personal property.

Witness: She would turn it over to me the next morning.

Q. The personal property she claimed she got as security from the E. C. Hazard Company? A. Yes, and the factory, and I was to go down and get the keys to the premises.

Q. What, if anything, did she say as to owning that property that she took as security from the E. C. Hazard Company; did she say whether she owned it or not? A. She absolutely owned it.

Q. What did she say? A. She said, "This is my property; they are simply down there taking charge of it as my agent, and they are working this property out into cash income."

Q. Did she say how she had become the owner of it? A. Through the minutes on the books of E. C. Hazard & Company; they reduced it on their books to her ownership.

Q. And you say she said she would give you possession of it in the morning? A. Yes.

Q. And she wouldn't cut the transaction in two? A. Absolutely no.

Q. Did she say what would be the result if she had any trouble with either Elmer or Matthes: anything said in that connection? A. She would choke them and throw them out if they didn't give it to her.

Q. Did she say whether or not they had any right to keep the factory building?

Mr. Sexton: I object.

Court: The proper inquiry is, what did she say?

A. She said they had no right in there, and simply were working up these goods; that was the night of the closing.

Q. She did not make an affidavit on the night of closing as to the right of any body to occupy the property? A. Mr. Dickensheets, the very last moment asked as to possession and gave her a typewritten form; what just was on it, I don't know, and she signed it, and he swore her.

Q. Mr. Dickensheets did? A. Yes, the gentleman who was taking charge of closing the title.

Q. You don't know what the substance of the affidavit was? A. It seemed to me that there was no one in possession of the property, and that she would turn the keys to the house and factory over to me the next night or morning.

Court: Was it read to her in your hearing?

Court: This is what that affidavit said?

Witness: Yes.

Q. When you were there at the Fidelity on the night of the thirteenth and the events transpired which you have described, prior to that time how much money had you advanced on account of this purchase? A. I gave her $500 on signing; I paid Judge Gray, whom she owed a bill of $700; then I went with her to the pawn shop and took out her jewelry to the amount of $7,000.

Q. What had you done, if anything, about the judgment of the Second National Bank? A. I went to the Second National Bank and the Na-

tional Nassau Bank and had those drawn in some sort of form so they could deliver them to me.

Q. Were they assigned to you? A. They were.

Q. How much were they? A. $14,700. The Second National Bank, I was told one was a note, and when I got down there I found it was a second mortgage, and there was some discussion about that.

Q. Without particularizing, how much approximately had you advanced to her before you met on the night of the thirteenth of March? A. Twenty-nine thousand five or six hundred.

Q. I show you this paper; is that a memorandum of your disbursements prior to that night, signed by her? A. Yes.

Q. Totaling $29,129.15? A. Yes.

Mr. Wilson: I offer that in evidence.

(Marked Exhibit D 9.)

"Purchase price $60,000.

Harry L. Powers.

Paid on contract	$ 500.00
Cash advanced for insurance	136.86
Cash advanced to Judge Gray	700.00
Cash advanced on March 6th	7,000.00
Cash advanced March 12th to Second National Bank of Red Bank	5,548.45
Cash advanved to National Nassau Bank on March 13th	7,000.00
Cash advanced by reason of taking premises subject to Prudential Ins. Co. Mtge., a first lien	7,702.50

Cash advanced by reason of taking premises subject to taxes of 1912.....	418.70
Interest and costs from Dec. 20, 1912..	12.40
Cash advanced by reason of taking premises subject to judgment of Doremus Bros. v. Arnold Hazard.....	55.77
Interest and costs.....	7.80
Cash retained by reason of taking premises in question subject to judgment of Louis Sobel, filed Oct. 25, 1919..	40.96
Interest and costs.....	5.71
Total.....	$29,129.15
Deduction for Henderson & Applegate bill	250.00
	$29,379.15

Dated, March 13, 1913.

Approved: Vendor, Florence A. Hazard,
Purchaser.

The Henderson & Applegate bill to be repaid to Florence A. Hazard when suit is discontinued and record cleared. I agree to this.

HARRY L. POWERS."

Q. Approximately, how much of this $29,129.15 had you advanced to her on account prior to the nineteenth of February; that is to say, between the nineteenth of February and the fifth of February? A. I should think it was over $10,000, and the others were all being gotten in shape. The banks were gettng their paper ready.

Q. About $10,000 you think? A. About that, $10,000 or $12,000.

Q. And how much had you advanced to her, or on her account, between the fifth of February, and the time you heard of the recording of these two bills of sale? A. That is what I am talking about; at that time it was ten or twelve thousand dollars; I didn't get your question right.

Court: Did you pay the balance of the $30,000 at the time of closing?

Witness: Yes, sir.

Q. In cash? A. Yes.

Q. On the thirteenth or fourteenth of March? A. Yes, sir, up to the $30,000; that didn't include the Eisemann judgment.

Q. After you closed this transaction at the Fidelity when next did you see Mrs. Hazard? A. On the night of the fourteenth.

Q. About what time did you get through at the Fidelity? A. Two or three o'clock in the morning.

Q. Then you saw her that same night of the morning you got through? A. Yes.

Q. Where did you see her? A. At her home at Shrewsbury, at the house that I purchased.

Q. Who else did you meet there that night? A. There was Elmer, his wife, and his wife's mother, and Mrs. Hazard and Mrs. Powers and myself.

Q. What, if anything, passed between you that night in respect to the business you had transacted or attempted? A. We were in the dining-

room and waited for an hour, until it almost got ten o'clock, and then Mrs. Powers spoke up and said, "Mamma, we have come for the keys of the house and factory which you agreed to give Harry at the Fidelity last night," and with that, Elmer spoke up and he said, "Mamma, you said I could have the factory until 1916 without rent." She said, "Yes, that is right, Elmer," and he said, "The business is going on up there," and I said, "I don't agree to that."

Q. Go on. A. And we left. We had that angry dispute there and we left there. He tried to tell me about some chemicals that he could mix iodine and ammonia together and tickle them together with a feather and blow up Shrewsbury, and I said, "What would become of the fellow who does the tickling?"

Q. Confining yourself to what was said about your dealings, was that the first time that you had any intimation that Elmer claimed to have any rights in the factory or any property there? A. He didn't claim any property altogether; he claimed absolutely a lease of these premises, and I asked for permission to see the written lease.

Q. What did she say? A. She said, "There isn't any written lease." I said, "What is it?" "It is a verbal agreement." I said, "I don't agree to that at all."

Q. Did you go to the factory the next morning? A. I did.

Q. At what time? A. Around six o'clock.

Q. Who went with you? A. Alone.

Q. When you got to the factory what did you find? A. I found a sign on the door, "No one

admitted here without the permission of Elmer Hazzard," or something of that fashion.

Q. Was the entrance door closed? A. Locked.

Q. What did you do? A. Knocked on the door and the night watchman came.

Q. Who was he? A. A man named Wilson.

Court: Did he know you and you know him?

Witness: Yes, he had been around there quite some time.

Q. Did he open the door wide? A. Far enough to put my foot in; he said, "I have instructions not to let you in this place."

Q. What did you say? A. I said, "I am inside now and I am going to stay in here." I said, "I have bought these premises and I am going to take possession of them. If you want to stay here until the day people come and hear what I have got to say, all right, you can do so, or you can go down to the house and tell Mrs. Hazard and Elmer Hazard that I have taken possession of this place."

Q. What happened then? A. So he waited around until the day men came and we had quite an argument; I explained to them that they were only workmen.

Q. How long an interval was it before they came? A. Seven o'clock they came, about.

Q. (Last question repeated). A. About an hour.

Q. You were in the factory? A. Yes.

Q. And this fellow was in there, too? A. Yes.

Q. When the day laborers came what happened? A. I stepped to the threshold to explain

to them that I had purchased the factory: one or two of them said they had heard so.

Mr. Sexton: I object; neither Mrs. Hazard nor Mrs. Murphy was present.

Mr. Wilson: We say that whatever was done that was adverse to his interest is competent.

Court: I think I must take into consideration the attitude taken by Mrs. Hazard the night before in recognizing Elmer's claim to control over the situation, in possession of the property under a verbal lease. The night watchman said he had orders to keep Powers from the premises, and then Powers undertakes to explain his right to be there.

A. (Continuing). I said, "I bought this factory and propose to take possession of it. If you wish, go over to the house and notify Mrs. Hazard and Elmer Hazard that I am here and have taken possession of it. I think it will be the best way for you." And they proceeded down to the house.

Q. What happened? A. I was accused of pulling a revolver on one; he attempted to drive past me, as he was instructed, and I pushed him out of the way and he fell.

Q. He fell outside of the building? A. Yes.

Q. You say he attempted to push by you in going into the building? A. He started to hit me with his lunch basket and his bottle.

Q. Who was it? A. William Dresser.

Q. What happened, if anything, in respect to that occurrence that same day, after? A. I had to call workmen and carpenters to fasten the windows and doors, to make it safe from entrance.

Q. Why did you do that? A. Because they threatened to force their way in there.

Court: Who?

Witness: These workmen.

Q. What else did Elmer Hazard say about taking possession afterward, which you heard him say? A. I didn't see him until that night, until he came with this constable to arrest me for having stolen goods.

Q. What did he say that night? A. He claimed the ownership of those goods, right, title of this business and ownership of this place, and a lease on it under some agreement he had with his mother.

Q. Was that the night you already referred to when he made claim to the trade mark and business name? A. Yes.

Q. What was the first time you ever heard of any claim by him or anybody else adverse to you? A. The first time I ever heard he had any interest——

Q. What, if anything, did he say at that time about going in and taking possession? A. He said that he represented the Little Silver Sauce Company and E. C. Hazard Company and Matthes, and that these goods belonged to them and this trade mark belonged to them, and that they had leased this factory and proposed to take possession of it from me.

Q. What do you say you did to maintain your possession? A. I had the doors and windows barricaded the best I could, and locked. There were quite a number of them. I called a number of carpenters and sent to Red Bank and got material to brace the windows and put locks on the doors.

Q. How many windows were there in the building? A. Several hundred.

Court: It was a building 400 feet long, you said?

Witness: Yes; and a good many doors; I have a picture of it here.

Q. Is the picture of the factory building shown upon this paper a fair representation of the properties at that time? A. I should say so.

Mr. Wilson: I offer that in evidence.

(Marked Exhibit D 10.)

Q. About how much money did you spend, Mr. Powers? A. $50 for labor and material in barricading the place, to try to keep it closed.

Q. What did you do to protect it by night in your absence? A. I hired a man, a watchman to take charge of it, and a man in the daytime to take charge of it.

Q. Do you mean to take charge of it in order to maintain your possession? A. Yes.

Q. What was the cost of the employment of those men? A. I should say about $75.

Q. For how long a period? A. While this con-

troversy was on, sixty days or more, or somewhere about that, when the first controversy arose.

Q. $75 for each man? A. Both men. I figured about $150 for the two of them.

Q. You said it both ways. How much were you paying them a month? A. I think they got $40 or $50; I think it was $200; each got $50 a month, and they were there day and night for two months.

Q. It was a matter then of $200? A. Yes.

Q. After taking possession of the property, as you say you did, did you manufacture food products? A. Yes, sir, I gave the building a general overhauling, cleaning up everything, and put the machinery all in good order, and put the boilers all in good order and had the interior all white enameled and got it in generally good shape.

Court: And then did you manufacture?

Witness: Then we manufactured; we grew the product and bought the product.

Q. And after you had taken possession was your right of possession disputed by litigation? A. Yes, sir, continuously; it seems to me every morning I had a paper served on me.

Q. And before passing on to the details of that litigation, were you arrested on the fifteenth of March? A. Yes, sir.

Q. And at whose complaint? A. Elmer Hazard, Little Silver Sauce Company, I don't know which one, or Matthes, the three of them.

Q. And where were you taken? A. Long Branch.

Q. Before whom? A. Justice Shonlein, the police magistrate.

Q. Did you give bail? A. No, sir, he released me on my own recognizance; he asked me did I buy this place, and did I own it; I said, "Yes, sir."

Q. Were you subsequently indicted for the same general matter to which you have referred?

Mr. Sexton: I make the same objection as to binding Mrs. Hazard or Mrs. Murphy under any of these proceedings. This complaint was made by Elmer C. Hazard.

Court: All this is very closely tied up, it seems to me, with her attitude on the night of the fourteenth, when she sanctioned or ratified what Elmer said about having the right to the possession under a verbal arrangement for three years to the real and personal property; now, that in a measure gives endorsement to Elmer's whole conduct, it seems to me, subsequent to that ratification on the part of Mrs. Hazard; that is the only reason I am allowing it in. If I am wrong, on that theory, the whole matter should go out. I think it is proper to have it go in.

A. Yes, sir, but I never was called to trial.

Court: Were you indicted?

Witness: I don't understand that part of it.

Q. You said you were indicted? A. I was held for trial pending some investigation: I don't know what it was, and that was the end of it.

Q. Weren't you afterwards indicted by the Grand Jury of Monmouth County? A. Not on that case; I was still arrested again.

Q. When did that happen? A. Sometime later on; I cannot give the exact date.

Q. What did that charge consist of; what were you charged with then? A. Having Elmer Hazard's goods, pharmaceutical goods in my factory, in my possession.

Q. Laboratory goods? A. Laboratory goods.

Q. Were you indicted for that? A. I was held for the Grand Jury, and the case is still pending; I don't know.

Q. Were you held for the Grand Jury and then were indicted after that yet? A. I believe so.

Q. Have you ever been brought to trial?

Court: His belief wouldn't be evidential, if there is any record of it.

Witness: Mr. Parker went my bail and I came home.

Court: Did you go to Freehold?

Witness: Yes.

Court: For an arraignment there before the Court?

Witness: Yes, before the Grand Jury.

Court: You gave bail there?

Witness: Yes.

Q. How soon after this fuss that morning of the fifteenth was it that you went to Freehold under the circumstances you just referred to? A. Maybe thirty or sixty days or more.

Q. Directing your attention to the activities in the civil courts, I show you a paper which I

may or may not offer as necesity arises—possibly the whole thing may be covered by stipulation—and I ask you if the papers I now hand you were served upon you? A. Yes, sir.

Mr. Wilson: I offer these for identification, and ask counsel to stipulate that these papers were served upon this defendant in the suit in the Monmouth Circuit Court, wherein Elmer Hazard was plaintiff and Harry L. Powers defendant, in an action at law; Charles F. Sexton, attorney for the plaintiff; and service made on or about the fourteenth of May, 1913; the action being one in trover and conversion and the writ being tested on the twelfth of May, 1913.

Mr. Sexton: I assent to that.

(Papers marked Exhibit D 11 for identification.)

Mr. Wilson: I ask counsel also to stipulate that the following suits were instituted against this defendant: a suit in the Monmouth County Circuit Court, Little Silver Sauce Company, plaintiff, against Harry L. Powers, an action at law in replevin, the service having been made on or about the third of December, 1913; that a demand in the same matter was served upon him in the same suit, enumerating goods and chattels in respect to which the replevin suit was instituted.

That on or about the twelfth of November, 1914, an action was brought in the Court of Chancery by the Little Silver Sauce Company against Harry L. Powers and certain insurance companies therein named, the purpose of which was to impress upon insurance moneys which were claimed by Powers in consequence of loss by fire of the factory and its contents.

And that on or about the same time another suit was instituted in the same jurisdiction, with Elmer C. Hazard as complainant, and Harry L. Powers, defendant, and that the proceeding had the same general purpose, seeking to impress a trust upon insurance money representing the alleged value of goods owned by Elmer Hazard and claimed by him to have been in the factory building at the time it was destroyed by fire.

And a similar suit, for a similar purpose, peculiar to the alleged ownership of Frank T. Matthes, brought by Frank T. Matthes on or about the same date.

That on or about the twelfth of May, 1914, a suit was brought in the Court of Chancery, between Florence H. Auersperg, complainant, who is the same Florence Murphy, complainant in the present suit, against Harry L. Powers, with Charles F. Sexton as attorney, by which it was sought to control the payment of insurance moneys to be paid to said Powers in consequence of the loss of his porperty in that fire of

the factory, as already mentioned in this stipulation.

It is further stipulated and agreed that as an incident of said proceeding, the defendant Powers having consented thereto in open court, an order was made by which he was permitted to proceed with the collection of the insurance money, provided the sum of $30,000 was paid into the Court of Chancery, provided he gave a bond sufficient in amount to indemnify the complainant to the amount of $30,000.

And it is further stipulated and agreed that the defendant Powers elected upon the collection of the insurance moneys to deposit $30,000 in the Court of Chancery, and that that fund now is to be applied, so far as may be necessary to the satisfaction of the complainant's mortgage now under foreclosure.

It is further stipulated and agreed that on or about the blank day of August, 1916, a suit was instituted in the Court of Chancery by E. C. Hazard & Co., complainant, against Harry L. Powers; Runyon & Autenreith, solocitors for complainant; whereby it was sought to impress a trust—as had been attempted in the former Chancery suit—against the insurance funds aforesaid, for the benefit of E. C. Hazard & Company, the said complainant company claiming ownership to certain property destroyed in said fire.

Mr. Sexton: In that connection may we not also stipulate that the finding in the

Court of Chancery in reference to the suits of Elmer Hazard and Matthes and Little Silver Sauce Company be marked in evidence?

Mr. Wilson: I have no objection to Mr. Sexton at any time offering, if it is legal and relevant for him to do so, any informal copy of the decree in the Court of Chancery that he himself may furnish. I do not understand that that decree is *res adjudicata* between any of the parties in this suit. My understanding is that Mr. Sexton and I have entered into a stipulation by which if either thinks it necessary to fix the value of property alleged to have been owned by either Elmer Hazard or Matthes or the Little Silver Sauce Company or Powers, that either at his election and with the consent of the other may use the value of the property of the respective parties as fixed in the Court of Chancery in that proceeding to which counsel now refers.

Mr. Sexton: That is our understanding, but what I am now seeking is, that these papers have already been admitted.

Court: The papers are not in evidence. Ordinarily when any part of a record is offered, I am rather desirous of having the whole record go in as far as it is relevant or material. By reason of the stipulation you have no papers. You have referred to the substance, and when you come to your case, Mr. Sexton, it does not prevent you

from offering any paper you want or any part of the record. As long as they will not consent to the stipulation you ask, you can offer anything you wish.

Mr. Wilson: I wish to have it appear on the record that according to my understanding, there was still another suit brought some time in the spring or summer of 1913, in which Mr. Sexton was the solicitor of record, and Mr. Sexton has assured me that he will look over his memoranda and inform us what the fact is.

Q. Did you pay interest upon this mortgage that you had given to Mrs. Hazard? A. Yes, sir.

Q. Do you recall how many payments you made? A. Three.

Q. To whom were your checks sent? A. Florence A. Hazard.

Q. Did you at the time you made those payments have any notice that the ownership had been changed in the mortgage? A. No, sir.

Q. When did you first learn that? A. Just recently, somehow or another.

Q. Was it during this proceeding? A. Yes, just recently.

Q. I show you a letter purporting to run to Florence A. Hazard, and with that letter in your hand I ask you if you are able to tell us about the time when you made the last payment of interest on account of that mortgage? Just look at the letter. I am only asking about the time of the payment? A. September 18, 1913.

Mr. Wilson: We ask you as the solicitor of Florence Hazard to produce the original

of a letter dated September 18, 1913, addressed to her and relating to the payment of interest upon this mortgage. I show you a copy of it.

Mr. Sexton: We received some sort of a letter like that. We haven't the original.

Court: Any objection to the use of the copy?

Mr. Sexton: No.

Q. Did you cause the letter that has just been shown you to be sent to Florence Hazard? A. Yes.

Q. Who did you direct to send the letter to her? A. Mr. Smock.

Q. Did you hear the letter dictated when it was dictated? A. Yes, sir.

Q. Do you know the signature of Florence A. Hazard when you see it? A. Yes, sir.

Q. I show you a receipt for registered mail, with the name of F. A. Hazard on it; is that Mrs. Hazard's name? A. Apparently.

Q. I mean her signature? A. Yes, very similar, yes, sir.

Court: Is it?

Witness: It looks like the signatures on all other papers.

Court: What do you say?

Witness: I say it is hers.

Q. Do you know of your own knowledge whether the letter that was sent to her was registered? A. I registered it.

Q. Did this registry receipt which you have in your hand come back in response to that transaction? A. Yes, sir.

Mr. Wilson: I offer this registry receipt and letter in evidence.

(Letter and registry receipt marked Exhibit D 12.)

Court: You don't make any objection to it; no formal notice has been given to produce?

Mr. Sexton: No.

Mr. Wilson: (Reading) "September 18th, 1913.

Mrs. Florence A. Hazard,
528 Fourth St.,
Brooklyn, N. Y.

Dear Madam:

Herewith you will find Mr. Harry L. Powers' check for $375, six months' interest on mortgage covering property at Shrewsbury, on which interest fell due on the 13th day of this month.

This money is paid upon the express understanding that none of the equities of the said Harry L. Powers in respect to the mortgage are waived by this payment of interest, and further in the payment hereof the said Harry L. Powers reserves the right to set off against the principal and interest of said mortgage whatever

may now be due or hereafter come due from the said Florence A. Hazard to Harry L. Powers. All rights of the said Harry L. Powers in respect to said mortgage are hereby reserved, and none are waived by the payment of the interest.

Very truly yours,

Dic. S-V"

The registry receipt D 12 is a return registry receipt bearing date September 20, 1913, signed F. A. Hazard, the return slip running to the name Wilson & Smock. The date September 20, 1913, is written on one side and stamped in ink on the other side.

Q. How soon after you took possession of this property did you employ counsel to direct you or aid you in any difficulty that arose? A. About the fifteenth.

Court: Is this included in your item or claim for expenses and disbursements?

Witness: About the fourteenth or fifteenth of March, the day I was arrested.

Q. And whom did you seek for that purpose? A. Wilson & Smock.

Court: Does it appear in the stipulation on the record that your firm represented Mr. Powers in all the litigation mentioned?

Mr. Wilson: It does not.

Court: It appears that Mr. Sexton represents the different parties?

Mr. Wilson: And Judge Heisley represented certain parties, and Runyon & Autenreith.

Q. As a matter of fact, in all the litigation referred to in the stipulation made in your hearing, by whom were you represented? A. Wilson & Smock.

Q. Have you been continuously represented by them from the fifteenth of March, 1913, until the present day? A. Yes.

Q. And directing your attention in particular now to the four suits that were brought in the Court of Chancery, one by the little Silver Sauce Company, and one by Elmer Hazard and Matthes, and one by Matthes, and still another by E. C. Hazard & Company, by which it was sought to impress a trust upon this insurance money, were those suits litigated? A. Yes, sir.

Q. And directing your attention to the first three that I named, did they came to trial? A. Yes, sir.

Q. And do you recall the number of days actually occupied in the taking of testimony, or don't you remember that detail? A. I cannot say exactly.

Mr. Sexton: I enter an objection at this time that this should not bind Mrs. Hazard or Mrs. Murphy. The suits obviously on their face disclose that they have nothing to do with the real estate, that they have entirely to do with certain personal property which was claimed by these third parties, as far as Mrs. Hazard and Mrs. Mur-

phy are concerned, and it is immaterial in that it does not bind either of these parties. I also include in that objection the materiality as to whether counsel fees, such as have arisen in this instance, can be charged against Mrs. Hazard and Mrs. Murphy as a measure of damges.

Court: You object because they cannot be?

Mr. Sexton: Yes.

Q. Do you remember whether or not suits were brought against insurance companies who had risks against the property, after the fire? A. I think about twenty.

Q. By whom were they brought? A. By Wilson & Smock.

Court: For you?

Witness: Yes, sir.

Q. Have you settled with Wilson & Smock for the services rendered by them from the fifteenth of March, down to and including the time when these various Chancery suits and other suits to which your attention has been directed, were disposed of, and down to and including the time when the insurance money was collected from the insurance companies? A. Yes.

Q. Do you recall about the time when all this litigation had been disposed of, including the last Chancery suit which was brought by E. C. Hazard & Co., and when finally the collection was made from the insurance companies? A. Yes.

Q. What was the date of that? A. 1916, sometime.

Q. Do you recall the date? A. I cannot give the exact date.

Q. Sometime in that period of 1916? A. Sometime in the fall of 1916.

Q. What was the amount which your attorneys finally collected on account of your loss from the insurance companies? A. $101,500.

Q. What charge was made to you by your attorneys for the services rendered during this period of more than three years, for services in connection with these various suits at law and in equity, including the twenty-odd suits which were brought against the insurance companies, including the final collection of $101,500 from the insurance companies, and including also work after that collection, where adjustment and settlement were made with your creditors, judgment and otherwise; what was their charge for that service?

Mr. Sexton: That is objected to. Here is an omnibus question, not limited to any of the suits which we have, but after taking twenty odd suits, about which we know nothing, and no reason why they had to be fought out——

Court: That goes to the weight of the evidence. Suppose the witness said, "I paid five or ten thousand dollars to Wilson & Smock," for which Mr. Powers expects an allowance and deduction from this mortgage; they will have to show why that entire charge should be deducted. They are now proving the amount.

Mr. Wilson: As one of the elements which he claims he is entitled to have paid.

Court: But because he said, "I paid Wilson & Smock five or ten thousand dollars" does not entitle him to have it deducted; he must show it to have some relation to the suit, and why it should be charged up to Mrs. Murphy or Mrs. Hazard.

Mr. Sexton: We object to all this evidence relative to the twenty suits.

Court: Suppose they bring home to Mrs. Hazard that she was the inspiring genius behind the doctor, the Little Silver Sauce Company and Mr. Matthes to make all these claims whereby a settlement of the insurance policies or loss under them were reduced because of conflicting claims to ownership and rights to property, and that there was no other way to force the insurance companies to pay except by litigation; suppose that is brought home to her; why should she not be responsible for it, if she produced the litigation and expense incident to it?

Mr. Sexton: We object to the materiality and its binding force upon Mrs. Hazard and Mrs. Murphy.

Court: Unless it is connected, it will have none.

A. $10,000.

Q. Did you pay that amount? A. Yes, sir.

Q. In addition to that did you disburse any

moneys as an incident of the prosecution of those various suits? A. A thousand dollars.

Mr. Sexton: Same objection.

Q. What was the most considerable item of that thousand dollars? A. Minutes of the case.

Q. Stenographers' bills? A. Yes, sir.

Q. I show you a bill for stenographer's fees; did you pay that? A. Yes, sir, $578.40.

Mr. Wilson: We offer that in evidence.

Mr. Sexton: Same objection.

Court: Mr. Sexton's objection will be noted, and the bill will be admitted.

(Marked Exhibit D 13).

Q. This bill purports to be a bill of George A. Wardell rendered to Wilson & Smock, Solicitors for Harry L. Powers, the total amount being $578.40; the last item in this bill, Mr. Powers. is $35.10. Do you recall whether in point of fact you paid that item yourself or whether that was paid by your attorneys? A. I am not certain about that.

Court: These items relate to transcripts of testimony taken in some of those suits?

Mr. Sexton: The bill will show.

Mr. Wilson: It say, "To bill rendered for testimony taken before M. T. Rosenberg, Advisory Master, in Little Silver Sauce Co. v. Harry L. Powers, Frank T. Matthes v. Harry L. Powers, and Elmer C. Hazard

v. Harry L. Powers," and the last item is "To bill for fees as Examiner, taking testimony at Noroton Heights, Conn., in above cases."

Q. In addition to the thousand dollars which you say you paid out of your pocket, there were other expenses in connection with this litigation which your attorneys paid, and which by your authority they charged against this insurance fund when collected by them? A. Yes, sir.

Mr. Wilson: The question of these charges we will have to sustain, I presume. We are not endeavoring by this witness to make any apportionment to particular issues involved in this case. It seems to me that must be done by his solicitors, or in some other way.

Q. Mr. Powers, did Mrs. Hazard testify as a witness in support of the Chancery suits of the Little Silver Sauce Company and Elmer Hazard and Matthes? A. Yes, sir, both at Long Branch and at Jersey City.

Mr. Wilson: I offer in evidence uncertified copies which, under stipulation, shall serve the purpose of the original of affidavits of Florence Hazard attached to the original bills and moving papers in the three suits, to wit, Little Silver Sauce Company v. Powers, Elmer Hazard v. Powers, and Matthes v. Powers, and finally in the latter suit, of E. C. Hazard & Co. v. Powers.

Court: It is stipulated copies can be used?

Mr. Sexton: If it is admissable at all, copies may be used. It is objected to as to its admissibility.

Court: On what ground?

Mr. Sexton: It is immaterial and irrelevant, and certainly not a proper way of proving such a statement, if there are such affidavits.

Mr. Rosenberg: We are trying to prove there were such affidavits.

Court: It is for the purpose of showing her activity in these suits, and if she make an affidavit in connection with moving papers, bill or whatever it might be, that is something that is done by her voluntarily, because she is not under process of subpoena; while if she testified as a witness, she may have been compelled to come and testify but an affidavit is a voluntary matter. Your objection only goes to the effect of the evidence?

Mr. Sexton: It is immaterial at this point, anyhow, as to whether she made an affidavit in those proceedings or not.

Court: But you don't object to it because Mr. Wilson desires to use copies instead of the originals?

Mr. Sexton: No, we have a stipulation as to the use of copies subject to opposing counsel scrutinizing them and calling the Court's attention to any defect, if there is any, for the purpose of correcting them.

Court: Then they will be admitted subject to such correction as Mr. Sexton has indicated.

Mr. Rosenberg: We are not relying upon the contents of the affidavit; we are not trying to prove by the use of the affidavit that the facts which were set up in the affidavit are true; we are not making it evidential on our side: in fact, that is the very thing we don't want to do, because everything that is in the affidavit is very largely contradicted by us; but we are offering it to show that there was such an affidavit made, and offer the contents of the affidavit to show the attitude of Mrs. Hazard, and to show that she was a participant in this litigation on the side of the Little Silver Sauce Company, Matthes and her son, Elmer.

Mr. Wilson: You mean affidavits.

Mr. Rosenberg: Affidavits—and that is the attitude; and Mr. Sexton's objection would be perfectly good if we wanted to rest upon that as showng the fact; but we are showing that there was such an affidavit made and showing what the statements were in the affidavit, not as to their truth, but as to what Mrs. Hazard's attitude was; and in that view it seems to me clearly evidential.

Mr. Sexton: We are about to read these affidavits in the record, and while it is true it is done for a certain purpose, nevertheless we are making a record of those affidavits.

Court: This Court and the Court above will take it for the purpose for which it is offered. As I view the situation, they claim that Mrs. Hazard after selling certain property to Mr. Powers and receiving his money therefor, and attempting to collect the balance of the purchase price, turned around instantly and endeavored to deprive him of his property, for which he was seeking payment then, and is seeking payment now through Mrs. Murphy, and did everything she could to divest him of his title, by participatingi n this litigation, through affidavits and otherwise. That is the way I understand the attack is being made upon her, in fact. I will allow the affidavits in, and I will allow them to be read for the purposes indicated by counsel, and with the limitation I have imposesd upon them.

Recess.

Court: Mr. Wilson may read such portions of the affidavits as he pleases, reserving the right to you, Mr. Sexton, to put in the whole affidavit, or read such portion as you wish in, and that same remark applies to the statement which has gone on the record regarding the parties and dates and the nature of the various actions that have been referred to. The entire record or any portion of it may go in, if you see fit to offer it. Mr. Wilson will read such parts as he thinks is material, and you may offer such portion as you see fit to offer.

Mr. Rosenberg: It is evidential to show the attitude of Mrs. Hazard and therefore is material to this controversy, not as it was material on the question of the issues that were raised in that affidavit, but it is material for this controversy, not that they were at all material to the issues of the previous litigation; we don't care about that.

Court: In order that there may be no danger of allowing it to go under misapprehension, I concluded I would tell you that you will not be precluded by being limited to the part that they see fit to offer; I will give you the privilege to offer the whole or any part of it. Mr. Sexton can have the benefit of an objection.

Mr. Wilson: We offer the entire affidavit and call your attention to such portion of it as we think is material to our case.

Mr. Sexton: I suggest that counsel state at this time just the purpose that he is offering these affidavits for.

Mr. Wilson: I have stated it already.

Mr. Rosenberg: I also wish to state, because I think it is fair to counsel, that we offer it not only for the purpose that I have stated, but also as evidential of the fact that there was a collusive arrangement between Mrs. Hazard, Elmer Hazard and Matthes to defraud the defendant Powers.

Court: That is substantially what Mr. Wilson said; it was part of the conspiracy.

Mr. Sexton: I will renew the objection in view of the further statement of Mr. Rosenberg.

(At this point the evidence of Mr. Charles G. Ferris, Mr. Henry D. Dickensheets, Mr. Rasmus P. Miller and Mrs. Florence A. McAnerny, was taken and will be found at page 359.)

(Wednesday, April 24th, 1918.)

Mr. Wilson: I will now follow out the plan under the rulings of your Honor yesterday, of reproducing at least in part affidavits of Florence Hazard which accompanied the moving papers in the three Chancery suits: Little Silver Sauce Company v. Powers, Elmer C. Hazard v. Powers and Matthes v. Powers, by each of which it was sought to impress a trust upon the insurance fund, and reading now from the affidavit as it appears attached to the original bill of Little Silver Sauce Company against Powers, and in which not only Powers, but the various insurance companies who had risks upon the property at the time of the fire, were joined as defendants.

Court: Let me interrupt you. In the testimony offered yesterday as to the amount paid by Mr. Powers to the firm of Wilson & Smock was included service rendered in all the litigation.

Mr. Wilson: Yes, sir.

Court: It occurred to me to make this suggestion: suppose when I come to consider this case, I find in effect that Mrs. Hazard might be responsible for part of the litigation and not responsible for the remainder, how am I going to adjust that in the absence of any further proof?

Mr. Wilson: We had that in mind, and my purpose is that either Mr. Smock or myself will go upon the stand later on and show in somewhat detail what was done so that the Court will have before it the necessary data of apportionment, if the Court deems that course necessary.

Court: Mr Sexton suggested in the course of his comment that the litigation against the insurance companies might have been on various grounds of which she was entirely independent and innocent, and I think it is a very serious situation he presents by that, and I call your attention to it, but use your own judgment.

Mr. Wilson: Our minds were alert to the necessity of dealing with it.

Mr. Sexton: Due to the adjournment, I don't know how the record will appear, but as I recall it, I had entered an objection to the statement of the offer of Mr. Rosenberg, or a restatement by Mr. Rosenberg, and then I offered a formal objection. For the purpose of this affidavit, I I want the record to show that I do object to the offer of the affidavit or to the reading of portions of it into the record.

Mr. Wilson: I offer in evidence—I understand your Honor has said you will receive them—the affidavits of Florence A. Hazard attached to the moving papers in the three suits which I have just indicated, and will now read certain portions of the affidavit, reserving the right to Mr. Sexton to offer the whole or any part of the record as he sees fit. I have already offered the whole affidavit, and I am now, for the Court's convenience, reading certain parts of these affidavits which seem to us to be of special value.

Court: In addition to what you have offered, I will permit Mr. Sexton to put in such part as he sees fit or necessary.

Mr. Wilson (Reading):

"Florence A. Hazard, of full age, being duly sworn according to law upon her oath, deposes and says that she resides in the borough of Rumson, County of Monmouth and State of New Jersey; that on or about the 13th day of March, 1913, deponent sold to one, Harry L. Powers, by deed of warranty, all the buildings, farm tract or parcel of land and premises, situate, lying and being in the Township of Shrewsbury, County of Monmouth and State of New Jersey, containing 45 36/100 acres, upon which there was situate, a large factory and factory buildings, together with all and singular, the house, buildings, and appurtenances to the same belonging and in any wise appertaining, excepting

from said sale, such personal property contained in said factory buildings, which deponent sold to Frarnk T. Matthes on July 29tht and August 3rd, 1912, by bills of sale recorded respectively in Books ——, p. 371 and 373, on the 29th day of February, 1913: deponent further says that she sold said premises for $60,000; that said Harry L. Powers paid the purchase price thereof, by giving a first mortgage to one, Floyd W. Davis, covering said premises, for $30,000; deponent further says that at and prior to the time of closing the title to said property, there was contained in certain buildings situate on said premises, goods, chattels, merchandise, machinery, books, furniture, fixtures, etc., belonging to E. C. Hazard & Company; Little Silver Sauce Company; Frank T. Matthes and Elmer C. Hazard, respectively; deponent further says that at the time of the purchase of said property by said Harry L. Powers, the said Harry L. Powers was informed and well knew that the factory was in operation by the occupants thereof; deponent further says that E. C. Hazard & Company, body corporate, Little Sauce Company, body corporate, Frank T. Matthes and Elmer C. Hazard were in occupancy and conducting business in said factory buildings at the time of the purchase of the premises by said Harry L. Powers, and continued to do so until March 14th, 1913; that E. C. Hazard & Company, Little Silver Sauce

Company and Elmer C. Hazard conducted business therein for many years past; that Frank T. Matthes had conducted business therein during the year 1912 and until March 15th, 1913; all of this was known to said Harry L. Powers. Deponent further says that at the time deponent agreed to sell said premises to said Harry L. Powers, she heard Elmer C. Hazard and Frank T. Matthes ask the said Harry L. Powers if they should remove from the factory buildings, and said Harry L. Powers specifically said to Elmer C. Hazard and Frank T. Matthes "to go along just as they had been doing." Deponent further says that on the evening of the 14th day of March, 1913, deponent was visiting at the house occupied by Elmer C. Hazard and family in Shrewsbury, N. J., and said Harry L. Powers called at the home during the evening and spent the evening socially and was apparently friendly with all. The following morning, between the hours of six and seven o'clock, before the factory opened for business for the day, the said Harry L. Powers, his servants and employees took possession of said factory buildings, and assaulted the employees and occupants of the building, and has continuously converted to his own uses, the entire contents of said factory buildings, and has sent out letters promiscuously wherein he claims to be the owner of the business of the former occupants. Deponent is in-

formed that the said Harry L. Powers has set up in defense of his actions, that deponent sold to him the property of E. C. Hazard & Company, Little Silver Sauce Company, Frank T. Matthes and Elmer C. Hazard; deponent further says that she did not sell to said Harry L. Powers, any goods or chattels or property of E. C. Hazard & Company, Little Silver Sauce Company, Elmer C. Hazard or Frank T. Matthes; that Harry L. Powers well knew that goods were sold to Frank T. Matthes for a valuable consideration, and that bills of sale for the same were executed and recorded, and said Harry L. Powers spoke to this deponent many times concerning same, before witnesses, prior to his purchase of the real property; deponent further says that at the time the said Harry L. Powers took title to the said property, it was distinctly understood by said Harry L. Powers that the occupants of the building should have ample notice to vacate the premises and remove their assets, should Harry L. Powers desire possession. Deponent says that Harry L. Powers knew of the business being carried on at said factory; that he lived in his home adjoining the factory property, that his wife was a stockholder in E. C. Hazard & Company, body corporate, and he personally attended the stockholders' meetings with his wife; and deponent further says that prior to the purchase of the

property, Mr. Powers was apparently friendly, and had offered to assist in carting coal which arrived at Little Silver Depot, the coal being the property of the occupants of the factory building; deponent further says that on February 13, 1914, the said factory building with its entire contents, were destroyed by fire.

Deponent further says that she has been informed and believes that the factory property was insured for over One hundred thousand dollars ($100,000).

(signed) FLORENCE A. HAZARD.

Sworn and subscribed to
before me this 9th
day of November, 1914.

G. B. NOYES,
Commissioner of Deeds,
of New Jersey."

An affidavit, which if not identical in words, is practically the same in substance, is attached to the moving papers in the suit of Matthes against Powers and of Elmer C. Hazard against Powers, and these I shall not read.

Court: Reserving the right to refer to them?

Mr. Wilson: I have offered them.

I desire, now, however, to read an affidavit made by Mrs. Florence A. Hazard on the rule to show cause issued in the

case of the Little Silver Sauce Company against Powers in the Court of Chancery of New Jersey, and the rule in that case was made by agreement a rule pertinent in the other two cases then pending at the same time.

Mr. Sexton: And the same objection may be noted which I made to the affidavits and the other matters?

Court: That will be satisfactory.

Mr. Wilson (Reading):

"Florence A. Hazard, of full age, being duly sworn according to law, on her oath, says that she is the widow of Edward C. Hazard and that she formerly owned the real estate at Shrewsbury, N. J., which she sold to Harry L. Powers.

Deponent further says that she was familiar with her husband's affairs, and that the business at Shrewsbury, N. J., was but was always conducted by a copartnership from the year 1883 to the year 1905, never conducted by Edward C. Hazard, at which time the death of Edward C. Hazard her husband, terminated said copartnership, which occurred on Feb. 2, 1905.

Deponent denies that she was ever at any time a copartner in the firm of E. C. Hazard & Co., or any other copartnership, and deponent further says that she as executrix of the estate of Edward C. Hazard, sold out the interest of her husband, Edward C. Hazard, to one Elmer C. Hazard.

Deponent further says, that the said factory property at Shrewsbury, N. J.,

was usesd by E. C. Hazard & Co., from A. D., 1883 to March 13, 1913, and the Little Silver Sauce Co. also used certain portions of said plant from 1898 to 1913. Elmer C. Hazard, individually, and Frank T. Matthes also used the said plant.

Deponent denies that all the fixtures contained in said factory were the property of this deponent. It is also untrue that the said tenants 'paid little if any rent during the years of their respective business conduct.'

Deponent denies that she importuned Harry L. Powers to purchase the property in question including all the personal property therein. But on the contrary the said Powers and his wife both earnestly importuned this deponent to sell him the said property. Deponent also denies that she was compelled by her financial condito sell her said property to Harry L. Powers. On the contrary this deponent, for the simple asking could pay every dollar she owned, that was in the least annoying her.

Deponent further says that it is untrue that said Powers agreed to pay this deponent $71,400.00 for her real estate and all the personal property therein. But the said Harry L. Powers did agree to pay this deponent $60,000.00 for the real estate and he agreed to give her $11,400 for personal property deponent had formerly sold to said Frank T. Matthes, provided the

deponent could get the said Frank T. Matthes to give it back to this deponent.

Deponet further says that the said Harry L. Powers has never paid to this deponent anything at any time, on any personal proprety, with the exception of what personal property this deponent owned on Feb. 5, 1913, and was included in the sale of said real estate, such as boilers, water pumps, piping, permanent water tanks, elevators, steam engines, etc., which were put in as part of the building and included in the sale of said property.

Deponent denies that a pre-arranged appointment was agreed upon whereby this deponent, Elmer C. Hazard, Frank T. Matthes, the other parties in interest should meet in the City of New York for the purpose of consummating the proposed purchase by Harry L. Powers. On the contrary this deponent made an appointment with Elmer C. Hazard (only) immediately after the Eisiman suit to meet this deponent at the Astor House on Feb. 5, 1913, to talk over the Eisiman matter and during the interim the said Harry L. Powers and his wife importuned this deponent and tried to inveigle this deponent into making a hasty sale of deponent's place at Shrewsbury, N. J. And the said Harry L. Powers and his said wife tried hard to get this deponent to sign a contract for the sale of said property without an attorney being present, and this de-

ponent said, "No, I will see you tomorrow at the Astor House as I have to go there," and accordingly this deponent went over to the Astor House on the 5th of Feb., 1913, and met Elmer C. Hazard and Frank T. Matthes (deponent did not know that Mr. Matthes was coming). Deponent then said to them, "I am going to sell my place today." Mr. Matthes and Elmer C. Hazard were both astonished, and Mr. Matthes said, "Good; to whom and how much?" Then Elmer C. Hazard said, "Where is Powers going to get the money from?" Deponent said to both Hazard and Matthes that Powers and his wife have nearly driven her crazy about buying the place and have been running back and forth to the houses about it. In less than three minutes after Elmer C. Hazard and Frank T. Matthes met this deponent, Elizabeth H. Powers, wife of Harry L. Powers, came upon the scene and all conversed for about fifteen minutes, when Harry L. Powers came along and joined the party and Powers suggested that deponent give a simple contract which the said Harry L. Powers proposed to draw up. Thereupon Mr. Matthes objected and said to deponent, "Mrs. Hazard, our affairs are of too serious nature not to have an attorney here." Then Mr. Matthes said to deponent, "Are you going to sell the furniture in the house along with the property?" And this deponent said "No," then Mr. Matthes said

to deponent, "By all means have your attorney here." Powers became perturbed and excited when deponent suggested that she would have Mr. J. F. Joyce, her attorney, here to draw the contract.

Deponent further says she also heard Elmer C. Hazard say, "Of course, you all understand about the factory and every one therein and the goods and machinery therein," or something equivalent to this.

Mr. John F. Joyce, attorney for this deponent, came upon the meeting and all talked together for a few minutes. The party dispersed and about two hours thereafter Harry L. Powers, Elizabeth H. Powers, John F. Joyce and this deponent met and the agreements were drawn up and entered into. Deponent further says that Elmer C. Hazard and Frank T. Matthes were not present at any time when any agreements of sale were entered into and neither of them knew from this deponent anything about the said contracts until after the said Powers had taken illegal possession of the factory.

Deponent further says that she positively heard Elmer C. Hazard, while in the Astor House, say: "Now, Harry, are we to vacate the factory and move out our things, because, if we are to, we have got to make arrangements at once and besides there is a carload of coal at the depot and it would be foolish to cart it in and out again." And then Powers said specifi-

cally to both Elmer C. Hazard and Frank T. Matthes, in the presence of all, "No, go right along just as before you have been doing. I have no use for the factory now and will see you later about arrangements."

Deponent further says that the said Harry L. Powers did make payments to the Nassau Bank of New York and to the Second National Bank of Red Bank, N. J., at his own suggestion and was to satisfy judgments of record and was to deduct the same from the mortgage money, but notwithstanding that this deponent has paid the said money, the said Powers has never cancelled the said judgments of record.

Deponent denies that the two Bills of Sale to Frank T. Matthes were dated after the 5th day of Feb., 1913, and deponent positively knows that said Bills of Sale were executed at Brooklyn, N. Y., on the day and date set forth on said Bills of Sale and at no other time. Said Harry L. Powers well knew that this deponent had sold a lot of the personal property in said factory and knew that each and every one of the tenants in said factory had goods, machinery, equipment, etc. contained therein and was well informed and tried hard to induce this deponent to get Mr. Matthes to release the goods deponent sold to said Matthes.

Deponent further says Powers never made any demand for any keys to any

part of said premises, but said Powers and his wife did call at the residence part of said premises on the night of March 14, 1913, and spent the evening socially and appeared friendly and on said night there were present this deponent, Elmer C. Hazard, Mrs. Elmer C. Hazard, Elizabeth H. Powers and Harry L. Powers. The entire evening was spent in social intercourse and Powers acted friendly and remained until about eleven o'clock P. M. Powers told Elmer C. Hazard that he could remain in said residence until March 30, 1913, as he would not need the house until then.

This deponent intended leaving her furniture in said house for the use of said Powers, on storage.

Deponent further says that the next morning, namely March 15, 1913, between 6 and 7 o'clock, the night watchman came to the house and said to deponent, "Powers is up to the factory and kicked me out," which was followed by a general turmoil.

After learning the actions of said Powers, this deponent hired a large number of men, put them on guard and removed all the furniture of this deponent's to a warehouse, which took about eighteen hours continuous work, and this deponent is of the opinion that if deponent had not moved said furniture at this time and said Powers had ever gained possession of the same she never would have recovered it,

and would have been in the same position as the tenants of the factory.

Deponent further says that the affidavit of this deponent obtained by the said Harry L. Powers on March 19, 1913, was obtained by fraud and deceit. The said Powers came to this deponent and said, "I wish you would sign this affidavit. I may want to get possession of the factory and those fellows may put up a kick; you told me they had no lease on the property," and this deponent then said to the said Harry L. Powers, "Any time you want the possession of the factory they will give it to you but you must give them time to get out." Mr. Joyce, my attorney, also told this same thing to said Powers.

Deponent further says that the said Harry L. Powers did not take possession of the said factory in a peaceful manner nor in accordance with the understanding.

Deponent denies that the said Powers ever paid any money for either the real estate or the personal property. The said Powers executed two mortgages of thirty thousand dollars each on the real estate and nothing for any personal property.

Deponent further says, that said Powers, since the 15th day of March, 1913, has tried to induce this deponent to issue to him a Bill of Sale covering the same property she sold to said Frank T. Matthes and offered also her a note of $11,400 which deponent refused to accept or sign.

Deponent further says that a short time prior to the 13th day of Feb., 1914, the said Harry L. Powers came over to Rumson, N. J., to see deponent and he told this deponent he was broke and could not keep coming any longer and that he would have to give up the place.

Deponent further says that at the time the title was to pass at the Fidelity Trust Co. of Newark, which took many hours (somewhere near thirteen hours), this deponent told Harry L. Powers if he was not perfectly satisfied with everything to call it all off and this deponent would keep the property, which this deponent was capable of doing. Powers was told at said meeting by one of the attorneys "that he was the toughest nut that he had ever cracked."

Deponent further says that she was at a meeting in Red Bank, N. J., at the office of Edmund Wilson, arranged by one of the attorneys for Frank T. Matthes, to try and settle this affair in an amicable way, shortly after it had happened and at this meeting there were present Frank T. Matthes, Edmund Wilson (attorney for Harry L. Powers), Harry L. Powers, Elizabeth H. Powers, Elmer C. Hazard, John F. Joyce, an attorney for Frank T. Matthes, and this deponent. Deponent heard Attorney Wilson say to said Powers, in the presence of all, "Powers, you can't hold this stuff," and the said Wilson turned around and said specifically to Elmer C. Hazard,

"Go ahead and take out all the merchandise and your laboratory from the factory." The said Powers thereupon positively refused to permit it and he carried on and used profane language.

Deponent positively denies that any of her children or the children of her husband were ever in the copartnership of E. C. Hazard & Co., with the exception of Elmer C. Hazard.

Deponent further denies that the business was ever operated for the benefit of this deponent. This deponent never at any time received any profits from said business, not even one cent.

Deponent never told Elizabeth H. Powers that she could sell all the personal property in said factory and said Elizabeth H. Powers well knew that this deponent did not own all the personal property in said factory and in fact said Elizabeth H. Powers is a stockholder of record in E. C. Hazard & Co., a corporation, one of the tenants of said building.

FLORENCE A. HAZARD.

Sworn to and subscribed before me
this 15th day of May, 1914.

G. B. NOYES,
Comm'r of Deeds of N. J."

Q. When you negotiated for the purchase of this property and consummated the purchase, did

you do this with the notion of making an investment which was to be independently operated, or did you do it with a view of acquiring a property that you yourself intended to run? A. I intended to operate this factory for a livelihood.

Q. Did Mrs. Hazard know that? A. Yes; she suggested it herself.

Q. She suggested it herself in the negotiation? A. Yes.

Q. Before you took possession on March 13th, what, if anything, did you do in order to put the plant in a working condition? A. Had all the engines overhauled, boilers and hangers bobeted, new belting.

Mr. Sexton: Objected to as immaterial, after March 13.

Court: I am not sure that it is; I will let it in and give you the benefit of the objection.

Q. Without particularizing, state whether or not before the seasons' business began, dealing with tomato products, the factory was in an efficient condition to do that kind of business? A. The general machinery was there, but it needed a lot of overhauling.

Q. Before the tomato season began did you put it in an efficient condition? A. Yes.

Court: When does that season begin, about.

Witness: About August; from August on, some seasons earlier and some later.

Q. In order to do so, approximately how much did you spend?

Mr. Sexton: Objected to.
Court: I will admit it.

A. Several thousand dollars; I cannot just give the exact amount here—eight to ten thousand dollars; somewhere in that neighborhood.

Q. Did you take up that season the manufacture of food products in the factory? A. Yes, sir.

Q. How many men did you employ during your busy season which followed your purchase, and between the purchase and the time of the fire in February, 1914?

Mr. Sexton: This whole line of testimony is objected to for the same reason.
Court: The same ruling.

A. The busy time, about seventy-five to eighty.

Q. How often did you employ them, once a year or month or daily? A. Daily, all throughout the whole canning season.

Q. How many men did you have on an average, even during the period of the year when you were not having your busiest time? A. Eighteen to twenty-five.

Q. Daily? A. Daily.

Q. How much money did you disburse through the two banks of Red Bank as an incident of your cost of manufacture during that season? A. Between $45,000 and $46,000.

Q. Did that represent the total amount that you disbursed from these banks in connection with the business or did it it represent the amount you had disbursed merely as an incident of manufacturing food products? A. Just on food products.

Court: And didn't cover the repairs you made?

Witness: No, sir.

Q. How many farmers had you contracted with and were receiving tomatoes from during that summer?

Mr. Sexton: I object; I dont' know how far we are going; certainly it appears to me that it is absolutely immaterial. How is Mrs. Hazard or Mrs. Murphy to be charged with any such contracts that Mr. Powers made after he took the place?

Court: Suppose I find she sold all the claims she did; suppose I find as a fact that she combined and confederated with the doctor and with Mr. Matthes to deprive him of the use and enjoyment of what he claims he purchased, and what he claims she signed; that as a result of that, he suffered damage arising out of his inability to market his goods or carry out his contracts with farmers, or his inability to realize on his goods they had manufactured—such as the circular that has been offered, showing that E. C. Hazard claims

he has improperly asserted his ownership or his right to these trade marks or trade name. If I do, then it seems to me he has been damaged. The next question is, to what extent.

Mr. Wilson: Your Honor has stated it properly. There is only one other phase which seems to me makes all this evidence very efficient and very important. The complainant insists that he bargained to buy and did in fact buy the trade name and trade mark and the business. I think it is a part of his affirmative case to show that he bought it in good faith; he didnt' buy it as a piece of junk; he bought it in order that he himself might conduct a going business, where that trade mark and trade name and the business name was useful and of profit to him, and I think it would be incumbent upon him as going to the bona fides of his claim and as having some relevant bearing upon the value of the trade mark, to show that when he took possession of the property under this agreement—which I assume for the purpose of this offer we accept as the fact —that he then proceeded to demonstrate two things: first, that he had the capacity to make the food product to take the trade name, and the trade label was an appropriate designation; and second, that he actually did manufacture a product upon which this trade name and trade label could have been used.

Court: And in consequence of their interference unlawfully, as you claim, he suffered damage and loss as a result.

Mr. Wilson: I think this shows value in the trade mark which he recognized and which he spent money to avail himself of.

Court: I agree with you on it; I will give Mr. Sexton the benefit of his objection on the record, and he may state fully his objection, if he wishes to do so.

Mr. Sexton: It occurs to me, in addition to what I have already stated, that the element of damage by reason of any alleged interference would be that loss sustained by Mr. Powers by reason of not being able to market his goods. Suppose we take it for granted, that he had goods; his damage would be that he couldn't sell them, and it would be immaterial as to what goods he had purchased.

Court: Only to go to verify and corroborate his statement that he had manufactured anything. Suppose he said, "I manufactured $25,000 worth of goods which I was unable to market." The question would arise, did you manufacture catsup, or what was it. He is now going into the details—it is more than is necessary—and he is showing how he made contracts for purchase, which he will follow up, I presume, with manufacturing, and then follow it up by showing he was unable to dispose of it.

(Last question repeated.)

A. Thirty or more.

Court: You made your contracts after you went into possession?

Witness: Yes, sir; some of them I had seen before making the contracts; some I had seen at the time of signing the contract at Mr. Joyce's office. I came down here and went around among the farmers.

Court: After the contract had been signed?

Witness: Yes.

Q. How many acres of land did you then have under cultivation of tomatoes that year? A. About sixty or seventy.

Q. What was the average output per acre of the land you had under cultivation? A. About ten to twelve tons an acre.

Q. Did you use the output of the farmers to whom we have referred and of your own lands in your factory that year? A. Yes, sir.

Q. At the time of the first about what was the value of the manufactured product in the factory that you had manufactured that year and after you had taken possession on the thirteenth of March; what was the value of the manufactured food products down to the time of the fire in your possession? A. $56,000.

Q. Did this represent any food products in respect to which the trade marks of E. C. Hazard were not appropriate? A. A small amount.

Q. Out of $56,000 did you have some stuff there that you had manufactured, ready for sale,

upon which you could not put the Hazard name and the Hazard trade mark? A. Yes, sir.

Q. What did you have? A. About a thousand barrels of catsup.

Court: Worth how much?

Witness: It had benzoate of soda in it, and the Hazard ketchup label doesn't allow benzoate of soda.

Court: What would you take off the $56,000 as representing the value?

Witness: About $8,000.

Court: Did you have these products covered by your insurance?

Witness: This other products, yes.

Court: All of them?

Witness: Yes.

Court: Were you put to a loss of the insurance money?

Witness: I had the goods which I had manufactured—not the goods over which the dispute was—but these goods which I owned.

Court: Represented by the $46,000 that was covered by insurance?

Witness: Yes.

Court: And paid for in connection with the settlement of the loss?

Witness: No, sir.

Court: Paid for by the insurance company?

Witness: Oh, yes, sir.

Court: In the settlement of the loss?

Witness: Yes, sir.

Mr. Wilson: He means it wasn't settled in full.

Court: You dont' claim as an element of damage the loss of that, but the loss of the profit on it?

Mr. Wilson: That is all. I am not sure your Honor may be driven finally, you must take your measure of damage as the expert value as to what the trade mark is worth, but I think the testimony is receivable on the other theory which you have outlined.

Q. You have mentioned the catsup that had the benzoate of soda in as a preservative, to which the Hazard label would not be appropriate. Did you have any other food product there to which the Hazard label could not be attached, like sauerkraut? A. The Hazard people never manufactured sauerkraut.

Q. Wasnt' sauerkraut one of the goods upon which you wouldn't put any of those Hazard labels and trade marks? A. Yes.

Mr. Sexton: I call attention to the fact that Mr. Wilson is offending in that he is leading the witness.

Court: The witness doesn't listen to the question.

Mr. Sexton: That isnt' our fault.

Court: There is a certain latitude which the Court allows if it isn't serious or prejudicial. The witness is asked a question which I don't think, no matter what his answer is, will hurt you.

Q. To my grave regret, I cannot lead you, but I will ask you again what have you to say about sauerkraut? A. A thousand barrels were in there that couldn't have had the label on.

Q. And what were they approximately worth? A. Ten or twelve dollars a barrel.

Q. That being before the war? A. And giving as the date when I manufactured them for the market, which was about ten or twelve, which was put in the proofs of loss at the time of the fire.

Q. So that you had about $8,000 of tomato with benzoate of soda and you had $10,000 or $12,000 of sauerkraut? A. Yes.

Q. That you say should be eliminated from food products to which the Hazard trade name and label was appropriate? A. So far as the special trade mark, but E. C. Hazard & Company sold these same goods before I did, too, but the benzoate of soda—they sold the benzoate of soda by the barrel.

Q. But they didnt' sell that as a specialty of Shrewsbury tomato ketchup? A. No, sir.

Q. But they did sell the catsup in both forms? A. Yes.

Q. Were these food products, the specialties, tomato ketchup, Mayonnaise, onion sauce and what not, made up by you in accordance with the Hazard recipes? A. Yes, sir.

Court: I understand you claim to have purchased the formula of the different products?

Mr. Wilson: Yes, sir.

Q. Where did you get the recipes? A. In the factory when I went in that day.

Q. Where did you find them? A. In the office.

Q. And in what form were they? A. Two or three book forms.

Q. And did you comply with those recipes in the making of those products? A. Some of them in Mr. Hazard's own handwriting.

Court: Did you comply with them?
Witness: Yes.

Q. You took a deed that night you closed this transaction? A. Yes, sir.

Q. I hand you this paper; is this the deed? A. Yes, sir.

Mr. Wilson: I offer in evidence deed made by Florence A. Hazard to Harry L. Powers, dated the 13th of March, 1913, conveying the lands in question, signed in the presence of Henry Dickensheets, acknowledgment taken by him as Master in Chancery of New Jersey, and recorded on the 15th of March, 1913, and the deed being a warranty deed in the usual form.

(Marked Exhibit D 14.)

Q. This statement which we have already offered in evidence, which you yourself have identified as showing how your cash payment of $30,000 was made up to Mrs. Hazard, and which was, according to the testimony, made up on the thirteenth of March, recites "Cash advanced March

12th to Second Nat'l Bank of Red Bank, $5,548.45; cash advanced to National Nassau Bank on March 13th, $7,000." When you paid those moneys to the banks you have already said it was paid to take care of judgments of those banks against Mrs. Hazard? A. Yes, sir.

Q. Did you pay the judgments? A. Yes, sir.

Q. Did you cancel the judgments? A. No, sir.

Q. What did you do? A. I took an assignment of them.

Q. Running to yourself? A. Yes.

Court: Did you say yesterday you found out instead of one being a judgment it was a mortgage?

Witness: The bank was confused about it——

Q. What was it? A. Mrs. Hazard told me it was notes, and when I got down there, they said they had put their claim in a second mortgage; she asked for the notes and they couldn't find the notes.

Court: You took an assignment of it, and that remains open in your favor?

Witness: Yes.

Q. Why didn't you simply pay the money to those two banks and let them cancel the debt against Mrs. Hazard; why didn't you do that? A. Counsel advised me that this was the way to keep it until I got my deed.

Q. Your counsel? A. Counsel for the banks that drew the papers.

Q. You got your deed on the 13th of March? A. Yes.

Q. Why didnt' you cancel them then? A. The contracts have never been closed to this day.

Q. And is that the reason why you didn't cancel them? A. Yes, sir.

Q. You were interrogated yesterday as to your having asserted some interest in these claims against these two banks in a foreclosure suit brought against other property of Mrs. Hazard; what occurred in that connection? A. I appeared before a Master——

Q. Who was the gentleman? A. Mr. O'Reilly, who has since died here in town.

Q. It was in a foreclosure suit? A. Yes—and made a statement that this Eisemann judgment was still open of record and which I still hold some interest in.

Q. And did you make a statement in respect to these claims of the two banks as well? A. Yes.

Q. And you explained your claim and what the situation was? A. Exactly.

Q. Did you ever explain that Mrs. Hazard hadn't yet carried out her arrangement with you? A. Yes, sir.

Cross-examination by Mr. Sexton:

Q. I understood you to say, Mr. Powers, that you were in the carpet business? A. Yes, I owned a carpet factory.

Q. Where was that carpet factory? A. Up in New York City.

Q. Whereabouts in New York City? A. 131st Street and Lexington Avenue.

Q. What was the character of the business conducted there? A. I had about twenty-five looms manufacturing carpet and handling all the carpets of Altman, McCreary and Gimbels, and all the imported rugs which came into this country.

Q. You manufactured carpets? A. Yes, sir; twenty-five looms.

Q. Were you in that business on the thirteenth of March, 1913? A. I was.

Q. Were you running the business? A. I was.

Q. Were you also in the carpet cleaning business? A. All in the one plant.

Q. You had some stable interests? A. Yes.

Q. Where were they? A. 166-172 East 124th Street.

Q. What was the nature of that business? A. That was a stable and warehouse.

Q. How long had you been in that business? A. I was in that business from 1910 to 1914.

Q. Did you conduct that business? A. I did.

Q. The record shows that you married a daughter of Mrs. Hazard? A. I did.

Q. How long have you known the Hazard family? A. A great many years.

Q. How many years? A. I have known of them since I first was down here as a boy, and then intimately I suppose twelve or fifteen years —twelve years.

Q. When were you married? A. About ten years.

Q. You knew them, of course, before you were married—the family, I am speaking of? A. Yes.

Q. How long did you know them before that? A. I should say three or four or five years, visiting there.

Q. You would visit there? A. Yes.

Q. You visited the factory before you were married? A. Yes, many times.

Q. You were familiar with the factory? A. That is the reason I purchased it.

Q. Answer my question. A. Yes.

Q. Did you know Edward Hazard in his lifetime? A. Only Casually, coming up on the train with him.

Q. After your marriage did you visit the factory? A. Yes.

Q. Take an interest in the workings of the factory? A. Very much so.

Q. Your wife was a stockholder of the E. C. Hazard & Company? A. Yes, sir.

Q. You knew that there was a corporation known as E. C. Hazard & Company? A. Only from say so, and saw what papers and things were around.

Q. Your wife had stock in the corporation? A. Yes.

Q. You had been at meetings of the corporation of E. C. Hazard & Company, had you not? A. On behalf of Mrs. Powers.

Q. (Last question repeated). A. Yes.

Q. How often did you attend the meetings of this corporation? A. I think I was there once —one meeting only.

Q. What meeting was that? A. In Grove Street, when they wanted to reorganize.

Court: What year was that; what time?
Witness: I cannot give the exact time.
Court: Can you give the year?
Witness: No, sir.

Q. About how long before 1913? A. It was during the time that Mr. Bedleson and Mr. Samuel Adams were asked to put money in. It appears on the record.

Court: How long: a year or two or three years before 1913?
Witness: A couple of years, I should say—it was before 1913—1910 or 1911, about that.

Q. Do you recall how soon after the bankruptcy proceedings it was? A. It was after the bankruptcy proceedings.
Q. How many years after the bankruptcy proceedings? A. I haven't any sure knowledge.

Court: Give your best recollection.
Witness: I know the bankruptcy proceedings were in 1907.
Court: Then you say two or three years after that?
Witness: Yes.

Q. Mr. Bedleson did put some money in the corporation? A. So I was told by Mrs. Hazard.
Q. How much? A. I was told $25,000.

Court: The Mr. Bedleson referred to is a son-in-law of Mrs. Hazard?

Witness: Yes.

Q. Do you know whether Mr. Greene put any money in the business of E. C. Hazard & Company at that time? A. I wasn't told so.

Q. Do you know? A. No.

Q. Did you know Mr. Frank Greene? A. I did.

Q. Did you know that he was actively interested in E. C. Hazard & Company? A. No; I understood he had retired.

Q. Do you know George Archer? A. Yes.

Q. Do you know that he was actively interested in E. C. Hazard Company? A. Not at the time I speak of.

Court: You mean financially?

Q. Did you know that he was a stockholder? A. I heard so.

Q. Did you know that he was in the old company that went into bankruptcy? A. Just through general conversation.

Q. And continued in the reorganized company; did you hear that? A. I may have heard such a thing.

Court: Did you.

Witness: Yes.

Q. Did you know that Samuel Adams was interested financially in the reorganization of E. C. Hazard & Company? A. He told me he put in $20,000.

Q. You knew Mr. Adams? A. Yes.

Q. Did you know at the time of the reorganization of the E. C. Hazard & Company what assets they had? A. No, not at all.

Court: When was it reorganized, do you know?

Witness: Some time after the bankruptcy in 1907.

Court: About the period you speak of, two or three years later?

Witness: Yes.

Q. How much stock did your wife get on the reorganization? A. I don't know anything about her stock. I don't know the quantity of stock she held; all I know is she was a stockholder.

Court: You don't own the shares?

Witness: No.

Court: Or the total value of the holdings?

Witness: No, I don't.

Q. Do you not hold an assignment from Mrs. Powers? A. She offered to assign some stock.

Q. (Last question repeated.) A. There is an endorsement on the back of the stock to my name; that is all I know about it.

Q. Do you know the certificate? A. I do not hold the certificate.

Mr. Rosenberg: That is calling for a conclusion.

Q. Was that certificate delivered to you? A. It was given to me by Mrs. Powers.

Q. Then you are a stockholder of E. C. Hazard & Company?

Mr. Rosenberg: I object as calling for a conclusion.

Court: That wouldnt' make him a stockholder; it would have to be followed up by a transfer being made. Are you a stockholder?

Witness: It has never been transferred —no.

Q. You have an interest in the company, E. C. Hazard & Company? A. No.

Q. A financial interest? A. Which company are you talking about?

Q. E. C. Hazard & Company, the reorganized company. A. Do you mean by the stock or by the purchase that I made from Mrs. Hazard?

Q. I ask you whether you have any interest in the reorganized E. C. Hazard & Company?

Court: In any way.

Mr. Rosenberg: I object to that; it clearly calls for a conclusion of law.

Court: I don't think so. Suppose he were a creditor; suppose he claims by reason of this contract he has an interest in the property, or by reason of investment in stock he has an interest; he can say yes or no, and state how he has it, if he has any.

A. Which way does it come from?

Court: The question is, do you consider you have any interest?

Mr. Rosenberg: I object to it on the ground of its immateriality; how does it affect this situation at all whether Mr. Powers has any interest in the E. C. Hazard & Company or not?

Court: It might be said to affect it in this way—without asking Mr. Sexton to answer you—you have attempted to assert that the E. C. Hazard & Company is antagonistic to him and endeavored to put him out of business by asserting the right of these trade marks and labels. It seems to me on that line alone, it would make it competent, and he may answer it.

Have you any interest in this company?

Witness: I have got to be enlightened here by the Court, if you mean from the sale of Florence Hazard to me.

Court: Through any channel.

Witness: Yes, through the sale of Mrs. Hazard to me.

Mr. Wilson: I think your Honor ought to bring out whether that is the only source of interest that he has.

Court: You gentlemen can develop it.

Mr. Sexton: I move that the latter part of the question be stricken out.

Court: It is all responsive.

Q. What became of the stock that was deliv-

ered to you—endorsed to you, of the E. C. Hazard & Company by your wife, Mrs. Powers? A. I think it is in her possession.

Q. Why was it endorsed to you? A. She may have thought I was a little more capable of looking after it.

Q. Why was it endorsed to you?

Mr. Wilson: He has answered.

Q. Can you give any other reason? A. It was better to have a man represent her than a woman.

Q. How many shares of stock did you receive? A. I have no knowledge.

Q. Did you ever look at it? A. I glanced at it. It has gone out of my mind since then.

Q. When did you see that last? A. Some time.

Q. How long ago? A. More than a year ago.

Q. How many? A. Seven or eight years ago, six or seven years ago.

Q. Do you know whether or not the Hazard children each had a certain percentage of the stock in the reorganized company? A. I had heard so.

Q. And what was it? A. I have no way of knowing.

Q. Did your wife assign all the stock that she had to you? A. I don't know.

Q. Was all her stock contained on one certificate? A. I cannot answer.

Mr. Wilson: Why don't you ask her? We are going to put her on the stand. I make you that promise.

Court: The books will show and the certificates can be subpoenaed here; they will speak better than anything else.

Q. When did you last see the books of E. C. Hazard & Company? A. When I went through Mrs. Hazard's house the night that I went after the keys on the kitchen table, and in the butler's pantry between the kitchen and the dining room——

Court: On the fourteenth of March, 1913?

Witness: Yes.

Q. What book or books are you referring to? A. To the general minute book, ledger and day book, or desk book, it was all there in a heap.

Q. You knew then of your own knowledge that certain gentlemen had put in $25,000 and another $20,000, making $45,000?

Court: He said he was told about Mr. Bedleson putting in $25,000 and he was told that Mr. Adams put in $20,000.

Q. Do you know whether there were other assets which E. C. Hazard & Company owned?

Court: In addition to the $45,000.

A. I have no knowledge of anything of that kind.

Q. Did you before the reorganization see certain machinery in the factory building? A. The factory was full of machinery.

Q. And that was there before the bankruptcy proceedings, was it not? A. I never went into the factory much before the bankruptcy.

Court: What is your recollection about it; do you remember seeing machinery?

Witness: I looked in the door; I remember seeing machinery there.

Q. You said a moment ago you were in there many times? A. Yes, I was.

Q. Then you were not standing and looking in the door? A. Not in reference to machinery.

Q. Were you standing in the door or actually in the factory?

Court: On your visits prior to the bankruptcy.

A. No, I wasn't in the factory prior to the bankruptcy.

Court: Were you in there at all?

Witness: I cannot say I was or wasn't.

Q. Didn't you, in reply to my question, state that before you were married you were in the factory many times? A. Yes, but the bankruptcy proceeding was long before I was married.

Court: He makes a distinction in point of time from the one you make.

Q. Did you see the same machinery in the factory after the reorganization as you saw in it

before the reorganization? A. I cannot answer that.

Court: Speaking generally.

Witness: Apparently, from observation at a distance; I never was through it; it apparently looked the same.

Q. After the reorganization did you know who the machinery belonged to? A. No, I never went into the question.

Court: Did you know?

Witness: No.

Q. Who was working in the factory after the reorganization?

Court: As manager or laborer or how?

Q. Laborers, in any capacity. A. I don't know.

Q. Do you know how many men were employed there? A. I haven't the least idea.

Q. More than one?

Court: Did you see a number working there?

Witness: I didnt' pay any attention; I didn't see any. Men may have been walking around.

Q. Were they working there? A. I couldn't see any; I don't remember anything about it.

Q. Don't you know as a matter of fact that the factory after the reorganization was conducted by E. C. Hazard & Company? A. Not at all; I don't know anything about it at all.

Q. You don't know anything about it at all? A. No.

Q. You lived next door, did you not? A. I lived in the small house adjoining.

Q. And had visited the plant on numerous occasions? A. Passed it and just casually looked in.

Q. Whether you looked in or not, you had visited the plant? A. I passed it and looked in.

Q. Did you walk in? A. I wouldnt' say; I just casually passed it; I may have stuck my head in the door; it was none of my business and I didn't go in.

Q. You were a stockholder? A. No, sir, I never have been.

Q. You held stock? A. No, I did not, and don't to this day, nor ever did.

Q. I ask you, you have stock in your name? A. I have not.

Q. You have stock assigned to you? A. Endorsement on the back, in my name, from Elizabeth Powers to me, but it has never been carried out.

Court: She was Elizabeth Hazard at the time she got the stock?

Witness: Yes.

Court: It is made out to Elizabeth Hazard?

Witness: I am not sure about that.

Q. Did you know that the reorganized company of which Mr. Bedleson and Mr. Adams were members were using the factory at Shrewsbury?

Mr. Rosenberg: We haven't anything to show in the case that Mr. Bedleson and Mr. Adams were members; all we have got is the witness was informed that one put in $25,000 and the other $20,000.

Court: Mr. Sexton assumes that they were, and he asks if he knew it; if he did, he can state whether he did or not.

Witness: I have no knowledge about it.

Q. Were you at the reorganized meeting? A. Not as I remember.

Court: When was it held?

Witness: A short time after the bankruptcy proceedings.

Mr. Smock: When and where?

Mr. Sexton: Let him tell.

Mr. Smock: He says he does not remember that he was present at the reorganization meeting.

Q. What meeting was it that you attended of E. C. Hazard & Company? A. I went to Grove Street with Mrs. Powers, at her request, one day to hear some general talk; what it was I have no memory of.

Q. Who were present at that time? A. Mr. Herbert Adams and Elmer Hazard and I think Bowden Hazard and Mrs. Hazard and Mrs. Powers and myself. I am not sure of anybody else; maybe Mr. Stern was there at that time.

Q. Did you know of the existence of the Little Silver Sauce Company, a body corporate? A. I have heard of such a company.

Court: When are you talking about?

Mr. Sexton: Any time.

Witness: I supposed he meant sometime prior to the time he is talking about.

Court: Up to what time, Mr. Sexton?

Mr. Sexton: I think he should stand by his answer.

Court: I must give Mr. Powers credit for ordinary intelligence, and having sat here and heard the name mentioned for two or three days, you must assist and not confuse me; I want enlightenment; I want information.

Q. When did you first learn of the existence of the corporation Little Silver Sauce Company? A. The night I was arrested.

Q. That you have already testified to? A. Yes.

Q. Mr. Powers, what name did you do business under at Shrewsbury after you took possession of the factory? A. I practically did no business at all; I wasn't allowed to do any business.

Q. I ask you what name did you do business under after you took possession of the factory?

Court: He has answered that by saying this: "I practically did no business; I was allowed to do no business." Do you want a further answer?

Mr. Sexton: Yes.

Mr. Rosenberg: Then I object on the ground that the question is vague, as there isn't anything to indicate what coun-

sel means by "doing business"; does he mean manufacturing, selling or what?

Court: The question is broad enough; I will admit the question.

A. Under the name of H. L. Powers.

Q. I show you Exhibit D 10, and ask you if that is a letterhead prepared by you or which you had prepared? A. Yes.

Q. And that has upon it Hazard's Shrewsbury Manufacturing Company? A. It has.

Q. Is that a body corporate? A. No.

Q. Is it a corporation? A. No.

Q. Whose firm name is it? A. It is a name that I was attempting to prepare to use, in trying to dispose of these goods which I had manufactured in this factory.

Q. You were then trading or about to trade under that name? A. I said I was preparing to trade; I had not traded.

Q. You were preparing to trade under that name? A. Yes.

Q. Did you use stationery similar to the one I now show you, D 10, for the purpose of sending out letters and your correspondence? A. To a small degree.

Q. To what degree? A. I cannot tell you.

Q. When did you have these printed? A. I should think sometime during the spring of 1913 after I took possession of the factory.

Q. Did you use this billhead and letterhead similarly printed upon for all purposes in connection with whatever business you may have transacted in the factory? A. Not at all.

Q. Did you have any other letterheads? A.

There were lots of plain letterheads with the name of H. L. Powers.

Q. Where did you have these letterheads printed, Exhibit D 10? A. New York City.

Q. I show you a paper on which is printed Hazard's Shrewsbury Manufacturing Company and ask you if that is a copy of a letterhead used by you? A. I started to say——

Q. Is it a copy of a letterhead which you had printed? A. I had it printed.

(Letterhead shown witness marked Exhibit C 7 for identification.)

Mr. Rosenberg: It is apparently the same as D 10, except it is on white paper.

Q. I show you an envelope and ask you if that is a sample of an envelope which you had printed? A. It looks like it.

Q. How many thousand of the billheads did you have printed, Mr. Powers, like D 10? A. I have no recollection.

(Envelope shown witness marked Exhibit C 8 for identification.)

Q. Who printed these billheads, D 10? A. The printer.

Mr. Wilson: How is that material?

Court: I don't see where any of this is yet, but I will allow it.

A. (continuing). I haven't any recollection now; somewhere in New York; it seems to me I got figures on it, but I dont' recall the name.

Q. When did you have any conversation with Mrs. Hazard relative to the purchase of any property at Shrewsbury? A. I think it was 1912, November or December, at her house in Brooklyn.

Q. Was it November or was it December? A. One or the other, I don't know which one; somewhere during the fall, just before the holiday time.

Q. How do you fix the time? A. By the purchase of the property.

Q. What has the purchase of the property to do with November or December, 1912? A. The incidents that passed between that date and the date of purchase.

Q. That, then, was the first time you had any conversation with Mrs. Hazard relative to the purchase? A. Yes, to the purchase.

Q. And it may have been in December?

Court: Yes, he says November or December.

Q. Where was that conversation held?

Court: At her house in Brooklyn. What street?

Witness: I cannot tell you.

Q. Who was present on that occasion? A. Mrs. Hazard and Mrs. Powers, and one evening Elmer Hazard was there.

Court: Did you have more than one conversation at the house?

Witness: Yes.

Court: Mr. Sexton is asking about the first conversation; who was present at the first conversation?

Witness: I am not certain; a general family conference over there—Mrs. Hazard and Mrs. Powers, and I don't know whether the rest were in and out or not.

Q. Did that conversation have anything to do with the fact that you were ultimately going to purchase this property, Mr. Powers? A. It was a general conversation about the property, about the purchase of this property, about my purchasing this property.

Q. Was that the occasion that Mrs. Hazard gave you the labels? A. Oh, no.

Q. When was it Mrs. Hazard gave you the labels, referring to D 2 in this case? A. At my house—in my apartment in 96th street, just off of Broadway.

Q. When? A. Just prior to the signing of this contract; I cannot say the exact date, sometime prior to the fifth of February.

Q. And since that time where have the labels been? A. Lying with some other papers of mine, letters and things, lying in the house in Shrewsbury.

Court: In your possession?

Witness: Yes.

Q. And these are the labels that Mrs. Hazard gave you at the time? A. Yes, sir.

Q. You are quite positive about that? A. Yes, sir.

Q. Just where in your house had they been lying? A. When this controversy started, Mrs. Powers pulled out a lot of papers that had been brought over from the big house, the house that I bought from Mrs. Hazard in Shrewsbury, and started sorting out all these papers, in an endeavor to find some letters of some importance, and one day she handed me these labels, and I said, "Look and see if you cannot find some more, because there are some more of them."

Q. They had passed from your mind from the time Mrs. Hazard gave them to you until the time that you found them, is that so? A. Not exactly.

Q. They certainly had passed from your physical possession? A. No, anything on my property is in my physical possession.

Q. From your personal possession? A. I didn't carry them in my pocket.

Q. When did you first put them in the place that you found them, after Mrs. Hazard gave them to you? A. Yes.

Q. How soon after she gave them to you was it that you put them where you found them? A. I didn't put them, nor I didn't find them; Mrs. Powers found them.

Q. Did you have them at any time after Mrs. Hazard had given them to you and you took them to your house? A. I took them down in the Shrewsbury house after taking possession of this factory.

Q. And they were there the entire time until— A. No, I don't say so. After I moved from the big house,—being reduced in circumstances, I

couldnt' afford to run this large house, and I owned the adjoining one and I went there, and these papers were brought over in boxes to me and put in another closet.

Court: They were promptly brought from your house in New York, the apartment; that is where she gave them to you?

Witness: Yes, and I brought them down to Shrewsbury.

Q. And they are the same now as when Mrs. Hazard gave them to you? A. Yes, apparently.

Court: Have you any idea about it?

Witness: No.

Q. Going back—the first time that you talked with Mrs. Hazard then was during the months of November and December; at that time were you contemplating purchasing this property? A. She requested me.

Q. (Last question repeated) A. No.

Q. You were not in the market at that time? A. Not at the price.

Q. Were you in the market for the factory property at any price, on the occasion of the first talk? A. I would have considered it at a price.

Q. Did you state that you would consider it at any price? A. No, we hadn't got that far.

Court: At the first talk, you mean?

Mr. Sexton: Yes.

Q. When did you have the next talk with Mrs.

Hazard relative to the Shrewsbury property, the purchase of it? A. There were many talks leading up to it.

Q. When did you have the next talk that you can recall? A. I cannot recall; there were many of them through the winter.

Q. How long after the occasion of the first talk was it that you again talked over this subject,—the subject of purchasing the Shrewsbury property, with Mrs. Hazard?

Court: A matter of weeks or days?

Witness: No, it dropped off; someone got an option on it, and after that option was dropped——

Court: Did you not talk with her between the first talk and until after the option expired?

Witness: I wouldn't say that; there were family talks all the time.

Q. It is possible you had no other talks with Mrs. Hazard from the occasion you first mentioned, namely in November or December, until after the option to a third party had expired? A. About that; I should say that is correct.

Q. Who held this option, if you know? A. I never found out.

Q. Did Mrs. Hazard tell you? A. Yes, Mrs. Hazard told me.

Q. Then you did find out, didnt' you? A. Mrs. Hazard told me about the option after.

Court: You are both talking about dif-

ferent things. Did she tell you the name of the party who held that option?

Witness: I said no to that question.

Q. What was the price, if you know, fixed in the option for the purchase of this property? A. Somebody said $100,000; who said it I don't know exactly.

Q. Didn't you say $80,000 yesterday? A. It might have been $80,000 to $100,000; I don't know what it was.

Q. What was it? A. I have no way of knowing.

Q. $20,000 doesn't seem to mean—— A. Nothing at all under these conditions; I wasn't interested at that price.

Q. What did the option cover, if you know? A. I have no knowledge what it was; it was just an option I heard.

Q. Did you know that it covered the same property that you were contemplating purchasing? A. Not at all.

Q. Then if it did not, why did you desist in your talks with Mrs. Hazard concerning your purchase of this property? A. Because the man had an option.

Q. Then you did know what property it was? A. The man had an option and I just wasn't interested; she was approaching me on the subject.

Q. You did know what was covered by the option? A. I supposed it was the option of the Shrewsbury property and I didn't know what property it consisted of really.

Q. I asked you if you knew what property the option covered, and you answered that you did not know. A. I have no definite knowledge as to what the option covered.

Court: That is so, and he further answers that while he thinks it covers Shrewsbury property, he doesn't know what particular property it covered. I don't see any inconsistency in the two answers.

Q. When did the option expire? A. I don't know when it began or ended.

Q. When after the expiration of the option did you have your next talk with Mrs. Hazard? A. It was either at her house or in my apartment at 97th street.

Q. When? A. I cannot tell you; sometime after she designated "this man's option is off and his time is up and I would like to take this matter up with you."

Q. When was that? A. After the option expired.

Court: About when was it?

Witness: Sometime before the fifth of February: I don't know when it was.

Q. 1912 or 1913? A. Sometime intervening between those months; there was no rapid move about this thing with me; I took my time with it; it was a general conversation, and went into as much to help Mrs. Hazard out with her financial difficulty as anything—the investment of the business, the purchase.

Q. How long prior to February 5th was the second conversation that you had with Mrs. Hazard relative to purchasing this property? A. I remember having a conversation at a dinner at my house, in which Mr. and Mrs. McAnerny were present, Mrs. Powers and Mrs. Hazard and myself.

Court: Can you state how long prior that was to February 5th?

Witness: It might have been a week or two or something like that.

Q. Then a week or ten days before the fifth was the occasion that you met Mrs. Hazard at this lady's house? A. No, I didn't say so; I said at my house, at dinner, and it may have been two or three weeks, sometime prior to that.

Q. You said, I think, a week or two, did you not? A. It may have been.

Q. What conversation was had between you and Mrs. Hazard on that occasion concerning the purchase by you of the Shrewsbury property? A. She just talked generally as to my purchase.

Court: State what you recall of it.

Witness: That she was getting me or asking me to buy the Shrewsbury property, the house and connections down there —just a general family conversation at a dinner table; I cannot recall just the exact words.

Q. Were you interested in purchasing the property at that time? A. We hadn't arrived at a price then.

Q. Were you interested in purchasing the property at that time? A. I was listening somewhat to the conversation; I don't know whether I can say I was interested; no price had been submitted; I didn't know what was in her mind.

Q. What was in your mind? A. If the price was correct and I could see my way clear I would have purchased.

Q. Were you interested in the purchase of that property on the occasion of this talk?

Court: What else can you say?

A. I was interested if the price was satisfactory.

Q. Was any price mentioned on that occasion? A. None whatsoever as I remember.

Q. Have you told us all of the conversation that took place at that time which you can recall? A. I wouldn't say that I have; it was a general family conversation there in reference to her children, the boys not being able to run this factory and not taking proper care of it, and by drinking and squandering the money, and she had lost such great quantities of money through their doings.

Q. Anything else said? A. And she had visited my other business——

Q. I mean in reference to your purchasing. A. And with my ability to run it, she was willing for me to have it, and for her daughter to have the house and have the property which her father once owned, rather than strangers.

Q. Have you told us all you remember? A. I have told you to the best of my knowledge.

Q. When did you next have a conversation with

Mrs. Hazard concerning the purchase of this property? A. I don't know, off and on.

Q. Between that occasion and the fifth of February? A. There may have been some other occasions; we were a family and we visited each other's house; I have no recollection now exactly.

Court: Mr. Sexton asks prior to February 5th when did you have the next conversation.

Witness: There was one evening she was over there to my house—I think she was there when I came in——

Q. Fix the time. A. I cannot tell the time, just prior to the fifth of February, when she gave me these labels, and that was the day that I came in just about dinner time, she was there.

Q. How soon prior to February 5th was it that this conversation took place? A. Somewhere about a week—three or four days or a week, somewhere in that neighborhood.

Q. What conversation did you have on that occasion? A. Mrs. Hazard desired to sell me the Shrewsbury house, grounds, factory, equipments, labels, trade marks, name, business, and everything down there with the exception of her household furniture, everything, whether she derived it from her own money, through Mr. Hazard, through the E. C. Hazard Company, or what not, even the purchase of personal property which she had made sometime prior to that, the corn in the crib, horse and carriage, everything was included, with the exception of the household furniture.

Court: Is that all that was said that you remember?

Witness: Yes.

Court: Any price named that night?

Witness: $60,000 or $75,000 comes to my mind; I think it was about $75,000 she put on it first, or $80,000.

Court: Is that all that was said?

Witness: About all.

Q. And at the close of that conversation had you and Mrs. Hazard arrived upon an agreement for the purchase of this property? A. Not as to price, no, sir.

Mr. Sexton: Listen to the question.

Witness: No.

Q. Did you have any other talk with Mrs. Hazard between that occasion and the occasion of February 5th? A. No.

Q. When was the occasion that you went over to Mrs. McAnerny's apartment after you had dinner at your house? A. The night of the fifth.

Q. When then, Mr. Powers, were the terms of the purchase of this property by you talked over? A. At the Astor House on the fifth of February; in the morning, between ten and twelve, with Elmer Hazard present and Matthes present and Mrs. Hazard present.

Q. I asked you when it was? A. I am telling you.

Mr. Sexton: I move to strike the rest of the answer out.

Court: Yes, let it go out.

Q. Was that the first time that the consideration of $60,000 was mentioned? A. That was the first time, except over the phone; I don't remember; she called me on the phone to meet her there.

Court: That same morning?

Witness: Yes. I hadn't known anything about anything else, and she called me on the phone to meet her.

Court: Is it your recollection that she made any reference to the $60,000 in that telephone conversation?

Witness: I had said I would give that amount, and she said "Come and meet me."

Court: When had you told her that?

Witness: When she was talking about $75,000 or $80,000, and I thought under these conditions I might give $60,000.

Q. What time did you reach the Astor House? A. I say about ten o'clock, maybe a little after, 10:30.

Q. Who was there when you arrived? A. This was the old Astor House downtown opposite the post office; Mrs. Powers and I went in the door and I left her to telephone.

Court: Who was there when you arrived?

Witness: Elmer Hazard, Matthes and Mrs. Hazard, and Mrs. Powers.

Q. Who first spoke to you in reference to the

selling by Mrs. Hazard of the property to you? A. Mrs. Hazard.

Q. What was said by Mrs. Hazard on that occasion concerning the purchase by you of this property? A. Mrs. Hazard said, "I have had these two gentlemen meet you here with me——

Court: Referring to whom?

Witness: Elmer Hazard and Matthes.

A. (continuing)——as I propose to sell today the plant at Shrewsbury, house, grounds, equipment, and the business entire, and if you don't purchase it, I am going to sell it to a man named Bedell, or O'Dell, at three o'clock this afternoon."

Q. Do you know that Mr. Bedell was the man who had the option? A. No.

Court: Is that all she said to you? You interrupted him.

Witness: I think that was about all just at that juncture, but other conversation followed.

You asked me on the former occasion. It seems to me that she did make mention of the Eisemann judgment right there in the first remarks.

Q. As a matter of fact did she not up there say she was expecting a decision in the Eisemann judgment? A. No, she told me she had received the decision.

Q. She had received it that morning or the day previous? A. Elmer Hazard had brought the decision to her.

Q. When? A. Right there in that hotel room.

Court: While you were present?

Witness: No, I was not there; I hadn't arrived there.

Q. What other conversation, if any, did Mrs. Hazard have with you concerning the purchase of this property prior to the time that Mr. Joyce arrived? A. She said that she had lost a great deal of money and hadn't slept for weeks and weeks, had walked the floor and was at her wit's end and she had lost all the money she was going to lose, and she proposed to sell that place today, and "I have had these two gentlemen meet you here to go over these facts."

Q. Is that all? A. I believe that is all.

Q. Mr. Joyce arrived upon the scene? A. Mr. Joyce came in and said he had had a——

Q. Not what he said; he arrived upon the scene? A. Yes.

Q. Prior to the arrival of Mr. Joyce had you said anything to Mrs. Hazard, "We will draw up a little contract which will be safer," or words to that effect? A. No, sir.

Q. Did you inquire of Mrs. Hazard why it was necessary to have Mr. Joyce there to prepare these contracts? A. I didn't know this title was going to be closed.

Court: Did you?

Witness: No; I did say I was surprised to see "him come here; what is he here for?"

Q. What do you mean? A. I didn't know there was to be any contract signed. I wasn't prepared to sign any contract.

Q. Did you know Mr. Joyce prior to this meeting? A. Yes, he had visited the young ladies before I married.

Q. What was said by Mrs. Hazard in reference to the selling of the Shrewsbury property, in the presence of Mr. Joyce? A. He came in the room and said, "How do you do?" and said Mrs. Bedleson had telephoned him and asked him to come there and look after her mother's interest, and thereupon there was a general conversation what was proposed to sell and what was proposed to buy.

Q. Do you recall what the conversation was at that time? A. The conversation ended in the making of these two agreements.

Court: Tell what was said by anybody and everybody.

Witness: The conversation carried on there was in reference to the sale of the Shrewsbury property. Mr. Joyce had two sheets of yellow paper, such as is used in an attorney's office, and drew up a small table to the sofa, and on this sofa was Matthes, on this side (indicating), Mrs. Hazard, Elmer Hazard and Mrs. Powers on either side of that, and Joyce sat in the middle of the table. She started off with a proposal to sell me for $71,400 the entire equipment down there—business, factory, grounds, house, Shrewsbury

labels, the name E. C. Hazard, machinery, the equipment of which the Hazard had put in there along with all the formulas and everything, and the only thing she excepted was the furniture in the house; even the question came up and Elmer spoke in and said, "The horse, the corn in the crib and your cow," and she said "Everything."

Q. You are quite positive? A. I am positive.

Q. Up until that time you didn't know whether you were going to make a contract or not? A. I was prepared in money to make the contract; I had a check of $500 which I happened to have not filled in, and it was a small amount to pay down on the contract.

Q. Why had you brought the check of $500? A. I took it up for another purpose, as I told you.

Recess.

Q. Up until that time, Mr. Powers, as I understand, you had made no arrangement with Mrs. Hazard to purchase this property? A. I wouldn't say; we had general conversation as to purchase.

Q. Had you made any arrangement as to the price? A. We had talked over price many times.

Q. Had you made any arrangement as to the price which you eventually paid? A. Yes, I think we did; I think we got it down to $60,000; I think she got it to $61,000 one time, and then made it $60,000.

Court: Before the fifth of February?
Witness: Yes.

Q. Didn't you say this morning that at the time you arrived at the Astor House nothing had been said—before the time you arrived at the Astor House nothing had been said as to you paying $60,000 for the property?

Court: He didn't so state. He said that conversation where she wanted seventy or eighty, he had offered sixtv, and the price hadn't been agreed upon, and he got a telephone conversation to ask him to come to the Astor House because, he took it, that she was going to accept his price. That is the way I understand his testimony.

Mr. Rosenberg: Your recollection is absolutly correct.

Q. Then prior to the fifth had you made any arrangement with Mrs. Hazard that you would purchase this property for the consideration of $60,000, referring to the real property? A. We had conversation on the matter.

Q. Had you made arrangements? A. No, we had conversation.

Court: Had concluded arrangements?
Mr. Sexton: Yes.
Witness: No, not exactly: just verbal talk.

Q. Verbal talk might include some arrangement, Mr. Powers.

Court: Not necessarily reduced to writing, but had you come to an understanding?

Witness: We had a general conversation.

Court: Had you reached an understanding that she would take $60,000, and you would pay it?

Witness: Practically, yes.

Court: When was that?

Witness: I don't know.

Q. How long before the fifth? A. Just prior, a few days or something, on some of the visits to the house.

Q. Which one of the visits to the house? A. Just when she called there.

Q. What time was it that you made these arrangements or had this conversation with Mrs. Hazard concerning your paying $60,000 and she receiving $60,000? A. At the Astor House.

Q. Prior to that time? A. General conversation.

Court: Can you be more specific as to the time?

Witness: No.

Court: You told me "a few days before"; Mr. Sexton is trying to get you to be more specific than that.

Witness: I have no definite date.

Court: Could you say whether it was one, two, five or seven days?

Witness: I should say inside of the week.

Court: Was anyone present at this time

when you and Mrs. Hazard reached the understanding that $60,000 would represent the real estate end of the transaction?

Witness: Mrs. Powers.

Mr. Wilson: Was anyone else present?

Witness: Mrs. Powers.

Court: But Mrs. Hazard and yourself?

Witness: Except the general conversation which Mrs. McAnerny referred to.

Court: On this particular occasion.

Witness: Only Mrs. Powers and I.

Court: That is the time I refer to.

Witness: Yes.

Q. On that occasion, namely, the occasion last referred to, which you fix as within the week preceeding February 5th, what had Mrs. Hazard agreed to sell you for $60,000, if anything?

Court: You said there was an understanding; what did the understanding cover?

Witness: The house, grounds, factory, equipment, trade marks, labels, Shrewsbury, E. C. Hazard & Company, and this referred to this E. C. Hazard & Company security which was held by judgment against her on her endorsement of these notes of E. C. Hazard & Company; all of the personal property on these grounds and thereabout that she owned, either put there after her husband's death, or through her husband's death, on every part and parcel of that ground, equipment of that

business, every right, title of every kind, "equipped ready to run," she said, "all you want, the ambition, the money, and I am standing back of you to deliver to you everything there is there."

Q. For $60,000? A. For $60,000 and this $11,400.

Q. I asked you what she had agreed to sell you for $60,000, Mr. Powers. A. The $60,000 item covered the real estate, the house, the grounds, the factory and the general machinery in the factory, with the label Shrewsbury, trade marks and E. C. Hazard & Company.

Court: As I understand you, in all these negotiations you understood, however, that Mrs. Hazard was not selling you her household furniture?

Witness: Not the household furniture.

Court: At any time?

Witness: At any time, but every other personal property.

Court: But that certainly was not included?

Witness: No, sir, that was not included.

Q. What were you to purchase for the $11,400? A. All of the security that E. C. Hazard & Company had given her for security on these notes, which she had endorsed, and which stood in the National Nassau Bank and the Second National Bank of Red Bank, and she said, "I have an inventory of those goods."

Court: These goods representing the security?

Witness: Yes, those goods representing the security. I asked what they consisted of and she said she had an inventory of them.

Q. When did she first mention the inventory? A. I think the inventory first came of at the time when we spoke of the labels, although I am not just certain about that; it may be only on the fifth of February, but I think it was at the time when we talked about Mr. Hazard running this factory as the Shrewsbury Ketchup, and the amount of money he had made, and all that kind of business, and the first cans he ever put out, what they call Love Apple Tomatoes.

Q. You are not positive, then, that you were told of the inventory before you met on the fifth of February? A. It is not very clear in my mind that she did,——

Mr. Sexton: I object.

Court: Let him answer.

A. (continuing)—yet it comes to me that she always used this expression—it comes to me now, she always used, "If you buy"—it comes to me now, she said, "If you buy these two things for $71,400, that it covers the entire equipment and everything."

Q. When did she tell you that? A. In the immediate sphere.

Q. On the fifth of February? A. On the fifth; I am talking about prior, just prior.

Court: Mr. Sexton's question relates to sometime prior.

Witness: Just prior the question came up and she said, "If you buy this, you will have everything there ready to do business, —names, labels, bottles, caps, and everything ready to go on and do your business at once."

Court: And then you say $71,400 was mentioned at that time?

Witness: Yes.

Court: At that conversation prior to the fifth of February?

Witness: Yes.

Court: You object to that part of the answer?

Mr. Sexton: No.

Court: I will let it stand.

Q. When had you first heard of the judgment of the Second National Bank which you mentioned? A. About that time, through her conversation is all I know about it.

Court: Had you ever heard of the judgments or her liability thereon prior to the opening of negotiations with you for the purchase of the plant and property?

Witness: I heard of many judgments arising, but I didn't know who held them.

Court: These two particular ones?

Witness: No, I don't think so, although there was a man who came from Mr. Van Gelder's office in Long Branch and asked

me once to make an affidavit and I believe I refused; I don't know just what date that was; it seems to me it was about some judgment. That is all I remember about it.

Q. Was any particular label mentioned in those conversations of the fifth by Mrs. Hazard? A. No.

Q. Any particular label mentioned on the one occasion prior to the fifth of February that you testified to? A. Oh, yes.

Q. What label was mentioned? A. Particularly the word "Tomatoketchup" and particularly the words "Love Apple" and the words "Burnt Onion Sauce," but I am not sure about the Mayonnaise, but those were the particular labels which we were generally addressing our conversation to.

Q. She hadn't given you the labels at that time, had she? A. I said that she gave them to me at my 96th street apartment sometime, a week or so, prior to the fifth of February—two or three days, or three or four days, I don't know exactly.

Q. On that occasion when she spoke of the Love Apple and the Burnt Onion Sauce was the time she handed you the labels? A. That is it.

Q. And that was within the week prior to February 5th? A. About that time.

Q. My question was, had she spoken of any particular labels prior to that time?

Court: That is what I understood you to say, these three in particular at the time she gave them to you.

Witness: She had a conversation with me in Brooklyn, in front of her son Elmer, about this whole shooting match, these labels, this factory, this house, and these grounds and everything else.

Court: You don't still understand the question.

Witness: He said prior to the fifth.

Court: You are not answering responsively.

Q. (Read) My question was, had she spoken of any particular labels prior to that time? A. At any time prior to the fifth?

Court: Yes.

Witness: Why certainly.

Q. When? A. Many, many, many occasions.

Court: In connection with your contemplated purchase of the property or not?

Witness: Before this option was on, at this time she took the matter up——

Q. I asked you this morning to tell me how many times you talked with Mrs. Hazard about the purchase of this property, and you gave me only one occasion prior to the option; isn't that so?

Court: Yes, that is so. Is that the fact?

Witness: I would like to correct it then.

Mr. Wilson: He didn't testify to that.

Court: My understanding is that he did very clearly say but one conference in contemplation of the purchase prior to the option.

Mr. Wilson: I don't think he said they only had one conversation about the purchase; he said they had numerous conversations, but there was conversation before the fifth, when they got down to practical terms.

Court: But that was after the option expired?

Mr. Wilson: Yes.

Court: If he desires to correct his testimony, he may do so. Do you understand the question?

Witness: Hardly; I don't quite get it.

Court: Mr. Sexton wants to find out if you and Mrs. Hazard had but one conversation sometime in the fall—you say November or December, 1912—relative to the hope or expectation on her part that you would buy this plant.

Witness: Then he misunderstood me, because there were many, many conversations.

Q. Before the option was given? A. Before the option was given, questions about business

and questions about this same purchase, and then it stopped.

Court: When it was expected that you might buy it; and then the option went on, and then you made another?

Witness: That isn't so; it was a family conversation, and when I talk of a conversation, I mean a business conversation, prepared to do something.

Court: Any time you had a talk about it is what Mr. Sexton wants to know.

Witness: We never met that we didn't talk about it.

Q. When did you first meet and talk about it? A. Over in Brooklyn, at Mrs. Hazard's house.

Q. When? A. Sometime during the month of November and December.

Q. You testified about that? A. I believe I did.

Q. When did you next meet and talk about it? A. It was a continual family——

Court: Not meet especially to talk about it, but when did you talk about it, if you did?

Witness: That is impossible for me to answer: it was a continuous proposition whenever we met, in our apartment——

Q. How many times did you meet between November and December and the time that the

option expired? A. I am under oath and it is impossible for me to answer such a question.

Court: Is that the best answer you can give us? It is impossible to state the number of times?

Witness: We were meeting continually.

Q. I understand it is impossible for you to tell us the total number of dates? A. The exact dates, yes, sir.

Q. Did you meet every day? A. Of course not.

Q. Did you meet once a week? A. There were no regular visiting days.

Q. Did you meet once a week? A. We might have met two or three times one week, and may not see each other for two or thre days, and see each other two or three times a week.

Court: Is that the way it happened?

Witness: Yes.

Q. Then there were intervals of two or three weeks between times that you did not meet? A. I did not say so.

Q. You testified this morning that you didn't know when the option expired. A. I don't know now when the option expired.

Q. Do you know how long prior to February 5th? A. I have no recollection.

Court: Do you know whether it expired before the new year or not?

Witness: No, sir, I cannot tell you.

Q. Where were you living during the interval between November or December, 1912, and February 5, 1913? A. In 97th street, just west of Broadway, an apartment.

Q. Where was Mrs. Hazard living? A. Brooklyn.

Q. How many conversations did you have with Mrs. Hazard at her house in Brooklyn?

Mr. Wilson: About what?

Mr. Sexton: About the purchase of this property.

Court: When he asks about talks or conversations, he means about the purchase of this property; so keep that in your mind when you answer.

A. Many, many, many; I have no way of knowing how many.

Q. Were all these conversations concerning the purchase of this Shrewsbury property held between November or December and February 5th at Brooklyn, at Mrs. Hazard's house? A. I believe so, or at my house.

Q. How many times were you in Mrs. Hazard's house at Brooklyn between these times when this was discussed?

Court: Between November and February 5th.

A. I cannot answer.

Q. Have you any idea about it? A. No, sir; I would go there evenings.

Court: The number of occasions.

Q. Was it five times? A. I cannot answer.

Q. You have no idea; it surely wasn't every day? A. It was always in the evening.

Q. Was it every evening? A. Evening time.

Court: It was not every evening?

Witness: No, no.

Q. Was it once a week? A. I told you that I had no way of knowing; I told you it was a continuous performance; her daughter would go to see her and I would escort her daughter, and she would come and visit her daughter, and in that way the conversation was taken up.

Q. I am speaking about Brooklyn. A. I am speaking of Brooklyn and New York; I have no way of knowing except that we visited many times.

Q. Were you over there ten times in Brooklyn between November, 1912, and February 5, 1913? A. I have no way of knowing.

Court: What is your best recollection?

Witness: I have no way of knowing whether I was there five or ten or twenty-five times.

Q. It was a matter of four months, from November first to February fifth. A. It is also six or seven years; it never impressed it on me.

Q. What were your relations? A. Very kind; we used to go to theatres together.

Court: Can't you tell whether you averaged two or three visits a month?

Witness: More than that; we were continuously together.

Court: Did you go over ten times to Brooklyn?

Witness: I wouldn't guarantee ten times.

Court: You are asked to give your best recollection.

Witness: I cannot put any number of times on it.

Q. How many times did you go to the theatre with them? A. I cannot tell that; I haven't any way of knowing. I thought I was under oath. I have no way of knowing what time I went to the theatre or how many theatres I went to. It was while they were visiting me.

Q. You are quite positive of all these conversations you had concerning the detailed items that you mentioned, between November, 1912, and February 5, 1913?

Court: You are quite positive of the details?

A. Yes, sir.

Q. But you have no recollection as to how many times it was said; it may have been up to twenty-five times, is that so? A. It may have been.

Q. How many times was Mrs. Hazard in your house in New York between November and December, 1912, and February 5, 1913? A. I have no way of knowing.

Q. Was it as many as ten times? A. I have no recollection at all.

Q. Was it as many as twenty-five times? A. I said I had no recollection of it.

Q. Have you any recollection of anything that happened in your house in New York? A. Yes, I have.

Q. What is that? A. The day that she gave me these labels, the day we talked over this business transaction which we had, this Eisemann judgment——

Q. There is one thing positive that you do recall Mrs. Hazard giving you these labels? A. I certainly do.

Q. And were they in that envelope at that time? A. They were not.

Q. When did you put them in the envelope? A. In Mr. Wilson's office here the other day.

Q. She gave you all these labels, D 2, is that right? A. And more.

Q. And gave them to you in the form that they are now in? A. I wouldn't say that.

Q. You said so this morning? A. She handed these labels to me like this (indicating).

Q. Just as they are? A. Yes.

Court: What do you mean, the form in which they are?

Witness: Hold on, there is one in there—there are two in there that I had, that she did not give me, and I said that. She gave to me all of them except two or three, which are in duplicate, and these two or three that are in duplicate, after I

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was harassed this way, I was trying to get some sort of a form, and I took a couple and took the name Hazard out.

Court: I understand your answer is that these labels as they are now in evidence before me are in the condition they were when she gave them to you, except for the correction—the changes you have made on them as you indicated?

Witness: That is it exactly.

Mr. Wilson: One thing ought to be stated. The bundle of labels which I handed him and which he identified and testified from, did not have those three labels in them, and when I took my exhibit back to my office, I put them in that envelope and turned the envelope over to Mr. Sexton when he asked for the envelope, and that is the reason why he finds them.

Court: The first day they were offered there were eighteen which were marked Exhibit D 2, and yesterday, for a matter of convenience, in order to refer to them particularly, they were marked on the back by a letter commencing with Exhibit A.

Q. Then the eighteen which I now hold in my hand are the eighteen which Mrs. Hazard gave you? A. I haven't examined them.

Q. They are the originals ones which you testified to on direct examination?

Mr. Wilson: Let him see them: he is entitled to see them.

(Witness shown labels.)

Court: Showing the witness the eighteen labels contained in the Exhibit D 2. Are they not the labels which you say you received from Mrs. Hazard?

Witness: All of them.

Q. Directing your attention to these eighteen, are they or not the labels which you say you received from Mrs. Hazard?

Court: You were asked by Mr. Sexton are these eighteen labels which I show you and which have been offered as an exhibit in the case on your side, the labels which you say Mrs. Hazard gave to you on the occasion you mention?

A. They are.

Q. And you testified this morning, Mr. Powers, in reference to these labels, that you took them to your house and later were found by your wife, is that so? A. I took them to the 96th street house.

Court: And he took them from there down to Shrewsbury, and later on Mrs. Powers found them. That is so, because he so testified.

Q. I ask you if that label is in the same form that you say Mrs. Hazard gave it to you, referring to Exhibit K; yes or no? A. No.

Q. Then when you testified in reference to these labels, Mr. Powers, being in the form that Mrs. Hazard gave them to you, it was not true?

Court: He hasn't testified to that.

Mr. Sexton: I have laid the foundation all this morning, if your Honor please, I have held them up and I noticed continuously—and I laid the foundation, if you will refer to the record, that he has sworn to that fact, that they are the labels that Mrs. Hazard gave to him.

Mr. Wilson: That is true; he has never been asked about the form.

Court: You asked about the labels, but the word "form" has not occurred until within the last five or ten minutes, throughout the entire examination. If I am in error about it, I will correct it.

Mr. Sexton: You will see the record when the time comes.

Court: I said to you, what do you mean by form; you held them up and I asked you the question; but quote the testimony correctly, so I will not be confused by the testimony.

Q. The Hazard Shrewsbury Manufacturing Company of Shrewsbury, New Jersey, was the company which you had, Mr. Powers, was it not? A. That I attempted to start.

Q. And it was not in existence prior to February 5, 1913? A. Not as I knew of.

Q. Do you know of any? A. No. I don't

know whether there was another company ahead of that.

Court: He is asking about your own actions. Do you know whether you organized the Hazard's Shrewsbury Manufacturing Company?

Witness: I don't know as it was ever formed.

Q. Did you ever form it? A. No; I drew it up to start it off.

Q. When you took possession of the factory, you took possession of all the labels in the factory, did you not? A. There were labels in the factory.

Mr. Sexton: Answer my question.

Court: You know whether you took possession of all the labels that were there in the factory.

Q. You took possession of labels of similar kind to these referred to in Exhibit D2, did you not? A. Yes.

Q. And you have had since the fifteenth day of March, 1913, possession of a large quanaity of labels such as these referred to in D 2, is that so, which I hold in my hand? A. With the exception of that changed one.

Mr. Sexton: Never mind about the changed one.

Court: His answer is proper and responsive.

Q. How many of the changed ones did you have? A. Two or three, three or four.

Q. Five or six? A. No, three or four.

Q. When did you make them out? A. Sometime during the spring of 1915, when I was refused the name of E. C. Hazard & Company.

Q. Who did the typewriting on these? A. A stenographer I had in the office.

Q. Where is the typewriter now, the machine? A. I have had it at my house, my mother's house in New York; I took it up there one day.

Q. Did you use on your products "Shrewsbury Mayonnaise"—referring to Exhibit K—the words "E. C. Hazard & Co. This includes salads of all kinds, either made from meat, fish or vegetables. For dressing salads,"—the label as it was originally—referring to Exhibit K? A. No, I never used any of their labels.

Mr. Wilson: Don't volunteer anything. Answer his questions and stop.

Q. Going back, Mr. Powers, to the meeting in the Astor House—we diverted at the point where Mr. Joyce came in—what, if anything, was said in Mr. Joyce's presence by you or Mrs. Hazard concerning the goods mentioned in the two bills of sale to Matthes?

Mr. Rosenberg: That question is very general. There was a long talk.

Mr. Sexton: That isn't a trick question.

Mr. Rosenberg: The two bills of sale didn't come up until some time after that.

Court: The witness can state that if it is the fact.

A. There was nothing said about any bills of sale whatever to anybody.

Q. I asked you in reference to the goods included in the bills of sale. A. The goods in the bill of sale—I haven't seen the bill of sale.

Court: What was said about the goods in the bills of sale?

Witness: Matthes and Elmer Hazard's name wasn't connected up——

Court: Strike that out; that question is capable of two or three constructions, Mr. Sexton, and the witness will answer it if he can.

Mr. Rosenberg: I object; Mr. Sexton says that isn't a trick question, and yet for the life of me, I cannot get away from the feeling that it is, because how can the witness be expected to testify as to what was in bills of sale concerning whose existence he didn't know anything until two weeks after?

Court: He isn't asked what he knew about the bills of sale, but about the goods mentioned in them. What was said about those goods is what is asked. Now, do you understand? There are certain goods described in the bill of sale; you know that?

Witness: I never had the bills of sale in my hand until they were in this court this time.

Court: In all this litigation?

Witness: In all this litigation.

Court: You have had them in your hand?

Witness: Here, just during this hearing.

Court: Have you read over the list of goods in them?

Witness: Somewhat, just casually.

Court: Mr. Sexton's question is, what was said at the Astor House in the conference, when Mr. Joyce came in, about those goods that you saw mentioned in the bill of sale?

Witness: Nothing was said about those goods.

Q. What goods, then, were talked about? A. The goods which Mrs. Hazard held as security for E. C. Hazard & Company.

Q. What was said by you to Mr. Joyce, or to Mrs. Hazard in Mr. Joyce's presence, concerning the goods which Mrs. Hazard held from E. C. Hazard & Company, at the February 5th meeting at the Astor House? A. What did Mr. Joyce say to me?

Court: What did either one say to the other?

Witness: Only the contract of sale of them.

Court: What was said, is what you were asked.

Witness: Mrs. Hazard enumerated these goods to Joyce.

Court: The question is, what did you say, not what they said; what did you say to either of them, or particularly to Mrs.

Hazard in Mr. Joyce's presence; that is the question.

Witness: I agreed to purchase those goods.

Court: What did you say about that?

Witness: The purchase price of the whole thing was about $71,400, then it occurred to me that the Fidelity did not guarantee personal property, and was then interrupted and said, "You will have to——

Q. Whom did you say it to? A. Mrs. Hazard and Mr. Joyce; they were all together; "You will have to make this contract in two parts; the part that we can separate, which is the security from E. C. Hazard & Company, should be made in one paper, and the personal property that goes with the factory—no, that didn't go in there—the personal property, the factory and the equipment will have to go in the other paper," and on account of the Fidelity is why I wanted to separate it.

Q. You testified, Mr. Powers, in the litigation between the Little Silver Sauce Company and yourself? A. I did.

Q. At that time, in your testimony, did you relate the facts and circumstances concerning the meetings between Mrs. Hazard and yourself which led up to your purchasing the Shrewsbury property? A. Yes.

Q. In that testimony did you at any time mention the fact that you were purchasing trade marks or labels? A. Generally. I wasn't asked particularly about them.

Q. Did you mention the word "trade mark," "good will" or "labels"? A. I mentioned that I was to purchase everything.

Q. Did you mention either one or all of those three words? A. I mentioned E. C. Hazard & Company.

Court: Did you mention those words, trade marks, good will, or labels?

Witness: No, not that same——

Q. And yet, as I understand you from your testimony on direct examination, the most important item which prompted you to purchase this property was the good will and the labels? A. Absolutely.

Q. And when you testified before, you did not mention that? A. That wasn't asked of me; I gave a general conversation.

Q. Notwithstanding the fact that it had been talked over between you and Mrs. Hazard on numerous occasions, incessantly; is that correct? A. In that regard, there is a place where I started to enumerate them and was interrupted, and I marked it in that book there with a card (referring to testimony in the previous case), "and she said," and then they stopped me.

Q. That is all it is, "Then she said?" A. On the end, right where that line comes—"where they should come from." These were to come from here, not as the security of E. C. Hazard & Company; they were to come under the transfer of this real estate, under this $60,000.

Q. But in both books of testimony is there any

place where you testified concerning the trade marks, good will, or labels, which you are now testifying about?

Court: By mentioning the same by name.

Q. By mentioning the same by name? A. No.

Q. There is not; you have read the books over? A. Well, yes.

Q. Is there any place in those books where any witness testified concerning the good will, trade marks or labels?

Mr. Rosenberg: The books speak for themselves.

Court: They are not in evidence. If he doesn't know, he can say so.

A. Used the word absolutely "trade mark"?

Q. Is there any place in those books that you know of where any witness testifies to either one of those words, or all of them? A. Not to those words.

Court: His answer wouldn't establish anything.

Q. You have outlined all the conversation that you had with Mr. Joyce, have you, Mr. Powers? A. I wouldn't say that.

Q. As far as you can recall at this time?

Court: I don't think he has been asked that question.

Q. Concerning the purchase of the factory at Shrewsbury. A. You mean at the Astor House.

Q. Yes, at the Astor House. A. Why, no, we had conversation.

Q. What else did you have to say about the purchase of the property with Mr. Joyce? I want it all. A. Just on that one occasion at the Astor House?

Q. Yes. A. Mrs. Hazard and——

Court: In addition to anything you have already told us, what else did you say either to Mr. Joyce or in his presence?

Witness: He asked about the deed and such description of the property, and what was being conveyed, and then he asked about what this personal property consisted of, and she said she had an inventory of it, and the amount, as I said before, $71,400, was to be the amount, and then I separated it for this reason of the Fidelity not being able to——

Court: For the reason already stated?

Witness: Yes. Then after that was all settled, he took these papers and went on down to his office, and we went to lunch.

Court: Does that cover all the conversation you had with Mr. Joyce or in his presence about this matter?

Witness: I think so.

Court: I mean at the Astor House.

Witness: To the best of my recollection.

Q. What were the terms concerning the mortgages that you talked over on that occasion, if any, with Mr. Joyce or in his presence? A. The terms of the mortgage?

Court: Were the terms of the mortgage talked over either with Mr. Joyce or in his presence that morning at the Astor House?

Witness: I was to pay up Mrs. Hazard's indebtedness out of my own money, to clear the title; the title had to be guaranteed before I would take it, and she agreed to subordinate the first mortgage on it, and then the balance should be in, I think, five notes of equal amounts, for the remainder of the personal property; that is, the personal property which was included in this security.

Court: In the $11,400 contract?

Witness: Yes, sir.

Q. In other words, is this not a fact, that you stated, "If I could procure a first mortgage and you would be willing to take a second mortgage, as I will need all the cash I have to carry on the business; and she agreed that I was to give $11,400, the full transaction at the Astor House being $71,400," is that so? A. Yes, sir; that is correct; I was to clear the title to this property.

Q. Then you adjourned for lunch at the Astor House? A. Mrs. Powers, Mrs. Hazard, Mr. Matthes and myself went to lunch, and as Elmer left,

Mrs. Hazard said, "Elmer is broken-hearted."

Court: Part of it is not responsive; strike it out.

Q. What time did you meet at Mr. Joyce's office? A. I should say an hour and a half to two hours.

Court: Until two o'clock?

Witness: About that time; I don't know exactly; prior to three o'clock; about two or three o'clock.

Q. How long were you at Mr. Joyce's office? A. For an hour or so: no more than that.

Q. When you arrived at Mr. Joyce's office, were the papers D 1 and D 3 (showing witness the contracts for the property between Mrs. Hazard and himself) prepared? A. All but that interlineation.

Q. Was any further conversation had concerning what was being purchased by you from Mrs. Hazard at Shrewsbury before the contracts were signed? A. I don't recall it, if there was or not.

Court: How did the interlineation come to be made then?

Witness: That was after the papers were brought in. You mean when they signed?

Court: I knew you didn't understand the question when you answered it. I will have it read again.

Q. (Last question read). A. Yes.

Q. What was it? A. I took the paper and read it over, and I said, "I don't see where you are transferring by this paper all the articles that you have enumerated to me," and then came up the question of the personal property that passed on this real estate contract.

Q. Was that personal property discussed? A. Between she and I?

Q. In Mr. Joyce's presence? A. He was going around there; he was in and out of his office.

Court: He had more than one office?

Witness: He was going back and forth in his office.

Court: He had a suite of rooms?

Witness: He had a small enclosure with a desk, and he was going in and out while we were getting ready to sign these papers.

Court: Going in and out of the room, not out of the building?

Witness: Yes, out of this room.

Court: Was Mr. Joyce out of hearing at all at any time while you and Mrs. Hazard were talking about the matter?

Witness: Yes.

Court: He was out of hearing?

Witness: Yes.

Q. I refer to when Mr. Joyce was present; what was said concerning the personal property which you have mentioned was to go with the real estate contract, referring to D 1? A. I said, "This paper doesn't evidently pass and give the articles you enumerated to me, to pass

to me with this factory, with this description here."

Court: What did she say, if anything, to that?

Witness: She asked me what I meant, and I then enumerated that the personal property that passed with the factory I wasn't receiving.

Court: Did you say that while Mr. Joyce was within hearing?

Witness: To the best of my knowledge.

Q. Did you talk of what personal property was to go with this contract for the sale of real property, referring to Exhibit D 1? A. We did.

Court: He says he enumerated it in Mr. Joyce's hearing.

Q. Did you enumerate them in detail to Mr. Joyce? A. I did to Mrs. Hazard.

Q. In Mr. Joyce's hearing?

Court: That is what he said.

Q. Did you mention trade marks, good will and labels in Mr. Joyce's presence? A. To Mrs. Hazard, yes, right there in that office, right that afternoon, and also the cows and horse, the corn in the crib, and what so like, everything of personal property that was on that place.

Q. When was the information given to Mr. Joyce concerning that portion of the contract for the purchase of the property that Mrs. Haz-

ard had obtained from E. C. Hazard & Company, which refers to the Nassau Bank claim of $7,000 and the Second National Bank for $4100; when was that information given to Mr. Joyce? A. The information as to the property was given at the Astor House, but $4100 was put in at the Astor House, because no one knew the exact amount.

Court: At the time you were in the Astor House?

Witness: Yes. And at the time we were at his office no one knew.

Q. How did you put the amount in? A. They put $4100 as just an approximation amount.

Q. Assuming that was the amount? A. No one knew. I had to ascertain that myself, but it should not go over $11,400 according to her description of it.

Q. As a matter of fact was not that contract drawn after you got to Mr. Joyce's office? A. That was drawn right with the other one there; the two of them came in together.

Court: Was it drawn after you got to Mr. Joyce's office, or was it prepared and ready when you got there with the exception which you stated about the amount?

Witness: When we came into the office he went out to the stenographer apparently, and brought both papers, or four papers back with him.

Q. Where did you get the information con-

cerning the amount of the judgments of the Nassau Bank and the Second National Bank? A. By going to them.

Q. When?

Court: At that time?

Witness: We didn't know at that time; that is the reason why $4100 was put in that paper.

Q. When did Mr. Joyce get that information? A. I don't know when Mr. Joyce got that information.

Court: Why don't you know; you say the amount was blank when you came to his office; was it filled up while you were there?

Witness: Yes.

Court: How did he get it; you three were there; where did he get it from?

Witness: No one knew the exact amount, and we agreed upon it to put $4100 in.

Court: That is how he got it?

Witness: Yes.

Q. There was a blank space there, as I understand it? A. I didn't say so.

Court: You said you didn't know the amount at the Astor House, but when you got there you assumed this amount and put it in.

Witness: The amount at the Astor House was given as $71,400.

Court: He is talking about these judgments.

Witness: The full amount at the Astor House was given as $71,400, and $60,000 real estate contract; there was interest accumulating and no one knew the exact amount which would have to be paid out of this money which I was to guarantee—to get this guarantee of title for.

Court: Mr. Sexton asks you where you got these figures or these amounts to put in this contract respecting these two judgments?

Witness: That was filled in there when we got there as to $4100; I thought they had got the figure wrong; instead of $11,400 I thought they got the figure wrong. It was afterwards explained that that amount of money should have been $11,400, but they didn't know the amount, so they used that just as a figure to fill in anything, but whatever these notes amounted to, that is what I was to take up.

Court: But they were not to exceed $11,400?

Witness: Yes.

Court: Then this $7000 and the $4100 were filled in these papers after you arrived at Mr. Joyce's office?

Witness: I didn't say so.

Court: Isn't that so?

Witness: It was there when the papers came in the first time.

Q. Were the figures already written in? A. Yes.

Court: I understood you to say differently.

Mr. Sexton: I did also.

Mr. Wilson: So did I.

Court: Do you want us to understand the fact to be now that when you got to Mr. Joyce's office these figures relating to these judgments were already written in the paper?

Witness: Those figures on the face of it, that are there now.

Q. I ask you again, referring to that part of the contract between Florence Hazard and yourself, marked Exhibit D 3, where did Mr. Joyce get the information concerning the Nassau Bank of New York judgment, approximately $7000, and the Red Bank Second National Bank judgment for $4100? A. From Mrs. Hazard.

Q. When? A. At the Astor House.

Q. What did you mean when you testified that you ascertained the figures? A. After these contracts were signed I went to the banks to settle up with them.

Q. Did you not say that you ascertained those figures for the purpose of putting them in this contract?

Court: Say it now.

Q. Did you not say it in your previous cross-examination today? A. No.

Court: I don't recall it.

Q. You saw this interlineation made, referring to the interlineation on page 3 of Exhibit D 1? A. I wouldn't say I saw it made, but it was made at my suggestion; it was made and that is my initials, and Mrs. Hazard put it on, too; whether it was put on in pen and ink and brought in after, I wouldn't certify to.

Court: But it was made at your request?
Witness: Yes, sir, during that afternoon.

Q. You testified this morning that you knew that there was a corporation of E. C. Hazard & Company, did you not?

Court: He did.

Q. Did you understand by these contracts that you were purchasing the entire plant of E. C. Hazard & Company? A. I did.

Q. The same corporation that you held by assignment, although not transferred, the stock from your wife, is that right? A. The stock of my wife didn't include any transaction——

Court: The company in which his wife held stock, would be clearer, because he doesn't recognize and won't, and apparently is fencing with you on the question that he has an assignment of the stock.

Q. The same E. C. Hazard & Company in which you held stock?

Court: Did you expect you were buying all that concern's assets and property?

Witness: That is what Mrs. Hazard told me—yes, everything on those premises.

Q. And which contract were you purchasing those goods under, D 1 or D 3? A. That $11,400.

Q. Then if there was personal property in this building not covered by the schedules which were shown to you, you did not purchase them, is that so? A. No, I wouldn't say that.

Court: What schedules are you referring to?

Mr. Sexton: He was given an inventory.

Q. Then if there was property in the factory building not covered by the inventory that was shown you, you did not purchase them? A. I purchased everything on the premises; that was her description of it.

Court: Whether it was in the inventory of the goods or not?

Witness: Yes.

Q. What contract—referring to D 1 or D 3—did you purchase the personal property under? A. If you show me which ones you are talking about——

Court: Hasn't he answered that? He said he purchased the E. C. Hazard & Company under the $11,400 contract;

therefore he must have purchased all the rest under the other contract.

Is that so?

Witness: That is correct.

Q. The labels, trade marks, &c., belonged to E. C. Hazard & Company, did they not? A. Not according to Mrs. Hazards' description of it.

Q. Whom did they belong to? A. They belonged to her, they had been reduced to her ownership on the minutes of this concern, and she was absolute owner.

Q. When did you first see this list or inventory? A. About two days after the signing of this contract at Mr. Joyce's office she handed it to me, or Mr. Joyce handed it to me, but he came to us, between the four of us; Mrs. Powers was there also.

Q. Was Mrs. Hazard there at that time? A. She was.

Q. What was the occasion of going to Mr. Joyce's office two days after the contracts were signed? A. Only to get that inventory, as I know of.

Q. Was it done by appointment? A. He said at the Astor House, "I have an inventory for you and I will deliver it to you."

Court: How did you happen to go two days later?

Witness: By some sort of an appointment.

Q. When the interlineation was made in D 1, "All personal property not covered by an as-

signment as security by E. C. Hazard & Co. to the party of the first part is included in this sale," what personal property did you understand was included on those words?

Mr. Wilson: I submit he has been asked that question twice this afternoon, and twice he has answered it.

Court: I will let him answer it again if he can.

A. I was to get all of the property, all of the real estate and all of the personal property, such as the machinery, the name of E. C. Hazard & Company, and the full equipment and the trade marks.

Court: His statement of it is in the record at least a dozen times.

Q. Were you to give a mortgage to Mrs. Hazard for the property that you purchased under this contract D 1?

Court: Doesn't the contract speak for itself? Whatever the contract calls for he was obliged to give.

Q. Did you give Mrs. Hazard a mortgage or any security for the bills of sale or any property that you say was to be transferred to you under this real estate agreement?

Mr. Rosenberg: I object because this contract and the mortgage speak for themselves.

Court: And the legal effect of it as well; why isn't that so? I will permit the complainant to amend so as to reform your mortgage if you think it covers any property not described in your mortgage.

Mr. Wilson: We have no objection to that.

Mr. Rosenberg: We are willing to have his security to be co-extensive.

Court: I sustain the objection on the ground that the contract must speak for itself.

If you wish to avail yourself of the offer counsel just made you may put it on the record.

They offer to let your mortgage security be co-extensive with the lien upon the property that they claim you conveyed to them by the contracts and by the deed in this transaction, so if the Court should decree that their contention is sound and they were entitled to all the things that Mr. Powers has referred to in the contracts mentioned, your mortgage would have the same effect on these things as it would have upon the real estate. That is what I understand the offer is, if you desire it.

Mr. Wilson: Yes, sir.

Q. Did you receive any paper other than the deed from Mrs. Hazard in carrying out the terms of the contract for the real estate, referring to D 1? A. No, sir, that is the only paper I received.

Court: At any time?

Witness: Yes, sir, in reference to this transaction.

Court: This whole transaction?

Witness: I received her note.

Q. You qualify your answer; you received in addition to the deed, her note for $3,000?

Court: At the same time with the deed?

Witness: Yes.

Mr. Wilson: Has he explained what that was for?

Court: What was that note for?

Witness: She had run over her purchase price of $30,000. For me to clear this property it took nearer $34,000, instead of $30,000, as called for by the contract.

Q. $34,000 includes the Eisemann judgment? A. Yes.

Court: And you had to advance the $34,000, or about that, to clear the title?

Witness: Yes, sir, I had to put $4,000 cash up as deposit.

Court: And then she gave you this $3,000 note to represent the excess payment made by you?

Witness: Yes, and she was supposed to secure the note with the furniture in the house.

Court: And it was not included in the purchase?

Witness: Not at all.

Court: Did she secure it?

Witness: She did, and when she moved she took the furniture with her.

Court: Was the note for just $3,000?

Witness: Yes.

Mr. Sexton: Have you a copy of a paper made on the thirteenth of March, 1913, between Florence Hazard and Harry Powers, in reference to the Eisemann judgment? I have in my hand a copy which apparently came from your office.

Mr. Wilson: I have no doubt in the world that is the agreement that relates to the Eisemann judgment, and I am willing it shall be used as though the original had been rpoduced, subject to any correction either of us may wish to make, if it is proved to be not a true copy.

Court: Let it be marked.

Mr. Sexton: I will ask to have it marked for identification.

(Marked Exhibit C 9 for identification.)

Q. I show you the paper marked Exhibit C 9 for identification, which appears to be an agreement between you and Mrs. Hazard, bearing date the thirteenth day of March, 1913, reciting the fact that Frederick F. Eisemann had obtained a judgment against Florence Hazard and for the consideration of one dollar you agree to accept a note from Mrs. Hazard, and Mrs. Hazard is to proceed with the prosecution of the appeal of the Eisemann judgment in New York, and ask you

if you recognize that as being a copy of the original?

Court: Did you sign an agreement of that kind? As far as you know is that a copy of the agreement you signed?

Witness: Yes.

Court: The note referred to therein is that $3,000 note you just described to me?

Witness: Yes.

Q. Mr. Powers, does that agreement anywhere contain any reference to Mrs. Hazard giving you a chattel mortgage on her furniture?

Court: That is objectionable; the paper will speak for itself.

Q. Does that paper embody your agreement with Mrs. Hazard concerning this $3,000 note?

Mr. Rosenberg: I object; the paper must speak for itself.

Court: Objection sustained.

Q. Did you receive a note for $7,000 from Mrs. Hazard?

Mr. Wilson: That night.

Mr. Sexton: Or at any time in closing this transaction.

A. It seems to me she gave me a note or memorandum at the time I—when I took the jewelry out of pawn she gave me a memorandum of the note because of this cash I spent.

Court: Of $7,000?
Witness: Yes.

Q. You took a note from her for $7,000? A. Just a memorandum, I believe I did.

Q. Where is that note? A. It was turned in the night of the closing of this title.

Q. Turned in to whom? A. The Fidelity.

Court: Have you it in your possession or control?
Witness: No, sir.

Q. Why was it turned in to the Fidelity? A. I mean to say we were all at the Fidelity and when this transaction was all gone thorugh, this note was turned over to her or to her attorney.

Q. Why? A. Becauses it was—I considered it a part of her money due her, or her security as to the acknowledgment of this $7,000.

Q. $7,000 advanced on account of the $30,000 purchase? A. Yes.

Q. And this you say was in the form of a memorandum note? A. Yes.

Q. Was it an actual note? A. It was on a note form with Mrs. Hazard's name signed to it.

Q. When was it dated? A. I cannot tell you that.

Q. Payable when? A. It was on demand.

Q. It was a genuine note, was it not? A. I suppose so.

Court: It was not to represent any indebtedness then due you from Mrs. Hazard?

Witness: No, it was a memorandum of this $7,000.

Court: Which you did pay on her account in connection with the $30,000 purchase price?

Witness: Yes. Before the deed was turned over.

Q. Was it a negotiable note? A. No, sir.

Q. In what way was it not negotiable? A. I didn't consider it so, it was a memorandum.

Court: It should be returned?

Mr. Sexton: It never has been returned.

Q. Have you not been asked repeatedly for that note? A. This is the first time since the note was given that there has ever been any mention of it.

Q. Has not Mrs. Hazard asked you repeatedly for that $7,000 note?

Mr. Rosenberg: I object; it is not within the issues in this case.

Court: I will receive it for the purpose of showing that instead of being the aggrieved party, that he is the party who attempted to impose upon Mrs. Hazard, that being the claim of Mr. Sexton.

Mr. Wilson: I wish it might be understood that we don't pretend, and never did pretend, that we had any interest in this judgment, except such as has been disclosed here: nor have we any interest in this so-called note or due bill, or any ownership in it.

Court: And are willing it should be surrendered to anybody holding it?

Mr. Wilson: Absolutely; and we must all be concluded anyhow by what your Honor may determine is the equity under the facts, and the conceded fact is we have no interest in those judgments other than such as has arisen under the trend of evidence here. We have absolutely no interest, title, ownership or dominion in the note or due bill, except as it represented our initial advancements on her account for which we had credit at the Fidelity on the night of March 13th.

Court: And evidence of partial performance on your part of the contract?

Mr. Wilson: Yes, sir, and will relinquish it if we can produce it, or to satisfy the judgments. I assume that your Honor's decree in this case will stand as a satisfaction of these judgments one way or the other.

Court: If I find that Mr. Powers received the property that he was paying for, and under these conditions of course there is no reason why they should not be decreed to be satisfied of record.

Q. I ask you if you received from Mr. John F. Joyce a letter dated September 22, 1913, relative to the judgments of the Nassau National Bank; did you receive a letter from Mr. Joyce concerning those judgments?

Mr. Wilson: I submit that he should be shown the letter, and I also object to it.

Court: What is the object of it? You have got a stipulation on the record that they have no interest in the judgments; you may have them canceled of record, and they will be decreed to be so anyway. Then why pursue this line?

Q. After signing the contracts you closed them at the Fidelity Trust Company? A. Yes.

Adjourned to April 25th, 1918, at 10:30 A. M.

Continuation of testimony in the foregoing cause before Hon. John E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, on Thursday, April 25th, 1918, at 10:30 A. M., in the presence of counsel as before stated.

HARRY L. POWERS, resumes the stand for further

Cross-examination by Mr. Sexton:

Q. Mr. Powers, for the moment referring to the meeting at Mr. Joyce's office and the signing of the personal property contract, in a previous suit, in response to an appropriate question, did you not say: "I was to give the notes in payment and when we got down there we didn't know how much the indebtedness would be that I had to take up, so they filled it in at $4100"?

Court: Do you recall saying that?
Witness: Yes, sir.

Q. I ask you, Mr. Powers, whether those amounts were filled in at Mr. Joyce's office or not? A. Yes.

Q. And you now testify that they were filled in at Mr. Joyce's office?

Court: That is what he says; he made the same statement yesterday.

Q. And you have also said that the paper was drawn with these amounts in it when it was first presented to you? A. Yes.

Q. Which is correct; you have answered both these amounts?

Court: Where is the inconsistency?

Mr. Sexton: I want to know whether or not when the contract was originally drawn these amounts were in it, or afterwards filled in.

Court: He stated they were in it. What is your answer now; they were in it?

Witness: Yes.

Q. Then I again ask you——

Court: He says in the testimony that they were filled in in Mr. Joyce's office. Do you mean they were filled in after they were written on the machine?

Mr. Sexton: Yes, sir.

Q. Do I understand you, Mr. Powers, that after the typewriting of this was done, these amounts were filled in that contract?

Court: Is that what you mean, or were they all in when you saw the papers?

Witness: The entire paper was completed except signatures.

Court: And the interlineation you refer to in the contract?

Witness: That was put in after.

Q. What do you mean by the expression "it was filled in" in your former testimony? A. I meant to say that the figures were there.

Q. When did you ascertain those figures? A. The National Nassau Bank I called on a few days after this transaction and asked them——

Court: After you signed these papers?

Witness: Yes, sir, after the fifth of February.

Court: He asks you did you ascertain these figures before the fifth of February or afterwards?

Witness: At Mr. Joyce's office is all I know about it. I thought you meant the correct amount.

Q. Where did Mr. Joyce get these figures? A. I don't know.

Q. Did you tell him? A. Certainly not.

Q. Did you, Mr. Powers, after arriving at Mr. Joyce's office give Mr. Joyce any information

which was used by Mr. Joyce or which you intended Mr. Joyce to use for the purpose of making up or preparing these two contracts, referring to D 1 and D 3?

Court: Any information?

A. Only the interlineation in there, the personal property that passed with that $60,000.

Court: D 1?
Witness: D 1.

Q. Then you met at the Fidelity office on March 13th? A. Yes.

Q. There had been an adjournment of the closing of title previous to that time, had there not? A. Yes, from February 19.

Q. Do you know what caused the adjurnment? A. I was notified by the Fidelity that the contract or the search was getting so complicated that they couldn't complete it in that length of time; judgments kept coming up so fast.

Q. Was it a matter of judgments, Mr. Powers, or anything else? A. Absolutely judgments, to my knowledge.

Q. Don't you know that it was because the Fidelity Company wanted certain papers from one Sickles, who were previous grantors in the title? A. They didn't say that to me.

Q. Do you know whether any judgments were entered against Mrs. Hazard between the fifth of February and the nineteenth of February? A. I was notified so.

Q. Were you informed what judgments they were? A. It seems to me one of them was this Hendrickson and Applegate here, the hardware people; there were two judgments, one of $250 and one of $200, and they made almost $500 obtained by them.

Q. Any others? A. It doesn't come to my mind now.

Mr. Wilson: There is a list that was made up on the night the title was closed that shows all these encumbrances.

Court: He is speaking between the fifth and nineteenth.

Witness: I want to make a correction, in talking with Mrs. Hazard about it.

Court: At what time?

Witness: After the nineteeth.

Court: Does this relate to the judgments acquired between the fifth and the nineteenth.

Witness: After the nineteenth.

Court: Mr. Sexton's question relates to what judgments you knew were obtained between the fifth and the nineteenth of February.

Q. Did you learn of any that had been obtained between those two dates; do you know of any other obtained between those dates? A. Zobell and Doremus Brothers.

Wilson: Those judgments were entered between those two dates against her?

Witness: The Fidelity notified me to that effect.

Court: Anything else?

Witness: No, sir.

Q. Do you know that the judgment of Doremus Brothers was against Arnold Hazard and that it was filed October 25, 1910? A. I didn't know of the date, but I heard it afterwards.

Q. Do you know that the judgment of Louis Zobell was filed October 25, 1910?

Court: Now or then?

Q. Do you know it now?

Mr. Rosenberg: I cannot see the materiality of all this testimony; it is making a tremendously long record, and it leads to nothing.

Court: I am still going on the assumption that Mr. Sexton is neither wasting his time nor mine, and it is material to his issue, as he understands it.

A. I don't know the day of it.

Q. Now, taking up the meeting at the Fidelity on March 13th; I think the record shows you were about thirteen hours in closing that? A. It was a rather long time.

Q. Was it a matter of thirteen hours? A. We got there five o'clock and didn't leave until about three in the morning.

Q. During that time were you engaged all the

time in closing or attempting to close this title? A. The entire transaction.

Court: You had supper or breakfast?
Witness: After we had finished closing.

Q. Did it take thirteen hours? A. I don't know; I cannot say exactly that.

Q. During that time you were engaged all the time in attempting to close this transaction? A. The entire transaction, yes, sir.

Q. The matter was pretty thoroughly gone into, was it not? A. I don't know what you mean by "thoroughly gone into"; we had plenty of arguments but never could come to any conclusion.

Q. Was it thoroughly gone into as you understood it? A. No, there was no conclusion reached.

Q. Do you understand that there must be a conclusion reached in order to discuss the subject thoroughly? A. I should have thought on this there would have been a conclusion reached.

Q. I didn't ask you that. You understand English? A. Somewhat.

Q. Do you understand that there must be a conclusion reached in order to discuss the subject thoroughly? Do you understand that in order to discuss a matter thoroughly, you have to reach a conclusion? A. No.

Q. Then did you go thoroughly into all the matters pertaining to the closing of this title on that occasion, namely, on March 13th?

Mr. Rosenberg: I object.

Court: The witness is asked to give his interpretation.

A. As far as we went.

Q. What do you understand by "thoroughly"? A. We took up the general subjects of the contract.

Q. What do you understand the meaning of the word "thoroughly" to be? A. Examination of this contract as far as this was concerned.

Q. That is your understanding? A. Yes.

Q. You did examine these contracts? A. I did.

Court: Not only you, but the parties did?

Witness: Yes.

Q. And examined the different parts of the contract? A. Yes.

Q. Did you examine the different elements that went into the closing of those contracts? A. We did.

Q. Did you close these contrats? A. No.

Court: That night you mean?

Witness: No.

Q. Did you close the real estate contract, referring to D 1, the $60,000 one, that night? A. We didn't close the entire contract; the real estate contract and the personal property represented in the contract was the part that was finished up; the other personal property was not.

Court: Now, you refer to D 3; he is directing your attention now to D 1; did you close that?

Witness: Absolutely.

Q. Did you close the contract D 3, referring to the personal property contract? A. That was left open.

Q. How was it left open? A. At Mrs. Hazard's request, to get possession of some papers to deliver to me.

Q. Was it at Mrs. Hazard's request or your request? A. Mrs. Hazard's request, accommodation to her.

Q. Didn't you say in your direct examination that you refused to close this contract because you had been advised that Mrs. Hazard could not pass title to you at that time, referring to D 3? A. Which paper is that?

Q. The $11,400.

Court: Could not pass title to the property included in D 3.

A. Yes, sir.

Q. Then it was not at Mrs. Hazard's request that this contract was not closed? A. It was an accommodation to her.

Court: Was it at her request as well as the other reasons you have stated?

Witness: Yes.

Q. What was the accommodation to Mrs. Hazard in reference to the closing of the contract

marked Exhibit D 3, which is the collateral property? A. To give her time to get these papers from Elmer and Matthes, as she explained it.

Q. Were you advised by Mr. Dickensheets on the night of the closing that Mrs. Hazard was not in the position to deliver the title to the collateral property mentioned in D 3? A. So he said.

Q. I asked you were you advised? A. So he said.

Court: He told you so?

Witness: Yes.

Q. He told you so at that time? A. Yes, sir.

Q. Were you advised by Mr. Davis that Mrs. Hazard was not in a position on that occasion to deliver you title to the collateral property mentioned in the agreement marked D 3? A. Yes, a general conversation.

Court: Did Mr. Davis tell you so as well as Mr. Dickensheets?

Witness: Yes, sir.

Q. Did you at that time know that Mrs. Hazard could not deliver to you, on the night of closing, title to the property in Exhibit D 3, known as the collateral property?

Mr. Wilson: You knew she couldn't deliver title that night?

Mr. Sexton: Yes.

A. They said so.

Q. You knew it then from the information you

were given? A. From them, yes, sir, from Davis and Dickensheets.

Court: You knew from what they told you, that she couldn't deliver title that day?

Witness: Yes.

Q. And you were willing that this accommodation to Mrs. Hazard should be granted? A. I wasn't willing, but had to grant it.

Q. Why did you have to grant it? A. I saw an entaglement here that Mrs. Hazard insisted she could do it, and I had paid this cash, but saw no way of getting it back.

Q. Were you not told by Mrs. Hazard on that occasion that if you did not want to take this property, you could have your money back, and in that same relation did not Mrs. Hazard tell you that Mr. Bedleson would advance her the money to pay your money back? A. No, sir.

Q. Were you told by anyone else present at that time that if you did not want to close these contracts, you could have your money back? A. No, sir.

Q. Was it mentioned at all that you could have your money back if you did not want to close the title? A. I don't recollect that; not at all, nothing that I heard.

Court: It wasn't mentioned then in your hearing.

Q. You, Mr. Powers, had seen Mr. Bedleson in reference to purchasing this property from Mrs. Hazard? A. I did.

Court: When was that?

Witness: Prior to the closing of the title and prior to the contract; prior to the original contract.

Court: And also prior to the thirteenth of March?

Witness: Yes, sir.

Court: And after the contracts were entered into?

Witness: Yes, sir.

Q. In this accommodation, as you put it, to Mrs. Hazard, and in reference to the contract for the collateral property, marked D 3, and in connection with that contract did you give the note in question, namely, the note upon which the endorsement was made and which you signed? A. I did.

Court: He is referring to the note for $11,400, bearing the endorsement made thereon by Mr. Dickensheets.

Witness: Yes, sir.

Q. Was that note signed and delivered to Mrs. Hazard after you had talked over the collateral property and the question of whether or not Mrs. Hazard could deliver title to it on that night?

Court: Was it after you had finished talking about it or before that?

Witness: We would talk and then stop, and sometime during the night.

Q. At what stage of the talk and stop did you

give the note; was it when the talking was all over? A. I don't recollect; sometime during that evening.

Q. Was it not the final decision between you and Mrs. Hazard in reference to the collateral property mentioned in D 3 that you would give her the note upon which the endorsement was made and which you signed? A. I cannot positively say; it was done sometime during the evening.

Q. After that note was given, Mr. Powers, the question as to the transfer of the collateral property mentioned in D 3 had, as far as that meeting is concerned, been disposed of, had it not? A. It wasn't cnosidered disposed of; it was just simply held open in that form.

Q. As far as that meeting was concerned? A. I wouldn't say so; the general discussion ran on both pieces of property.

Court: You don't understand; when you gave the note was there anything further to be done, except what was to be done, as you say, by Mrs. Hazard, to complete the transaction?

Witness: I haven't any recollection; it was going on during the whole evening.

Q. What hour during the evening was that note written out by Mr. Dickensheets? A. I haven't any way to tell the time; I have no recollection.

Q. Was it written within a short time after you arrived at the meeting? A. No, it was not.

Q. Was it written at ten o'clock in the evening? A. I have no way of telling it.

Q. Or was it written shortly before the adjournment? A. I know it wasn't written at the first part when we went in there, but time went fast after that.

Q. Was it not written after you had been advised that Mrs. Hazard could not deliver title to the collateral property mentioned in D 3 to you on that night? A. I suppose so, yes, sir.

Court: Have you any knowledge that the note was given and signed by you and delivered after you learned that she could not give you title to the collateral property that night?

Witness: Yes.

Court: That was so?

Witness: Yes, sir. He is talking about the collateral, the E. C. Hazard & Co. security?

Court: Yes. And you realized at the time that you did give the note, that Mrs. Hazard could not deliver title to you for the collateral property on that night?

Witness: On that night, yes, sir.

Court: You did realize that?

Witness: I realized that she couldn't deliver it that night.

Q. This note and the endorsement thereon was the new agreement that you had made with Mrs. Hazard in reference to the delivery by her of the collateral property to you?

Mr. Wilson: You say new agreement?

Mr. Sexton: Yes.

Mr. Rosenberg: I object to that; the paper speaks for itself.

Court: There is no paper relating to that. He is asking if it was not a new agreement. I will admit it. He is asking whether he did not make a new agreement in connection with the making and delivery of that note.

A. No.

Q. You were to give certain notes to Mrs. Hazard for the transfer of the collateral property mentioned in Exhibit D 3, namely, four notes for four, five, six and seven months, were you not? A. Yes.

Mr. Rosenberg: The paper speaks for itself.

Q. You did not, Mr. Powers, give Mrs. Hazard four notes, did you? A. No.

Q. You did not after that night intend to give her four notes called for in the contract D 3? A. Yes, if she asked for them.

Q. Did you not say over your signature: "This instrument is not to be considered as evidence of indebtedness as a chose in action according to the payee or her assigns until the title to the goods in payment for which this note is given is legally vested in the maker or his assigns. When said title is vested by bill of sale or assignment thereof, then a new note of like tenor and effect, bearing the same date, is to be executed by the

maker of this note, or his heirs or assigns?" I am quoting from the endorsement on the note for $11,400. A. That is the endorsement that was on the note.

Court: That is what you said, in effect, in writing?

Witness: Yes.

Q. And was it not at the time that you gave Mrs. Hazard this note, referring to the note with the endorsement, your intention that she should have but one note of like tenor and effect without the endorsement? A. Yes, or in any part she wanted it.

Q. Then you did not intend to give her the four notes in question? A. Either one or four notes, she could have had at any time.

Court: Had you any intention formed at that time about the matter?

Witness: Yes, my purpose was to give her a new note or the four notes.

Q. This note bearing the endorsement was drawn for eighteen months, was it not? A. Really, I cannot say, unless I see the note.

Q. The record in the former case counsel is quoting from so states that to be the fact; have you knowledge to the contrary, having your attention directed to the former record? A. I believe it was an eighteen months note.

Q. You don't say that the record as disclosed in the former testimony—the record of that note is not a true copy? A. I haven't read it.

Court: He says he believes it is correct.

Mr. Wilson: It is already stipulated in the case that it is correct.

Q. Will you read the record of the note, page 44, at the bottom, and say whether it is an exact copy of the note as you recall? A. (After reading the record.) I believe that is what was on the note.

Court: And therefore you believe that is a correct copy of the note?

Witness: Yes, sir.

Q. At that time it was your intention not to give Mrs. Hazard notes for four, five, six and seven months, but that you should have this one note for eighteen months? A. That is what the endorsement says.

Court: The question is what was your intention; you stated your intention was to give one or four notes called for in the contract as desired?

Witness: That is so.

Q. Was it your intention to give her four notes or only one? A. Either way as she desired.

Q. Then why did you make this note for eighteen months? A. To bridge over the matter—to get over this difficulty, as she insisted that she would deliver the goods the next morning.

Q. Was it necessary to draw a note for eight-

een months if you expected to get the goods the next morning? Say yes or no. A. The Fidelity so advised at that meeting.

Court: Why wasn't it made for nine or twelve months?

Witness: I cannot tell you.

Court: What was said at the meeting that led up to it being made for eighteen months, as you recall, instead of three or six months?

Witness: It was agreed upon by Mr. Dickensheets, and Mr. Joyce representing her, that that was the way to do it.

Q. Then you did make a new agreement, which was embodied on that note, as to the sale by Mrs. Hazard of that collateral property mentioned in D 3? A. As far as the payment of it was concerned, if the endorsement is taken that way.

Court: That isn't very clear. He asks you if you did make a new agreement. You say as far as the payment of it is concerned.

Witness: I don't understand, when I didn't agree at that time that there was any new agreement.

Court: If you didn't make a new agreement, say so; and if you did, say so. Did you make a new agreement?

Witness: No, sir.

Court: As evidened by the endorsement

on this note; that is his question, you say no?

Witness: No, sir, I did not.

Q. You say you had made an extension of the old agreement? A. That was my understanding of it.

Q. How long was that extension to run? A. Mrs. Hazard said until the next morning, to deliver these goods.

Court: Suppose Mrs. Hazard had carried out her promise to deliver these goods the next day or next morning, did you understand that she was then to wait for eighteen months before she got the payment of her note?

Witness: She could either wait that length of time or take this note or four notes specified in D 3.

Court: She had the privilege of doing that?

Witness: So I understood it.

Q. I do not find anything on the endorsement as to the privilege of Mrs. Hazard having the four notes referred to in the agreement D 3 for the sale of the collateral property; where, if anywhere, was such a privilege given in writing? A. There was none.

Q. It wasn't in writing? A. No.

Q. So that is this not the fact that your understanding and Mr. Dickensheets' understanding and Mr. Joyce's understanding as to any fur-

ther action on behalf of Mrs. Hazard and yourself concerning the sale of the collateral property mentioned in Exhibit D 3, was embodied in the note and the endorsement of that note?

Court: Do you understand that? He is asking you if that is the way Mr. Joyce and Mrs. Hazard understood it?

Witness: I didn't understand it that way.

Q. Do you know what their understanding was about it? A. Mrs. Hazard didn't deliver the goods the next morning.

Q. What was your understanding as to the delivery of the personal property goods, the collateral goods mentioned in D 2, by Mrs. Hazard to you, as to when she was to deliver the title? A. The next morning.

Q. Why didn't you state that in this endorsement on the note? A. It was left to the attorneys, and if they left it out—the general conversation of Mrs. Hazard and all concerned—this controversy or this talk here is in order to close and I will deliver you the goods the next morning.

Court: Don't you think, Mr. Sexton, that Mr. Dickensheets' explanation of that, unless it is contradicted, gives a plausible and a reasonable explanation of the whole matter, regardless of anything that Mr. Powers has said in the case?

Mr. Sexton: Mr. Powers is a party.

Court: I have Mr. Dickensheets' sworn testimony that he is the man who made this endorsement. I gathered the impression that he made it on his own volition without suggestion coming from Powers, but for Powers' protection and to carry the transaction over until the next day, or until the matter was closed. That is the impression made on me, and inasmuch as he is the man who made the endorsement, I do not charge up against Powers the great responsibility for the language of that endorsement, aside from being signed by him. I am not charging the language employed so much to Powers as I am to Dickensheets.

Mr. Sexton: Reading this agreement and the note and the endorsement, which was, as we claim——

Court: You claim a new contract in effect?

Mr. Sexton: First a new contract, or if not, it was such an extension of that contract that the contract never could be completed until Mrs. Hazard delivered that property, and Mr. Powers was never entitled to it until that took place.

Court: Suppose I should take your view of it ultimately, why should I not charge Mrs. Hazard with the same responsibility in the situation, having Mr. Joyce representing her there, as much as I charge Powers? I must divide the responsibility between both parties, because they were all

there; they were both represented by counsel; counsel prepared this paper and accepted it; one is as much at fault as the other. They are lay people in the transaction; they are not lawyers.

Mr. Sexton: I am going into this because Mrs. Hazard should not be charged, as she is charged, for a failure to deliver these properties under the terms of this contract, as it has been changed, obviously, as we say, by the additional writing signed by Mr. Powers and acquiesced in, and which was signed by him after the matter was gone into.

Court: I may agree with you finally, but what are you developing here; simply that Mr. Powers was not specific enough, when he did not prepare it at all, but signed it. It was prepared by Dickensheets and accepted by Joyce.

Mr. Wilson: There was a mutual agency carried out in the presence of principals.

Court: And ratified it by their acquiescence, if nothing else, and are responsible for the acts of their attorneys.

Mr. Rosenberg: What is lacking in detail?

Mr. Sexton: That the goods are to be delivered the following morning is one thing, and that the time of eighteen months indicates that it was not the intention——

Court: That is a fair subject of comment, but not for criticism of Mr. Powers.

Q. Mr. Powers, do you recall Mr. Dickensheets saying to you that he did not believe that Mrs. Hazard could deliver possession of that property to you on the following morning? A. No, he didn't use those words.

Q. Did he say it or did he not? A. No, he didn't say it.

Q. If Mr. Dickensheets testified that he did tell you that he did not believe Mrs. Hazard could deliver title to the personal property mentioned in the contract D 3, is he mistaken or you mistaken?

Objected to. Objection sustained.

Court: If he testified to it, does that bring anything to your recollection about it?

Witness: There was a conversation.

Court: Do you recall now that Mr. Dickensheets expressed to you a belief that she could not deliver possession the following day?

Witness: Not those words.

Court: What were his words?

Witness: He believed she would not deliver the goods the next morning; not that she couldn't, but that she wouldn't.

Court: There is quite a distinction.

Q. He told you that she wouldn't? A. He said she wouldn't live up to her agreement.

Q. Then when you gave this note for eighteen months, you knew from Mr. Dickensheets' statement that Mrs. Hazard would not live up to her

agreement? A. I believe it was after giving the note.

Court: He didn't know it.

Q. You say it was after giving the note? A. Yes, after giving the note he made that statement.

Q. Did you hear Mr. Dickensheets testify day before yesterday that the reason he drew this note up was he did not believe Mrs. Hazard could deliver the title to the property on the following morning; did you hear him say that? A. I think so.

Q. And that he then prepared the note? A. I did hear him say that.

Q. And that you signed it? A. I did.

Q. And that conversation then was before you signed that note? A. You are talking about two different conversations now.

Q. Did you hear two different conversations? A. Yes, sir.

Q. Did you hear Mr. Dickensheets say to you, "I do not believe that Mrs. Hazard can deliver title to you of the collateral property mentioned in Exhibit D 3"? A. Before making the note, yes, sir.

Q. I asked you a moment ago whether you heard Mr. Dickensheets make such a statement. A. You said after signing the note.

Court: Reframe your question. There is a confusion here.

Q. Did you hear Mr. Dickensheets say to you before the note with the endorsement on was

made, that he did not believe Mrs. Hazard could deliver title for the collateral property mentioned in D 3 on the following morning?

Court: Before it was made did he say that?

A. No, I didn't hear any such conversation as that.

Q. What did Mr. Dickensheets tell you, if anything, before the note was made, as to whether or not Mrs. Hazard could deliver the collateral property mentioned in Exhibit D 3, if he told you anything? A. I don't recall anything that he said.

Q. Did you hear Mr. Dickensheets testify in this case that he told you before the note was made, that he did not believe Mrs. Hazard could deliver title to the collateral property mentioned in Exhibit D 3 on the following morning, and therefore he drew this note and drew the endorsement on the back and had you sign it; did you hear him testify to that in this case? A. No, sir, I didn't pay any attention to his testimony in this case.

Q. You were sitting in the court room, Mr. Powers? A. I may not have been; I was downstairs a couple of times attending to some other things.

Court: I remember he went in and out of the room.

Witness: There were other witnesses coming I had to take care of.

Q. Is it not a fact, Mr. Powers, that this entire matter of the delivery of the personal property mentioned in D 3, referring to the collateral property, to you from Mrs. Hazard, was gone into by you and Mrs. Hazard and your attorneys that night, and as a result of that, the note with the endorsement upon it was given by you to Mrs. Hazard?

Court: Hasn't he testified to that two or three times?

Mr. Wilson: More than that.

A. Yes.

Q. It was with your consent and authority, then, that the note in question with the endorsement on was drawn up?

Court: It must be so; he signed it.

A. I signed it.

Q. You adjourned about two o'clock, I understand; when did you see Mrs. Hazard after the closing of the title on March 13th? A. We all went to dinner, if that is what you mean; we all went to breakfast or dinner.

Q. When after that? A. At the house in Shrewsbury.

Court: Did you see her the following day, on the fourteenth?

Witness: Yes, on the fourteenth, down here at Shrewsbury.

Court: Did you go back to the Fidelity Company?

Witness: No, we went out and got something to eat. The meeting was adjourned. I met her at her house at Shrewsbury on the night of the fourteenth.

Q. And when you adjourned you had something to eat, after the closing of title? A. Yes.

Q. You were perfectly satisfied with the manner in which the details had been closed? A. Not at all.

Mr. Wilson: What difference does it make?

Q. After the closing you knew, Mr. Powers, that you had not purchased the collateral goods mentioned in the exhibit marked D 3? A. I did not.

Q. You say you did not? A. I did not.

Q. Had you paid for them? A. I had attempted to pay for them.

Q. I ask you had you paid for them? A. I tendered her my four notes in the contract, for five, whatever it calls for.

Court: Isn't that a conclusion of law whether he had or hadn't?

Q. You had been advised that Mrs. Hazard could not deliver you the title to these goods at the time of the closing, had you not, that night?

Mr. Rosenberg: That has been asked six times.

A. Yes.

Q. And you knew that she had not delivered title that night? A. Yes.

Q. Do you say that after you closed that title, the contracts, and left the meeting, that you did not know whether or not you had purchased the collateral goods mentioned in Exhibit D 3?

Court: My view of it is that he purchased the goods, or agreed to purchase them, when he entered into that contract of February 5th. I don't care what his understanding may be. Suppose I find by this record that Mrs. Hazard was in the possession of all these goods that night, and he failed to perform, I would still hold him liable for the purchase price. I don't care for his construction of the contract. He must be bound by the paper he signed and agreed to pay. He explained he couldn't get possession until the following day. Suppose he said, "I didn't consider I bought them," and Mrs. Hazard said, "Yes, you did, and I want you to pay the four notes." I may agree with her and say he has got to pay it, but I don't intend to pay any attention to his answer. He agreed to buy and agreed to pay for it in a certain manner. Just give me the facts and I will draw my own conclusion about it.

Q. You say you met Mrs. Hazard at Shrewsbury house on the night of the fourteenth? A. Yes.

Q. What time of the night was it that you met her? A. I think we got there about eight or half past eight in the evening.

Q. Who did you meet there? A. Mrs. Hazard, Elmer Hazard and his wife, and Mrs. White, Mrs. Elmer Hazard's mother, and Mrs. Powers and myself were present.

Q. You spent a social evening there? A. No, not a social evening.

Court: Part of it was?

Witness: Hardly; it wasn't singing and dancing.

Q. There wasn't any singing? A. Mrs. Elmer Hazard had got a new piece and played it and sang it for Mrs. Powers.

Q. Then there was some singing? A. There was a song sung there, sung by Mrs. Hazard for Mrs. Powers.

Q. What did Mr. Elmer Hazard come there for? A. He was out at the dining-room table with his mother and I.

Q. What was he working at? A. Not anything as I could see.

Court: Were you three talking there about the matter?

Witness: Yes.

Q. Where was Mrs. Powers and Mrs. Elmer Hazard? A. The piano was in the corner of the room, just in the corner of the next room; there was no heat in the house except in those two rooms.

Q. When did this conversation take place in reference to the keys that you have related?

The Court: The refusal to give keys and give possession.

A. Toward the latter part of the evening.

Q. How long had you been there prior to that conversation? A. I should think it was nine or half past nine o'clock.

Court: Did this conversation about the keys occur?

Witness: Yes.

Q. How long did you remain after the conversation about the keys? A. A short time.

Q. About how long? A. We had an argument of about a half hour.

Q. An argument for half an hour after that? A. Yes.

Q. Do you remember Bowden Hazard being present that night? A. He was not.

Q. Didn't you take him home? A. I did not.

Q. Who first brought up the subject of keys? A. Mrs. Powers.

Q. What did Mrs. Powers say about the keys? A. "Mamma, we have come for the keys of the house and factory as you promised at the Fidelity last night."

Court: What reply, if any, did Mrs. Hazard make?

Witness: Mrs. Hazard said—Elmer Hazard broke in and said, "Mamma, you said

I could stay in the factory until 1916 without rent."

Court: And did he say he was going to stay in the factory? Is that all he said when you say he broke in? That is, before Mrs. Hazard made any reply to Mrs. Powers' question?

Witness: She said, "Yes, that is right, Elmer, I did make that agreement with you."

Q. What did Mrs. Hazard say to you then?

Court: Did she make any further remark addressed to you?

Witness: I addressed a remark to her a little earlier in the evening; she had her head on her hand like that (indicating) on the dining-room table, and I said, "You seem to be worried this evening; what is the matter? I thought the relief of this place would give you quite a different feeling," and I said, "If it is a question of leaving your home, you can always consider this room—this house the same as your own and live with us and go in and out as you always have; you don't have to feel bad about leaving this place, for you have been heer all these years." That was right prior to their coming there.

Court: Then Mrs. Powers spoke about the keys?

Witness: Yes.

Court: Mr. Sexton has directed your attention, after Elmer broke in, as you say,

and said, "I thought I was going to stay there," and then Mrs. Hazard said, "Yes, you are to stay until 1916"; he wants to know what remark, if any, Mrs. Hazard addressed to you right in that connection, if she said anything to you or to Mrs. Powers.

Witness: Directly after her saying, "Yes, Elmer, that is right," there was a general conversation between Mrs. Hazard and Elmer Hazard in reference to the business, the E. C. Hazard business, as I supposed it, and Mrs. Hazard said, "Elmer is there. I cannot deliver to you the E. C. Hazard & Company these goods which I sold, as Elmer has the right to them." "I don't agree to that," and then I didn't go into the rights; I got quite provoked with her.

Court: Do you want him to go on?

Mr. Sexton: No. He hasn't answered my question.

Q. What else did Mrs. Hazard say to you? I say Mrs. Hazard to you; you understand that, do you not; what else did she say, if anything? A. She said that Elmer Hazard had the factory until 1916 without rent, and that I couldn't take the factory, take the property, or take the business, and he was going to stay in the house, and she promised to let him stay in the house until March 31, or something like that.

Q. What did Elmer Hazard say to you in reference to his staying in the factory, at this same time, if he said anything? A. "Yes, mamma——

Court: That remark, did he direct it to you?

Witness: He directed it generally, the conversation, to all.

Court: Was there anything else; did he say anything else to you?

Witness: He could mix up some chemicals—it seems to me it was iodine—and tickle them with a feather and blow up Shrewsbury; I said, "What will become of the fellow that does the tickling?"

Q. Did Elmer say anything to you in reference to the fact that he intended to maintain possession of the factory? A. He took that stand.

Q. What did he say? A. He was going to enforce his rights under his lease, and then I asked "Is this a written document, a written lease," and they said, "No, it is a verbal lease." I said, "I don't agree to this thing."

Court: He is asking for all that Elmer said to you. Was there anything else he said?

Witness: I asked if it was a written lease.

Court: Then what did Elmer say to you?

Witness: He said no, it was a verbal agreement. Whether it was Elmer or Mrs. Hazard said it, I am not sure.

Court: Tell us everything you remember about Elmer.

Witness: I am in doubt as to which one said that.

Q. Do you recall anything else that Elmer Hazard said to you concerning the fact that he intended to stay in that factory? A. No.

Court: That is, on that occasion when you talked about the keys.

Witness: No.

Q. Did Elmer Hazard say anything to you to the effect that you could not go into the factory because he was going to insist upon the verbal lease and stay there until 1916? A. That was his demeanor to me.

Court: Did he say that?

Witness: Yes, he forced himself into it.

Court: Did he say that?

Witness: He said, "I am going to hold possession of this place on this lease until 1916." I said, "How do you expect me to pay the interest and taxes on this place, on this property, fixed the way it is, and no income from it?"

Court: What did he say, if anything, to that?

Witness: There was no answer; they just stopped.

Court: Is there anything else that Elmer said to you on that occasion, other than what you have already told us?

Witness: No, I believe not.

Q. You took possession the next morning? A. I did.

Q. And you have had possession from that day until the present time? A. I have.

Court: Except as interrupted by the fire.

Q. You took possession of the Shrewsbury property including the grounds and the buildings erected thereon, the following day, did you not? A. No.

Q. What part of it was it that you did not take possession of? A. The house and generally the grounds; I took possession of the factory.

Court: When did you take possession of the house?

Witness: A few days after. They moved out bag and baggage at night, or four o'clock in the afternoon, and kept going all night.

Court: When did you consider yourself as in possession of all the property mentioned in the two contracts, the real and personal?

Witness: After they left.

Court: A few days after the fifteenth?

Witness: Fifteenth or sixteenth or something like that.

Q. Did anybody dispute your right to the possession of the manor building, the house proper, from the time of the delivery of that deed? A. Until March 31st, by Mrs. Hazard that night.

Court: Did she dispute it?

Witness: Yes, she said she had given Elmer Hazard the right.

Court: On the night of the fourteenth?

Witness: Yes.

Q. When did Elmer Hazard move from that building? A. I don't know; they all went out in three or four days.

Q. You had agreed, did you not, that Mrs. Hazard could keep her furniture in the building? A. Mrs. Hazard gave me the furniture as security on this $3,000 note.

Court: Had you agreed with her that if she desired she could keep her furniture in the manor house?

Witness: I accepted it as collateral security.

Court: Did you agree that she could keep her furniture there?

Witness: The furniture was to remain there, yes.

Court: And you agreed to it?

Witness: Yes.

Q. You again stated that Mrs. Hazard agreed and did give you her furniture as security for that $3,000 note? A. Exactly.

Q. Did you get any paper or any writing, or any evidence whatsoever, to the effect that that furniture was to be subject to any lien that you might have by reason of the $3,000 note? A. Only verbally, only on her word.

Q. You signed a paper in connection with the Eisemann judgment and you signed an affidavit in reference to the Eisemann judgment? A. I believe so.

Q. And that paper embodied your agreement with Mrs. Hazard as to the Eisemann judgment, did it? A. In reference to the note.

Q. I show you Exhibit C 9 for identification and ask you if that is the paper? A. No, it is a copy.

Q. Is that a copy of the paper?

Court: He said it was yesterday. As far as you know, it is?

Witness: Yes, sir.

Q. Did you object to Mrs. Hazard removing her furniture from that house? A. I had no interest in it.

Court: Did you object?

Witness: No.

Q. And yet you state that you took that property or was entitled to that property for security for $3,000? A. So she agreed.

Q. And you had no interest in the fact whether or not she removed the furniture? A. I was absolutely disgusted with the situation.

Q. Did you not in your direct examination testify that you said to Mrs. Hazard that you were perfectly willing that she could leave her property in the large house?

Court: He said that now. You told her that?

Witness: Yes, sir.

Court: He also said she could live there. You said that?

Witness: Yes, sir.

Q. You had agreed that she could live there? A. I did.

Q. You knew that Elmer was living there at the time, did you? A. He was in the house—yes, he was occupying it.

Q. And his wife? A. Yes.

Q. Did you object to Elmer and his wife living in the house?

Court: Continuing to live in it.

A. I certainly did.

Q. Did you say anything to that effect on the night of March 14th? A. No, I didn't take any great exception to the house.

Court: Did you make any objection to Elmer and his wife continuing to live in the house?

Witness: No.

Mr. Rosenberg: What is the materiality whether or not he objected to Elmer living in the house?

Court: I assume it is on the line that is to be contended for, that there was a certain acquiescence on the part of Mr. Powers and a recognition of change in the arrangement.

Q. So that, Mr. Powers, on the morning of the fifteenth you took possession of the factory and its entire contents, and all the outbuildings, with the exception of the physical possession, so to speak, of the house, and you got possession of the house two days after the fifteenth; after that time, having possession of the entire property—— A. I took possession of the factory; I don't know what goes with it.

Court: Doesn't it answer your purpose if we have his answer as he gave it, that within three or four days of the fourteenth he obtained possession of everything? He qualified his former answer by saying that on the fifteenth he took possession of the factory alone and its contents, and didn't bother his head with the land or house, and when they moved out three or four days later, he took possession of everything.

Witness: Exactly.

Court: Did anyone dispute your possession or your right to possession of any building other than the factory or the house, or to any of the grounds?

Witness: The word came up that Elmer is going to stay in this house until March 31st.

Court: And aside from that you had no interference with all that you purchased in the way of real estate, except with the factory and this statement from Mrs. Hazard?

Witness: Then one of the workmen stopped me from going into the factory.

Court: I excepted the factory.

Witness: All right.

Q. And you have had possession of the entire property, including the buildings, the land and the contents thereof, from two days after the fifteenth of March until the present time, with the exception of such property as was destroyed by fire? A. Not the contents of the factory; no, sir, I have not had.

Q. Who has? A. The contents of the factory —I was served with papers not to touch the property.

Q. You operated the factory during the season of 1913? A. Yes, and a portion of 1914.

Q. You made up considerable goods? A. I did.

Q. And used the factory for the purpose of doing that? A. I did.

Q. You used the machinery in the factory for the purpose of doing that? A. Some of it.

Court: Such as you needed?

Witness: Yes.

Court: And used all you wanted?

Witness: Not exactly, no, sir.

Court: Why not?

Witness: Because these goods had been taken a list of, and I was notified to shove them over against the wall and not use them.

Court: Did that include some of the machinery?

Witness: Yes.

Q. What machinery did you shove up against the wall? A. The bean machine, the machinery that passed with the right title to E. C. Hazard and the right title to use the Shrewsbury trade mark—the trade marks and such as passed with the real estate transaction, I did not use, that is, the general machinery.

Court: Then we can separate it in this way: all the machinery that was included in the collateral agreement of $11,400 and goods you considered you were prohibited by these actions, and put them away?

Wtiness: Yes.

Q. And considered yourself entitled to use all the machinery that was included in the interlineation in the real estate contract? A. Yes.

Q. But you did use that machinery, but not the other? A. Yes, sir, and repaired that part of the machinery.

Mr. Wilson: It was that latter group that was inventoried, as testified by Mr. Miller yesterday.

(Inventory called for by complainant and produced by Mr. Wilson.)

Q. Will you, if you can, express it more definitely what personall property in the factory you did not use? A. The goods represented on that inventory (Exhibit D 8), the inventory given to Mrs. Hazard about two days after the fifth, to sign at Mr. Joyce's office.

Q. Where did you place these goods mentioned in Exhibit D 8? A. Those that we could handle, we accumulated and put up and cleaned up the factory and put them in piles in different rooms: the heavy machinery was left standing where it was fastened, but did not use it.

Q. Who assisted you, or did you take any part in the superintending of moving these goods? A. I was there.

Q. And did you use any of the gas engines? A. Not to any extent.

Q. Did you use any of the gas engines? A. Yes, that was an Otto gas engine.

Q. What horse power? A. Twenty-five horse power.

Q. How many gas engines were in the building? A. Two.

Q. And there are two gas engines mentioned in this list, referring to D 8; which of them? A. That one right there, the fifty horse power engine (which appears at the bottom of page 4 of Exhibit D 8); I just used it.

Mr. Sexton: Have you a copy of this inventory?

Mr. Wilson: No, sir.

Q. Did you use the copper kettles, Mr. Powers? A. Yes; I don't know that they are the same copper kettles that are on that inventory, but I used copper kettles.

Q. Did you use the 200-gallon copper kettle? A. I cannot recollect.

Q. Were there any copper kettles larger than 200 gallons? A. That was the largest.

Q. Did you use the largest copper kettle? A. I am not certain about that.

Q. You may have used it? A. It may have been used. As far as the general equipment of this factory, I considered it passed with the real estate.

Court: What is the purpose of this?

Mr. Sexton: That he actually used it.

Court: There is no claim made, except so far as he was interfered with in his use and enjoyment by the litigation. You don't claim any actual interference with him, but it was by reason of the consequence of the litigation instituted by the Little Silver Sauce Company and Matthes and Dr. Hazard—in that way he was interefered with in the enjoyment of the property he bought.

Mr. Wilson: Yes, sir.

Court: Do you want to go all over this?

Mr. Sexton: No, but he said that he didn't use any of these.

Court: Can you now, that your attention has been directed to it, in order to save time, tell what you did not use of the articles mentioned in that inventory or what you did use?

Witness: None of the merchantable goods in there, none of the stock, or any of the goods that were in their cover, the gas engine—the fifty horsepower gas engine and some of those copper kettles.

Court: What else?

Witness: That is all, and the general machinery in the factory that I considered went with it.

Court: What did you use?

Witness: I cannot enumerate it.

Court: Did you use any of the stock or any of the ingredients?

Witness: No.

Court: Did you use any of the labels?

Witness: None except as I mentioned.

Court: Did you use any of the goods in the laboratory?

Witness: No, sir.

Q. Did you use any of the barrels of Shallot? A. No, sir.

Q. Did you use any of the vinegar? A. No.

Q. None whatever? A. No.

Q. Did you use any of the caps? Seven gross of caps. A. The bottle tops, no; it had E. C. Hazard & Company's name.

Q. Did you use the pepper sauce? A. No.

Q. What was it that Mr. Meyers inquired for in his letter? A. Barrels of Worcestershire and he inquired for green pepper sauce.

Q. Did you furnish Mr. Meyer with the pepper sauce? A. No.

Q. Did you use the pickled beets? A. I didn't see any there, for all that stuff wasn't there.

Court: Did you use them?

Witness: No.

Q. Did you use any of the paprika in bags? A. No.

Q. Did you use any of the celery tincture? A. No.

Q. Did you use any of the ketchup bottles? A. About half a dozen or a dozen.

Q. When did you use those? A. When I was making ketchup.

Q. When you made ketchup what bottles did you put them in? A. I bought bottles.

Q. Where did you buy those bottles? A. In the open market; I cannot tell you.

Q. Where was it, in New York or what city? A. New York; the agents are in New York.

Q. Who are the agents? A. I don't know.

Q. You mean to say you do not know from whom you purchased those bottles? A. Absolutely, I have no recollection now who I purchased the bottles from.

Q. Did you ever know whom you purchased them from? A. I hope so, when I bought them.

Q. Did you buy a large quantity? A. Yes.

Q. What quantity did you buy? A. I cannot tell you the quantity that I bought, but I bought a fair amount of bottles; how many, I have no distinct recollection of.

Court: Gross?

Witness: They come by the gross.

Court: Did you buy more than a gross?

Witness: Yes.

Q. Did you buy a carload? A. I wouldn't say a carload.

Q. Were they shipped in a special car? A. No, they were not.

Q. Where were they received by you, at what station, if any? A. I am not certain; some came to Shrewsbury station and the balance was put on an automobile truck in New York.

Q. Who drove the automobile truck? A. A man who testified in the last case, named Frank Anglin.

Q. Do you know where he is now? A. No, I haven't seen him since that time.

Q. Whose truck was it that was driven? A. My own.

Q. Was it a full truck of bottles that you got? A. Yes—cases of bottles.

Q. How many truck loads of bottles did you get? A. I cannot tell you.

Q. You have no idea at all? A. None at all.

Q. Was it your own truck that was driven there? A. Yes, a five-ton truck.

Q. Where did you get that truck? A. New York.

Court: Is it in this transaction?

Mr. Sexton: No.

Q. Did you use any of the corks? A. No.

Q. From whom did you purchase corks? A. Some from the Armstrong Cork Company; I saw the agents.

Q. Did you use any of the spices—ginger? A. No, sir, we made all our own.

Q. Did you use any of the lemon vinegar? A. No.

Q. Did you use any of the relish? A. No.

Mr. Wilson: I would like to inquire upon

what theory this degree of particularity is deemed proper or relevant?

Court: I don't see that it makes any difference. If Mr. Sexton says it is important to him, I will allow it.

Mr. Sexton: I will say the only purpose is to test the witness's memory as to these details.

Court: Do you need to go into all this detail? You are not making any impression on me, on a test of his memory after the lapse of four years. I will let Mr. Sexton go ahead, to let him have his day in court to the fullest extent.

Mr. Sexton: I will not continue this, except as to one or two items.

Q. Did you use the safe? A. One of them.
Q. How did you gain access to that?

Court: What difference does that make? He makes claims for damages and asks that the mortgage be reduced because you did such and such things—you aided Matthes and the Doctor and the Little Silver Sauce Company and others to annoy and harass him and interfere with his business, as a result of which he had to spend a lot of money in hiring lawyers and paying expenses and so on. In addition to that, you put in claims or encouraged claims to be put in to the insurance companies, whereby it was necessary to recover the loss suffered by him, to institute twenty or more suits,

which involved a great expense upon him. He doesn't say that you kept him out of the safe or that you didn't let him use such quantity of vinegar and something else, and therefore asks damage; he does say that you interfered with the use of the trade marks and trade names. He is getting down to material things. Those are the important things that I ought to have some proof about. I won't reduce the amount of the mortgage because he got in the safe or didn't get in.

Q. I understood you to say, Mr. Powers, that you manufactured something like $56,000 worth of goods? A. That is correct.

Q. The question as to how much goods you manufactured was passed on in the Little Silver Sauce Company suit, was it not?

Mr. Rosenberg: Doesn't the record of that case speak for itself?

Mr. Sexton: Then I offer the record.

Court: Do you mean to say that the record in that other case shows that his statement before me is untrue? If it is, show it to me. I don't know that I am foreclosed by the conclusion in that suit.

Mr. Wilson: This man has had to defend figures as to the value of his manufactured goods. If there is any significance to be attached to it or commented on by reason of the discrepancy between that statement, I don't see why his attention is not called to that discrepancy.

Court: Whether counsel develop the facts or not, it is my duty to do it. That is what I am going to do, and not let this record of a thousand pages come into this case.

Mr. Wilson: It is not our purpose to do so.

Court: Anything in the record that is pertinent, I will receive. If there is anything that contradicts Mr. Powers, Mr. Sexton is entitled to contradict him.

Mr. Wilson: That isn't what he proposes to do.

Court: You asked him if the value of his manufactured products was not determined in the former case?

Mr. Sexton: Yes.

Court: I don't know how that was arrived at, and I will not go through that record to find out.

Witness: I do not see how the witness is competent to answer the question.

Court: What do you mean by a determination in the former case?

Mr. Sexton: The decree in the former case.

Court: Then the decree will speak for itself, and I will not take this witness's interpretation of it.

Mr. Wilson: We are willing to stipulate upon the record that the decree in the case to which counsel has directed attention found that Mr. Powers had in the factory at the time of the fire manufactured goods,

manufactured by him after he took possession, and destroyed by fire, to the value of $45,984.70. I am willing to stipulate that, if that is what Mr. Sexton wants.

Court: Did you have the property in the factory at the time of the fire which you placed a value upon yesterday of $56,000, the manufactured products?

Witness: Which I manufactured, yes.

Q. Did you have it all in there at the time of the fire, $56,000? A. The best part of it.

Q. Did you have it all? A. I cannot answer that question—sure, I had it in the factory.

Q. You had all of it there at the time of the fire? A. Yes, sir.

Q. Hadn't sold any of it? A. Yes, sir.

Mr. Rosenberg: Isn't counsel also a little askew on that question? I think here again Mr. Powers and counsel are on a different track. Mr. Powers testified that he expended about his manufacture and that his manufacture cost him something like $56,000, the value of which is absed upon the cost of manufacture, and when the Court of Chancery came to fix the value, it fixed the value as of the day of the fire, and that might be on contracts entirely independent of what the cost of manufacture would be.

Court: That is a fair comment to make when you come to sum up this case. If, however, you want, for the purpose of showing the discrepancy, to make the comment, I will let it go in.

Mr. Wilson: I am willing that the decree should go in, but I must respectfully suggest that it is neither a contradiction, nor is it relevant, for the reason that what a Court of Chancery may have determined between Powers and another litigant as to the value of personal property that he had, manufactured goods he had at that time, doesn't bind him.

Court: You need not argue that. I must have the same situation of facts in this case that the Court had in that case, in order to reach and be bound and be foreclosed by that determination. If I haven't it—while I have the greatest respect for the decree it has no bearing on my situation here; I will have to say that it has no bearing. I will allow Mr. Sexton to show that Mr. Powers manufactured $56,000 worth of goods, if he wishes to. Mr. Sexton, when you come to your case, you can offer the decree and I will admit it.

Q. In the suit of the Little Silver Sauce Company did you testify as to the value of the personal property that you had in the factory at the time of the fire? A. I did.

Q. Did you have the $56,000 worth of manufactured goods which you testified in the factory at the time of the fire? A. I did.

Q. And were those goods included in your testimony as to what personal property you had in the factory at the time of the fire? A. They were.

Court: When you say you had goods of the value of $56,000, manufactured goods, does that value represent the cost of manufacture, or does it represent the market value of the goods?

Witness: The cost of manufacture.

Court: Was that figured at $56,000 worth of manufactured product at the time of the fire? I understood you to say that it cost you that sum to manufacture it—those goods?

Witness: Yes.

Q. What part of the $56,000 of goods were marketable and what part were raw material?

Court: He said they were all manufactured goods. When you say manufactured, you mean——

Witness: Ready to go on the market, in this way, that some of it was raw material, pulp put down into barrels, cans and such like, ready to repack into these bottles which was on this inventory, which I was to put out on them arket under the name of Mr. Hazard. This is raw material altogether, not in the raw state, but in a state to put out through the winter months and ready to go out.

Q. What part of the $56,000 of goods were marketable and what part were raw material? A. It was all marketable. Some may have been raw material, which may have to be worked up

and filled and put into bottles and corks put in them.

Q. But aside from that, they were all marketable? A. Yes.

Q. Did you put in bottles any of the goods that had benzoate of soda in them? A. No.

Q. Did you pack in barrels any goods without benzoate of soda? A. No.

Q. So that all goods that were packed in barrels had benzoate of soda in them? A. Not all goods. All tomato paste.

Q. You know it is necessary to——? A. It is absolutely necessary.

Q. You testified in a previous case concerning the number of barrels of ketchup that you had manufactured, did you not? A. Yes.

Q. And in answer to the question "did you have any barrel ketchup at that time (referring to the time of the fire)," did you answer "1250 barrels"? A. Yes, that is about right, to the best of my recollection.

Q. And in reply to the question, "What was it worth approximately a gallon," you answered, "Fifty cents"? A. That is about it.

Court: What is the purpose of this line of examination?

Mr. Sexton: If this man had $56,000 worth of goods in the factory, and if he had nearly all of it with benzoate of soda in it, none of that was susceptible of being used under the Hazard ketchup labels, because it is already in the testimony, and it is a fact, that the Hazard Tomato

Ketchup did not have benzoate of soda in it.

Court: Assuming that to be so, as I understand it, the claim asserted for injury to the property is, because he cannot use his trade mark and cannot market it, as he was prevented by the law suits, and not by reason of the fact that the commodity wasn't within the scope of the Hazard products. You say by reason of his own action and manufacture he barred himself from using those labels?

Mr. Sexton: For that purpose, and for the purpose of contradicting the statement of the witness yesterday. He said yesterday that he had a thousand barrels with benzoate of soda in it, and that the value of it was thirty-one cents a gallon.

Court: Do you understand he is asserting a claim against you for damages because he cannot market that?

Mr. Sexton: If I understand his intention correctly yesterday, it was that he had given the gross amount, and that they had then deducted certain portions of that which had benzoate of soda in, which they admit could not be used in the manufacture of E. C. Hazard & Company goods.

Mr. Wilson: That isn't so: that is the error of your statement and your conception of the evidence.

Mr. Sexton: And further, that they could not put the label of E. C. Hazard & Company upon any goods unless it was goods

that did not have benzoate of soda in them.

Court: I don't know of any restriction of that character. The gentleman who came from Memphis testified, and he made that distinction himself in referring to the law of 1905, but I don't recall anyone else making any such distinction, and there is nothing in the contract that my attention has been directed to, preventing the use of it in connection with the Hazard labels. Why are you pursuing this line?

Mr. Sexton: It is in the evidence by the testimony of the defendants that the labeled goods of E. C. Hazard & Company were all of a high grade and character, that Dr. Wiley spoke of them as not having benzoate of soda in them, and it is further in the evidence that E. C. Hazard & Company goods could not have that label on if they had benzoate of soda in them.

Court: Where is the proof that they cannot?

Mr. Sexton: By a statement of the witness.

Court: I don't recall any such statement. Is there anything in the bargain between Mrs. Hazard and Mr. Powers that prevents him from putting those labels on anything he sees fit in the way of a manufactured food product that they properly relate to? Is there? If there isn't, I don't know of anything that restricts him from doing it. The gentlmena from Memphis made the distinction and said they had

acquired this high grade of reputation by reason of the fact that they did not use benzoate of soda, in common with a few other high grade manufacturers.

Mr. Wilson: I may refresh your Honor's recollection. Mr. Powers did testify that the Shrewsbury tomatoketchup—this trade mark brand—had as a *sine qua non* the fact that it had no preservative in it. I asked him the question "What did you have in the factory at the time of the fire which you say aggregated $56,000, that couldn't be marketed under the specialty trade marks," and to that he replied, "I had so many barrels of sauer kraut and I had so many barrels of tomato ketchup —the pulp that did have benzoate of soda in," going on to explain that he couldn't use that ketchup under the Shrewsbury ketchup labels; that he could, none the less, pursue the same course of business of the Hazard Company.

Court: How is it material to his evidence here?

Mr. Sexton: If for no other purpose, to contradict the statement in the minutes as to the amount of goods on hand with benzoate of soda in it.

Mr. Wilson: Your Honor has stated our theory, except that our opinion was, it was incumbent upon us to show that we had gone about this matter seriously, and in good faith, and had this manufactured product. I do think it was incumbent upon us

to show incidentally that we had a manufactured product there of considerable value, in respect to which the labels of the E. C. Hazard & Company would have been appropriately descriptive, and that we might have used in the vending of them. It was with that dual purpose, as your Honor has suggested, the last named purpose being one to which I give now emphasis, and which the Court did not mention in its summary. Here comes the practical difficulty. Before we finish this case we have got to elect upon what theory we are going to prove our measure of damage. If we say that it arose from failure to attach appropriate labels, which we say we bought, to a particular class of goods, then clearly, as your Honor has just intimated, if we claim damage on that theory, we must show the particulars upon which a definite sum of damage could be predicated. That is one theory. And it may be that before we have finished with this case, we may elect to prove our damage in another way, from the mouths of experts, that these trade marks under conditions which obtained at the time when we say we took those trade marks over, if in the hand of an owner who had the capacity to manufacture and the capability to manufacture, and to continue to manufacture, would have been reasonably worth so much; and we may elect to work out our measure of damage upon that theory. I only say this,

thinking it will do no harm to explain our theory to the Court.

Court: I supposed from the line of testimony you offered, that you were going to base your claim for damages more or less on the bar that had been introduced to prevent you from using the trade name and trade labels. In view of your other statement that you may elect on the other hand to come in and prove the loss arising actually from failing to market these particular goods, the question is whether Mr. Sexton should not be permitted to go on with his line of examination. If I suspend it now, I will have to reserve the right to take up this branch of the examination if it becomes necessary. There is no use of doing a lot of work, if it is not necessary. I will ask him to suspend on this branch of it—this detail—continuing the rest of the cross-examination, and then if it becomes necessary, reserve the right for you to continue it on the particular point covered by this particular discussion we have just had. With the rest of the cross-examination may proceed.

RECESS.

Mr. Sexton: In order that I may not be prejudiced thereby, it is understood that all testimony in reference to the letters of Meyer and others will be all along the line of the testimony which we have just sus-

pended with, on the cross-examination?

Court: No, I think that was offered in connection with what I have in my mind, with the trade marks and labels and so on. I think you should take that cross-examination up now. I intended to reserve anything on the question of damages that Mr. Wilson referred to, namely, that they may abandon the trade mark and put it on the other grounds. The trade mark feature and everything else is in the case for cross-examination, except that one feature.

Q. I refer, Mr. Powers, to the letter from M. J. & H. J. Meyer Co. of September 9, 1913, marked Exhibit D 6, wherein they speak of shipping five barrels of English sauce at once, and marking the barrels English Sauce. Was that a sauce of E. C. Hazard & Company covered by any trade mark? A. It was covered by a trade mark of E. C. Hazard: there is a trade mark of E. C. Hazard.

Q. I asked you about English Sauce. A. Well, English Sauce.

Q. Is this the same thing? A. A little change in it.

Court: Was there a sauce of that kind and under that name covered by the E. C. Hazard & Company property which you bought, or label, trade mark or trade name; was there such a sauce called English Sauce?

Witness: Yes.

Q. Included in the E. C. Hazard & Company goods? A. Yes.

Q. Does one of these labels relate to it? A. I think it does; I am not just certain about it.

Court: Glance at the letter and see what he is inquiring about.

(Witness shown Exhibit D 6.)

Witness: No labels are on the sauce; that is in barrel lots.

Court: Do you find any label among the eighteen which have been marked as exhibits that relate to an English Sauce that had been manufactured under the Hazard name, or that you manufactured under the Hazard name?

Witness: Yes, sir, the one marked Exhibit R.

Court: Was that manufactured under the Hazard name?

Witness: That was manufactured in the Hazard factory.

Court: Was it manufactured by E. C. Hazard & Company before you purchased?

Witness: Yes.

Court: And did you continue its manufacture?

Witness: Yes.

Court: And does the label, Exhibit R, relate to that sauce?

Witness: Yes, but not in barrel lots.

Court: You put the label only on bottles?

Witness: Yes.

Court: And that is true on the bottle or container and not on the bulk packages?

Witness: Yes.

Q. Do you claim that the label English Worcestershire Sauce, prepared by the English Sauce Company, New York, was sold, or that there was a contract for sale to you by Mrs. Hazard? A. No.

Q. Do you claim that there was any good will or trade mark or other interest incident to the English Worcestershire Sauce prepared by the English Sauce Company of New York that Mrs. Hazard transferred to you or agreed to transfer to you? A. No.

Q. Then as a matter of fact, Mr. Powers, this item in the letter of M. J. & H. J. Meyer Co., referring to D 6, wherein it speaks, "Ship 5 Bbls. English Sauce at once. Mark Bbls. English Sauce," had nothing to do with any transaction you had with Mrs. Hazard concerning the transfer to you of any trade marks, labels or interest in E. C. Hazard & Company? A. As far as E. C. Hazard & Company, yes.

Q. In what agreement did Mrs. Hazard agree to transfer to you the good will, the label, the trade mark, of the English Sauce Company of New York? A. She did not.

Court: Here are three other labels relating to Worcestershire Sauce.

Q. I show you label marked Exhibit N, and ask you, Mr. Powers, whether or not Mrs. Hazard

agreed to or did transfer to you any trade mark, good will, label, in Lord Ward's Brand Worcestershire Sauce, made by James G. Powers & Co., New York? A. No.

Q. Do you claim any interest in the trade mark, the label, the good will, in Lord Ward's Brand Worcestershire Sauce, James G. Powers & Co., New York, Sole Agents; do you claim any interest in it? A. In the label, no.

Q. Do you claim any damage from Mrs. Hazard by reason of this brand of Worcestershire Sauce or the transfer from her of the good will, trade mark or label? A. Yes.

Q. Of that brand? A. Yes, under the name of E. C. Hazard & Company; they are packers of these goods for these people; if I had had the name of E. C. Hazard & Company, I could have packed the same goods.

Q. Do not other people pack goods for these people? A. I cannot answer what other people do.

Court: Do you know?

Witness: Not to my knowledge.

Q. Is any Worcestershire Sauce manufactured by a manufacturer and a label such as this placed thereupon and shipped to that manufacturer? A. Yes.

Q. Is it under the name of E. C. Hazard & Company? A. It is today; under the law it is.

Q. Under what law? A. Under the law of the United States any parcel or package packed for anybody, by anybody, the name has to go on it.

Court: If E. C. Hazard & Company, which you claim you bought, made a Worcestershire Sauce for the James G. Powers & Co., you would have to state on the label or container that you were the manufacturer of it for them?

Witness: Yes, sir, absolutely, today.

Q. Was that true when you purchased this property? A. It came into a law just at that time.

Mr. Wilson: That was passed in 1905.

Q. Is that true when the word "sole agents" is placed on the label? A. I believe it is, according to this law.

Court: We will have to look at the law if it is important.

Q. I show you the label marked Exhibit O and ask you if Mrs. Hazard agreed or did transfer to you any interest in the good will, trade mark or label, referring to this label, Exhibit O, entitled "Green Label Worcestershire Sauce"? A. If E. C. Hazard & Company ever manufactured it.

Q. If E. C. Hazard & Company ever manufactured any goods, then you claim that Mrs. Hazard shuold pay you damages, because she had transferred to you a good will label, or interest in a good will label and trade mark used on those goods?

Court: Isn't that misleading and confusing? He claims the damage from Mrs.

Hazard on the ground that among the things that she conveyed to him as a form of property of E. C. Hazard & Company were certain prepared trade marks, labels, etc., and as a result of interference which she conspired with others to interpose, he was prevented from enjoying and getting the benefit of the property he purchased from her, and your question does not embody that.

A. I don't grasp the question.

Court: It came under the name of Hazard or Shrewsbury and had been manufactured by the Hazard people; it was your property; that is what you thought?

Witness: Yes, but there were other items manufactured by the Hazard people.

Court: He claims he succeeded by his purchase to the name Hazard, to manufacture, to market and to use the label as they had done?

Witness: Yes, sir.

Q. Do you claim, Mr. Powers, that Mrs. Hazard transferred or agreed to transfer to you the brand of goods represented by the Green Label Worcestershire Sauce, prepared by the Little Silver Sauce Company, Little Silver, N. J., Exhibit O? A. If it was ever manufactured by E. C. Hazard & Company.

Q. Do you know whether it was ever manufactured by E. C. Hazard & Company? A. I never

heard of it before, up to the time this claim was made by Elmer Hazard at the factory, the night I was arrested.

Q. That particular label, as far as you are concerned, never entered into the negotiations by that name? A. Not by that name; I just took the rights of that.

Court: If Hazard & Company had made it, you make the claim?

Witness: Yes.

Q. Did you manufacture Worcestershire Sauce, Mr. Powers? A. I did.

Q. And sell it in bulk? A. I did.

Q. Sell it to M. J. & J. H. Meyer? A. I did.

Q. Any sauce that you sold to them was in bulk, was it not? A. It was.

Q. In fact all the sauce sold by you to them was in bulk? A. Yes.

Q. How long have you been acquainted with M. J. & H. J. Meyer? A. Since the purchase of this factory.

Q. Do you know, Mr. Powers, that it is the custom in this trade to manufacture goods by contract in bulk and put the label of the consignee upon it? A. Not in every instance.

Q. Do you know that there is such a practice? A. There is such a practice.

Q. And is not that the practice which was followed in reference to the label marked Exhibit N, James G. Powers & Co., New York, Sole Agents; in the Exhibit R, English Sauce Co., New York, and in the Exhibit G, called Royal Worcestershire

Sauce? A. It was my practice if I continued the business and was allowed to use these labels.

Court: Do you know if it was the Hazard practice and were the labels used in connection with such a practice?

Witness: Manufacturing and bottling the goods and using these people's labels such as my attention has been directed to.

Q. And that was on the contract order of the people mentioned on these labels, was it not?

Mr. Wilson: I don't understand that question.

Court: They might have been made by any company and these labels used in that way, you mean?

Mr. Sexton: Yes.

Court: Do you know whether the Hazard Company ever carried on that practice?

Witness: I have no knowledge on that subject.

Q. Are you in the business now; have you been manufacturing these food products since the fire? A. Not since the fire, no, sir.

Q. Did you receive any orders from anyone in reference to the Royal Worcestershire Sauce: James G. Powers & Company, Lord Ward's Sauce; English Worcestershire Sauce, English Sauce Company, represented by Exhibits G, N and R? A. No.

Q. Did I understand you to say that the sauce marked Green Label Worcestershire Sauce, pre-

pared by Little Silver Sauce Co., was transferred, or had been agreed to be transferred to you; that is, the trade mark, label and the good will, to manufacture that sauce, by Mrs. Hazard? A. No, sir.

Court: He said not by that name, but if it were made by the Hazard people, then he considered it was transferred to him; that is right?

Witness: That is correct.

Court: But without any reference to that particular label or name?

Witness: Yes, sir.

Q. Are all these labels, Mr. Powers, placed upon the barrels of pure tomato ketchup? A. There wasn't any barrels of pure tomato ketchup; a barrel of tomato ketchup with benzoate of soda may be pure and may not be pure; I don't know what standard he is going by.

Court: Did you label barrels?

Witness: No.

Q. I understood yesterday you didn't label anything in bulk, but only labeled the bottles or containers? A. That is it exactly.

Q. I show you a letter marked Exhibit D 4 from Herbert Coulter, which refers to several hundred barrels of pure tomato catsup, and ask you whether that was to be shipped by you under any of those labels which you have produced? A. Not by that letter.

Court: In any way in your custom?
Witness: Yes.

Q. Did you ship it under that label? A. Yes; after receiving that letter I called on Mr. Coulter——

Mr. Sexton: I object.

Court: I want the truth. He said that none of the products shipped in bulk or barrels was labeled; now, you are asking if he labeled these barrels.

A. (Continuing) In response to that letter I called on Mr. Coulter, and through a conversation the gentleman who had placed the order wanted the Hazard ketchup; he had been an acquaintance of Mr. Hazard, Senior; it turned out that they didn't want the barrels, that they wanted these goods packed under E. C. Hazard & Company labels in glass.

Court: Did you fill the order in that way?

Witness: I couldn't do it.

Q. Who was the gentleman you talked with? A. The gentleman signed there, H. B. Coulter.

Q. Had you any other business dealings with Mr. Coulter? A. I had several inquiries from him.

Court: Had you done business with him before that?

Witness: I couldn't say if it was before or after.

Q. You say you did not ship any goods to Mr. Coulter? A. Not to my recollection; I am not sure about that; not in glass.

Q. If you did ship, you shipped without the labels? A. Yes, sir.

Q. Did you ship any goods to Mr. Coulter in barrels? A. Not to my recollection?

Q. As a result of this letter did you ship to Mr. Coulter any goods?

Court: He says not. That is right?
Witness: Yes.

Q. Was there any dispute between you and Mr. Coulter in reference to the price of the goods mentioned in this letter?

Court: What difference will it make?

A. There was very much difference between the price of bulk and bottled goods.

Q. Was there any dispute between you and Mr. Coulter about the price? A. No, we never had any disputes; I simply couldn't fill the order.

Q. Why not? A. Because I couldn't use the Hazard name and label.

Q. By reason of those suits which you claim interfered with you? A. Yes, sir.

Q. This letter was sent on August 28, 1913, Exhibit D 4: when did you have the conversation with Mr. Coulter, about how long after the receipt of the letter? A. A short time, a few days.

Q. Who had stopped you then from using the E. C. Hazard & Company goods? A. Elmer Hazard, in these suits at law.

Q. Is that the only thing that prevented you from using those labels or the trade mark in the shape of those gods? A. And Mrs. Hazard's conversation the night of the fourteenth, when I called for the keys of the factory.

Q. At that time you had not received any letter from E. C. Hazard & Company, the letter bearing date November 20, 1913, marked Exhibit D 5?

Court: At the time that you received this Coulter letter in August.

Mr. Sexton: Yes.

Q. Had you received the November circular letter of E. C. Hazard & Company? A. I cannot exactly say when I received this letter D 5; it was sent to me by the trade.

Q. What is your best recollection about when you did get it? A. It come down sometime during my canvass of the trade to use these goods, and this was the answer.

Q. You don't know, Mr. Powers, when you received this letter D 5? A. No.

Q. Do you recall whether it was before or after November 20, the date of this letter, when you received it? A. No, I haven't any recollection.

Q. It may have been received by you, then, during August of that year? A. I don't see how it could.

Q. I am asking you what is your best recollection? A. It must have been after it was dated; I don't know when.

Court: You have no knowledge; you are reasoning about it from its date?

Witness: Yes.

Q. Then up until the time of the receipt of the Coulter letter, referring to Exhibit D 4, you had no other notice that E. C. Hazard & Company claimed that you could not use these trade marks or good will, other than the fact that suits had been brought and Mrs. Hazard had said something to you; in other words, those things you have just related? A. Those were the things that stopped me.

Q. Had there been any injunction served upon you for the purpose of restraining you from using the trade mark? A. There were suits; I don't know just exactly what suits they were that were brought, but I was instructed not to use those goods.

Court: Instructed by your counsel, Messrs. Wilson & Smock?

Witness: Yes.

Q. And they are the suits that have been referred to and the pleadings in which have been offered in evidence? A. I suppose so; I never looked over all those papers; that was for counsel to do, not for me.

Court: You turned them over to counsel?

Witness: Yes.

Q. Mr. Powers, how many bottles of E. C. Hazard Tomatoketchup did Herbert B. Coulter

desire after your conversation with him, when he changed from barrels to bottles? A. I never got into the question with him; I said, "I cannot put them up under that label," and that was the end of it; there was no going into an order; I couldn't fill it.

Q. Did you endeavor to have the man purchase the goods in bulk instead of taking them in bottles—Coulter? A. Yes.

Q. After you took possession of the place, Mr. Powers, you sent out letters to the trade? A. Yes, sir.

Q. When was it that you sent out letters to the trade; when did you begin to send them out? A. Just after the contract had been signed, about February 5, the first notice, that I had purchased the factory and equipment and the name and labels and such rights.

Court: And did you follow that up with other letters?

Witness: Yes.

Q. When you sent those letters out to the trade did you send them on the Hazard's Shrewsbury Manufacturing Company stationery? A. No, sir.

Q. Did you send any letters to the trade on the Hazard's Shrewsbury Manufacturing Company letter paper? A. I did.

Q. Was it a typewritten form—partly typewritten and partly printed.

Q. You mean the top part, that was printed? A. Yes, sir.

Q. I am speaking of a letter. A. I am talking to right there (indicating).

Q. And that is printed? A. Yes.

Q. That is what you mean when it is part typewritten and part printed? A. Yes.

Court: Referring to the list on Exhibit C 7 for identification, beginning with the words "Hazard's Shrewsbury Burnt Onion Sauce"? Was the same printed matter on your letter that you sent out?

Witness: Just as it appears on this letter.

Q. The body of the letter, leaving out the top, was that a circular letter, typewritten? A. Yes, sir.

Court: Signed by you, or was your name printed on the typewriter?

Witness: Printed on the typewriter.

Q. Have you been able to recall who printed this letterhead, Hazard's Shrewsbury Manufacturing Company? A. No, sir.

Q. How many did you send out of those to the trade?

Court: A thousand or ten thousand?

A. All the wholesale grocers; I haven't any idea how many: they went all over the United States.

Court: Do you think there was more than a thousand of them?

A. Oh, my, I should think so.

Q. More than two thousand; give your best estimate. A. I should think two or three thousand, or three or four thousand. I know I hired an expert typist to come on and write these letters and put them through the mail.

Q. Were they all typewritten or printed letters, leaving off the top part? A. Typewritten.

Q. Actually copied on the machine? A. Yes.

Court: Or printed to resemble typewriting?

Witness: No, sir, printed on the machine.

Q. They were all originals? A. Yes.

Q. Signed by you? A. Yes, signed by me. I wouldn't say that my name was on the bottom of every one by my own handwriting, but my initials were there.

Q. Who was the typewriter at that time, Mr. Powers? A. That I sent these letters out?

Court: No, that did the work.

A. The first set I sent out was sent out from my office in New York.

Q. Who was the typewriter, or man or woman? A. There were three girls.

Court: He wanst the names.

Witness: I cannot give the names; they have gone out of my mind.

Q. Are any of them in your employ now? A. No, sir.

Q. How long had they been in your employ? A. Some of those were hired extra for this work.

Q. Do you know the name of any of them?

Court: What difference does it make?

Mr. Sexton: I want to follow it up.

Court: You mean he didn't send them out?

Witness: I am talking about the first letters; I am not talking about those. The first letters after February 5th I sent out, they were sent out from my office—a few thousand of those, I don't know exactly, that were down at this factory.

Court: These you refer to are Exhibit C 7, with the leterhead "Hazard's Shrewsbury," etc.?

Witness: Yes, sir.

Q. When was the fire, Mr. Powers? A. February 12, or 13, 1914.

Q. All the goods that you have spoken of, namely, the $56,000 of goods, were insured? A. Yes.

Q. Together with the other goods that were in that plant and factory? A. No, I didn't consider it when I placed the insurance.

Q. Were they destroyed with the other goods? A. Yes.

Q. Was it a total loss, building and contents? A. Absolutely.

Q. Did that affect the dwelling house; was that destroyed? A. No, sir.

Q. Nothing but the factory building proper? A. Yes, the factory and the warehouse, platform and warehouse.

Q. You say there were no other goods insured there, Mr. Powers? A. Only those goods represented by this $56,000.

Q. And that you say were your goods? A. They were.

Q. Manufactured by you? A. Yes.

Q. Were any of the goods covered by the bill of sale insured? A. It was claimed so by the court.

Court: What do you say?

Witness: I say I exempted them from my proof of loss and from the insurance under this condition.

Q. You didn't intend to cover them and didn't understand they were covered? A. No, sir, I didn't understand they were.

Q. Notwithstanding that fact, the Court said that they were covered? A. Yes.

Q. And you did pay from the insurance money, Mr. Powers, $11,400 by the bill of sale to the Little Silver Sauce Company? A. It was taken out by counsel; I actually paid it or was it deducted from this amount?

Q. Yes. A. It was deducted from this amount, under the decision of the court.

Q. There was enough money, then, in the insurance money for the Little Silver Sauce Company to get $11,400? A. Yes.

Q. Have you ever paid Mrs. Hazard any money

for any of the property mentioned in Exhibit D 3? A. No.

Q. Have you attempted to continue the business of E. C. Hazard & Company since the fire? A. No.

Q. During the period between March 15, 1913, and February 15, 1914, did you have in your possession all the labels, trade marks and personal property of whatsoever nature contained in the factory at Shrewsbury and necessary to manufacture goods of the E. C. Hazard & Company brand? A. Yes, sir.

Q. And you did have them at the time of the fire? A. Yes.

Q. Did you manufacture or attempt to manufacture all the goods mentioned on the letterhead, Exhibit C 7, referring to the printing on the left-hand corner, and containing a list of seven or eight lines?

Mr. Wilson: At the time of the fire?

Mr. Sexton: At any time.

Court: March 15, 1913, and the time of the fire.

A. I manufactured all but one in there, but not under the name of Hazard; I had to put those there—I had to try to attempt to do something with the trade names.

Court: What is that?

Witness: The Hazard's Shrewsbury Manufacturing Company.

Q. And which one did you not use? A. Spinnach.

Court: Give the full title.

Mr. Sexton: Hazard's Shrewsbury Spinnach.

Q. Have you formulas for each of those preparations, or did you have them between the period of March 15, 1913, and February 13, 1914? A. I did.

Court: Including the spinnach one?

Witness: There is no formula on spinnach. It is just put up.

Q. Where were they at the time of the fire? A. In my house.

Q. You still have them? A. I have.

Q. Did you have labels for all these names mentioned upon this letterhead, Exhibit C 7? A. No.

Q. Which ones were they that there were no labels for? A. I hadn't had the labels made up yet.

Court: For none of them?

Witness: None of these labels were made up (referring to Exhibit C 7).

Court: Did you have any labels which related to those?

Witness: No, I had the goods, but not the labels.

Court: That combination of Hazard's Shrewsbury was your own creation?

Witness: Yes.

Q. Did anyone state to you that you were to stop manufacturing goods under the formulas that you had? A. They used the words, right, title and interest in E. C. Hazard & Company; the place that I got the formula from, or I was to get the formula from—Mrs. Hazard and Elmer Hazard both used that expression.

Court: Did you understand that included formula?

Witness: I understood that included what I was to get by the sale that was consummated.

Q. Everything? A. Yes.

Mr. Sexton: I submit he is not answering the question.

Court: Can you answer it any more specifically?

Witness: No, I think that covers it.

Court: Did anybody forbid you from using these formulas?

Witness: Mrs. Hazard and Elmer Hazard, by these suits, by the claim of the Little Silver Sauce Company which started suits against me.

Q. Did the Little Silver Sauce Company have anything to do with preventing you from using the formulas or manufacturing goods according to those formulas? A. I had no knowledge of that.

Q. Did it or did it not? A. Those suits in law, I cannot tell you.

Court: He said, under the expression "right, title and interest," he assumed it included formulas as well as everything he bought.

Witness: At the time of the purchase I was promised the formulas.

Q. Referring to Exhibit D 5, did you understand that that prevented you from manufacturing goods according to any of the formulas which you have? A. No.

Court: That is the letter of November 20?

Mr. Sexton: Yes.

Q. Was E. C. Hazard & Company manufacturing goods between March 15, 1913, and February 13, 1914? A. There was a sign up down at Branchport.

Court: Answer the question.

Q. (Last question repeated.)

Court: Have you any knowledge of it; you are asked whether you know if they were manufacturing?

A. Yes, they were.

Q. What were they manufacturing? A. I saw one of Worcestershire Sauce, some sort of a label.

Q. Was that manufactured under the name E. C. Hazard & Company? A. The bottle or label that I saw, not the exact label; this label I saw

had E. C. Hazard & Company on. Can I refer to something I have here? I have a bill for the goods manufactured.

Q. Will that bill show the label? A. I have seen the goods in the grocery stores, and I have procured a bill which covered the sale of these goods to the grocery stores.

Q. I understood you to say, Mr. Powers, that they were manufacturing an article with the label E. C. Hazard & Company on it? A. Yes, sir.

Q. And what was that? A. Worcestershire Sauce.

Q. What name was it? A. E. C. Hazard & Company.

Q. What was the name of the Worcestershire Sauce, the brand? A. I don't just recollect.

Q. What designation or place of manufacture was on it?

Court: Did it say Shrewsbury or anything like that?

Witness: I am not certain of that, but the name E. C. Hazard & Company was on it, and I think it had New York City on it.

Q. Do you know whether they manufactured any catsup? A. No, I have no knowledge of that.

Court: Within this period?

Mr. Sexton: Within this period.

Witness: I have no knowledge.

Q. Do you know whether there was any mayonnaise manufactured? A. I have no knowledge.

Q. Do you know whether there was any other? A. I saw the label on Burnt Onion Souce within that period, the same style label and same name and all except the address; I wouldn't say it was New York or Shrewsbury or Long Branch, or what was on it.

Q. Mr. Powers, why is it that one label of the eighteen marked Burnt Onion Sauce is larger than the other? A. One goes on a package and the other goes on a bottle, and there are a dozen bottles in the package. The Burnt Onion Sauce comes in small bottles and has a small label and then is packed into a case with a filler, and this larger label goes on the outside of the case.

Q. You testified to having a watchman on the premises? A. Yes.

Q. Was it not a fact that under the terms of your insurance you were compelled to have a watchman there? A. No, I had no insurance at the time of the purchase.

Court: Were you under the terms of your insurance policies obliged to keep a watchman on the premises?

Q. During the whole interval?

Court: At any time?
Witness: Yes.

Q. Did you keep a watchman on the premises during the entire time you were manufacturing goods? A. I did.

Q. Do you know whether E. C. Hazard & Com-

pany had a watchman on the premises prior to the time you purchased? A. Only the morning I went there to take possession.

Q. There was a watchman there then? A. Yes.

Q. Don't you know that there has always been a watchman there? A. No, I do not.

Q. And that the watchman always had the keys of that factory? A. No.

Mr. Wilson: What difference would it make?

Court: What do you wish to say?

Witness: I knew that they didn't have a watchman there many times.

Q. What do you mean by many times you knew there was no watchman there? A. Prior to a certain date during a great deal of trouble there, there was never anyone there at night at all while I lived in the adjoining property.

Q. How long was that before you bought the property? A. I cannot fix the dates.

Q. That was because the E. C. Hazard & Company had practically gone out of business? A. It was on account of some difficulties.

Q. You knew that they were in difficulties and had been in difficulties for some time?

Mr. Wilson: How can that possibly be relevant?

Court: What time are you talking about?

Mr. Sexton: Prior to March 13.

Court: The only theory on which it can be relevant is that they are going to con-

tend that the watchman has always been there and wasn't put there to keep you out of the premises. I think it is competent under that theory of it. It may be far-fetched.

Q. Did you know at the time the contracts were made, February 5, 1913, where the formulas were? A. No, I had no information.

Q. How did you expect to get them, then, Mr. Powers, if they were not in the factory?

Court: Is there any need of asking a question like that? Someone agreed to sell him something; why should he not expect to get it from the person from whom he was buying? Unless you establish a verbal contract, I will hold you to the written contract. I think the terms of the contract are particular enough to include the property of E. C. Hazard & Company wherever it is. If I am wrong about that, show it to me. This gentleman testified time and time again, when he paid $60,000 he expected to get everything of E. C. Hazard & Company, and what he didn't get in that way he was to get under the $11,400.

Q. Did you understand that you were to get property of E. C. Hazard & Company whether it was on the Shrewsbury place or not?

Court: Connected with the manufacture.

A. Her words to me were——

Court: Did you understand it whether it was at Shrewsbury or not?

Witness: It included the factory and equipment of the factory, labels, rights and personal property that she had received and all the names of E. C. Hazard Shrewsbury labels, factory equipment——

Q. Were you to get them whether they were down there or not? A. Yes, anywhere.

Court: In addition to what was on the place, you were to get anything else that belonged to them; that is what you said you bargained for?

Witness: Yes.

Q. Do you know whether or not the store in 74 Grove street was running at that time under the name of E. C. Hazard & Company? A. No, it was not.

Court: Did you expect to get any interest in that store or anything in it under your bargain?

Witness: No.

Q. Or do you know whether there was anything in that store at the time these contracts were signed belonging to E. C. Hazard & Company? A. I do know of my own knowledge that there was nothing in there.

Q. Did you go there? A. I was called in consultation with the sheriff of New York City when

they moved the things out over night down here at Shrewsbury, and some of the things are on the inventory and are the things that were moved from New York City down to Shrewsbury.

Q. And you got them? A. They were in this factory.

Q. And you got them? A. Yes, they were in the factory.

Q. Did you make claim for any goods anywhere other than the goods you found on the Shrewsbury property? A. Yes.

Q. What? A. The trade mark and name Shrewsbury that was registered at Washington with the Government, and all rights of trade marks.

Q. Did you get any transfer or papers showing that they were transferred to you? A. That interlineation there.

Mr. Wilson: I submit that has been gone into at great length.

Court: If he didn't and I find that there was a contract by which he was entitled to them, I consider that to have been done which ought to have been done.

Q. When you first spoke to Mrs. Hazard in reference to the purchase of this property, did you have any conversation with her to the effect that you were going to use the factory plant for the purpose of a carpet weaving factory? A. No.

Q. You had a carpet weaving factory, as you say, in New York at that time? A. Yes, and she suggested selling it, and putting the money in this factory here.

Q. And was there a conversation between you two as to moving down to Shrewsbury and making a carpet weaving factory down there? A. Never.

Mr. Sexton: That is all.

Re-direct examination by Mr. Wilson:

Court: I may say that I don't think there are many things in Mr. Powers' cross examination that require a good deal of explanation. I have endeavored to avoid that very thing by interpecting questions myself and allowing him to correct and amplify his answers. I make that statement so counsel know what is in my mind.

Mr. Wilson: It seems to me that that course by the Court results not only in substantial justice, but in infinite saving of time.

Court: I don't mean to limit you.

Q. I want to ask you about the group of labels marked Exhibit D 2, some eighteen in number; when you ran over these yesterday you found one, I think, that had been altered and changed? A. Yes, sir.

Q. I show you now Exhibits K and J, and ask you whether Exhibit J shows that label in the condition it was before the change was made? A. Yes, sir.

Q. And whether or not Exhibit K is identical with J, except insofar as the change appears? A. Yes, sir.

Q. Directing your attention to Exhibit K, the one which has been changed, did this particular exhibit reach your hand either in the form in which it is now or any other form with those labels that you say Mrs. Hazard handed you at your house in New York? A. No.

Q. Just tell us the history of Exhibit K and also of another which seems to be a replica of Exhibit K, unmarked; tell me where they came from and how they got into your possession and my possession?

Mr. Sexton: I object.

A. I was working up the new name and they got mixed with these others and I went to Mr. Wilson and at his office I threw them aside as not being in this package of exhibits, and he in picking them up—this one got in the wrong place.

Court: Where did you get K or K unnumbered?

Witness: I got the original ones from Mrs. Hazard, but these got mixed in with some of the others.

Court: These are original ones which you have altered?

Witness: Yes.

Court: And when you took them in Mr. Wilson's office, he mixed them up with the other labels?

Witness: Yes.

Court: But the label with the exception of the correction you made on it, namely

"Hazard Shrewsbury Mfg. Co.," was among the labels you received from Mrs. Hazard but altered afterwards?

Mr. Wilson: I didn't understand so.

Q. I show you Exhibit K; that is the one which has been changed and marked; I show you another label which seems to be another label like it, but unmarked? A. Yes.

Q. Did these two labels or either of them come to your hand from Mrs. Hazard in New York City? A. No.

Q. How did they happen to be in the group of labels which I handed you when you first went upon the stand, and which you identified as labels that came from Mrs. Hazard? A. They got mixed at your office.

Q. And by you or me? A. By you picking them up off your desk.

Court: When did you get them?

Witness: Down at the factory.

Court: When you took possession of the factory you found those with other labels there?

Witness: Lots of them.

Court: And then you made the change and took them to Mr. Wilson's office, and that is when the mixture occurred?

Witness: Yes.

Q. This particular package of labels and group of labels which you have introduced and offered in evidence as being the labels which Mrs.

Hazard gave you in the New York house, do you know where they were between the time she gave them to you and the time they were brought here in Court; do you know where they were or who found them? A. Mrs. Powers found them in a lot of old letters that she took out of some of my winter clothes and had stuck them into a box. I said, "Always keep all these old letters and put them in the attic of the house," and upon another case I had in court in New York I was looking for some old papers and memorandas, and she found some checks and other memorandas that I required and brought these down and said to me——

Q. That is the time they got back in your hands? A. Yes.

Court: And since then in whose possession have they been?

Witness: Mr. Wilson's.

Mr. Wilson: I will offer in evidence and ask to have marked this other label which is a replica of Exhibit K.

(Label referred to marked "Replica of Exhibit K".)

Q. Mr. Powers, I notice in the bill of sale that runs from Mrs. Hazard to Matthes, one team of horses named in the schedule of the bill of sale running from Florence Hazard to Frank T. Matthes? A. Yes, sir.

Q. Being bill of sale dated July 29, 1912; did you ever buy that team of horses? A. Yes, sir.

Q. With whom did you negotiate the purchase? A. Mrs. Hazard.

Q. How much did you pay her for them? A. $600.

Q. In what form did you make the payment? A. Checks.

Q. When was that purchase made? A. October, about 6th or 8th, of 1912.

Q. To whose order were those checks made? A. Florence A. Hazard.

Court: Where were the horses?

Witness: They were on the Hazard place.

Court: Did you get possession of them?

Witness: I did.

Court: Drive them?

Witness: Yes.

Court: And used them how long?

Witness: I sent them to New York. I used them for a year or so and then shipped them to New York.

Court: Did Matthes ever have anything to say about the transaction?

Witness: No one.

Court: No one but Mrs. Hazard and yourself?

Witness: Mrs. Hazard took the check.

Court: Did Mattres ever say anything about the horses?

Witness: No.

Court: Ever claim to own them?

Witness: No.

Q. Did Mrs. Hazard at that time ever claim or mention the fact that Matthes or anybody

else ever had any interest or ownership in those horses? A. No, sir.

Q. Have you the check by which you made this payment to her? A. It was in that bundle of checks at your office.

Mr. Wilson: I will ask leave to offer that check as soon as we find it.

Witness: Two checks, one for $400 and one for $200.

Court: Does the bill of sale from Matthes to the Little Silver Company contain the same schedule?

Mr. Wilson: I don't know about that. We will look that up.

Court: Do I understand you finally sold the horses?

Witness: Yes.

Q. How long did you have them in use before you sold them? A. I used them down in that place about a year and then sent them up to New York and used them about a year.

Court: Did you ever have demand made upon you by Matthes or anyone for the horses or the value of them?

Witness: No.

Court: Did you ever hear any suggestion of adverse ownership of the horses?

Witness: No.

Court: At the time you bought did you know they were included in the bill of sale to Matthes?

Witness: No, she told me they were her property.

Q. Mr. Powers, to go back to an omitted inquiry, Mr. Ferris who was on the stand yesterday or the day before, spoke of having seen two bottles of output sent to him by you that had on it the Hazard Shrewsbury Manufacturing Company, New York; were they bottles upon which you had used the modified label as shown by Exhibit K?

Mr. Sexton: I object as leading. What label was on the bottle?

Court: I don't see that it is a serious matter.

Q. I am directing your attention to the bottles, one or more, referred to in the testimony of Mr. Ferris of New York; he says he saw some kind of a label was on those bottles and how did the label come to be there? A. It was a label similar to K, with the prospect of starting that company, and it was a sample bottle that I had taken the name of Hazard out of and put this in.

Q. You took the name of Hazard out of one of the original labels and made an insertion as it appears in Exhibit K? A. Exactly.

Court: What was your purpose in doing that?

Witness: In order to start to show what kind of a package I was attempting to make up for these goods which I had down here.

Harry L. Powers—Re-direct.

Q. You were asked this morning about catsup in which you had put a preservative benzoate of soda; if you had been permitted to use the Hazard trade mark or trade name Shrewsbury TomatoKetchup, would you or would you not have treated that ketchup with benzoate of soda? A. Yes, sir, I would have made it a pue ketchup, under the E. C. Hazard brand.

Court: Would you have treated it with benzoate of soda?

Witness: No, sir.

Court: Why not?

Witness: Because the formula under which E. C. Hazard & Company ketchup was made had no benzoate of soda in it.

Court: Then so far as the quantity which you had on hand is concerned, the interference of Mrs. Hazard and the doctor and the others was not what prevented you from marketing it under the name of Hazard or Shrewsbury; you couldn't have marketed it anyway with benzoate of soda in?

Witness: Under the name of Hazard, no, not under that other formula.

Court: So that their interference, if it actually existed and occurred, didn't prevent you from marketing that particular product?

Witness: No, sir: but I could have marketed it as a pure ketchup if I had been left alone, that was in February, and I would have had these goods in other containers under the name Shrewsbury brand.

Q. Having treated it with benzoate of soda, it was impossible for you to sell it in bottles, wasn't it, as the Shrewsbury Tomatoketchup? A. As it was advertised and should have been sold, yes, sir.

Q. Was there any difference in the profit and advantage of handling your product in barrel form treated by benzoate of soda, as between a method where you would have handled it in bottle form without the benzoate of soda, with the Hazard trade mark on it? A. Yes.

Q. Any difference between those? A. Yes, sir, considerable difference.

Q. Then why did you use the benzoate of soda? A. Because I was forced to use it in marketing these goods.

Court: How were you forced to do it?

Witness: I couldn't obtain bottles and glass to put those in.

Court: To put the product in without the benzoate of soda?

Witness: Yes, and another thing, the personal property which I bought under this $11,400, there was a great quantity of bottled which I could have filled and turned that product right into money; that was the intention and purpose.

Court: Did those tbottles have the name of Hazard?

Witness: E. C. Hazard & Co. blown on the bottles.

Q. Isn't it necessary when you have your product made up without any preservative to bottle it promptly? A. It is necessary to bottle it before you must process it, and in the bottles in which it is filled.

Q. The processing is done in the bottle? A. Yes.

Q. And if it is not processed in the bottle, you have got to put the benzoate of soda in to keep it from spoiling? A. Yes, fermentation will start.

Court: That is the reason that you had to keep it in bulk because you thought you could not use the bottles?

Witness: I was prohibited from using the bottles.

Q. Mr. Powers, you have been asked a question as to whether in the former suits in the Court of Chancery to which reference has been made, you gave any specific testimony in respect to the trade mark and the Hazard name and the value of it, and you said you did not in the former suits? A. Yes, sir.

Q. I ask you why you didn't? A. It wasn't asked of me, and generally I did refer to it and there seemed to be no controversy over it; I had no controversy over it; it was in this bill of sale and passed to me under the property

Court: Your right wasn't disputed in the other suit?

Witness: No.

Q. Let me ask you whether in the other suits the trade mark, or value of it, or the business name,

was one of the things which was brought in controversy at all by the loss occasioned by the fire; that wasn't destroyed in the fire? A. No, sir, the registered name Shrewsbury and such like, that is simply with the rights, as a government or state right, and that didn't burn up.

Q. Was the purpose of the former suits to determine value of personal property that had been destroyed in the fire? A. Yes, sir.

Q. And this wasn't destroyed in the fire? A. Yes.

Court: Some of the former suits?

Mr. Wilson: I refer in my last question to the last four suits where testimony was taken, to wit, suit by E. C. Hazard & Company, Little Silver Sauce Company, Matthes and Elmer Hazard against Powers.

Re-cross examination by Mr. Sexton:

Q. When you were speaking of the goods manufactured by you with benzoate of soda in them you said they were placed in barrels and that they could not be used for the purpose of manufacturing the E. C. Hazard & Company tomato ketchup? A. Not if you kept it up to its purity.

Q. Is it not a fact that pure pulp can be manufactured and placed in cans hermetically sealed? A. Yes.

Q. And is it not a fact that you did put some of them up that way? A. Certainly.

Q. And that form of pulp was susceptible of being manufactured into the high grade ketchup, was it not? A. It was.

Q. It did not have benzoate of soda in it? A. It did not.

Q. How much ketchup had you put up in that form? A. That is impossible for me to answer.

Q. You answered that question before, sir, did you not?

Mr. Wilson: In the former suit?

Mr. Sexton: Yes, sir.

Court: When was this former suit tried?

Mr. Wilson: December, 1914; the commencement of testimony was on the seventeenth of December, 1914, and concluded the following June or July.

Q. You cannot tell us at this time? A. No.

Q. Was it a considerable amount or not? A. Yes, a considerable amount.

Court: Under what name was it marketed?

Witness: It wasn't marketed; I couldn't market it; the label stoppde me from marketing it.

Q. Didn't you market it under any name? A. No, all the time the thing would come up whether I could use the name.

Court: Had you it on hand at the time of the fire?

Witness: Yes, sir.

Q. I am speaking about the tins? A. I had had them filled.

Q. What were the sizes? A. Five gallons, three gallons, two gallons and gallons; every receptacle I could get hold of to put these goods in to keep them.

Q. How many gallons did you have, do you know? A. No.

Q. Can you give us any idea as to what you mean by a considerable amount? A. Enough to make up the difference in dollars and cents from the amount that I had in benzoate up to the amount of the claim of this loss.

Court: That would be approximately what?

Witness: $56,000.

Court: The difference?

Witness: Pretty near.

Q. What was the price per gallon that you placed in your proof of loss for this grade of ketchup? A. I am not quite sure; I cannot tell unless I went over the facts.

Q. Did you ever attempt to file any papers or record any transfer to you of the formulas or trade marks of E. C. Hazard & Company in your name anywhere? A. No, sir.

Q. Why not? Why didn't you attempt to have them registered or filed in your name? A. In the first place, I didn't think it was necessary, and afterward I thought I was prohibited from doing anything with it, after the notice of these suits.

Q. What was the occasion of your taking labels down to Mr. Wilson's office? A. After Mrs. Pow-

ers found them I thought they were good evidence in this case.

Q. Why did you take the class of labels referred to as Exhibit K and replica of Exhibit K to Mr. Wilson's office? A. They happened to be in with the others; they were mixed up with the others.

Q. Were they mixed up with the others when you took them there? A. Yes.

Q. Then Mr. Wilson didnt' do the mixing? A. He did. When I separated them, I said to his office, "These don't belong in there, and you don't want to include these in that lot of labels."

Q. When you took them to Mr. Wilson's office were they all in together? A. They were together.

Q. All these labels that I have in my hand in this envelope Exhibit D 2? A. Yes, and one additional.

Mr. Wilson: Still another which I haven't been able to find.

Q. Did I understand you yesterday in explaining this label to me (referring to Exhibit K) that you had received that particular label from Mrs. Hazard and that you had cut this part out and placed the Hazard Shrewsbury Mfg. Co. in it? A. No, not that particular label, but similar label which hasn't been changed.

Court: He said there were a great many of them and he took some of these and cut this out.

Q. When did your wife find these labels? A. Just here the other day when I was looking for some papers in a suit which I was having in New York.

Q. When was it? A. A week or two ago, I don't remember the exact date.

Q. How long ago? A. A few days before this suit began.

Q. What was the name of the suit that you were in in New York and in attendance upon? A. I was giving an accounting of my father's estate of which I am the executor.

Q. What was the day set for the time for you to give the accounting?

Mr. Wilson: We had been in the accounting for the last three or four weeks.

Q. What occasion was their connection with the case you speak of? A. I was looking for some checks or papers referring to conversations and happenings in my father's life with mine.

Q. Is there anything that brings to your mind or that you can call to your attention now, that you were going to do that day you found these labels, or Mrs. Powers found these labels? A. I cannot fix the time.

Court: She is here; can't she fix it?

Q. What was the name of the parties who were in this suit you were making up? A. It was an accounting in my father's estate; there was no suit about it; it was an accounting ordered by the Surrogate's Court in New York.

Q. Can you give us any more definite time than a week or ten days ago?

Court: He says not.

Q. Was it the last time you were in court on that matter in the settlement of that estate?

Witness: I was before a Referee and giving this account.

Court: Were you before the Referee on the day that Mrs. Powers found these labels?

Witness: No, but sometime after.

Q. How many days after? A. I should think about two or three weeks ago; I cannot say exactly. This account has been going on for some time. We have one each Monday.

Q. When were you last before the Referee in this accounting matter? A. About two weeks ago; it was suspended to allow me to attend this suit.

Q. And how long prior to that time was it that you found these labels, or Mrs. Powers found these labels and turned them over to you? A. I don't know; it was a few days prior to my coming to this hearing; not the last session, but previous to that.

Q. The last session was before the Referee on Monday two weeks ago? A. Yes.

Q. And the session before that was the Monday preceding? A. Yes.

Q. Had Mrs. Powers turned these papers over

to you at that time? A. I think it was in advance of that.

Q. Was the session before that? A. A session before or so she came down and said, "Won't these be of service in this other suit?"

Q. Have you any recollection at all about what time? A. No, sir, it is about three wesks ago.

Court: Don't waste any more time; he doesn't know. Were you present when she found them?

Witness: No, I was away, and when I came home she handed them to me.

Q. Where were these given to you? Shrewsbury, at your home? A. We have two houses up there.

Court: When you came home, she gave these to you among other papers?

Witness: Yes.

Q. Was it in the day time or night time? A. I think in the evening.

Q. When did you give them to Mr. Wilson? A. Just after Mrs. Powers found them.

Q. How long after? A. I cannot say.

Q. A month or week ago? A. Two or three weeks.

Q. Within three weeks you gave them to Mr. Wilson? A. Yes, and I was called down by him to prepare for this case.

Q. Can't you tell me how long prior to the time that you gave them to Mr. Wilson it was

that your wife found them? A. A few days, within a week or so.

Q. And they were put in this envelope at the time you found them? A. Mrs. Powers found them.

Q. They were in an old coat? A. I didn't say so. I said Mrs. Powers said they were in an old coat, and she had taken them from the coat and put them in this box.

Q. Do you know anything further than that where you placed them when Mrs. Hazard gave them to you, anything further than you have already stated? A. No.

Court: What did you do with them between the time you received them from Mrs. Hazard until Mrs. Powers found them, in addition to anything that you have already told us?

Witness: Nothing.

Q. Did you put those in your pocket at the time Mrs. Hazard gave them to you? A. I did.

Q. And had they been in the same coat, if you know, that they were afterwards found in at Shrewsbury?

Court: Do you know?

Witness: No.

Q. They were not there or do you not know? A. I don't know anything about it.

Q. When was the last time that you saw these

before your wife found them? A. Sometime after purchasing this factory, after taking possession of this factory; I used to take books and papers and go down to the house or go to the little house and write in the evenings, and Mrs. Powers and I used to talk over the business; I remember having them out with one of those formula books or a couple of them which I brought from the factory to the house to write up; then I had the formulas copied and they all got in together somehow or other. These labels got mixed in with the papers that I had of those formulas and books.

Q. They were mixed in with the formula books? A. They were in there when I was at the house writing up these different formulas; I copied all these recipes which I took out of the factory.

Q. Did your wife tell you that she found the formula books in the box with these labels? A. No, sir, not at all, the formula books stayed with me.

Q. Did you take these labels from the formula books—D 2? A. No, I took the formula books to New York to have copies made of them.

Court: He said he took them there while they were going over the formula books; he didn't say they were in the formula books.

FLOYD W. DAVIS, sworn for defendants.

Direct examination by Mr. Wilson:

Q. Where do you live? A. 211 Central Avenue, Leonia, New Jersey.

Q. What is your business? A. I am a mortgage salesman and title insurance solicitor.

Q. Where is your place of business? A. New York Titile & Mortgage Company, 135 Broadway.

Q. How long have you been with them? A. About ten years.

Q. Had you any knowledge of the purchase of this so-called Hazard property by Mr. Powers? A. In what respect, Mr. Wilson?

Q. The circumstances that led up to it or any of the negotiations? A. I wasn't present at any of the negotiations, no, sir, prior to the closing of the title.

Q. And had no conversation with Mrs. Hazard about the terms of the sale until the closing of the title? A. Until the closing of the title.

Q. Were you present when the title was closed? A. Yes, sir.

Q. And where was it cosed? A. The Fidelity Trust Company office at Newark, New Jersey.

Q. And do you recall generally what the date of it was? A. That is hard for me to say; it is some years ago.

Mr. Wilson: I don't suppose that is important.

Q. Who was present at the time? A. Mr.

Powers and his wife, Mrs. Hazard, Bowden Hazard, Mr. Joyce, Mr. Dickensheets and myself.

Q. How did you happen to be present? A. I was advising Mr. Powers in connection with it.

Q. How advising him? A. Sort of looking over the title examination and the closing of the title.

Q. And at this meeting of the Fidelity did the question come up as to what property she proposed to sell to Mr. Powers? A. Yes, sir.

Q. How did that question arise; what was it gave discussion to it? A. When we received the report of the title of the Fidelity Company of Newark there were either one or two bills of sale for certain personal property.

Q. That was before the night you closed or the day you closed? A. We received the report, yes, sir, before the night we closed, and the bill of sale, as I recollect it, ran to a man named Matthes, and I asked them how they proposed to convey the personal property, inasmuch as she was not the record owner of the property.

Q. You made that inquiry at the Fidelity? A. At the Fidelity.

Q. And what did she reply to that? A. She replied by saying that the goods were at all times hers and that she had made the bill of sale to Matthes for protection for herself against her creditors; that at all times she owned the goods in question that she agreed to convey to Mr. Powers.

Q. What did Powers say; what attitude did he assume in respect to the matter, as to dividing the bargain in two, or doing what not? A. I

suggested that we close the real estate contract and leave the personal property contract go until she could get possession of the goods; that is, have the bill of sale reassigned to her.

Q. When you speak of the real property contract, are you referring to Exhibit D 1 which includes a description of the real estate, together with these interlined words, "As to all personal property," &c.; you are referring to that contract? A. Yes, sir.

Q. And you suggested the carrying out of D 1 and letting this other stuff that she held as security of the E. C. Hazard Company go for the present? A. Yes.

Q. What response did she make to that? A. She absolutely refused to consent to such an agreement; she said that both of the contracts must close simultaneously or not at all.

Q. What, if anything, did she say as to her ability and readiness to deliver possession to him of the property that she held as security from the E. C. Hazard Company? A. In response to my inquiry as to how she expected to deliver title to the personal property, she said that she could control her son and he would do just exactly as she told him to. I then called her attention to the fact that it was not her son that held the bill of sale for the goods, that it was Matthes. She said that she could control Mr. Matthes, too. I said, "How are you going to make your son give you—reassign that bill of sale to you?" She said, "I will take him by the throat and choke him until he does do it."

Q. What did she say as to when she would deliver to him possession of that personal property held as security from the E. C. Hazard Company, if he paid his money and closed the matter that night; when did she say she would give him possession? A. The next morning.

Q. What, if anything, did she say as to the right of anybody to occupy the premises? A. She said that nobody had a right to occupy the premises, that she was the sole owner, and that he was occupying those premises merely because she let him stay there; he had absolutly no right in the premises whatsoever.

Court: Whom did you understand her to mean by "he" was occupying it?

Witness: Elmer Hazard and Mr. Matthes.

Q. Do you recall that she made an affidavit to that effect, too? A. Yes.

Court: That day?

Witness: At the closing of title.

Q. That night? A. That night.

Cross-examination by Mr. Sexton:

Q. Did you see Mrs. Hazard sign this affidavit that night? A. Yes.

Q. Who took the affidavit? A. Mr. Dickensheets, the closer of the title.

Q. And who dictated the affidavit? A. That I cannot recall, sir.

Mr. Sexton: Have you that affidavit, Mr. Wilson?

Mr. Wilson: No. The affidavit is undoubtedly attached to their certificate of closing, which is probably in Newark.

Mr. Sexton: No, it is not; it is right here.

Mr. Wilson: We have one, made not on that day; it was made on a previous date, but that one we have not got; we did have it at the former trial. Have you got it there?

Mr. Sexton: I have the original closing papers here.

Witness: It is an affidavit of possession.

Q. Are you sure that Mrs. Hazard made an affidavit that night? A. Yes.

Court: Who took possession of it, do you know?

Witness: It went with the title closing.

Mr. Wilson: Mrs. Hazard swore that she made such an affidavit at the former trial.

Court: Did Mr. Dickensheets take it?

Witness: Yes, I believe Mr. Dickensheets has it.

Q. Did you know that Mrs. Hazard made an affidavit on the nineteenth of March, a few days

later, as to the possession of this property? A. I cannot recall that.

Q. Is that the affidavit you refer to (witness shown affidavit)? A. No, the affidavit that I refer to was made the night of the closing of the title, and it is part of the closing of the title, the affidavit was.

Q. Do you know why that affidavit was made, Mr. Davis? A. It is always made; it is customary in connection with the closing of a title, to take an affidavit of possession.

Q. Are you testifying because you think it is the custom, or because you actually saw such an affidavit made? A. Yes, I verily believe that I saw an affidavit.

Q. What you mean is the ordinary affidavit of title? A. Yes.

Court: And possession?

Witness: Yes, an affidavit of title with reference to leases and encumbrances and being a citizen and all those sort of things.

Q. I show you, Mr. Davis, a paper which I have just received by messenger from the Fidelity Trust Company, and show you a closing sheet; on the reverse is a blank for an affidavit of title and possession; is that the affidavit you refer to? A. Oh, no, this was a big long affidavit.

Q. See if you find it in there (witness shown package of papers); that is the affidavit of possession which is ordinarily taken on a closing of title? A. Yes.

Court: You looked through it; it is not there?

Mr. Sexton: I will tell you it is not there.

Witness: I don't, sir.

Q. Are you a relative of Mr. Powers? A. Yes.

Q. What relation are you? A. Cousin.

Q. You took one of these mortgages, did you not? A. Yes.

Q. A mortgage was taken in your name? A. Yes.

Q.The first mortgage for $30,000? A. Yes.

Q. Afterwards assigned by you to Mrs. Greene? A. Yes.

Q. At that time did you advance $30,000 for that mortgage? A. No.

Q. Did you pay any money for it? A. No.

Q. You merely held that for Mr. Powers? A. I can explain.

Q. Answer the question; you held that simply for Mr. Powers? A. Yes.

Q. You had no pecuniary interest in this property? A. Absolutely none, no, sir.

Court: Have you any interest in it now?

Witness: No, sir.

Q. You subsequently assigned it to Mrs. Greene? A. Yes.

Q. Were you present at the time that was assigned? A. No, sir.

Q. No money passed to you at that time? A.

Yes, I believe the full consideration was passed to me at that time.

Q. You were not present? A. No.

Q. How did you get the full consideration? A. It was offered to me by Mr. Powers and then I think I endorsed it over.

Q. Where was it taken to? A. To my home at 352 Halsey Street, Brooklyn.

Q. How much was the amount that he offered to you? A. I believe it was the full amount.

Q. How much? A. I cannot recall just now.

Q. How much was the mortgage? A. $30,000.

Q. And was it $30,000 that was brought to you? A. I believe so, yes, sir.

Q. Are you sure that is the amount? A. It it five years; it is a long while ago.

Q. What is your best recollection? A. It was $30,000; I have already answered to the best of my knowledge.

Q. As a matter of fact do you know that the mortgage was discounted? A. No, sir, I do not.

Q. Don't you know that $4,000 of that sum was left with the Fidelity Company? A. I believe there was $4,000 left to secure a note or a judgment or something like that.

Mr. Rosenberg: We haven't objected; what do you thing is the materiality of it?

Mr. Sexton: We are charged with fraud, and we say we were not committing fraud. On the other hand, Mr. Powers was trying to obtain possession of this property——

Court: I will allow it in to show what interest, if any, this witness has had in the transaction; that is the only way I see that it is competent yet?

Q. When you were at the Fidelity Company closing the title you were there for some time? A. Yes.

Q. How long were you there? A. My best recollection is we got there about half past five and the matter lasted until the next morning.

Q. Were you there all night? A. Pretty near.

Q. Were you there until two o'clock in the morning or one o'clock or twelve? A. Yes.

Q. And most of that time you were talking about the personal property, were you not? A. It was a sort of fifty-fifty.

Q. What do you mean by that? A. I mean the time was divided; the title was so absoluely twisted up with judgments and writs and one thing and another that it was like a Philadelphia law suit to try to untangle the situation.

Q. How was it twisted up by any writs? A. There was a writ of attachment on the title. The property was about to be sold at a Sheriff's sale.

Q. And that was straightened out by an agreement entered into at that time? A. I believe so

Q. And there was some judgments? A. Yes, I believe so.

Q. And that Mr. Powers had taken an assignment of those? A. Yes.

Q. So there wasn't any trouble about those? A. No, sir.

Q. And the title otherwise was clear? A. There was a question at the time whether or not Mrs. Hazard was a bankrupt and the Fidelity Company was raising a question as to whether or not it would care to insure the title, because of the fact that they were afraid she was a bankrupt; all those things had to be considered.

Q. How long did that take? A. We went into separate rooms and had conferences on that very question that lasted for some time.

Q. Who was present at the Fidelity Company at the conference? A. Mr. Dickensheets.

Q. Mr. Dickensheets representing whom? A. The Fidelity.

Q. And representing Mr. Powers? A. Yes.

Q. Mr. Powers had employed you? A. Yes.

Q. Who was representing Mrs. Hazard? A. Mr. Joyce was representing Mrs. Hazard.

Q. The conferences in reference to bankruptcy, if any, was Mrs. Hazard present? A. No.

Q. She knew nothing about the bankruptcy talk, did she? A. No.

Q. So that what bankruptcy talk there was, was out of her presence? A. Yes.

Q. They did insure eventually, did they not? A. I believe so.

Q. Did you see this note signed for $11,400, which reads,

"New York, March 13, 1913.

Eighteen months after date I promise to pay to the order of Florence A. Hazard $11,400 at 20 Vesey Street, Borough of Manhattan. Value re-

ceived. (Signed) Harry L. Powers." Did you see Mr. Powers give Mrs. Hazard such a note? Did you see anyone write on the back of that note? A. Yes.

Q. Was this written on the back of the note: "This instrument shall not be considered as an evidence of indebtedness or a chose in action——

Mr. Wilson: We agreed and stipulated that that was on the back of the note.

Q. "This instrument shall not be considered as an evidence of indebtedness or a chose in action accruing to the payee or her assigns until the title to goods in payment for which this note is given is legally vested in the maker or his assigns. When such title is vested by bill of sale or assignment thereof, then a new note of like tenor and effect, bearing the same date, is to be executed by the maker of this note, or his heirs or assigns. (Signed) Harry L. Powers." A. Yes.

Q. With the writing on the back of it? A. Yes.

Q. There had been considerable talk about the closing of the title for the property comprised in the two agreements before that? A. Yes, sir.

Q. What did Mr. Powers say, if anything, in reference to closing the real estate transaction without the personal transaction? A. Mr. Powers was agreeable to close the real estate transaction without the personal property.

Q. And he actually did? A. No, he never did.

Q. The real estate transaction? A. He closed the real estate; he closed both of them.

Q. What do you mean by closing both the contracts? A. Because one was personal and the other was real; he gave a note and purchased the personal property and gave his money and purchased the real property.

Q. And that note was the closing of the personal property contract? A. Yes.

Q. At that time it was left so that Mrs. Hazard would deliver under the arrangement they had made, the personal property, and then he would give her this new note for eighteen months? A. I believe so, yes, sir.

Q. Was there any talk between Mr. Powers and Mrs. Hazard as to the personal property included in the contract as being the same as was included in the bills of sale? A. Mrs. Hazard represented that she owned all the property in that factory with the possible exception of some chemistry stuff—or laboratory—some personal property that Dr. Hazard had. She represented that she owned all the personal property contained in the property, with the exception of some parts of a laboratory that she said her son owned, that Mr. Hazard had given to her son.

Q. You saw the statement of closing title when Mr. Powers received it, Mr. Davis? A. Yes.

Q. And that statement had upon it the fact that the bills of sale had been recorded? A. Yes.

Q. When was it that you received it? A. About a week prior to the closing of the title.

Q. Who brought it to you? A. It was sent to me from the Fidelity Trust Company of Newark.

Q. What did you do with it? A. I showed it to Mr. Powers.

Q. Did you show it to anyone else? A. I cannot recall that I did.

Q. Do you remember going to Mr. Joyce's office and showing it to him? A. That is right; yes, I did.

Q. Do you know whether it was any longer than a week prior to the time that you received it? A. I think not; the report was late in arriving because of the complications that arose in the title examination. I think it was about a week, or maybe less than a week.

Q. So that when you went over to close that title you knew that the bills of sale were on record? A. Yes, sir.

Q. And you had known it for a week? A. Yes.

Q. And you had communicated that fact to Mr. Powers? A. Yes.

Q. Had you ever been down to the factory before the title was closed? A. No, sir, I never wa sthere; I have seen the factory, but I don't think I was ever in it before the title was closed.

Q. You don't know anything of the contents of the factory prior to the time of closing? A. No, sir.

Q. After this strenuous closing all parties were on good terms? A. There was some bitter feeling at the closing, but they all went out to supper together and they sort of made up.

Q. They were on good terms at that time?

Court: He said so.

A. They had a row and made up again.

Q. Who was the hasty one on that occasion?

A. Mr. Powers.

Mr. Wilson: How is that relevant?

Q. Do you know whether or not all these bill of sale goods were in the factory at the time the title was closed? A. It was represented to be in the factory.

Court: Represented by whom?

Witness: Represented by Mrs. Hazard to be in the factory.

Q. What else besides the laboratory stuff was it represented was in the factory? A. I don't get you.

Q. What else besides the bill of sale stuff, laboratory stuff, was represented as being in the factory? A. All the personal property in the factory was supposed to be covered by a certain note or a bill of sale that she got title to by reason of the fact——

Court: You don't understand his question. He asks you what else, if anything, besides the laboratory property was stated to be in the factory at the time of the clothing; in addition to the matters in the bill of sale and the laboratory stuff, what else, if anything, was stated to be in the factory at that time; if anything was stated to be?

Witness: I don't get the question yet.

Q. (Last question repeated). A. There was nothing said; it was supposed to cover everything.

Re-direct examination by Mr. Wilson:

Q. You spoke of the real estate transaction; I have already directed your attention to Exhibit D ; that is the paper that provided for the payment of $60,000? A. Yes, sir.

Q. And described lands that he was to take, and interlined the words "All personal property not covered by an assignment as security by E. C. Hazard & Company to the party of the first part is included in this sale"; in other words, did you understand at that time that there was personal property considered which she claimed to hold as security from the Hazard Company, and also other personal property that she undertook and agreed to pass by this paper that I have just directed your attention to, which passed the land for $60,000 and all other personal property except what she held as security; did you understand that? A. I did.

Court: I think he should say what was said.

Q. What was said about it? A. She represented——

Court: What did she say?

Witness: She said that she had acquired certain personal property, machinery and fixtures, pulleys and lathings and all this kind of things from her husband.

Q. And she was going to give that, was she? A. Absolutely.

Q. And under what paper was she going to give that? A. Under the real estate contract.

Q. What other kind of property was she going to give, if anything, and what did she say about it? A. She was giving under the personal property certain personal property that she got title to through endorsing notes of the E. C. Hazard & Co.

Q. Was that property, as the parties indicated that night, referred to in Exhibit D 3? A. Yes, sir, the personal property contract, I know it; that is the one.

Q. You have been asked if you took this first mortgage which was executed, in your name or executed to your name, and you said yes; how did that happen?

Court: Do you think it is material to go into it? I don't. I allowed Mr. Sexton to go into it, to develop whether he had any interest, if he could. I don't think anything has been developed. I allowed him to testify, to show if he had any interest in the transaction.

Re-cross examination by Mr. Sexton:

Q. Did you know of your own knowledge or did you hear either of the parties say anything

about any personal property in the factory, excepting that covered by the bill of sale? A. Mrs. Hazard told Mr. Powers that he was getting under the real estate contract all the personal property that she had gotten from her husband through his death, and she even said how she got title to the property, by reason of the fact that she inherited it from her husband.

Q. Did she enumerate any of that class of personal property? A. Excepting so far as I know in a general way, the machinery and the lathes and pulleys and belting and boilers, and also the trade marks, the good will, labels and all this sort of things.

Q. Did you hear her talk about trade marks at the Fidelity closing? A. Yes.

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

(April 23rd, 1918.)

CHARLES G. FERRIS, sworn for defendants.

Direct examination by Mr. Rosenberg:

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

Q. What is your business? A. Manufacturers' agent.

Q. What particular specialties? A. Food products.

Q. How long have you been a manufacturers' agent of food products? A. I have been a manufacturers' agent of food products for a little over seven years.

Q. What was your line of business before that? A. I was in the wholesale and retail grocery business.

Q. How many years back does that extend? A. I started in that business in 1886.

Q. Then, as I understand it, you were in the wholesale and retail grocery business from 1886 until about seven years ago? A. About seven years ago, yes, sir.

Q. That will bring it to about the beginning of the year 1911? A. Yes, sir.

Q. And since that time you have been manufacturers' agent in food products? A. Yes.

Q. You have during the whole time since 1886 been familiar with various kinds of food products? A. Yes, sir.

Q. Have you known the Hazard products? A. Yes, sir.

Q. The Shrewsbury Ketchup? A. Yes, sir.

Q. The burnt onion sauce and the Mayonnaise? A. Yes.

Q. For how many years have you known those? A. I have been handling—to give you a positive answer one way yes or no, I have been handling grocers' goods since 1886 up to the time that I came to New York, which was the beginning of 1911.

Q. Where were you in business up to that time? A. At Memphis, Tennessee.

Q. Wholesale and retail grocer? A. Yes.

Q. What was the character and reputation of the Hazard products?

Mr. Sexton: I object to this line of testimony on the ground that the character of

the goods, what it may have been in the past, or if I might anticipate, any value that the witness places upon any trade mark or anything of that nature, has nothing to do with the loss or damage sustained, if any, by the defendants in this action.

Court: I will admit the evidence.

A. Hazard's products were considered the high class goods; in other words, I would say that they were considered as high a class as any goods that we could buy in that particular line.

Q. And that was the reputation during the whole time from 1886 down to the time that you came to New York in 1911 and quit handling that class of goods? A. Yes.

Q. From 1911 on you did not handle, as I understand it, this class of goods, tomato-ketchup? A. No, sir, I did not.

Q. Do you remember the passage of the Pure Food Law of the United States? A. Yes, sir.

Q. That was about the year 1905? A. I think it was.

Mr. Sexton: When was it?

Mr. Wilson: The Court will take judicial notice of that date.

Q. Did the passage of the Pure Food Law in any way affect the standing of the Hazard goods? A. Not to my knowledge.

Q. Did it make them at all more valuable in connection with the products of others?

Mr. Sexton: Objected to, because the witness has already answered and said "Not to my knowledge."

Court: He is directing his attention specifically to the matter of the value in comparison with other goods on the market of the same kind.

A. In comparison with other goods, they were considered the high class of goods; when I say high class, I mean as high a class as any goods manufactured.

Q. And they were one of the goods that were not affected by the Pure Food Law?

Court: In value.

A. Yes.

Q. Then, as I understand you, these goods were not affected in value, while the goods of other competitors were affected in value, or some of them? A. Some of them were.

Q. And why was that? A. The only reason that I can answer that is, that the quality of the goods was especially bad.

Q. What can you say as affecting that question as to the presence or absence of artificial preservatives in the product? A. In regard to the artificial preservatives my recollection is that E. C. Hazard Shrewsbury Tomatoketchup had no preservative in it.

Q. And the products of the other manufacturers did in some cases? A. Some of them, yes, sir.

Q. With the result—what was the result? A. The result was that they either had to discontinue to market their goods—compound goods or adulterated goods, as you might call it.

Q. From your knowledge of the Hazard products, your knowledge of the conditions and the knowledge of the business generally, can you give us an idea what the trade mark of the Hazard products that you are familiar with was worth at the time you ceased handling them? A. Not since the time that I ceased handling it.

Q. At the time, I say, which is about the beginning of the year 1911? A. Yes.

Mr. Sexton: That is objected to as too remote.

Court: It may be. I expect it to be followed down.

Mr. Wilson: We will follow it with other testimony.

Q. What is your idea? A. In my judgment, the trade mark of E. C. Hazard & Company at the time that I quit handling the goods, I think a very fair estimate would be about $75,000.

Q. What elements enter into that estimate? A. I base my opinion on my experience, being associated with manufacturers and wholesalers who were establishing a brand of goods, a trade mark, you might say.

Q. And then what elements of value enter into $75,000? A. The advertising, the expense of getting the goods on the market and the extra cost of getting an unknown brand established. If you

will allow me, I can go a little bit further——

Q. Go ahead. A. And will say that I have had the experience in the last three years of establishing a new brand of goods on the New York market, and it has been a very expensive one, and while we have spent a good many thousands of dollars, we consider it worth all that we have spent from the fact that we have got the goods on the market.

Mr. Sexton: I move to strike it out.

Court: Why should it go out?

Mr. Sexton: It is vague and uncertain; they spent a good many thousand dollars. It is something that has happened very recently, something which is within the control of this particular individual. I don't know what the class of goods is; he hasn't stated whether it is the same grade of goods or same class of goods that we are now dealing with.

Court: We have a peculiar situation presented here. Assuming for the moment that there is any allowance to be made for trade marks and so on, just how to determine the value of such an article must be a very difficult thing under the best circumstances and conditions. The information must be obtained from one familiar with market conditions, and the difficulty and expense of estabilshing a reputation for an article, and this gentleman has mentioned merely the incident of his experience in the past three years,

in trying to establish something at the expense of several thousand dollars, to illustrate the ground on which he places the value of $75,000 on the Hazard property. Is that correct?

Witness: That is part of my reason.

Court: I think the answer should stand. You may state, if you have anything more to say, what other elements, as Mr. Rosenberg has asked you, enter into your mind in determining the value of $75,000. I want all the information I can get on that branch of it.

Witness: I will give anything I can conscientiously.

Court: Why would you say it was worth $75,000 instead of $25,000?

Witness: The reason I say $75,000, the business that E. C. Hazard & Company had, that is, the distribution of his goods scattered over the United States, was such that I think that any goods, trade mark, that is established in the United States to the extent that E. C. Hazard & Company's goods were, are worth that much money to anyone, that is, the goods to distribute to these different sections of the country.

Q. Not only the volume of the trade, but the extent of the territory the trade covered? A. Yes.

Q. And you are also considering the length of time this manufacture had been established? A. This manufacture had been on the market.

Court: It appears in the proof in this case that Mr. Hazard died about 1905. So far as you know, did the reputation of the goods continue for the six years that you remained in business up to 1911, after his death?

Witness: Yes, as far as I know.

Court: And the reputation of the goods within your range of observation and knowledge was as good as when he was living?

Witness: Yes.

Court: Up to 1911?

Witness: Yes, up to the time that I quit handling the goods, they maintained the same character and quality that they did at any time during the period I did handle them.

Court: And had the same reputation in the trade and market that they had at any other time?

Witness: Yes.

Court: And you handled them prior to 1905?

Witness: Yes.

Q. You handled them continuously from 1886 down to 1911? A. Yes.

Q. You were at Memphis, Tennessee? A. Yes.

Q. Memphis, Tennessee, is a distributing point for a considerable section of the southwest? A. Yes.

Q. Was there a large business in the Hazard products in that part of the country? A. For a high class goods it had a good trade.

Court: Were there many other manufacturers in number turning out goods of the same grade and quality as Hazard and competing with it?

Witness: No, up to the time of 1905, there was not so very many that put up pure goods.

Court: Then when the law went into effect——

Witness: Yes, then there was a great many of them and they had to put up pure goods, or brand their goods with the compound or preservative.

Q. There were some concerns that did put the brand on, showing that there was a preservative in them? A. Yes, after that time, to my knowledge.

Cross-examination by Mr. Sexton:

Q. Did you handle the goods of E. C. Hazard & Company in 1908? A. Yes, sir.

Q. Handle them to any considerable extent? A. Not to a great extent, no, sir.

Q. Did you handle them in 1909? A. Yes.

Q. To what extent did you handle the E. C. Hazard goods in 1908? A. It would be a hard matter to say in dollars and cents; I was in the retail grocery business at that time, and that is one of the reasons I handled them.

Q. During the year how many cases would you use? A. I cannot tell you.

Q. You must have some idea; you of course want to be fair? A. Absolutely.

Q. You must know whether you used ten or a thousand? A. I know I didn't use a thousand; I may have used fifteen, twenty-five or fifty cases, but right now I cannot tell you how many cases.

Q. You are not sure whether you used ten or fifty? A. I cannot tell you positively.

Q. Would it be less than ten that you used? A. No, sir, not less than ten; it would be more than ten, I think.

Q. During the year 1908 do you know how much you used? A. No, sir, I cannot mention in any one year how much we handled, because it went into general line of business; a general line of goods we handled.

Q. How many bottles are in a case, Mr. Ferris? A. Twenty-four of the pint bottles, it used to be.

Q. You say you were in the retail grocery business? A. Retail and wholesale.

Q. When were you in the wholesale business? A. From 1886 up to 1890 I was in the wholesale and retail combined; from 1890 up to 1902 or 1901 I was in the wholesale business exclusively, and then from 1901 up to the latter part of 1910 I was in the retail business exclusively.

Q. Are you still in the wholesale business? A. I am manufacturers' agent of foods.

Q. During the time from 1901 to 1910, while you were in the retail business, how much would you use of the E. C. Hazard & Company's goods, say per year? A. That would be a hard thing for me to say.

Court: Give us an average.

Witness: I would say I would handle ketchup twenty-five cases, I don't know, it might be half of that, it might be double that; I cannot say.

Q. But on an average? A. I suppose I handled twenty-five to fifty cases of ketchup; the onion sauce, that was a small sale; I handled a few cases of that.

Q. The onion sauce, you handled less of that than the ketchup? A. Yes.

Q. Did you know Mr. Edward Hazard in his lifetime? A. No, sir.

Q. While you were a wholesaler did you use more or less of E. C. Hazard & Company's goods? A. I cannot tell you one that handled more than I did in the retail business, but the quantities I cannot say.

Court: The valuation that you place—do you attach that valuation to more than one output of the Hazard factory, such as the ketchup alone or to the onion sauce and all other Hazard products combined?

Witness: I would put that on the valuation of his entire products that he sold.

Court: The combined products bearing his name would carry that valuation?

Witness: That is the idea. When it has E. C. Hazard's name on it, I place the valuation on the fact of it having E. C. Hazard's name on it.

Court: Regardless of the article itself?

Witness: Outside of the article itself; not one particular article, or two or more, but the combination of the entire productions.

Q. Did you know that E. C. Hazard & Company went into bankruptcy in 1907? A. I did not.

Q. Would that fact have any bearing upon your estimate of the $75,000, assuming it to be so? A. I will say that it would have no effect upon my opinion up to the time that they did go into bankruptcy; whatever happened after that time would be a different proposition.

Court: Directing your attention to the period to which your attention was directed to by counsel for Mr. Powers, in the year 1911, you place a valuation of $75,000. Assuming that the bankruptcy occurred in 1907, what would you say the valuation was in 1911, if any less than the sum you have named?

Witness: As far as my knowledge goes, it was worth as much in 1911 as it was in the earlier years, from the simple fact that I didn't know anything about the bankruptcy proceedings; I know the general demand for the goods was about the same in my section of the county all along as it was before that time.

Court: So that if the bankruptcy occurred, it didn't make any difference in your opinion?

Witness: Not in my section; it may have made a difference in other sections, but in my section it would not.

Court: Would it make any difference in the estimate of value?

Witness: I don't think it would; that would be my judgment.

Court: Assuming then, as Mr. Sexton has directed your attention, the bankruptcy occurred in 1907, what would you say the value of those trade names and trade marks were in 1911?

Witness: I will answer that by asking was their business continued after the bankruptcy proceedings?

Mr. Rosenberg: Yes.

Mr. Sexton: It was continued by Elmer Hazard, but on nowhere the same scale.

Witness: With the same name?

Mr. Sexton: Yes.

Witness: I don't think it would have made any difference in the value, if it was continued in the same line and in the same proportion as it was before.

Court: Under the same name?

Witness: Yes.

Q. When you say the same proportion, do you mean the same volume of business? A. Yes.

Q. Would the fact that the concern was a going concern have anything to do with your fixing a valuation upon the trade mark? A. Yes, sir.

Q. And if in the year 1913, namely, March 13, 1913, E. C. Hazard & Company went out of

business, what would you say then that the trade mark was worth?

Mr. Rosenberg: I object; there is no foundation for that. There is no evidence that they were ever out of business, and his direct testimony goes to conditions existing in this line of business up to the first day of January, 1911.

Court: It goes farther than that; it goes into his ability to express an opinion as to valuations at any time, and I will allow it.

A. How long were they out of business?

Q. Assuming, Mr. Ferris, that after the bankruptcy proceedings in 1907 the business of E. C. Hazard & Company had gradually diminished, that they had lost money each year, and that on March 13, 1913, they were actually out of business. A. That is six years afterwards.

Q. Now, what would you say the value of the trade mark was at that time, namely, March 13, 1913? A. In my opinion that would be decreasing the value of the trade mark very much if it was out of business for seven years.

Court: And what sum would you name then as the possible value or probable value of the trade mark and names at that time?

Witness: That is a hard question to answer.

Court: The Court is going to be called upon to answer it.

Mr. Rosenberg: I object; there is no foundation for this question. There are no facts which support the question at all. May I have your ruling on it?

Court: As I have stated, I am allowing the question on this line of examination, to test the witness's ability to testify as to value at any time as he has assumed to.

Witness: I would judge that it would be from $40,000 to $50,000, being out of business seven years.

Q. That would still be its value? A. I would think so, provided it was renewed.

Court: Provided business was resumed?

Witness: Yes.

Q. Provided it was resumed shortly thereafter? A. Yes.

Q. Assuming that business was not resumed afterwards, what would you say? A. Up to the present time?

Court: Is that a fact, is that going to be in the case?

Q. Assuming that the business was not continued until some months thereafter, after the date of March 13, 1913? A. I think a few months would not make any difference, in my opinion.

Q. Would the fact of a man conducting the business who had no knowledge of the business have any bearing, as far as you are concerned,

as to fixing the value of the trade mark which you are testifying about?

Mr. Rosenberg: I object to that.

Court: Is that going to be in the case?

Mr. Sexton: Yes, sir; we have already had a witness who is now in the carpet business.

Court: I will give you the widest latitude, but I want the witness to testify on facts which you say you are going to establish in the case; I have assumed that all you have embodied in your former questions you are going to seek to establish. I don't know whether you expect to attempt to prove the quality and value because of the ignorance or intention or purpose of Mr. Powers or someone else. If you do, then you should in fairness give Mr. Ferris all the facts on which you base that statement, so he can form an opinion.

Mr. Sexton: I withdraw the question.

Q. You said $40,000 or $50,000; what do you base that valuation upon? A. That would be the reputation of the standard brands that were manufactured by those people—the value of them after being manufactured, as long as they had been, that is, to my knowledge, from 1886 up to that time; how much longer, I don't know.

Court: If I grasp the effect of your testimony, an article having once estab-

lished a good reputation, it would take some time for it to lose it in the market?

Witness: Yes; that is, I mean if the quality it maintained all the way through, and the quality in the first place is A-1, and I mean the best of the kind, or as good as any of the kind.

Q. You are testifying from your observation simply in Memphis, Tennessee? A. That is where I was in business, yes, sir.

Q. Your knowledge is confined to that locality? A. Yes, sir.

Q. Do you know anything of the quality of E. C. Hazard & Company's goods during the years you have testified to, whether it was the same? A. As far as my knowledge goes, it was, and I saw no difference in it; I had no complaints of it, that is, during the time that I was handling the goods.

Q. What would you say the value of the E. C. Hazard & Co.'s pepper preparation was? A. I don't know what would be the value of that, because I have never handled any of that goods.

Q. You testimony has included that? A. Yes, for the brand.

Q. Let me ask about the quality of the Pepper, the Shrewsbury as applied to peppers? A. As far as peppers are concerned, I don't know the value of the peppers.

You don't know anything about that? A. No, I have never handled it.

Q. How about the Paprika? A. That was all right.

Q. What could you say then the value of the trade mark in reference to the Paprika would be? A. I cannot tell you what any one article would be; it wouldn't be as much on Paprika as other manufactured goods, because he didn't manufacture Paprika.

Q. He did not? A. No, sir, he did not manufacture Paprika; that is an imported article.

Q. I am mistaken about that and you are right. You are sure that he didn't manufacture Paprika? A. I never heard of any Paprika being manufactured in this country.

Q. Or put out under the name of Hazard Paprika? A. If he puts the imported goods under his own brand, and he maintained the quality of those goods as the rest of his goods, they would maintain the same value to the entire amount, you understand, the value of the entire amount of the trade mark, as the quantity he sells of that in proportion, for instance, to his ketchup.

Q. How many brands do you know of that E. C. Hazard & Company maufactured? A. There was the ketchup, mayonnaise, Worcestershire sauce, and the Onion Sauce, and two or three others outside of Tomatoes.

Q. When you spoke of Hazard goods, Mr. Ferris, you had in mind a certain quality of goods? A. Yes.

Q. It is so that if the quality of the goods depreciated, your values would depreciate, is that so? A. If the quality of the goods should depreciate, the value of the brand would depreciate.

Q. Do you know from 1907 whether or not the

quality of the goods did depreciate? A. I do not; the only thing I know is this: that as long as I was handling the goods, they were supposed to be and gave the same satisfaction that they had previous to that time.

Court: Wouldn't the value of the trade mark and the trade names depend to a certain extent upon the volume of business done and the profit made therefrom?

Witness: Yes, sir.

Court: Have you any knowledge as to the volume of business done by the Hazard people in any one year or the profit made therefrom on any or all of those articles?

Witness: No, sir, I have not.

Q. Assuming that E. C. Hazard & Company's business was run at a loss for the past nineteen years, would that have any bearing upon the figures that you have placed upon this trade mark?

Mr. Rosenberg: I object; no foundation has been laid for the question.

Court: Do you expect to show it?

Mr. Sexton: Yes.

Court: I will allow it.

A. If they had been running at a loss for nineteen years, I would imagine that that would depreciate the value of the trade mark, unless it has been mismanaged and run by persons that could not make a success of it as the predecessors

had; that would be my judgment in the matter, if it had been run by someone that was not capable of running the business, and the goods had depreciated, naturally the trade mark would depreciate in value.

Q. Assuming that Edward Hazard and all the old members of the original firm har either died or retired, and that goods had been returned from various sources, of which you, of course, knew nothing about, because they were not up to the standard of quality, would that have any bearing upon the question of value as to these trade marks?

Mr. Sexton: Those matters, I might state, we intend to connect up.

Court: You intend to prove the situation embodied in your question?

Mr. Rosenberg: For the purpose of saving our rights, I interpose the same objection as before.

Court: Same ruling.

A. That would depend on the goods being returned and as to what quantities.

Court: The extent of the returned goods?

Witness: The extent of the returned goods; in other words, if there were fifty per cent, or sixty or seventy-five per cent of the goods returned, it would have some bearing on the value.

Court: It seems to me that must be so. If one grade of goods came back, which

might be defective, some one day's production, and the rest of the year might be all right, I think that we all agree on that.

Q. Assuming that the total sales, Mr. Ferris, of the E. C. Hazard & Company's specialties from 1909 to March 13, 1913, did not exceed $20,000, what would you say the value of the trade mark was in 1913?

Mr. Rosenberg: I object to that as it is not very clear what Mr. Sexton means by the word "specialties."

Court: You mean the articles we have been referring to as covered by the labels and trade marks and trade names?

Mr. Sexton: The Shrewsbury names.

Mr. Rosenberg: Are you referring to the articles that we have all been referring to throughout the hearing, and the labels, the trade marks and trade names, everything thereon, as being the specialties?

Mr. Sexton: Yes, everything that they manufacture.

Court: You mean everything they manufacture?

Mr. Sexton: No, only those things that were put up under Hazard and Shrewsbury labels. (Labels marked Exhibits A to R, inclusive, in Exhibit D 2.)

Q. Assuming that the total sales of E. C. Hazard & Company for the year 1909 to March 13, 1913, for Shrewsbury Tomato-Chutney, referring

to Exhibit M; for Shewsbury Mayonnaise, referring to Exhibit J; for Shrewsbury Chili Sauce, referring to Exhibit E; for Louisiana Pepper Sauce, Exhibit H; for Liquid Paprika, Exhibit I; for Burnt Onion Sauce, Exhibit Q; and for Shrewsbury Tomatoketchup, Exhibit A, amounted to $20,000; what would you say the trade mark was worth in March, 1913? A. That would depend on whether the deterioration of the goods was the cause of that short sale, or whether they did not have the goods manufactured to make the short sale, or whether there was no effort to sell the goods; not so much, no effort to sell the goods, as it was that they didn't have the product to sell, because in that case it would not affect the value of the trade mark as much as if they had deteriorated in quality, or that it had been mismanaged in manufacturing the goods. But the fact of not being able to secure the goods and supply the demand, that would affect the value very little; but if it is from the fact that they had quit business or the goods had deteriorated, then it would affect it considerably.

Q. You cannot express it, then, in dollars and cents? A. No, sir, not without I knew the cause of these small sales.

Re-direct examination by Mr. Rosenberg:

Q. Then as I understand it, a large element of the value of a trade mark is the demand for the particular goods, is it? A. The reputation of the brand and the demand for it, yes, sir.

Q. Had that demand for these Hazard goods

and the reputation, or either of them, fallen off up to the time that you ceased dealing in that class of products in the beginning of 1911? A. Not to my knowledge.

Q. The fact that the concern that manufactured them might have been operating it at a loss, owing to extravagance in its operations, or lack of good business principle, that wouldn't affect the value of the trade mark to any extent, would it? A. Not to any great extent, but it would to a certain extent; it would do it, from the fact that the people that were manufacturing the goods were not business people—they could not give satisfaction; I mean their methods of dealings would not be satisfactory to the customers.

Q. That would depend upon the method of dealing with the consumer? A. Yes.

Q. Not with the internal economy of the factory? A. No, sir, not a bit in the world.

Q. The extravagance and the internal management of the factory, the quality of the product remaining the same, wouldn't affect the situation? A. No, sir.

Q. Do you remember visiting this factory at Shrewsbury while Mr. Powers was in charge of it, a short time before the fire? A. Yes, sir.

Q. Did you at that time sample the product of the factory? A. Yes, sir.

Q. The product which Mr. Powers had put up? A. Yes, the goods were there; I suppose Mr. Powers put them up; I don't know.

Q. That was about a week or two before the fire? A. Yes, sir.

Q. And the fire occurred early in 1914? A. I cannot tell you when it was.

Mr. Rosenberg: We have fixed that time.

Q. What was the quality of the product? A. The quality of the product that was tasted by me in the factory, it was what I would call A-1; I mean as high as any class of that particular line of goods.

Q. Was it as good as the E. C. Hazard products had been in the past? A. I think so, yes, sir.

Q. How did you happen to go down there? A. I went there to secure the account for New York City from Mr. Powers.

Q. That is to say, you were manufacturers' agent? A. I was trying to be manufacturers' agent.

Q. In other words, his representative in New York City?

Examination by the Court:

Q. I don't know if I understand you rightly. Wouldn't it make a difference in the value of the trade mark and trade name if the total volume of business done under it in four years only aggregated $20,000? A. As I tried to explain a while ago, that would depend upon circumstances.

Q. On the cause? A. The cause of it, yes, sir.

Q. Independent of the cause; regardless of what the cause might be, suppose there is the result, and the business in four years only produced

$5,000 a year on an average, how could you say that business was worth at the end of that period —the name connected with it was worth $75,000 or $50,000, if it only produced a total volume of business of $5,000 a year? A. I will explain by giving you an example. For instance, you take a commodity that is short in any one year or two years, as one of the articles that I represent; it has been short now three years; the demand for those goods is greater today than it was three years ago.

Q. You are talking of abnormal times; I am talking of normal times. A. No, normal conditions; as I say, the cause of it would be a cause, whether or not it would reduce the value of the other product—the label.

Q. And what I had in my mind was this: if a concern is doing business of $5,000 a year, and does that on an average of four years, can you say that its trade name or good will or trade mark, or whatever it is pertaining to it, is worth $75,000? A. No, sir: and furthermore, I would say that when I answered that question a while ago, I was basing my answer on the value that I put on the goods at the depreciation value, that is $40,000 to $50,000.

Q. Not the $75,000? A. No, sir.

Q. You think it would even then be worth $40,000 to $50,000 if the conditions that have been mentioned in the question, namely, merely gross business—— A. I say it would be depreciated.

Q. To what extent? A. To what extent, I cannot tell.

Q. If you were offered a business, to put it concretely to you, on the thirteenth of March, 1913, that for the four years prior to that time had only amounted to a total volume of $5,000 a year on the average, what would you say the good will was worth? I mean at that time. A. It depends on what the reputation of the goods was.

Q. Regardless of the volume of business or the result produced. A. It is not the volume of business you do, if you have the reputation on the particular brand, if the quality of the goods is right and you have a good excuse for not doing more business than you did in that particular year.

Q. The reputation value or good will value or trade name value is simply because it brings business and increases the volume of your profits? A. Yes.

Q. If on the other hand, you don't increase your business in four years, but run it on an average of $5,000 a year, I don't see how you can say that the name under which you are operating is worth twice as much as the total volume of your business for four years. A. If they will tell me why they didn't do that much business then I can answer the question more intelligently.

Q. You have given several reasons why it might happen—shortage of crops and other things might interfere? A. Yes.

Q. And you qualify your answer, if they will specify the cause you might be more definite? A. Yes.

Court: In other words, what would be the value of the trade name at that time.

Mr. Wilson: As I understand his statement, he reduced it to $40,000 upon the assumption that the goods manufactured during that period had not been inferior in character; and whatever the cause might have been, if not inferior in character——

Court: The quality always was maintained.

Witness: Yes.

Further re-direct examination by Mr. Rosenberg:

Q. In other words, if there is the demand and the capacity to produce, the value of the trade mark is not materially affected? A. I would think so.

Q. You mean you think the value of the trade mark would remain about the same if there was the demand? A. If they produce the goods, and if the quality was the same, and the capacity was the same, and in their ability to produce the goods, the trade mark should be the same value right straight along, and increase.

Q. Even though they had not produced during the few years past? A. If they had not produced, when you get a trade mark off the market, the longer you keep it off, the less it is worth.

Court: If you were going to establish a food output like the Hazard today, would it cost $75,000 or $50,000 to establish a reputation as good as the Hazard had in the post?

Witness: Yes, sir, for the length of time they were in business that I knew about, I would venture to say it would cost more than $75,000; that is, I mean introduce the same number of articles.

Q. And get the same class of trade, the same territory covered? A. Yes, sir, that would be my judgment.

Re-cross-examination by Mr. Sexton:

Q. You were sales agent? A. I came down to get the account for New York City; in other words, be his representative in New York City on the products that he was going to manufacture down there; I don't remember how I got acquainted with Mr. Powers, at this moment, but I came down to his factory for that purpose.

Q. What was the occasion of your sampling any of the goods you found there? A. He was showing me the quality of the goods he had.

Q. What goods did he show you? A. The Mayonnaise and Worcestershire Sauce and Ketchup.

Q. What was the label on the Mayonnaise he showed you? A. The Hazard label; exactly what the name of it is, I cannot tell you at this moment. If you show me the label, I will recognize it.

Q. Do you recognize the label (Witness shown Exhibit K, one of the labels in Exhibit D 2)? A. I think that was it.

Q. What else did he show you, if anything? A. Worcestershire Sauce.

Q. What Worcestershire Sauce? A. The Worcestershire Sauce that he had there in barrels.

Q. Was there any label on it? A. No, not on the ones that I saw, that I remember of; it has been some time since I saw those goods, and I cannot be positive about what I saw there, farther than the quality of the goods I saw there and what I had in my office in New York.

Q. What did you have in your office in New York? A. Tomatoes, and Worcestershire Sauce and Tomatoketchup, and I had some of the Liquid Paprika; I don't know whether I had anything else or not.

Q. Was there a label on the ketchup? A. No, sir.

Q. Did you have a Tomatoketchup at your office? A. Yes, sir, that was in bottles.

Q. And label on it? A. Sample bottles; no label.

Q. Did you ever have anything over in your New York office with labels on? A. Nothing except the Mayonnaise and the Onion Sauce; I believe that is all I had with labels on.

Q. Whose label was on the Onion Sauce? A. That was Hazard.

Q. Similar to Exhibit C? A. That was the color; regarding the wording, I wouldn't be positive, but that was the color of it.

Court: It was of the same general appearance?

Witness: Yes.

HENRY DICKENSHEETS, sworn for defendants,

Direct examination by Mr. Wilson:

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

Q. Are you a member of the New Jersey bar? A. Yes.

Q. Admitted when? A. 1905.

Q. Where are you in business now? A. I am the chief examiner of the Farmers' Loan Division, Metropolitan Life Insurance Company, New York.

Q. Where were you employed in February and March, 1913? A. I was settlement officer in the Fidelity Trust Company, Newark.

Q. Were you actively connected with the negotiations and purchase of this so-called Hazard property, between Mrs. Florence Hazard and Mr. Powers? A. I had charge of the closing of the title, yes, sir.

Q. Do you recall when the transaction was closed? A. In March, I think, 1913.

Q. Do you recall the date? A. Around the thirteenth of March, 1913. I remember the incident by reason of another title that I had prior to that time.

Q. At the closing of the title who was present? A. Mrs. Hazard, Floyd Davis, Mr. Joyce and one of the Hazard boys, and Mrs. Powers and Mr. Powers, and a stenographer named Miss Edith Eastland.

Q. Whom did Mr. Joyce represent, if anyone? A. Mrs. Hazard.

Q. What time of the day was it when you took up the task of settlement? A. About two

o'clock in the afternoon we started to close the title in the big board room of the Fidelity Trust Company.

Q. What time was it when the task had been finished? A. After eleven o'clock at night.

Q. What happened after eleven o'clock at night; did the party keep together? A. Yes, we all went down to Achtel Stetters and had dinner down there.

Q. So that your activities continued until after twelve o'clock, did they? A. Yes, sir.

Q. When you got to the closing of the title with these persons present whom you have indicated, do you recall whether there were any papers which purported to embody the agreement between the parties? A. Yes, the first thing in closing the title is to ascertain whether there is a contract of sale and purchase with the people.

Q. Had you had already in your possession the originals of the two papers which purported to be the agreement between the parties? A. Either originals or duplicates of the originals.

Q. I show you defendants Exhibit D 1 and defendants' Exhibit D 3, and ask you if you can identify these as being originals or duplicate originals of the two papers that had relation to these contracts; look them over? A. Yes, sir; they are the originals; I had a duplicate original of this executed, I am quite sure—both of them. They are now with the papers in the Fidelity Trust Company.

Q. At that time was the fact that a bill of sale had been found on record, running from Mrs.

Hazard to Matthes, or rather two bills of sale, recorded on or about the nineteenth of February preceding? A. I don't think that was reported on the original title, but after a title is reported, there are frequently delays, and a date is set for closing, and necessitates a continuation of the title to date, and I think on the continuation of the title, this bill of sale was turned up by Ed Taylor at Freehold, and Mr. Powers was advised of it, either by letter or an addition report.

Q. Do you recall whether it was one bill of sale or two? A. No, I cannot, but I know that there was a bill of salt that showed up on the continuation.

Q. And Mr. Powers' attention was called to it? A. Yes.

Q. Was the fact that there was a bill of sale, one or more, in some way affecting this transaction, on record, brought up for consideration and discussed when you were closing the matter on the thirteenth at the Fidelity? A. Yes, sir.

Q. What explanation, if any, did Mrs. Hazard make in respect to those bills of sale? A. She said that the property was hers and that they were simply making up the goods down there and that she would put them in possession of the goods the next morning—put Mr. Powers in possession of the goods the next morning; that it represented stock that was being made up down there—the bills of sale did.

Q. Did she say who was the owner of that stock? A. Yes, that she was the owner of it.

Q. Do you recall that one of those agreements, both of which you have already identified, and

I am referring now in particular to Exhibit D 1, had certain words interlineated in ink; I direct your attention to page 3? A. Yes, sir, I am quite sure they were there.

Q. They read: "All personal property not covered by an assignment as security by E. C. Hazard & Co. to the party of the first part (that is Mrs. Hazard) is included in this sale"; the personal property, except the property that she held as security? A. Yes.

Q. At that time to which I have directed your attention did Mrs. Hazard make any statement as to what personal property was intended to be covered and passed under the terms of this D 1 which I have just shown you, D 1 being the paper which also has reference to conveying the real estate? A. My understanding of the transaction, from the conversation between Mrs. Hazard and Mr. Joyce, was that the contract number one there, which embraced the real estate contract, under that she conveyed everything except the goods that were held as security for that assignment.

Q. And did she make any enumeration or description of the property that did accompany that paper number one, as you call it? A. Mr. Powers raised the question that he wanted the recipes and the formulas, the trade name, everything connected with the business, so that he could operate it; that that was supposed to go under that number one contract.

Q. And raised the question to Mrs. Hazard? A. Raised the question to Mr. Hazard, and Mr. Joyce and Mr. Davis.

Q. And what response did Mrs. Hazard make as to whether that passed under that number one paper? A. She agreed to convey everything under that number one——

Q. Except what? A. Except the goods that were held as security for this assignment, which were being made up by the Hazard boys and Matthes, whoever he was.

Court: Did you understand that the trade marks and trade names were not included in the excepted goods, or included in the goods in the real estate contract?

Witness: I understood that they were included in the goods under the real estate contract. The controversy under the contract was an after consideration and raised by reason of the fact that Mrs. Hazard wouldn't let the deal go through as originally planned; that is, without both going through at once. That is what prompted me to prepare the note which I prepared.

Q. Did Mr. Powers express a desire to take the real estate and to take the personal property that you have just referred to—the business and the name and all that, upon payment of $60,000, and express a wish to have that property that she had as security from the E. C. Hazard & Company—to let that part of the transaction lay over? A. He certainly did.

Q. What response, if any——

Mr. Sexton: I object as leading.

Court: I think it is.

Q. When you say Mr. Powers made that request, what response did Mrs. Hazard make? A. She wouldn't let the thing go through; she wouldn't let the deal go through; her attorney wouldn't, Mr. Joyce.

Q. What did he say? A. He declined to let it go through; I cannot remember the exact words.

Court: Did he give any reason?

Witness: He said the thing had to go through as a whole transaction.

Q. Was that stated in her presence? A. Yes, and she backed him up; that was after several hours of wrangling, too, that that happened.

Q. What did she say, as near as you recollect her words, as to her ownership of the property that she held as security, about getting possession of that; state in your own words what your recollection is as to what she said in that connection. A. She kept asserting all the time that it was hers, that it belonged to her, and I contested the fact because of the bill of sale.

Q. What reply did she make, if any? A. That was only given as security, that it was a collateral security, and it was because I couldn't harmonize her statement with the bill of sale turned up in the record, that I refused to let Mr. Powers sign the note that he was willing to give up for those goods; I drew up the note myself and endorsed it on the back that it wasn't to be valid as an instrument of indebtedness, until she put the title to those goods in him.

Court: That is the note for $11,400 bearing the endorsement which was read yesterday.

Mr. Wilson: Yes.

Q. The original note appears to have been lost? A. I drew the note in my own handwriting.

Q. I read to you from the transcript of a former trial, which brought this same matter in question, and I ask you whether, according to your recollection, this is the substance of what was endorsed upon the note, and to which you have just referred:

Eighteen months after date I promise to pay to "$11,400. New York, March 13, 1913. the order of Florence A. Hazard, Eleven Thousand Four Hundred Dollars at 20 Vesey Street, Borough of Manhattan. Value received.

(Signed) HARRY L. POWERS."

That is the body of the note, and on the back are these words:

"This instrument shall not be considered as evidence of indebtedness or a chose in action accruing to the payee or her assigns until the title to the goods in payment for which this note is given is legally vested in the maker or his assigns. When such title is vested by a bill of sale or assignment thereof, then a new note of like tenor and effect, bearing the same date, is to be executed by the maker of this note, or his heirs or assigns.

(Signed) HARRY L. POWERS."

Is that the endorsesment to which you referred a moment ago? A. Yes.

Q. And is that the endorsement which you prepared? A. Yes, I think I wrote that on the back of the note.

Q. Was the undertaking and promise of Mrs. Hazard to which you have already referred—did it have in it any qualification whatever, expressed or implied, as to her willingness and ability to put him in possession of this property in the morning? A. Absolutely none.

Q. What did she say in that connection? A. She said, "I will go down there and throw him out by the neck in the morning."

Q. Referring to whom? A. Referring to Elmer Hazard and Matthes.

Court: Did Mrs. Hazard actively participate in the conference or did she leave it to Mr. Joyce?

Witness: She was most active.

Q. And it was she who made that statement that you just testified to, was it not? A. Yes.

Q. At the time of the closing of this title did you take an affidavit of Mrs. Hazard as to the right of any person to use and occupy the building and property? A. I certainly did; the facts as they were produced to me compelled me to.

Q. What was the substance of that statement that she made under oath? A. That she was in possession, and the property was not——

Mr. Sexton: Have you got the paper?

Mr. Wilson: No, it appears to have been lost, according to the statement yesterday?

Court: What became of the paper?

Witness: I don't know; it should have been with the papers, I am quite sure I saw it there this morning; there are five times as many more papers relating to this title; I am sure I saw that affidavit this morning.

Q. When did you take it? A. That night I called a stenographer and dictated it.

Court: Suppose we test his memory while he is here, and avoid bringing him back again, with the understanding that if the affidavit is found, it will be stricken out?

Mr. Sexton: Are you referring to the affidavit that is on the reverse side of the "Report to Applicant"?

Witness: The affidavit ought to be here. I can testify from a memorandum right here on the settlement certificate.

(Last question repeated.)

Witness: No, that is an affidavit of title; that is not the affidavit I mean. The affidavit I mean as to the possession of the premises, a short affidavit.

Court: I will take his statement as to the substance of that affidavit. If the paper itself can be found and put in evidence, I will strike it out.

Mr. Sexton: If the affidavit is found, his testimony can go out?

Court: And if the affidavit is produced, it can be offered by either of you; and if it is not found, his statement will stand.

Q. What was that affidavit in substance? A. The usual affidavit as to occupation of the premises, that she was in possession of the premises, and that there were no liens against the property, and no one else in possession but herself.

Court: Is that a customary affidavit you have on closing title?

Witness: It is usually done, and I took it in this instance because of the controversy.

Q. And it is the form you usually use? A. No, I dictated it.

Q. It is a form that is frequently used by you? A. Yes.

Q. I show you a paper which has been marked Exhibit D 9, and ask you if you recognize that as one of the papers that passed through your hands that night? A. I recognize that, yes, sir, in my own handwrting.

Q. Indicating what part of it is in your handwriting? A. This is the statement of settlement.

Court: The part in ink, is that in your handwriting?

Witness: Yes, except the signatures.

Q. It is in fact signed by Florence A. Hazard and Harry L. Powers? A. Yes.

Court: Signed before you?

Witness: Yes; the settlement was dictated by me to Miss Eastland, a stenographer, in the presence of the parties.

Q. And according to your knowledge of the facts at that time, did that show advancements —payments to her or on her account up to and prior to that date, as shown upon that statement?

Mr. Sexton: The paper will speak for itself.

A. Yes. The statement was made up from the evidence adduced to me to make it up by the parties in interest at this conference.

Cross-examination by Mr. Sexton:

Q. At the time of the closing of the title you were connected with the Fidelity? A. Yes.

Q. You are not connected with it at the present time? A. No, sir, I have not been since 1915.

Q. Referring to the paper which Mr. Wilson has just shown you, marked Exhibit D 9, there is an item "Cash advanced March 12, Second National Bank of Red Bank," do you recall that? A. Yes.

Q. Do you know whether or not Mr. Powers presented an assignment of a judgment or a mortgage in reference to that? A. Not at that closing, no, sir.

Q. Had he done so previously? A. No.

Q. What evidence did you have at that time that he had paid that money? A. His statement and Mrs. Hazard's agreement with it.

Q. The item of $7,000 cash advanced to the National Nassau Bank on March 13? A. I think there was an assignment, either at the closing or subsequent thereto, as to that amount.

Q. Do you recall later recording the assignment? A. No, that is a matter of detail which I don't remember; if I had the papers I could explain it.

Q. Did you guarantee the title at that time? Did you except those two judgments? A. As I understand the matter, we guaranteed the title, save to certain details to be cleaned up, which were later cleaned up, upon the transfer of the first mortgage on the property to an assignee for value.

Q. And who was the assignee for value? A. A man named Green, who had offices in the Marlbridge Building, 34th Street and Broadway.

Q. I refer to the item "$7702.50, Cash advanced by reason of taking premises subject to Prudential Ins. Co. Mtge., a first lien"? A. That was the accrued interest. That is the assumption of the accrued interest by Mr. Powers; the assumption of the mortgage subject to interest.

Q. He took the property and assumed the mortgage? A. Yes.

Q. No cash was paid at that time for that amount? A. This represents the face value of the mortgage plus accrued interest. He assumed that instead of advancing the cash.

Court: But he didn't advance the cash?

Witness: No, not to my knowledge, not at the closing, but he assumed it subject to that mortgage and accrued interest.

Q. I refer to the next item, "Cash advanced by reason of taking premises subject to taxes of 1912, $418.70; interest and costs from Dec. 20, 1912, $12.40"; was that in the same category as the previous one? A. Yes.

Q. I refer to another item, "Cash advanced by reason of taking premises subject to Judgment of Doremus Bros. v. Arnold Hazard, $55.77; Interest and costs, $7.80"; he did not advance any cash as to that either? A. He assumed it subject to that, and agreed to clean them up.

Q. "Cash retained by reason of taking premises in question subject to Judgment of Louis Sobel filed Oct. 25, 1910, $40.96; Interest and costs, $5.71"; did he take the property subject to that judgment? A. Yes.

Q. And no cash was advanced? A. No.

Q. When the Nassau Bank item of $7,000 and the Second National Bank of Red Bank item of $5,548.45 was deducted from the purchase price of these premises, did you consider them a further lien upon the premises? A. No, because they were deducted by assumption by Mr. Powers of those judgments by assignment to him; he was going to clean them up; that is the reason the writing of the guaranty was withheld until they were cleaned up.

Q. Do you know that they have been cleaned up at the present time? A. I am quite sure I saw at a later date the assignment from the Second National Bank and Nassau Bank, and cleaning up of the judgments.

Q. With whom? A. I think they are with the papers.

Q. They were assigned from the bank to whom?

Court: To Mr. Powers. Is there any dispute about it?

Mr. Wilson: None whatever.

Witness: I think so.

Q. Do you recall being subpoenaed by me after the closing of this title and appearing before Joseph Reilly, a Master in Chancery, in Red Bank, and testifying in reference to those two certain judgments? A. I have been called several times in this case, I cannot remember how many, I have been down here to Red Bank twice—I don't remember who the Master was, though; I remember having met you on some hearing on this case.

Q. You were at that time subpoenaed by me? A. I suppose so.

Q. And you gave testimony, did you not, Mr. Dickensheets, as to the transaction in reference to the two judgments which we are now referring to, namely, the Second National Bank and the National Nassau Bank? A. Only so far as the record of it there is concerned.

Q. And at that time your testimony was in substance as to what the transaction was at the closing of this title?

Mr. Rosenberg: I object, because the witness has a right to have his testimony read to him, if it is for the purpose of contradiction.

Court: Objection sustained.

Q. At the time of the closing was it not agreed that Mr. Powers was to cancel these liens of record? A. No conversation was raised to my knowledge; he agreed to clean them up.

Court: It is expressly so stated in Exhibt D 3.

Q. What was said about the personal property by Mrs. Hazard before the title was closed and while you were at the Fidelity Company—the personal property generally? A. She insisted it was hers.

Q. What personal property did she refer to? A. She meant all the personal property.

Q. Not what she meant; what did she say? A. Everything; all of the personal property; she enumerated the property.

Q. What did she enumerate? A. Boilers, and labels, the good will of the business and everything, the stock made up, the stuff in hogsheads there.

Court: Did she say that herself and not her attorney.

Witness: Yes, she was a party to the whole thing.

Q. What did she say about labels? A. The controversy took in the questions of the recipes and the labels and the right to use them.

Court: What did Mrs. Hazard herself say about the labels, if anything?

Witness: I cannot remember anything specifically that was said with relation to it.

Q. What did she say about the property comprised in the bill of sale? A. She said it belonged to her.

Q. Did you see a note of $11,400 signed by Mr. Matthes on that occasion? A. I may have; I think I did.

Q. You did? A. I wouldn't swear that I did; I say I may have.

Court: Was there such a note on that occasion?

Witness: Wasn't it $12,900?

Court: Wasn't it subsequently reduced to $11,400—this matter of $600, isn't that the proof?

Mr. Smock: Yes, sir.

Mr. Powers: It was $11,400 at that time.

Q. Did you see such a note on the night of closing, from Matthes to Mrs. Hazard, for $11,400? A. I cannot swear that I did: if I was confronted with it, I might be able to identify it; I dont' know.

Q. Do you recall Mrs. Hazard offering to Mr. Powers this note for $11,400 and saying to him: "You take this note and get the personal property yourself"? A. No.

Q. You don't recall that? A. No.

Q. You say it did not occur and it may have occurred and you don't remember? A. It may have occurred and I not have paid particular

attention to it, but it doesn't come to my memory on that point.

Q. At the time of the closing did you have copies of the bills of sale? A. I had an abstract of them as shown from the record—a searcher's abstract as shown from the record.

Q. Did that have an itemized list of the goods contained therein? A. I do not remember; the papers are in the Fidelity Trust Company.

Q. You have spoken about Mrs. Hazard conveying under the real estate contract the title to the labels and trade marks; do you know that the trade marks were in the schedules of the bill of sale? A. I do not.

Q. Did you at that time know it? A. No, I did not.

Q. Did you at that time know what you were conveying to Mr. Powers? A. Yes.

Q. How did you know it? A. From the conversation of all the people present.

Q. You drew a deed? A. I drew a deed from the contract.

Q. Did you draw a bill of sale for any goods? A. I don't remember doing so.

Q. How then did you pass title to any personal property? A. I don't remember.

Q. Did you or did you not by any instrument on that occasion pass title to any personal property? A. I don't remember drawing any bill of sale.

Court: Did you have Mrs. Hazard sign anything that would pass title?

Q. Or did you have Mrs. Hazard sign any

paper? A. I don't remember the actual signing of the papers, even the deed; you say I drew the deed; I don't remember drawing the deed.

Q. Did you say you drew that deed? A. I don't remember drawing the deed; I may have; it would have been my province to draw the deed had it been requested.

Q. Did you see the bond and mortgage on that occasion? A. Which bond and mortgage?

Q. The $30,000 bond and mortgage which was given by Harry L. Powers to Florence A. Hazard? A. I am quite sure I did.

Q. For part of the purchase price?

Mr. Wilson: Show them to him.

Witness: They are not on the Fidelity Trust Company's forms; if they were drawn in our office they would be drawn on our forms.

(Witness shown Exhibits C 1 and C 2.)

Witness: I passed upon the papers, but I am quite sure I didn't draw them.

Q. Did you then pass upon any other papers? A. Yes.

Q. If so, what papers were they? A. I think I prepared and superintended the execution of the mortgage—the first mortgage, whatever that amount was—to Floyd Davis; think that is drawn on the Fidelity form.

Q. Other than the first mortgage, the second mortgage and the deed, did you draw or prepare or pass upon any other document or instrument for the conveyance or transfer of real or

personal property that night? A. I wouldn't say that I did not, no, because I cannot recall.

Q. You are quite positive, Mr. Dickensheets, as to the conversations had between Mrs. Hazard and Mr. Powers? A. Yes, because I was forcibly impressed with them.

Q. As the outcome of those conversations, if there had been a bill of sale drawn, would it still be retentive in your memory? A. I cannot remember any bill of sale, but I wouldn't swear there was none.

Q. I am not trying to catch you. A. I appreciate that.

Court: He has no recollection about the bill of sale.

Mr. Wilson: Nobody has claimed there was a bill of sale, as far as I have heard.

Q. What means was taken to pass any personal property from Florence Hazard to Harry Powers at the time of the closing of these negotiations? A. Nothing but her statement that she would put him in possesson of it. In the Fidelity Trust Company the settlement officers are not responsible for the transfer of personal property.

Q. Nothing but her statement? A. No.

Q. She was going to put him in possession of the personal property? A. Yes.

Q. What personal property did that refer to? A. From the conversation, I took it to refer to the whole transaction, all the personal property relating to the business.

Q. So that when you left that night, or when the parties left, you having closed the title to this property, the title to no personal property was transferred, is that so?

Court: That may be a legal conclusion. There was no further paper executed that night?

Witness: I have no remembrance of any paper being executed, but it was the intention of the parties, from the conversation.

Q. Excepting, of course, the note which you drew up? A. Yes. Mr. Powers was willing to take the property without the personal property, and Mrs. Hazard's attorney wouldn't permit it, and she backed him up in that statement.

Court: When did you say she promised to give him possession?

Witness: The very next morning; she said "I will put you in possession the next morning."

Q. Why did you draw this note if the title was to be closed the next morning? A. Because I didn't think she could give him legal title to the property described in the bill of sale which was outstanding, and I wouldn't let him give the note for it.

Q. Did you so inform Mr. Powers that night? A. I did.

Q. What did you tell him in reference to what title he took? A. I told him he took his chances,

and she insisted all the time that the goods were hers and that she would put him in possession, and it was because of that insistment that he was willing to take it without any endorsement on the note.

Q. What did you tell Mr. Powers that night with reference to what personal property he had purchased by the closing of this title? A. I hadn't any interest in it.

Q. Did you tell him anything in reference to it? A. I don't remember telling him anything regarding it at all; I wasn't his attorney.

Court: Did he have an attorney there?

Witness: I don't remember whether Mr. Davis is admitted or not; Mr. Davis represented him. He attended with him and represented him.

Q. Were you the representative of the Fidelity Company? A. Yes, on the real estate end, and our responsibility ended with the real estate end, with the possession of the premises; that is why I took the affidavit.

Q. What do you mean that Mr. Powers would take his chances? A. As to the goods that were covered by the bill of sale.

Q. Taking his chances how? A. He was willing to give her the $11,400 note, and I took the note and endorsed on the back of it the endorsement which Mr. Wilson read.

Q. There wasn't any chance in that, was there? A. There was before that was put on; I maintained all the time that he hadn't the title to that property, because of the bill of sale.

Q. And did you so tell Mr. Powers that he did not have the title to that property? A. I did.

Court: And notwithstanding that he was willing to give the note in settlement, but you refused to give it unless it was qualified by the endorsement?

Witness: I did.

Q. And your refusal was based on the fact that the bills of sale were running to Matthes? A. Yes; I couldn't understand why he should have possession of the goods with a bill of sale outstanding.

Re-direct examination by Mr. Wilson:

Q. Did she make it clear on this occasion what property, real and personal, was to pass to Powers by the payment upon his part of the $60,000, the sum named in Exhibit D 1? A. Yes, my understanding of the transaction, from the conversation with the people, was, that she sold everything she had.

Q. I am speaking of D 1, with the consideration of $60,000, the papers that related to the real estate; did she say what passed with that? A. Yes, that is the contract I closed and was responsible for.

Q. What did she say passed with that? A. Everything in it except the goods that were covered by the $11,400 bill of sale or note.

Q. Did she say whether or not the good will and trade name and what not passed with that,

or whether it passed with the security contract? A. Did she say whether it passed or not?

Court: With the $60,000 contract?

Witness: Yes, it passed with the $60,000 contract.

Re-cross-examination by Mr. Sexton:

Q. What was there in this deed or any papers that you drew to show that the good will and trade marks passed with that $60,000 deal? A. Nothing to my memory.

Q. You testified in the case before involving the question of certain personal property and the closing of this title, the last time you testified? A. Yes.

Q. Did you at that time say anything about the trade marks, good will, or recite any conversation as having occurred between Mrs. Hazard and Mr. Powers that night concerning those matters? A. I wasn't asked.

Q. Did you say anything about it? A. No.

Q. Were you not asked what conversation was had at the time of the closing? A. Not as a general question, no.

Court: If you have the record, direct his attention to it; don't leave it in the air that way.

Q. "What did she say?" Were you asked that question, referring to page 1152 in the case of the Little Silver Sauce Company?

"Q. Why couldn't she give good title? A. Because there was an outstanding bill of sale showing she had conveyed it to Mr. Matthes.

Q. What did she say? A. She said it was her property and she would put Mr. Powers in possession in the morning, and if necessary she would throw Mr. Matthes out by the neck. We argued about two hours on the question of the personal property, and she insisted that the contract must go through as a whole."

You were asked that question, "What did she say?" and you did not testify that time as to any labels.

Mr. Wilson: I submit that that question is so involved, that it doesn't mean anything.

Court: I don't attach any significance to it. The witness is asked "What did she say?" I wouldn't attach any significance to it, Mr. Sexton. You might ask me about a whole lot that was said at a conference and I might omit a great deal.

Mr. Wilson: If Mr. Sexton will read the next question and the next answer——

"Q. What do you mean by that? A. There were two contracts; there was a contract to convey all the property, the real estate, together with all personal property in it, with the exception of some furniture she had in the house and the property

acquired by her from the E. C. Hazard Company, &c."

Mr. Wilson: That was one agreement?

A. That was one agreement."

April 24th, 1918.

FLORENCE A. MCANERNY, sworn for defendants.

Direct examination by Mr. Wilson:

Q. Where do you live, Mrs. McAnerny? A. 110 Tenth Street, Garden City.

Q. Who is your husband? A. Marshall J. McAnerny.

Q. What is his business? A. Broker, New York Stock Exchange.

Q. Did you know Mr. and Mrs. Powers and Mrs. Hazard in February and March, 1913? A. Yes.

Q. How long had you known them at that time; were they casual acquaintances or had you known them for some time previous? A. For several years.

Q. Do you recall having had any conversation or heard any statement made to you by Mrs. Hazard in respect to the sale of the Shrewsbury property at any time before the fifth of February, that being the date upon which the contract was signed? A. I do.

Q. And about how long before the contract was

signed did this conversation occur? A. The previous month.

Q. Sometime in the previous month? A. Yes, that would be in the month of January.

Q. Where did it occur? A. Mrs. Powers' apartment in 97th street, New York City.

Q. And what, if anything, did Mrs. Hazard say to you about this sale at that time? A. She spoke of selling the property to Mr. Powers, and he was going to run the business at Shrewsbury.

Q. Was the talk general or particular at that time; was she talking in a general way about it, or did she go into particulars? A. In a general way, I should say.

Q. And when next did you have any conversation with her about it? A. One night in our own apartment, when she called with Mr. and Mrs. Powers to spend the evening.

Q. Do you remember hearing her say what had been done, if anything, that day with respect to the sale of the property? A. Yes.

Q. What did she say had been done that day? A. She said that she had signed the contract to turn over the property at Shrewsbury to Mr. Powers and to run the business.

Q. What details, if any, did she mention, as to what she had sold him? A. She said she had sold the factory and she had sold the old homestead, the manor house.

Q. What in connection with the factory did she mention, as to the business, the scope of it; how it was to be run or anything of that sort?

Mr. Sexton: I object.

Court: What did she say?

Witness: I asked her the question if Mr. Powers was going to run the business, and she said yes, under the same name.

Court: You are not related to these parties in any way?

Witness: No, sir.

Court: And have no interest in this controversy, I suppose?

Witness: No, sir, except that they are all friends of mine in a social way.

Court: On both sides?

Witness: Yes.

Q. This occurred at your house, you say? A. This last conversation.

Q. Did Mr. and Mrs. Powers come there with Mrs. Hazard? A. Yes, and Mrs. Murphy was there.

Cross-examination by Mr. Sexton:

Q. What day was that, Mrs. McAnerny, what day of the month? A. I cannot say that; from the testimony that has been given here, I know what date it was.

Q. Independent of that? A. I cannot say that, except from what Mrs. Hazard said.

Q. If she said anything about the date—— A. That day she signed the contract.

Court: You don't recall the date independent of what you heard here?

Witness: No.

Q. What was the date of the previous talk? A. Sometime in January; it was the previous month.

Q. The forepart or latter part of January? A. That I cannot say; I should say it was about two weeks before; two weeks previous to the fifth.

Q. That would make it, then, in the latter part of January? A. Certainly, there are four weeks to the month.

Court: In either conversation was anything said about the trade marks and trade names?

Witness: That I cannot say.

Court: As you recall it?

Witness: No.

Q. You don't recall anything being said about it? A. I wasn't giving it any special attention, except the fact that the factory was sold and the business was to be run under the old name.

Q. (By the Court) Anything said about the personal property? A. I cannot say.

April 22, 1918.

FRANK T. MATTHES, sworn in rebuttal for complainant.

Direct examination by Mr. Sexton:

Q. Where do you live? A. 97 Washington street, Long Branch, New Jersey.

Q. Where are you employed? A. I am carrying a line of goods in Boston and down through New England.

Q. Are you acquainted with Mrs. Hazard? A. Yes.

Q. And Harry Powers? A. Yes.

Q. Elmer Hazard? A. Yes.

Q. Did you have any business transaction or carry on business at what is known as the Shrewsbury Ketchup Factory? A. Yes.

Q. And when was that? A. 1912.

Q. Who was associated with you, if anyone? A. Elmer Hazard.

Q. When did you first start in 1912 in that business? A. May; I first started negotiations in May.

Q. Did you purchase any goods from Mrs. Hazard? A. Yes.

Q. What? A. There is a big list enumerated in a bill of sale, and which is recorded at Freehold.

Q. Witness being shown bill of sale, Florence A. Hazard to Frank T. Matthes, bearing date July 29, 1912, is asked, is that one of the bills of sale you have just referred to? A. Yes.

Mr. Sexton: I ask to have it marked for identification.

(Marked Exhibit C 4 for identification.)

Q. Witness being shown bill of sale, Florence A. Hazard to Frank T. Matthes, bearing date August 3, 1912, is asked if that is one of the bills of sale that you referred to? A. Yes.

Mr. Sexton: I ask to have that marked for identification.

(Marked Exhibit C 5 for identification.)

Q. When did you acquire title, Mr. Matthes, to the property mentioned in the bills of sales? A. July 29th, I think it was.

Q. And as to the other one? A. August 3, I think.

Q. You acquired title on the day they were given to you? A. Yes, sir.

Q. Where was the property located? A. At Shrewsbury, New Jersey, in the factory, in the plant of the E. C. Hazard Company.

Q. Were you engaged in working at that plant on February 5, 1913? A. Yes, sir.

Q. Had you been prior to that time? A. Yes.

Q. Were you at the Astor House at the time mentioned by Mr. Powers? A. What time was that?

Q. About February 5th. A. Yes.

Q. Who else was present? A. Mrs. Florence Hazard, Mr. and Mrs. Powers, Elmer Hazard and Mr. Joyce came upon the scene afterwards.

Q. Did you hear the conversation between the parties there? A. Yes.

Q. What conversation, if any, did you hear in respect to the sale of the property at Shrewsbury? A. It was a family conversation in regard to the sale of the property, of the factory building, to Powers.

Q. What conversation, if any, did you hear relative to the bill of sale for the personal property? A. None.

Q. Was there any at that time? A. No.

Court: What was said?

Witness: There was a regular conversation; that wasn't mentioned; they were speaking about the buildings.

Court: I would like to hear all that was said, and it may be of some interest to me to know what was said by everybody about this whole transaction.

Witness: I came to New York and I met Elmer Hazard in the subway station at Fulton street on another matter, and he stated to me that he had——

Mr. Wilson: I object.

Court: When you were all together in the Astor House, what was said when Mr. Powers and the others were present?

Witness: When we came there Mrs. Hazard told me that she was going to sell the property to Mr. Powers.

Mr. Wilson: Was that in the presence of Mr. Powers or before he came?

Witness: Mr. Powers, I guess, was there.

Mr. Wilson: That is your best recollection?

Witness: Yes.

Q. What do you mean by the property? A. The real estate property.

Court: What did she say?

Witness: She told me that she was going to sell the property to Harry Powers.

There are things about it I don't remember.

Court: Give all you can remember.

Witness: During the conversation I said, "This is a pretty good sized transaction, you ought to have a lawyer, so I believe she telephoned for Mr. Joyce, and then the conversation went right on, which it would be among a lot of people. There was nothing more.

Court: Nothing in reference to the sale; no further reference to the sale?

Witness: No.

Court: Until Mr. Joyce arrived?

Witness: Mr. Joyce, and then——

Court: What else was said when he arrived, if anything, by anybody in the presence of all the others?

Witness: It seemed to be a sort of a pleasant family gathering; I didn't notice anything out of the way.

Court: Any instructions given to Mr. Joyce?

Witness: No, I didn't hear any given.

Court: About preparing papers or making a memorandum?

Witness: No.

Q. Who owned the bill of sale goods at that time? A. I did.

Q. Was there any mention made of the bill of sale goods? A. I heard none.

Q. Did you say anything in reference to the sale of the bill of sale goods? A. No.

Court: How long were you there; did you remain at lunch with the party?

Witness: Yes.

Court: The party broke up right after lunch?

Witness: Yes; I didn't stay there.

Q. Did you go to Mr. Joyce's office? A. No.

Q. From the conversation that you heard at that place, what was being sold?

Mr. Wilson: I object.

Court: Objection sustained. Let him state everything that was said and then we will have to form our conclusions ourselves aside from the memorandum. He can state everything that was said as to what Mr. Powers said he was buying and Mrs. Hazard said she was selling, that he hasn't already told us, or what he said in their presence.

Witness: I wasn't interested in any sort of a way; I came upon the scene——

Q. Why were you not interested? A. I had no interest in it.

Court: What were you doing there if you hadn't any interest?

Witness: I went there with Mr. Hazard to see his mother.

Court: Why did you remain through the discussion and go to lunch that day?

Witness: It wasn't a very long while.

Court: How long were you there?

Witness: A couple of hours.

Q. Your property was in the factory at that time? A. Yes.

Q. You say you were not interested? A. No.

Q. Why not? A. The only thing I was interested in was in Mrs. Hazard selling her property —her real estate property.

Q. Did you have any talk with Mr. Powers in reference to selling the property that you had a bill of sale for? A. No.

Court: You and Dr. Hazard were operating some business in this plant at the time; didn't this sale threaten to oust you of your occupancy there and put a stop to your business?

Witness: That came afterwards.

Court: Wasn't it before your mind at that time?

Witness: It was, but that didn't enter into it; the transaction was closed.

Court: It wasn't a thing that occurred to you, "if this thing goes through, it will oust us?"

Witness: It would, naturally, occur to me——

Court: Did it?

Witness: Yes.

Court: Then you were interested in what was being said?

Witness: Not along that line.

Court: When you heard her say that she

was trying to sell this property, which would result in ousting you from your business, I don't see why you were not interested.

Q. You had your property in the plant and you were there and Mrs. Hazard was selling the roof over your head, so to speak? A. Yes, she was selling the real estate if the transaction went through.

Q. They were negotiating about the sale, and what we want is everything that was said in reference to these negotiations that you heard. Do you recall anything else, other than you have testified? A. No.

Court: Within a week after that conference or eight days, you had these bills of sale recorded; why did you do that?

Witness: That came about—we were speaking the matter over——

Court: Who?

Witness: Dr. Hazard and I, and we were going to move then, when we thought the property was going to be sold, we negotiated then with a man named Longstreet, at Matawan, to take his factory, to buy that factory, and go up there, and then while that was going on, we were going to have a lawyer—I knew a man named Fay at Long Branch at that time, and I went to see him about that transaction. Mr. Fay wasn't there, so Dr. Hazard suggested Mr. Sexton, and when that matter

came about, at that time it was we wanted to have the bill of sale recorded.

Court: By whom?

Witness: By Mr. Sexton.

Court: Then you did it under Mr. Sexton's advice?

Witness: I don't say it was his advice, but that is what occurred.

Q. You then were negotiating for a place to go? A. Yes.

Q. And what were you going to do in the Longstreet place? A. We were going to move our goods out.

Q. What goods? A. All the goods we had, my goods.

Court: Covered by the bill of sale?

Witness: Yes. It was all friendly; I spoke to Mr. Powers after that time, and he seemed to be agreeable to let us stay there.

Q. What was said in that respect about you staying at the factory property after it was purchased by Mr. Powers?

Court: And when was this said, and where?

A. The conversations took place several times, as I met Mr. Powers down below at Little Silver and at the station and at the factory; he was there every day and I was.

New Jersey State Library

Court: After February 5th?
Witness: Before.

Q. What was the conversation? A. One of the conversations was, we had a car of coal there and that was at the station; Mr. Powers stated we didn't have to move out of there, that he would give us time, when the time did come, to move out of there, and the car of coal was there. He even asked me if I didn't want a man to cart the coal up there to the factory, which was afterwards done.

Court: Anything else ever said between you and Mr. Powers about the matter; what other conversation did you have?

Witness: It was all along that line. Mr. Powers seemed to be agreeable to have us stay; he didn't seem to want to push us out or throw us out.

Q. Did you continue the business after the fifth of February? A. Yes.

Q. Until when? A. Until Powers threw our men out in the early part of March.

Q. How many men do you recall you had employed during that time? A. Ten or fifteen. That wasn't my end of it, to look after the men in the factory.

Mr. Wilson: You say that was March 13 or 15?

Witness: March 13th, I think it was.

Q. You had been working at the factory prior to February 5th? A. Yes.

Q. Did you see Mr. Powers around there at that time? A. Yes, he was there most every other afternoon.

Q. And converse with him? A. Yes, he was in there and looked on and saw how things were going, and he was very agreeabe; we had several very pleasant conversations.

Court: Did that continue up to the fifteenth of March?

Witness: Yes.

Court: Then he threw you out without notice or terminating your friendly relations?

Witness: Yes.

Q. Had you ever said anything to anyone to object to Mr. Powers coming in? A. No.

Q. From February 5th until the time of the closing? A. No.

Q. Or the day after it? A. No.

Court: Had you had this property insured from the time you owned it, in July and August?

Witness: Yes, it was insured.

Court: In your name?

Witness: The policy ran out.

Court: The loss payable solely to yourself as owner?

Witness: Yes.

Court: For what amount of insurance?

Witness: I don't know what that was; I would have to refer to the books.

Q. You don't know the exact date that you were thrown out? A. No.

Q. Were you there the morning that Mr. Powers took possession? A. No, I wasn't there.

Q. What time did you get there, if at all? A. Dr. Hazard telephoned me and I came down that next day.

Q. You were not at Long Branch at that time? A. No.

Q. Did you afterwards transfer the bill of sale goods? A. Yes.

Q. To whom? A. To the Little Silver Sauce Company.

Q. You were interested in the Little Silver Sauce Company? A. Yes.

Q. Who else was interested in the Little Silver Sauce Company? A. Dr. Hazard.

Q. Was there a suit brought by the Little Silver Sauce Company? A. Yes.

Q. Referring to the suit brought after the fire? A. Yes.

Q. At any time were you abel to get any of the goods from the factory? A. No.

Q. Did you make an effort to get them? A. Yes.

Q. Were you allowed in the factory? A. No.

Q. Who prevented you from going into the factory? A. That was in the hands of the attorneys.

Q. Had you any personal knowledge on the subject? A. No.

Q. Who besides you would have any authority, Mr. Matthes, to keep Mr. Powers from the premises?

Mr. Wilson: I object.

Mr. Sexton: Mr. Powers has said that he was told he couldn't go in the factory.

Court: I don't think this witness is qualified to answer that.

Mr. Sexton: I want to know who was running the factory.

Witness: The superintendent, foreman, and all the men were around the place.

Q. Were any instructions given by you or anyone to your knowledge, telling Mr. Powers that he must stay out of the factory? A. No.

Court: Or to exclude him from it?

Witness: No.

Q. Were you attempting to exercise any lease on the property? A. In what way?

Q. Mrs. Hazard had agreed to sell it; you already said you had gone to Powers asking if you could stay there; did you claim you had any right to stay there? A. We had a right, through Mrs. Hazard giving us permission to do our work there.

Q. But other than that, after Powers had the deed for it? A. No, we spoke to Mr. Powers and he had no objection until he got ready; he didn't order us out, and as soon as things were straightened out—we would have continued on there;

there was nothing until the day we got thrown out.

Court: You had no definite term?

Witness: No.

Q. You say you were thrown out? A. Our men were.

Mr. Wilson: You have no personal knowledge of that.

Q. Was any of your property removed from there and given to you by Mr. Powers—set out? A. No.

Q. Your property was destroyed by fire? A. Yes.

Court: The property covered by the bills of sale?

Witness: Yes.

Cross-examination by Mr. Wilson:

Q. You never were present at any conference or any talk between Mrs. Hazard and Mr. Powers about the sale of this property, except this conference at the Astor House in New York? A. No, sir.

Q. And if I correctly understand your story, you were there not by design; it was just a casual meeting? A. Yes.

Q. And according to your recollection, Mr. Powers was there when you came in? A. Yes.

Q. And you were with Mrs. Hazard and Mr. Powers, therefore, through their entire talk and

down to the time when they had finished their lunch at the Astor House? A. Yes.

Q. And you were there when Mr. Joyce came? A. Yes.

Q. And it was you who suggested that she should have a lawyer? A. Yes.

Q. And you gathered from the drift of their talk that she was negotiating for the sale of the land, the factory? A. Yes.

Q. And the price you heard talked about was how much? A. $60,000.

Q. You thought it was a transaction of sufficient magnitude for her to have a lawyer, and you suggested getting a lawyer? A. Yes.

Q. Then Mr. Joyce came? A. Yes.

Q. And was the matter talked over in his presence? A. The real estate matter.

Q. Whatever their business was, it was talked over in his presence? A. Yes.

Q. Or else it would have been folly to have sent for him? A. Yes.

Q. And then he went away with the understanding he would get the papers ready? A. Yes.

Q. And you went out and had lunch? A. Yes.

Q. And parted with them? A. Yes.

Q. And yet you say that at that interview nothing was talked about except the mere sale of real estate; there wasn't anything else talked about? A. There may have been a little conversation that I wasn't interested in.

Court: He means about buying or a sale.

Witness: No.

Q. There was no other subject matter of a bargain and sale except real estate, as you recall it? A. Yes, sir, that is all.

Q. Are you quite sure you are not mistaken about that? A. Yes.

Q. How can you explain the fact that Mr. Joyce, who had been summoned there at your suggestion, leaves the meeting and prepares two papers, each of which makes reference to personal property, on the very day——

Mr. Sexton: I object to that question, because there seems to be a sort of a deduction on the part of Mr. Wilson about the preparing of two papers; our claim is that the other paper was not prepared until they got to Mr. Joyce's office.

Court: This is cross-examination.

A. I didn't know how many papers he prepared; I didn't know what he was going to do.

Q. While you and he were there, he having been summoned at your suggestion to advise Mrs. Hazard, did you notice whether he took any notes, whether he took any memorandum on paper? A. Yes, I think he took memoranda; I don't know what they were.

Q. Did he take memoranda in connection with his talk with them? A. Yes.

Q. And at the time when they were discussing the terms of the sale, you noticed that he did that, did you? A. Yes.

Q. Directing your attention to your two bills of sale that have been identified by you and of-

fered, these two bills of sale running from Florence Hazard to you, one dated August 3 and one dated July 29, you have identified? A. Yes.

Q. I notice that these bills of sale were not recorded until the nineteenth of February, 1913; that were made in the summer of 1912; you have already offered an explanation as to why they were kept off record until 1913, on the nineteenth of February. Is that the only explanation you wish to give? A. Yes.

Q. Who actually sent those papers for record to the County Clerk's office? A. That was sent through the attorney.

Q. What attorney? A. Mr. Sexton.

Q. At your request? A. Yes.

Q. And you took the papers to him and asked him to have them recorded, did you? A. Yes.

Q. And you thought it was necessary to do that since you were intending to enter into business somewhere else? A. Yes.

Q. How did the recording of these bills of sale help you in this business somewhere else? A. Well, it was—I thought it was a good business like move to do, to have a record made of it somewhere.

Q. But you had slumbered on that notion of commercial duty from the 29th of July, 1912, until the nineteen of February, 1913, hadn't you? A. Yes.

Q. Had the fact that that deal between Powers and Mrs. Hazard was to be closed on the nineteenth of February anything to do with your idea about having them recorded? A. No, sir.

Q. That is a mere coincidence? A. No, I will explain that——

Q. You have answered my question. Directing your attention to the first of those papers, the one dated on July 29, I notice that the consideration is $10,000? A. Yes.

Q. And the consideration of the bill of sale of August 3 is $2,000? A. Yes.

Q. Why was it necessary to have two of those bills of sale? A. When I first negotiated with Mrs. Hazard I closed a deal for all the goods for $10,000; then after going down there and looking over the matters, there were some other goods down there, a separate bill, so I come back and closed the second deal, four or five days afterwards, with Mrs. Hazard for $2,000 extra for those other goods.

Q. Did you understand that she was taking that amount on the goods that she had taken as security from the E. C. Hazard Company? A. Yes.

Q. And you understood that they were goods that belonged to her? A. Yes.

Q. And she represented that they belonged to her? A. Yes.

Q. And that was descriptive of the goods named in both bills of sale? A. Yes.

Q. Both having come as security to her from the E. C. Hazard Company? A. Yes.

Q. Of which she was then the owner, that is, as you understood it? A. Yes.

Q. May I inquire of you how you paid this $10,000, the consideration of the bill of sale of the 29th of July? A. In notes.

Q. One or more? A. In two notes first, and then it was transferred into one note.

Q. And do I understand that you acquired this entire $12,000 worth of property, property passed by bills of sale, naming a consideration of $12,000, that you satisfied the entire consideration by notes? A. No, I gave $600.

Q. You paid $600? A. Yes.

Court: In addition or on account of the notes?

Witness: On account of the notes.

Q. But you paid $600 after you had given the original note? A. That came afterwards, yes, sir.

Q. In point of fact, you acquired all the property named in both bills of sale, by giving one or more notes that aggregated $12,000; that is what happened first? A. Yes.

Q. Then subsequently you paid $600 on account of the principal debt? A. Yes.

Q. And that reduced it to $11,400; that is right? A. Yes.

Q. And the $600 that you paid on account of the $12,000 debt, you got that by the sale of a team of horses to Mr. Powers for $600? A. No, I didn't know anything about a team of horses.

Q. Didn't you know that there was a team of horses sold? A. No.

Q. Where did you get $600 from that you had credited on that note? A. From myself, from my own money; I kept on putting money in down

there when I first took possession, between that date, lots and lots of times.

Q. That was your money? A. Yes, that was my own cash.

Q. When did you make the payment of $600? A. That came later.

Q. How much later; have you a check or anything to show? A. I did have the checks, in the other case.

Q. According to your testimony in the other case, it was a long time after that that you paid the $600, wasn't it; you renewed this note once before you paid the $600, didn't you? A. Yes.

Q. And the original note ran a year before you renewed it? A. I don't know how long that was.

Q. In point of fact the $600 wasn't paid until after this former litigation had been started, was it; I am speaking of the suits of the Little Silver Sauce Company and yourself, in which you sought to get a lien upon the insurance money? A. Yes.

Q. That is right, isn't it? A. Yes. While I was working down at that factory for eight or nine months I was sending down my payroll and paying the men down there week after week, sending a good deal of money.

Court: That has nothing to do with this.

Q. You paid $600 on account of that note? A. Yes.

Q. And that reduced the debt to $11,400? A. Yes.

Q. Did you ever pay anything more from that date to this on that note? A. No.

Q. And what did you do with these notes for which you had given her your note for $12,000, what did you do with them? A. We were manufacturing some of the goods into finished products and there were some goods went out and some goods came in, some raw material came in, and some goods were sent out and sold, and some were finished.

Q. But the great bulk of them you passed over to the Little Silver Sauce Company? A. Yes.

Court: Are your two notes outstanding yet for $11,400?

Witness: Yes.

Q. Who holds them? A. Mrs. Hazard.

Q. You passed them to the Little Silver Sauce Company by a formal bill of sale, didn't you? A. Yes.

Q. When this insurance trouble arose the Little Silver Sauce Company filed a bill seeking to get a portion of that insurance money, didn't they? A. Yes.

Q. And they sought to get a portion of that insurance money for the very goods that you had turned over to them, that is, to the Little Silver Sauce Company, which you in turn had taken from Mrs. Hazard by these bills of sale; that is true, isn't it? A. Yes.

Q. And in that suit of the Little Silver Sauce Company seeking to acquire insurance money as representing the value of said goods, you know

as a matter of fact that they claimed these goods to have been worth $48,463, don't you? A. Yes.

Q. And they were a portion of the goods that you had taken over for $12,000? A. Yes.

Q. And in that same suit you set up a claim for some of those goods which you held still in your own right, for $3,610? A. Yes.

Q. And you secured a determination in that suit that you had goods to the value of $600? A. Yes.

Court: He personally?

Mr. Wilson: Yes, he personally.

Q. What did the Little Silver Sauce Company, when you turned over to them a portion of those goods that you took from Mrs. Hazard for the $12,000, and gave them a bill of sale—I think you said—and goods for which they subsequently claimed value to the amount of $48,463—what did the Little Silver Sauce Company pay you? A. We organized a company. As soon as we got streightened out, I was to get my proportion of stock.

Court: What did you capitalize at?

Witness: It was about $50,000.

Court: You were to get how much?

Witness: I was to get a majority of the stock.

Court: Fifty-one per cent?

Witness: We figured it out a little more than that.

Court: And you were to turn this por-

tion of the goods over for that share of stock?

Witness: Yes.

Q. And it was capitalized at $50,000, and you were to get a little over half? A. I was to get the bigger portion.

Q. And he was to get the balance? A. Yes.

Q. And assuming that the goods you turned over were worth $48,463 wouldn't leave very much for him? A. Of the $50,000, no.

Court: Were you to get stock of the par value of that amount?

Witness: We were going to straighten that out; the doctor was to get a few thousand dollars of stock, and I was to get the rest.

Q. Were you to get forty-eight thousand and some dollars worth of stock? A. Yes.

Court: How much stock did you actually get?

Witness: When it was straightened out?

Court: Even up to date, how much stock did you get out of the Little Silver Sauce Company?

Witness: Today I have nothing.

Court: At any time, what is the largest amount you ever had?

Witness: $48,000.

Court: Actually issued to you?

Witness: Yes.

Q. Isn't it a fact that you testified in the former case that not one single share of stock was ever issued to you by the Little Silver Sauce Company? A. I was to get it.

Q. You were to get it? A. Yes.

Q. I am asking you, and the Court asked you, what you actually did get? A. No.

Court: You understood what I said.

Witness: What I was to get.

Court: You told me you got it all.

Witness: I was to get it.

Court: You know what I meant, and I want an answer to my question correctly and honestly; I don't want a dishonest answer or an untruthful answer.

Witness: I don't mean to.

Court: And I don't mean that you shall. When I asked you what you got and what was actually issued, you understood my question; you told me you got $48,000 and some hundred of stock represented by the value you placed upon it. That you say is not true?

Witness: No.

Court: Then you didn't get anything?

Witness: No.

Q. Who had the custody of those bills of sale between the time when they were executed to you, which was in July and August, 1912, until they were recorded in February, 1913, Elmer Hazard, didn't he? A. Elmer Hazard—I had them part of the time and Elmer Hazard had them the other time.

Q. How did you divide this time between you? A. He lived down at Long Branch at that time and I used to go down and then he had them; he had them after that.

Q. The question is how much of the time did he have them? A. He had them all the time, only the time when I had them in my possession, when I took them to New York and looked them over.

Q. That was a matter of a few days—a day or two? A. Yes.

Q. Then he kept them continuously? A. Yes.

Q. Until you took them to Mr. Sexton and asked to have them recorded? A. Yes.

Q. That is true? A. Yes.

Court: Why did he hold them?

Witness: He lived in Long Branch and I was in New York, going back and forth.

Q. Why didn't you keep possession of your own papers? A. He was my partner.

Q. He is not mentioned in those papers; it was your personal transaction and your personal note for $12,000? A. Yes.

Q. Why did he keep possession of the papers instead of you? A. He lived at Long Branch.

Q. Why couldn't you keep them in the home as well as having Dr. Hazard keep them in his? A. No special reason.

Q. Did you observe that when you had these papers, when you last parted with them and gave them to Elmer Hazard, that they were not acknowledged, either of them; did you notice that? A. No.

Q. You see they were not acknowledged, nor was there any attempt to prove their execution until the seventeenth day of February, 1913, and then it appears to have been done by the affidavit of Elmer Hazard, the subscribing witness?

Court: That is true as to both of them?

Mr. Wilson: That is true of the bill of sale dated the 29th day of July.

Q. That is obviously so, isn't it? A. Yes.

Q. It wasn't acknowledged, and you didn't notice that it wasn't acknowledged, at the time it left your hands, did you? A. No.

Q. You see now that it was not acknowledged, and it was only proven by his affidavit on the seventeenth day of February, 1913? A. Yes.

Q. Did you notice that that had not been acknowledged either? A. No, I didn't.

Q. And its execution was not proved until the seventeenth of February, 1913, and that that was proved by the affidavit of Elmer; you didn't notice that before? A. No.

Q. That is the first time that has ever been brought to your attention? A. Yes.

Q. Do I understand from your narrative that the Little Silver Sauce Company was a corporation conceived by you and Elmer? A. No, it was handed down through the old E. C. Hazard Company; it was incorporated some years ago.

Q. But you and Elmer proposed to reorganize it and you proposed to turn over some portion of this stuff that you took from Mrs. Hazard; that was right, was it? A. Yes.

Q. And which you afterwards put a valuation of some $48,000 upon, is that right? A. Yes.

Q. And that you were going to receive in turn the bulk of a new issue of new capital stock of $50,000, and Elmer was to have the balance? A. Yes.

Q. So that the plan in contemplation was that you and Elmer should be the company? A. Yes.

Q. And you practically were the company? A. Yes.

Q. And continued to be the company until you quit doing business as the Little Silver Sauce Company? A. Yes.

Q. Have you stopped doing business under that name? A. Yes.

Q. After your meeting in New York at the Astor House did you understand that on that day, February 5th, there was an agreement in writing entered into between the parties; did you hear that? A. No.

Q. You never knew that? A. No.

Q. There came a time when you knew that Mr. Powers had bargained to buy, didn't you? A. Only just as I heard the conversation, and then after they went away; that is the time I knew it about the real estate property.

Q. That doesn't mean anything to me; there came a time when you knew that Powers had bargained to buy that property; whether he had actually paid for it or not, you didn't know, but there came a time when you knew that he had bargained to buy it? A. Yes.

Q. And that was subsequent to February 5th? A. Yes.

Q. You knew he had entered into a contract to purchase it? A. Yes.

Q. You know what? A. Yes.

Q. You knew that because you say that you saw him almost every day in and around the factory? A. Yes.

Q. You had some talk with him about shifting this coal at the depot; you say he told you to go ahead and move it, that he wouldn't be imperious about demanding possession of that car, in your conversation with him? A. Yes.

Q. You didn't then tell him that you had this bill of sale, did you? A. I don't think that ever came up.

Q. Did you know as a matter of fact when he was to close his purchase of this property? A. No.

Q. You didn't know that was to be on February 19th? A. No, of course everything seemed agreeable; I didn't know there was to be any trouble.

Q. Whether agreeable or not, there was to be a day to close up? I am talking about whether you heard there was a time fixed at which Mr. Powers was going to pay his money and take over the property? A. No, I didn't know that.

Q. Elmer didn't tell you? A. No.

Q. Did Elmer suggest that you had better have these bills of sale recorded? A. No, that come—we talked over it.

Q. You and he talked that over? A. Yes.

Q. Are you quite sure that it was not he who asked Mr. Sexton to have them recorded? A. I don't know which one it was; I wouldn't say. We both were talking the matter over.

Q. Isn't it true that when you were over in the Astor House on the fifth of February, one of the things talked about was the trade mark and the labels and the brands of stuff that were being manufactured? A. No.

Q. Wasn't that talked about? A. No.

Q. Isn't it true that in the Astor House Elmer said that his mother was selling $60,000 worth of property for $11,400; didn't he make some such statement as that? A. I don't remember that part of it.

Q. But you are not sure that that wasn't said? A. It could have been said among them.

Q. As a matter of fact the trade mark for that business is a very valuable item, isn't it? A. It was.

Q. At that time? A. Yes.

Q. You had been a good many years in this kind of business? A. Yes.

Q. And familiar with the value of that name? A. Yes.

Q. What do you think that name was worth at that time?

Mr. Sexton: Are you making him your witness now?

Mr. Wilson: I am cross-examining.

Mr. Sexton: I object to it.

Court: It is not cross-examination, and

he hasn't shown any qualification to permit him to testify.

Q. What experience do you say you have had in this kind of business? A. A good many years.

Q. How many is that? A. Twenty-nine.

Q. And when I speak of this kind of business, what do you mean? A. Preserving and canning, canned goods, food products.

Q. And selling them? A. Yes.

Q. How long had you been familiar with the name E. C. Hazard & Company and the E. C. Hazard Tomatoketchup and the Shrewsbury Tomatoketchup and the other products of that factory; how long had you been familiar with them? A. Ever since I have been in business, close on to thirty years.

Q. How did the output of the E. C. Hazard factory, the Tomatoketchup and the other products, compare with similar products of similar factories?

Mr. Sexton: Objected to as not cross-examination.

Court: Objection sustained.

Mr. Wilson: May I make him my witness for the purpose of the answer?

Court: Have you anything else on direct? Are you through on that?

Mr. Wilson: Yes.

Re-direct examination by Mr. Sexton:

Q. Mr. Matthes, was Florence Hazard interested in any way with you and Elmer Hazard

in the Little Silver Sauce Company? A. No.

Q. Did Florence Hazard have anything to do with the institution of the suit for the recovery of the insurance money by the Little Silver Sauce Company? A. I don't understand that.

Q. Did Florence Hazard have any interest in the suit for the money obtained by the Little Silver Sauce Company from the insurance fund? A. No.

Q. Did she receive any of the money? A. No.

Q. Was that suit brought at her solicitation or direction? A. No.

Re-cross examination by Mr. Wilson:

Q. She testified in each of those suits, didn't she, in support of each of them? A. Yes.

Q. And she had interest in the outcome of the suit, to the extent of having some reasonable hope—— A. Yes.

Q. —that her note of $11,400 that was unpaid might be paid; she had that much hope in it? A. Yes.

Q. And it wasn't paid? A. No.

Q. She has got it yet, unpaid? A. Yes.

Q. To go back to the other inquiry, I ask you how these products compared with similar products?

Court: He is your own witness on behalf of the defendants now?

Mr. Wilson: Yes.

A. They were the highest grade goods on the market in their days.

Q. Would that be descriptive of their condition at the time of this deal in February, 1913? A. No, they had deteriorated some.

Q. What was their relative value at that time? A. Do you mean the goods compared with the relative goods on the market?

Q. Of other concerns in 1913; that was the time of this alleged sale.

Mr. Sexton: What concerns?

Mr. Wilson: All food concerns.

A. They had gone back some through the—I don't know whether it was a difference in manufacture or difference in quality of manufacture, but the name was still good, but the goods wasn't up to the old time standard as they originally started off.

Q. But you regard the name of Shrewsbury Tomatoketchup, the Tomatoketchup appearing as one word, the Onion products and the Sauce products,—did you regard the name and the right to use the name as of value in the year 1913? A. Yes.

Q. What do you think would be a fair value to put upon them?

Mr. Sexton: Objected to on the ground that he is not sufficiently qualified.

Court: Do you wish to cross-examine him? You may.

Re-re-direct examination by Mr. Sexton:

Q. Have you ever manufactured goods similar to those of the Shrewsbury Manufacturing Company? A. I have been interested in the manufacture; I haven't been in charge of it.

Q. What has your interest been? A. I have been in charge of the sales department.

Q. Have you been in charge of the management of it? A. No, but in this way: a man in charge of the sales department must qualify himself as to the quality of the goods and the reasons why, but he has nothing to do with the manufacturing, but he suggests to the manufacturer——

Court: But he would have a better knowledge as to the value of the article than the manufacturer, by being in possession of the knowledge of the criticism of the purchasing parties. You may answer Mr. Wilson's question.

Re-re-cross examination by Mr. Wilson:

Q. What value do you think might fairly be attached to the trade mark and the name of these various products to which your attention has been directed, at the time of this transaction, in February or March, 1913? A. I will answer that in two ways, to make it clear; that depends a good deal on who is associated with the concern, who pushes the goods, I mean selling the goods, and the other connections. You may place the value under those conditions, it would be a

fluctuating value, I would say from $25,000 to $50,000 offhand.

Court: Would that include all three that Mr. Wilson has directed your attention to, or to each one?

Q. The entire use of the name, as I understand, for all purposes? A. Yes.

Q. Would this sliding scale depend upon the degree of efficiency with which the products was manufactured and put upon the market? A. Yes.

Q. And assuming that you have a plant adequate to turn out that output, and assuming that you have the necessary skill for that purpose, and assuming that you have the necessary capital for that purpose, would you fix upon the value of these trade marks the higher sum that you have named? A. I would.

Q. To wit, $50,000?

Court: As being the aggregate price in February and March, 1913?

A. Yes.

Court: If you were buying those trade marks and trade names in February and March, 1913, and the sum of $50,000 had been asked for them, and you had had that money and desired to engage in that business, would you have paid that price for it, considering it a reasonable price?

Witness: I would if things were work-

ing in good shape, taking everything into consideration; that it hadn't slackened off.

Court: Had it slackened off?

Witness: Yes, and gone backward.

Court: And would that affect the value at all of $50,000?

Witness: It does, because the goods were off the market.

Court: How much would it affect the value; how much less than $50,000 would you have been willing to pay for it at that time?

Witness: $25,000.

Court: You think it would be absolutely worth that?

Witness: Yes.

Court: Without qualifications?

Witness: Yes, at those conditions.

Court: At the time I speak of?

Witness: Yes.

Re-re-re-direct examination by Mr. Sexton:

Q. The value you have put upon these trade marks, you say, if I understand you correctly, that they have, would be under such conditions as they would be manufactured by a person competent to manufacture and sell them? A. Yes.

Q. Could you believe such a value, if the concern was a bankrupted concern and had been out of business for two or three years?

Court: Is that the condition here; do you expect to show that to be the condition?

Mr. Sexton: Yes.

Court: The witness said they were still marketing the goods at this very time, but that the character had deteriorated to some extent.

Q. Do you know that there was an interval when E. C. Hazard & Company was not marketing goods? A. They were shipping goods when I became interested, not to a big extent, but they continued shipping some goods right along.

Q. Do you know the period when they were out of the market with their goods? A. I don't know.

Q. To your knowledge? A. No.

Q. Do you know that they had stopped advertising? A. They had stopped advertising.

Q. And as a matter of fact, the use of the Shrewsbury trade name was included in the very bill of sale that you had? A. Yes.

Mr. Rosenberg: I object, the bill of sale speaks for itself.

Court: Objection sustained.

Q. And the prices that you have fixed are such that would be under an ideal situation and in the position to manufacture and continue a going plant?

Mr. Rosenberg: I object, because that is not what he said. He didn't say a word about ideal condition.

Court: It is cross-examination.

Q. You fix your values on a situation that would be an ideal situation, that is, as to the manufacture and salesmen and advertising? A. That is the basis of $50,000; and under the other conditions I would say $25,000.

Q. That also includes the financial backing? A. Yes, to keep the thing in good shape.

(April 24th, 1918.)

RASMUS P. MILLER, sworn in rebuttal for complainant.

Direct examination by Mr. Sexton:

Q. Where do you live? A. Oceanport.

Q. How long have you lived there? A. About twenty-three years.

Q. Do you know Elmer Hazard? A. Yes, sir.

Q. How long have you known him? A. Since 1892.

Q. Were you working for him on the fifteenth of March, 1913? A. Yes, sir.

Q. Where? A. At Shrewsbury.

Q. What occurred, if anything, on the morning of that day?

Court: Whereabouts in Shrewsbury, in the Hazard factory?

Witness: Yes. You want generally what occurred?

Mr. Sexton: Yes.

A. On the morning I came to work as usual.

Court: At what hour?
Witness: At seven o'clock.

A. (continuing). As I came to the door, Mr. Powers was standing in the front of the door; as I tried to enter, he said, "You cannot enter here," and I questioned him why; he said, "Because I have bought the property and all that is within it, and it is my property, and you cannot enter"; so I questioned him and said that Mr. Matthes and Elmer C. Hazard had goods that they had bought to my knowledge that they were manufacturing and putting up at the present time, and we had orders to put them out that day, and that I was to go there to go ahead and put it up, and therefore I wanted to enter, but he refused. By that time, when he wouldn't let me enter, I asked him for the watchman, Mr. Wilson; he said he was inside, and by that he opened the door to show me where Mr. Wilson was, and I stepped in. I started to converse with Wilson about what we had to do, what the orders were, and by that time Mr. Powers grabbed me and forced me by the shoulders, and shoved me out of the door, and luckily I didn't stub my toe and get hurt, or there might have been trouble.

Mr. Wilson: That parenthetical remark ought to go out.

Court: It is only indicating what might have happened.

Witness: That was all on that morning, as far as I know.

Q. Did you afterwards take an inventory of the goods in the place? A. Yes.

Mr. Sexton: Have you that inventory, Mr. Wilson?

Court: When did you make it?

Witness: I cannot tell exactly the dates.

Court: About how long after this morning incident you speak of?

Witness: Probably a couple of weeks or three.

Mr. Wilson: Do you mean the inventory that was made by Callahan and the rest of them?

Witness: Callahan and myself.

Q. Who assisted you in the inventory? A. Daniel Callahan.

Mr. Wilson: My understanding is that after you instituted your suits at law and possibly your suit in chancery, in respect to which you were going to inform us yesterday, the parties met and it was agreed that as a preliminary step an inventory should be taken of stuff claimed by the Little Silver Sauce Company, Elmer Hazard and Matthes, and thereupon someone representing the respective parties—persons, one or more, representing the respective parties—went to the factory with a view of making an inventory of the prop-

erty claimed by Elmer and the Little Silver Sauce Company, and possibly Matthes; that inventory, I think, we have a copy of it.

Mr. Powers: I think we have.

Mr. Wilson: Is that the inventory you refer to?

Mr. Sexton: Yes, but the statement is erroneous; the inventory is an inventory of all the goods in the factory, instead of being an inventory which anyone claimed.

Mr. Wilson: I think you are correct. If you are asking for that inventory, Mr. Powers thinks he has a copy of it, somewhere, but you have a copy, one or more.

Mr. Sexton: And we cannot find ours.

Mr. Wilson: And if we can find it, we will give it to you.

Q. You understood, Mr. Miller, what I referred to? A. Yes.

Q. How many copies were made? A. One for Mr. Hazard and one for Mr. Powers.

Q. Who made the copy for Mr. Hazard? A. I did.

Court: Were you selected by Mr. Hazard as his representative to make the inventory?

Witness: Yes.

Court: Was Mr. Callahan selected by Mr. Powers, as far as you know?

Witness: Yes.

Q. What goods were set forth in that inventory; what goods did you inventory?

Mr. Wilson: I submit that he cannot answer that of his own knowledge.

Court: He can say whether he inventoried machinery or manufactured product.

Q. Did you inventory everything in the factory or not? A. Everything that was there.

Mr. Wilson: You offered it in the former case as Exhibit C 9.

Court: Who wrote the inventory; was it typewritten?

Mr. Smock: It was in Mr. Callahan's handwriting.

Court: Who wrote the one Mr. Hazard got?

Witness: I wrote the one for Mr. Hazard.

Court: Did you and Mr. Callahan sign the two copies?

Witness: I would not say for sure about that; I could identify my own writing, if I saw it.

Q. Did you see a sign on the factory door on the morning you went there, on the fifteenth? A. No, sir.

Q. Was there a sign on the factory door? A. No, sir.

Q. If there had been a sign there you would have seen it? A. I would likely have seen it.

Court: Are you referring now to the noticed?

Mr. Sexton: I refer to a notice prohibiting men.

Q. Did you notice upon the factory door a sign, signed by Elmer Hazard or anyone, that on one was admitted? A. No, sir.

Court: Or forbidding anyone entering the premises?

Witness: No, sir.

Court: How long were you on the premises that morning, Mr. Miller?

Witness: I probably was there about the factory fifteen or twenty minutes.

Q. From seven o'clock until seven-thirty? A. Yes, waiting for some of the men to come, and then I went down to Mrs. Hazard's house.

Cross-examination by Mr. Wilson:

Q. I understood you to say that when you came there Mr. Powers was standing in the door? A. Yes.

Q. And the door was open? A. No, sir, he opened it for me; I said when I asked for Mr. Wilson he opened the door.

Q. Then he was not standing in the door? A. He was on the door steps, but the door was closed behind him.

Q. Then you said you wanted to get in and speak to Wilson? A. Yes.

Q. And you went in and did speak to him? A. Yes.

Q. Wasn't Mr. Powers standing in the doorway of the office in the machinery room when you came up to the door; wasn't he standing in the doorway with the door open when you came up? A. The door was closed.

Q. Why is your mind so certain about that, so clear about it? A. Because I know he took hold of the knob and opened it; I remember it as

Q. Did he turn his back to you when he opened it? A. He turned simply, the knob was there well as can be.

and he stood this way, sir, and he turned around this way and opened the door (indicating).

Q. Then he turned his back to you when he opened it? A. Not entirely, but sideways.

Re-direct examination by Mr. Sexton:

Q. Mr. Miller, you had been working at the factory prior to this time? A. Yes.

Q. Did you know whether or not Elmer Hazard or Little Silver Sauce Company or anyone else had received a carload of coal? A. They received a carload of coal, yes.

Q. How long prior to this? A. I wouldn't state the time exactly; it wasn't long before that.

Court: A matter of a few days or week?
Witness: Probably a week or two weeks.

Q. Where was the carload of coal? A. Right outside of the building, close to the boiler room, on the side; it was carted and dumped on the ground.

Q. Did you see the coal in the car? A. I did not see the coal in the car.

Q. Did you see the car that contained the coal? A. No, sir.

Court: That would be at the station?

Mr. Sexton: Yes.

Q. Is there a siding at Little Silver? A. Yes.

Q. How far is that siding from the factory? A. I should think about half a mile, I should judge.

Q. How was the coal, if you know, brought to the factory? A. I cannot say positively; I think it was carted there.

Court: Do you know anything about it?

Witness: I think it was carted there by the help in dump carts.

Court: Do you know anything about it?

Witness: I know it was carted there.

Court: By whom; only what you know about it.

Witness: I know, but I don't remember the man's name.

Re-cross examination by Mr. Wilson:

Q. You remember being asked about the way that you came to the factory on this morning in question, when you gave testimony in the former trial, don't you, in relation to this general matter? A. Yes.

Q. Isn't it true that when you came to the door, that Mr. Powers was standing by the door, and without saying anything to him, you started to enter? A. No, sir.

Q. That isn't true? A. No, sir.

Q. Isn't it true that the door was open and he was standing by it and you started to enter, when he stopped you? A. No, sir.

Q. Do you remember saying this, in response to an appropriate question in the former trial: "I came there on the fifteenth, in the morning, shortly before seven o'clock, and when I came there Mr. Powers was standing there by the door and I started to enter"; you testified to that, didn't you? Didn't you say that very thing? A. I started to enter?

Q. Didn't you say that? A. Yes.

Q. So that he was standing by the door and you started to enter, didn't you? A. I started, yes.

Q. And he said you couldn't enter there? A. Yes.

Q. That is what happened? A. Yes.

Q. And you asked why? A. Yes.

Q. And I ask you if it is not true that when you came there, he stood by the door and the door was open and you tried to enter? A. I said the door wasn't opened.

Q. You say still the door wasn't open? A. The door wasn't open.

Q. And then did you further in that same connection say in the former trial: "I have got my orders from Mr. Hazard; and I asked him where Mr. Wilson, the watchman, was, and he said he was inside, and I said I would like to see him if he would allow me to go inside and see him," and you said that to him, and you

testified to that in the former trial, didn't you? A. I don't recall that.

Court: That is what you said there?

Witness: That I asked him if I could enter; I stated there I asked where Mr. Wilson was.

Q. But you don't kwon whether you asked permission to go in and see him? A. No.

Q. You don't deny you said that in the former trial; didn't you at the former trial in giving your narrative, say, "I said I would like to see him if he would allow me to go inside and see him," and then he stepped aside and allowed me to go inside." Didn't you testify to that in the former trial? A. I don't remember that.

Q. Do you deny that the fact was that he stood in the open door. And when you made that request he stepped aside and let you go in? A. I deny it, that he stood in the open door because I remember correctly the door was closed.

Court: We will take a rest until the twelfth of June, at Red Bank, at ten o'clock in the forenoon, and I will make a reference to Mr. Bindseil to take testimony of such witnesses, either within or without the state, as counsel on either or both sides desire, and that in the absence of any arrangement to the contrary, such testimony may be taken on five days' notice to either party.

IN CHANCERY IN NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, et als.,

Defendants.

Continuation of testimony in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, on Wednesday, June 12th, 1918, at 10:30 A. M.

Appearances:

Mr. Charles F. Sexton for complainant.

Mr. M. T. Rosenberg and Mr. Warren H. Smock for defendants.

HENRY KOHL, sworn for defendants.

Direct examination by Mr. Rosenberg:

Q. You reside in Jersey City, I think? A. I am living now at Allenhurst.

Q. You are the president of the National Grocery Company? A. Yes, sir.

Q. You conduct a very large wholesale grocery store? A. No, it is a retail store—a chain of stores.

Q. How long have you been in the grocery business? A. Since 1891.

Q. And have been actively dealing in food products? A. All the time grocery business.

Q. Were you acquainted with the Hazard brands of ketchup, pickles, and the other Hazard brands, during the time they were on the market? A. Yes.

Q. What was the reputation that those brands had in the business? A. You are speaking now of originally?

Q. Yes. A. First class reputation; everybody knows that.

Q. Was there an extensive sale for them or not? A. There wasn't so much ketchup used in those days as there is now, but whatever ketchup was used——

Court: What time are you referring to?

Witness: The time that the Hazard ketchup was on the market.

Q. Go back to the time just anterior to March, 1913. A. I didn't handle it then.

Q. When did you cease handling it? A. I am going back about ten or twelve years ago—longer than that, fifteen years ago.

Q. Considering the character of the product as you knew it, and its being manufactured at the place where the Hazard product had been manufactured, what would you consider the value of the Hazard trade marks and labels to have been in the year 1913?

Mr. Sexton: Objected to.

Court: Objection sustained. You have only directed his attention to ketchup.

Q. Have you had any particular experience with any of the other Hazard products besides the Hazard ketchup? A. Not very much.

Q. Did you know of them at all? A. Yes.

Q. Were they or were they not, to your knowledge, actively dealt in in the market? A. No, there were other products——

Court: Were they actively dealt in?

Q. Were they articles of commence in the market generally; were they dealt in; you knew that there were such articles of merchandise? A. Yes, I remember buying canned lobster under their brand, different kind of brands.

Q. Do you know about the Chili sauce? A. Yes.

Q. You know there was Hazard Chili Sauce? A. Yes.

Q. And Chutney? A. Yes.

Q. Do you know anything about the Hazard brand of Sauer Kraut? A. No.

Q. Do you know what reputation these other articles enjoyed besides the ketchup? A. Everything under the name of Hazard brand, in my own opinion, always bore or had a good reputation.

Q. From your knowledge of the Hazard brand, what would you consider would be the value of the trade marks and labels in 1913, if they could be manufactured at the same place at which they had been manufactured?

Mr. Sexton: I object on the ground that the witness has not sufficiently qualified

himself and hasn't sufficient knowledge to place a value on the goods he is asked about—upon the trade mark.

Court: I sustain the objection.

Mr. Rosenberg: On the ground that he hasn't qualified?

Court: I haven't stated any reason; he has dealt in ketchup about twelve years.

Mr. Rosenberg: I will limit him then to the inquiry as to ketchup.

Court: He must show how extensively he dealt with them.

Q. How extensively did you deal in the Hazard ketchup when you did deal in it? A. Hazard Ketchup was always the principal ketchup at those times, the same as it is now like Blue Label today.

Q. Did you buy and sell it in large quantities? A. Not so much, no; I wasn't a large man then.

Q. Have you been dealing in other brands of ketchup since then? A. Oh, yes.

Q. To a large extent? A. Yes.

Q. You have a general idea of the extent of the sales in ketchup, have you or not? A. Yes.

Court: Have you any idea of the extent of the sale of the Hazard Ketchup at the time you were handling it?

Witness: No.

Q. Have you had opportunities of observation as to the sales of the Hazard Ketchup generally? A. At that time?

Q. Yes. A. No.

Q. Or at any time since? A. Not at any time since.

Mr. Rosenberg: I think he is sufficiently qualified.

Court: I don't think so; he has no knowledge whatever—the witness absolutely admits—of the extent of the Hazard business; how can he predicate, in the absence of such information, a valuation upon the Hazard trade mark in connection with Hazard or anything else? The witness apparently himself doesn't think he can.

Mr. Rosenberg: I will withdraw the witness for the present.

HENRY C. TRAUTE, sworn for defendants.

Direct examination by Mr. Smock:

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

Q. What is your business? A. I am connected with the Diamond Match Company—charge of the advertising for eighteen years.

Q. Did you ever do any advertising in connection with products of E. C. Hazard & Company? A. I never have.

Q. Were you familiar with E. C. Hazard & Company prior to March, 1913; did you know that there was such a concern? A. Oh, yes, I was in their business place in New York a number of times and met Mr. Hazard, Sr., and Mr. Stern, one of the partners.

Q. Do you know anything of the reputation of the products of E. C. Hazard & Company? A. Generally among the grocery trade, yes, sir.

Q. And your business led you to have dealings and conversations with the grocery trade? A. We distribute our entire product of matches through the wholesale and retail grocers.

Q. And that gave you a familiarity with the grocery products generally? A. Generally speaking, in that way I obtained general knowledge of a great many of the grocery products, yes, sir.

Q. How long have you been in that business, in the match business; in this particular line of business advertising? A. Since 1894, and connected with the Diamond Match Company in charge of their advertising, eighteen years.

Q. What territory do you cover? A. The entire United States, and in fact other portions the world over.

Q. You say you knew of the products of E. C. Hazard & Company? A. I did.

Q. What was the reputation of these products?

Mr. Sexton: Objected to.

Court: I will allow that. I suppose we all have a general idea of them; I could say I knew something about the Hazard products by seeing labels on them, and using them at home; I knew they existed and knew there were such things.

Q. What was the reputation of these products in the trade as you had learned it—the Hazard products?

Mr. Sexton: Objected to on the ground that this man is an advertising man; he has no connection whatsoever with a grocery firm, or a kindred firm, of which he is attempting to qualify.

Court: I will permit it.

A. Most excellent.

Court: You didn't dispute that, do you?

Mr. Sexton: No.

Q. Do you know what the reputation was as late as March, 1913? A. Might I inquire what year Mr. Hazard died?

Mrs. Murphy: 1905.

Q. Eight years after his death do you know what the reputation of his goods were? A. Very good, they maintained the reputation, very good.

Q. What products do you recall were marketed by E. C. Hazard & Company up to that time? A. Generally I have always associated the Hazard and the Shrewsbury names together, Shrewsbury products of the E. C. Hazard Company.

Q. Regardless of what they were? A. Practically regardless of what they were—ketchup and general food products.

Court: Can you recall anything else beside ketchup that bore that name or the names?

Witness: Just at this moment I could not.

Q. In any event, that was the largest product that they marketed, wasn't it, ketchup? A. Yes.

Q. That was their main product? A. Yes.

Q. If they had marketed other products, using the name of E. C. Hazard & Co. or E. C. Hazard, what bearing, if any, would the name of E. C. Hazard Company have in respect to these other products, no matter what they might be?

Court: In his mind?

Mr. Smock: In his mind.

A. It would certainly have a value.

Q. That is, the name connected with whatever the product may be, would add value to it? A. Absolutely; no question in my mind about that.

Q. What value, Mr. Traute, would you place upon the trade name and trade mark of E. C. Hazard & Co. in March, 1913, if it had one—a marketable value?

Witness: Might I inquire how many years previous to that they had been in business?

Court: That isn't embodied in the question.

Witness: How many years prior to 1913 had E. C. Hazard & Co. been in business?

Mr. Rosenberg: Your answer will depend on that to a certain extent?

Witness: Not entirely.

Mr. Rosenberg: Will it to some extent?

Witness: Yes.

Mr. Sexton: I object.

Mr. Rosenberg: Can't we agree how long the company had been in business?

Court: Even if you get that information, do you think you are qualified to express an opinion in regard to the value of this trade name or trade mark?

Witness: I base my—I am an advertising man—my experience is based entirely along advertising lines.

Court: Could you express an opinion on the value of anything without knowing the extent in which it was dealt, the valume of business done every year?

Witness: The value of E. C. Hazard Shrewsbury trade mark is such in the trade, to my absolute certain knowledge—I have no interest in this matter—as an advertising matter, I know what it costs actually to build up the value of a trade mark in the general public, among the general masses of the country; I know exactly what it costs; I know by experience in the match business; we distribute all our product to the wholesale and retail grocer, to the consumer, and I would base my value of what I would be willing to pay for that trade mark, good will and rights in 1913—my personal knowledge of what I would consider that value, my knowledge in the general grocery trade, being among the retailers and the wholesalers, at that time, the number of years E. C. Hazard has been in business, because they must

have spent considerable money in advertising, and with the good quality of their product, the two combined, that is what made that value of that trade mark and that good will; now if they had been in business ten years or fifteen years, all right; I don't say they must have been in business twenty-five years to establish that.

Court: Would the value you fix, then, because of the elements you have mentioned, depend upon the amount of business they did, the volume of business they did, or the profits they made from it?

Witness: Not entirely, no.

Court: Would it at all?

Witness: Might I answer it this way: In 1913, if that proposition had been offered to me in the condition it was—as I understand Mr. Hazard died eight years previously——

Court: He died in 1905.

Witness: That would have been worth considerably less, much less than at the time Mr. Hazard was alive. In my opinion Mr. Hazard was a very able man and a man in that business.

Court: You think his personality was as essential element, do you?

Witness: Oh, very essential. The value increased, in my opinion, enormously.

Court: Why do you object, Mr. Sexton?

Mr. Sexton: I object to the placing of a value by this witness upon the trade name Shrewsbury and E. C. Hazard, because he

has no knowledge whatever of the volume of business; it is true he may say the advertising had something to do with it. We could advertise a very poor article, and the profits must be an element which must be taken in to consideration in fixing the value. It is nothing more than a mere guess as far as this witness is concerned, because he is not in the same line of business; all he knows is, as he goes around, that at some prior time E. C. Hazard Shrewsbury was a good product, and he has talked with merchants for years prior, and he knew in those years it cost something to build up the advertising.

Court: I am inclined to agree with you, but I am curious to see what figure he has to give, so I will take the answer.

Witness: Might I say this, that I will give you what I consider that worth the day after Mr. Hazard died?

Court: That isn't the question. What was it worth in March, 1913, if you know?

Witness: It was worth very much less than the day after Mr. Hazard died.

Q. And the question is, how much in your judgment was it worth in March, 1913?

Court: Not what you would give for it, but its market value, the trade name.

Witness: From $20,000 to $25,000.

Q. Have you any intimate knowledge as to the

volume of business done under the name of E. C. Hazard & Company? A. Per year?

Q. I don't mean as to real quantity sold, but as to whether it was dealt in extensively or only in a very small way? A. It was dealt in extensively, E. C. Hazard & Company were regarded as one of the prime factors in the fancy grocery business in this section of the country, if not in the entire United States; every one knew that.

Q. From your obesrvaion and from your knowledge of the grocery trade, are you able to say whether the products of E. C. Hazard & Company were dealt in in a small way or extensively? A. Very extensively; everyone knew that; it was a matter of general knowledge.

Q. We are all supposed to be ignorant of it. A. Any one going up Hudson Street and going into the corner and meeting E. C. Hazard in the E. C. Hazard building, would readily see that that was a large business.

Court: You are talking now about the time when Mr. Hazard was living.

Q. What do you say about the conditions in March, 1913? A. Very materialy less at that time; when Mr. Hazard was alive it was a different proposition. My value I place on it in 1912 is a far lower value than I would have placed on it at the time Mr. Hazard was alive.

Court: How much was it worth when Mr. Hazard was living?

Witness: The good will?

Court: The good will, trade mark and names.

Mr. Sexton: If everything continued the same as when he knew it.

Witness: $150,000 or $200,000, and that isn't high.

Cross-examination by Mr. Sexton:

Mr. Sexton: I move to strike the testimony out; my objection was interposed at the time your Honor said, 'I am inclined to agree with you, but I am curious to know what he is going to say.'

Court: I think I will let it stand, but I cannot attach much weight to it, unless it is coupled up more than it has been so far.

Q. After Mr. Hazard died, Mr. Traute, you more or less lost interest in the E. C. Hazard & Company? A. I never had an interest in E. C. Hazard & Company.

Q. You didn't keep up your visits to the office and those who were running the business after Mr. Hazard died? A. My business didn't call me to see E. C. Hazard & Company; I just dropped in there casually with friends of mine; I didn't call on them and solicit business.

Q. Then you had no business dealings whatever with them? A. No.

Q. Did your company through you? A. Our company had——

Q. Through you? A. Not through me.

Q. Did you have any knowledge of the business

that your company did with E. C. Hazard & Company? A. Generally, yes, sir; we only sold them matches.

Q. Your knowledge was limited to the sale of matches? A. My knowledge of the match business was limited to the sale of matches.

Q. And your knowledge, whatever you gained concerning E. C. Hazard & Company, was due to these friendly visits to Mr. Hazard? A. I casually met Mr. Hazard and met him here on the train, and met Mr. Stern; I lived at that time in Allenhurst.

Court: Did E. C. Hazard & Company at that time conduct a general grocery business or deal only in the manufacture of food products?

Witness: Conducted a wholesale grocery business.

Court: And in that connection with that dealt in their own manufactured products?

Witness: Yes.

Q. And there were brands of goods with the word Shrewsbury on, that were not manufactured at Shrewsbury, New Jersey? A. You mean that they were handled?

Q. Yes. A. I assume that they handled other products than the Shrewsbury brand.

Q. Do you know that there were other food products put up by E. C. Hazard & Company which were not manufactured at Shrewsbury, New Jersey? A. I did not know that.

Q. Did you know he had a manufactory any-

where else except Shrewsbury? A. No, I did not.

Q. When you say $20,000 or $25,000, you are guessing more or less? A. I am placing my own estimate of the value.

Court: You mean by that, that you think that is the amount it would bring in the open market if those things had been sold.

Witness: Yes.

Q. Would you have paid $20,000 or $25,000 for it? A. In a minute I would have taken a chance on it; I would have made money on it.

Q. And that is what you mean by your testimony? A. Yes.

WILLIAM D. LAWLER, sworn for defendants.

Direct examination by Mr. Smock:

What business are you in? A. In the canned goods and dried fruit brokerage business.

Q. Salesman? A. In business for myself.

Q. How long have you been in this business? A. I have been in the brokerage business about one year.

Q. What business were you in before that? A. Previous to that I was twelve years in the chain store grocery business.

Q. Selling to these chain stores? A. No, I was employed in the chain store business.

Q. What company? A. James Butler, Incorporated.

.Q In what capacity? A. Manager of the department.

Q. Traveled from one store to the other, did you? A. I traveled from one store to the other.

Q. Where were these stores located? A. All around the Metropolitan district, New York City, Westchester County, New Jersey, Long Island.

Q. Did these stores handle any of the E. C. Hazard & Company products? A. No, they did not.

Q. Were you familiar with the products of E. C. Hazard & Company—are you now familiar with them? A. I was twenty-one years previous to my employment with Butler & Company, employed by E. C. Hazard & Company.

Court: For twenty-one years.

Witness: For twenty-one years.

Q. Immediately previous to your employment with Butler & Company? A. Yes, it ended about thirteen years ago.

Q. Twenty-one years prior to thirteen years ago? A. Yes.

Court: You worked for Mr. Hazard just about the time of his death?

Witness: Yes.

Q. Were you working for him at the time? A. Yes.

Q. In what capacity? A. Buyer and general manager of the sales department.

Q. You were familiar with all the products that they dealt in, I suppose? A. Yes.

Q. And had knowledge, did you, of their volume of business? A. Approximately, yes.

Q. You know whether it was large or small? A. Yes.

Q. What do you say was the volume of the business generally during the twenty-one years you represented them; did they do a large or small business? A. They did a large business.

Q. Do you know the reputation of their products at that time? A. I do.

Q. Was it good or bad? A. The very best.

Q. How did the quality compare with the products of other concerns, similar products? A. They were generally recognized as better than anything else in the market at that time.

Q. How extensive a territory did their products cover? A. A large volume of business was done east of Chicago; there was some business west of Chicago, but not very much; all along the eastern coast.

Q. Were their products handled by large or small concerns? A. Handled by practically all the fancy grocery trade in the large cities.

Q. Such as Austin Nichols? A. Not so much by the jobbing trade as by the large retail grocery trade, like Park & Tilford, Acker, Merrill & Condit, Charles & Company.

Q. Do these concerns you speak of deal in high or low grade products? A. Generally high grade.

Q. What products weer put out by E. C. Hazard & Company as you recall? A. The Shrewsbury Ketchup——

Q. Was that the principal—— A. is the principal item; Shrewsbury Mayonnaise, Burnt Onion Sauce, Chutney, Mushrooms, Tomatoes.

Q. And did all those products bear a high reputation? A. The very best.

Q. The prices obtained for these products compared how with the prices obtained of similar products of other manufacturers? A. They generally brought about the highest price in the market.

Q. Did your familiarity with the reputation of these goods continue down to the present time? A. I have always kept in touch with them.

Q. Did the reputation of these products continue down to the time of Mr. Hazard's death? A. Always, the very best.

Q. And do you know whether the reputation continued as late as 1913? A. Yes, but they lost their distributing powers. They had ceased to be so generally distributed.

Q. You have no knowledge as to why that was, have you? A. I have an opinion.

Court: Of what value is the opinion to us?

Mr. Sexton: I would just as lief let him state it.

A. I believe it was due to lack of proper business methods.

Q. Do you think it was due in any measure to the inferior quality? A. I think not.

Court: Do you know if there was any change in the quality?

Witness: I never saw any.

Q. Did you use the goods personally? A. Always, as long as I could find them.

Q. After Mr. Hazard's death? A. Yes, and after the goods ceased, I went around and tried to buy them wherever I could find them.

Q. And the same standard of quality still prevailed? A. Yes.

Q. Did the demand for these products continue good even down to 1913? A. Yes, there was a general demand for them, if they could find them.

Q. How do you know; you were not connected with the Hazard Company after 1905? A. I have been in touch with the wholesale and retail grocery business.

Q. You were with the Butler concern twelve years after the death—— A. I have always been in touch with the general wholesale grocery business and meet the brokers.

Q. Were you sufficiently interested to learn what demand existed for the Hazard products? A. It was always a matter of general conversation that they were not pushed.

Q. Pushing might create a demand? A. There was a demand that was not supplied, through a lack of goods.

Q. You have personal knowledge of that? A. Yes.

Q. You have been a broker for the last year? A. For a year.

Q. During that time has there been any demand for those products? A. I don't say there is any demand now; I think a demand could be created, but I don't think there is any demand now.

Court: Why do you think that demand has fallen off?

Witness: Because of other goods having taken their place; a good many of the old people still ask for Shrewsbury goods and mention their inability to get them, but I don't believe that they go around continually asking for them. That is what I would consider a demand.

Q. Would a lack in advertising be largely responsible for the falling off of demand? A. Advertising, and lack of being distributed among the retailers.

Q. No difference in quality being responsible for the failure of demand? A. No.

Q. In your judgment would it be possible to market the goods bearing the name of E. C. Hazard & Company and Shrewsbury as before if they could be produced? A. To the same extent?

Q. Yes. A. Yes, I believe to a larger extent, if they were properly introduced and advertised.

Q. Do you think the name of E. C. Hazard & Company and Shrewsbury, which were more or less linked together, would help in marketing there products? A. I do think so.

Q. From your knowledge of the demand and the extent of their sale and from your observation while you were with Butler, could you place a value on this name and trade mark of E. C. Hazard & Company in March, 1913? A. I could only give an estimate.

Q. That is all we want; what estimate would you give?

Mr. Sexton: Objected to on the same ground, and further that he has no knowledge whatever as to the amount of goods that have been distributed in the past twelve years; he has been with Butler Company, who do not handle their goods.

Court: He says he has kept in touch with the Hazard name, however, and has continued to use the goods, and it is largely a matter of guesswork.

A. My business brought me around to visit and inspect not only our own stores, but all stores in competition with us, and I made it a point always to watch what other people were selling and what they displayed for sale and the prices they asked for them. I had to be posted on what everybody was doing.

Court To what time are you addressing your question as to value?

Mr. Smock: March, 1913.

Q. Can you state what these trade marks and trade names were worth in 1913? A. I would say very conservative $20,000 to $25,000, possibly a great deal more.

Q. Would you place $25,000 as the minimum or maximum? A. I would place that as the minimum; $20,000 is the minimum, I would say.

Court: Would that be true even if the business were being managed or conducted at a loss?

Witness: If it continued to be conducted at a loss, it would cease to have any value ultimately, but if properly managed—if a proper manager were put in there, I think it could be revived very quickly.

Q. When you place this minimum value of $20,000, you have reference to the conduct of this business by a competent person, with the necessary capital, I suppose? A. In that event it might possibly be worth $100,000.

Q. At any event, you place a minimum of $20,000, and that has regard to the conduct of the business by some one who has sufficient capital to run it and to conduct it in a business-like way? A. That is it.

Q. It wouldn't be worth anything to a man who was going to conduct it in a haphazard manner and at a loss? A. Not in course of time.

Q. Did you ever negotiate with anyone for the purpose of this trade name? A. I suggested to Mrs. Hazard at one time that there were people who might be interested, but they didn't want to consider it at the time that Mrs. Hazard or her son——

Q. How long ago was that? A. That was about seven years ago, I should say—maybe more than that; that was seven or eight years ago.

Q. Did you get as far as making an offer? A. As far as writing to the people interested and receiving their reply that they would, and I submitted that reply and I got an answer from Mr. Elmer Hazard, and he said he wouldn't consider selling.

Q. Were there any figures mentioned at that time? A. No.

Cross-examination by Mr. Sexton:

Q. Under proper management and with sufficient finances to conduct the business, there is a value still to the Shrewsbury? A. I would think so.

Q. What do you say the value at the present time is?

Court: More or less than it was in 1913?

A. I think it is less.

Court: How much less would you say?

Witness: Five year it is; it is so much more difficult to revive it.

Q. How much less do you say? A. I would say if I could buy it for $10,000 I would buy it right away.

Q. Would you consider $15,000? A. Yes, I would.

Q. You are talking now of the trade mark and trade names? A. Yes, the trade mark and the right to use that on the canned goods as formerly used, the words Hazard Shrewsbury Brand.

Q. Would you consider any more than $15,000? A. I think I would.

Q. Would you consider $20,000? A. I would have to know what the conditions were.

Q. In the same conditions as you are testifying.

Court: Your knowledge of the condition of the trade generally; that is what Mr. Sexton is referring to.

Witness: If I could get it free and clear and the right to operate it, then I would consider $20,000.

Re-direct examination by Mr. Smock:

Q. You have stated that you would consider the purchase of this trade mark anywhere between $10,000 and $20,000; would that be regardless of the plant at Shrewsbury or in connection with it? A. That would be in connection with the possibility of operating the plant at Shrewsbury.

Court: You mean on the same property?

Witness: Not necessarily, no.

Court: But in that locality?

Witness: Yes.

CHANDOS WEDDLE, sworn for defendants.

Direct examination by Mr. Smock:

Q. Where do yo ulive, MrM. Weddle? A. New York.

Q. What is your business? A. Importer and exporter of fancy groceries.

Q. How long have you been in that business? A. Since 1909.

Q. What was your occupation before that? A. I was with E. C. Hazard & Company.

Q. In what capacity? A. As a salesman.

Q. And in what territory? A. New Jersey, Philadelphia, Baltimore and Washington.

Court: For how many years?

Witness: I was with them twenty-one years—not as a salesman.

Q. How long were you with them as a salesman? A. I should say about ten years.

Q. And previous to that you were there in what capacity? A. I started from the bottom and worked my way up.

Q. In the office? A. Yes.

Q. While you were in the office, I suppose you were familiar more or less with the volume of business done, were you? A. Yes.

Q. Were you familiar with the volume of business done by the concern while you were salesman? A. Not with the firm's business.

Q. From 1909 to 1913 were you familiar with the products of E. C. Hazard & Company? A. Oh, yes.

Q. Did you deal in them? A. I believe I dealt with them through Mr. Elmer Hazard at Shrewsbury.

Q. You bought and sold them? A. No, I sold for Mr. Elmer Hazard.

Q. And exported them? A. I did do some business in London for them.

Q. While you were salesman was there an active demand for the products of E. C. Hazard? A. Oh, yes.

Q. How did that compare with the products

of other concerns, similar products? A. There was nothing similar.

Q. You mean that— A. They were in a class by themselves, all their products.

Q. They were superior? A. Absolutely superior.

Q. When I say similar, I mean there were other brands of ketchup, were there? A. Yes.

Q. What was their relative reputation with other brands? A. Theirs was the very best that could be put on the market.

Q. And how did the prices of those products compare with similar products of other concerns? A. The Shrewsbury products were the highest, always.

Q. What was the volume of business done by E. C. Hazard & Company, was it small or large? A. In what year?

Q. We will say during the time you were salesman.

Court: Up to 1905 when Mr. Hazard died.

Witness: The volume of the firm's business?

Court: Was it large or small, the volume?

Witness: Prior to Mr. Hazard's death?

Court: Up to the time of his death.

Witness: It was large.

Court: What can you say about it after his death?

Witness: Then, of course, it declined.

Court: To a pronounced extent?

Witness: About three years after his death.

Court: To a pronounced extent?

Witness: Yes.

Q. Did the quality of the goods decline? A. No.

Q. Did the demand decline? A. Yes.

Q. Do you know why? A. My opinion was it was on account of bad management.

Q. I don't understand exactly how that would affect the demand; maybe I don't understand your answer. A. I would take a great many orders after Mr. Hazard's death and they were not filled.

Q. Then the demand diminished because of the fact that the purchasers were not able to get the goods, is that the reason? A. Yes.

Q. In your judgment, if they had continued to supply the trade in the manner that they had previously, the demand would have remained the same? A. I think so.

Q. So that the quality had nothing to do with it? A. Nothing whatever.

Q. And the reputation was about the same? A. Just the same.

Court: Was there any competition between it and any other brands, like the Blue Label?

Witness: Yes.

Q. Did that effect the demand in any way? A. Yes, but they were both what you might call ketchups, but a different grade; as I said before, Shrewsbury was distinct from any other class.

Q. Was one of the reasons for the decline in the demand due to the fact that the competitors of Hazard & Co. were more active in pushing their brands? A. That had something to do with it.

Q. Had E. C. Hazard & Company continued to advertise and make efforts to put their products on the market as their competitors had, do you think there would have been ample demand for all their products? A. I think so.

Q. In other words, in your judgment, the quality was about the same? A. Yes.

Q. And the demand was normal? A. Yes, even today they ask for the Shrewsbury brands.

Q. Even today they ask for the Shrewsbury brands? A. Yes.

Q. Who are some of the people who are still desirous of purchasing the E. C. Hazard & Company products? A. Take Philadelphia, for instance, take Showell & Fryer Company, the firm of Finley, Acker & Company of Philadelphia, Mitchell, Fletcher, and a number of other very large dealers.

Q. Are they concerns that deal with high or low grade products? A. High grade.

Q. What about the demand at the present time for products of this concern and the market at the present time for E. C. Hazard & Company goods? A. I think if it was properly managed, that there would be a very fair chance that the brand could be brought back again.

Q. Assuming, I suppose, the same quality were maintained? A. Oh, naturally.

Q. With your intimate knowledge of the volume of the business done by E. C. Hazard & Company and the character of their products, can you give us an estimate of the value of the trade name? A. What year?

Q. And trade mark, in March, 1913, if used in conjunction with the factory at Shrewsbury formerly occupied by E. C. Hazard & Company, and if managed in a proper manner and with the necessary capital? A. Of all the brands they have had down at Shrewsbury, you mean?

Q. Yes. A. I should say between $30,000 and $40,000.

Cross-examination by Mr. Sexton:

Q. What do you mean by all the brands, Mr. Weddle? A. Everything, I presume, with the trade mark on Shrewsbury; is that the question?

Q. Don't you know what the question is? A. Yes, that is the way I understood, and I answered it that way.

Q. Everything that the trade mark Shrewsbury was upon? A. Of the Shrewsbury factory.

Q. You don't limit it to the brand Shrewsbury? A. No.

Q. You know that they had the Little Silver Sauce Company and Burnt Onion? A. That is what I asked, does it mean that?

Q. You meant everything? A. I asked the question if it meant that; yes, I have answered it on that ground.

Q. When you fixed your value, you meant everything that was there? A. Yes.

Q. Which meant not only the Burnt Onion Sauce, but other brands; for instance, they had Worcestershire Sauce? A. Yes.

Q. There were other brands of Worcestershire Sauce—Royal? A. Yes.

Q. And you included that in your estimate? A. Yes.

Q. And what else did you include in your estimate that was not under the Shrewsbury label? A. I don't know that there was anything else. I was taking into consideration the Worcestershire Sauce.

Q. When you were with the firm, they also had a wholesale grocery business in New York? A. Yes.

Q. And a very large percentage of the sales were of the canned goods that you were selling? A. Of the Shrewsbury products.

Q. And other goods, cigars and liquors? A. I didn't do much on that.

Q. Did you do anything with any other goods, other than goods which had upon them the label Shrewsbury? A. No, mainly Shrewsbury.

Q. Are you still a salesman? A. No, I am in business for myself.

Q. And you go around still? A. Oh, yes.

Q. You fixed a value of $30,000 or $40,000 in 1913; there is still a demand for the Shrewsbury goods, as you say? A. Yes.

Q. And there is still a value to the trade mark? A. I should say so, if properly managed.

Q. And if properly managed and manufactured at Shrewsbury, New Jersey, what do you say the value of the trade mark Shrewsbury is at the present time?

The Court: I don't think he limits his value to the word Shrewsbury; I think he

places his value upon everything that was produced by E. C. Hazard & Company.

Witness: At Shrewsbury, yes.

Q. What do you say that value is at the present time?

Mr. Rosenberg: Is this for the purpose of testing the capacity of the witness?

Court: I think it is competent for that purpose.

A. I should like to answer it in this way, that the Shrewsbury products didn't decline owing to the quality; it declined owing to bad management, and I think if properly managed today, it isn't worth any loss.

Q. Then $30,000 to $40,000? A. No, I do not.

ELIZABETH POWERS, sworn for defendants.

Direct examination by Mr. Rosenberg:

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

Q. You are the wife of Harry L. Powers? A. Yes.

Q. The defendant in this cause? A. Yes.

Q. And you are also the daughter of Mrs. Florence Hazard? A. Yes.

Q. And a sister of Mrs. Murphy, the complainant? A. Yes.

Q. Do you remember the negotiations between

your husband and your mother with reference to the purchase of the factory and the business at Shrewsbury? A. Yes, very well.

Q. Do you remember when those negotiations commenced? A. Sometime in 1912.

Q. What time in 1912, early or latter part? A. The latter part of 1912.

Q. And you were living then in Shrewsbury? A. We were living in Shrewsbury in the summer, and at that time we were in 97th Street, New York.

Q. Do you remember how those negotiations commenced? A. By my mother saying that she was going to sell the place and would like to have Mr. Powers buy it.

Q. Were you there when she said that? A. Yes.

Q. She said that to Mr. Powers in your presence? A. Yes.

Q. Do you know whether or not the factory was then in operation? A. It was in operation, but it did very little business.

Q. Was the concern in an embarrassed situation? A. Yes, it was practically a dead business; it was practically over.

Court: Who was conducting it?

Witness: My brother and Mr. Matthes were liquidating the goods in there.

Q. Your brother Elmer? A. Yes, and Mr. Frank T. Matthes.

Q. When did your father die? A. 1905.

Q. Do you know how many years before that

he had been in the business of manufacturing food products? A. I believe fifty or sixty years.

Q. Your father had been in that business fifty or sixty years? A. He was in business about fifty years, I should judge.

Q. And you knew, of course, what the factory plant was at Shrewsbury? A. Yes.

Q. Tell us in a general way what it was? A. It was a very large building and he did a very large business and employed many hundred men and women, and it was a very fine large business.

Q. Give us some idea of the detail—the character of the various buildings. A. It was a brick building, two stories and skylight.

Q. About how long was the main building? A. 375 feet long and 75 feet wide. There were two very large packing houses, and a platform that connected them all with a large tank house that they stored things in the bottom of.

Q. The residence was there also where your mother lived? A. Yes, and the little cottage on the place and the stable and ice house.

Q. Do you remeber the business in your father's lifetime? A. Yes.

Q. Do you remember what happened to the business after his death? A. After my father died, from February until May, it was sort of held in abeyance until they could do something with it, and they finally, I think, formed a partnership and they took in Mr. Archer and Mr. Green and my brother Elmer and some other man—I don't know if it was Mr. Stern or not.

Q. Then afterwards a corporation was organized? A. Yes, about two years later.

Q. Was there one corporation or two? A. I understand there was one, called Hazard Shrewsbury Manufacturing Company, in Shrewsbury, and the E. C. Hazard & Company in New York, and after a short while they were both merged into one.

Q. Do you remember when that was? A. I think in 1908 or 1909.

Q. And then the business was operated by one or the other of those companies after that? A. Yes.

Q. Who was running that business in 1912? A. It was dead at that time; it had evidently failed, or something happened to it; they did no business and there was nothing there.

Q. Had they stopped manufacturing? A. They had stopped practically manufacturing, at the time it had been seized by the sheriff, and the place was to be sold and the business sold out, and my mother said that Elmer and Mr. Matthes were there liquidating these goods that belonged to her, so that the money would be turned over to her, and when she sold this property to Mr. Powers, she said if he would buy this note for $11,400——

Mr. Rosenberg: We haven't got to that yet.

Q. When your mother opened these negotiations, you were there with your husband? A. Yes.

Q. Did she tell your husband in your presence what her situation was? A. Yes.

Q. What did she say? A. She said that she was nearly crazy with the loss of the business, and that she had no money and that the place was ready to be sold out at auction, and that everything was—well, just dead; if it wasn't sold and something done that day, she didn't know what she would do.

Court: Did your mother live with you?

Witness: No, she was living in Brooklyn.

Q. What else did she say? A. She said she would like to sell the factory, the business, and she would like to have Harry have it, because he was her son-in-law, and would like to have me have the place, because I was her daughter.

Court: I don't know that I have it upon the record—how many children were there?

Witness: Seven.

Court: Tell us who the seven children were.

Witness: First, my brother Elmer, and then my brother Bowden, then Mrs. Murphy and myself, and my brother Arnold and my sister Helen, Mrs. Bedleson, and my brother Frank.

Q. At that time the property you were living on in Shrewsbury was adjacent to the factory property? A. Yes, next door.

Q. This interview between Mrs. Hazard and you and your husband took place where? A. In 97th Street.

Q. Where Mrs. Hazard was living? A. Where I was living, 97th street and Broadway.

Q. So that was apparently during the winter season? A. Yes.

Q. Was any price suggested at that time? A. Yes, there was a price talked over.

Q. What price was it; who started talking about the price? A. My mother said that she would like to have $75,000 for the place.

Q. And what was said then? A. I was very anxious to have Mr. Powers pay the $75,000, because I wanted to help my mother, and at the same time would be glad to have him buy it, and he refused to pay that much. I know I spent many hours trying to induce him to pay that much for it.

Q. Did the negotiations proceed to anything at that time? A. They didn't at that time, because just as we were arguing there, that point as to whether he would give $75,000 or less, it seems that someone else came up that offered some price for the place, and when we spoke about it again, my mother said that there was an option on the place for six weeks, and we would have to wait until that was over, and after the six weeks were over, it was taken up again.

Q. Did she tell you what the option price was? A. No.

Q. At the end of the six weeks it was taken up again? A. Yes, she said it was all off, and asked if Harry would like to have it.

Q. Then what took place; was there another

interview? A. There were many interviews; we were over there continuously.

Q. But the next time it was taken up, that you remember, what was said at that time? A. Then I think the price was gotten down to something like $65,000.

Q. Tell us just what took place at that interview. A. At that interview, when the price was made $65,000, I went back to my apartment and I told Mr. Powers about it, and he said he wouldn't give $65,000, and I asked him if he wouldn't do it; I tried to convince him that it would be well to do that, and he said no, that he didn't consider it worth that; I asked him what he would give, and he said he didn't know exactly, but he wouldn't consider $65,000; then finally my mother came over and talked about it, and they finally arrived at $60,000.

Q. Was that done in your presence? A. Yes, all the negotiations were done in my presence.

Q. Then when the $60,000 was fixed, where was that, in your house at 97th street? A. I think it was.

Q. What was that $60,000 to cover; was anything said about that? A. Yes, it was to cover the——

Q. Who said it? A. My mother.

Q. What was said about it? A. She was to sell the place, the factory and everything connected with the factory, the equipment of it, the trade names, trade mark, the good will of the business; in fact, that was his object in buying it, to run it, and she said she was willing to sell it for $60,000.

Q. And that was to go into the $60,000? A. Yes.

Q. Anything said about the labels at that time? A. Yes, she spoke about the labels and as to their value.

Court: What was the relation between yourself and your mother at that time?

Witness: Very friendly.

Court: And also with your husband and mother?

Witness: Yes, we were always very congenial.

Q. Was there anything said about any other property beside what was in the $60,000 property? A. Yes, she said the goods in the factory and one or two pieces of machinery that had been put in by E. C. Hazard & Company had been reduced to her ownership because she had gone on the firm's notes, and they had turned these goods over to her as security, and finally on the minutes of the book they had been reduced to her ownership, therefore she was free to dispose of them.

Q. Were they to be included or not in the $60,000? A. No, this was separate.

Q. What were they to be? A. $11,400.

Q. That would make $71,400 for the entire contract? A. Yes.

Q. For the total of the two contracts? A. Yes.

Q. These negotiations were then brought to a head sometime during the early part of 1913? A. Yes.

Q. Did your mother have any judgments against her at that time that you know of? A. Yes, I know of many judgments.

Q. What was said by her about the judgments? A. Simply that there were judgments entered against her and against the firm of E. C. Hazard & Company.

Court: The old firm or the new?

Witness: The old one; it is the old one all along—simply reorganized, and that the Sheriff I know came in and attached many things, and the place had been advertised for sale.

Q. You knew that there were some judgments against your mother also? A. Yes.

Q. Do you know who had recovered those judgments? A. There was one of Mr. Frederick Eisemann against the property, and one of Henderson & Applegate.

Q. Were there any bank judgments? A. Yes, the Second National Bank of Red Bank and National Nassau Bank of New York.

Q. Were there any mortgages on the property? A. Yes, I think there was one for seven thousand and some hundred.

Q. Held by whom? A. I think the Fidelity Trust Company of Newark.

Q. Was that under foreclosure or not? A. I think so.

Q. You don't know of your own knowledge? A. No, it is so many years ago I have forgotten that detail.

Q. Let us come down now to the fifth of February, 1913; do you remember that day? A. Yes, very well.

Q. Do you remember about the arrangement to meet your mother at the Astor House? A. Yes.

Q. Tell us what took place? A. When we got to the Astor House——

Q. How was that arrangement made? A. My mother called Mr. Powers and I up over the phone and said that she would be at the Astor House that day and for us to join her, and we did.

Q. And you went there; you and Mr. Powers went down together? A. Yes, he stopped to telephone and I went upstairs, and when I got there my mother and my brother Elmer and Mr. Matthes were there.

Q. Your mother, Elmer and Mr. Matthes? A. Yes.

Q. And your husband came in later? A. Yes.

Q. When you got there what happened? Just give your recollection. A. My recollection is that mother and Mr. Elmer Hazard and Mr. Matthes were standing in the corridor talking about this Eisemann judgment, and it seems she had just gotten the decision that day, and she was very much worked up over it, because she had lost it; at the time she considered it Elmer's fault because of some testimony he had given that caused her to lose it.

Q. Then what happened after that? A. Then while we were talking over that we walked into

this parlor, and we had only been there a few minutes when Mr. Powers joined us, and we started talking about the sale of this property, and shortly afterwards—maybe five or ten minutes later—Mr. Joyce came in.

Q. Who was Mr. Joyce? A. He was a friend of ours, and he said that Mrs. Bedleson had telephoned him to come over in order to represent her mother.

Q. Meaning your sister Mrs. Bedleson? A. Yes.

Q. He came then to look after your mother's interest and he was your mother's attorney? A. Yes.

Q. Then there were present you and Mr. Powers and your mother and Elmer and Mr. Matthes and Mr. Joyce? A. Yes.

Q. What then took place with respect to the purchase of this property? A. We talked over the buying of it; how it was to be bought.

Q. What did your mother say and what did your husband say? A. My mother said she wanted to sell the property and she wanted to do it right away, and she said that if Mr. Powers don't buy it this morning, that she would sell it to Mr. Bedle this afternoon at three o'clock, as she was going to get rid of it that day.

Q. What property did she say she wanted to sell? A. The property at Shrewsbury.

Q. What was that property, did she say? A. She said it was to be the house, grounds, everything there, including the business.

Q. Did she mention that again at the Astor House? A. She had mentioned it previously and

explained all about how the business was to be run and all about it, and what a good thing it would be, and at the Astor House that day it was gone over again.

Q. Won't you tell me how the business was going to be run; what did she say? A. She said when Mr. Powers got it—Mr. Hazard and Mr. Matthes were there and she opened the conversation by saying: "I have these two gentlemen here in order that there may be no misunderstanding about this deal," and then she went on saying that she was going to sell the business for $60,000, and Elmer at the time said, "Well, mother, do you realize that you are selling $80,000 worth of goods in that factory for $11,400, and selling the business and the place and the factory and everything equipped for $60,000?" And she said, "Yes, Elmer, I know perfectly well what I am doing." He said, "Do you realize that when you sell all personal property, that that includes even your horses, your cow, any corn in the crib, anything on the place?" She said, "Yes, I realize it; I am sick and tired of all this business and I want to get rid of it," and thereupon the deal was started to be consummated.

Q. You said it was also settled how the business was to be run; what was said about that? A. Mr. Powers spoke about how he intended to run the business, and my brother and Mr. Matthes stood there and never said anything, and he went on saying it was a shame the business had been run down so, and said how he intended

to run it, and he expected to make a success of it.

Examination by the Court:

Q. Did anyone say that your brother Elmer or Mr. Matthes, or one or both of them, had reserved to them the right to manufacture any of the Hazard products? A. No, nothing was said at all.

Q. Or had they been manufactured or accumulated by Elmer or Mr. Matthes? A. No, they said they were down there liquidating the goods for my mother.

Q. Did you know at the time that they were manufacturing goods or claiming to manufacture goods? A. I knew that they were making up goods or what had been left in the factory and sending them out.

Q. Did you know that the material that they had made up or were making up was included in the sale from your mother? A. Yes, she said it was included, and she said if he paid off these notes for $11,400 and gained this property—signed the contract, that from that moment he would become the possessor of these goods, and that whatever goods were manufactured, when the money came in, it woudl go toward reducing this sum of $11,400.

Q. And what goods did your brother Elmer refer to when he asked if she knew she was turning over goods worth $80,000? A. I don't know which goods; I thought the sum he mentioned was rather preposterous, and I didn't give it much attention.

Q. I think the expression was $80,000? A. He said, "You are selling $80,000 worth of goods."

Q. You understand that related to manufactured food products? A. I thought it related to that and everything in general, machinery and everything.

Further direct examination by Mr. Rosenberg:

Q. What did this $11,400 represent? A. It represented the security that she had gotten from E. C. Hazard & Company and which she said was the merchantable goods in the factory and some of the machinery.

Q. And the $60,000 was to cover—— A. The factory and equipment that she owned; the main equipment in the factory was her own property, and that along with the good will and trade mark and labels which she said also she owned, was to go with the $60,000.

Q. And she said that on that day? A. Yes.

Q. Then what took place after this discussion at the Astor House, after the agreement had been reached orally? A. Mr. Joyce went up to the table in the center of this little room and started to make out—I don't know what you would call it, but he wrote down some memorandum of what was to go in these contracts, and at different times he would come over and ask questions, and at different times Mr. Powers would get up and walk over to him and suggest the different things to be put in.

Court: Did Elmer and Mr. Matthes remain during all this time?

Witness: Yes.

Court: Did they participate in preparing the memorandum?

Witness: No, they simply sat and listened to it all and said nothing.

Court: Did Elmer make any further suggestion as to his mother or any criticism to his mother about the transaction?

Witness: No.

Court: Did either Elmer or Matthes make any claim that they owned any of this property?

Witness: None whatsoever.

Court: They asserted no claim of ownership against your mother?

Witness: No.

Court: Was anything said as to when they would cease manufacturing at Little Silver or elsewhere?

Witness: Yes, when Mr. Powers went up and spoke to Mr. Joyce and said, "I would like to have you put in (referring to the memorandum) 'I am to take possession on the signing of the contract'," —he said he wished to do so in order to preserve the things in the factory, and because he said he knew things were taken out and stolen right and left—and then the question came up, and Elmer asked "What will I do about staying down there and manufacturig these goods for my mother," and he said, "That is all right, you can go along

just as you have been doing, as long as the money is paid over, and the balance over the $11,400 is to be turned over to me."

Court: What goods did he refer to, about manufacturing for your mother?

Witness: Goods that she was having Elmer and Mr. Matthes liquidate for her.

Court: And Mr. Powers was to purchase?

Witness: Yes.

Court: And he was to get the amount of the sale in place of the goods?

Witness: Yes, from the very day of his contract.

Q. Did they assert any right to possession as against your mother? A. Not at all.

Q. Was anything said at that time between your husband and Mr. Joyce or the others with reference to the number of agreements that were to be drawn, whether one or two or what? A. When he went over to get this first contract, which was the factory and house and grounds and its equipment——

Court: Referring to the $60,000 as distinguished from the $11,400?

Witness: Yes.

Court: That is the one you mean?

Witness: Yes. They were first going to put them in as one contract, $71,400, and Mr. Powers then went up to Mr. Joyce and said, "You will have to separate those,

because the Fidelity Company won't guarantee personal property, and they will have to be separated; so one contract was drawn up for $60,000 to cover the real estate, and such personal property as she conveyed to him, and there wasn't any question or any details gone into, because that was already transacted with my husband and my mother previous to the Astor House meeting and the other contract of $11,400, which were these goods which came as an assignment from E. C. Hazard & Co., was to go in a separate contract.

Q. And then what happened? A. Then this was completed, and my brother then at the close of it, got up and said, "Well, as president of E. C. Hazard & Company, I have to go and notify the stockholders that the business has been sold out and there is no E. C. Hazard & Company," and as he got up and went out, my mother turned to us and said, "You know Elmer is heartbroken."

Q. Then what? A. Mr. Joyce had finished these contracts, and he went out, I think just ahead of my brother Elmer.

Q. He had finished? A. Yes, making these memorandums and had gone out to prepare them, and my brother Elmer got up——

Q. Where was he going? A. To his office, and we went in to lunch and had lunch together, my mother and Mr. Powers and Mr. Matthes and myself. Mr. Matthes at that time made this statement—he said, "In order to help Elmer liquidate

these goods, I have put $600 of my money in there, and with this contract going through, I don't see where I am going to get my $600 back, and I think I have been treated pretty shabby," but aside from making that remark he seemed to be quite agreeable to the whole transaction, and had luncheon with us and was very agreeable and pleasant throughout.

Q. What did you do after lunch? A. We went over to Mr. Joyce's office.

Q. Where is that? A. That was just one or two doors down from that hotel.

Q. Did he have the contracts ready when you got there? A. We waited for a few moments in his office—maybe two or three minutes—and he came in with the contracts.

Q. Who was present at the time? A. My mother and Mr. Powers and myself and Mr. Joyce.

Court: Mr. Joyce was representing your mother?

Witness: Yes.

Court: He was not acting for Mr. Powers?

Witness: No, we had no representative.

Q. Then he had the papers read and then what? A. They were signed.

Court: They were read over?

Witness: Yes, and when Mr. Powers read the $60,000 contract, he immediately called Mr. Joyce's attention to the fact that in that there wasn't any definite wording

which would indicate that he had gotten this equipment of the factory and all the personal property and trade marks and good will, so he said, well, that could be remedied, and they had this little interlineation—I think they call it—put in, which he said would cover all of that sufficiently.

Court: Who made the interlineation, Mr. Joyce?

Witness: He wrote it in, I believe.

Q. I show you a paper which has been marked Exhibit D 1 in this case, and ask you whether that is the contract to which you are referring as containing the interlineation? A. Yes, that is the one.

Q. And the writing in pen and ink on the third page is the interlineation to which you refer? A. Yes; that is my husband's signature and my mother's.

Court: What did Mrs. Hazard say, if anything, when your husband suggested or made the remark that led up to that interlineation being made; what did she say about it?

Witness: Nothing; she seemed to be quite willing to do it.

Q. And the other agreement that was presented by Mr. Joyce that day is this paper Exhibit D 3? A. Yes.

Q. All this information as to the contracts that

were to be drawn, was given to Mr. Joyce at the Astor House before he went to his office? A. Absolutely.

Q. And he had those papers prepared with the exception of this interlineation at the time that you came to his office? A. Yes.

Court: Did your mother appear to understand the nature of those papers?

Witness: Yes, because we had gone over it very, very thoroughly.

Q. And the signatures in the margin opposite the interlineation are the signatures of your mother and your husband? A. Yes.

Court: Was any question raised at that or any other interview prior to the execution of the papers as to Mrs. Hazard's right to sell the property?

Witness: At the time that she negotiated to sell the $11,400 goods, Mr. Powers asked her how she got control of them and became owner of them, and he said there were these papers, "Is this an assignment?" She said it was an assignment but had been reduced to ownership because they had failed to pay them up.

Court: And by the entry on the minutes?

Witness: And by the entry on the books.

Q. What property did she claim she had gotten from your father's estate directly? A. She

claimed that she owned the factory and all its equipment and had a right to use and sell the trade mark and good will and all that, and nobody questioned it.

Court: Did your father leave a will?

Witness: Yes, he did.

Court: Was your mother the sole executrix?

Witness: Mr. Greene, I think, his partner, and my mother, and I think Mr. Greene resigned; we have since found out that none of the trade marks and a great many things were not left to my mother.

Court: Were the papers signed that day in Mr. Joyce's office?

Witness: Yes, everything completed.

Court: Was any money paid to your mother by Mr. Powers?

Witness: $500, and our relationship at that time was very very lovely and friendly.

Q. What labels were there that your father had used in his business that had been used by the E. C. Hazard & Company? A. Many labels, labels for all the different bottles for specialties that he put up.

Q. What were they; give as many as you can recollect. A. Shrewsbury Mayonnaise, Burnt Onion Sauce, Chili Sauce, Ketchup, Worcestershire Sauce.

Court: You have sixteen or eighteen of them here?

Witness: Quite a number of them.

Court: You have seen these labels that have been offered in evidence?

Witness: Yes, many times.

Court: Do they include all these food products that were manufactured by Mr. Hazard?

Witness: They include the main part of them. There were a lot of other goods, like Blackberry Jam, that were only small side issues of the firm.

Q. You knew of your own knowledge that the business had been widely advertised? A. Yes.

Q. And they were doing business all over the country? A. Yes.

Court: Was this property the only estate that your father left?

Witness: No, there was a place in 74th and Grove street, New York, where they had a sort of a bottling house and sub-cellars under it and apartments above, and then there was a small piece of property down South, I believe—I haven't any knowledge of it—but this was the main property that he owned.

Q. Do you know whether your mother ever said anything to your husband before February 5th as to the value of the trade marks and the names? A. She put it that it was a very very valuable concern and that the name and the name of E. C. Hazard & Company and the trade marks were

very very valuable, and he ought to make a lot of money out of it, and the first year he was to do business he would more than make what he had paid for the house and grounds and factory and everything.

Q. Did she say anything about the labels? A. Yes, she said the labels were very valuable and they had been very widely advertised; that to put a label like that on a bottle would mean its selling anywhere.

Q. Was anything said about the effect of the pure food law? A. Yes, she said that Dr. Wiley had pronounced it the only pure ketchup in the United States, and many things about it that I have forgotten.

Q. To enhance the value of this property? A. Yes.

Examination by the Court:

Q. Were all your brothers interested in the business during your father's lifetime? A. I cannot say they were particularly; my brother Elmer started to be a physician and graduated as a physician, and for many years was away from the business, and my brother Bowden worked in the factory and also my brother Arnold; no, I think at that time when my father was alive, he was at school, but at times he would work there.

Q. After your father's death did your brothers continue to be identified with the factory? A. Yes, my brother was immediately made the head of it, and we turned everything we owned in the

world over to him to manage it for us, and he went in as President.

Q. That was Elmer? A. Yes, and my brother Bowden was interested to some extent—I think he was a salesman—I don't know just what he did.

Q. They were all identified with the business? A. Yes.

Q. Did your mother make any reference to that when she tried to sell it to your husband, that it would put her sons out of business? A. No, for the reason that my brother Bowden was doing some other business of his own; I know he wasn't exactly interested in E. C. Hazard & Company, because it had died down and was out of business, and only my brother Elmer and Mr. Matthes were there.

Q. Any suggestion made to Mr. Powers by Mrs. Hazard that her son should be retained or someone should be retained in connection with the business? A. No, not at all.

Further direct examination by Mr. Rosenberg:

Q. You were a stockholder in E. C. Hazard & Company? A. Yes.

Q. During the time your brother Elmer was running the business did you receive any dividends on the stock? A. Only about a year after my father died, and since then I have received nothing.

Q. You received nothing out of the business at any time after one year from your father's death? A. Just about from the time he died

up until—or rather after he died and they formed this company, from that time until they failed, I got something—I don't know if that was a year or year and a half, but it was a short time.

Court: Did the seven children form a company to continue the business; was that the scheme?

Witness: No, my mother was left one-fourth and the balance was distributed between the seven children.

Court: Did your mother and the seven children combine?

Witness: Yes, we combined and made Elmer our representative; he was our trustee for our money, and then he as trustee went in with Mr. Greene and Mr. Archer as partners, and he was to represent our interests.

Court: You each had an equal interest?

Witness: Yes.

Court: And that was represented later by shares of stock?

Witness: Yes.

Q. Do you remember whether these labels were the ones which Mrs. Hazard showed your husband, referring to Exhibit D 2, eighteen labels? A. Yes.

Q. You remember these were shown to your husband? A. Yes, these are the identical ones.

Q. You found them quite recently again, did you? A. Yes.

Q. Tell us how you found them and where. A. At the time that they were given to my husband, it was in 97th street, and he carried them around in his pocket, and when I was moving down to the country they were in his pocket, and we got down to the country, after having purchased this place, we got ready to move into the big house and we were preparing to rent the little cottage, and I took his clothes and sent them to the cleaner, and I took all the papers and piled them in one box, and I didn't throw them away because he said, "Don't destroy any of my papers," and they accumulated on top of his dresser, and I was nearly wild, so I piled them in a hat box and put them in a closet, and I moved them all over in the house and put them in the top of the attic, and they have been there ever since until shortly; Mr. Powers, a little while ago, when he was called in this case in New York, asked me to go to find any checks in reference to his father's estate, and I did so, and in going through all these papers, looking for those checks, I came across this envelope with the labels in it, and checks and many things that I thought might be of interest to him, and I brought them over, and when I handed them to him, I said, "These are the only checks I found along with these labels," and he said he was glad I had found the labels, as he had wondered where they had gone and had missed them all these years.

Q. Do you remember the time when your mother handed these labels to Mr. Powers? A. Yes.

Q. How long before February 5th was that? A. About a week or ten days.

Q. Where? A. 97th street.

Q. Did she say anything when she handed them to him? A. Simply that those were the labels that went with the business, and he could use them and they would be of great value.

Q. Did she say anything about the cost of them? A. Simply that they were a very high grade label and that they had cost lots of money to have them made, and that there were quantities of them in the factory, which was true.

Q. Did she make any comment upon this particular label of Shrewsbury Tomatoketchup? A. She spoke about the trade name Tomatoketchup all in one word had been copyrighted, and that no one else in the United States could use it.

Q. Are there any dies from which these labels are printed? A. Yes.

Q. Where are they? A. I don't know where they are.

Q. Did you ever find them? A. I don't know; I never questioned Mr. Powers about it, but there were quantities of them in the factory to use, already printed and ready to use, stacked up to the ceiling.

Q. Did she make any comment about the label with reference to the Burnt Onion Sauce? A. That was one of the products that he had put up.

Court: Which is the one there about the Little Silver Sauce Company; is that the Burnt Onion?

Mr. Rosenberg: Green Label Worcestershire Sauce.

Q. Did she mention that label particularly? A. Nothing in regard to the Little Silver Sauce Company. If I may explain about the Little Silver Sauce Company, there was a man named Keene came down to see my father in reference to putting up a ketchup that would be a good competitor for the Blue Label, and he said that the majority of people now-a-days like sweet ketchup instead of the ketchup he put up, and he said he would not change his grade of ketchup.

Q. Who said that? A. My father, so Mr. Keene suggested that they use——

Mr. Sexton: Did you hear this conversation?

Witness: No, I heard my father say this.

Mr. Rosenberg: I haven't called for it.

Court: She is explaining to me. It is not yet clear in my mind about the Little Silver Sauce Company. I am trying to get some information.

Witness: This Little Silver Sauce Company was thereafter formed in order that they might put a ketchup on the market that was sweet and that was on the order of Blue Label Ketchup—in other words, inferior in quality.

Court: Where was this made?

Witness: Down at Shrewsbury.

Court: There was no separate factory?

Witness: No, it was done in order that what he didn't put in his own ketchup, he could put in that, and use up the waste and make money out of it. It was a lower grade of ketchup, and it was used and his business in the other ketchup was so extensive, and the other dwindled down and it was nothing; they formed this company, and my father and Mr. Keene and another man had a share, and maybe some other man, but it finally died down and went out of business; they stopped manufacturing, and at the time they were ready to discontinue even the tax on the name hadn't been paid, and my brother Elmer requested my father not to remove it from the records, but to leave it there, that he might sometime use it, and to please his son he left it as it was, and it wasn't until after the goods manufactured by E. C. Hazard & Company began to be attached by the Sheriff, and everything they sent out under the name of E. C. Hazard & Company, that they started to use the Little Silver Sauce Company to avoid the creditors.

Court: I think I will let it stand as one of the matters which I brought out. Neither of you will be responsible for it.

Q. Do you know from anything that was said in your presence and the presence of Mrs. Hazard, whether or not these representations of Mrs.

Hazard as to the value and character of those trade marks had anything to do with your husband entering into this agreement?

Mr. Sexton: Objected to. Ask what was said.

Court: She can say "Yes, I do," or "do not."

A. It had everything to do with his even thinking of buying it.

Mr. Sexton: I move to strike it out.

Court: I will let it stand.

Q. How do you know that it did? A. Because he told me that when he bought this business.

Q. Was it in the presence of Mrs. Hazard? A. It was.

Court: When and where did it take place?

Witness: 97th street, New York.

Court: When, about?

Witness: Maybe a month or three weeks prior to the fifth of February.

Q. Now, you may say what he said in the presence of yourself and mother. A. He said he would like to buy that business if he could have it at his own price; he considered the trade mark and name were valuable to him and he could run it and make it go successfully.

Q. Do you know whether your husband made any investigation, of your own knowledge, as to

the value of these trade marks and labels from outside sources? A. He had his own knowledge of it, because he had heard of the business for many years, and he was down there in the country with us at the time that the business was attempted to be reorganized, and frequently heard my comments about the directors meeting and so forth, and knew enough about it to know that it had been a fine business, and that it had run down, and if he bought it he could bring it up again.

RECESS.

Q. Do you remember what took place on the thirteenth of March, 1913, at the Fidelity? A. Yes.

Q. Were you there? A. Yes.

Q. Who were there? A. My brother Bowden Hazard, my mother, and Mr. Joyce and Mr. Powers and Mr. Dickensheets, and Mr. F. W. Davis and myself.

Q. Mr. Dickensheets was the title officer of the Fidelity Trust Company? A. Yes, sir.

Q. And Mr. Davis was the gentleman who was looking after Mr. Powers' interest? A. Yes.

Q. And you met there in the early afternoon? A. Yes, sir.

Q. And the matter lasted until either late that night or early the next morning? A. Yes, sir.

Q. Something came up at that meeting concerning the personal property? A. Yes, sir.

Q. Do you remember how that happened to come up? A. My recollection of it is that this inventory that my mother had given to Mr. Powers——

Q. Your mother had given an inventory to Mr. Powers of this personal property? A. Yes, sir.

Q. Was that inventory arranged for at the meeting of February 5th? A. Yes, she said she had one and she would deliver it to him.

Q. And that inventory was delivered? A. About two days later in Mr. Joyce's office.

Q. What was done with that inventory? A. Mr. Powers took it and went down to the factory to see——

Mr. Sexton: Were you present at that time?

Witness: Yes, I was right present in the office when this was done, when this inventory was handed by my mother to Mr. Powers and then Mr. Powers went down with me to the factory to have my brother Elmer check off the inventory, to compare it with the things in the factory, and my brother refused to do it, saying, "I am awfully busy today, and I will be unable today, but some other time," so Mr. Powers came down later.

Q. Then also as leading up to this discussion concerning the personal property, do you remember about any information coming to your husband so far as you knew about the two bills of sale that were on record? A. Yes, about the twentieth or twenty-first, I think it was, of February—I don't know whether it was Floyd Davis or the Fidelity Company of Newark, but in some way Mr. Powers got information that there had been two bills of sale put on file running to El-

mer and Matthes, and he immediately called up my mother on the phone and asked her what it meant. I heard him getting the number and talking on the wire.

Q. But you could only hear what he said? A. Yes, and what he afterwards told me she had said over the phone.

Q. What did you hear him say? A. I heard him ask her what it meant, and I know what took place because I was close enough to hear her conversation.

Q. You heard what she said? A. I stood right there by the telephone and could hear very plainly what she said. She said, "Harry, never mind that, that isn't anything at all; it was only done to protect you and me." Mr. Powers said, "Mrs. Hazard, I don't understand it; I don't see how anything of that kind could protect you or could protect me either; I cannot understand what it is." She said, "I will explain it to you when I see you."

Q. Did she see him? A. She came to our apartment the next day or two after and explained it.

Q. Were you there? A. Yes.

Q. What was said? A. She said it was nothing, that whatever was done was only done to make the goods so that she could deliver them to Mr. Powers, and he asked her how that was, and in what way it could be made perfect, and she tried to explain; he said, "I don't understand the thing"; she said, "Rely on me, I will deliver those bills of sale to you, and they are mine."

Q. Coming back therefore to this discussion

concerning the bills of sale that was had at the Fidelity on the 13th of March, what was said between Mr. Powers and Mrs. Hazard and the others there with reference to those bills of sale? A. There was no question about the real estate contract; there wasn't one question about it.

Court: The $60,000 contract?

Witness: Yes. The other one Mr. Powers had told my mother that he had been down to the factory and had been unable to check off the different things, and since he had already given her a check for $400 for a team of horses and since it was on this inventory he wasn't going to pay for it twice, and wanted that $400 taken off by reducing the note for $11,400, and he knew a typewriter and adding machine had been taken out, and he wanted a reduction of those items, and there was quite a little argument, and they argued for hours over the thing.

Q. Was there any argument with reference to the property embraced in these two bills of sale that were on record? A. Yes, there was an argument over that, and my mother tendered Mr. Powers a note that Elmer and Matthes had given her for these bills of sale, and wanted him to accept it, and he refused it; he said, "I don't want to borrow any lawsuit; I want these things from you. You said you could deliver them and could deliver them to me, and I only want them from you direct."

INDEX.

PAGE

Petition of Appeal..... 1

Answer and Counterclaim..... 5

Schedule "A," Attached to Answer..... 30

Schedule "B," Attached to Answer..... 36

Reply 38

Foreclosure Bill 39

Replication 50

Schedule, Attached to Replication 64

Testimony 67

Decision 1072
Final Decree 1101
Notice of Appeal 1108
Answer to Petition of Appeal..... 1111

WITNESSES FOR COMPLAINANT:

Florence E. Murphy:

Direct 68
Cross 73

CALLED IN REBUTTAL FOR COMPLAINANT:

Frank T. Matthes:
Direct 455

PAGE

Cross 468
Re-direct 484
Re-cross 485
Re-re-direct 487
Re-re-cross 487
Re-re-re-direct 489

Rasmus P. Miller:
Direct 491
Cross 496
Re-direct 497
Re-cross 498

Harry Longstreet:
Direct 600
Cross 601
Re-direct 602

Chatham F. Bedell:
Direct 602, 885
Cross 613, 887
Re-direct 624

Florence A. Hazard:
Direct 650
Cross 703, 1025
Re-direct 742
Re-cross 742

Elmer C. Hazard:
Direct 754
Cross 837, 964

Bowden Hazard:
Direct 861
Cross 874

PAGE

John F. Joyce:
Direct 890
Cross 921
Re-direct 952

Mrs. Helen F. H. Beadleston:
Direct 954
Cross 958
Re-direct 962

Harry L. Powers:
Direct 1014
Cross 1017

Georgie Hazard:
Direct 1018
Cross 1022

Isabel Gentleman:
Direct 1026

John V. Green:
Direct 1036
Cross 1039
Re-direct 1048
Re-cross 1050
Re-re-direct 1051

WITNESSES FOR DEFENDANTS:

Harry L. Powers:
Direct 78
Cross 200

PAGE

Re-direct 364
Re-cross 374

(Recalled)
Direct 1053, 1059, 1067
Cross 1055

Floyd W. Davis:
Direct 383
Cross 386
Re-direct 397
Re-cross 398

Charles G. Ferris:
Direct 399
Cross 407
Re-direct 420
Re-cross 426

Henry Dickensheets:
Direct 428
Cross 438
Re-direct 449
Re-cross 450

Florence A. McAnerney:
Direct 452
Cross 454

Henry Kohl:
Direct 501

Henry C. Traute:
Direct 505
Cross 513

PAGE

William D. Lawler:
Direct 515
Cross 523
Re-direct 524

Chandos Weddle:
Direct 524
Cross 529

Elizabeth Powers:
Direct 531
Cross 579, 624
Re-direct 638
Re-cross 644

(Recalled)
Direct 1056
Cross 1058

Edmund Wilson:
Direct 1061, 1071
Cross 1065

COMPLAINANT'S EXHIBITS:

C1—Bond from H. L. Powers to F. A. Hazard, dated March 13, 1913, marked in evidence at page 69.

C2—Mortgage to secure above bond, same date, marked in evidence at page 69.

C—For Identification 1113

C9—For Identification 1114

PAGE

C4—Bill of Sale 1118

C5—Bill of Sale 1118

P13—Typewritten List of Personal Property 1118

H—Certified Copy of Petitions and Schedules in Matter of E. C. Hazard & Co., Bankrupt 1117

C21—Miscellaneous Checks Made by E. C. Hazard 1117

C22—Miscellaneous Checks Signed by E. C. Hazard 1117

C20—Miscellaneous Checks Signed by E. C. Hazard 1117

Exhibit B—Letter dated December 27, 1911—E. C. Hazard Co. to Mrs. H. L. Powers 1115

DEFENDANTS' EXHIBITS:

D1—Agreement, between F. A. Hazard and H. L. Powers, dated Feb. 5, 1913, marked in evidence at page 92.

D2—Envelope containing 18 labels, marked in evidence at page 99.

D3—Contract of Sale, dated Feb. 5, 1913, marked in evidence at page 103.

D4—Letter, dated Aug. 28, 1913, from H. B. Coulter to H. L. Powers, marked in evidence at page 108.

PAGE

D5—Letter sent out by Elmer Hazard, dated Nov. 20, 1913, marked in evidence at page 114.

D6—Letter, dated Sept. 9, 1913, H. J. Meyer & Co. to H. L. Powers, marked in evidence at page 114.

D7—Letter, dated Sept. 12, 1913, same as D6, marked in evidence at page 120.

D8—Inventory of the E. C. Hazard Co., marked in evidence at page 133.

D9—Memorandum of Disbursements by H. L. Powers, marked in evidence at page 143.

D10—Photograph of Factory, marked in evidence at page 150.

D11—Papers served in various actions against H. L. Powers, marked for identification at page 154.

D12—Letter and Registry Receipt, marked in evidence at page 160.

D13—Bill for Stenographer's Minutes in Other Case, marked in evidence at page 166.

Q. Then what further took place? A. She said that would be all right; she said, "You give me your note for $11,400 and I will see that you get those two bills of sale in the morning; and if necessary, I will choke them until I give them to you."

Q. That had reference only to the property included in the $11,400? A. That was all.

Q. Then there was some discussion as to whether or not they would close one contract apart from the other? A. Yes.

Q. What was said about that? A. Mr. Dickensheets advised Mr. Powers to close the real estate contract.

Q. What do you mean by the real estate contract? A. The $60,000 contract, without this other contract which included these goods in the factory, and my mother refused to do it, and she said she would not let one contract go through without the other.

Q. And then as a result of that, this non-negotiable note was prepared? A. Yes, at Mr. Dickensheets' suggestion, and that was merely intended to tide over until the next morning, but there was no question about her being willing and able to deliver these bills of sale.

Q. What did she say about giving him possession? A. She said she would give him possession at once; the next morning she would give him possession, giving him the keys to the factory and the house.

Q. You remember your mother making an affidavit as to the right of occupancy of that par-

ticular property that night at the Fidelity? A. Yes.

Q. Do you know of your own knowledge as to how much money, if anything, your husband had paid on account of the contract with your mother? A. Yes, he had twenty-nine thousand and some hundred; there was some balance of $500 or $600 he paid at the closing.

Q. Do you know to whom he had paid that? A. The $29,000?

Q. Yes.

Court: Is there any question about it? You don't claim actual cash paid up to that time?

Witness: Yes.

Mr. Smock: They had actually been paid at that time.

Court: That is the point you dispute, Mr. Sexton?

Mr. Rosenberg: There had been actually advanced in cash something over $20,000; the assumption of the mortgages made it $29,000.

Q. This statement, Exhibit D 9, is the paper which was signed on that occasion? A. Yes.

Court: Who made up this statement, Exhibit D 9; do you know?

Witness: No, I do not.

Q. The matter then was closed at the Fidelity sometime, you say, in the early morning of March 14th? A. Yes.

Q. When did you see your mother net after that? A. The evening of the 14th.

Q. Where? A. At her home in Shrewsbury.

Q. Was your husband there with you? A. Yes.

Q. Who else were there? A. My brother Elmer and his wife, and his mother-in-law and my mother and Mr. Powers and myself.

Q. Was anything said about the matter of the transfer of possession of this property that night? A. We went over there that evening, presumably to get the keys to the factory and the house.

Q. With the intention of getting them? A. Yes, with the intention of getting them, and it got to be nine o'clock, and ten o'clock, and nothing was said, and I could tell that something unhappy had arisen which sort of changed the atmosphere, and when it got to be ten o'clock, I spoke up and asked my mother and said, "We have come for the keys to the house and the factory, and we are stopping at the Globe Hotel in Red Bank," and at that period my brother Elmer spoke up and said, "Mamma has rented the factory to me until 1916 without rent," and my mother seemed to be rather unhappy and had her head down on the table, and Mr. Powers said, "What is all this about, Mrs. Hazard, the first time I ever heard of any such arrangement as this," and she said, "That is true, I have." Mr. Powers said, "Where is the lease?" Elmer said, "There isn't any lease, it is just a verbal lease," and my mother upheld what he said.

Court: You will have to state what she said.

Witness: She said that that was true; she said, "That is true, Harry, I have rented it to Elmer until 1916 without rent." He said, "I won't stand for anything like that."

Court: Did she say when she had made that lease with Elmer?

Witness: Some time prior, she didn't say how long.

Court: Did you say anything as to why she hadn't disclosed that before?

Witness: Yes, Mr. Powers asked her why she hadn't disclosed it.

omitted saying it, and Elmer deliberately said, "I have a lease until 1916 without rent."

Court: Is Mrs. Hazard a woman that is easily influenced?

Witness: I think so; I didn't think so at the time.

Q. Then what happened after that? A. Then Mr. Powers was very angry about it and got up and left.

Q. Had you had any idea that Elmer Hazard claimed to have any rights in the factory or the property? A. No, sir, I did not.

Q. Had he ever said anything to you about it? A. I knew he had a pair of scales in the factory

Witness: She didn't appear to give any special reason, any more than she had

Court: What did she say?

and one or two little things that he used in his doctor business.

Q. Did he have a laboratory there of his own? A. No, he did not; that laboratory belonged to E. C. Hazard & Company, but he worked in it occasionally, and had some few drugs and things like that in it, that he was told previous to this that he could take out.

Q. Beside all that, you had no notice from him of any rights in the factory? A. None at all.

Q. And said nothing to you about it? A. No, nothing.

Q. And nothing was said by him about any lease before that? A. Nothing at all.

Court: Had anything been said by your mother prior to that about a lease to your brother?

Witness: No, on the contrary, she said they were only down there working these goods out and had no lease.

Court: Did she state they desired to remain there to work up the goods?

Witness: Until such time as Mr. Powers went down there after the title was handed to him.

Court: Did anyone else take part in the conversation that night except those you have mentioned?

Witness: Only my mother and Elmer and Mr. Powers and myself. Mr. Powers even mentioned that night that he had bought the factory, that my mother had

signed the paper that there was no one in possession, and that he could run the business and factory and use the name E. C. Hazard & Company and all that, and she said that Elmer did have a perfect right to stay in the factory, and she would let him have the things that she had promised.

Q. Would let who? A. Harry.

Court: Was anything said about calling off the transfer and having the money and mortgages returned?

Witness: No, the title had been passed to Mr. Powers.

Q. Do you know anything of your own knowledge of Mr. Powers' attempting to take possession the following morning? A. He called up Mr. Wilson and said that Mrs. Hazard had taken a stand whereby she refused to allow him to take possession of it and had refused to turn over the things, and had said that Elmer had a lease, and he said, "Mr. Powers——

Mr. Sexton: Did you hear all this over the phone?

Witness: Yes, I was right there when Mr. Powers called him up, and Mr. Wilson told him to "go and take possession at once, tomorrow morning go up there and take possession."

Court: When was this interview with Mr. Wilson?

Witness: This was over the telephone after we left there in the evening, after we came from mother's house.

Q. Then Mr. Powers did start in to take possession the next morning? A. Yes—about that I don't know, I wasn't present.

Q. You were not present when he did take possession of the factory? A. No.

Q. When did you next see your brother Elmer Hazard? A. I think that evening of the morning that Mr. Powers took possession.

Q. The evening of the day on which Mr. Powers took possession? A. Yes.

Court: That would be the fifteenth?
Witness: Yes.

Q. Where did you see him? A. At the factory; he came to the factory with a constable to arrest Mr. Powers.

Q. Were you present? A. I was.

Q. What did he say then? A. He said Mr. Powers had property in there that didn't belong to him and he was trying to take the business of E. C. Hazard & Company and he had no right to it, and such conversation as that. I don't remember everything about it.

Q. What property was he talking about; did he mention it? A. Yes, he mentioned, saying he had stolen goods in the factory.

Q. What goods did he say? A. He said he had goods belonging to the Little Silver Sauce Company and E. C. Hazard & Company.

Q. Did he say what the goods were? A. He said they were barrel goods and bottle goods and all kinds of goods.

Q. Did he say anything about the trade marks or labels? A. He said that Mr. Powers was trying to use the name of E. C. Hazard & Company and the trade marks and labels, and he took this man up there in order to restrain him from doing it.

Q. Had he ever to your knowledge made any claim of that kind before? A. Never.

Q. You heard of none? A. No.

Court: What was the result that day; what happened when the constable arrived?

Witness: He had to go down to Long Branch.

Court: He arrested Mr. Powers?

Witness: Yes.

Q. Did you go? A. I went with him.

Q. What took place at Long Branch? A. When we went to the office—I don't know if he was a judge or what he was—I went along to give bail in case they want to put him in jail, and he released Mr. Powers on his own——

Court: He didn't take you as a married woman, as bail?

Witness: No.

Q. And after that Mr. Powers took possession of the factory; do you know whether he had any

expense about protecting his possession; did he have a watchman there? A. Yes; afterwards he had to go and get the whole factory equipped with fasteners on the windows and doors and such things.

Court: How long did Mr. Powers then remain in possession from that time; when was the fire?

Witness: The 13th of February, the following year.

Court: That would be 1914?

Witness: Yes.

Q. And he remained in possession of the factory, then, from the 15th of March until—— A. After he was arrested, when he came back to the factory that night they were in possession again; then they were finally ousted and he took possession again.

Court: When was that?

Witness: The 16th or 17th, and from that time until he lost his factory he was in possession.

Court: Did he continue to manufacture while in possession?

Witness: He did.

Court: And used the labels and trade marks?

Witness: No, he tried to; he was stopped from using them.

Q. Do you know what efforts Mr. Powers made to use these trade labels and trade marks? A.

He manufactured goods and he had some bottles and he took off the name of E. C. Hazard & Co. and inserted little slips saying Hazard Shrewsbury Manufacturing Company, because Mr. Wilson advised him not to use the other, because he would only get in trouble about it, unless this was settled.

Mr. Sexton: Did you hear Mr. Wilson advise him?

Witness: Yes.

Q. Do you know whether he was stopped from using these labels and trade marks and interfered with? A. Yes, they sent out letters to the trade saying he was a fraud and impostor.

Court: These letters which have been offered in evidence, like these?

Witness: Yes.

Q. That is the only way he was stopped? A. And by the fact that he was arrested and these suits started—they never were brought to trial, but they were all started, and he refrained from ever daring to use them.

Court: Let it appear on the record that counsel are of the impression that a bill was filed in chancery on which a rule to show cause without restraint was issued. Either side is at liberty to offer proof as to the character of the proceedings and relief sought from the files.

Q. You say Mr. Powers did go on and manufacture? A. Yes.

Q. Do you know whether or not he started to raise tomatoes during that next year? A. Yes.

Q. Where? A. On both places in Shrewsbury and on other pieces of property that he rented, and also took tomatoes from the farmers.

Q. When you say both places in Shrewsbury—? A. I mean my place that is in my name and the place he had purchased from my mother.

Q. Do you know how many acres of land he had under cultivation altogether? A. With what he rented, over 100.

Q. You were familiar with your husband's business? A. Very.

Q. Do you know what the output was by the acre of the land? A. You mean how many tons to the acre?

Q. Yes, of tomatoes. A. About twelve, or twelve to fourteen tons to the acres, because it was a wonderfully fine season.

Q. You were familiar with the amount in dollars and cents that was manufactured in the factory; did you keep an eye on that? A. I know.

Q. How do you know? A. From what money my husband had ot put in it and how much money he had to pay to the farmers, and what it cost to raise the goods on his own place.

Q. How much do you estimate that the value of manufactured product was?

Court: Is it necessary to resort to an estimate; haven't you the records?

Mr. Rosenberg: I think we did introduce the records. I shall not go into that any further; this is simply corroborative.

Q. Then the property was destroyed by fire about—? A. Thirteenth of February, 1914.

Q. Was the manufacture kept up in the factory from the time Mr. Powers took possession in March, 1913, down to the time of the fire in 1914? A. Yes, continuously.

Q. Did he have operatives working in the factory? A. Yes.

Q. How many men? A. At his busy season he had between 75 and 100 men, that is, during August and November, and the rest of the time he had from 25 to 30 men.

Q. Did he manufacture anywhere after the fire? A. No, sir; he tried to on several occasions; he leased a piece of property, thinking that this litigation would be over and he could immediately start operations. He paid twice on a piece of property and had to give it up.

Q. Do you know how much of the property that was manufactured during that time was sold? A. I know there was some barrel lots shipped out, but not very many.

Court: Could you give the percentage of it, whether half or quarter?

Witness: I would say it was less than a quarter.

Q. Was it as much as ten per cent of the manufactured products that were shipped and sold?

A. I really cannot say that it was as much as ten per cent, but most of the stuff was in the factory up to the time of the fire.

Court: Had the marketing season opened at that time?

Witness: No, on the contrary my brother Bowden, whom we met afterwards at the Hotel Knickerbocker, when Mr. Powers was discussing with him about the factory and the goods he had made up and had on hand, advised Mr. Powers not to sell the goods, but wait until later, because in February and March was the time when it was more scarce than ever and would bring a higher price.

Court: Do you know if that recommendation of your brother's was influential with your husband and caused him to hold the stock back?

Witness: No, he tried his best to sell it just the same, but it made him feel that even though he had been able to market it at that time, he still had hopes of disposing of it.

Q. Do you remember hearing your mother say something about the trade marks and the name of the Hazard Company, about Christmas, 1913? A. Yes, I think it was Christmas day she came over to the house and told Mr. Powers that she wanted to thank him for something that he had done for one of her sons, and he said, "Well, Mrs. Hazard, if you are so thankful, prove it by

putting me in possession of those goods and allowing me the use of the name and trade marks and those things, so I can do business."

Court: When was this?

Witness: Christmas, 1913, and my mother said, "Well, I will do my best, Harry."

Court: Between the difficulty you had about Mr. Powers' getting possession and this visit on Christmas, had you and your mother and your husband resumed friendly relations again?

Witness: No, sir.

Court: Had she visited you, or you her, between the incident in March and Christmas?

Witness: No, sir.

Court: You had no communication?

Witness: None whatsoever that I recall.

Mr. Rosenberg: This visit was in consequence of something that Mr. Powers began.

Court: Did he do it at your mother's request for your brother?

Witness: No, he did it at my request.

Court: And that led to a sort of reconciliation or visit from your mother?

Witness: Yes.

Q. Did you and Mrs. Hazard then continue on your friendly relations? A. She at that time said she would go right and see Elmer and try to get him to turn over these things and stop all this litigation, so he could resume the name and all

that, but she didn't do it. Then Mr. Powers told her—he said, "In July or August the note would become due again, and as long as you say that Elmer refused to do it and won't do it, this will be an opportunity where they won't be able to refuse, because if they refuse to do it, you will become immediately possessor again," and Mr. Joyce and I met downtown in Cortlandt street, just we two, and I suggested to Mr. Joyce that there was an opportunity where if Mrs. Hazard wanted to make good, she could do it, and he said all right, he would talk with her and see what came out of it, but nothing ever came out of it.

Cross examination by Mr. Sexton:

Q. Mr. Hazard had already tendered this note of $11,400 to Mr. Powers? A. Yes.

Q. Why was it necessary to say any more about it? A. At that time she didn't think it was necessary to have to take a note, because she said she owned the property, and when she tried to force the note on him, he said he didn't want to borrow any trouble or any lawsuit; that was at the outset.

Q. Later on he was willing to take the note? A. Only after she became owner of it. He wanted her to force them to pay the note, and if they were unable to do it, that when she then became owner, he wanted to do business with her; he never wanted to do any business with Matthes or Elmer Hazard.

Q. When was it, Mrs. Powers, that you first heard of the dividing of the contracts into one of $60,000 and the other of $11,400? A. At the Astor House.

Q. Was that in the early part of the conversation or the latter part of the conversation? A. That I don't know; I know that during the conversation, when Mr. Joyce was drawing up the memorandum, the idea occurred to Mr. Powers that the Fidelity wouldn't guarantee the personal property, so he asked to have it separated.

Q. They never had said anything about it before that time? A. Mr. Powers knew that the——

Q. At any of the interviews on conferences you had, there had never been any question but that of dividing the property, this $60,000 and the $11,400? A. No.

The Court: Was it to be in one or two?

Witness: It was to be in one contract at that time.

Q. Had the price been fixed at $71,400 prior to that? A. Yes. I won't say prior to that; there had been a figure given. The notes amounted to that. There was no question about what the price would be, because the notes couldn't be any more or less. It was the real estate price he was arguing about, and really wasn't decided until we got down to the Astor House.

Q. So whatever the real estate price was, you added $11,400 and that is the way the difference was made up? A. $71,400.

Q. If the real estate price had been $65,000 for that real estate, then the $11,400 would have been $76,400? A. No, $11,400, always had that one price.

Q. You lived on the Hazard home at Shrewsbury; you were born there? A. I was the first one born there.

Q. You lived there until you were married? A. Yes.

Q. The rest of the children were familiar with what went on around the place from childhood up? A. Yes, I should say so.

Q. After your father died, you had an interest in the E. C. Hazard & Company? A. Yes.

Q. You knew the details of ownership of the property, the real estate property, did you not? A. I knew the details.

Q. And who owned it prior to your father's death? A. I think my mother.

Q. Your mother owned it for some time prior? A. Yes, I think she did.

Q. Your father was interested with other men in the manufacturing of the food products at Shrewsbury and also had a large store, I think it was at Hudson and Washington streets; you knew of that? A. Yes.

Q. At the time of your father's death the children had nothing to do with the real estate, that was your mother's at the time? A. Yes, all but a very small portion. I think there were some eight acres that we all had an interest in, but I am not even positive.

Q. At Shrewsbury? A. Yes.

Q. Was that the piece of property that Mr. Powers contracted to buy from Mr. Hazard? A. Yes.

Q. Some other transaction? A. Yes.

Court: That was another transaction, not related to this at all?

Witness: Yes, not related to this matter at all.

Court: You, I understand, were a stockholder in E. C. Hazard & Company?

Witness: Yes.

Court: And you had assigned your stock to your husband, Mr. Powers?

Witness: Yes.

Court: At the time that the negotiations were pending and in fact closed, your husband had your stock?

Witness: If signing it over made it his.

Court: You knew also that there were a number of stockholders interested in E. C. Hazard & Company in addition to the family?

Witness: Yes.

Court: What proportion of the stock of the E. C. Hazard & Company did the family hold? What percentage of the whole?

Witness: My mother had a one-fourth interest and each one of us one-seventh.

Court: There were seven of you?

Witness: Seven children.

Q. What interest did the outsiders own?

Court: Do you know what percentage, if any, the outsiders of the family held?

Witness: At the time of my father's death there were only the two partners, Mr. Greene and my father, and therefore Mr. Greene only had one fifth of the business and my father had the balance, and my mother of that had one-fourth and each of us one-seventh.

Q. Then when E. C. Hazard & Company was incorporated, there were others that came into the corporation? A. Yes.

Q. And others who held stock? A. Yes.

Q. And some who put in money? A. Yes.

Q. Mr. Meadleston put in $25,000? A. I think it was $20,000.

Q. And others put in money? A. Mr. Adams put in $20,000.

Q. You were cognizant of that? A. Yes.

Q. You had two contracts, the real estate contract and the personal property contract, as I understand it, Mrs. Powers; your husband claims a lot of personal property went with the real estate contract? A. Yes.

Q. What did your husband say as to that personal property being guaranteed by the Fidelity Company, the property included in the $60,000 contract? A. That was simply property that she said she owned and that went with the $60,000 and was his object in buying that property.

Q. I ask you again what did your husband say in reference to the personal property that went with the $60,000 contract, about being guaran-

teed by the Fidelity? A. Because he didn't consider that a trade mark or good will——

Court: What did he say?

Witness: He said that the trade mark, and good will, and those things were not tangible personal property that anybody could guarantee. It merely went with the real estate property at $60,000.

Court: Did he use those words at that time?

Witness: No.

Q. You have since heard that tangible personal property? A. No, at the time when he was talking to my mother in 97th street she mentioned what was to go with the $60,000 contract, and there was no controversy over it at all; the only agreement was over the $11,400.

Q. Did he use the words "tangible personal property" at the time he spoke of the Fidelity Company guaranteeing the title? A. He spoke about the $11,400 personal property, he didn't want it mingled with the other, because it would cause confusion.

Q. Was it not intended that the $60,000 contract was to convey to your husband the real estate and the buildings appurtenant thereto, with such fixtures and machinery as your mother owned at the time of that sale? A. Yes, that was all to go with it also.

Q. And the fixtures and machinery were such that had come to her through her husband? A. So she said.

Q. And you knew that that was what the $60,000 contract was to cover? A. That was part of what it was to cover.

Q. Isn't that a fact that that was all that it was to cover? A. No, sir, it was not.

Q. Mrs. Powers, you haven't any idea of the amount of goods that were in the factory at Shrewsbury at the time of the sale in March, 1913, at the time of the delivery of the deed? A. No, I haven't any idea at all.

Q. Did you know that an inventory was taken by Miller and Callahan? A. Yes.

Q. Did you know that after the goods that were covered by the bill of sale had been deducted from the goods on hand, as shown by that inventory, that it left a large part of the goods still not mentioned by either contract? A. No, sir, I only know there was a small quantity of goods in the factory.

Q. Did you at any time look up the items of the bill of sale on the inventory list? A. No, sir.

Q. You have been quite active in those negotiations with your husband, in fact you were with your husband on every occasion? A. I was, and I was in the factory when both inventories were taken by the other side and our side, but I didn't participate in any way by writing down the different things.

Q. Who owned property or goods in the factory at the time of the contract, namely February 5, 1913, to your knowledge? A. What goods were in there were supposed to be owned by my mother.

Q. Didn't you claim as a stockholder of E. C. Hazard & Company that you had an interest in

some of those goods? A. If there was anything belonging to E. C. Hazard & Company.

Court: Did you claim it at the time?

Witness: Did I make a claim? No.

Court: Did you understand you had an interest in some of those goods?

Witness: I understood that when there was a firm of E. C. Hazard & Company I had an interest in it.

Court: In February, 1913, when the contracts were signed, what was your understanding about it at that time?

Witness: I understand that the interest of everybody was all sold out and Mr. Powers was buying it.

Q. You knew at that time that your mother was selling your goods and everybody else's goods who had anything to do with E. C. Hazard & Company? A. Because they said it had been refused to her ownership.

Q. But you knew at that time she was attempting to sell, as you claim, property of E. C. Hazard & Company, Little Silver Sauce Company and Hazard & Company? A. I never heard of the Little Silver Sauce ompany until after Mr. Powers had purchased and got his title to the place.

Q. You just gave us the history of that company? A. At that particular time, at the Astor House meeting or at the time my mother first spoke about selling price, there was no mention of that company, because that business had been dead for years.

Q. You knew there was a Little Silver Sauce Company prior? A. When Mr. Powers was arrested, the name of Little Silver Sauce Company came up, and he asked what it was; he wanted to know then what relationship that had to do with E. C. Hazard & Company, and I explained to him the circumstances connected with it.

Q. Elmer had been running the business of E. C. Hazard & Company since your father's death? A. He was president of the company.

Q. Was he actually managing it? A. I wouldn't call it managing it.

Q. Was he the one in active charge? A. He was the one who had active charge of it, yes, sir.

Q. Did you ever have any conversation with Elmer as to the sale of the property by your mother, prior to February fifth? A. Only once in Brooklyn, when Elmer was present, when they were talking over the sale.

Q. You knew that a lot of creditors had judgments against the assets of E. Z. Hazard & Company? A. Yes.

Q. Did you stop to consider what would become of the claims of the creditors when your mother was selling all these goods to your husband? A. No, I cannot say that I did think of it.

Q. They were the E. C. Hazard & Company's goods that the creditors had levied against, were they not? A. They were, but they had since that time been returned to my mother, and it was she that was selling them to Mr. Powers, and he was not buying the E. C. Hazard property for the reason that it had become her property, and he was buying her property.

Court: Where was the distinction ever made or drawn between what property should be considered Mrs. Hazard's and what property should be considered E. C. Hazard & Company's?

Witness: The only division that I know of was simply what belonged to E. C. Hazard & Company were the goods that had been assigned to my mother.

Q. Do you know where E. C. Hazard & Company got those goods from? A. No, I don't.

Q. Were they any part of your father's assets or estate? A. My father bought and paid for nearly all the machinery; owned the factory, and in fact almost everything was his, other than the fact that the firm when they bought any goods, such as manufacturing goods, they bought it together.

Q. In the $11,400 of so-called property that belonged to E. C. Hazard & Company, no part of it actually belonged to your father's estate at the time of his death, or constituted part of his plant at Shrewsbury? A. Everything there of E. C. Hazard & Company was supposed to be owned by the children and by the estate and by all the people that were interested in it.

Q. How were certain articles that totaled in value $11,400 were selected and set apart as the E. C. Hazard & Company's property, and the remainder of the articles, personal and real, amounting to say $60,000, was held as Mrs. Hazard's property? A. The factory and its equipment and most of the machinery.

Court: Possibly Mr. Powers can explain that better than you.

Witness: Very likely.

Q. But there were, Mrs. Powers, goods still remaining in the factory at the time your husband took possession of it, belonging to E. C. Hazard & Company? A. At the time that my husband bought the place and bought the factory and bought everything that was supposed to come to him for $60,000 and for $11,400, it was supposed to have wiped out E. C. Hazard & Company.

Court: The question is, was there any property when you took possession—I don't know if it was the fourteenth, fifteenth or sixteenth—was there any property, to your knowledge, on the premises that belonged to E. C. Hazard & Company?

Witness: Not to my knowledge, because the goods belonged to my mother.

Q. Did you have, after the twentieth or twenty first day of February, 1913, when you learned of the bills of sale being placed upon record, a copy of the bills of sale? A. We simply heard that there were two bills of sale.

Q. Did you keep a copy, or did Mr. Powers, to your knowledge? A. No, I don't think so.

Q. At the time of the closing of the title, did you have a copy of the bills of sale? A. No, I don't think he had gotten any copy.

Q. Has he at any time since then gotten a copy of the bills of sale? A. I don't know.

Q. Did you ever compare the inventory that it is alleged Mrs. Hazard gave your husband, with the inventory made of the goods in the factory by Miller and Callahan? A. No.

Q. You never did? A. No.

Q. You are quite positive that at the meeting at the Astor House, the $11,400 contract was talked over in the presence of Mr. Joyce? A. I know it was.

Q. And with Elmer Hazard and Frank Matthes? A. Yes, with Mr. Elmer Hazard and Mr. Matthes present.

Court: Was Mr. Joyce present at the time when Mrs. Hazard refused to close the $60,000 contract unless the $11,400 contract was also closed?

Witness: Yes, Mr. Joyce was present at the Fidelity.

Q. Do you remember whether you were present when Mr. Powers made the suggestion to Mrs. Hazard that he close the $60,000 contract at that time and let the $11,400 contract remain? A. Yes, I was present; I think Mr. Dickensheets was the one that made the suggestion.

Q. Was Mr. Joyce present? A. Yes, he was present.

Q. When was it you first heard these words, "All personal property not covered by an assignment as security by E. C. Hazard & Company to the party of the first part is included in this sale"? A. At Mr. Joyce's office after we left the Astor House.

Q. Mr. Joyce had received full instructions at the Astor House as to preparing these contracts? A. Yes.

Q. What was said as to what property was to be included in the $60,000 contract at the Astor House? A. My mother said that in the $60,000 contract was to go the house, grounds, factory, factory equipment, the trade mark, good will and the labels.

Q. Your husband heard that? A. He did.

Q. And made no objection that the Fidelity Company could not guarantee the personal property and equipment in the factory, as referring to the $60,000 contract? A. He didn't make any reference to saying anything about what the Fidelity would do with that, any more than he wanted to separate the $11,400 from the $60,000, on account of the Fidelity.

Q. At the Fidelity when the title was closed, there was no hitch over the $60,000 contract? A. None whatsoever that I recall.

Q. Your husband got a deed from Mrs. Hazard? A. Yes.

Q. And gave back a mortgage? A. Yes.

Q. And the mortgage covered, as far as you know, everything that was deeded by Mrs. Hazard to your husband? A. Yes.

Q. And the mortgage covered everything that was contemplated to be covered by the contract for $60,000? A. The title, not the mortgage; the title conveyed the real estate and all she said she would sell on that day.

Q. And she was to give a mortgage back? A. Yes.

Q. And the mortgage she got back covered everything that was deeded by her to your husband? A. Yes. I don't understand that.

Q. Your mother gave a deed, according to the $60,000 contract, to your husband? A. Yes.

Q. Which was to close the $60,000 contract, that is so? A. When he paid twenty-nine and some hundred dollars that was to pay for the place, the factory and its equipment, and all she said she would sell him and deliver when he had paid up those notes.

Court: Don't attempt to answer it, if you don't know; say so. That isn't an answer to the question.

Witness: I don't understand the question.

Court: If you don't understand it, don't answer it.

Q. There was a contract for $60,000? A. Yes.

Q. And that was to deliver certain property from Mrs. Hazard to your husband, is that right? A. Yes, and that contract was carried out at the Fidelity Trust Company.

Q. Mr. Powers said it was never carried out.

Court: Do you know whether it was carried out or not?

Witness: No, it wasn't carried out.

Court: Do you know whether it was or not?

Witness: I know it wasn't.

Q. Was anything said at the time of the closing of that contract that Mr. Powers wasn't get-

ting everything that Mrs. Hazard had agreed to give him in the $60,000 contract? A. He was only supposed to pay $30,000, and the other judgment coming up made it such that he didn't consider it closed.

Q. Other than the fact that the Eisemann judgment came up, was the $60,000 contract closed?

Court: If you know, at that time?

Witness: I don't know.

Q. The $11,400 contract was not closed?

Court: Do you know whether it was?

Witness: There was a lot of argument about it.

Q. Do you know whether it was closed or not?

Mr. Rosenberg: I think he is asking for a conclusion, and even a lawyer cannot settle that question.

Court: I will permit it.

A. I should say it wasn't closed and it wasn't supposed to be closed until the next morning, when my mother said she would turn over the goods.

Q. Do you recall Mr. Dickensheets saying to your husband that he didn't think Mrs. Hazard could turn over the goods the next morning? A. I remember hearing him ask her if she could turn over the goods, and he said he didn't think she could.

Q. And your husband was present at the time

that Mr. Dickensheets said that he didn't believe Mrs. Hazard could turn over the goods the next morning? A. Yes.

Q. I suppose there was some more talk? A. No, that note then was made not negotiable until she did hand them over, but he was willing to put it in that way to give her an opportunity to get the goods.

Q. What time was specified when the note was given, that Mrs. Hazard should have to turn over the goods? A. She was to see Elmer the next morning and give them to Mr. Powers.

Court: The next day?
Witness: Yes.

Q. You saw Elmer Hazard the next night? A. I did.

Q. And that was the occasion of your going over there after the keys? A. Yes.

Q. Did you know at that time that Elmer and Matthes were contempalting going to Matawan? A. No, I did not.

Q. And there had been an arrangement made by your husband with your mother to leave her furniture in the house, had there not? A. May I explain that?

Q. Yes. A. When she spoke to Mr. Powers about buying the place, she said in order as an inducement that he would take such a great big house—we already had our own and a farm of our own—and she said she would leave the furniture in, because she had no place to put it, and would be glad to leave it there, and that that

would save us buying furniture for such an enormous house, but that it was not to become our property, and that it was to be exempt from the list of the sale, and that if at any time it should happen that she would want a piece of furniture she could take it and sell it; that she should have the right to do it, and Mr. Powers agreed to it.

Q. Was there anything said about allowing your mother to live in the house? A. Mr. Powers said at the time that we went over there that evening he saw her head down on the table and she was unhappy, he said, "I hope, Mrs. Hazard, you are not unhappy about losing your place. Remember this is your old home, you can have the same room to sleep in; if it pleases you, you can live here at any time."

Q. The house was one of the things you wanted a key for? A. Yes, we wanted a key for the house and factory, and have never received a key for the house yet.

Q. Was there a key for the house? A. Yes, because my brother Elmer used to use one, and I know my brother had one.

Q. Mr. Powers took possession of everything that was in the factory? A. Yes.

Q. And has had it from that time up until the fire? A. Yes.

Court: And did I understand there were some things that were recognized as the Doctor's, which he was allowed to take out?

Witness: Yes, we had already told Dr. Hazard that things that belonged to him

which we knew were his, he could go and take out.

Court: He did take some out?

Witness: Yes, and took lots of things that were not his.

Q. Was that furniture of his that was in the factory? A. I don't know what it was; I know he went there and was allowed to take out some things.

Q. How do you know he took out stuff that wasn't his? A. They were in boxes there, preserved raspberries and things like that, that hardly could have belonged to him, which had the E. C. Hazard label on.

Q. You don't know what he took out other than some of the boxes? A. He took some of those boxes and he took some boxes that did have some of those goods in them.

Q. Did he take any furniture out? A. I don't know what it was.

Q. Do you remember his taking a settee and some rattan stuff belonging to his wife? A. No.

Q. How many boxes did he take? A. I don't know, but quite a number.

Court: What do you mean, ten or fifty?

Witness: I would say maybe five or six boxes and a whole lot of other things that were gathered together. It has been so long ago that I have forgotten just what there was there.

Q. When you got to the house on the evening

of the fourteenth, on your direct examination you said you felt something—the atmosphere had changed; what did you mean by that? A. That where my mother before was happy over selling the place and was delighted, when we got there that night, after having spent the afternoon with Elmer and his wife and mother-in-law, her attitude was changed; she had her head down on the table and she was sad, and that caused Mr. Powers to ask if that was why she was sad, that she had sold the place and was going to lose her home.

Q. Did they have a watchman at the factory while they were running the E. C. Hazard & Company plant? A. For a long time they didn't have anyone.

Q. (Last question repeated.) A. At the time it was running?

Q. Yes. A. Yes.

Q. Did Elmer and Matthes have a watchman there, that you know of? A. They had at the time that Mr. Powers took possession.

Q. So that there wasn't anything unusual about having a watchman at that factory? A. Not an unusual thing, no.

Q. Wasn't Hazard there that night? A. No.

Q. You are positive about that? A. I am so positive that I would be willing to swear to it.

Court: You are swearing to everything you testify to.

Witness: I know I am. I know he was not present.

Q. Didn't Bowden Hazard ride home with you in the carriage and you let him out at Borden's corner? A. No, sir, that isn't so.

Q. You are quite positive that he was not there? A. I am absolutely positive that he was not there.

Q. Where did he live? A. Up in Shrewsbury, right in the very town.

Q. Not with your mother? A. No, and a very short walk from our house, less than a mile.

Court: How far did you live from your mother's house?

Witness: Next door, a stone's throw. We were at the Globe Hotel on this night.

Q. That is why you were driving home? A. Yes.

Q. Do you recall the Eisemann judgment coming up at the closing at the Fidelity? A. Yes.

Q. You know that your husband made these contracts in reference to taking care of the Eisemann judgment and Mrs. Hazard made her stipulation that she was to prosecute it in the highest court; you saw those contracts made? A. I saw everything that was made that night.

Q. Do you recall that Mrs. Hazard made an affidavit that your husband could have all the labels, stock and goods in the factory on the next day or whatever the affidavit you testified in your direct examination—did you mean to include in that labels, stock, etc.——

Court: You are talking of the affidavit at the Fidelity?

Mr. Sexton: Yes.

A. I didn't say anything of the kind.

Court: What did you mean to say, that it did or did not include labels, the reference to labels and trade marks in the affidavit?

Witness: As far as the affidavit went, I only said that when he bought the place at $60,000, she said it included the trade mark, the good will, and labels, and he could go right in and do business.

Court: Mr. Sexton is directing your attention to the affidavit said to have been made by Mrs. Hazard at the Fidelity and he asks you what you understood that affidavit was about.

Witness: The affidavit was asked for by the Fidelity and was only in regard to possession.

Mr. Sexton: I misunderstood you, then; I thought you testified as to the affidavit saying something about labels and goods.

Court: I didn't so understand it.

Q. You recall your husband receiving these labels from your mother; I understand that was at 97th street? A. Yes.

Q. They were in the enveolpe? A. I don't recall just what they were in, but I remember seeing the labels put out on the table and talking about them.

Q. How many were there at that time? A. I cannot say, but I know there was just a small

amount, something very much on the order of what has been exhibited here.

Q. Were there five or six? A. I should say there were easily that.

Q. Ten? A. Possibly; I didn't count them; I really personally wasn't very much interested in looking over them; I had seen them many times.

Q. You had seen them many times and knew there were large quantities of them at the factory? A. Yes.

HENRY H. LONGSTREET, sworn for complainant,

Direct examination by Mr. Sexton:

Q. You live at Matawan? A. Yes.

Q. And have lived there for a long time? A. Yes, a good many years.

Q. You were the owner of the property opposite the Matawan station, known to me as the Puffed Rice factory? A. Yes, the American Rice and Food factory.

Q. Do you know Elmer Hazard and Frank T. Matthes? A. Yes.

Q. Did you at any time have any negotiations with either Mr. Hazard or Mr. Matthes, or both, in reference to the renting of this factory? A. I did.

Q. And when was that? A. That was in the latter part of 1912 and the first part of 1913.

Q. How long did the negotiations continue? A. I don't really know how long; two months, probably, something like that.

Henry H. Longstreet—Direct.

Q. It started in the latter part of 1912? A. Yes; there was quite a little correspondence.

Q. And at that time they were endeavoring to lease this factory from you?

Mr. Rosenberg: You are talking now of the factory at Matawan?

Mr. Sexton: Yes.

A. My recollection is they were trying to lease it with the privilege of buying.

Q. The lease was never signed? A. No, sir.

Q. Was there a lease drawn? A. Yes.

Mr. Rosenberg: What is the object of this testimony; what is it corroborative of?

Mr. Sexton: It is corroborative of the testimony. It is in rebuttal to the effect that there was no intention of retaining possession of that factory by Elmer Hazard or Frank T. Matthes, or in fact to the time they were negotiating for the rental of the factory at Matawan, which has already been referred to by Mr. Matthes.

Mr. Rosenberg: Suppose I move to strike that out because I cannot see how the fact that they were negotiating for any factory down at Matawan is at all material.

Court: You can reserve the right.

Cross-examination by Mr. Rosenberg:

Q. You say there were negotiations from what time to what time? A. From the latter part of

1912 to the early part of 1913, my recollection of it is.

Q. Did the negotiations come to any head? A. Not quite.

Q. Why not? A. Simply because the lease was drawn, and then when they came up, they didn't come to time on the lease.

Q. You mean they didn't have the cash? A. I don't know whether they had it, but they didn't bring it. They may have had it.

Q. It fell through, then, because of their failure to comply with the financial end of the lease? A. That is it.

Re-direct examination by Mr. Sexton:

Q. Do you know whether they were going to bring machinery there? A. I know they said they were.

Q. Where was it coming from? A. I understood from the Hazard factory.

Mr. Rosenberg: I object.

Mr. Smock: I think it should be struck out.

CHATHAM F. BEDELL, sworn for complainant.

Direct examination by Mr. Sexton:

Q. Where do you live, Mr. Bedell? A. In Brooklyn, New York.

Q. What is your business? A. I am not in any

business at this moment; I have been for two months.

Q. What has been your business? A. Up to eight months ago, real estate business all my life.

Q. How long have you been in the real estate business? A. Thirty years.

Q. And these activities have been conducted where? A. First in Brooklyn, eventually in Denver, Colorado, and for the past twenty years in New York.

Q. Do you know Mrs. Hazard? A. Oh, yes.

Q. Do you know where her property at Shrewsbury is? A. Very well.

Q. Have you visited it? A. Four or five times.

Q. When was it that you visited that property the first time? A. The first time, I should say about 1910.

Q. Did you have any negotiations with Mrs. Hazard as to the purchase of this property, the Shrewsbury property? A. I had several times.

Q. Speaking of the Shrewsbury property, what do you understand me to mean? A. The Hazard homestead with all its acreage and the factory.

Court: And there are buildings on the property?

Witness: Yes.

Q. Anything about the equipment of the factory? A. It was there, the equipment.

Q. Was that included in the property? A. In none of my negotiations; I sell real estate only.

Q. Did you make an offer for the property, Mr. Bedell?

Mr. Rosenberg: I object; I cannot see the materiality.

Mr. Sexton: The proof is, it has already been testified that there was an option to Mr. Bedell; and furthermore to show the value of the property that Mr. Bedell had the option on, and it goes to the question which your Honor is to decide, whether Mrs. Hazard sold the land and the personal property for the price named, where she had an offer from Mr. Bedell for a certain amount for the land itself.

Mr. Rosenberg: How does the fact that Mr. Bedell had an option for the land show anything about what her contract was with Mr. Powers?

Court: Do I understand you mean to show that he had made her an offer or had an option?

Mr. Sexton: That he had an option.

Court: If he had an option, what significance would it have?

Mr. Sexton: He made an offer; then I will it that way.

Court: Which she declined?

Mr. Sexton: It was standing open at the time that Mr. Powers stepped in, and Mrs. Hazard said to Mr. Powers, "if you do not buy it this morning, I will sell it to Mr. Bedell this afternoon."

Court: I will receive it and see what I will do with it afterwards.

Mr. Rosenberg: My objection is on the record; it is entirely immaterial.

A. I did on behalf of a client.

Court: When?

Witness: January 24, 1913, was the date of the letter I wrote.

Q. Did you write a letter to Mrs. Hazard? A. I did.

Q. What book is this that I have? A. That is a copy of the letters we sent out from the office at that time.

QQ. Referring to page 206 of a book marked Letters, what is contained upon that page of that book, Mr. Bedell? A. It is the offer I referred to, a copy of the letter in which I made the offer.

Mr. Sexton: They tell me they mislaid the original, and I offer the copy.

Court: Was the copy made in the regular course of business?

Witness: Yes, on the same day it was sent.

Mr. Sexton: I offer the letter in evidence.

Court: I will let it in now and see what it is, and will strike it out afterwards if not relevant.

Mr. Rosenberg: My objection is it is immaterial and irrelevant; this is apparently an offer in which he said that he has received an offer from certain parties for the Shrewsbury, stating the offer; he doesn't say who the parties are, and it is a mere offer for the Shrewsbury property. I don't see how that is at all relevant on any of the

issues in this case. In the present case all that is in the testimony is, that Mrs. Hazard said to Mr. Powers that she had an option—she had got an option on this property, and if this option were not redeemed, then she would sell to Powers. Then there is also in the testimony evidence of a threat that if she didn't sell to Powers, she would sell to Bedell. That is all we have got. How is that at all evidential on any of the issues in this case?

Court: The evidential feature of it is this: that assuming that the offer is of such a sum, I suppose the comment will be made that when she refused an offer of that sum, it is incredible to believe that for a less sum or a slightly greater sum, she included all the additional property that Mr. Powers now claims that she sold.

Mr. Rosenberg: But apparently she didn't refuse that, but the thing fell through.

Court: It is not in evidence yet that she refused or accepted it. You may offer it and Mr. Rosenberg's objection will be noted.

Mr. Smock: Is this offered for the purpose of showing the value of the property?

Mr. Sexton: Yes.

Mr. Smock: It is clearly irrelevant on the question of fixing a value.

Court: The value is immaterial. The mere significance of it is to show, I suppose, the fact that she was offered $71,400 for

the property without labels, equipment, machinery and stock, and she refused it. It is a fair comment to make, if she refused it from Bedell, why did she accept the same sum from Mr. Powers for a great deal more property. I will hear it. Read the letter into the record.

Q. Will you read the letter? A. (Reading)

"176 Broadway, January 29, 1913.

Mrs. E. C. Hazard,
528 Fourth Street,
Brooklyn, N. Y.

Dear Mrs. Hazard:

I have today secured an offer from the parties I have been negotiating with, for your Shrewsbury property. I have been working with these people for some time, and last Sunday I visited the property myself in order to be posted to better answer their objections to price. When I came back I told them that they could well afford to give $80,000 for it simply on the basis of land value and the value of residence. We have argued over the matter from Monday until today, and today have secured an offer from them. I hope the offer will not be unsatisfactory to you. If it is, let me say that I have worked earnestly to get a better price, but cannot do it. I do not think these people will pay any

more than the present offer. To be frank with you, I believe you must choose between accepting this offer or not dealing at all with these people. The offer of $65,000 for the entire 51 acres and improvements; they are to pay $30,000 in cash and give you a mortgage of $35,000 at five per cent interest for five years. A condition of the offer is that you allow them to lease portions of the property, excepting the front ten acres, and on payment of $1,000 for each acre that they desire released. Their idea is to subdivide the land into half acre tracts and sell these tracts to different buyers. I have insisted that they must not break up the plot that surrounds the house, and they agree with me that it would be wise to let that remain in one large plot. If you are interested in their offer, I will be very glad to prepare the details of their release plan. I am usually in my office between eleven and five, but will surely be here, if you telephone an appointment. If you prefer to have me call on you, I will come.

Yours very truly,"

Q. Was that offer accepted? A. No, it was not; Mrs. Hazard came over to see me.

Q. How long after the letter was written? A. I think the next day—and said that it wasn't price enough, that she thought $80,000 was a cheap price, according to what other people had

sold, and what she thought she ought to get; and I told her it was hopeless, and we talked the matter over, and finally she said, "Well, you get a better offer, Mr. Bedell"; I said, "What is the best you will take?" And I said, "I haven't any hope of getting any better, but one can never tell; I will try." She said, "I might be tempted to take $75,000, but not $65,000. You get them up, they will come up some." I said, "I am afraid not," and with that she left me.

Q. Did you actually have a party who wanted to buy for $65,000? A. Yes.

Q. Who was the party? A. I cannot recall now, because I was negotiating with a hundred buyers of different things; I had an office full of clerks and half a dozen salesmen who would come to me on these properties; on this property I had four or five.

Court: How long had you had this property on your books?

Witness: For two or three years.

Court: At what price?

Witness: Never under $80,000.

Court: Have you your books now?

Witness: No; I only saved the letter books.

Court: Have you anything which will show the description of the property that was listed with you for $80,000?

Witness: I knew.

Court: Did you carry on your negotiations with the prospect of a purchaser by mail or conference, or both?

Witness: Conference.

Court: None by mail?

Witness: None.

Court: Did you ever write them a letter in which you described the property which you offered?

Witness: No, I looked up the letter book to see if I could locate the name of that party and I couldn't find it. I had three different parties considering it at one time, or within two or three weeks of each other.

Court: Isn't there anything in your letter book following up Mrs. Hazard's suggestion, to see if you couldn't get them up to $75,000; within the next two weeks or so didn't you write to the parties?

Witness: No, it wasn't done that way: it was done right in the office in the negotiations with the people—speculators who had offices near mine; they were speculators, all but one. I had three different land speculators to divide up the land. The fourth was a genuine home seeker, but he fell out by the wayside.

Court: Were these land speculators of such a special character that they could produce $30,000?

Witness: Yes.

Court: Can't you locate them in any way?

Witness: No; I thought it all over; I cannot place the name of this particular buyer.

Q. What was to be purchased by that offer, Mr. Bedell?

Mr. Rosenberg: I object; the offer speaks for itself.

Court: He has already answered it. You asked before what he understood the Shrewsbury property to include, and he has defined that.

Was the offer which you made, to purchase any stock or fixtures or furniture or what not contained in the factory or on the buildings?

Witness: No, nothing of the kind, the land and the buildings. It did take in the factory building.

Court: Was the property which you had for sale, and which you understood was covered by this offer, to include the right to manufacture food products under the name of E. C. Hazard & Company or E. C. Hazard, or under labels bearing the name of E. C. Hazard or Shrewsbury?

Witness: Never.

Court: Was anything said about that?

Witness: Never any negotiations; I understood that belonged to a different party altogether.

Court: Was anything said about it?

Witness: No.

Q. Were you spoken to at any time in reference to entering the firm of E. C. Hazard & Company, the corporation? A. Yes, Elmer and I had a great many talks about it.

Q. Did you do anything in relation thereto? A. Yes, I tried one time to raise capital for him,

and in that connection was made an officer of the company even while I was raising money.

Q. Were you successful in raising any money? A. Not sufficient to do any good.

Q. What was the reason that you didn't raise the money? A. Panic conditions only; it was difficult to raise money.

Q. Panicky conditions generally or locally with its paper? A. No, generally. Might I say why I went down that Sunday?

Q. You have already said you were there after 1910; you had been down there? A. I had been there several times. I came down with a particular object that Sunday.

Court: What was your object?

Witness: One of the arguments I used with this man, he could afford to pay $80,000, because there was so much material there, when the factory was down. I was in close touch with Elmer Hazard and knew that he didn't intend to manufacture in that big plant very long, especially if he had to pay rent, and I knew the factory could come down, and the buyer was insistent that they should come down, and he maintained that there was no value to it. I maintained as a practical builder that there was a lot of value to it, and I came down to estimate the value and demonstrate to him how much he could get from that brick and all lumber in the building, and get some idea of all the measurements in lumber. I went back to tell him how much

more it was worth on account of the material.

Court: How much commission did you get for effecting sales?

Witness: I was to get five per cent.

Court: It doesn't seem hardly credible to me that you cannot recall the man from whom you expected to get three or four thousand dollars.

Witness: I was making three or four thousand dollars every week then. I had a dozen customers myself, and the office probably a hundred working at once, all under my guidance.

Cross-examination by Mr. Rosenberg:

Q. How long did you say you were in the real estate business? A. About thirty years.

Q. You were making $3,000 or $4,000 a week? A. No, I didn't say that; I said at that time.

Q. When did you get out of the real estate business? A. About eight months ago.

Court: You were making, I understood you to say, three or four thousand a week at the time you made this offer to Mrs. Hazard?

Witness: Yes.

Q. You said you left the real estate business about eight months ago? A. Yes.

Q. Why did you leave it? A. Because I wasn't making anything.

Q. Your office had gone out of business between 1913 and the present time? A. Yes, like everybody else.

Q. And earning from three thousand a week to nothing? A. Pretty nearly.

Q. You said you had an office force of how many people? A. I had an office force of fourteen.

Q. This is the letter book that you had at that time, was it? A. My letter book, not the office.

Q. And the only letter book that you had? A. Oh, no, there were four or five books working in the office; that was mine.

Q. How many people were in the office with you? A. I say about fourteen; they used the office book, I used my private book; I was the head of the firm.

Q. What was the name of the firm? A. C. F. Bedell Company.

Q. And there were fourteen men in the firm? A. No, none of them in the firm but me; I was the whole firm.

Q. And this was your own individual letter book? A. Yes.

Q. And there were other letterbooks kept? A. Yes.

Q. How did you happen to put this letter to Mrs. Hazard in your own letter book? A. All my letters to anybody were in my own book.

Q. But any negotiations conducted by anyone else went into some other book? A. If they signed the letter, yes; I had to audit them.

Q. Then you had fourteen other letter books? A. No, they were not all salesmen.

Q. How many salesmen did you have? A. Five.

Q. All working under you? A. Yes.

Q. And on salaries? A. Yes, salaries and commission.

Q. And each one with his own letter book? A. No, it wasn't divided up just that way.

Q. You were a very busy man? A. We collected something like three-quarters of a million dollars rent a year; we had a olt of letter books.

Q. How do you account that with all your business, you had so few letters in your letter book? A. In my book?

Q. Yes. A. Because I had so much business individually, or I didn't spend my time writing letters; I telephoned if I could get a man on the phone, and called me; I tried to do that.

Q. Is there any way by which you can find out now who these people were with whom you had this business? A. Not that I know of; I cannot think of it.

Q. You cannot remember the names of any one with whom you had a transaction which might run from sixty to seventy-five thousand dollars at that time? A. I had loads of such transactions.

Q. Where were these other transactions? A. All over, mostly in New York.

Q. Whereabouts in New York? A. My office was 86th Street and Columbus avenue—not 86th street and Columbus avenue, 86th street and Broadway.

Q. Was there any $60,000 transaction that you had about the same time? A. I don't remember now.

Q. You occupied your office at 86th street and Broadway until about eight months ago? A. Up to two months before the letter was written, then I went down town to 170 Broadway, and cut out my renting department.

Q. How long did you stay there? A. Until eight months ago.

Q. And then you gave it up? A. I gave up the business because it didn't pay.

Q. What are you doing now? A. I have been in a position up to a week ago; now I am doing nothing.

Q. Was that the sole reason you gave up business, because you were not doing anything? A. I wasn't doing enough to make it pay.

Q. Was that the only reason? A. Yes.

Q. How long have you known Mrs. Hazard? A. I should say about ten years.

Q. Quite intimate with the family? A. I wouldn't say that; one of the family I never met until today, but I knew Elmer very well.

Q. You had business transactions with Elmer, it appears? A. Yes, I sold a hotel close by here for him.

Q. Which hotel? A. The Monmouth Park Hotel, before I had this offer.

Q. You sold it for Elmer Hazard? A. Yes, I was familiar with Little Silver and thereabouts.

Q. He had been the owner of the hotel in Monmouth Park? A. Yes.

Q. You also tried to raise money for him for his business? A. Yes, I was on intimate terms with Elmer Hazard.

Q. How much were you trying to raise? A. Different amounts at different times.

Q. And you couldn't raise it? A. I didn't succeed, no.

Q. With all the business you were doing, and with all the influential clients you had, you were not able to raise any money for him? A. Not for a commercial proposition.

Q. You are an officer of the E. C. Hazard Company? A. I was at one time for a few weeks.

Q. How long? A. Less than a month, for the purpose of qualifying to raise money, I went out as an officer.

Q. Do you mean to say that you thought you could raise money more readily if you were an officer of the concern? A. Elmer thought so, and I didn't gainsay it.

Q. Did you have any stock in it? A. Temporarily.

Q. Your personal friendship with Elmer has kept up to the present time? A. Yes; I haven't seen him in a year or two, but we have been friends all the time.

Q. Did you say you had anything in writing to bind these people who had made this offer? A. No, I rarely did that.

Q. All you know is that they told you, whoever they were, over the telephone that they—— A. Not over the telephone, in my office, at a prolonged interview.

Q. ——in which they said they would give $65,000? A. Yes.

Q. You don't know whether they were responsible or not? A. Yes, I knew at the time.

Q. How did you know? A. I knew at the time; I knew at the time it was a bona fide offer; my judgment told me it was.

Q. But you don't know who the people are? A. At that time I knew more about it than I do now.

Q. You then knew that it was bona fide? A. Yes.

Court: Did you ever write letters to the owners of property at their request, for the purpose of showing that an offer had ostensibly been made for the property?

Witness: Never in my life.

Court: You know that is done sometimes in the real estate business?

Witness: I never heard of it.

Court: You know that sometimes a fictitious rent roll is made up for the purpose of selling?

Witness: I have known of it, but I never had an occasion to be near one.

Court I don't mean you participated in it, but don't you know it, as a result of your business?

Witness: I have seen cases put before me when I knew it wasn't correct.

Q. When these people left your office that day, didn't you make any record as where they were to be found? A. Why certainly, I had books for that purpose at the time.

Court: What became of the books?

Witness: I passed them on and got rid of them.

Court: Threw them away?

Witness: Yes.

Court: Your address books?

Witness: Yes, all kinds of books, after a time. I kept them several years and carted them around, and I got tired and got rid of the whole thing, and just by luck I saved a few of the letter books.

Q. Just by luck you saved this particular letter book? A. Before and after I saved them continuously for a year or two.

Q. You didn't keep the addresses of these prospective customers for this property? A. What was the use?

Court: When you were going to sell this property for these people, they were to take it just as it was down at the factory, building, ground and everything?

Witness: We were not going to fix up the property for them; they were to buy it with the idea of taking out the furniture and moving out the things in the factory.

Court: This was a development scheme?

Witness: Yes.

Court: Had these same people ever been customers of yours?

Witness: I think they had.

Court: Do you know where they developed?

Witness: No, I don't recall the party; if I knew where they developed I would know the party. I dealt with a lot of land

speculators, and these weer one of those people.

Q. And they were going to buy the land and tear down the factory and scrap the machinery? A. We were going to move the machinery away —the owners.

Court: Mrs. Hazard.

Witness: Yes, she was to move the furniture away.

Q. Nothing of that kind was said in that option? A. In the letter?

Q. Yes. A. No, it didn't say anything else; it said it would bind the land and the buildings; it didn't say anything about the machinery or stock or furniture.

Court: What about the machinery that was affixed to the building?

Witness: We didn't get that far.

Court: But if you got an offer for the property——

Witness: They were buying the brick and lumber in the factory, and that is all.

Court: They were buying the real estate?

Witness: The real estate and the brick and lumber in the factory, and the residence and the other outbuildings, but they were not buying the machinery, stock nor furniture.

Court: You tried to get a loan of $30,000 on this property?

Witness: I tried to get a loan of something before that.

Court: You didn't succeed, did you?

Witness: No.

Court: What was the amount you were trying to get a loan for?

Witness: I cannot recall now; I was a pretty busy man; I don't recall all those things.

Q. On the same day that you wrote the letter to Mrs. Hazard, you wrote to Elmer Hazard, didn't you? A. I don't recall.

Q. With reference to a loan of $30,000? A. I don't recall it.

Q. I show you this letter to E. C. Hazard, dated January 24, 1913; look at the latter part of that letter? A. That is my letter.

Q. Does that refresh your memory as to the amount of the loan that you were going to get on the Shrewsbury property? A. Yes, $30,000; I probably wrote that letter before the other one.

Q. It bears the same date as the other letter? A. That may be; I was reporting to Elmer. Elmer asked me to get a loan; I was reporting to him.

Mr. Rosenberg: I offer this for identification.

Court: Is there any objection to having it go in now?

Mr. Sexton: Why not put it in, so we can have the letter book?

Court: It cannot go in if you object.

Mr. Sexton: I have no obection.

Mr. Rosenberg: I offer it in evidence then.

(Marked Exhibit D 16.)

Q. What page are you reading from? A. 191. (Reading) "January 24, 1913, E. C. Hazard, Shrewsbury, N. J. Dear Doctor: I regret that I was so busy Wednesday that you did not get a chance to have a long talk with me. I did not expect that so many other things would take my attention on that day. When you left the office you said you would be coming back, but I suppose train time arrived and you had to go. I have not yet had a single answer from that advertisement, a copy of which I enclose. My experience on loan matters is that every lender is in the habit of doing business with certain brokers and distrust everybody else. When they have money to loan they tell their own broker, and the broker finds the loan. In other words, I do not believe that money for mortgage loans can be obtained from capitalists direct; it must be done through brokers. I have written two or three friends who might have money, asking each if he would be interested in a $30,000 loan. I have also talked with one or two friends regarding the loan. I fully realize the tremendous importance of getting the money quickly. Do you know if Brady has ever been asked for that loan? With best regards. Yours very truly."

Court: Did it occur to you to suggest in that letter to the Doctor the necessity of

negotiating a loan, if he could prevail on Mrs. Hazard to accept the offer you had gotten?

Witness: I don't think I had the offer when that was written; I think the offer came later in the day; that was early in the morning.

Q. You spoke of selling the hotel property for Dr. Elmer Hazard? A. Yes.

Q. Do you recall what that was sold for? A. It was an exchange.

Q. What was the value fixed on that? A. I think $75,000, if I recall.

Q. He took some buildings in New York? A. Yes, buildings in Brooklyn, if I recall.

Q. You spoke of having other dealings at the same time that this negotiation was going on and prior thereto, about other properties? A. Yes.

Q. Why do you say that the letter to Elmer Hazard was written before the letter to Mrs. Hazard? A. Page 197; that is 206.

Q. How does that indicate to you that one letter was written before the other; you might have dictated them all together and had them copied at the same time? A. The inference in my mind would be that it was written earlier.

Q. That is only an inference? A. Yes.

Q. Both were written on the same day? A. Yes. I should judge from the paging, it was an early morning letter, and the other came in toward night; I didn't write so many every day; I was too busy. I had an overhead charge of $30,000 to meet before I got anything.

Re-direct examination by Mr. Sexton:

Q. You say you had an overhead charge of $30,000? A. Yes.

Q. You had a large business? A. Yes, that was ahead of me; I had to get my pay after that.

Mr. Rosenberg: We should like to move to strike out this evidence.

Court: I will let it stand for the present; you may make your motion later.

Adjourned to Thursday, June 13th, 1918, at 10:30 a. m.

Continuation of testimony in the foregoing cause, before Hon. oJhn E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, in the presence of counsel as before stated.

ELIZABETH POWERS, recalled for further

Cross-examination by Mr. Sexton:

Q. Mrs. Powers, did I ask you in reference to whether or not you had seen any keys for the big house, yesterday? A. I did not see any keys.

Q. Did you ever see any keys for the big house? A. I have seen my brother get in with the keys and know that he had keys, and I know that my mother had a key.

Q. Was it the practice to lock the large house with keys? A. Only if my brother was out late

nights, the door was not left open for him; he had his little key, which is a very small key, but fitted one of those locks.

Q. Which door was that? A. On the order of a Yale lock, one on the front and one on the side door.

Q. The front doors were locked? A. The big door, and those doors were just locked at night.

Q. Were there keys for the factory? A. I presume there were; my mother said she would turn over the keys to the house and the factory.

Q. The watchman had charge of the factory, did he not? A. Yes.

Q. You don't know whether there were any keys to the factory? A. I never have actually seen any keys to the factory, no.

Q. Did you ever have a key to the large house? A. No, I never did.

Q. While you were living there, did you? A. No, never.

Q. How would you gain access? A. Through the cellar door; if we locked up the house, we had to go through the cellar and come up that way.

Q. There would be a number of times when you wouldn't even lock the house, isn't that so? A. I don't know what you mean by locking it; we have had it locked all winter.

Q. I mean when your mother was living there and when you were home? A. How do you mean, locked at night?

Q. Yes. A. Of course the whole house was locked up at night; my father invariably went

around to every window and fastened every window and closed even the blinds.

Q. Do you recall about when in point of time it was that you found these labels that you have spoken of? A. Yes, about maybe a week or two—or maybe less than that, before this trial started again.

Q. Before the first hearing we had here? A. Yes.

Q. Had you known of the existence of those labels before that time? A. I had known of them, but they had passed entirely out of my mind, and it was a great surprise for me even to come across them.

Q. Did you know of the existence of those labels at the time you testified in the previous suits of the Little Silver Sauce Company against your husband and your brother against your husband; Elmer Hazard and Frank T. Matthes? A. From the time that they had been given to my husband and had been taken out of his clothes and put up there, even when they were taken out of his clothes I didn't even notice them.

Court: Did you know that your husband had at that time received the labels?

Witness: Oh yes, I knew that.

Court: When these suits were going on?

Witness: Yes.

Q. You didn't testify to any fact in connection with your husband receiving labels, in any of the previous suits? A. No, and the reason was——

Elizabeth Powers—(Recalled)—Cross.

Court: Were you examined about them?

Witness: No, I was not.

Court: It might not be her fault if she didn't testify to it.

Q. There is some feeling between you and the rest of the members of the family, Mrs. Powers? A. Yes, they are all against me.

Q. And I suppose I might say that you are against them all? A. No, I am not against any.

Court: Is there any cause for the feeling, except this controversy?

Witness: Other than the fact that I have absolutely stood on the ground that I am right, and even for the sake of my family, I am not going to testify to something that is wrong.

Q. In relation to the questions involved in this action? A. Yes.

Q. That is the only cause of difference between you? A. That is the only cause.

Q. When you found these labels, were they in any paper, envelope or anything? A. Yes, they were in an envelope.

Q. Have you got the envelope? A. No, I haven't.

Q. Do you know what became of it? A. Yes, Mr. Powers took the labels out of the envelope and put them in his pocket and came down here, and the envelope, I don't know what became of it; it might have been picked up and thrown out, but I don't know.

Q. As I understand it, these labels were placed by Mr. Powers in an old coat that he had? A. In an old coat.

Q. And it laid around in the old coat for sometime? A. For a long time.

Q. Was it in the old coat that you found them? A. No.

Q. How did they get from the old coat into the— A. I had taken the papers out of the coat.

Q. Then after they had been in the coat for some time, for a long time, you took them out and put them in this closet? A. They were carried around in Mr. Powers' coat,—the coat he must have evidently had on at the time that mother gave them to him, and wore it until the time we moved to the country.

Q. How long was it that Mr. Powers carried them around in his coat pocket? A. I cannot say, other than to just make a guess, by the fact that they were given sometime before the fifth of February, and we moved down—I imagine it must have been April.

Q. Until about April? A. Yes.

Q. Something like three or four months? A. Three months, I should imagine.

Q. And from there they went to this closet? A. They were taken out when I had the suit cleaned, or suits; he had many suits, and I wouldn't want to say which one he wore; he didn't wear that suit constantly, and when I had these suits cleaned because we were going to move into the big house, these papers were taken out and put in an old hat box, and when we moved into the other house they were all taken from there

and put up in the attic, and I hadn't seen or touched any of those papers for all these years.

Q. Did you look the labels over at the time that your mother handed them to Mr. Powers? A. No, I didn't pay any particular attention to them.

Q. They were talked over, were they not? A. I presume they must have been.

Q. You were there? A. I was there in the house, that was all.

Q. You heard the conversation? A. Yes, I heard all the conversation—most of it.

Q. What was said about each particular label that you can recall? A. I don't remember that anything was said particularly about the label, other than the Tomatoketchup label, that was referred to.

Q. Do you recall seeing at that time the label Hazard Manufacturing Company? A. I don't remember that I saw any part of it; I wouldn't want to say that I even noticed the name of E. C. Hazard & Company even on the Tomatoketchup label, because no point of that kind was called to my attention.

Q. Were all the labels that you found turned over to your husband? A. I persume so, I didn't count them.

Q. Did you turn them all over? A. I turned them over just as I found them.

Q. Did you count them? A. No, I did not.

Q. Did you look at the different ones? A. I didn't even notice them.

Q. How then, did you know that those labels that you had found were the same labels that Mrs. Hazard had given your husband some years prev-

ious? A. Merely by the fact that they were there in those papers which were all of the date of 1913, and because I remember that there were that number of labels or some bunch of labels in the envelope at that time.

Q. If your husband had taken some labels from the factory after he had taken possession of them, and put them in his pocket, there wouldn't be any way of your knowing that these particular labels were labels of the class that your husband may have taken? A. No, but I know that whatever labels he took from the factory he brought over to the other little cottage, and when he was comparing them with the books he found and the different things that had those recipes in, and the labels that he had there had the name taken out of E. C. Hazard & Company, and he tried to insert Hazard Shrewsbury Manufacturing Company.

Q. You haven't got my question yet. How do you know that these were not some other labels that he picked up in the factory and put in his pocket? A. No more than the fact I simply recognized them as a whole, and that when I took them over, Mr. Powers said, "Those are the very labels that Mrs. Hazard had given me."

Q. You don't know; you simply saw a bunch of labels, and you came to the conclusion that they must have been the same labels?

The Court: That is all anyone could say under the circumstances.

A. I can only say that they bore a resemblance

to the very labels I had seen, and his remark that they were the labels.

Court: They bore no distinguishing marks?

Witness: No, and theer were lots of labels in the factory identically like them?

Q. There is a Little Silver Sauce Company label among those labels, Mrs. Powers; did Mrs. Hazard say anything about conveying to your husband any rights of the Little Silver Sauce Company? A. None whatsoever.

Q. So that that Little Silver Sauce Company label had nothing to do with any negotiations that your mother may have had with Mr. Powers? A. Not at all.

Court: Yesterday I got the impression from what you said about the Little Silver Sauce Company, that the sale from Mrs. Hazard to Mr. Powers included everything that the Hazard people had been making in the factory?

Witness: Yes, but no such thing as the Little Silver Sauce Company was mentioned.

Court: But you gave me the impression that it was one of the things that was being manufactured at Shrewsbury.

Witness: We were putting it out under that name at that time.

Court: Mr. Keene was the cause of it?

Witness: Yes.

Elizabeth Powers—(Recalled)—Cross.

Court: I got the impression that while the Little Silver Sauce Company wasn't mentioned—the witness gave me the impression that it was included in everything that was sold in connection with the property; is that correct?

Witness: Yes.

Q. Mrs. Powers, are you under the impression that the Little Silver Sauce Company label and the right to manufacture under that label, had anything to do with the trade mark Shrewsbury or E. C. Hazard & Company—manufactured by E. C. Hazard & Company?

Mr. Rosenberg: I don't understand the question?

The Court: If I understand it, it is this, this Mr. Keene suggested that a cheaper grade of ketchup be put upon the market; Mr. Hazard objected to it on the ground that he would not allow the word Shrewsbury or his name to be used in connection with the cheaper grade?

Witness: Yes.

Court: Then upon Mr. Keene's suggestion, in order to meet these cheaper or sweeter grades of ketchup upon the market, the device was adopted of calling it the Little Silver Sauce Company ketchup instead of the Shrewsbury ketchup, or manufactured ostensibly by the Little Silver Sauce Company which was eventually organized as such?

Witness: Yes.

Court: But it was made as a sort of a second or other grade of ketchup at the Shrewsbury factory; that is the way I understand it?

Witness: That is true.

Court: And that it was one of the things owned by the E. C. Hazard Company during Mr. Hazard's lifetime, and one that was under his control and management?

Witness: Yes, sir.

Q. And part of his property? A. Yes, and one also that had been discontinued for years, and that we considered completely out of business, and when Mr. Powers bought the factory and trade marks, if there was a Little Silver Sauce Company, it was expected to be mentioned, but it wasn't mentioned. He had no thought when he bought E. C. Hazard & Company that he would use the name Little Silver Sauce Company.

Q. The Little Silver Sauce Company, as far as you were concerned and as far as Mr. Powers was concerned, had been a dead concern for some years, had it not? A. It had.

Q. And your mother agreed to sell you this right in this dead concern, or sell your husband, rather? A. I told you she never mentioned anything about Little Silver Sauce Company.

Court: Didn't I understand you to say she did sell it, together with all other things that belonged there at Shrewsbury?

Witness: If you can put that in as something that he could use, if he ever had

any reason for wanting to use it, but he probably wouldn't have used it.

Q. She never said anything about the Little Silver Sauce Company? A. She never mentioned Little Silver Sauce Company, but that everything that was connected with the firm of E. C. Hazard & Company was to go to Mr. Powers.

Court: That is as I understand it, and that being part of the E. C. Hazard property, it went with it?

Witness: Absolutely.

Q. You now claim that the Little Silver Sauce Company was conveyed to your mother and by your mother to Mr. Powers? A. That is the only way I can explain it.

Court: That is the way she qualified it; if it was owned by the E. C. Hazard & Company or had been, then she said it went to Mr. Powers.

Q. Yesterday you testified that your father did not retire this concern because Elmer wanted it? A. Elmer had requested that it simply be left open in that way, so that if he should ever want to use it, that he could put up some little thing of his own, and simply that it wouldn't be, in other words, a dead thing in case it should ever want to be revived again.

Court: You used the word "retired," you mean "dissolved"?

Mr. Sexton: Dissolved or forfeited.

Elizabeth Powers—(Recalled)—Cross.

Q. It was not then forfeited, because your father wanted to keep it for Elmer? A. He didn't want to keep it; Elmer merely asked as a request that it wouldn't be closed out.

Q. And at the time he was talking about it and saw these labels, Mrs. Hazard was talking to your husband, you knew the fact that Elmer had made such a request? A. I had no thought of it at that time.

Court: But you did know it?
Witness: Yes.
Court: You knew of it before?
Witness: Yes.

Q. ou still maintain that your mother agreed to convey the interest in the Little Silver Sauce Company to your husband?

Court: Not specifically. Don't let us be confused about that. She contends her mother agreed to convey it as part of the Hazard property. I understand Mrs. Powers' assumption is that she understood, and her husband says the same thing, in effect, that Mrs. Hazard was conveying to them everything that belonged there, and that she assumed that that included the Little Silver Sauce Company, and the right to manufacture and everything else relating to it that belonged to E. C. Hazard & Company, whether it was specified or not.
Witness: Exactly.

Elizabeth Powers—(Recalled)—Cross.

Q. Did you know at the time that your husband was negotiating for the sale of this property to your husband that E. C. Hazard & Company did not own the Little Silver Sauce Company?

Mr. Rosenberg: She hasn't claimed so. Isn't the difficulty between the witness and counsel and the court just this, that Mr. Sexton isn't distinguishing between the Little Silver Sauce Company as a corporation and the products which E. C. Hazard & Company had manufactured through the Little Silver Sauce Company?

Court: No. I don't think that it is limited to that. As I understand Mrs. Powers' testimony, and I understand his, that the result of their negotiations with Mrs. Hazard was that they were to acquire practically all the property that had belonged to Mr. E. C. Hazard. If you want to put it in a personal way, that E. C. Hazard or E. C. Hazard & Company not only owned the so-called Shrewsbury brands and the Shrewsbury corporation or the firm and property, but he also owned the Little Silver Sauce Company and the brands of goods manufactured by that company, or pretended to be manufactured by that company—as a matter of fact the company never manufactured anything; it was manufactured by Mr. Hazard in his plant at Shrewsbury; it was put out and marketed under the name of the Little Silver Sauce Company, and this witness, and I under-

stand Mr. Powers, are making no distinction whether they refer to a corporate entity or anything else, but there was something called the Little Silver Sauce Company and the Little Silver products that Mrs. Hazard sold in connection with the Hazard property.

Q. You have testified that the Little Silver Sauce Company was incorporated by your father and Mr. Keene? A. I believe so.

Q. And it was a corporation? A. I believe it was.

Q. And stock was issued? A. Yes.

Court: If you don't know anything about these things, don't say so.

Witness: I happen to know about the stock, and that recalls to me where you have stock, there must be a corporation.

Q. The stock was issued? A. Yes.

Q. How many stockholders were there, if you know? A. The only ones I know of was my father, Mr. Green and very likely Mr. Keene, and I know that Mr. Barlow owned one or two shares.

Q. That is four? A. Yes.

Q. This Little Silver Sauce Company was a separate corporation from the partnership of E. C. Hazard & Company? A. They kept it separate in order to distinguish what the cheaper lot of goods and what was the better quality of goods.

Q. And it had been kept separate from the time that it was organized up until the present time?

A. No, because it had gone out of existence entirely.

Q. It seems to have come back? A. No, it couldn't come back without being reorganized.

Court: Aren't you arguing about something instead of getting the facts?

Q. There being a separate company, the Little Silver Sauce Company, did you understand that your mother was conveying to your husband the Little Silver Sauce Company as part of the E. C. Hazard & Company? A. I understood that everything that had been manufactured, either any right that my father had had in the business and any right that E. C. Hazard & Company had in the business, everything had apparently, so my mother said, been turned over to her, and that she was selling it to Mr. Powers.

Re-direct examination by Mr. Rosenberg:

Q. Mrs. Powers, you were asked yesterday as to why Mr. Powers wanted two agreements drawn the day you met at the Astor House, and you gave an explanation. Have you any further explanation to make? A. No more than the fact that with the first agreement Mr. Powers could have started the business and gone on and done business. The only other, with this $11,400 of goods that was in the factory, it simply had been a little more of an asset, and it would have been cheaper to take those at that price than to go out and buy them. In order to keep the two things

separate, he separated them so that one would go with the $60,000 contract and the other the $11,400.

Court: And that is a reason in addition to the one you suggested?

Witness: Yes.

Q. Did you know at that time whether the title came from one source or from two sources? A. The title came from one source, other than the fact that in the $60,000 contract it was simply the real estate and factory and good will and trade mark and those things, while in the other one it was security that had been reduced to my mother's ownership, that she was selling, and those were kept separate for that reason.

Examination by the Court:

Q. But as a matter of fact, all the property had to come from Mr. Hazard to your mother, and from your mother to you? A. Yes. My mother had owned the property always and the factory always.

Q. The real estate? A. Yes, and the factory building as well.

Q. Did you ever have a talk with your mother after the difference arose about this situation, to see what caused the misunderstanding, as you say there was? What caused her to repudiate her arrangement with your husband? A. I tried to after the time that Mr. Powers took possession; I went down to the house and begged my mother to have this thing explained, that my brother

would see my husband, or both of my brothers, and they refused to do it.

Q. Were they present? A. They were, and I begged them and implored them to go up there and not have all this misunderstanding.

Q. What did they say? A. My mother said she would have nothing to do with Mr. Powers, "I will have nothing to do with you or anyone," and Elmer's wife and all of them have treated me as though I was the worst person in the world.

Q. Did they give any explanation for refusing to have anything to do with you? A. No other than they would have nothing to do with me or Mr. Powers.

Q. Did they say why they wouldn't have anything to do with either of you? A. I don't recall that they did. It was the day he took possession, the fifteenth.

Q. Did you make any other effort after that to reach an understanding? A. Yes, I did many times.

Q. With your mother? A. With my mother, and when I was up there just before this last Christmas, just after I had been very ill with typhoid; I went up to see my mother and sister and visited my sister two weeks, and during that time I begged my mother and sister and all to try and straighten this out so it wouldn't have to come to court.

Q. Was any suggestion ever made to you or any statement made to you that your husband had put through a sharp bargain and had deprived your brothers of their interest in your father's property in any way? A. No, sir, I never heard that.

Q. Or that he had taken any advantage of your mother in getting the contracts so worded that he was getting property that she had never intended to sell him? A. The only thing I ever heard was that Elmer had a right to it, and they were going to stand up and see that he got his rights.

Q. Who told you that? A. My mother.

Q. When was that? A. I don't recall just when that was.

Q. Before the fire or after, or before all this litigation was started? A. I think it was around that Christmas time when she came up to the house and when we had—no, I wouldn't say it was even then.

Q. Did she give any reason why she thought Elmer had a right to it? A. I don't recall anything about that.

Q. I want to find out why this family difference arose? A. In the first place Mr. Powers and I both asked for an explanation at the time that we heard that the two bills of sale were put on file in February, 1913. Mr. Powers and I both asked, and the only explanation that she gave us was that they had been put on for our protection.

Q. I remember that. What did she say in this conversation you had with her, where she said Elmer had a right to them, or right to it; what did she refer to, as you understood, that Elmer had a right to? A. I think that was down at the house on the fifteenth.

Q. What was it—had a right to them or it? A. She claimed he had the right to the factory and he had no right to be put out.

Q. Did she say whether she should expect Mr. Powers to pay $30,000? A. No one would allow me to explain. I tried to explain. Why would they get excited about him taking possession when it was their own property, but whether it was his or not, he had no right to do it, he had no right to do such a dreadful thing as this.

Q. As to put Elmer out? A. As to take possession of the factory before he had an opportunity to go up there.

Q. Before who had? A. Elmer had had an opportunity to go there.

Q. Was any suggestion ever made to return to your husband the money that he had paid on your mother's account? A. Not that I recollect.

Q. This litigation has been going on for about five years, hasn't it? A. Yes.

Q. In the conversation you had with your mother, was the interest of Elmer always referred to and not the other son? A. I don't know, because he seems to be the favorable son and has the most wonderful influence over my mother, and at the time she sold this place to Mr. Powers she was as angry as she could be at Elmer, and said he had ruined her, and said she would never have anything to do with him, and yet at the time she did contract to sell it at the Astor House, she expressed then, "Oh, Elmer is heartbroken."

Q. Did Mrs. Beadleston say she was consulted in the matter at all at the time the sale took place? A. I don't know any more than the fact that Mr. Beadleston, her own husband, was the one that was going to help Mr. Powers finance the thing, such as taking the first mortgage, and

when the time came to do it, through all the argument he heard at home through my mother and sister, he changed his mind and threw Mr. Powers down at the last moment.

Q. Was there ever any assertions made that this property belonged to the children? A. Never.

Q. And your mother had no right to convey it? A. Not at the time she was selling it to Mr. Powers; she said she had absolute ownership of it.

Q. Was such an assertion made subsequently, that you children owned the property, and not your mother, this personal property? A. I never heard anything about us ever owning it; no, sir.

Further direct examination by Mr. Rosenberg:

Q. At the time that this title was passed at the Fidelity, the money that Mr. Powers had advanced had not gone to Mrs. Hazard, it had gone to creditors? A. Yes.

Court: That appears from that statement, D 9.

Q. The people whom you have stated to have been the stockholders of Little Silver Sauce Company were the same people who were interested in the firm of E. C. Hazard & Company and in the corporation of E. C. Hazard & Company? A. I don't think that Mr. Keene was ever interested in this E. C. Hazard & Company, and Mr. Barlow never had any shares in E. C. Hazard & Company.

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Q. Mr. Stern was? A. Yes.

Q. Who was Mr. Keene? A. He was just—I don't know, just a friend of my father's who came down and started this concern.

Court: Was he a man in the grocery business?

Witness: He must have been.

Q. Who is Mr. Barlow? A. He was the manager of the factory and superintendent of E. C. Hazard & Company.

Q. Isn't it a fact that the moneys received by the Little Silver Sauce Company went right into the firm of E. C. Hazard & Company?

Mr. Sexton: If you know.

A. I don't really know.

Q. Do you remember whether or not at the meeting at the Astor House in February, 1913, your mother said anything to Mr. Powers about putting on record these two contracts? A. Yes, she asked him as a special favor not to put the contracts in file, and he said, "Why, Mrs. Hazard?" She said, "Because I don't want everybody in Shrewsbury and all over the place to know my business." He said, "Very well, if you request it, I won't."

Re-cross examination by Mr. Sexton:

Q. Do you recall at the Fidelity office your mother, Mrs. Hazard, saying to Mr. Powers, that if he didn't want to go through with this contract

in the way that she had talked and what she had agreed to sell, that Mr. Beadleston would "give you all your money back tomorrow morning?" A. I don't recall that I did.

Q. That may have been said, Mrs. Powers, as far as you know? A. As far as I know, I don't think it was said.

Q. You were there and heard the conversation that took place? A. Yes.

Q. And it was for a number of hours that they argued back and forth? A. Yes.

Q. Don't you recall your mother said to Harry Powers that "Mr. Beadleston has offered to loan me $30,000 on this property, and if you don't want to take this, I will give you your money back tomorrow morning? A. No, I don't recall that at all.

Q. You don't say that it was not said? A. I don't recall it.

Q. Was it said in your hearing? A. It couldn't have been, I don't recall it at all.

Q. As a matter of fact, have you not talked that very phase over, namely, that your mother said at the Fidelity meeting, that Mr. Beadleston would loan her $30,000, and your husband could get back the money, with Mrs. Beadleston recently? A. No.

Court: That very feature he is now directing your attention to?

Witness: No.

Court: How recently?

Mr. Sexton: Within the past few weeks.

Witness: What was the question again?

Q. That you had talked over what happened at the Fidelity Company with Mrs. Beadleston, and within the last few weeks, and that you had said to her that your mother, Mrs. Hazard, had stated that if Mr. Powers does not desire to go through with that, that Mr. Beadleston would give him his money back the following morning? A. Absolutely not, and not only that, but Mrs. Beadleston and I are not even speaking; since this trial started there hasn't been any speaking at all other than about day before yesterday she was in the dentist's when I was there, and simply said "How do you do?"

Court: When was the first session?

Mr. Smock: April 22nd.

Court: Is this conversation since that?

Mr. Sexton: Prior to April 22nd.

Court: Where was it?

Mr. Sexton: At the Park Avenue residence of Mrs. Beadleston.

Witness: While I was up there visiting?

Mr. Sexton: Yes.

Witness: No, nothing; never such a conversation took place.

Q. When were you there visiting? A. The Beadlestons would know better about the time I was there.

Q. What is your recollection? A. January of this year, the time I was ill, they came down and effected a reconciliation with me for all these things, and then they asked me to come up there to visit them, and I did.

Q. You were seriously ill?

Elizabeth Powers—(Recalled)—Re-cross.

Court: She says it was about January she thinks, and she says at no time did she have any such conversation.

Q. You were seriously ill? A. I was very seriously ill.

Q. And the family relationship was not so estranged, that when you were so ill they did come and see you? A. Yes, my mother and my sister, Mrs. Beadleston.

Q. So that the financial difficulty, there was even a limit to that, the estrangement, when you come to a matter of illness? A. They heard I was dying, I believe, was the reason they came.

Q. You testified that Mr. Beadleston was going to loan your husband—offered to loan your husband some money? A. Yes.

Q. Do you know why he refused to loan the money to your husband? A. No, I don't.

Q. Don't you know that Mr. Beadleston was willing to loan the money to your husband provided Mrs. Hazard got a first mortgage?

Court: And he take a second?
Witness: Why, never.
Mr. Sexton: I was wrong about that.

Q. That Mr Beadleston was to loan $30,000 on this property, provided he got a first mortgage and Mrs. Hazard was not in the transaction; she got her money, in other words? A. Mr. Sexton, my husband went to Mr. Beadleston and explained——

Court: Answer Mr. Sexton's question responsively, if you know. Then if counsel want an explanation, they can ask for it.

Q. Do you know that that arrangement was made, that Mr. Beadleston offered to loan your husband the money on first mortgage, provided Mrs. Hazard got her money out of it and was not involved in it? A. No, sir, I do not.

Q. Is that not the reason that Mr. Beadleston afterwards refused to loan your husband the $30,000? A. No, sir.

Court: When did Mr. Beadleston die?
Witness: Last August, 1917.

Q. Do you know that your husband endeavored to have Mr. Beadleston take a first mortgage of $30,000, and he refused to take it, because Mrs. Hazard held the second mortgage for $30,000? A. I don't know anything about what dealings Mr. Powers had with Mr. Beadleston other than what Mr. Powers told me, and that was that he had gone to Mr. Beadleston and explained to him the entire situation, and at the last moment when he came to get the money, Mr. Beadleston said that he wasn't going to do it; he changed his mind.

Q. The time that your husband took possession of the factory was the point where the relationship became estranged?

Court: At the time the relationship of the members of the family became es-

tranged was at the time your husband took possession or at some other time?

Witness: I would consider it started the night before, when we were at the house and my mother said there was a lease on it, and when she said there were tenants, it started a feeling, and that is when the strain began.

Q. And it snapped when he took possession the next morning? A. Yes.

Q. And it was because of the fact that your husband had not purchased the $11,400 worth of goods and had taken forcible possession of them, that your mother said that she did not want to have anything more to do with Harry Powers? A. No, that wasn't so.

Q. Do you know anything of the negotiations between your husband and Mr. Beadleston as to Mr. Beadleston loaning your husband money, independently of what your husband told you? A. Not a thing.

Mr. Rosenberg: With the exception of introducing evidence which will have to be given by Mr. Wilson, as to the amounts which Mr. Powers paid Mr. Wilson and Mr. Smock for counsel fees and other services in the litigations which were caused by this situation, and the testimony of possibly one or more experts as to the value of those trade marks, that is our case.

Court: When do you expect to be prepared to put in that additional proof?

Mr. Rosenberg: The additional proof that refers to the trade marks, we would be ready to get, I think, next week. We will try to get it all next week, or will take it out of court before Mr. Bindseil, and Mr. Sexton can take his testimony at the same time and in the same way. Mr. Wilson's testimony we will take as soon as he is able to testify, and we will probably be able to take that before Mr. Bindseil also; we may take it at the hospital or we may take it somewere else. Wtih these reservations our case is in.

Court: You also have the right, either of you, to offer the record from the court of chancery.

Mr. Rosenberg: That was reserved yesterday.

Court: If there are any of those exhibits that reference has been made to, which were marked for identification, or were not fully marked, of course they can be offered, and marked regularly, as exhibits before the final conclusion of the case, and that is true of Mr. Sexton's side as well.

FLORENCE A. HAZARD, sworn for complainant.

Direct examination by Mr. Sexton:

Q. You are the mother of Mrs. Powers and Elmer Hazard and Bowden Hazard? A. Yes.

Q. You are the widow of E. C. Hazard? A. Yes.

Q. And the person named in the contracts referred to as Exhibits D-1 and D-3, and $60,000 and the $11,400 contracts? A. Yes.

Q. How long have you lived at Shrewsbury? A. I think about thirty-four years.

Q. And how long did you have title to the property at Shrewsbury, that is, the land and the buildings? A. I think about twenty-five years, since Dr. James H. Patterson was the County Clerk; I don't remember just the year.

Q. When did you obtain title to the property? A. I think at that time.

Q. The property was in your name from that time continuously? A. Yes, sir.

Q. No part of this property was inherited by you from your husband? A. No, never.

Q. When were the buildings erected upon the property, if you know? A. When we first moved to Shrewsbury my husband built on this property that I bought, thirteen or fourteen buildings.

Q. That included the large dwelling house? A. No, that was there; that was a little white house then. My husband then built about thirteen or fourteen buildings on this property that we bought, and he had a factory for his chemistry and for his packing and all that sort of thing, and I don't remember the year that they were destroyed, and I want to state, too, that they didn't have any insurance on them, the first little buildings, and then they built brick buildings, and very extravagant, and very expensive buildings of brick, and two large packing houses which cost my husband with the equipment and all that was put in there—he told me many times that it cost him $200,000.

Mr. Rosenberg: I object.

Court: I will have to let that part go out; he built very large and expensive buildings. That includes the large factory and packing house?

Witness: Yes, and bottling sheds and canning factory, building built outside.

Court: Was the dwelling house destroyed at the time of the fire?

Witness: No, sir, nothing at all, nothing but just the building.

Court: When was this large house built or the addition to it?

Witness: That was built about 31 years ago this summer, the big house was finished.

Q. How many rooms did the large house have in it? A. Twenty-eight rooms, three baths, and a very beautiful house. There were eighteen buildings that I sold to Mr. Powers.

Mr. Smock: I move to strike that out.

The Court: Yes, strike that out.

Q. Do you know how large the brick factory building was? A. No, sir, I do not know the dimensions.

Court: It was given about 300 x 70.

Q. How many buildings were upon the property that you sold Mr. Powers? A. I think eighteen or nineteen buildings altogether.

Q. And they consisted of what? A. They consisted of the residence, the ice house, a large laundry, a smoke house, two windmills, mushroom cellars, tank house, a great big bottling shed, a chicken house, a corn crib, a farmer's cottage, and a tool house back of the farmer's cottage, besides a large toilet that was put there for farmers.

Court: And the factory buildings?
Witness: I have included those.

Q. How many acres of land were there which you sold to Mr. Powers? A. I really don't remember just how many acres there were.

Court: About fifty-one acres?
Witness: I really don't remember.

Q. How much frontage was there on Sycamore avenue, if you know? A. To the best of my knowledge, I think about 675 feet, or something about that.

Q. How far did the property extend back? A. It went six acres the other side of the railroad. They have six acres on the other side of the railroad, the Long Branch Railroad; it goes right through it.

Q. Does it go on the other side of the railroad? A. Yes.

Q. Were those six acres on the other side of the railroad sold to Mr. Powers? A. Oh, yes.

Q. There was another piece of property which adjoined this? A. Yes, and that was sold to Powers also.

Mr. Smock: Objected to; it is not in controversy.

Witness: No, it is not in the contract.

Court: I will sustain the objection.

Q. Mr. E. C. Hazard died when? A. 1905?

Q. At the time of your husband's death, he was running a business known as E. C. Hazard & Company at Shrewsbury? A. Yes.

Q. And had been running such a business for sometime prior thereto? A. Yes.

Q. How many years? A. Before Mr. Hazard bought the property he was running the business for Mr. Sickles, who was a grocer here in town.

Q. As the business progressed, Mrs. Hazard, and the buildings were upon the land, was other equipment added to the factory and other buildings? A. Of course, certainly.

Q. Was there much equipment added to it? A. As new buildings were erected they were equipped.

Court: Can you give me about the year when these new buildings were erected, after the first fire you spoke of, how long before Mr. Hazard's death?

Witness: I think they were erected thirty years ago, because Helen was an infant when we had this terrible accident, and she would be just thirty years old.

Q. When you had this fire? A. Yes, my husband met with a great loss; he hadn't any insurance.

Mr. Rosenberg: That is not responsive to anything.

Q. The factory had machinery in it? A. Yes.

Q. Who equipped it with machinery? A. Mr. Hazard and Mr. Frank Green.

Q. They conducted business under what name? A. E. C. Hazard & Company while Mr. Hazard lived.

Q. Quite a large business was built up? A. Yes, a very large business.

Q. And in connection with that Mr. Hazard, as I understand it, had a wholesale grocery business? A. In New York, Hudson and North Moore Street, New York.

Court: Was that business connected with the canning affairs at Shrewsbury or was it an independent business.

Witness: It was connected in this way, that the plant at Shrewsbury was the manufacturing end, and that was the shipping end.

Court: And in addition to the distributing end of the output at Shrewsbury, they also handled other goods, groceries and cigars?

Witness: Yes, everything.

Court: It was a wholesale grocery?

Witness: Yes, sir, everything you could think of.

Q. After your husband died was the business continued? A. Yes.

Q. Until it met with financial reverses? A. Yes, in 1907 it failed.

Q. What happened at that time? A. They went all to pieces.

Q. When you say "they," whom do you mean? A. Mr. Stern, Mr. Green and Elmer Hazard.

Q. Had they been conducting it as a business from the time of Mr. Hazard's death? A. Yes, they took in a man by the name of Archer.

Q. It went through bankruptcy? A. Yes.

Q. Was the business continued after that? A. At Shrewsbury in a very slight way; Elmer Hazard and his brothers tried to make it go as well as they could. They didn't have any capital, you know, to do business with much.

Q. Was there any new capital put in? A. Yes, Mr. Beadleston put in $20,000 and my friend Mr. Adams put in $20,000, and it gave them $40,000, and it took $40,000 to pay the debts, and then they had no money to do business with.

Q. Was the business continued with any profit by Elmer Hazard after the failure? A. I don't think so, because we never received any dividends or anything, nothing.

Q. What did you do, if anything, towards assisting financially the business as run by Elmer Hazard? A. They came to me and told me that they thought if they had a little more money, maybe they could make it go, so I went on their notes for the Nassau Bank and for the Second National Bank at Red Bank.

Q. Did you advance other moneys? A. Some, I don't know just how much, but quite a num-

ber of them; I did everything for them that I could.

Q. As a matter of fact, everything that you had, you gave to help this thing along? A. Yes.

Q. Have you anything left? A. No, sir.

Q. What happened as a result of your endorsement of those notes? A. They naturally wanted me to pay them, but they hadn't started any foreclosure or anything like that; they simply warned me that the boys had failed to make good, and that I would have to pay, and naturally I immediately started to have my place sold.

Q. At the time that you endorsed the notes, were you secured in any way? A. Only by collateral security from E. C. Hazard & Co.

Q. Is that collateral security that you have mentioned the security that was referred to in which you signed the contract with Mr. Powers to deliver him, referring to D 3? A. Yes.

Q. That is the $11,400 contract? A. Yes.

Q. When was Mr. Powers married to your daughter, do you know? A. Nine or ten years ago; I am not positive as to the date.

Q. Where did he live? A. He lived in the cottage adjoining for several years, and he lived somewhere in Little Silver for awhile—I don't remember how long that was.

Q. The cottage is on your property? A. No.

Q. Did Mr. Powers buy portions of the property from you? A. Yes—his wife did.

Q. Mrs. Powers? A. Yes.

Q. And that adjoins the property referred to in the $60,000 contract? A. Yes.

Mr. Rosenberg: They lived next door; that is all you want to bring out?

Mr. Sexton: Yes.

Q. How long did he live next door? A. I should think five or six years, I am not sure; I am not really sure how long it was.

Q. Did you live in the large cottage? A. Yes, I lived there until the fourteenth day of March, 1913.

Q. Did Mr. Powers visit your house? A. Yes.

Q. Visit the factory? A. Every day nearly.

Q. Did you go out to the factory sometimes? A. Very seldom. I very seldom went to the factory.

Q. Did you see Mr. Powers out at the factory? A. No, I didn't see him. He was there talking to the men.

Q. Did Mr. Powers ever talk with you in reference to how Elmer was conducting the factory? A. Yes.

Q. During those conversations did he or did he not display to you a knowledge as to how the business was being conducted at the factory? A. Yes, sir, many times.

Q. His wife was a stockholder in E. C. Hazard & Company? A. Yes.

Q. Did he ever protest to you as to the manner in which Elmer Hazard was running the factory, as affecting his wife's interest in E. C. Hazard & Company? A. I don't know just that he made reference to just that special thing, but he mentioned that Elmer was a professional man and not a business man, or words to that effect.

Q. He didn't know how to run a manufactory? A. Yes, that he didn't know how to do it; he said the business was going back every day.

Q. When was it that you were pressed for payment for the $11,400, do you recall? A. You mean for the notes?

Q. Yes. A. Some time in February, I think, or March, 1913.

Q. Had you made any application for loans upon the property? A. Only through Mr. Bedell, that is the only one.

Q. Had anyone else ever offered to loan you money upon the property? A. Yes, Mr. White, who was in Red Bank, in those days was willing to lend me the money, but you know I was a lone woman and didn't know what to do; I regretted always that I didn't take the loan.

Q. Did Mr. Beadleston ever say anything to you about it? A. He said, "Mamma, if you get in a position and you need me, I am ready, but my advice is to you, since you are alone, to sell your property and get rid of it," and it was at his advice that the property was sold.

Q. You had negotiated with Mr. Bedell for the sale of this property? A. Yes.

Q. Did Mr. Bedell write you a letter? A. Mr. Bedell wrote me several letters.

Mr. Smock: I object as immaterial and irrelevant.

Court: I will allow it.

Q. Did Mr. Bedell make you the offer that he has testified to? A. Yes.

Court: What did you do with the offer, accept it or reject it?

Witness: I didn't take the offer; I simply knew that my daughter was begging me every day, her husband too, to sell them the property, and my children often told me that it would be nice to have Bessie have the home, "You sell it to her."

Court: Did you reply to Mr. Bedell's letter in which he made this offer of $65,000?

Witness: Yes, I told him I wouldn't take it, because they wanted to wreck my husband's buildings and build cottages to sell to other people; that is the reason.

Court: Did you reject it then as a matter of sentiment instead of business?

Witness: Yes, absolutely so.

Q. But you refused Mr. Bedell's offer? A. Yes, I did.

Q. And you had a talk with Mr. Powers concerning a sale to him of the property? A. Yes, dozens of times.

Court: Had you talked with Mr. Powers about the purchase of the property by him while this sale was being attempted by Mr. Bedell, or after you had rejected Mr. Bedell's offer?

Witness: It was after and before, too.

Q. The talks you had with Mr. Powers resulted in a meeting at the Astor House? A. Yes.

Q. Prior to that time what was your talk with Mr. Powers in relation to what you would tell him? A. I first wanted $75,000 for the property; I even put it at a very low figure; I wanted first $80,000, but I thought, well, he cannot afford to pay that even though he was going to inherit a lot from his father; he was going to inherit a quarter of a million dollars. He is my daughter's husband, I will sell it to him as reasonably as I can, and my feeling in the matter was purely a motherly kind to a daughter that I was very fond of.

Court: What did you say to him and what did he say to you in those various conversations?

Witness: He told me that if he had that farm of mine, he could raise potatoes enough, that he could serve them to the hotels in New York—which he was doing then from his own place—that he could get a better price from them than any other men he knew, and if he had my place in addition to his own, he would make a fortune. That was the principal talk always between Mr. Powers and myself as to his ability to run a farm and make it pay and make it go, and I believed him; positively I did.

Q. What besides the land and the buildings were you to sell him?

Mr. Rosenberg: I object to the question.

Court: The proper inquiry is, what was

said by you and Mr. Powers in relation to this matter; what did you offer to sell him; what did he offer to pay, and what was said by each of you to the other; we want to know first off, who were present, what occurred in the conversation that you had about the matter.

A. The main thing that Mr. Powers wanted was my farm and my buildings.

Mr. Rosenberg: I move to strike it out.

Court: Strike it out. Not the main thing. You don't understand me. We want you to put us in the position, if you will, just as if we were present and heard the conversation and heard all that you two said. Please test your memory to recall as fully as you can what was said by you and Mr. Powers on any of those occasions.

Q. What was said by Mr. Powers as to what he wanted to purchase and what was said by you as to what you would sell him?

Mr. Rosenberg: The time should be fixed.

Court: If you can fix the time, do so, when you first began to talk about it.

A. The main time we talked about it was about the first of February, 1913; that was the important time.

Court: Then you had several interviews or conversations about it?

Witness: Yes.

Court: Won't you go into the detail of those conversations as fully as you recall, everything he said to you and you said to him.

Witness: Nothing was said except Mr. Powers wanted to buy the property at that time, that is all.

Q. What property did he want to buy?

Mr. Rosenberg: I object.

Court: What did he say?

A. He wanted to buy my property.

Court: What did you say?

Witness: I was perfectly willing to sell it to him.

Court: Go on and tell us the rest of it, what each one said to the other.

Witness: He wanted to buy the property; he wanted to farm the place; he wanted to become a big farmer, to my knowledge; that was the main thing that he wanted to do.

Mr. Rosenberg: Is that what he said?

Witness: Why certainly. He wanted to become a great farmer; he suggested lots of things that he could do with such a place.

Q. Did he say what property he wanted to

buy? A. Yes, my Shrewsbury property he said he wanted to buy.

Court: Did he specify any particulars about it?

Witness: It was all in one deal.

Q. Was there no specification? A. Except that he bought the Shrewsbury property.

Q. And was that what you were trying to sell him? A. Yes.

Q. What else did you have to say between you at any of those conversations about the matter? A. Nothing came up until the signing of those contracts and the buying of the property, and then he thought he would like to buy all the things that were given to me for security. I said I was perfectly willing to sell them, but I wanted to be paid for them.

Q. Was that prior to the Astor House conference? A. Yes.

Q. Where did that conversation take place, at your home or his, when he first made that suggestion? A. It took place dozens of times and everywhere.

Q. When he wanted to acquire the property you owned as collateral? A. He understood——

Mr. Rosenberg: I object.

Court: Yes, strike that out.

Q. He wanted to buy the factory? A. Yes.

Q. What did he say in reference to purchasing the factory building? A. Nothing special about

the factory building was said, anymore than he did about the house.

Court: How did he come to make a reference to the collateral property?

Witness: That was a secondary thought.

Q. When did he bring that to your attention? A. The last of February.

Q. What did he say about it? How did it come about? A. Every evening, every morning, all the time, at my home, at my place across the street, and his wife, too, begged me to sell it to him; I wanted more money for my place than I got for it.

Q. What did he first say about this collateral paper on this occasion in February; who said it first, or who mentioned it? A. He was the one who mentioned it.

Q. What did he say? A. He wanted to know if he could pay for the goods that had been given me for collateral security, and I said, "Yes, certainly."

Q. Did you talk anything about the price at that time? A. Yes, $11,400.

Q. At that time? A. $12,000 then, I think it was.

Q. Anything said about how extensive the goods were, or what they were? A. No, I didn't know anything about how extensive they were or anything.

Q. Did he know? A. He had been all over it and taken an inventory.

Q. You don't follow me and don't listen; how did he know that you had a collateral arrangement, in the first place? A. Because he had seen it on the books of the firm. Q. What did your collateral consist of; what represented it? A. I cannot tell you what was represented; there were assignments, I think. There is a list but I never had it.

Q. How many times, if you can recollect, did you loan money to the E. C. Hazard & Company? A. I cannot recall it; many times.

Q. More than once? A. Oh, yes, several times.

Q. At times other than those where you endorsed the notes? A. Only very small loans that didn't amount to anything; those were the main things that I loaned.

Q. What did the other loans amount to? A. Trivial loans; I don't know just exactly whether they were for payroll; I don't know what they were.

Q. When you would loan the money, would you receive security for it? A. They gave me a note.

Q. Anything to secure the note, if you know? A. Except the goods in the factory that belonged to the firm; that is all I know about it.

Examination by the Court:

Q. These goods that belonged to the firm; when Mr. Hazard died he left an equipped factory down there? A. Yes.

Q. Prepared to go on and continue to manufacture the food products? A. Yes.

Q. Upon his death and shortly thereafter your

son, Dr. Hazard, and the others you have mentioned, associated themselves together and continued the business? A. Yes.

Q. Were you and your children interested in that business? A. I had as the guardian given everything to Elmer Hazard to manage for me.

Q. And your children? A. and my children.

Q. And for himself individually and the others who were associated with him, these outsiders whom you have mentioned? A. Yes.

Q. They continued to operate then under the name of E. C. Hazard & Company that plant with their own capital or what they could borrow, for about two years, when they failed and went through bankruptcy? A. Yes.

Q. During that period you received no dividends from the operation? A. No, not after the failure.

Q. Did they install any new equipment in the property during the two years that they were operating? A. Yes, Elmer Hazard put in chemical fixtures and some laboratory fixtures and he put in some engines that would pump up—he ruined the business putting in too many things.

Q. Do you know what the value of those things were? A. No, I do not.

Q. Did they run into the thousands? A. The factory was worth thousands.

Q. Not the factory; I am trying to find out what the so-called firm of E. C. Hazard & Company, as I distinguish it from the real E. C. Hazard & Company—what they put into the factory that amounted in value to $11,400, that represented the collateral they gave to you? A. That I don't know.

Q. Whether that was something of their own creation or whether they took part of your husband's property to make up $11,400? A. No, those were goods that were given to me.

Q. Manufactured stock? A. Yes, and raw material that could be manufactured and sold at once. At any time you could get your money back.

Q. And it was no part of the E. C. Hazard estate? A. No.

Q. It was things that they had produced themselves? A. Yes. They were the heirs; they wouldn't be mine; manufactured goods, they were goods to sell that I could get the money for at once; I wouldn't take any of their old stuff; that wasn't any good to me.

Further direct examination by Mr. Sexton:

Q. At the time that your husband died, who else was interested in the copartnership E. C. Hazard & Company? A. When my husband died, Mr. Frank Green, Theodore Stern.

Q. Do you know what interest Mr. Green had?

A. To the best of my knowledge from the books, I think Judge Nevius discovered that he had a one-fifth interest in the firm.

Q. What interest did Mr. Stern have? A. I dont' know.

Q. We were speaking of the conversations you and Mr. Powers had prior to the signing of those contracts; did you have any conversation concerning labels? A. Why, never; labels never entered into my contract.

Mr. Rosenberg: I object.

The Court: Don't offer an explanation until Mr. Sexton asks for it. Just answer his question responsively.

Q. Did you give any labels to Mr. Powers? A. Never.

Q. I show you Exhibit D-2, containing eighteen labels, marked A to R, inclusive, and ask you if you gave those labels to Mr. Powers prior to the signing of the contracts? A. No, sir.

Court: Those or any of them?

Witness: No, sir.

Court: You have looked over them?

Witness: No, sir.

Court: Have you looked over them; examine them before you answer.

Witness: Those look like my husband's labels that were always in the factory.

Court: Mr. Sexton's question is, did you ever give Mr. Powers these or any of them before he signed this contract?

Witness: No, sir, never.

Court: Or after?

Witness: No, sir, I never handed him even a piece of paper in my life, not even a sheet of paper; I never gave Mr. Powers out of my hands even a sheet of paper.

Q. Did you have any conversation with Mr. Powers concerning the sale by you to him of products manufactured by the E. C. Hazard Company under the label Shrewsbury? A. I was

willing to sell him what was coming to me as collateral security; I had no conversation about it, except he knew that the property was to be sold it was mine to sell for the time, but I had nothing to do with it.

Court: What did you understand you owned as collateral security?

Witness: Goods that were merchandise that I could sell, that I could get the money for at once.

Court: Did that include, in your mind, trade names and trade marks and labels?

Witness: I don't know—labels, no, sir.

Court: What did you think about it; did you think you owned the trade mark and trade names of Hazard?

Witness: No, sir.

Court: As collateral?

Witness: No, sir, I couldn't, I didn't.

Q. Did you think that you owned the collateral, had the exclusive right to manufacture the Hazard products under the trade names and trade marks of Shrewsbury and the others? A. No, sir.

Q. Who did you understand owned those trade names and trade marks and the right to manufacture at the time you held the collateral? A. E. C. Hazard & Company.

Q. And that consisted of your son and the others who you said succeeded your husband? A. Certainly.

Q. Did you have any conversation with Mr.

Powers prior to the signing of these contracts, wherein you told him that you would sell him the right to manufacture Hazard Shrewsbury Tomatoketchup under the E. C. Hazard & Company name, and calling attention to the word "Tomatoketchup" all written together? A. I never had any occasion to do anything like that.

Q. Did you? A. No, sir.

Q. Mrs. Hazard, as a result of the conversations that you had with Mr. Powers, you met at the Astor House? A. Yes, sir.

Q. Who was there? A. Mrs. Powers, Dr. Hazard came in, Mr. Matthes came in; they both came in there by accident, because they were here on another matter, but they came in; I met them in the meantime, and Mr. Joyce was called in by Mrs. Beadleston to meet me there.

Q. You spoke of Mr. Elmer Hazard and Matthes coming in by accident; what was the occasion of their meeting you there? A. They came in there about the Eisemann matter.

Court: That is the judgment?
Witness: Yes.

Q. Had a decision been rendered? A. I don't remember just how it was, but I had a great deal of trouble over it; I never was a member of E. C. Hazard & Company, but I was charged with being so.

Q. What conversation was had at the Astor House between you and Mr. Powers relative to the sale to him of the property at Shrewsbury? A. The property at Shrewsbury—he wanted to

buy the goods that had been given to me for collateral security.

Q. What did you say to him, if anything, in reference to the purchase of the goods given to you as collateral security? A. If I could get them, I would gladly give them to him, give him anything that I had, if I could give it to him.

Q. What do you mean by "if I could get them?" A. If I could put him in possession I would do so.

Q. What did you tell him, if anything? A. I told him that Matthes and Elmer Hazard were there and that on account of their doing business there, and the money that they had advanced me and everything, that these goods had been assigned—that I had given them—these goods that had been given to me, to manufacture for me and to try and get me some money for them, and that I would get him those if it was possible to get them.

Mr. Rosenberg: I object and move to strike it out.

Court: Strike it out:

Q. That conversation took place at the Astor House? A. No, that conversation took place at Mr. Joyce's office.

Q. That was later on? A. Yes.

Q. What conversation, if any, took place at the Astor House concerning the collateral goods mentioned in the $11,400 contract? A. At that time there was just mentioned that I would get the goods for Mr. Powers, if it was possible to get them.

Q. And when did Mr. Joyce appear upon the scene; was he there when you got there? A. No, I think he came right after I got there. I am not sure as to whether he was there or came after. It was a very unpleasant meeting, I can assure you.

Q. And did Mr. Joyce make memoranda? A. Yes, to the best of my knowledge.

Q. Who was present at the time Mr. Joyce was there and you talked over what you wanted to sell? A. Mrs. Powers and Mr. Powers.

Q. Who else, if anyone? A. No one else, but Mr. Joyce.

Q. I am speaking of the Astor House. A. I am speaking of the Astor House.

Q. What became of Matthes and Hazard? A. They had gone; I told Elmer Hazard that I was going to sell my property, and he said, "Why, mother, you are going to sell your property"; he said, "I think you are making a terrible mistake"—no, he said, "I think you are crazy," that is the word he used, and he left the room and went out.

Q. After Mr. Joyce made the memoranda——? A. Mr. Joyce went to his office and we went to luncheon, and afterwards Mr. Matthes joined us at luncheon.

Q. When did you go to Mr. Joyce's office? A. Right after luncheon.

Q. When you got to Mr. Joyce's office, the contracts were prepared? A. Some of the contracts were prepared and some of them were not prepared; I think they were prepared, though there was some writing to be done; Mr. Powers wanted

something else fixed, wanted something else added; he wasn't satisfied with the way it read.

Q. What was said with reference to the additions, if any, if you recall? A. I don't remember what the additions were; I tell you candidly there was so much crying and feeling, I truly cannot tell you.

Q. You signed the contracts? A. Yes.

Q. In the presence of Mr. Joyce? A. Yes.

Q. You did testify at Mr. Joyce's office you had this conversation in reference to the collateral property mentioned in the $11,400 contract? A. Yes.

Q. What did Powers say, if anything, in reference to your getting this property from Hazard and Matthes? A. I told him I was going to try to get it, and he was satisfied; he didn't care anything about this; all he wanted was the property; he wanted the farm.

Mr. Rosenberg: I move to strike this out.

Court: You cannot characterize it, Mrs. Hazard, or give your conclusions; you can tell us all that he said. If he said he didn't want those things, you can tell that, but you must tell us——

Witness: He didn't say anything like this at all.

The Court: The distinction I am trying to make is, you cannot give us your conclusion of what was said, but you can state and repeat as nearly as you can recall, what they said, and we will see what the proper conclusion is.

Q. What did Powers say, if anything, in reference to your getting this property from Hazard and Matthes? A. He wanted me to get it for him; I told him I would try.

Q. Was anything said by you to Mr. Powers in reference to your holding Matthes' note for the goods? A. He didn't say anything about it; he knew all about it.

Mr. Rosenberg: I move to strike it out.
Court: Yes.

Q. Was anything said by Mr. Powers at that time in reference to your holding Matthes' note for this property mentioned in the $11,400 contract? A. Yes, I wanted Mr. Powers to buy it.

Court: What did he say?
Witness: He said he thought he would.

Q. Do you recall an interlineation being made in the contract D-1, which was referred to as the $60,000 contract? A. That was something that was written in after the papers were finished, and Mr. Joyce called me into his office and wanted me to sign this paper, and he thought it was all right, and I signed it.

Q. What was the conversation in reference to that interlineation? A. I don't remember anything about that.

Court: Do you recall why it was made?
Witness: No, sir; I do not.
Court: Do you know who suggested having it made?

Witness: Mr. Powers.

Court: Can you recall what he said in substance, in his suggestion that it could be made?

Witness: No, sir; I cannot.

Court: Do you know what it is?

Witness: No, sir; I do not; I have not read it.

Mr. Sexton: "All personal property not covered by an assignment as security by E. C. Hazard & Company to the party of the first part is included in this sale." Do you recall the conversation relating to that interlineation or why it was put in there?

Witness: I really don't know. I don't know what you mean by personal property; I was selling him everything—my farm and my buildings, and my home and my house, everything except my furniture and my horses and carriages that were at the stable; I didn't sell him those, but everything that was regular personal property I sold him, that is, the farm, utensils——

Court: You don't say anything in your contract about that?

Witness: No.

Q. Were you selling any goods in the factory under this contract?

Mr. Rosenberg: Objected to.

Court: Objection sustained.

The contract says "furniture, &c."; the

contract to which Mr. Sexton is directing your attention describes certain real estate, together with what is called in law the appurtenances, &c., and your right, title and interest of the same. Just below that typewritten part of the contract Mr. Sexton has directed your attention to an interlineation that has been made by pen, in which you agree also to sell "all personal property not included in the assignment as collateral from E. C. Hazard & Company"; he asks you if you can tell why that was made. Take your time and look over it. Take your time and think it over; we want the facts as nearly as you can recall them.

Witness: I don't really know. Mr. Joyce will have to explain that; I positively do not know.

Q. You have no recollection about it now? A. No, I have not; no, I actually do not know why Mr. Powers requested that to be made there.

Q. After the contracts were signed, Mrs. Hazard, where were you living? A. After the contracts were signed, I was living in 528 Fourth street, Brooklyn.

Q. And you met again for the closing of this contract at the office of the Fidelity Company? A. Yes.

Q. Who was present at that meeting? A. Mr. Powers, Mrs. Powers, Mr. Dickensheets, Mr. Davis, Mr. Boden Hazard and myself, and Mr. Joyce; there might have been someone else, but I don't know.

Q. That was quite a lengthy session? A. It was from two o'clock in the afternoon until half past two the next morning: I got home at quarter to five, I know that.

Q. You executed a deed to Mr. Powers for the property at Shrewsbury? A. Yes, sir.

Q. And received from him at that time the bond and mortgage marked Exhibits C 1 and C 2, which is sought to be foreclosed in this proceeding? A. Yes.

Court: Did you have anyone represent you at the time you went to the Fidelity office, any lawyer?

Witness: No one except Mr. Joyce.

Court: Was Mr. Joyce representing you at that time?

Witness: Yes.

Court: Do you know who prepared the deed and the bond and mortgage?

Witness: Mr. Dickensheets did, to the best of my knowledge; it might have been Mr. Joyce; I don't know.

Court: When you were present was anything said at that time about a mortgage on the chattels that you were selling to Mr. Powers to secure the balance of the unpaid purchase money to you?

Witness: I don't think so; I don't remember. I don't remember anything about it.

Q. These are the only papers, C 1 and C 2, that you received from Mr. Powers at that time? A. Yes.

Court: Didn't you receive a note at that time?

Witness: Mr. Joyce had that note; I didn't have it.

Court: Mrs. Hazard, did you turn over to Mr. Powers the personal property covered by the $11,400 contract at the Fidelity Trust Company?

Witness: I tried to.

Court: What conversation did you have in reference to closing that contract at that time?

Witness: I told him that if I could get it I would give it to him. He said that he decided that he didn't want it, that he would buy just the real estate and nothing else, and Mr. Davis advised him to do that, too, and so did Mr. Dickensheets; they both advised him to buy nothing but the real estate, and he closed up the real estate and had nothing to do with the other at all. Turned it down, in fact; that is what caused the trouble.

Q. And it was at that time that the note was delivered to you or to Mr. Joyce for $11,400, with the endorsement on it? A. There were four notes first that Mr. Powers had drawn up, which I was willing to take because they were negotiable notes; he finally decided that he wouldn't purchase them at all, and those were torn up or given away or destroyed, and then afterwards I was so anxious to get through with everything and have it all off my mind that he finally de-

cided that he might give another piece of paper, which was a worthless piece of paper to me.

Q. And he at that time gave you that note? A. He gave it to Mr. Joyce; I was through.

Examination by the Court:

Q. Did you understand that that note was given to you or to Mr. Joyce on your account, in settlement of the $11,400 contract? A. It wasn't accepted; Mr. Joyce wouldn't accept it, and I didn't accept it.

Q. What was it given for by Mr. Powers? A. He was trying to "put one over," as he called it afterwards.

Q. What was said at that time? I cannot decide this case as you want it decided unless you give me the facts. A. Mr. Powers didn't want anything but the real estate; he decided at the last moment that he wanted nothing but the real estate; he wouldn't take anything else.

Q. But before leaving, he changed his mind, because you say he drew up first four notes, with the intention of carrying out the $11,400 contract? A. Yes.

Q. Then he changed his mind and destroyed them? A. Yes.

Q. Then he again changed his mind and drew up a note that you say was worthless, the non-negotiable note which has been referred to here for $11,400. A. Yes.

Q. And he gave that to Mr. Joyce on your account? A. Yes, because I didn't want it.

Q. Mr. Joyce was representing you in the matter? A. Yes.

Q. Did you understand why Mr. Powers gave that note either to you or to Mr. Joyce? A. Hoping that we might be able to get these things, and he said if he found the goods in the factory after he had manufactured them and found that they were worth the money, then he would pay for them, after eighteen months. I said, "Oh, no, nothing like that."

Q. Then what else was said? A. That is, to the best of my knowledge, all that was said; that ended the conversation.

Q. Was his note handed back to him? A. It was thrown on the table; I didn't have it there.

Q. Do you know what finally became of it? A. It finally was given to Mr. Smock or Mr. Wilson up at Newark.

Q. I don't mean finally; I mean finally that night. A. I don't know what became of it.

Further direct examination by Mr. Sexton:

Q. What conversation had you had at that time in reference to turning the property over to Mr. Powers, giving him possession of it? A. I told him he could have possession tomorrow morning, to meet Dr. Hazard and Mr. Matthes at ten o'clock on the morning of the 16th. It was all prearranged that he was to meet Dr. Hazard and Mr. Matthes and that he was to take possession at once. Dr. Hazard hadn't any lease; the old firm of E. C. Hazard hadn't any lease; I never leased any building to anyone, either verbally or by paper; it has never been in existence. He could have it; in fact, he could have it as soon

as the contract was signed, if he wanted it; there was nothing to keep him.

Q. There never was a lease? A. No, never in the history of the building; there was never a lease to E. C. Hazard & Company or to Elmer Hazard or George Matthes; there was never a lease to any human being since it has been in my possession for thirty years.

Q. Did you hear Powers say anything in reference to allowing Hazard and Matthes to get their goods, if any, out of the place?

Mr. Rosenberg: When?

Mr. Sexton: At the time of the closing.

A. Certainly, he was going to give them until March 30th; he said they could have until the thirtieth of March, and then his teams would carry their coal up to the factory, so they could manufacture their goods and get out of there; I never saw such an agreeable man, and he changed like that (indicating); he thought it over and said——

Q. Did this happen at the conference? A. This all happened at the Fidelity, every bit of it.

Q. Did you say he changed while at the Fidelity? A. He was going to do all these things, and I cannot tell you what happened.

Court: Did he change at the Fidelity?

Witness: No, he was all right there; he was very agreeable.

Q. Have you at any time denied Harry Powers

the possession of that property? A. Never, sir; never once.

Court: When you broke up that night, or morning, at the Fidelity, did you understand that you had or had not sold to Mr. Powers, and that he had bought, the property covered as collateral?

Witness: I knew that he hadn't; he certainly had not.

Court: Was there any arrangement made at that conference——

Witness: Provided I could get it.

Court: You answered before I finished the question. Was any arrangement made by which the right to purchase, or the time within which he had the right to purchase this collateral property so-called, was extended?

Witness: I told him I thought I could get it for him.

Court: By any particular time?

Witness: I told him that maybe within a few days, as soon as he met Mr. Matthes and Elmer Hazard—they were to meet on the morning of the 16th at ten o'clock—we were going to have the whole thing talked over.

Court: And if you did get it for him, was he to take it and pay you the $11,400?

Witness: Yes.

Court: And if you did not get it, then what?

Witness: Then he would take the prop-

erty without anything to do with the collateral.

Q. Did you ever meet Mr. Powers and Mr. Matthes and Mr. Hazard in reference to the getting of the property from Mr. Hazard and Matthes and turn it over to Mr. Powers? A. No, sir.

Q. Why not? A. Because Mr. Powers never met them; Mr. Powers got there half past six in the morning with a pistol; he threw the night watchman out.

Mr. Rosenberg: Were you there?

Witness: No, but the night watchman came down and told me that.

Mr. Smock: I move to strike that out.

Court: Yes.

Q. They never got together because Mr. Powers took forcible possession? A. All Mr. Powers had to do was to be a gentleman and see those boys peaceably on the 16th; Mrs. Powers was all ready—Pearl was ready to move.

Q. Who is she? A. Elmer Hazard's wife. Mrs. White had moved the morning of the thirteenth; she had moved and taken the baby to Long Branch; Elmer Hazard was all packed, ready to leave, and they were ready to take possession. I was doing nothing to keep them out, and such lies as I have recently heard on the stand I cannot understand.

Mr. Rosenberg: May I ask that that latter part be stricken out?

Mr. Sexton: It should be.

Q. Do you know that Elmer Hazard had actually rented a house at Matawan? A. I do know he had.

Court: Do you know when?

Witness: Sometime in February or March.

Q. For his own occupancy? A. Yes.

Q. That night of the fourteenth, did Mr. and Mrs. Powers come to your house? A. Yes.

Q. Did you tell him on that occasion that you had changed your mind, that you had decided to give Elmer a lease of the premises? A. I will take my solemn oath before God and man that factory was never mentioned; that lease was never mentioned, or nothing of the kind had ever taken place; so sure as God is my judge, that I may never leave this chair, there was no such thing mentioned that night.

Q. Was there any unpleasantness that occurred there that night between Mr. and Mrs. Powers, yourself and the doctor? A. No, sir, not a word; everything was pleasant and agreeable as could be; Pearl was all ready to leave in the morning.

Q. Mr. and Mrs. Powers have said that after they were there and waited some time to get the key which you had promised them, to get possession the following day, then you announced that the matter could not be carried out, be-

cause you had given Elmer a lease on the premises; it wasn't in writing, and that you couldn't give them possession, as promised? A. Such conversation never was even breathed or mentioned; Mrs. Elmer Hazard was there, Mrs. Powers was there, Bowden Hazard was there, I was there, and Elmer Hazard was there: the word never came up. I had been out all night the night before and I was too tired, and the morning of the sixteenth they were going to meet, and there was no necessity for the conversation; Bowden Hazard rode home with them in the buggy up to Borden's corner.

Mr. Rosenberg: Did you go with them?

Witness: No, he got in the buggy with them.

Q. Bowden Hazard was there? A. Yes, he was there; Mrs. White was not there.

Q. You made an affidavit that Powers could have possession of the premises? A. Certainly.

Q. And you have not denied him—you at no time denied him possession? A. Why, of course not; it was my pleasure to have him there; I was delighted to have him there.

Court: What caused all this rupture, if you had no trouble at the Fidelity and you had no trouble at your home?

Witness: Because he didn't want to pay for the goods that I still had on my hands and I wanted to pay my debts with them.

Examination by the Court:

Q. When did the rupture occur? A. At the Fidelity.

Q. I understood you had all left there in harmony? A. But that is where it started.

Q. When you broke up, as I understand you, somewhere about two or three o'clock, in the morning, everything was all harmonious? A. Yes.

Q. Everything apparently had been adjusted to the satisfaction of all? A. That is right.

Q. That condition continued throughout the following day? A. Yes.

Q. And the following evening? A. Yes.

Q. There was no trouble? A. Until he broke in the factory there was no trouble.

Q. The next day you say he attempted, from the information you got, to break into the factory? A. Yes.

Q. Can you tell me where the necessity was for breaking in? A. That is what caused the trouble; we don't know what the necessity was. What was the necessity?

Q. There was nothing, so far as you know, to prevent him from going in and taking possession? A. No, the doors were never locked in the factory; there has never been a key to the factory door, to my knowledge, in thirty years.

Q. Can you suggest to me any reason why, after everything was going along so harmoniously, that out of a clear sky this rupture occurred? A. It was this, this man was bound to get these goods, whether he paid for them or

not, and he did get them; he insured them; he got $101,000, and in real good cold money; he got the money and he insured my buildings; he insured the goods that were there; he insured everything; he had the use of everything; nothing was taken away from him. They accused Elmer Hazard of stealing things out of the factory; that isn't so; the toys of the little boy and some furniture that was there, and something like that, was all that was ever taken out of that factory.

Q. That goes beyond the point I direct your attention to. It answers more than I asked for, and covers a period of a year or more, but I am trying to find out, if I can, Mrs. Hazard, again repeating my question, if you can tell me why on the thirteenth, fourteenth, fifteenth or sixteenth of March, in view of what you have already testified, there should be any rupture between the relation of Mr. and Mrs. Powers and yourself? A. The fact that he broke into the factory and the manner he did it.

Q. Why did he have to do it? A. No one under heavens knows; he says Mr. Wilson told him to do it.

Q. You say nothing occurred that night? A. Not a thing in the world.

Q. And yet the testimony of Mr. Powers is that he was obliged to call Mr. Wilson on the telephone that night at his home and seek his advice because of your attitude, as he claims. A. I took no attitude.

Q. He stated you had given this lease to the doctor; if that didn't occur—you say it did not

—I am trying to find out what did occur that caused him to break in the factory the following morning? A. I do not know; I don't know; no one knows.

Further direct examination by Mr. Sexton:

Q. Have you ever brought any suits contesting the right of Mr. Powers' possession of this property? A. No, sir, never.

Q. Did you bring any of those suits referring to the personal property in the factories?

Court: Can you be specific?

Q. Did you bring the Little Silver Sauce Company suit? A. No, I didn't bring any suit.

Q. Did you have any interest in the Little Silver Sauce Company suit? A. No, sir, none whatever.

Q. As a matter of fact did you get any money from the Little Silver Sauce Company from the money that they obtained on the decree? A. I don't remember whether it was from the Little Silver Sauce Company; I received a check from Elmer Hazard for a sum of money, $800 I think, or eight hundred and something.

Q. Is that all the money you have received? A. Yes.

Q. You knew that the Little Silver Sauce Company recovered a decree for $11,000 and odd? A. I don't know what it recovered, but that is all I got.

Q. Did you bring or have any interest in the suit brought by Elmer Hazard against Harry L. Powers? A. No, sir, I wouldn't do such a dirty trick.

Q. Did you have anything to do with the suit which was brought by Hazard and Matthes against Harry L. Powers? A. No, sir, I never did.

Mr. Rosenberg: Matthes?

Q. Did you have anything to do with the suit brought by Matthes against Harry L. Powers? A. Certainly not.

Court: Did you encourage the institution of any of the suits?

Witness: No, sir, I did not; I wouldn't do such a thing. I was very anxious for my daughter to have that home and that place and everything that went with it.

Q. Did you inspire or have anything to do with the suit of E. C. Hazard & Company being brought against Harry L. Powers? A. No, sir, I am not a member of E. C. Hazard & Company.

Court: Did you suggest or influence them or inspire them?

Witness: No, sir.

Court: Did you contribute any money to the litigation in any way?

Witness: Not one cent.

Q. When did you first become incensed against Mr. Powers? A. The morning that the watchman came down and knocked at my door, and he said, "Mrs. Hazard, Mr. Powers has broken into the factory and has thrown me out." I said,

"There is some mistake about it"; I went up and called Dr. Hazard out of bed, and I said, "What is the matter with Harry Powers; the men are down at the kitchen door and he has broken into the factory and he won't let the men in." He said, "That is all right; that will be all right." That is just the expression he used.

Q. Did you see Mr. Powers about it and demand an explanation from him? A. No, he had a pistol; the men came down and said he was up there and armed with a gun.

Q. You were afraid? A. Yes, I have always been afraid of him: I am afraid of him today; he always carried in his pocket a little bit of a black pocketbook with a brass pistol in it; I saw it in the Knickerbocker Hotel.

Examination by the Court:

Q. After this occasion when you say Mr. Powers broke in, did you ever talk with him and Mrs. Powers about the difference between you? A. No, sir, I never met them and never wanted to meet them again in the world.

Q. Why didn't you talk with your daughter; she wasn't to blame if he had broken into the factory? A. I did talk with her.

Q. When did she come down? A. The next day when we were packing to leave the place and get out and give her possession at once, she came in and she said, "Well, it is too bad this all happened"; I said, "I think it is too bad."

Q. Is that all that you and she said? A. Yes.

Q. Did you have any feeling against her? A. Naturally.

Q. Why should you; it was her husband that broke in the factory; Mrs. Powers had nothing to do with that? A. If she was the right kind of a woman she would never permit her husband to do such a dirty trick.

Q. Don't you know that a great many women cannot control their husbands? A. I never saw a woman that couldn't.

Q. This is an occasion now when shortly after the whole trouble between you and Mr. Powers was the fact that he broke into the factory without cause? A. Yes.

Q. Try to keep any feeling out of this matter and answer me. You had a great fancy for your daughter? A. Yes, always.

Q. You had been anxious that she should acquire this property? A. Yes, very.

Q. And were willing to do everything you could to make it possible for her to have it? A. Yes, even giving it to her $10,000—and would have given it to her $20,000 cheaper.

Q. And if you could have afforded, you would have given it to her entirely? A. Yes.

Q. Will you tell me why you and your daughter didn't reach some understanding at that time? A. Because the whole thing was so terribly unreasonable; she knew very well that they had possession. I was disgraced living in a town like I did there for 34 years, in a peaceable

community, and to have all these workmen coming around and telling me my son commonly broke in in the morning at 6:30——

Q. That wasn't any disgrace on you. A. It was on my family and on my daughter. Everybody thought we were congenial and everything; a man that I always had known all my life; I have known his mother and people and always had the greatest respect for them, and have a thing like this happen, as though, as if I was doing—I don't know what it was.

Q. After you met your daughter that same day—— A. I was so angry I couldn't talk, to tell you candidly.

Q. When did you recover from your anger—when you recovered from your anger did you meet her again? A. Not for a very long time.

Q. Why should you be angry with her? A. I was angry at her husband.

Q. I understand that; why were you angry at Mrs. Powers? What had she done in the matter to arouse your ire? A. She hadn't done anything, she personally, not a thing, except she thought that Harry did the right thing, and I say that certainly was not called for. It would have been very nice for her to say, "It is much nicer to meet Mr. Elmer Hazard and Mr. Matthes and have an understanding and have this thing kept quiet." All the neighbors—it was in everyone's mouth in a half hour.

Q. Did Mr. Powers tell you that you need not move from the house, that you could remain there and you could have your room there? A. No, you know that is not so; I wouldn't expect that.

He told me I could visit there every time I wished, and he was very nice about it, yes, indeed.

Q. Didn't he say you could keep your home and room there? A. No.

Q. Were you crying that night when he spoke to you and asked you if you felt sorrowful over parting with the home? A. I don't think so, no, sir. Pearl even got up to play a new piece of music, which Mr. Powers throws a very dirty slur on the house as to the music. Since my husband's death I haven't given a party or anything in my home.

Q. Don't you think you are attaching unnecessary significance to some remarks? A. Very unkind.

Q. That were not intended? A. I am ashamed of my daughter; I feel as if I never want to see her; I feel as if I want to disown her for being such a liar.

Court: Strike that out.

Recess.

Further direct examination by Mr. Sexton:

Q. When Mr. Powers took possession of the factory, Mrs. Hazard, which was, I understand it, the fifteenth of March, what, if any, property did he take possession of that you had not agreed to sell him?

Mr. Rosenberg: Were you there when he took possession?

Q. Do you know what was in the factory on the morning of the fifteenth? A. No, sir, I don't know what was in the factory.

Q. Do you know the character of the personal property that was in the factory? A. No, sir, I do not.

Q. Do you know whether or not the personal property referred to as the bill of sale goods were in the factory on the morning of the fourteenth? A. I presume so, I don't know.

Q. Do you know whether there was any property of E. C. Hazard, yourself or anyone else's at Shrewsbury that Mr. Powers did not take possession of? A. There were lots of people's property.

Q. Referring to yours, E. C. Hazard & Company's and the other claimants property on the premises.

Mr. Rosenberg: I object: the question is decidedly indefinite.

Court: If she knows, she can say so, and then she can elaborate her answer.

A. Yes, I know there was $2,500 worth of goods there belonging to Mr. N. Beadleston.

Court: Did Mr. Powers take possession of them?

Witness: Yes.

Q. What other property did he take possession of? A. He took possession of the goods that were assigned to me as collateral security.

Q. What other property, if you know? A. The property of Mr. Frank Matthes and Elmer Hazard and E. C. Hazard & Company.

Q. Under the closing of the contracts at the Fidelity Company, what property was he entitled to at Shrewsbury?

Mr. Rosenberg: I object.

Court: Objection sustained. That is the question you are putting up to me, or one of the questions, at least.

Q. When the memorandum in reference to the payment of $11,400 by giving a note, a copy of which was handed to you, in eighteen months from that time, was tendered by Powers, were you consulted in reference to it, at the Fidelity Company? A. Yes, certainly I was there.

Q. What was said by Mr. Powers in reference to that memoranda being in the form of a note with an endorsement on the back saying that this is a copy of a note we will give you? A. Mr. Powers was to give me new notes as soon as I could get him the goods from Elmer Hazard and Matthes; that is to the best of my recollection about it; he was to give me new notes as soon as I was to get the goods.

Q. How was the term of eighteen months fixed, if you know? A. I don't know; there were first four notes and afterwards Mr. Powers didn't want those four notes; he said he wanted more time; I don't remember really what the conversation was; I was terribly upset and am upset, very, but he gave me some money, and I wanted

money, and I told him so, and I didn't want to have to wait for eighteen months, but he said that as soon as he got the goods he would give me four more notes or some note that would be negotiable; I don't know what it was.

Q. Was Mr. Joyce consulted about it at that time? A. I don't know. Mr. Joyce must speak for himself; I don't know.

Q. Did Mr. Joyce consult you in reference to receiving a note for $11,400? A. Yes, certainly.

Q. And which was as follows:

New York, March 13, 1913.

"$11,400.

Eighteen months after date I promise to pay to the order of Florence A. Hazard Eleven Thousand Four Hundred Dollars at 20 Vesey Street, Borough of Manhattan. Value received.

(Signed) HARRY L. POWERS."

and then on the back of it:

"This instrument shall not be considered as evidence of indebtedness or a chose in action accruing to the payee or her assigns until the title to the goods in payment for which this note is given is legally vested in the maker or his assigns. When such title is vested by a bill of sale or assignment thereof, then a new note of like tenor and effect, bearing the same date, is to be executed by the maker of this note, or his heirs or assigns."

And that was signed "Harry L. Powers." Were you consulted by Mr. Joyce in reference to that paper? A. Yes, but I was to have a negotiable note; I wouldn't take anything else; I was going to have a negotiable note as soon as I could deliver the goods, the next morning or the next day.

Q. And under the original agreement you were to receive four notes? A. Yes.

Q. Under this new memorandum you were to receive one note? A. Four notes I was to have in the beginning.

Q. And under this new memorandum you were to receive one note for $11,400? A. Yes, but it was going to be a negotiable note.

Mr. Rosenberg: It says so on the paper itself.

Q. At the time that was tendered you were willing to receive a negotiable note for $11,400? A. Yes.

Court: Payable in eighteen months?

Witness: Yes, $11,400, but I wanted to put it in the bank.

Court: Payable in eighteen months?

Witness: Yes, but it must be one that I could use.

Q. You wanted a note that you could put in the bank? A. Yes, I told him so, and he knew the necessity of it; he knew how very necessary it was for me to have it.

Mr. Smock: I move to strike that out.
Court: Strike it out.

Q. Was that memorandum that you received at that time in reference to the closing of the $11,400 contract marked Exhibit D 3? A. Yes, but it wasn't one that I could use.

Q. You knew at the time you got the memorandum that that was not negotiable? A. Yes, sir, I knew that it wasn't.

Court: Did you know that yourself or did Mr. Joyce?

Witness: Mr. Joyce told me that it wasn't negotiable, that I couldn't use it. I told Mr. Joyce how important it was for me to have some money, and he said, "This won't do you any good until you have delivered those goods."

Q. You were consulting with Mr. Joyce during this closing at the Fidelity? A. Certainly.

Q. And he was consulting with you in reference to these various matters? A. Yes, sir.

Q. Before the closing of the title, as Mr. Powers would advance you money, did he exact from you a note? A. For everything he has ever spent for me I gave him a note; he made me give a note to him for everything and a receipt for everything that he ever did for me.

Court: Are you referring to Exhibit D 9, the twenty-nine odd thousand dollars paid her?

Examination by the Court:

Q. See if I understood you right; you say he made you give him a note every time? A. Yes.

Q. For instance, when he paid $500 on account of the contract, did you give him a note then? A. No, he took a receipt from me then.

Q. He says, "Cash advanced for insurance, $136.86?" A. He had a receipt also.

Q. He didn't have a note? A. No, sir.

Q. "Cash advanced to Judge Gray, $700"; did he get a note for that? A. No, he had a receipt—yes, he had a drawn up memorandum.

Q. A note I am talking about. A. I guess it was in the form of a note.

Q. You answered that every time he paid you he made you give him a note. On March 6th, cash advanced, $7,000; did he make you give him a note for that? A. Yes, that is what I was alluding to.

Q. What was that for? A. For the jewelry that Mrs. Murphy had.

Q. That you redeemed? A. That I redeemed for her, because she had given it to me to take care of it.

Q. "Cash advanced to the Second National Bank of Red Bank, $5,548.45"; did you give a note for that? A. That wasn't to me.

Court: You asked the question and that is why I interrupted the examination as I did; I cannot conceive why a note should be given in every instance where a payment was made.

Q. Has he still got your notes? A. Yes, he has never given them back.

Q. For what amount? A. He never gave me the Nassau Bank notes or the note for $7,000 or any one of those papers; I have never received a receipt yet, and if I should have died in the meantime my daughter says, "You would have all these things against you."

Mr. Rosenberg: I move to strike it out.

Court: Strike it out. It will all go out.

Q. Can you tell how many notes you have given to Mr. Powers? A. No.

Q. Or how much they amount to? A. No, sir, I cannot.

Q. How many of your notes has he at the present time? A. I cannot tell you. Mr. Joyce and Mr. Sexton will have to find that out.

Further direct examination by Mr. Sexton:

Q. Have you ever received the assignments—— A. No, sir.

Q. Satisfactions, rather, of the Nassau and the Second National Bank judgments? A. No, sir, never received them; I never have; I have asked for them many times.

Q. Do you recall a piece of property being foreclosed at Red Bank? A. Yes, that was done to injure me, too.

Court: Strike it out.

Q. Where was that property? A. That property was right down here on Little Riverside Drive.

Q. Do you recall a claim being made by Mr. Powers against that property by reason of you holding assignment of a Second National Bank judgment? A. Yes.

Mr. Rosenberg: Before the answer came, I tried to object. I object to it as immaterial and irrelevant.

Court: I will let it go in. It is in on your side, with his explanation as to why he did it and under whose advice. He said it was done under the advice of counsel and for the reasons he stated at the time.

Q. You employed counsel to appear before the Master in this case? A. Yes, Mr. Reilly.

Mr. Rosenberg: I object to that.

Court: I will allow it.

Q. And you resisted the claim through your counsel of Mr. Powers? A. Yes.

Mr. Rosenberg: Same objection.

Court: Same ruling.

Q. And you resisted the efforts of Mr. Powers to collect the money from the property sought to be foreclosed?

Mr. Rosenberg: Same objection.
Court: Same ruling.

A. Yes.

Q. Do you recall a statement by Mr. Powers at the Fidelity Company's office that Mr. Powers would cancel these judgments right away? A. Yes, sir.

Court: Was that made in connection with your promise to give him possession of the property right away?

Witness: Certainly, he was to have possession the next day if he wanted it.

Q. What are you speaking of when you speak of that, real estate or personal property? A. Yes, sir, my residence, my home; that is what I am always thinking about, my home where I lived.

Cross-examination by Mr. Rosenberg:

Q. Directing your attention to the suit of the Little Silver Sauce Company against Mr. Powers, you made an affidavit that was attached to the bill of complaint in that case, did you not? A. I might have.

Q. Did you or didn't you? A. I think I did.

Q. And you made an affidavit for Mr. Matthes in his case? A. I don't remember that.

Q. Are you sure you didn't? A. I am not sure.

Q. You don't know whether you did or didn't? A. No, but I know I did for Elmer Hazard; I don't know anything about Mr. Matthes.

Q. Then there was a suit brought by E. C. Hazard & Company some time after those three suits; you had nothing to do with bringing that suit? A. No, sir; nothing at all.

Q. Was Mr. Skinner concerned in those suits? A. No, sir, I had nothing to do with hiring Mr. Skinner.

Q. Who did hire Mr. Skinner? A. Mrs. Murphy did.

Q. Mrs. Murphy is your assignee of this mortgage? A. She is the owner of this mortgage because of money that she and her husband have loaned me for five years.

Q. Why should Mrs. Murphy have retained Mr. Skinner in the other suit? A. What other suit?

Q. In the suit of E. C. Hazard & Company against Powers? A. Mrs. Murphy didn't.

Q. Wasn't Mr. Skinner in that suit? A. No, sir, he was not; not to my knowledge; not by my direction; I don't know anything about it.

Q. You had nothing to do with that suit? A. No, sir.

Q. So that if Mr. Skinner professed to represent you before that suit was brought, he did so without your authority? A. Indeed he did.

Q. Did you make an affidavit in that suit? A. No, sir, not that I know of; I don't think I ever knew anything about it.

Q. You never heard about it? A. I don't think so.

Q. You never knew what happened to that suit? A. No, sir, I do not.

Q. When did you first consider Mr. Powers as a possible purchaser of this property at Shrews-

bury? A. He had been talking about it for about two years before he bought it; I mean he didn't say that he would buy it, but he said he always would like to have it, and my daughter said she would love to have the home.

Q. You said you wanted him to have it? A. Yes, and her, too.

Q. And you urged him to buy it? A. No, I never urged him to buy it, never. If he says so, he tells you an untruth.

Court: The latter part was not responsive. Strike it out.

Q. When did you first make up your mind that you did want to sell this porperty? A. I think about the first of February, 1913, to sell it to him.

Q. But when did you make up your mind that you wanted to sell it to anybody? A. When Elmer Hazard failed; when they failed in business and I didn't receive any dividends any more and didn't receive any interest money any more.

Q. When was that?

Court: They failed in business in 1907; you mean as far back as that?

Witness: No, I got rent for my factory up to about 1913 sometime.

Q. So that you made up your mind to sell it about 1913? A. I made up my mind to sell it about 1912.

Q. When about? A. I should think about the

fall of 1912, to the best of my knowledge.

Q. Then you put it in the hands of Mr. Bedell? A. Mr. Theodore White at Red Bank and Mr. Bedell.

Q. You had known Mr. Bedell for some time? A. Only through Elmer Hazard; I didn't know him very well; he was a friend of Elmer Hazard, but not mine.

Q. And you received no offers for it except what was communicated to you by Mr. Bedell? A. Yes, several offers were received; I had an offer also from a man that came down that wanted it for a big hospital.

Q. When did you get the offer from the man who afterwards bought the Monmouth Park Hotel? A. That was tendered sometime in 1912.

Q. Was that Van Kueren? A. No, I don't think so; he was a fat physician; he came from Summit; he wanted to use it for a hospital, and my son Elmer said "it wouldn't be fair to the people in our neighbood to sell it, because I think he wants it for consumtives," and he said, "Mother, don't do it, it won't be fair to the neighbors."

Q. What offer did he make you? A. I don't remember.

Q. You never got to dollars and cents? A. No, on account of this disease.

Q. What other offer did you have? A. I had an offer from Mr. White at Red Bank; he told me he would give me $70,000; at that time I wanted $100,000.

Q. Then when was this offer you got through Mr. White, how long before 1913? A. That was in 1912, sometime in 1912.

Q. You held it then at $100,000? A. No, that was in the beginning.

Q. How much did you hold it at at the time you got the White offer? A. $80,000.

Q. You got an offer from him of how much? A. $70,000.

Q. Who made the offer? A. Mr. White himself.

Q. For himself? A. No, he had people from Newark, New Jersey, and he brought the people there to see me, and we gave them luncheon at our house, and went all through the house, and admired it very much. Then Mr. Bedell was the next man, and then Mr. Powers.

Q. You turned that down? A. I turned down Mr. Bedell's.

Q. Then you started negotiations again with Mr. Powers? A. Yes.

Q. When you started negotiations with Mr. Powers what did you expect Mr. Powers was going to do with the property? A. I didn't know any more than I know now; I thought he was going to live there.

Q. But that wasn't all there was to it; there was the factory building also? A. He had the factory building to do what he pleased with it.

Q. Didn't you understand very clearly from him that he was going to start in the manufacture down there? A. Mr. Powers was going to do all kinds of business.

Q. Didn't he tell you that he was going to manufacture there? A. Yes, he was going to invite Mr. Matthes and Elmer Hazard to go in business with him, as I understood it, a long time.

Q. But when he was going to buy this property

for himself, he was going to use the machinery and go into the canning business? A. He was going to have everything except that which was coming to me as collateral security.

Court: That doesn't answer the question.

Q. He was then going to have this factory building and everything that you had there and use it for the purpose of the factory? A. Whatever he wanted it for.

Q. And that was a factory to can food products? A. Yes.

Q. That is what is was there for? A. Yes.

Q. And was built for that? A. Yes.

Q. And equipped for that? A. Yes.

Q. And he was going to use it for that purpose? A. I don't know what he was going to use it for.

Q. Didn't he tell you so? A. He told me a dozen different things.

Q. Wasn't one of that dozen different things the fact that he was going to use it in the canning business? A. He might have.

Q. He did, didn't he? A. I am not positive that he did; he might have.

Q. If that was one of the dozen things, what were the other eleven? A. I would say there were eleven or twelve, but I know he talked often of buying it, that he could even make a wonderful boarding stable; he could make a great carpet cleaning manufactory there. Mr. Powers often spoke to me about the plant he had at 125th Street, or some street, and he could get rugs from Sloan's and Altman's, and he had a wonderful reputation as a rug cleaner and repairer.

Q. When did he tell you that? A. At my home in Shrewsbury.

Q. But at the time he was buying this property didn't he tell you that it was his object to use it as a canning plant? A. He suggested when at the Fidelity that he wanted these goods from Elmer Hazard if I could get them for him, and I promised him——

Mr. Rosenberg: She doesn't answer the question.

Q. (Last question repeated). A. He might have.

Q. And didn't he tell you that all through the negotiations that were for the purchase of this property? A. I wouldn't say he did.

Court: Did he ever tell you that he was going to continue to make the Shrewsbury ketchup?

Witness: No, sir, he didn't; he never said anything about making Shrewsbury ketchup; I didn't think he had any way of making it.

Court: I am trying to find out what he told you.

Q. At the time that he first approached you about buying that property, was it in November or December, 1912? A. I positively cannot tell you.

Q. But at the time he first approached you you said you would be willing to sell it to him, but

you had an outstanding option on the property? A. Yes.

Q. And as soon as that option expired you would deal with him? A. Yes.

Q. And did you deal with him? A. Yes.

Q. Did he ask you first about buying it, or did you go to him and ask him to purchase it? A. He came to me first always about buying it.

Q. In other words, you never thought of him as a purchaser until he came to you? A. No, sir, I never did, because he was living on a place that his wife was fond of, next door.

Q. You were rather surprised to find that he did want to buy it? A. I was very much surprised.

Q. And equally gratified that he was? A. Yes, delighted.

Q. At the time that you began the negotiations, what did you think he wanted to buy it for? A. To have a fine farm and a large place as he was going to be a rich man and he was going to have everything.

Q. What part did you think the factory buildings played in that? A. I don't know; what would any man buy the factory for; that was his business.

Q. A man wouldn't buy the factory if he didn't intend to manufacture, ordinarily?

Court: Any reason to have this argument?

Mr. Rosenberg: No, I am willing to have that struck out.

Court: Strike it out.

Q. Then you intended to sell to him, and told him you would sell to him everything that was on the property, except the property that you had as collateral for the moneys which you had advanced to E. C. Hazard? A. Yes, sir.

Q. Everything that was there? A. Yes, except my horse and carriage and furniture.

Q. And everything that was there was to be vested in Mr. Powers? A. Yes.

Q. So he was to have the whole business except that collateral stuff? A. Yes.

Q. You told him that you had reduced that collateral to your possession, did you? A. Never, no, sir; no, I told him that I had a note for it.

Court: Do you understand that question?
Witness: To the best of my ability.
Court: I don't believe I understand it.

Q. You told him that you had reduced that collateral to your possession, did you? A. I might have, I don't know.

Court: What that question means, as I understand it, did you tell Mr. Powers that you had taken possession of the goods that represented your collateral?

Witness: No, I told him I trusted my son with those; he had them in his possession.

Q. Didn't you tell him at the Astor House that that property had been pledged to you as collateral, but that you were now the owner of it, and

had taken it over? A. It had been given to me as collateral, but I hadn't taken anything over at all.

Q. Then you didn't tell him that you were the owner of that particular property? A. I told him that I had a collateral security given to me, which I would sell.

Court: Did you make any reference in your conversation with him to the effect that the company had on its minutes——

Witness: Yes.

Court: ——minute book, taken such action that you were now the owner of the property instead of holding it as collateral?

Witness: No, it was given to me for collateral security.

Court: In case they defaulted on the notes that you were on?

Witness: Exactly.

Court: And they did default on them; they didn't pay them?

Witness: No, they were still paying interest though.

Court: They hadn't paid them?

Witness: No.

Court: You had been called upon to pay?

Witness: No, I had not.

Court: I thought you said you had been?

Witness: To pay their note—no, sir.

Court: I mean the $11,400, you had been called upon to pay that by reason of your endorsement?

Witness: Yes, certainly; that is why they gave them to me.

Court: Didn't they, when you were called upon to pay these obligations, take action as a corporation, by which on the minutes it appears that the collateral had been turned in to your absolute property?

Witness: They had; it was in the factory.

Court: And before it had been made over to you as yours?

Witness: Yes, it had been assigned to me.

Q. Had it been assigned to you absolutely? A. By the minutes.

Q. Did you ever tell Mr. Powers that you were the absolute owner of that property? A. I don't know.

Q. Didn't you say that you had told him that you only held it as collateral, a moment ago? A. I didn't have it in my possession nor anything, that was up at the factory and I was down at the house; I don't know. I don't even know what the goods were on the list.

Q. What did you say to him about your ownership of that stuff that was covered by the $11,400 contract? A. We were going to the books, to get Mr. Herbert Adams to go on the books and find out by the books the goods that had been assigned and a list of the goods, which I have never yet seen.

Mr. Sexton: When was this?

Mr. Rosenberg: At the Astor House conference.

Q. Was it mentioned at that time that Mr. Adams was to go over the books and make a list? A. No, sir, but Mr. Powers and I talked it over.

Q. When? A. I told you Mr. Powers thought Mr. Adams had.

Q. When did you tell Mr. Powers that? A. I cannot remember when that was.

Q. Before or after the Astor House conference? A. Lots of times; not once, but several times.

Q. You told him on each one of those occasions that the property was held by you as collateral security? A. That the property was turned over to me as collateral security; I had never seen it though.

Q. You never told him that you were the absolute owner of it? A. No, sir, I never did.

Court: It appears by Exhibit D 3, the last paragraph of which reads as follows: "It is further agreed that the party of the first part (Mrs. Hazard) assign to the party of the second part any security that was given to her by the E. C. Hazard & Company for the payment of the aforesaid two notes"—referring to the two notes held by the Nassau and Second National Bank, respectively. Do you remember reading that provision in this contract when it was signed on the fifth of February?

Witness: No, sir, I do not.

Court: Did you then regard yourself as merely holding this property as a security or as the owner of it?

Witness: As a security, absolute security.

Q. You had, however, made two bills of sale of that particular property to Mr. Matthes, hadn't you, before the fifth of February? A. Yes.

Q. How did you happen to make the bills of sale of that particular property to Mr. Matthes? A. How did I happen to do that?

Court: Yes, if you didn't own it, how did you happen to make those bills of sale?

Witness: They were given to me for collateral security.

Q. That doesn't answer the question; if this property was only held by you as collateral security, how did you happen to make a bill of sale of the property to Mr. Matthes? A. I had my son's word for it, that they were there and they would give to me that collateral security.

Court: What do you understand collateral security to mean?

Witness: I don't know.

Court: You have been using that expression.

Witness: No, I don't. I mean that these goods were assigned to me to secure me, so that they could be sold, manufactured and sold, and that I would get my money.

Court: From the proceeds of the sale of the goods?

Witness: Yes.

Court: Suppose you didn't get your money, what would happen?

Witness: In the factory was $75,000 to

$80,000 worth of goods; there wouldn't be any doubt about my getting it.

Court: You haven't got it yet, have you?

Witness: No.

Q. From your last answer to his Honor's question as to what you consider to be collateral security, will you tell us how you happened to make this bill of sale to Mr. Matthes, apparently giving him the absolute title to this property? A. Through Dr. Hazard and Dr. Hazard's advice.

Q. Did you know that you were selling this to Mr. Matthes when you made this bill of sale? A. I was pretty sure I was; I don't know.

Q. Did you think you had any right to sell property which you simply held as security? A. I thought I did.

Q. What consideration did Mr. Matthes give you for the property? A. A note of $11,400, which he reduced from $12,000 down to $11,400.

Q. So that the note was originally $12,000? A. Yes.

Q. And had been reduced to $11,400? A. Yes.

Q. That is what Mr. Matthes had paid you? A. Yes; I think he has paid something since that.

Q. He has? A. I think so.

Court: Was he financially responsible for $11,400?

Witness: I supposed he was, he and Elmer Hazard both; I held them both responsible for the note.

Court: I mean was either or both of them worth $11,400 so you could collect that amount from them?

Witness: Elmer Hazard was worth that amount, because he owned two fine apartment houses in Brooklyn and a nice house in Brooklyn.

Court: He had ample property?

Witness: Yes, I could trust him.

Q. At the Astor House conference you said nothing to Mr. Powers of the fact that you had given this bill of sale to Mr. Matthes? A. Mr. Powers knew everything.

Q. I am not asking you that; did you say anything to him? Did you tell him anything about it? A. I don't remember whether I did or not.

Q. Isn't it the fact that you didn't? A. I am not sure about it; I think I did; that I would get Elmer and Matthes to give me back the goods.

Q. If you said that, how would you expect Elmer and Matthes to give you back those goods if Matthes had paid you for them—paid you $600 and you had his note? A. Because Mr. Matthes hadn't paid the note as I wanted him to pay it; I wanted it all paid long ago; it was past due.

Q. What right did you consider that gave you to get those goods back? A. I tried to get them for Mr. Powers, because I wanted him to have everything I could get for him.

Q. That doesn't answer my question. What right did you think that you had to get those goods back from Mr. Matthes? A. I wanted to give him everything.

Q. You said a little while ago you didn't know what Mr. Powers was going to do with the property? A. No, I didn't.

Q. Why were you so anxious to get them for him; they were in the factory? A. Because he asked for them.

Q. When did he ask for them? A. I don't remember just when, but several times; he wanted Elmer to go in business with him.

Q. Then from the fact that he did ask for the goods, you must have known what business he was going into? A. No, I didn't.

Q. Why did he want them, simply to go into business with Elmer? A. I don't know what he wanted them for; I don't think anyone ever knew what Mr. Powers wanted to do.

Q. You were anxious to get him those goods? A. Yes.

Q. Because he wanted them? A. Yes.

Q. You had no curiosity to know why he wanted them? A. No, I had too much trouble on my hands at the time.

Q. All you wanted to do was to get them for him? A. Yes, I wanted to get him everything I could get for him, so he could keep up the place and the home.

Q. What was the property that you intended to convey to Mr. Powers by this $60,000 agreement or contract? A. My residence, my home, my property, my buildings, my land, everything except my horse and carriage and furniture.

Q. Everything that was in the factory? A. Everything that was mine.

Q. Which included what? A. I don't know, sir; I want to be truthful to you; I will tell you that I don't know.

Q. There were engines? A. Several, I don't

know how many; there were enough there to equip three or four factories.

Q. Everything that was there in the factory, including the labels and everything else? A. I never had anything to do with the labels and they were never mentioned, to my knowledge; I don't know anything about them.

Q. Mrs. Hazard, you remember testifying in the last case? A. Yes, I remember being on the stand.

Q. You remember that you were asked—after you had stated that you intended to convey everything that was in the factory—this question: "There was certain personal property in the factory which came to you through your husband's estate?" A. That isn't so.

Q. And you answered, "Yes, sir." A. I don't know; I was so excited and so sick, I guess I didn't know what I was saying; I might have said it.

Q. You don't remember whether you said that or not? A. I don't know, but if it is there I must have said it.

Q. And you were asked, page 39, "What was the character of that property?" and you answered, "I don't know except that it was a factory and it had boilers and machinery and tin cans and bottles and glass." A. That is all I know about it.

Q. And you were asked "Labels," and you said, "Yes, sir." A. I don't know.

Q. Do you mean to say you don't know there were labels there? A. Yes, sir, barrels and boxes and thousands of them, enough to cover the farm.

Q. Whom did they belong to? A. They belonged to E. C. Hazard.

Q. The old firm? A. The old firm; they had been there for thirty years.

Q. You were asked, "Machines," and you answered "yes." Then you were asked, "And those are the things which you think came to you through your husband's estate?" A. That isn't so; I might have been asked that.

Q. And your answer was, "I didn't know anything about it, except the factory was mine, except I knew that Mr. Elmer Hazard was there doing business?" A. Yes.

Q. You answered that question? A. I might have.

Q. Do you remember Mr. Powers calling you up on the telephone with reference to those two bills of sale? A. I don't remember about that; I remember his speaking to me about it somewhere or somehow; I don't remember about the telephone.

Q. He did call you sometime between the fifth of February and the thirteenth of March—he called you up on the telephone or spoke to you about those two bills of sale? A. Yes.

Q. He had discovered from the Fidelity that those bills of sale were on record? A. He knew before that they were there and he knew that I was going to——

Q. I askd you whether he didn't say that he had just heard from the Fidelity about those two bills of sale? A. I don't remember about his telling me that particularly.

Q. What did he say to you about it? A. I think he mentioned something—wanted to know if I could get those goods for him, and I told him I thought I could.

Q. Didn't he say anything, that he was very much surprised to find you had given bills of sale to Matthes for this property? A. No, he did not.

Q. You say that he did know about is? A. He did.

Q. How do you know? A. Because he knew everything that went on in the factory.

Q. The giving of those bills of sale didn't go on in the factory, did it? A. I didn't know; I think they were on record in the factory.

Q. Where? A. I don't know.

Court: She merely assumes that he knew what was going on in the factory. That doesn't bring any knowledge home to him.

Q. Wasn't he very indignant about your having given those bills of sale to Matthes? A. No, sir.

Q. He didn't use any strong language? A. No, sir, because he expected to get them, and I expected to get them for him.

Q. And you told him that at the time? A. Yes.

Q. When you met at the Fidelity on March 13th why did the discussion come up again about getting title to this property? A. I don't think it did; the only thing was that Mr. Matthes and Elmer didn't turn them over and didn't meet us there, as they should.

Q. When was it appointed that Elmer and Matthes were to be there to turn them over? A. They were to meet us on the sixteenth of March at ten o'clock at my home at Shrewsbury, and Mr. Powers was to be there.

Q. Why do you say that they were not there to turn over the property on the thirteenth; we are talking about the thirteenth. A. I don't think it was worth while to bother with me; they hadn't decided to turn it over.

Court: When and where was the arrangement made that you and Elmer were to meet on the sixteenth at ten o'clock; when was that first made, that arrangement?

Witness: After the deed was signed in the Fidelity.

Court: While you were at the Fidelity did you make that arrangement?

Witness: Yes.

Court: Who was speaking for Elmer and Matthes?

Witness: I was.

Court: How did you know that they would?

Witness: I never had to ask my son to be in any place in my life that he wasn't there.

Court: Matthes was a stranger.

Witness: Yes.

Q. You said the trouble came at the Fidelity because Elmer and Matthes were not there to turn over the property? A. That is the reason

why they couldn't turn it over that night, because they were not there, but we were to meet there.

Q. But a moment or two ago you said that Mr. Powers had expected Elmer and Matthes to be at the Fidelity—— A. No, he didn't.

Q. ——on the thirteenth to turn over this personal property? A. No, I expected them to be there; Mr. Powers didn't know anything about their being there, nor I didn't tell Mr. Powers they would be there.

Q. When did Mr. Powers expect that Elmer and Matthes would turn this property back to you? A. They were to meet on the sixteenth at my home.

Q. But that arrangement wasn't made until after the deed was executed at the Fidelity? A. Yes.

Q. Mr. Powers did bring to the Fidelity four notes covering this $11,400? A. Yes, he was to bring it to cover my note which I had from Mr. Matthes.

Q. Of $11,400? A. Yes.

Q. Then if he knew that the title to this property was in Matthes and you couldn't give him title on that day, and he didn't expect Matthes there or Elmer, why did he come prepared with these four notes of $11,400?

Mr. Sexton: If you know.

A. I promised Mr. Powers that I would go to Elmer Hazard and get those goods for him.

Q. When did you promise him that? A. Always; I always promised him that.

Q. Mention one particular time. A. Every time we talked about selling the property.

Q. When was the first time you promised that? A. It was such a long period I cannot tell you that, but it was every time I met him I told him that.

Q. So you told him as far back as November, 1912, that Matthes had this title? A. No, sir, February.

Q. February when, at the time of the conference at the Astor House? A. February, that is the time.

Q. Then you did tell him on that day at the Astor House that Matthes had the title? A. No, sir.

Q. When did you tell him that? A. He knew all about it; we had talked about it previously and he knew about it.

Court: When did you talk about it, what part of February?

Witness: I think about the first week in February.

Court: When were the bills of sale given?

Mr. Sexton: 29th of July, 1912.

Q. Going back to the Astor House interview, who came in first? A. I think Mrs. Powers, myself and Dr. Hazard and Mr. Powers.

Q. Did you come first or Mr. and Mrs. Powers first? A. I really don't know; I think Mrs. Powers.

Q. And after awhile Elmer came? A. Yes.

Q. And Matthes? A. Yes.

Q. Who sent for Mr. Joyce? A. Mrs. Beadleston telephoned him to come to the Astor House, that I was there.

Q. She telephoned from her house? A. Yes, to Mr. Joyce to go around.

Q. And then Mr. Joyce sat down and took notes as to these papers? A. Yes.

Q. When were the papers drawn? A. I cannot just tell you when they were drawn; I suppose he drew them in his office; we went around there after luncheon; he made some memorandums at the Astor House, but I didn't see what they were. We told him all together what we wanted, and intended to do, and he made some memorandums and went to his office, and after we had luncheon we went around to his office, but Mr. Matthes didn't go.

Q. And Elmer didn't go? A. No, sir.

Q. Were the contracts ready by the time you went to his office? A. I am not sure.

Court: Why were there two contracts instead of one?

Witness: One was for the real estate and the other was for what I was trying to get for him, to the best of my knowledge. I don't know anything about business or contracts. I don't know anything about anything of that kind at all. I don't know anything about business or papers. I had to trust in whoever I had to look after it, and if he had offered me anything to have signed, I would have signed it, absolutely so. That is why I am in such a mix-up.

Court: You understand your position today, that the bond and mortgage you assigned to your daughter, you ask Mr. Powers to respond for $30,000, and he says you should not do it, because that mortgage is in part payment of it; you understand that that is part of the controversy here?

Witness: I don't know even now what they are trying to get.

Court: Do you know what this controversy is about?

Witness: No, sir, because I gave a man a valuable property what was worth four times what he paid for it, and I don't see what he is arguing about, why he wasn't satisfied. He ought to have been satisfied with the residence, stable and ice house.

Court: That is where you and he differ as to the value; you have the right, each of you, to your opinion.

Witness: I don't know what the argument is about.

Q. You say that Mr. Joyce took a memorandum and then went to his office and drew up the papers? A. Yes.

Q. When did you go to his office? A. After luncheon.

Q. How long after? A. I don't know.

Q. You remember that in the previous case, on page 30, volume 1, you were asked this question, "Is it not true when you were all there together, and your attorney present, that he took down a memorandum of what you had agreed upon and

that you went to his office two hours afterwards and signed the paper which he had prepared in the interval; is not that true?" And your answer was, "No, sir, that is not true; he went there right away." A. I went there right after luncheon.

Q. "You went there right away?" And your answer is "Yes, sir." A. We went there right after luncheon.

Q. Then your previous testimony is not correct? A. To the best of my knowledge.

Q. At the Fidelity there was quite an animated discussion about that $11,400? A. Yes, I wanted Mr. Powers to buy it.

Q. But you didn't have it to give the title, how could you ask him to buy it? A. I had a note that I wanted to sell Mr. Powers; I had a note that I wanted to see Mr. Powers; I want to explain this to this court and you.

Court: Do so.

Witness: I had a note that was given to me by Elmer Hazard and Mr. Matthes; I tried to make Mr. Powers buy that note from me; that would give him, a fitting man that knew how to get these things—give him control and let him work it out. I didn't know how to do it; I wanted my money because I needed it; I wanted him to give me four negotiable notes, or to give me some negotiable paper that I could put into my bank to meet the notes that were coming due in a day or two, and he said he would, and then he was going to get

the goods from Matthes, because he would then hold the whip over both these men. I offered the note. This is no story or made-up lies about labels. This is true; I wanted you (Mr. Powers) to have this note.

Q. But a little while ago, Mrs. Hazard, you old us that you were going to get Mr. Matthes to turn over the goods to you? A. So I was going to use my influence to do everything for Mr. Powers that I could.

Q. But now you say you wanted to sell Mr. Powers a note so he could get the goods? A. I told you the same thing; I told you so at Jersey City, or wherever we were.

Q. What are the facts; was it that you were trying to turn over this property to Mr. Powers, or that you were trying to turn over the note to him to let him get the property? A. I was turning over to him what I could get my hands on.

Q. Answer the question; what were you intending to do; were you intending to get the property from Matthes and turn it over to him, or were you going to turn over the note to him and let him get the property from Matthes; which? A. I was going to turn the note over to him, and give it to him, and let him go in there in the factory and say to Mr. Matthes, "Either you pay me this money or these goods are mine."

Q. Then why did you want to make an arrangement for Matthes and Elmer to meet with Mr. Powers on the sixteenth? A. Because Mr. Powers didn't buy my note and wouldn't accept it.

Q. You had never made any arrangement with Mr. Powers before that to sell him that $11,400 note? A. He knew about it and he knew that I wanted to sell it to him. Q. Did you ever make any agreement to sell it to him? A. No, I don't think so.

Q. Wasn't the agreeemnt with him that you were going to turn over the property which was covered by that $11,400 contract? A. Yes, I was going to get it in this way——

Q. Yes or no. A. I cannot answer it by Yes or No, I am sorry. I was going to get Mr. Powers in possession of the note; then after Mr. Powers was in possession of the note, either Mr. Matthes or Elmer Hazard would have to pay the money, or he would have to turn over the goods.

Court: On the fifth of February, when you signed this Exhibit D 3, this agreement relating to the $11,400, which recites in it that there were two judgments against you, one held by the Nassau Bank for $7,000 and the other by the Second National Bank of Red Bank for $4,100; it recites that you were to pay those, and if you did, that Mr. Powers was to give you four notes amounting to $11,400, and then he is to have from you an assignment of the security that you held on the Hazard notes; that is what this paper that you and he signed on the fifth of February calls for?

Witness: Yes.

Court: How could there be a transaction in relation to the purchase of the

Matthes and Elmer Hazard note of $11,400 involved in the settlement at the Fidelity's office; you were there to settle this contract and the other one of $60,000.

Witness: We have it here; that is what I tried to sell him.

Court: That isn't what you agreed to sell him.

Witness: That is not my fault. That is what I proposed at the Fidelity, and that is what I had, and that is what he understood.

Court: I don't see how he could understand it. Here is an agreement in black and white, that is foreign to anything you now suggest about the Matthes or the Elmer Hazard note; you had two judgments amounting to $11,400 by these two banks that had to be satisfied out of the purchase price?

Witness: Yes.

Court: Out of the property which he was purchasing from you?

Witness: Yes.

Court: If you satisfied them he agreed to give you four notes running for so many months; if he gave you the notes, you were to assign all the collateral you held from the Hazard Company; that was your agreement; that had nothing to do with buying the $11,400 note signed by Matthes and Elmer Hazard?

Witness: That was the note that I had.

Court: I understand that, but it had

nothing to do with Mr. Powers' agreement whatever?

Witness: Because I felt certain sure that I could get them, because I knew that Elmer Hazard and Mr. Matthes couldn't pay.

Court: But you are injecting something now into the settlement at the Fidelity office that didn't exist under the contract between you and Mr. Powers.

Witness: That was what happened at the Fidelity.

Q. In other words, then, Mrs. Hazard, you were not able to complete your agreement to turn over to Mr. Powers the property that you had agreed to give him, and instead of that you offered to turn over to him the Matthes note of $11,400; is that so? A. Mr. Powers knew all that.

Q. (Question repeated). A. No, I wasn't able to perform, because we were to meet on the morning of the sixteenth to do that.

Q. But that agreement to meet on the sixteenth wasn't made until some time after you were at the Fidelity office? A. No, it was understood; Mr. Powers knew all the time that we were to meet, and we were to have the meeting with Elmer.

Q. When did Powers first know that you were to meet Elmer? A. On the first of February.

Q. So that on the first of February an agreement was made with Mr. Powers, that you and he and Elmer and Matthes were to meet on the sixteenth of March? A. We were to meet on the sixteenth of March; I don't know when that agreement was made.

Q. And that agreement was made about the first of February? A. In February some time.

Court: These papers were signed on the fifth; before that, was it?

Witness: I don't know when it was; before or after.

Q. Why did you select the sixteenth of March for the meeting? A. This was the day we had signed the deed. He said when I again meet Matthes and Elmer and I said on the morning of the sixteenth, because Mr. Matthes wasn't down there then.

Court: You are talking about two different occasions: first you say some time on the first of February, then you say when you signed the deed on the thirteenth of March, that was the arrangement. When was it, in February or March, that you told Powers that you would have them there on the sixteenth?

Witness: I think at the Fidelity; I am positive it was.

Q. Then it comes back to this, that you were at the Fidelity on the thirteenth of March and were not able to complete your contract that you had made on the fifth of February? A. Yes.

Q. And thereupon, when you were not able to complete, you offered to give Mr. Powers that $11,400 note of Matthes instead? A. Yes, and I told him that if he wasn't satisfied, tomorrow

morning at ten o'clock I would have his money for him; I told him that, and I had absolute proof, and can prove today that I could have gone and gotten him his $30,000 the next morning at ten o'clock.

Q. And thereupon he offered—— A. And thereupon we made a new agreement, and the new agreement that, providing I could get them for him——

Q. And that new contract was the contract which was expressed in that non-negotiable note that was drawn up by Mr. Dickensheets? A. Yes, an entire new contract was made that night.

Q. Mr. Powers at that time offered to complete the $60,000 agreement? A. Yes, and leave the other out.

Q. And you refused? A. Yes, I wanted him to take the note, and he wouldn't, and he didn't.

Q. As I say, you wanted him to take that $11,400 note of Matthes? A. Yes, that is right, perfectly truthful.

Q. And there was quite a hot time over that, wasn't there? A. It was certainly very unpleasant for me to sit there until two o'clock in the morning or until three o'clock in the morning.

Q. There was considerable trouble and altercation? A. No, he wanted the property, and he wanted everything, and I couldn't give it to him until we met Mr. Matthes and Elmer, and we made a new contract providing I would get these goods, and I would have tried very hard, if he had behaved like a gentleman.

Court: Do you know if Joyce knew of the existence of the bills of sale to Matthes and Elmer at the time he prepared these papers?

Witness: I don't think he did; I do not think Mr. Joyce did, and I tell you candidly I had forgotten all about it, to be truthful, because I never even thought about them.

Court: Were they mentioned that morning at the Astor House?

Witness: I don't think so. I don't know whether Mr. Powers and I mentioned them, or how; I don't remember about that.

Court: Were they mentioned in the hearing of Mr. Joyce?

Witness: I don't think so. I truly don't think so.

Court: Did Mr. Hazard or Matthes when they learned that you had finally agreed to close the matter with Powers, make any objection to your doing so, on the ground that you didn't own this so-called collateral property, that they owned it now and had bought it from you with this $12,000 note?

Witness: Yes.

Court: Did they make any objection at the Astor House conference?

Witness: No, they did not; Elmer simply told me——

Court: Was that the occasion when he said you were crazy?

Witness: Yes.

Court: Because you were selling so much property for so little money?

Witness: Yes.

Court: But made no reference to the bills of sale?

Witness: No.

Court: Or to the fact that you didn't own this collateral property, having sold it to Elmer and Matthes?

Witness: I guess he was so angry at me he didn't say anything.

Q. Mrs. Hazard, you were there at the Fidelity, then, from about two o'clock in the afternoon until something like two o'clock the next morning; what were you doing during those twelve hours, talking about this $11,400 matter? A. Mr. Powers wanted to buy the property, and he had found fault because I didnt have Elmer and Matthes there to see him, or something like that; I don't know what the quarrel started about.

Q. Then there was a quarrel? A. There wasn't any quarrel; there was a discussion as to the buying of the note and the buying of the property.

Q. A nice peaceful time? A. No, I wouldn't say so, not a peaceful time, but it wasn't any quarrel. I don't think that would be a fair thing to say; we didn't do any joking or anything like that.

Q. The next time you saw Mr. and Mrs. Powers was that evening at your house? A. On the evening of the fourteenth.

Q. You broke up at two o'clock in the morning of the fourteenth, and saw them again on that same evening? A. Yes.

Q. What did they come to your house for? A. I don't know, sir.

Q. Didn't they say that they came to get keys for the property? A. Never said a word about a key; the key was never mentioned; there wasn't anything mentioned at all; they were coming down to stay at their little home, and they were coming down to stay all night, but I told them we hadn't any bed clothes, the house wasn't opened, and Mrs. White had already gone with the baby over to Long Branch and Elmer Hazard and his wife were still living there, and they were all packed ready to leave, and Elmer Hazard's clothes were all packed.

Q. They were there how long? A. About an hour and a half; not a word was said that night about anything—about any key.

Q. Nothing was said at all that night about possession of the property—about the possession of the factory or keys or anything? A. Not a word.

Q. Nothing was said about any lease to Elmer Hazard? A. Not a word.

Q. You didn't say anything? A. No, sir.

Q. Elmer didn't say it? A. No, sir, I never mentioned a lease to Elmer Hazard.

Q. And the word "lease" wasn't mentioned at all? A. No, sir.

Q. Nothing at all was said about Elmer continuing in possession of the property? A. No, sir, not a word.

Q. And it was all general conversation? A. That was all, Pearl played and sang—not that

loud barroom song that Mr. Powers gives it as going on.

Q. But she did sing something? A. Yes, and was very agreeable about it.

Q. And everything was harmony? A. Yes, sir, perfectly so, and I didn't have my head down on any table at all.

Q. The next morning, the first thing you knew was that someone told you that Mr. Powers had gone into the factory? A. Yes.

Q. And taken possession of it? A. Yes.

Q. You were very much surprised? A. I was, because we were to meet the next morning at ten o'clock.

Q. Then you were surprised because he had taken possession in advance of the meeting at ten o'clock? A. No, what was his idea of going in in that manner?

Q. Then he could have gone in and taken possession without waiting for the sixteenth? A. Yes, the same night if he wanted to.

Q. Then why do you think he went in at that time? A. I don't know and no one is able to answer that; that is what I would like to know.

Q. You cannot answer it? A. No, I would like to know why it was.

Q. You said you were surprised he went in, in view of the fact there was to be a meeting on the sixteenth? A. No, they were to discuss then about getting these——

Q. Then he was entitled to go into that place that very morning the contract was signed at the Astor House? A. Yes, he was entitled to go in that building then.

Examination by the Court:

Q. Then why didn't he? A. I don't know.

Q. Did you ever mention to him the fact that he had a right to go into possession before the matter was closed at the Fidelity? A. No, but he had a perfect right to go there any how; he was entitled to go there any time.

Q. Not keep or go into possession? A. Yes, he was there every day of his life from early morning until late at night.

Q. In the factory? A. Yes.

Q. Then why was it that he had to take violent possession? A. That is what we all want to know. Every member of my family—Mrs. Beadleston would like to know, Elmer Hazard, I would like to know why he took that position.

Q. Why was he arrested for having done so? A. Because he took goods that did not belong to him.

Q. Did he remove them from the place or just simply go in and take possession? A. He took possession.

Q. He didn't take them out? A. I don't know; I wasn't there; I have never gotten my horse and my carriage or anything.

Q. I am a stranger to this whole transaction. It doesn't seem credible to me that a man who has a right legally and otherwise, as you say, to take possession of the property, that he does so at a peculiar hour of the morning, at the point of a revolver, without anyone offering objection to his taking possession, and is subsequently arrest-

ed for having taken possession; I cannot reconcile that. There is a break somewhere in the story that is not supplied to me, unless I believe their story. A. Unless the next witnesses show you, I cannot; I do not know.

Q. A part of that is brought home to you by the statement that you said that you had given a lease; you changed your mind and were not going to have—— A. My daughter has lied, and I will disown her forever for telling the lie that she told about these labels; I will never in my life forgive that young lady for doing such a wicked thing as that.

Court: You can strike it out. There is no reason for having that on the record; I don't believe it.

Further cross-examination by Mr. Rosenberg:

Q. I show you a paper which has been marked in this case Exhibit D 8. A. I don't know anything about that.

Q. Will you please look at it; look at the paper; have you ever seen that before? A. I have only in Mr. Joyce's office.

Q. You did see it in Mr. Joyce's office? A. Yes, I never knew anything about it.

Q. When? A. The day that Mr. Joyce gave it to Mr. Powers.

Q. When was that? The day the papers were signed? A. I don't know.

Q. The day of the conference at the Astor House? A. I don't know even that; I know it

was given to Mr. Powers in Mr. Joyce's office.

Q. What did you understand it to be? A. Whatever the goods were that were given to me for collateral security.

Q. You understood it to be a list of those goods? A. Yes, but I never read it.

Q. And it was handed by Mr. Joyce to Mr. Powers? A. Yes.

Q. How did it get to Mr. Joyce? A. I don't know.

Q. Did he ever explain to you how he got possession of it? A. I don't think I have even talked about it, and I am very sorry to be so ignorant, but I cannot help it; I don't now how Mr. Joyce came in possession of it.

Q. Do you know why Mr. Joyce gave it to Mr. Powers? A. Because they were the goods that Mr. Powers was to have.

Q. Do you know who made it up? A. Yes, Elmer Hazard made it up.

Court: I have never seen that paper.

Q. You said in your direct testimony that you had given Mr. Powers notes for the payments that he had made, which are stated in this Exhibit D 9? A. That I had given him notes?

Q. That you had given him notes for some of those things. A. I only gave him a note for—for the money he had advanced for the jewelry, and he had receipts for everything. I simply misused the word "notes" for "receipts."

Q. But you said you did give him a note for the amount which he had paid to redeem your

jewelry? A. Yes, because Mr. Bowden Hazard drew it up.

Q. And you signed it? A. Yes.

Q. And delivered it to Mr. Powers? A. Yes.

Q. And that is the only one you gave? A. I don't remember that; he may have others; I don't know; but I misused the word "note" for "receipt."

Court: I will ask counsel for defendant, you don't claim your trade name, trade marks and labels under Exhibit D 8?

Mr. Rosenberg: No.

Court: This is in a sense eliminated from this class, and put it in the $60,000 contract.

Mr. Smock: Yes. If Mr. Powers has any notes made by Mrs. Hazard, representing these various disbursements which were supposed to have been deducted from the purchase money, we are perfectly willing to turn them over to him; they have never been demanded, and they were taken at the time to secure Mr. Powers pending the completion of this transaction.

Court: I think you made a similar offer about the judgments that had been assigned.

Mr. Smock: Exactly, and I wish also to have it clear upon the record that they were taken and received partly to secure him also for the Eisemann judgment, which up to this day has never been paid by Mrs. Hazard.

Re-direct examination by Mr. Sexton:

Q. On cross-examination, Mrs. Hazard, you replied to a question propounded by Mr. Rosenberg as to what property you intended to sell by the $60,000 contract, you stated in substance, your land, dwelling, factory and buildings, and you would sell the whole business; what did you mean by the "whole business"? A. I meant all my personal property, everything that was mine, with the exception of the things that I made exception to—my horses and carriages which were in the stable, and my furniture and everything else, except these goods which were given to me as collateral security; everything else I sold Mr. Powers.

Q. Do you mean your own goods, your own personal property? A. Yes, sir.

Q. Did you agree or attempt to sell any personal property on that place that did not belong to you? A. I don't know; I don't know what it was; I don't know; I might have.

Q. Was it your idea to sell Mr. Powers any property that was not yours? A. Oh, no, I don't want to sell anything that wasn't mine; I wanted to sell only the things that were mine. I couldn't be in a position like that.

Examination by the Court:

Q. Were you the executrix under Mr. Hazard's will? A. Yes.

Q. Did you ever settle up the estate? A. Yes.

Q. When you administered the estate of Mr. Hazard, did you make an inventory of Mr. Hazard's factory and property? A. I think so; I think Mr. Crater attended to everything for me.

Q. Do you include therein and place any value upon the trade name or Hazard or Hazard Shrewsbury Ketchup or other articles that he was manufacturing? A. No, sir, never.

Q. Didn't you consider that they had any value? A. Not to me; I had nothing to do with them.

Q. I am talking now as administrator of the estate, as Mr. Hazard's executrix? A. No, sir.

Q. Did you consider that these barrels of labels had any value? A. They were not mine.

Q. They were your husband's estate; were they not part of it? A. They belonged to E. C. Hazard & Company; Mr. Green was still living and Mr. Stern.

Q. That partnership was terminated by Mr. Hazard's death? A. Sometime.

Q. Actually it was made out to have an adjustment of his interest? A. But those were never settled.

Q. Was there never any mention of any labels? A. Judge Nevius attended to everything.

Q. Didn't you consider that these various brands of food products that Mr. Hazard had been manufacturing and marketing, that the names were worth something? A. Mr. Green is still alive; the old business has never been wound up.

Q. Did you ever take it up with him and see about disposing of them? A. No.

Q. And your firm's business has never been wound up? A. I don't think so.

Q. You would know? A. I don't think it has.

Q. You have never been discharged and never made a final settlement as executrix, have you? A. I think so.

Q. Do you know anything about it, Mrs. Hazard, or have you left it to some attorney to attend to? A. I had Judge Nevius to attend to that.

Q. Have you had anyone else to look after it? A. No, we haven't had anything since Mr. Hazard died.

Q. If I believe the testimony of some of some of these witnesses you have an asset here worth $75,000 or $100,000, that belongs to someone, in the way of these trade names and trade marks. A. I am glad to hear it; we need the money badly.

Q. But you haven't made any effort to realize on it? A. I would like to have you find some one that will pay it; I will be only delighted.

Q. There seems to be quite some controversy here over the value of it. A. I would like to find some one that would pay it.

Q. We all know that these things do have their value. Take the Heinz products, 57 varieties, would certainly be worth something today to anybody that could afford to put them on the market, and the Diamond match, and Mr. Hazard's ketchup. A. When we sold the business when

Mr. Hazard died, it would be worth something, but they tried to start on with the business, and the trade names and brands were left in, and they formed a new company and they failed again.

Q. You heard two of the men testify yesterday, who were competent to express an opinion, that even today, after all the misfortunes or vicissitudes that the concern has been through, those trade names and trade marks are worth at least $20,000 today. A. Do you think any one of those men would give $5,000 for them?

Q. One of them intimated very strongly that he would. A. It would be nice to have his money.

Further re-direct examination by Mr. Sexton:

Q. Up until the time that the answer was filed in this foreclosure proceeding, had any demand ever been made upon you for the trade marks or labels by Mr. Powers?

Mr. Rosenberg: I object as immaterial.
Court: I will allow it.

A. No, sir; he never said anything about trade names or trade marks to me in his life.

Q. Did you ever hear it before the answer was filed in this suit? A. No, sir.

Q. (By the Court) Did you ever see that circular letter that has been put in evidence, in which it was stated in effect that Mr. Powers had no right to use the name of Hazard, or

Hazard Shrewsbury, I think it was, or Shrewsbury Ketchup; did you ever see that circular? A. No, I had nothing to do with it.

Q. With its preparation or circulation? A. No, sir, nothing; nothing of the kind; I know nothing about it, what anyone else did.

Mr. Smock: Do you know who did?
Witness: No, sir, I do not.

Re-cross examination by Mr. Smock:

Q. Who do you say were present the night of the fourteenth of March, 1913, at Shrewsbury? A. Elmer Hazard, myself, Mr. Powers, Mrs. Powers, and Bowden Hazard and Mrs. Elmer Hazard.

Q. Are you very positive that Bowden Hazard was there? A. Positive; absolutely positive.

Q. There cannot be any doubt about it? A. I know it.

Q. (By the Court) He is one of your sons? A. Yes.

Q. You testified in a previous cause at Long Branch, in which you were asked this question, at page 22, "Who was present?" and you answered, "Dr. Hazard and his wife, Mrs. Powers and her husband, and myself, and we sat around the table and we had a very pleasant evening and everything was very agreeable, and he was to meet there the next day at eleven o'clock and receive the keys to the factory and talk about business"; do you remember making that answer? A. I don't remember, but if I made it——

Q. Which is true? A. If it is so, it must be true.

Q. Which is true, what you said at Long Branch or what you now say? A. If I left Mr. Bowden out, I can give you my word that he was there; I can give you my positive word on my honor that he was there, and that Mr. Powers with his wife went in the buggy and took him——

Q. Would it make any difference to you if Mrs. Bowden Hazard would deny it? A. I don't know what difference it would make.

Q. It wouldn't change your answer at all? A. No, sir, because I know he was there; I absolutely know he was there.

Q. (By the Court) Why are you sure of it; have you anything but your memory? A. Mr. Bowden Hazard came back the next morning to me and told me that Powers had told him on his way home that he didn't like Elmer's attitude last night.

Q. (By the Court) Did he say what there was in Elmer's attitude? A. Except that he looked downhearted and he didn't like his attitude; he sat at the end of the table and he never said anything to Powers. I never said anything to Powers about lease or anything else, and if I never move from this chair, what I tell you is the gospel truth, so help me, God.

Q. (By the Court) Is that all that was said by him to you that impresses upon you that he was present? A. Yes, sir.

Q. How is it that impression wasn't present in your mind at Long Branch, which was about

a year ago? A. I don't think I thought anything about it; did you ask me?

Q. I just call your attention to this same question. A. I don't remember it.

Q. What has taken place that has revived your memory? A. The very fact that he came back and told the next day——

Q. You knew that when you testified at Long Branch.

Court: You must have known it then, if you know it now.

A. I knew that he was there.

Court: He is asking you if you didn't know the same fact a year ago which you say now?

Witness: I may have forgotten it.

Q. You meant that you forgot it when you testified at Long Branch; who called it to your attention since that time? A. No one.

Q. Didn't Bowden Hazard tell you that he was there? A. No, I know he was there.

Q. Since you testified in Long Branch a year ago, has your son reminded you of the fact, "Don't you remember that I was there?" A. Yes, he spoke of it.

Q. Then that is the real reason why you say now that he was present at that meeting? A. But I know that he was there; if I forgot to tell you that, if I forgot to enumerate the people, I may have forgotten; I don't know.

Q. And you wouldn't have thought of his be-

ing present—— A. Except the remark that he made.

Q. —except as Bowden told you? A. Except he made the remark to me, and it left a very lasting impression, that he said that Powers said on the way home that he didn't like Elmer's attitude.

Q. And wasn't that impression made at the time he told you? A. No.

Court: It must have been, or you wouldn't remember it.

Adjourned to tomorrow morning, June 14th, 1918, at 10:30 A. M.

Continuation of testimony in the foregoing cause before Hon. John E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, on Friday, June 14th, 1918, at 10:30 A. M., in the presence of counsel as before.

FLORENCE A. HAZARD, recalled for further

Re-cross examination by Mr. Rosenberg:

Q. When did you first hear that these bills of sale to Matthes had been put on file or on record at Freehold? A. I requested it through Mr. Sexton to have them put on.

Q. You wanted those bills of sale to Matthes put on? A. Yes.

Q. Then they were put on at your request? A. The ywere put on at Mr. Sexton's request.

Q. Made by you? A. We were talking about them, and I said, "What good are these bills of sale to me if they are not on record?"

Q. And so they were directed to be put on by you? A. I knew about it, yes.

Q. At the trial of the last case, you were asked this question (page 55): "Q. And why did you want them recorded? A. Because I wanted to be sure of the goods that I was giving my money for; I was furnishing my money and giving up my money and I wanted something tangible that I would have for myself. They didn't want to record them; Mr. Matthes was not anxious to record them." That is right? A. I know I wanted them recorded.

Q. You testified to that at the trial of the previous case? A. I may have; it is six years since I testified.

Q. It is not six years ago since you testified. A. How long is it?

Court: One year ago.

Q. You were further asked this question: "You wanted something that was tangible for the money that you had given up?" and you answered "Yes, sir." A. I think I said that.

Court: Mr. Sexton says this testimony was taken in 1914.

Mr. Rosenberg: It is three years and a half ago.

Florence A. Hazard—(Recalled)—Re-cross.

Q. You were asked the further question: "So you concluded to have something and you urged Mr. Matthes to record two bills of sale that run from you to him and made him the absolute owner of the property?" A. No, sir, Mr. Sexton, not Mr. Matthes. I made a mistake there if I said that.

Q. "So you concluded to have something and you urged Mr. Matthes to record two bills of sale that run from you to him and made him the absolute owner of the property?" You were asked that, and you answered, "I didn't think he was the absolute owner." That is correct? You were asked that and you answered that way? A. I don't know.

Court: If you don't remember whether you said it, say so.

Q. You were asked the further question: "Well it made him say so?" and you answered, "Well Doctor Hazard and hi mboth." Is that correct? A. That might have been, I don't know.

Y. You were further asked this question (page 56): "And yet in between the 5th of February and the 15th of March you told Mr. Matthes that you wanted those bills of sale recorded so you would have something tangible for your money?" You were asked that question and you answered, "Yes, sir, to be sure I did." Is that correct?

Court: Do you remember whether you answered that way?

Witness: No, sir, I don't remember it.

Q. And the further question: "And that was the way that you was protecting yourself and protecting Mr. Powers?" and you answered, "I did it to protect myself." Is that correct? A. I might have; I don't remember just how I answered it; I really do not.

Court: Does it appear when these bills of sale were recorded?

Mr. Sexton: The 19th of February, 1913, both on the same date, referring to C 4 and C 5.

Q. (By Mr. Sexton) You made reference yesterday in your testimony to Mr. Stern; is he living? A. No, sir.

Q. (By Mr. Sexton) When did he die, if you recall; about what year? A. About 1910.

Further cross-examination by Mr. Smock:

Q. Mrs. Hazard, did you previously to the meeting at the Astor House talk with your son Elmer about your negotiations or conversations with Mr. Powers about this property? A. I told him I was going to sell the property that day, the first time I absolutely told him that I was going to sell the property. I hadn't been very good friends with Elmer for several weeks, and that was the first day that I told him to meet me there, and told him that day when he went out; as Mrs. Powers said, when he went out he hung his head and went out brokenhearted when he heard the news.

Florence A. Hazard—(Recalled)—Re-cross.

Q. Was that the conversation you had with him about your contemplated sale with Mr. Powers? A. That was the first time that I decided, that day.

Q. Didn't you advise with Elmer about the sale of the property, previous? A. I think Dr. Hazard knew that Mr. Powers was looking at the property.

Q. (By the Court) Did you talk with him? A. No.

Q. Didn't you talk with your son Elmer previous to this Astor House meeting with respect to your negotiations and conversations with Mr. Powers respecting this sale? A. No, not particularly.

Q. (By the Court) Did you consult him? A. Oh, no, I didn't consult him at all.

Q. You say that he knew it; how did he know? A. Only through Mr. Powers, and through general conversation with the rest of the family, but not through me.

Q. Were those conversations in your presence with the rest of the family? A. I don't remember that; I don't think they were.

Q. Elmer knew you were trying to borrow some money? A. Oh, yes.

Q. And he knew about your transaction with Bedell? A. He knew about it, but he didn't know how far it had gone; he knew something about it.

Q. And yet you mean to say that he knew nothing whatever about your negotiations with Powers? A. Only in a general way; that was be-

fore the day that it was absolutely decided that I was going to sell the property.

Q. But he knew that you were talking with him about it and trying to make some arrangement? A. I don't think he knew exactly, from our conversation, very much about what we were doing; Mr. Powers and I and my daughter were working by ourselves.

Q. He knew that Mr. Powers was trying to buy it from you? A. He might have.

Mr. Sexton: I found among my files last night the missing bill we have been talking about, filed in the Court of Chancery.

(Copy of bill handed to counsel for defendant.)

ELMER HAZARD, recalled in rebuttal for complainant.

Direct examination by Mr. Sexton:

Q. Mr. Hazard, you are the son of Florence A. Hazard? A. I am.

Q. And a brother of Mrs. Powers? A. Yes, sir.

Q. You reside at Shrewsbury? A. I formerly resided at Shrewsbury.

Q. How long did you live there? A. I lived at Shrewsbury from 1883 until on or about 1910 or 1911, somewhere along there, and from 1910 or 1911 until the early part of 1912 I resided in Brooklyn. From the latter part of the sum-

mer of 1912 until March 14, 1913, I resided at Shrewsbury, and from 1913 until the present time I am residing at Long Branch, New Jersey.

Q. You are a physician? A. Yes.

Q. Practising? A. Yes, sir, practising at Long Branch.

Q. Your father, as I understand, died somewhere in 1905? A. February 2, 1905.

Q. Prior to that time were you familiar with the firm of E. C. Hazard & Company? A. Very familiar with it, yes, sir.

Q. You were living at the manor house on that property? A. Yes.

Q. Were you associated with the company? A. I was associated with E. C. Hazard & Company ever since I was a child.

Court: In what capacity?

Witness: From bottle washer at $3 a week to presidency at $10,000 a year.

Q. During your father's lifetime in what capacity were you associated with E. C. Hazard & Company? A. I was employed.

Court: Were you a member of the firm during his lifetime?

Witness: Not during his lifetime, with one exception, that is, in 1904, my father and I conducted a chemical business at Shrewsbury.

Q. In what capacity were you employed by E. C. Hazard & Company during your father's life-

time? A. I filled various positions in the factory at Shrewsbury beginning as a boy in the bottling department, washing bottles and shipping clerk; in fact, I did everything connected with the business of the factory.

Court: The last few years before Mr. Hazard's death what did you do especially?

Witness: I was practically his righthand man in the factory.

Court: And in that capacity what did you do or have to do?

Witness: Supervision over different parts of the factory.

Court: Manufacturing?

Witness: Yes.

Court: And shipment?

Witness: Yes.

Court: Did you have anything to do with the books and accounts?

Witness: No, the books were all kept in New York, I had nothing to do with the books before his death, except what I had to do with them when I would go to New York to the store; I was familiar with the books.

Q. What has been your education, in what line, other than general education? A. My education has been directed along the lines of that of a chemist and as a physician.

Q. Did you perform any work connected with the chemical side of E. C. Hazard & Company? A. I attended to all of it, yes, sir.

Court: Was there any manufacturing chemist employed by the firm at the factory?

Witness: None other than me.

Q. What was your qualification as an analytical chemist or as a chemist?

Court: They don't question it; so why go into it?

Q. What was the nature of the business during your father's lifetime, Mr. Hazard? A. At New York or Shrewsbury?

Q. Of E. C. Hazard & Company at both places. A. The nature of the business was mostly that of a wholesale grocery business.

Q. Where? A. Located in New York City. The business at the time was a large business and fully ninety per cent of the total business was from the wholesale grocery store in New York; the factory business at Shrewsbury was very small and was greatly experimental.

Q. What were the lines carried by the wholesale grocery business in New York?

Mr. Smock: I object as immaterial and irrelevant.

Court: I don't know that it is immaterial. If you are going to insist that the volume of business at the factory was so great and lent great value to the trade mark and trade names, it may be quite material to know whether this percentage

of about 90 and 10, which the Doctor has divided the whole business into, is correct or not. I will receive it.

Mr. Smock: I withdraw the objection.

A. We carried a full line of fancy groceries, imported goods and generally staple goods, such as flour, sugar, molasses, wines, liquors, cigars, clothespins, washboards; in fact, everything, household articles in general; drugs, chemicals, perfumes, toilet extracts, candy, canned goods—probably canned goods represented the large part of the business in the store outside of the liquors and cigars.

Q. And the goods other than those manufactured by E. C. Hazard & Company? A. Yes, Hazard & Company didn't pack two per cent of the canned goods that they sold.

Q. Would that be true of the bottled goods also, such as ketchup? A. We sold Blue Label, Shrewsbury, Heinz and any ketchup anybody would ask for.

Court: Goods generally on the market?
Witness: Yes.

Q. Under what labels or trade marks were the canned goods sold? A. Other than their own?

Q. Were there canned goods sold under other labels than those belonging to Hazard & Company? A. Yes, some were sold under the original labels that they were bought under, and some were bought without labels and labeled by us in New York with the Shrewsbury brand; in fact, the greater number of them were.

Q. You had goods manufactured for you to market and put on your own label? A. We bought good quality canned goods from the factories throughout the country and brought them in and labeled them up.

Q. Were they manufactured at Shrewsbury? A. No.

Q. Was the brand Shrewsbury a registered brand? A. No, sir.

Q. What was it? A. The Shrewsbury brand was first gotten out by my father with the idea of——

Mr. Rosenberg: I object. I also want to know whether that was within his own personal recollection.

Court: You may find it out on cross-examintaion.

Mr. Smock: It is objectionable also if it appears that he didn't know about it.

Court: Then I will strike it out, but I will let him tell now if he knows anything about it.

Mr. Smock: I object further on the ground that the witness must first disclose whether he knows or not.

Court: I am going on the assumption that he is sworn to testify what he knows about it; if you develop on cross examination he doesn't know what he is talking about, I will strike it out.

Mr. Rosenberg: May we ask at this point whether he knows?

Court: You can object. I think you should make your objection and I will rule

on it, and if you find he doesn't know what he is talking about, I will strike it out; otherwise it will stand. He may answer.

A. (continuing) The Shrewsbury brand was gotten out by my father with the idea of—conveying the idea that it represents goods many in Great Britain, England; it was named after Shrewsbury, England. It could not be copyrighted because it was a geographical name.

Mr. Rosenberg: I object to that because now he is testifying to a matter of law.

Court: If it is a matter of law and he knows it, why can't he state it?

Mr. Rosenberg: He is testifying to a conclusion.

Court: If he is, it will be stricken out.

Witness: I am testifying to what I was told by lawyers.

Court: Anything you were told you cannot state. Anything you heard your father state, you can state.

Witness: I am telling you what my father said and his idea. Whether the name Shrewsbury could be registered in Washington was what the firm learned by hiring lawyers.

Mr. Rosenberg: I don't see that it makes it any more evidential.

Court: It shows how it was attached to it by Mr. Hazard, Sr. I will let it stand; I will hear everything, gentlemen, and you can make your objection. I am going to

try to find out anything I can about it.

Witness: And the goods were sold under that label with a better grade of canned goods.

Q. Was it registered? A. It was not registered, no, sir.

Q. Why not? A. Because it was a geographical name and could not be registered.

Q. I show you a bottle and referring to the label thereon, ask you what that is? A. That is the Shrewsbury brand label for the canned goods and fancy grade table goods, the same general coloring and design.

Mr. Sexton: I refer to both labels on the bottles. I will offer the labels in evidence.

(Marked Exhibit P 7.)

Q. What do you find in the center portion of the label? A. That is the coat of arms—Shrewsbury arms of English.

Court: Didn't someone call it the "Earl of Shrewsbury"?

Witness: Yes.

Q. What do you know about the manufacturing or labeling of goods with a foreign coat of arms upon it?

Court: What does he know about this subject generally or about the Hazard?

Q. Directing your attention particularly to the Shrewsbury Hazard label. A. In 1906 when the United States Department of Agriculture passed a ruling that labels bearing a foreign coat of arms could not be used——

Court: That doesn't mean anything.

Q. When were the labels similar to those with the word Shrewsbury and the coat of arms discontinued in their use by Hazard & Company? A. About 1909.

Q. Were they the labels used by your father at the time that he was manufacturing the goods? A. Yes, sir.

Court: This label that has been referred to, marked Exhibit P 7 for identification?

Witness: Yes.

Court: And were they the only kind of labels?

Witness: Oh, no.

Court: They were some of the labels?

Witness: Yes.

Court: When I say "kind," I mean kind both in appearance, color and language.

Witness: That was the Shrewsbury label that was used on all goods of the Shrewsbury grade that had the large sale.

Q. Who was connected with the firm of E. C. Hazard & Company at the time of your father's death? A. At the time of my father's death the New York and Shrewsbury business was generally owned by Frank Green and my father, and Mr.

Stern having a peculiar interest in the business; that peculiar interest was that he was to receive a guarantee of a certain amount per year, and if there was a profit, he was to share in that profit, but he represented no capital interest whatever. The capital interest of my father was about 84 per cent of the business, and the balance was Mr. Green's interest.

Q. What is Mr. Green's full name? A. Frank Green.

Q. Is he living? A. He is pretty near dead; he must be a man of eighty-five years of age. The last I heard from him he was incapacitated and in very bad shape. And the profits of the business, if any, were shared by Edward C. Hazard and Frank Green on a basis of fifty per centum each.

Court: Subject to the allowance to Mr. Stern that you spoke of?

Witness: Yes, a guarantee of $5,000 a year.

Q. After your father's death, the partnership dissolved by the death of your father and then what was done in reference to the continuation of the firm of E. C. Hazard & Company, if anything? A. In May, 1905, a new co-partnership was formed by Frank Green, Elmer C. Hazard, George M. Archer and Theodore Stern.

Court: Elmer C. Hazard being yourself?

Witness: Yes.

Q. What were the respective rights of those persons named in the new co-partnership; what interest did they have? A. Thirty per cent to Elmer C. Hazard, thirty-five per cent to Frank Green, twenty per cent to George M. Archer and fifteen per cent to Theodore Stern.

Q. What had become of the interests of the beneficiaries of Edward Hazard in the firm of E. C. Hazard & Company? A. The interest of Edward C. Hazard in the firm of E. C. Hazard & Company was sold to Elmer C. Hazard.

Examination by the Court:

Q. By whom? A. By the executrix of the estate of Edward C. Hazard.

Q. When was that sale made? A. That sale was made in May, 1905.

Q. Prior to the formation? A. Prior to the formation or simultaneous with the formation of this co-partnership.

Q. And what was sold you? A. The entire interest of Edward C. Hazard.

Q. In the business? A. In the business of E. C. Hazard & Company.

Q. And how was that sale made, by a bill of sale; anything to evidence it? A. It was sold on a note or a series of notes.

Q. Did Mrs. Hazard as executrix issue any paper to you, showing the sale of that interest to you? A. I presume so.

Q. Have you such a paper? A. I have not, except such papers as Mr. Sexton has.

Q. Have you looked for papers in reference to that transaction? A. Yes.

about $50,000 and a participating interest of how much?

Witness: There is a little misunderstanding as to Mr. Archer's $50,000; he did not have the $50,000, while he was credited up with $50,000 as capital; $21,000 of it was represented by a note.

Court: Which was not paid?

Witness: No, the note was not paid and we couldn't use the note.

Court: But he contributed the balance of his share?

Witness: Yes, he contributed the balance in cash.

Q. When you arrived at the value which you paid for the interest of Edward C. Hazard in E. C. Hazard & Company, was any value placed upon the trade mark Shrewsbury? A. None whatever.

Q. Why not? A. Because we didn't feel that they had any money value, except to a going business.

Court: Was the trade mark included in the sale?

Witness: All his interest was included in the sale.

Q. Anything said about the good will of the old firm? A. I think the contracts specify good will, right, title and interest.

Q. Who prepared the contract? A. I think Henry M. Nevius drew the contracts—between Henry M. Nevius and a lawyer named Frederick Beltz of New York City, in William Street.

Court: Who represented you, anyone beside yourself?

Witness: Nevius.

Court: He represented your mother?

Witness: He represented me also, and Mr. Beltz represented me for the business.

Q. You were about to say that the partnership went into bankruptcy. A. The partnership was forced into involuntary bankruptcy in August, 1907.

Q. Was the property sold in the bankruptcy proceeding? A. No, a composition was effected at sixty cents on the dollar with the creditors.

Q. How was that composition effected? A. That was effected by a majority in number and amount of the creditors agreeing to accept sixty per cent, payable fifteen per cent in cash and ten per cent in installments, in five payments on notes running for a period of months which I don't recall.

Court: Was the composition approved by the court?

Witness: It was approved by the court and an arrangement was made whereby the business in New York was incorporated under the laws of the State of New York, under the name of E. C. Hazard & Company, Inc. The business at Shrewsbury was incorporated under the laws of the State of New Jersey as the Hazard Shrewsbury Company. The capital stock of both corporations were pledged with a trustee

as collateral security for the fulfilment of the payment of the composition to the creditors, on the agreement that at the expiration of the payments to the creditors the stock was to be returned to Elmer C. Hazard, Frank Green, George M. Archer and Theodore Stern.

Q. Were these four men the stockholders of E. C. Hazard & Company? A. We four men were the common stockholders of each corporation.

Q. Did you pay these notes? A. At a later date, the Hazard & Company, Hazard Manufacturing Company, the charter was amended and the name changed to E. C. Hazard & Company, and the New York business was merged with the new Jersey business under one head, and we continued to conduct a semi-grocery business at the old stand at Hudson and North Moore street.

Mr. Rosenberg: What is semi-grocery?

Witness: We eliminated all heavy staples and confined ourselves to liquors, cigars and imported goods, and the business removed then in New York to the corner of Hudson and Franklin street.

Court: Was the New York corporation dissolved?

Witness: Yes.

Q. Up until that time had there been a jobbing business conducted? A. Always.

Q. Was that continued or discontinued? A. It was continued.

Q. How were the notes paid, if at all? A. I started to explain that. Then after this corporation, the single New Jersey corporation, known as the E. C. Hazard & Company, was formed, I went to my personal creditors, Florence A. Hazard, Bowden Hazard and every other one of the heirs of Edward C. Hazard, to whom I was indebted, and paid these notes by giving capital stock of E. C. Hazard & Company for them, and being released from my obligation.

Q. That is, these notes? A. These notes.

Q. Did you give them capital stock in the same proportion? A. I don't recall now what the proportion was.

Q. So that at that time there were the gentlemen named by you, Mr. Green, Mr. Stern, Mr. Archer and yourself; when did Mr. Bedleson and Mr. Adams come in? A. They came in on or about that time as stockholders; they each put in $20,000—Mr. Samuel Adams $20,000 and Mr. Bedleson $20,000, and received stock in the corporation for their money.

Q. Was there an inventory made of the goods at the time, of the assets of E. C. Hazard & Company, at the time of the bankruptcy proceedings? A. Yes, sir.

Q. Was there any value fixed upon the trade mark Shrewsbury at that time? A. Not one cent.

Q. Or any other trade mark or trade name? A. No, sir.

Mr. Smock: The inventory would be the best evidence. He says an inventory was made.

Court: Unless it was an inventory and appraisal also, the inventory would just recite the articles without any value.

Was there an appraisal?

Witness: There was an appraisal of the value of the bankrupt estate and audited by De Delvitte, Phlende, Griffiths & Co., Wall street, New York; he made a report to the receiver as to the value of the business—to the receiver of the company.

Q. Was there an appraisal placed upon the labels and trade marks? A. No, sir.

Q. Why not, if you know? A. The receiver said he didn't think they were worth anything.

Q. You have referred to the sale of liquors and cigars; was that an extensive business? A. Very.

Q. During your father's limetime how extensively was that carried on? A. The business during my father's lifetime and after his lifetime fluctuated as to sales; the sales of the co-partnership of E. C. Hazard & Company sometimes ran two, three and maybe more millions of dollars a year, of which the factory sales would run between sixty thousand dollars a year and $127,000, which I think was the largest business it ever did, and all the balance of the sales were from the New York house.

Court: Representing other goods than those manufactured by Hazard & Company?

Witness: Yes, and some made by Hazard & Company in New York.

Court: What did they make in New York?

Witness: They bottled Bass' Ale and they made celery salt and free running salt, and they bottled liquid lye and olives and spices, general grocery sundries, oxalic acid and laudunum.

Q. Then the manufacturing end of the business wasn't confined to Shrewsbury? A. No.

Q. Ammonia? A. Yes, we made ammonia, both in New York and Shrewsbury.

Q. How much manufacturing wsa done at New York, about what percentage, if you know? A. I cannot state what the percentage of manufactured stuff made in New York was as compared with Shrewsbury; I can only take the business as a whole and know what the factory did, because the books of the factory sales were kept separate from the New York sales. The sales from the factory would average and run between $60,000 a year as a minimum up to $127,000 a year as a maximum, out of total gross sales of about two million, three million and sometimes nearly four million per annum.

Court: But $127,000 would be the maximum represented by the Shrewsbury?

Witness: Yes. I don't think there was but one year, and that was back in 1888 or 1889, that it was anything like that.

Court: In 1904 can you tell us, or 1905, or just before Mr. Hazard's death what was the general volume of the busi-

ness was and what the Shrewsbury trade was, approximately?

Witness: Approximately between $70,000 and $85,000.

Q. For Shrewsbury? A. That is for the sale of all the goods from the Shrewsbury factory.

Q. Cigars were one of the products dealt in? A. Yes, sir, very largely.

Q. Different brands of cigars? A. Yes; I think we had a couple of hundred cigar brands.

Court: Domestic and imported both?

Witness: Just domestic; we didn't handle imported cigars.

Q. What became of the good will of the cigar business? A. We gave it away to Mr. Stern.

Q. Did you have your own brands and labels? A. Yes, we only sold our own brands of cigars.

Q. You manufactured none? A. No.

Q. But you distributed under brands selected by yourself? A. Yes, sir, mostly; we had the agency for some cigars formerly, like the Liederkranz, Cabinet and The Girl from Paris, which were advertised by the manufacturers; we were simply allowed a percentage for handling the goods, but our own cigar brands represented the largest part of the business.

Q. And there were brands of the names you had selected yourself? A. Yes.

Q. Was any value fixed upon these brands at the time they were given to Mr. Stern? A. Absolutely none.

Q. Did you have brands of liquors? A. Yes.

Q. Brands selected by E. C. Hazard & Company? A. Yes.

Q. What became of the good will in the liquors? A. The labels and the brands were given to Smith & Darling, wholesale liquor dealers in New York, in 1910, I think, on Hudson street.

Q. Any value fixed upon that? A. No.

Court: Any consideration paid for them?

Witness: Not a cent.

Court: Did you make any effort to sell either the brand of cigars or liquors?

Witness: I didn't, no, sir.

Court: Do you know if any effort was made to see if they had any market value?

Witness: Not to my knowledge.

Q. What was the transaction with Smith & Darling? A. That they were to buy our stock of liquors we had on hand and we would give them the trade marks, labels, free, and they took them and they paid us about what the goods cost, or a little less, for the stock on hand.

Q. Was that so with the cigars? A. Yes, sir, they were turned over to Mr. Stern, who resigned—I don't know that he resigned, but we discontinued selling the cigars; and after the fire in Hudson street we moved up to the little quarters, up in 74 Grove street, and Mr. Stern made an offer to take the cigars off our hands at inventory prices, if we would consent to give him the brands and the good will and right, title and interest in it, and we agreed to that, and did so.

Q. When did the fire occur at Hudson street? A. As near as I can remember, it was on or about the seventh of January, 1910.

Q. Was it a large building in Hudson street? A. A very large building.

Q. Will you describe it? A. It was a six story building with two cellars; one building covering the entire block between Leonard and Franklin street, on Hudson street, and one-half of the building was occupied by Sir Thomas J. Lipton, the sea merchant, that is, the Leonard street corner, and the Franklin street corner E. C. Hazard & Company, and in the rear of us was Crandell & Godley. I should say approximately the building was 50x100 we occupied.

Q. When the amount was fixed for which you gave the notes and purchased the interests of Mrs. Hazard, your mother, and Bowden, was the New York stock taken into consideration? A. Everything was taken into consideration.

Q. And the Hudson street store was then in existence? A. Yes, and the Grove street store was used as a factory for the making of liquid lye and packing of cider and bottling of ale we had India Pale Ale and Quail and Knickerbocker Ale.

Q. Was the Hudson street store stocked at the time that the sale was made by Mrs. Hazard and Bowden Hazard, Mrs. Hazard personally and as trustee? A. That was the building then at Hudson street and North Moore street; that was the building that E. C. Hazard & Company had built for them by Mr. John Castree.

Q. Are there two buildings, then, on Hudson street? A. The building on Hudson street was the building that E. C. Hazard & Company moved into about twenty-five years ago.

Q. Is that the one that was destroyed by fire? A. No, sir, we moved out of that building after the bankruptcy proceedings because it was too large for us; the rent there was $12,500 a year and we got released on the lease, and it was subsequently turned over to another company.

Court: Then where was the fire?

Witness: The fire was after we had moved from Hudson and North Moore to Hudson and Franklin street.

Court: That is where the fire occurred?

Witness: Yes.

Q. And at the time, April 27, 1905, what building were you in at that time? A. We were in the building Hudson and North Moore street.

Court: That is the one you paid $12,500 for?

Witness: Yes, that was 50x125.

Q. Was that stocked at that time? A. Yes, we had a very large stock in it.

Q. And was that stock taken into consideration when the amount of the notes was fixed? A. The books were closed off and the interest of Edward C. Hazard ascertained after completing inventory of everything contained in the business both at Shrewsbury and in New York.

Q. And that is what you bought? A. Yes.

Q. And paid for in this way? A. Yes.

Q. The other building you say was destroyed by fire? A. Yes, and the company sustained a big loss by it.

Q. Where did the fire start there? A. The fire started in Sir Thomas Lipton's place next door in the basement and burned out the whole block.

Court: What difference does it make?

Q. The corporation of E. C. Hazard & Company of New Jersey then came into existence at what time? A. The merged corporation came into existence actively about 1910, about the time we moved into the place at Hudson and Franklin street.

Q. And that business was continued how long? A. About two years.

Q. When was the building Hudson and Franklin street discontinued—the business? A. It burned out, as I said, January 7, 1910, I think.

Q. And they moved to Grove street? A. Yes; it is a small building, 19 feet front and 25 feet wide in the rear, and I think the building is 90 feet deep, on a 95 foot lot, and we had a cellar and sub-cellar.

Q. Was anywhere near the volume of business done at Grove street, or after you father's death, as before his death? A. No, there was hardly any business done then.

Q. There had been the bankruptcy failure, the fire, and going down to March 13, 1913, was E. C. Hazard & Company, the corporation, do-

ing any business at that time? A. Practically none.

Court: And how long had you suspended business?

Witness: It had been actually going down hill at a rapid space for the preceding two years, until the spring of 1912 it got down to the point where there was no one left in the business, there wasn't any business there for anyone to look after.

Q. What did you do then; did you give up your connection with it? A. I have never given up my connection with it.

Q. Active participation in it? A. Yes.

Q. And did the others also? A. Yes, they had given up long before I did.

Q. Was the corporation doing any business after 1912? A. Not actively, no, sir.

Q. In any form except by being a mere entity? A. That is all.

Q. What was the Little Silver Sauce Company? A. The Little Silver Sauce Company was organized in 1898 by Joseph M. Keene, Edward C. Hazard and Frank Green.

Court: You heard Mrs. Powers describe it?

Witness: I didn't pay any particular attention.

Court: Did she give an accurate description of it? If she did, we don't want to have it repeated.

Witness: I didn't pay particular attention.

Court: She stated that at the suggestion of Mr. Keene, Mr. Hazard had it organized in order to put an inferior grade of goods upon the market under the label of Little Silver rather than the label of Shrewsbury.

Witness: That wasn't the purpose.

Court: What was it?

Witness: It was to get out a ketchup similar to Blue Label Ketchup.

Court: A sweeter ketchup?

Witness: Yes.

Court: She mentioned that also.

Witness: Yes.

Court: Inferior in the sense that Mr. Hazard thought there was nothing equal to Shrewsbury.

Witness: Put it that way, of course.

Q. What became of the corporation Little Silver Sauce Company? A. The corporation Little Silver Sauce Company ran along for a number of years and did a very active business for a while, in fact, sold more ketchup than Shrewsbury.

Court: That was all made at the factory in Shrewsbury?

Witness: Yes.

Court: There was no separate corporation, except on the papers?

Witness: No; it was actually separate; they kept their own books and ran their

own finances and had nothing to do with E. C. Hazard & Company.

Court: Who were "they?"

Witness: They consisted of Joseph M. Keene, Edward C. Hazard, Frank Green, John B. Green and Frank B. Green.

Q. Were there others interested in the Little Silver Sauce Company who were not interested in E. C. Hazard & Company? A. Yes.

Q. Who were they? A. Joseph M. Keene, Frank B. and John B. Green.

Court: Were interested in Little Silver and not in Shrewsbury or E. C. Hazard & Company?

Witness: Yes.

Q. How do you know they kept their own books? A. Because I was familiar with their books and saw them.

Q. What became of those books? A. They were with all the books of Hazard & Company that were in New York.

Q. And were down in Shrewsbury? A. And subsequently sent to Shrewsbury, and there was a carload of books sent to Shrewsbury when we wound up the Grove street place—after the business was wound up.

Q. When you bought the interest of E. C. Hazard & Company did you buy any interest in the Little Silver Sauce Company? A. No, sir.

Examination by the Court:

Q. What became of his interest in that company—Mr. Hazard's interest? A. Mr. Edward C. Hazard's interest in the Little Silver Sauce Company I think was appraised in his estate at something—I don't know just what—they had some money on hand and finally the goods that were on hand originally were cash in bank and labels and show cards and bottles and caps and raw products and boxes.

Q. Was his interest in the Little Silver Sauce Company sold in connection with the settlement of his estate? A. Yes, it was.

Q. To whom, do you know? A. No, I do not.

Q. Do you know what it was sold for, how much? A. No, sir; I know that the money in the Irving National Bank was paid to the Estate of Edward C. Hazard for his interest in the Little Silver Sauce Company.

Q. The money in the Irving Bank to the credit of that corporation? A. Yes; they held a meeting and acquiesced in the distribution of the assets.

Q. You don't recall who bought it? A. No, sir; I know the eventual outcome of it was that Hazard & Company got the capital stock and it finally drifted to me.

Q. The old firm of E. C. Hazard & Company or the corporation? A. The corporation of E. C. Hazard & Company acquired——

Q. How did they get it? A. I cannot tell you how they got it.

Q. Can't you recall it; you know, I suppose,

at the time how you got it? A. I presume I did at that time.

Q. You were one of the active men of E. C. Hazard & Company, corporation or firm, after 1905? A. Yes; I know the capital stock finally drifted to E. C. Hazard & Company. I didn't pay any particular attention as to how it was conducted, but I know there was a time when it didn't pay its taxes, and I took over the stock and paid $10 a year to keep the thing afloat.

Q. Is it still alive? A. As far as I know.

Q. Do you know whether the Governor's proclamation ever dissolved and stopped it from doing business? A. I never heard of it; I don't think it has ever been dissolved as far as I know.

Q. When did you—you or your company or your firm, acquire it? A. I cannot say; I know it was after the death of my father.

Q. You didn't have E. C. Hazard & Company, the consolidated companies, in existence until 1910? That was after you dissolved the New York E. C. Hazard & Company, Inc.? A. This consolidated company wasn't a new company, it was a merger effected by first changing the name of the Hazard Manufacturing Company which had been incorporated in 1908 in New Jersey and dissolving the one in New York, and that was done on or about 1910.

Q. Did you acquire the Little Silver Sauce Company before or after that? A. It is my opinion that it was subsequent to that.

Further direct examination by Mr. Sexton:

Q. What profits, if any, were made by the co-

partnership of E. C. Hazard & Company towards the latter part of the life of E. C. Hazard, if you know? A. My father?

Q. Yes. A. You mean at Shrewsbury, New Jersey, or combined?

Q. Take them up combined first and separate them afterwards. A. The business combined showed some years——

Court: Take 1904 or 1905.

Witness: They practically made no money.

Court: How long had that condition prevailed, for how many years prior to that, if at all?

Witness: The business at Shrewsbury had been conducted at a loss for the past seventeen years, with the exception of one year.

Court: Seventeen years prior to Mr. Hazard's death?

Witness: Yes.

Court: And what year was the exception?

Witness: Seventeen years prior to winding up of the company in 1910.

Court: That would take back to about 1893;from that time to 1910 it was a failure in fact, except in one year?

Witness: It made a net loss every year with the exception of one year, and that was the first year that the Hazard Manufacturing Company was formed.

Court: That would be about 1907 or 1908?

Witness: And that year it made a net profit of $10,000.

Court: Was the failure chargeable to the Shrewsbury part of the business, due to losses on the New York end of the business?

Witness: No, sir; the loss was by reason of the fact that the Shrewsbury goods were so hard to sell, and it had no selling expense, because we simply made goods and sold them through the New York office, on which they got a percentage for handling it, the same as any other wholesale grocer would, and the same amount.

Q. Why were they hard to sell? A. Because we couldn't get the product when we could sell it, and competing brands got in the market.

Q. Was the retail price more than the ordinary price? A. No, the retail price was in line with other goods on the market. Originally in 1883 Shrewsbury was first put on the market, the ketchup, and at that time it was the only thing made at Shrewsbury. And until 1888 it showed a wonderful outlook, in fact, so much so that my father thought he was going to make millions out of it. The factory was destroyed by fire on November 4, 1888; they undertook to build the factory; they lost all their product; they couldn't fill any orders, and from that day right down to 1912 it was a gradual receding every year in sales of the product, until the last two or three years of the business I don't think they sold two thousand cases, and I think back in about 1886 and

1887 they were selling 25,000 cases a year. The last two or three years the business ran I don't believe they sold 2,000 cases.

Q. In the meantime the Blue Label and kindred brands had come up? A. Yes, they were the active brands on the market, and we never rgained control of the ketchup market after the fire in 1888.

Q. After the corporation E. C. Hazard & Company had been formed, at times they had difficulties in paying their creditors? A. They had trouble before my father died.

Q. What trouble did they have before your father died? A. The trouble was with the business; they attempted to do a very large business on a very small capital; during my father's lifetime the capital, I don't think, ever exceeded $250,000, on which they were trying to do sales of upwards of three million dollars a year—two million dollars a year, and in order to do that they had to sell notes on the market to get money to finance the business, and that money that they borrowed ran into hundreds of thousands of dollars. Sometimes they owed $250,000, $300,000 or $400,000 to banks. Some of the banks were in Texas—all over the world.

Q. Give the names of some of the banks. A. I cannot begin to. Practically every bank in the United States loaned Hazard & Company at some time in its history. We don't know because the notes were sold through James H. Benedict & Company, note brokers, on which we paid a commission of one-fourth of one per cent, and the notes were generally sold at five per cent,

and in later years six per cent, and after a while they couldn't be sold at all, and that precipitated a catastrophe in 1907—the panic—and the bad management of the business. When Mr. Archer had the management of it, it was a receding gradual process until the failure came in 1907.

Q. Were these notes outstanding at the time of your father's death? A. I should say so, a couple of hundred thousand dollars.

Q. Were there notes coming due at the time you took charge of it after your father's death? A. Yes, at the rate of $5,000 every day or two.

Q. Did the minutes or the books show the fact that the notes were coming due? A. We didn't have the minutes.

Q. Do the books show that? A. Yes.

Q. And these are all books that were destroyed in the fire after Mr. Powers took possession? A. Presumably.

Q. They were in the factory as far as you know? A. As far as I know they were in the factory.

Q. Do you know whether Little Silver Sauce Company later on lost money? A. No, the Little Silver Sauce Company never lost money.

Q. It simply discontinued? A. It dwindled down—Mr. Keene received a salary as president of the Little Silver Sauce Company, and he had a financial interest in it. Of course, the Little Silver Sauce Company only had invested about three or four thousand dollars capital—that is, money capital—and Mr. Keene contributed to that, along with my father and Frank Green and

the other two Greens, and he sold these goods. He had the selling of them, and he sold a lot of them; they were sold all over the country, to all the big chain stores, and the business was very bright, but we afterwards let it slide back, because we had Hazard & Company's interest at stake and neglected it, and all it had was its labels and bottles and things with its name on.

Q. There were financial difficulties prior to your father's death and they continued on, did they not? A. Yes. The business has always been in financial difficulties for the last twenty years, owing to lack of capital in the business.

Q. Was money loaned by your mother or procured by your mother through her endorsements, by E. C. Hazard & Company? A. Yes.

Court: There isn't any dispute about the fact that she became liable for about $12,000.

Witness: She became liable for more than that.

Court: All that is involved is $11,200.

Witness: I have got $15,000 to pay myself yet.

Q. At that time was security given to Mrs. Hazard by E. C. Hazard & Company? A. Yes, sir, at different times.

Court: She endorsed various notes at different times?

Witness: Yes, covering a period of a

couple of years, running anywhere from $500 to $2500, and at each time, or in fact on some of the notes that she became guarantor on, she was given collateral security by the directors of E. C. Hazard & Company at a meeting.

Court: What form did that collateral take? Was any paper executed showing that she held anything?

Witness: Yes.

Court: What was it?

Witness: There were papers executed which simply said in general that this assignment is made as collateral security to Florence A. Hazard in payment of her liability in case she is called upon to meet the endorsement on these notes; and in substance it was an exact copy of the collateral security contracts as attached to notes by the National Nassau Bank and the Irving Bank. We copied that form.

Court: Who made the copies?

Witness: The bookkeepers, I presume.

Court: Accompanying the note was there any statement referring to the property to which it referred?

Witness: These collateral agreements were drawn up and I as president of the corporation——

Court: In addition to giving a mere general form of collateral note, did you have attached to it, showing the property which was assigned as collateral, a list of the goods?

Witness: No, because the note was used in the bank by us.

Court: It wasn't a collateral note?

Witness: No, it was a collateral contract securing a note that was being issued at that time, and drawn simultaneously with the execution of the endorsement of the note, by Florence A. Hazard.

Court: As long as it was not on the note, or the note itself was an ordinary promissory note and not a collateral form, then the agreement that accompanied it—or given by your company to Mrs. Hazard at the time she endorsed—did that have attached or embodied in it a list of the property assigned to her as collateral?

Witness: Yes, that was drawn up.

Court: Did it state so many thousand cases of this and that?

Witness: It did exactly; sometimes there would be twenty items on one note, and pending on the value of the property that was being hypothecated.

Court: For the amount of her liability?

Witness: Yes.

Q. Did anyone else beside Mrs. Hazard loan money to E. C. Hazard & Company and receive collateral security? A. Yes.

Q. Did Mr. Bedleson loan any money? A. Yes, he loaned money, too; he loaned money to E. C. Hazard & Company and received collateral security.

Q. In the same way? A. Yes.

Q. Were the notes paid by Hazard & Company? A. Mr. Bedleson advanced cash to E. C. Hazard & Company and accepted their collateral note which was never paid to Mr. Bedleson, and he didn't realize on the collateral.

Q. What became of the collateral? A. I don't know.

Court: Was it sold?

Witness: No, I think it was burned up.

Q. Was it in the factory at the time Mr. Powers took possession of it? A. As far as I know.

Q. Was it ever taken out by Mr. Bedleson? A. Not to my knowledge. I had collateral security myself.

Court: For money you had loaned or liability you had assumed?

Witness: Yes.

Q. Did Mr. Adams loan any money to E. C. Hazard & Company? A. Yes, Mr. Adams also loaned money to E. C. Hazard & Company and received collateral security, and we defaulted on the note, I think it was $5,000, and he executed his right under the collateral assignment and took his goods.

Court: That was in addition to the $20,000 you say he invested in stock?

Witness: Yes.

Court: These loans made by Mr. Bedleson was in addition to his $20,000 investment in the stock?

Witness: Yes.

Q. Whom were Adam's goods shipped to? A. They were sent from Shrewsbury to the Adams Flanagan Company, which he was operating in the Bronx with Mr. Flanagan; there were various people at different times made loans to the company in that way.

Q. There is a paper here marked Exhibit D 8, so-called inventory; look at that and tell me if that is one of the lists that was made out in connection with the collateral assignment or note? A. My opinion is that this is a list representing a partial amount of the total collateral given Florence A. Hazard by me at her request at a certain date, which I do not recall, as to the goods that she held as collateral security; as I recall it, she told me that she wanted to know what the stuff was——

Mr. Smock: I object to that.

A. —that she held as collateral, and whatever that date was I made up the list from the records as to what she held.

Q. You say this is only a partial list? A. Yes, because I know there are other things on the bill of sale that she sold to Frank T. Matthes that are not on this list.

Q. And which to your knowledge were included in her collateral? A. Yes.

Q. The papers also in reference to the collateral which Mrs. Hazard got, they were in the factory and destroyed in the fire? A. As far as I know.

Q. You haven't got them? A. No, sir.

Q. Have you looked over the list contained in the bills of sale, marked Exhibits C 4 and C 5? A. I have looked them over many times—yes.

Q. Do you know that Mrs. Hazard held goods from E. C. Hazard & Company which she originally got as collateral security? A. Yes, sir.

Court: She held the goods described therein.

Q. Described in the contract in the bills of sale, marked C 4 and C 5, do you know that they were her goods? A. These bills of sale represent the goods which passed to Florence A. Hazard in total for indebtedness owing to Florence A. Hazard.

Court: Passed to her as collateral?

Witness: Originally collateral.

Court: Which she held as collateral?

Witness: Which she originally held.

Court: And because of default in the payment of that paper, she took possession of them; is that what you mean?

Witness: Yes, and I think of course it included costs and different things and interest and so on.

Court: What was there to evidence the

fact that Mrs. Hazard did have all the goods enumerated herein? These lists that accompanied the collateral agreements?

Witness: Yes, there were a number of them; I should say probably thirteen, fourteen or fifteen.

Court: Who took possession of them, Mrs. Hazard, or were they left in the company's safe?

Witness: They were left with me; I had possession of them.

Q. Were they in the company's safe? A. I don't know that.

Q. Were there books in the company's safe? A. Yes.

Q. And Mr. Powers obtained possession of those? A. Yes.

Q. How did he obtain possession? A. He drilled the safe open and got the books out.

Q. Did you see him do it? A. No.

Mr. Smock: I move to strike it out.

Court: Strike it out.

Q. Did you hear Mr. Powers testify in the Little Silver Sauce case? A. Yes.

Q. Did you hear the admissions of counsel in that case of Hazard & Co. vs. Powers? A. Yes.

Q. Did you hear it admitted that Mr. Powers had caused the safe to be drilled?

Mr. Rosenberg: I object; Mr. Powers wasn't cross-examined on that.

Court: Suppose it is true; that doesn't establish anything before me; it may have been admitted for the purpose of that case only; you can easily prove it; if you have got your record here, you can put it in in proper shape.

Mr. Sexton: Will you admit it in this case?

Mr. Smock: We will let you know at recess.

Mr. Sexton: I will withdraw the question.

Q. Mr. Hazard, you were at the Astor House, were you not? A. Yes.

Q. What was the occasion of your being there? A. On the day prior to the meeting at the Astor House I was a witness in New York City in an action brought by Frederick F. Eisemann against Florence A. Hazard; the jury retired for debate at a late hour, and the judge left word that a sealed decision be rendered and he would give his decision to be read in the morning. Prior to that time I had made an engagement with Mr. Matthes when he was at Shrewsbury, to meet him on this date at the Fulton street subway entrance. My mother told me that night in leaving the court that she wanted me to meet her the next morning to talk about this Eisemann matter, and find out how the decision was going to be, and the Astor House was the selected spot. I came to New York in the morning; I met Mr. Matthes at the Fulton Street Subway, at the appointed place,

and I suggested to Mr. Matthes that I had an engagement with my mother at the Astor House and that he walk up.

Q. This is the downtown Astor House? A. Yes, Broadway and Vesey street; I went to the Astor House in the morning and Mr. Matthes was with me, and met my mother, and I don't think when I first arrived there she had received the decision; she was awaiting a telephone from Mr. Gray, her attorney, and I went upstairs in the ladies parlor, and my mother stood in the doorway—the lowest doorway at the end of the ladies parlor, on the Vesey street side, and she said to me, "Well, I am going to sell my place today," and I said, "To whom?" and she said, "To Harry Powers."

Mr. Smock: If this conversation took place without the presence of Mr. and Mrs. Powers, I object to it.

Court: It cannot be binding on them; it may have some significance and I will hear it; they cannot be bound by what was said in their absence.

A. (continuing) Mr. Matthes had nothing in particular to say; he simply said he was glad of it, and about two minutes after that I saw Mrs. Powers coming down the hall, and she came down, and probably five minutes later Mr. Powers came in, and they talked about selling the place at Shrewsbury. Mr. Powers wanted to buy the property and said he was going to take it, and I said to my mother, or Matthes

did—I know either one or the other spoke to her about having a lawyer there, and Mr. Powers suggested that she didn't need a lawyer, and I told her that she certainly ought to have an attorney there, and I think in a little while Mr. Joyce came in and we talked in one corner of the room and a couple would run down in the other corner and talk, and one would be on the sofa in one room in the lower end of the parlor, and someone would be over in the other end of the parlor; there were different talkings going on in different parts of the room at different times.

Q. What did you hear Mr. Powers say in reference to what he was to purchase from your mother, if anything? A. He didn't say anything about purchasing anything, except buying the place, and how he was going to fix it all up. I simply made the remark that I would have to send out a notice to the stockholders of E. C. Hazard & Company and tell them that the property was sold, and that we would have to get out of there, and I said to Mr. Powers, "Now, what about us, what are we to do, get out?" "No," he said, "you go right along just as you have been going." "No," I said, "Harry, we have a carload of coal down at the Little Silver Station and we don't certainly want to cart that up to the factory if you want immediate possession of it and you want us to get out of there"; I said, "We have got to unload the coal." He said, "Go ahead, and if you want any help, my men will help you cart it." I never paid any great attention to it. Jack

Joyce came in. They all left. I went over to the Nassau Bank to see about some notes that I was endorser on there in this same Hazard & Company business, and what transpired after that I don't know anything about it.

Court: How long were you there while the conference lasted?

Witness: I should say about ten minutes.

Court: What is the whole time you were present?

Witness: About fifteen minutes, not over that; it certainly wasn't very long.

Court: Did Mr. Matthes leave with you?

Witness: No, I think I left him there. When I left Mr. Matthes was still there.

Court: Did you learn how much Mr. Powers proposed to pay Mrs. Hazard for the property?

Witness: $60,000, she told me that—my mother told me that.

Court: Before you went there?

Witness: No, when I got there. I didn't know she was going to sell it to him until I got there.

Court: Was anything said while you were there about the $11,400 contract?

Witness: Nothing said about the $11,400 contract, not a word.

Court: Anything said about when Powers should have possession, in case he bought, while you were there?

Witness: No, the only thing was said

about possession, that we could go right along.

Court: Was anything said between Mrs. Hazard and Powers while you were present, about when Powers should have possession?

Witness: Not that I recollect. I paid practically no attention to the transaction whatever.

Court: Was any reference made to the bills of sale which Mrs. Hazard had given to you and Matthes?

Witness: Not that I recall.

Recess.

Court: Coming back to the Astor House interview, I want to ask you whether you can tell how many people were employed at Shrewsbury when the business was conducted by your father's firm?

Witness: In the midwinter season probably forty.

Court: And in the busy season?

Witness: In the busy season 250, maybe 300.

Court: In view of the meagre amount of business that you have testified to, the question has been in my mind why so many people were employed; what was the necessity for it? If I remember, from $60,000 to $120,000 worth of goods were produced per year; why were so many people employed?

Witness: My father moved down to Shrewsbury in 1883 and bought the old

farm on which was located the canning factory; the canning factory was about the size of this room made out of hemlock boards with tar paper roof on it, and a whiskey barrel on the roof for a water tank; it was a very crude affair; I think he bought that property cheap at that time. The business in New York was running along as a large business; he had been acquainted with this property for years, but when Mr. Gordon Sickles operated it as a canning factory, it was his custom to go down to Shrewsbury every year and buy all the tomatoes that Mr. Sickles would pack, and my father, as he told me, had been ill, and his doctor in New York recommended that he move to the country, and he moved down there—he came there in April, 1883, I was a small child. He began to occupy the factory and it was really a play toy and was worked out on the basis of an artistic Japanese factory, artistically painted, cut shingles. The beginning of making tomato ketchup started off in the fall of 1883, on a very small and crude scale, and it grew very rapidly up to the time of the fire in 1888. Then my father had a great desire of making Shrewsbury a model little town and a place where he was living and he expended fortunes in the property that never returned anything for the money outlay. The factory was built big enough

to do a business of four or five million dollars a year.

Court: But what were all these people employed for?

Witness: A large quantity of people represented girls and children that were brought in in the heavy canning season to peel tomatoes on piece work, and paid four cents a sixteen quart water pail for peeling the tomatoes, and they had all the help they could get, and all the neighbors would come in.

Court: Didn't that result in a very large output?

Witness: It didn't result in an output any larger than I have stated.

Court: Notwithstanding that number of hands employed?

Witness: Yes, sir.

Court: I cannot quite reconcile in my own mind the thought——

Witness: In those days the packing of canned goods—in those days everything was canned. The cans were made by hand; it was an expensive proceedure, and we never had any can making machinery prior to——

Court: You said that for about seventeen years, with the exception of one year, the business had been operated practically at a loss?

Witness: Yes.

Court: The local end, and during that

period he had this large number of hands employed every year?

Witness: Yes, sir.

Court: For how long would that continue?

Witness: Three or four months. The busy season lasted about five or six weeks. Probably the average would be 250 in the height of the season for a matter of probably two weeks, and then they would gradually recede as the season progressed, until it got down to about forty regularly in the winter. The cost was 175 per cent burden to run the plant, and it was never less than that, and did go as high as 204 per cent.

Court: When you operated it did you have the same number of people employed approximately?

Witness: No, fewer.

Q. The percentage you have given is the overhead? A. The percentage of overhead to figure in the cost of the production of the stuff, and a lot of those goods cost greatly in excess of their selling price, owing to the extensive area of the factory, and the expense of manufacturing and the limited sales. If we could have gotten the sales up to a marked business a year on those products, it would have been a very profitable proposition.

Q. Do you know what the payroll would run at, Doctor, during these years, during Mr. Hazard's lifetime? A. The factory payroll would

run anywhere between ten and sixteen thousand dollars a year.

Court: And during your management, about the same or less?

Witness: It would run less, because the business was smaller.

Court: How much less?

Witness: The regular business being done as low as $7500; toward the latter end it got down to practically nothing. In fact, the help didn't even get paid.

Q. You were speaking before recess in reference to Mr. Powers making the statement to you that he would loan his horses to carry the carload of coal which had been ordered and was at a siding there? A. Yes, sir.

Q. I show a paper, being a bill dated January 28, 1913, E. C. Hazard, Shrewsbury, N. J., to Reed Coal & Coke Company, C. N. B. Car 2296, and ask you what that is? A. That is a bill for a carload of coal that I ordered from these people in Baltimore and was shipped on January 28 to me at Little Silver, New Jersey.

Q. Is that the carload of coal to which you called Mr. Powers' attention at the Astor House? A. Yes, sir.

Mr. Sexton: I offer it in evidence. (Marked Exhibit C 10).

Q. I show you bill for car demurrage, Little Silver, New Jersey, February 11, 1917; will you tell me what that is?

Mr. Rosenberg: I object; it is immaterial.

Court: I will let it in on the ground that it is merely corroborative of the Doctor's statement that Mr. Powers had agreed that he could stay as long as he pleased, and help him unload the carload of coal which he had at the station at the time.

A. This is a bill from the New York & Long Branch Railroad Company, directed to me, bearing date February 13, 1913, covering car demurrage on a carload of coal which arrived on February 4, at 7 A. M. and notice given on February 4 at 11 A. M.

Court: It was on the fifth you called Mr. Powers' attention to the fact that you had the coal there?

Witness: Yes. The bill is $4, one dollar a day was the car demurrage.

Q. Did Mr. Powers assist you in moving the coal? A. No, sir, he did not.

Q. What was the occasion of the demurrage, if you know? A. Because the carload of coal came in and we were not going to cart it into the factory until we knew whether we could stay there.

Court: Why didn't you know you could stay there when Mr. Powers told you you could, at the Astor House; what reason did you have to doubt it, after he told you you could stay?

Witness: We didn't doubt it, we went ahead and carted it.

Court: You carted it into the factory?

Witness: Yes.

Court: And the coal was carted into the factory?

Witness: Yes, sir.

Court: Do you remember anything else being said by Mr. Powers to you at the Astor House in reference to your occupancy of the Shrewsbury factory?

Witness: There was nothing said, except he said, "You fellows can go right along just as you have been going, cart your coal in; my man isn't busy, he will help you," and he said, "After I get title, I will see you fellows."

Court: Did he say how long you could stay, or limit your time?

Witness: No.

Q. What did he say in reference to seeing you? A. He said, "After I get title, I will see you fellows."

Court: Did he make that remark to you and Matthes, or you alone?

Witness: We were all there.

Q. Do you know whether others heard the remark, others than yourself? A. I presume they did; I don't recall now just exactly where we were in the Astor House, but I know we were in the ladies parlor, and there were different con-

versations carried on. Mr. Joyce would go off in one corner and talk to my mother, and he and Powers would talk, and Powers and his wife, and Matthes and I would talk, and we all talked together.

Court: Did you make any objection in the hearing of Mrs. Powers to your mother's selling the place?

Witness: No, sir, absolutely none.

Court: Was anything said about her being crazy to let it go for such a price?

Witness: No, I told her I thought she was crazy if she didn't have a lawyer.

Court: Was anything said that Mrs. Beadleston asked Mr. Joyce to come there and represent her?

Witness: No, sir, but I know Mr. Joyce did come. This whole thing transpired over a total time not to exceed half an hour, and I don't think it was over fifteen minutes.

Court: While you were there?

Witness: Yes.

Q. And then you left? A. I went from there to the Nassau Bank, leaving Mr. Matthes, my mother and Mr. Joyce, and Harry Powers and his wife, in the Astor House. From there I went to the Nassau Bank, and from there home.

Q. You didn't meet them again in that day? A. No, sir.

Q. You knew that Mr. Powers had a residence adjoining the Hazard plant, neighbors, as Mr. Rosenberg stated? A. Yes.

Q. Had you ever seen him in the factory? A. Yes, sir.

Q. While you were there? A. Yes, sir.

Q. How many years has he been married to your sister? A. I don't recall.

Q. A number of years? A. I really do not know how long; quite a little while.

Q. During the time that he was married to your sister, did he visit your factory quite frequently? A. Yes.

Q. You have seen him there? A. Yes.

Q. Has he ever attended the meetings of the E. C. Hazard & Company? A. Yes.

Q. Do you recall any meetings that Mr. Powers was at? A. I know he was at a meeting held down at Shrewsbury, New Jersey.

Q. When, can you recall? A. It was during the year 1912; I cannot say as to just when it was, but I know it was at the latter end of the shaky condition of Hazard & Company, because the business was discussed as to its terrible financial condition, and its inability to pay its judgments, and Mr. Powers went with me to a lawyer on Broadway, right about that time, to see if we couldn't get him——

Mr. Smock: I object.

Court: Sustained.

Q. You have seen him in the factory at other times? A. Yes, sir.

Q. And discussed in his presence the financial condition of the company? A. That was a question that was always under discussion.

Q. In his presence? A. At this meeting, yes.

Q. At other times? A. And other times, yes, sir.

Q. Did he have access to the factory? A. Yes, sir.

Q. And could go and come as he pleased? A. Yes, anyone could.

Court: How were your relations with him and Mrs. Powers at the time of the Astor House conference and up to that time?

Witness: Friendly; I had nothing against Mr. Powers.

Court: Had you ever had any differences?

Witness: Never.

Q. After February 5th, and referring to the evening of the fourteenth of March, you were at the manor house? A. Yes.

Q. You were not at the settlement at the Fidelity offices? A. No, sir.

Q. Who was at the house on the evening of the fourteenth at Shrewsbury? A. I was there, my wife was there, Mrs. White, my mother-in-law, was there, and my son was there.

Q. He was an infant? A. You are asking me who was there, and Bowden and Mrs. Powers and Harry Powers.

Q. Your mother? A. She was there, yes.

Q. Tell us in your own words what happened that night, if anything. A. Nothing happened whatever.

Q. What were you doing? A. I was sitting at the dining room table working on a cold cream advertisement that I was going to publish in the New York Evening Journal; it was a new thing I was getting out, and Mr. Callender, the advertising man of the Journal, was in a hurry to get the approved proof, and I was making corrections and rewriting it during the evening.

Court: How long were Mr. and Mrs. Powers present?

Witness: I don't recall, but they were not there very long.

Court: An hour or two?

Witness: I paid no attention to it; they came there in the evening and we sat around that table, I was busily engaged on this writing, and I never paid any particular attention to it.

Court: Was any announcement made by Mrs. Hazard at the time to them that she had given you a lease on the premises?

Witness: Absolutely none.

Court: Any reference to such a thing?

Witness: No, sir, never even spoke about it.

Q. Did you have a lease upon the premises? A. The only lease that there was on the premises was a verbal lease; I don't know whether there was even that during my father's lifetime.

Court: He is asking about you. Did your company have a lease at the time, in March, 1913?

Witness: They had a month to month lease; they paid $250 on the first of each and every month for a month's rent; there was no written lease.

Q. Did you know that you and Matthes would have to leave the factory?

Court: On that night? That night or before that?

Witness: We expected to leave it.

Q. What arrangement had you made for leaving? A. I made every arrangement in the world. We went over to Matawan and negotiated for the purchase of the American Rice Food Factory at the railroad station with Mr. Longstreet, and had been negotiating with Mr. Longstreet during November, December and January.

Court: You had expected to give up the factory at Shrewsbury?

Witness: Yes, sir.

Court: Whether your mother sold it or not?

Witness: Yes; my mother wanted to sell it to me.

Q. What else did you do in reference to moving from the factory, aside from negotiating for the lease of the Longstreet place; did you hire a house? A. Yes, I hired a house in Matawan and paid a month's rent.

Q. Whom did you hire the house from, or for

what month did you pay the rent? A. February, 1913.

Q. And who was it through, do you know? A. No; March.

Court: Did you hire it after you met at the Astor House?

Witness: No, I hired it after this rumpus at Shrewsbury; I also hired a letter box at the Matawan post office about a day or two days after the fifteenth of March.

Court: At this meeting that night at your mother's house, was anything said as to when Mr. Powers was to get possession of the factory and property?

Witness: Not a word.

Court: Did you hear Mr. or Mrs. Powers offer to have Mrs. Hazard remain and occupy a room, and occupy it as her home, if she desired?

Witness: No, I don't recall that. I know that I was living in the house and Mr. Powers said that I could stay there, that he didn't want to use the house right away, that I could continue to live there, and that night I anticipated staying there right along for a month.

Court: Were your relations friendly that night?

Witness: Very friendly.

Court: All of you?

Witness: Everybody.

Court: Were you annoyed at all over the fact that your mother had sold the property to Powers?

Witness: No, I was glad of it.

Q. You said your mother wanted to sell the property to you? A. Yes.

Q. What talk did you have with your mother in reference to selling it to you? A. She came to me and said, "You boys have all left me, you are married and moved away, and here is this big house, I cannot live here alone, and I want you to buy this property from me; I want to keep it in the family, and want you to take it," and I said, "Mother, I don't know how in the world I could ever take it; how could I ever finance it; it is a big proposition," and she said, "I will sell it to you cheap"; I said, "What do you want?" She said, "I want $70,000." I said, "I will think it over." In the meantime I negotiated with a real estate man—I asked what kind of a settlement she would want, and she said she had to get some cash out of it right away, or she would be willing to back a mortgage for all of it. I said, "I will let you know what I will do." And I went up—I called up a real estate agent, or wrote to him, I forget which—I know I wrote to him, and I think I went to see him—this was in the early part of January—and he sent a man up to look at the property, and the man came up and said, "I will loan you $30,000 on this property," and I wrote him and told him I would let him know whether I wanted it or not. In the meantime I thought

the thing over and I figured out $70,000 at six per cent interest was $4200 a year; I said to myself, "I never could afford to pay that for the privilege of running the business; I would rather get out and let her sell it to someone else, and I will try to get the Matawan factory instead," and I wrote a letter to Henderson and declined to accept the loan.

Q. Why was it you didn't move to Matawan? A. I didn't move to Matawan, because after this stuff had all been confiscated on the morning of the fifteenth of March, I thought the next morning that this thing would all settle down and straighten itself out in a couple or three weeks, and I continued negotiating at Matawan until it got to such a deplorable condition, between these rows and arguments, and putting in keepers in the factory—Mr. Powers had a representative in there and we had one there, and at a meeting in Ed Wilson's office in Red Bank to settle, Mr. Wilson told Powers, he said, "Powers——

Mr. Rosenberg: I object.

Court: Objection sustained.

Q. You were answering the question why you didn't move? A. I am telling you.

Court: You cannot repeat this conversation.

Q. Was it made in the presence of Mr. Powers? A. Yes.

Q. What was it?

Court: The defendant would not be bound by what Mr. Wilson said, if he didn't see fit to follow his advice. Mr. Wilson had no more to say about it than you or I.

Q. Do you recall anything said by Mr. Powers in response to a statement made by Mr. Wilson at that time concerning the factory property and the goods therein?

Mr. Rosenberg: I object as immaterial; here is a statement made long after.

Court: I will allow it, if he did make any.

A. There wasn't any statement made about the factory at all.

Court: Or the goods in it, or about removing the goods out?

Witness: There wasn't anything said about removing from the factory.

Q. What was said by Mr. Powers? A. The only thing I heard Mr. Powers say was a lot of swearing. There wasn't anything said about removing from the property.

Examination by the Court:

Q. Was there anything said on the night of the fourteenth of March that would explain why Mr. Powers is said to have broken into the fac-

tory and taken possession of it the following morning? A. No, sir, there wasn't the slightest intimation of it.

Q. Can you explain why he broke into the factory? A. I can presume why he did.

Q. What is your reason for believing why he broke into the factory? A. In my opinion it was to get into the factory to get hold of the assets, that is all, and take them away from us.

Q. What good were they, they were worthless, except the manufactured products? A. No, there was a lot of valuable stock in the factory.

Q. That is the manufactured stuff or stuff to be made up? A. Yes, there was a lot in process of making up and a lot of machinery there.

Q. At that time did you know, on the fourteenth of March, that Mr. Powers had not only purchased the real estate, and the equipment of the buildings, but he had also purchased under an agreement calling for the payment of $11,400, all the property that Mrs. Hazard had acquired under the collateral agreements? A. I never saw the agreements.

Q. Did you know it as a fact that that had been done? A. No, sir.

Q. Did you ever hear that he had taken over that liability from Mrs. Hazard? A. Never.

Q. And had agreed to pay for these two judgments? A. I never knew anything about it.

Q. When did you first learn that fact? A. After all this— I learned about all these different things after this thing got up to the boiling point; I never saw any of those contracts.

Q. I ask you if you had any knowledge of

their existence? A. No, sir, I wasn't familiar with them.

Q. Did you know of the fact that Mrs. Hazard was worried about these two judgments of the Nassau Bank and Second National Bank amounting to $11,400, and that she had made an arrangement or a deal with Powers by which he was going to have these two satisfied, and in consideration of doing so, she would turn over to him the collateral that your company had given her? A. I didn't know that until after that.

Q. You didn't know it in March, 1914, on this night? A. No, this I understand took place in the Fidelity Trust Company and I wasn't there; I knew nothing about it.

Q. I am trying to find out as a fact when you first learned that Mr. Powers had another contract with your mother, in addition to the $60,000 one, by which he was to get, in consideration of paying the $11,400, all the property that she had acquired under her collateral arrangement with you or your concern? A. I never knew anything about any such arrangement.

Further direct examination by Mr. Sexton:

Q. The title was closed at the Fidelity and this was a day or so after the closing? A. I understand so; I wasn't there, and I know nothing about it; I wasn't at the Fidelity Trust Company, and didn't know they were going to meet there that night.

Court: I assume that, but I am trying to find out if he knew it in any other way.

Witness: It wasn't discussed that night of the fourteenth.

Court: Before that time had anything been said about it?

Witness: Not to me.

Court: Either by Mr. or Mrs. Powers or Mrs. Hazard?

Witness: By no one.

Q. After the entrance into the factory by Mr. Powers——

Court: Did you see him effect an entrance into the factory?

Witness: No.

Court: You were living in the large house that night?

Witness: Yes.

Q. What was the first that you knew that he went into the factory? A. About half past six or seven o'clock in the morning my mother came up to my room and knocked on my door and got me awake and she said, "Wilson is down at the kitchen door and said Powers is up to the factory."

Mr. Smock: I object.

Court: It was information your mother gave you the next morning?

Witness: Yes.

Q. What did you do then? A. I came downstairs and talked to my mother and I said, "I wonder what all this trouble is about."

Mr. Rosenberg: I object.

Court: Objection sustained.

Did you meet Powers or see him?

Witness: No, I started to find a lawyer to find out about it.

Court: What did you wand to find out what to do about it; you knew he bought the property?

Witness: Yes, and I knew from the description of what Florence A. Hazard, my mother, had told me that had taken place, from what Wilson had said to her, that there was a desperate situation at the factory.

Court: Desperate in what respect now, in your mind?

Witness: The message came to me that they were almost at murderous blows at the factory and there was a general row.

Court: Wilson, this man, had been employed by you?

Witness: Yes, he was the night watchman; he had been pitched out and threatened.

Court: Why didn't you go over and ask Powers, "What are you trying to do here?"

Witness: I don't know.

Court: Instead of going to a lawyer?

Witness: I thought a lawyer was the most prudent fellow to see.

Court: What was the harm in talking to your brother-in-law and trying to find out why he was acting in such a crazy and unreasonable manner? That is what I cannot understand. If he did act in the way you say, I don't see why you didn't go over and ask "What is the matter; why are you breaking into this place?" I am trying to understand your conduct on that occasion.

Witness: My conduct was to find out what the trouble was.

Court: Why didn't you go to the man who was making the trouble?

Witness: Because of my opinion and knowing things as I know them.

Court: What did you know? I want to know what you knew that made it seem unreasonable to you to go to Powers?

Witness: Because I deemed Mr. Powers an unreasonable man, and I wasn't going to go up there and get into any lengthy conversation that, in my judgment, would result in only argument and cursing and damning and swearing and vilification and nothing else.

Court: You were on friendly terms?

Witness: We were friendly; friendly, inasmuch as we never had any words or any trouble of any kind.

Court: Hadn't you been friendly as members of the same family?

Witness: Not intimately; not any more than I would be with any other acquaint-

ance that I would meet that I would bow to and shake hands with.

Court: I assumed because of the family relation——

Witness: I am not familiar with any particular person to that extent.

Court: After you saw the lawyer, then what did you do?

Witness: The lawyer said he couldn't do that, "We will get out a search warrant"; he drew it up—I don't know whether I signed it or didn't, but I know there was a terrible commotion.

Court: What did you charge him with, what offence?

Witness: I don't know?

Mr. Rosenberg: What lawyer?

Witness: Clarence G. Van Note of Long Branch.

Court: What offence did you charge Powers with having committed?

Witness: Taking what didn't belong to him, I guess.

Court: What did you say he had taken that didn't belong to him?

Witness: Stuff that we had there.

Court: Did you know that he had taken anything that belonged to you, that you owned?

Witness: Yes, because he broke in; all these men were down at the kitchen door; I had gone down to talk to these men—half a dozen were standing around there and their hair standing up straight, and

they said he was like a wild man there.

Court: Did the report come to you that he had removed anything?

Witness: No, that he was barricading the doors on the inside and holding it with a gun, so I deemed the thing to do was to see an attorney, and I proceeded to do so.

Court: Is Mr. Powers a man of excitable temper?

Witness: In my opinion he is.

Q. After Powers took possession and after the meeting at Mr. Wilson's office, what was done with reference to an inventory of the property in the factory? A. After the meeting down in Wilson's office, also a few days after this arrest, as I recall it, I think you got mixed up in the thing at that time, in this row, and you went over with us to Mr. Wilson's office, and we talked there for a little while, and as I say, there were arguments and nothing definite was reached, except that the best thing to do would be to have this inventory made?——

Court: They were made?

A. —and the plan was that Mr. Powers was to elect an official representative, and we were to do likewise, and that they were to go in and make an inventory together, and each there as they wrote down the different things contained within the building, and that each put in a keeper, and I understand that Mr. Powers——

Mr. Smock: I object.

A. —we put in a keeper and he was finally ousted by Mr. Powers—kicked out.

Court: So he reported to you, I suppose?

Witness: Yes. And the thing ran along and dwindled along, and in the meantime we backed off on the Matawan proposition. When we found we couldn't get this stuff away, we tried to replevin it. We first tried a bill in chancery to restrain Powers from holding it.

Mr. Smock: I think all this is clearly immaterial. It has relation to property which is being claimed by E. C. Hazard & Company, Elmer Hazard and Mr. Matthes and Little Silver Sauce Company, and it has already been thrashed out.

Court: It is more or less significant to me as to how the parties regarded the whole transaction, their conduct in relation to it, whether what they now say is consistent with their conduct at the time this alleged difference arose. That is why I am receiving it.

Q. There were suits started to obtain certain personal property in the factory? A. Yes.

Mr. Sexton: They have been offered in evidence. I now offer that bill which I produced this morning.

Court: I cannot receive a copy of it if they object to it as a copy, I will permit you to put the whole record in.

Mr. Rosenberg: We don't object to it as a copy.

Court: Is there any objection?

Mr. Rosenberg: None at all.

(Bill in Chancery filed by Elmer C. Hazard against Harry L. Powers offered and marked Exhibit C 12.)

Mr. Rosenberg: It is stipulated that any parts of the testimony in the three cases of the Little Silver Sauce Company against Harry L. Powers and others, Frank T. Matthes against Harry L. Powers and others, and Elmer C. Hazard against Harry L. Powers and others, may be offered without calling the stenographer who took the testimony, to prove its accuracy.

Mr. Sexton: Mr. Wilson and I agreed that any portion of that record which may be deemed relevant, could be offered without calling the stenographer.

Court: He qualifies it by "any portion of it deemed to be relevant."

Q. Other suits were brought, Mr. Hazard? A. Yes, sir.

Q. Did Florence Hazard bring any of those suits? A. No.

Q. Did she have anything to do with bringing those suits? A. No, sir, nothing whatever.

Court: Did she inspire them or suggest them?

Witness: No, sir.

Court: Did she conspire with you?

Witness: No, sir.

Court: Did she aid you by furnishing you with material to bring the actions?

Witness: Affidavits, you mean?

Court: Facts voluntarily?

Witness: Not voluntarily.

Q. You did obtain an affidavit from her, I believe, in one of the suits? A. Yes.

Q. And that was obtained at your solicitation? A. Yes, very earnest solicitation.

Court: This litigation that has been referred to in those three cases, has that anything to do with the suits for the fire insurance?

Mr. Rosenberg: Those are the suits.

Court: Mr. Wilson said there were ten or twelve suits.

Mr. Rosenberg: Suits were brought against a number of fire insurance companies by Mr. Powers to recover the loss on this factory. After these suits had been started three suits were brought in the Court of Chancery, one by the Little Silver Sauce Company, one by Matthes and one by the present witness, in which they claimed that Powers being a trustee ex malofficio bought this property in the factory which he had taken possession of, they could follow the trust into the insurance moneys, and the trust was impressed upon the insurance moneys to the extent of the proportion of the value of the stuff belonging to the Little Silver Sauce Company

and Matthes to the amount which Powers had in there in his own right.

Court: What I refer to is this. Mr. Wilson stated that the bill or expenses that Mr. Powers had been put to, and which he had paid to Wilson & Smock, were going to be claimed as a proper charge against the mortgage in this case.

Mr. Rosenberg: A certain proportion.

Court: On the theory that they were endeavoring to hold Mrs. Hazard responsible for being responsible for that litigation.

Mr. Rosenberg: Yes, sir. There was a later suit, I understand, brought by E. C. Hazard & Company claiming an interest in this insurance moneys, a bill in chancery, which I think was settled.

Court: Did Mrs. Hazard have anything to do with that?

Witness: No.

Court: Did she have anything to do with the suits against the insurance companies, that you know of?

Witness: No.

Court: Did she cause the insurance companies to resist the payment of the policies to Mr. Powers, so far as you have any knowledge?

Witness: No, sir, except in her own suit here.

Q. At the time that Powers took possession of the factory, who had goods in the factory, if

you know? A. E. C. Hazard & Company, Little Silver Sauce Company, Frank T. Matthes, Elmer C. Hazard and I think Alfred N. Beadleston.

Q. Certain property has been referred to as having been taken out by you? A. When?

Q. After the possession of the factory was taken by Mr. Powers? A. After the fifteenth day of March?

Q. Yes. A. There wasn't any property taken out; that was the property we couldn't take out.

Q. Was any property claimed by your wife—furniture or anything of that sort? A. There might have been some trifling matter—I don't remember what it was; I think there was, but I cannot recall what it was.

Court: Something about a typewriter and adding machine.

Mr. Sexton: No, that wasn't it.

Q. Do you know anything about any children's toys being taken out? A. I think there was something that was in there belonging to Mrs. Hazard or Edward or someone, I don't know what it was; it didn't amount to anything, anyway. I don't think it is necessary even to bother about it. Mr. Powers gave it up, whatever it was; it was immaterial.

Court: I notice on this label, Exhibit C 7, the word "trade mark"; was that a registered trade mark?

Witness: No, sir.

Court: Was the trade mark ever registered?

Witness: No, sir.

Court: Were any of the trade marks of E. C. Hazard & Company ever registered, to your knowledge?

Witness: It is my opinion that the name "Tomatoketchup," all in one word—it is spelled both ways, but formerly was spelled "catsup" and "ketchup," but it was made into one word, all the same sized letters "TOMATOKETCHUP," and early in the business of Shrewsbury Tomatoketchup, the name was copyrighted; the name "Shrewsbury" could not be copyrighted, owing to the fact that the name Shrewsbury was a geographical name.

Q. Was the E. C. Hazard copyrighted or registered, just that name? A. No.

Q. Your father's name being what? A. Edward C. Hazard.

Q. And your name is what? A. Elmer C. Hazard.

Court: After the trouble between Mr. Powers and the men in the factory did you ever talk with Mrs. Powers about the situation and ask her what prompted her husband to take the course you say he did?

Witness: I never talked with Mrs. Powers after the fifteenth day of March.

Court: Why didn't you talk with her; weren't you friendly with her?

Witness: No.

Court: Why were you unfriendly; what had she to do with it; where was she to blame?

Witness: I don't know wherein she participated in being to blame.

Court: Why didn't you talk with her; you were her brother?

Witness: Yes, I am her brother. We simply didn't speak, that is all. I had no reason not to speak to her, any more than I knew the attitude was not friendly. I have never spoken to her since that time, with the exception of one time recently to bow to her and say "How do you do?"

Q. Did she uphold her husband, as far as you know, in his attitude in this matter? A. Most decidedly.

Mr. Rosenberg: I object.

Court: Do you know anything about it, what she did?

Witness: I got credit for at least having good common sense.

Court: Did you ever hear her say anything to indicate it?

Witness: Only what she has said in court as a witness.

Q. Referring to the trade marks again, anyone could manufacture the goods with the word Shrewsbury on?

Objected to. Objection sustained.

Q. Do you know whether anyone else manufactured goods with the word Shrewsbury on, other than E. C. Hazard & Company? A. Yes.

Court: Who?

Witness: The National Biscuit Company used the name Shrewsbury as applied to an oyster cracker. There was a concern in Massachusetts—in Shrewsbury, Massachusetts, that put out a Shrewsbury ketchup at one time.

Court: In what year, about?

Witness: It is a good many years ago.

Court: Before Mr. Hazard's death?

Witness: Yes.

Q. Was any effort made to stop it? A. I think they wrote him a letter about it.

Q. Anything further than that? A. Not to my knowledge. Stern & Company, they had a Shrewsbury cigar.

Q. There was a Shrewsbury cigar manufactured by E. C. Hazard & Company? A. Sold by it.

Q. With the label Shrewsbury? A. Yes.

Q. Is that the Mr. Stern that was formerly connected with the firm? A. Yes, it was originally Hazard & Company's brand, and they gave it to him.

Q. Did they get anything for it? A. No, he bought the stock at inventory price, what we paid for it, and we surrendered everything.

Q. Did you on the thirteenth day of March,

1913, attach any value to the trade mark Shrewsbury?

Mr. Rosenberg: I object to that, because that is calling for the mental process of the witness.

Court: Suppose he did or did not; what difference would it make?

Q. Do you know whether there was a value to the trade mark Shrewsbury on the thirteenth of March, 1914?

Mr. Rosenberg: I object as calling for a conclusion.

Court: I think he is just as competent to express an opinion as the others who testified.

A. I don't think it had any value.

Q. What do you base that opinion upon? A. I base that upon the fact that the business had run down to such an extent, and ever since I have been connected with the business I have interviewed many financial institutions seeking aid, and never was able to get it.

Mr. Rosenberg: I move to strike out the latter part of the answer.

Court: I will let it stand; it is giving his answer; it may not be a convincing reason.

Q. At the time you sought aid were you requested and did you give a list of your assets? A. Yes.

Court: Did you include trade marks and trade names and good will?

Witness: We tried to.

Court: Were you ever given credit for any value for the trade marks and good will?

Witness: No, sir.

Q. Did Mrs. Hazard tell you when you found that Powers had taken forcible possession of the property, including the property that you claimed, that she had sold it to him? A. No, sir.

Q. You and Matthes claimed the ownership of that property in a bill of sale? A. Yes.

Q. In addition to that, you claimed part of the property as representing the firm of E. C. Hazard & Company, which had not been assigned to Mrs. Hazard, didn't you? A. We didn't claim any part of the property that belonged to E. C. Hazard & Company.

Q. You did not as a member of that company? A. Oh, yes, we claimed part of it, surely; it was all claimed in the original bill that was filed in Chancery.

Q. Before you got to the bill, before you intended litigation, I am trying to get your frame of mind. After Mr. Powers on the fifteenth day of March had gone in there and forcibly taken possession of the entire property, including everything that was in the building, and which you say included part of the property that you claim title to, by virtue of the bill of sale from Mrs. Hazard to yourself and to Matthes, did you—is that where you claimed it to be yours? A. I

claimed mine individually and Matthes claimed his individually, and the Little Silver Sauce Company, the same, and Hazard & Company claimed theirs individually.

Q. When did you first learn from Mrs. Hazard, if you did learn, that she had sold any or all of this property which you four people or four interests made claim to, to Powers? A. I never knew that she did sell it to Powers.

Q. Or had agreed to sell it to him? A. I never knew that she had agreed to sell it to him.

Q. When did you first get in touch with Mr. Joyce in connection with this matter? A. The only time I saw him was about five minutes in the Astor House on the morning of February——

Q. Right after Powers had broken into the place when did you first get in touch with Joyce? A. I don't think I came in touch with Mr. Joyce for a considerable time after that.

Q. Did he ever tell you that when the contracts were prepared that there was a contract for $11,400 prepared? A. No, sir.

Q. And that in the $60,000 contract he had interlined a provision that all the property your mother had acquired under the collateral agreement was to be assigned to Powers? A. No, sir, I didn't know anything about that.

Q. He never mentioned that? A. Not to me.

Court: Did you ever ask, or were you not curious to know, under what color of title Powers got his right to go in and

take possession of this property; didn't you ever make any inquiry about that?

Witness: I was satisfied it was a highwayman's right.

Court: That is the only right you thought he was asserting?

Witness: Yes. We were all at the house on the night of the 14th of March, and the next morning this happened; this happened while I was asleep and I didn't know anything about it and had no intimation of it.

Court: Had there ever been anything in Mr. Powers' past conduct to indicate that he was going in there to steal this property?

Witness: Absolutely nothing; on the contrary, I thought we could stay there and move out at our convenience. If I had not thought so, I wouldn't have moved the coal in there; I would have gotten out sooner.

Q. The Little Silver Sauce Company goods are mentioned in the bill of sale? A. Yes.

Q. Have you got the inventory that was made by Miller & Callahan; have you your copy? A. No, I don't know where it is.

Q. I show you a list and ask you if you know what that is? A. That is a list of the stuff that belonged to E. C. Hazard & Company, that was picked out by me from the inventories that were made by Miller & Callahan at the time—after this row.

Q. So that the goods mentioned on that list are what remained in the title of E. C. Hazard & Company? A. Yes.

Mr. Sexton: I offer that list in evidence.

(Marked Exhibit C 13.)

Court: Were all these goods on that list in the premises, as far as you know, on the fourteenth and fifteenth of March?

Witness: Yes.

Court: When Mr. Powers took possession?

Witness: Yes, taken off of the inventory made after that date.

Q. And the inventory made by Miller & Callahan was after Mr. Powers took possession? A. Yes, sir.

Q. So that the goods contained in that list, the goods contained in the inventories of the bills of sale, those attached to the papers in the E. C. Hazard suit, and those attached to the papers in the Hazard and Matthes suit, would comprise substantially the total inventory of Miller & Callahan? A. No, it wouldn't comprise all of it, because I presume that the inventory made by Miller & Callahan represented all the property in the factory, and that is what the inventory was supposed to include.

Q. That might include some things that Mr. Powers might be entitled to? A. Yes, it was supposed to contain everying in the factory, and

that was the purpose of making the inventory, to ascertain everything that there was.

Q. And Callahan was a man appointed by Mr. Powers? A. Yes.

Court: There is no copy of that inventory in existence?

Mr. Sexton: Have you a copy of that inventory, Mr. Smock?

Mr. Smock: I don't know; we will look it up.

Mr. Sexton: Will you produce it?

Mr. Smock: If we have it, we will produce it.

Q. Do you know whether your mother moved out of the house, moved her furniture out of the house? A. Yes, she moved out the same day of this row; I told her to get out, to take her furniture out, or she probably would never get it.

Q. When did she move out? A. She had truckmen come up from Red Bank and started in to move out, and carted all day and all night, to get out.

Q. Who assisted in moving? A. My wife was there.

Court: Is it material?

Q. And you moved to Long Branch after that? A. I went up to Bowden's house for a few days and negotiated then for this——

Court: Is this material?

Cross-examination by Mr. Smock:

Q. You had no knowledge whatever of the fact that your mother had agreed in writing to sell certain personal property which she had acquired from the E. C. Hazard & Company, until after this rumpus occurred, which you say took place after the fourteenth of March; is that right? A. Yes, sir.

Q. The Astor House meeting was on the fifth of February? A. I think so, yes, sir.

Q. I suppose you saw your mother frequently from the fifth of February down to the fourteenth of March? A. No, I did not.

Q. Where was she living at that time? A. I think she was living in Brooklyn.

Q. Did she visit the Shrewsbury property during that period? A. I think she was down there.

Court: Did you see her occasionally between February 5th and the thirteenth of March, or fourteenth?

Witness: No, I don't think I did until the day of the fourteenth.

Q. Did you write to each other during that period? A. Not to my knowledge.

Q. Did you know that Mrs. Powers and Mr. Powers were going to meet at the house on the fourteenth? A. No, sir.

Q. Did you know that your mother was coming down there to meet them at that time, by appointment? A. I knew my mother was coming on the fourteenth.

Q. Did you know that she was to meet Mr. and Mrs. Powers there? A. I don't recall it.

Q. Didn't you know at that time that the meeting at the Fidelity Trust Company had taken place? A. I wasn't certain of the date, no, sir.

Q. You knew that it had taken place, didn't you? A. No, sir.

Q. Had no knowledge of it whatever? A. No, I had no knowledge that they were holding the meeting in the Fidelity Trust Company on the night of the thirteenth.

Q. When did you first learn of the meeting at the Fidelity? A. I don't recall.

Q. When your mother came to the house on the fourteenth, did she come in the morning or in the afternoon? A. I don't recall that.

Q. Did she tell you that she expected to meet Mr. and Mrs. Powers there that day? A. I think she did.

Q. And did she tell you for what purpose? A. No.

Court: Did she tell you she had been sitting up all night, the night before, trying to close this title?

Witness: I heard it, but I don't know when I heard so.

Q. When did she come to your house that day? A. I don't know.

Q. Morning or evening? A. I am not certain about that; I wasn't in the house all the time.

Q. Was she there some considerable time before Mr. and Mrs. Powers arrived? A. That is my impression.

Q. And during all that period she said nothing whatever of the meeting which they had the night before at the Fidelity? A. She may have.

Q. Did she or not? A. I don't know what she may have said about that. All I know is that I have heard of that meeting a number of times, but when and where, I don't recall.

Q. You don't deny, then, that she told you of the meeting at the Fidelity, do you? A. I don't know anything about it. She may have told me; I have no recollection.

Q. Do you recall when the two bills of sale were recorded, marked Exhibits C 4 and C 5 for identification? Do you remember when they were recorded, without referring to them? A. I know they were recorded in February.

Q. Refer to them and tell me on what day. A. February 19, 1913, eight o'clock in the morning.

Q. When were they dated? A. This one is dated August 3 and the other one July 29, 1912.

Q. And in whose possession were these bills of sale from their date to the date of their record—from July and August to February? A. I don't know whether they were in my possession or Matthes' possession; it is my impression that they were in Matthes' possession.

Q. You knew of their existence, I suppose? A. Yes.

Q. You recall making an affidavit before Mr. Sexton, which is attached to Exhibit C 4; you remember making that affidavit? A. Yes.

Q. That was made on what day? A. The seventeenth of February, 1913.

Mr. Rosenberg: That is the certificate of proof.

Q. And at whose request was that made? A. It was made at the request of Mr. Sexton.

Q. How did Mr. Sexton know of the existence of that bill of sale? A. I went over to Long Branch to see Mr. Sexton about the property at Matawan, and I told Mr. Sexton we were going to move to Matawan and going to move out.

Q. When was this? A. This was in January or February.

Q. After the Astor House meeting? A. Yes, sir, I think it was, and I think Mr. Sexton asked the question about what we were going to move, what it consisted of, and I told him we were going to take everything out of there that belonged to us, and move it out, because the property—I may not have said "going to be sold," but I think I said so. He asked all about how we got this property, and I went into details, as has been gone over many times.

Q. Did he suggest to you that they should be recorded? A. He did, yes, sir.

Q. And what was your purpose in negotiating for a different place at that time, if Mr. Powers had no intention, as you say he didn't, of putting you out of the factory? Why were you intending to move out if Mr. Powers had agreed with you that you might remain in there; what was your purpose in getting out? A. We had been intending to remove since November, 1912.

Q. Regardless of whether Mr. Powers—— A. Regardless of whoever might have bought it.

Q. What reason was there then for your resisting the possession of Mr. Powers? A. We didn't resist the possession of Mr. Powers.

Q. You had him arrested for breaking and entering? A. Yes, because he had come there in the morning and taken possession of everything in the plant.

Q. He had a perfect right to do so? A. No.

Q. Didn't he have a right to go into the property? A. Yes.

Q. Then what reason was there for having him arrested for breaking and entering when he had the right to go in there? A. Because he came in there and took all of our stuff and wouldn't let the men handle the stuff or go to work.

Q. He had a perfect right to keep them from going to work if he had the right to possession of them? A. I don't think so.

Q. You have admitted that he had the right of occupation and you had no rights in there, haven't you? A. No, I haven't admitted that. He had possession of the real estate and I never questioned it.

Q. So that the only thing you questioned was the right to take possession of certain personal property? A. Absolutely.

Q. In view of that fact didn't he have the right to go in there and operate the factory and have the men keep your men from working? A. It would be an absolute impossibility for him to go in and operate the factory until he had put it in a position where he could operate it.

Q. What reason did you have for resisting him? A. I didn't resist him taking possession of the factory; I resisted him taking possession of the assets contained in the factory that belonged to E. C. Hazard & Company, the Little Silver Sauce Company, Frank T. Matthes.

Q. Did he ever take any such things out of the factory? A. I guess he did.

Q. Do you know? A. No, I don't know.

Q. Did he ever remove an article that belonged to E. C. Hazard & Company, to your knowledge? A. Not to my definite knowledge.

Q. Did he ever remove one article that belonged to the Little Silver Sauce Company, to your certain knowledge? A. I didn't see it.

Q. Did he ever attempt to remove any so that you were obliged to stop him?

Court: Your own or Matthes' property, did he ever take it?

Witness: Yes, I have knowledge he took it; he took it and held it.

Court: Took it by going in there?

Witness: Yes.

Court: But not any other way?

Witness: Not to my knowledge.

Q. At the time you had him arrested was he making any effort to remove any of this property from the factory? A. No, he was making an effort to restrain us from getting it.

Q. Had you attempted to take any of the property out at the time you had him arrested? A. We made every attempt after we had been in pos-

session and had been thrown out of possession.

Q. Your testimony this morning was that you didn't even go down to the factory before you had him arrested? A. No.

Court: Before you had him arrested?

Witness: No, sir, I didn't go to the factory; I went to the lawyer's, Clarence Van Note.

Q. Was there any reason for recording the bills of sale, other than the fact that Mr. Sexton told you that they should be recorded? A. None whatever.

Q. You had held them from July, 1912, and August 3, 1912, respectively, up to that time, and had never sought the advice of any attorney as to whether they should be recorded? A. I think Mr. Matthes had; I had nothing to do with it. Mr. Matthes had possession of these, I think.

Q. As a matter of fact, isn't it true that the real reason you recorded these bills of sale was that you had heard that Mrs. Hazard, your mother, had sold property which was described in those very bills of sale? A. No, sir.

Q. That is not the truth? A. No.

Q. And had nothing whatever to do with it? A. I don't remember it.

Q. Do you deny that it did? A. I don't ever recall hearing anything about what Mrs. Hazard had sold, or knowing anything about it, between the time I left the Astor House and the morning of the row.

Q. You knew that a meeting had taken place at the Astor House, and you knew at that meeting that Mrs. Hazard was contemplating the sale of the Hazard property? A. Yes.

Q. And at least some personal property, you knew that? A. I knew she was selling the factory for $60,000, and that is the way I arrived at that understanding.

Q. Having that knowledge in your possession, didn't it have some influence upon your mind in having these bills of sale recorded? A. Absolutely none.

Q. Absolutely none whatever? A. No, sir, as far as I can recall.

Q. Then if it is only as far as you recall, you don't deny that that might have had some bearing on your mind, do you? A. It never occurred to me to record the bills of sale until Mr. Sexton had suggested that they should be recorded.

Q. And that was at the time—— A. Then I went to Matthes, as I recall it, and asked him for those bills of sale, and he brought them to me, and I took them to Mr. Sexton.

Q. Do you remember when Powers went in on the morning of the fifteenth, whether there was any sign on the door prohibiting the entrance of anyone except by your permission? A. Which door?

Q. Any door.

Court: The door of the factory?
Mr. Smock: Yes.

A. There was no sign put there; wasn't any there the night before, anyway.

Q. Do you know whether there was upon any door of the factory on the morning of the fifteenth of March this sign, or a sign containing these words: "No one to enter here without the permission of Elmer Hazard"; do you remember that? A. I don't know that that sign was there on the morning of the fifteenth, because I wasn't up there.

Court: Had you caused a sign of that kind to be put on the place?

Witness: There was a sign on the laboratory door.

Q. I am talking about the outside door. A. No, sir, not on the night before.

Q. When was such a sign on the door? A. Which door?

Q. Any door on the outside of the factory. A. There wasn't any on there to my knowledge at any time, on any outside door.

Q. You deny then so far as you know that there was any sign on the outside door,—on any outside door of the factory, containing words that I have just read, or similar words, on the morning of the fifteenth? A. I most emphatically deny it.

Q. You say that the business from 1893 down to the time of Mr. Hazard's death was conducted always at a loss? A. Yes, sir, with the exception of one year, I think from 1893, down to the time of my father's death it was operated at a loss every year.

Q. What year do you refer to that there might

have been a profit? A. The year that the Hazard Manufacturing Company was incorporated—I think that was 1908.

Q. When did you first know of the fact that there had been a loss in the conduct of this business; when did you first become acquainted with that fact? A. I had been acquainted with the fact for a great many years.

Q. Did you know it at the time your father died? A. Yes.

Q. And notwithstanding that fact you organized a corporation after your father's death and undertook to operate the business, didn't you? A. No, we formed a co-partnership.

Court: And a corporation later.

Q. At least you formed a corporation after your father's death, didn't you? A. Yes.

Q. And you knew at that time that the business had been operated at a loss for the last seventeen years? A. Yes.

Q. What about the operation of the business during the partnership; that finally failed, didn't it? A. Yes, sir.

Q. And notwithstanding that fact, you organized two corporations to conduct the business? A. Yes, sir.

Q. Which I think you called the Hazard Manufacturing Company and E. C. Hazard & Company? A. Incorporated, yes, sir.

Q. And both of those concerns went bad financially? A. No, one went out of legitimate existence by vote of the stockholders and the name

of the other was changed, and that finally became incapacitated.

Q. That finally became embarrassed financially? A. Yes.

Q. And was very much involved with its creditors? A. Yes, sir, very much.

Q. During all that period do you consider that the name of E. C. Hazard & Company had any value at all in the trade? A. During which period?

Q. From 1893 down to 1913, in your judgment did E. C. Hazard & Company, the name, have any value whatever? A. It had a value as a going business, yes, sir.

Q. When did it cease to have any value? A. When it became incapacitated.

Q. When was that? A. 1912.

Q. And in 1905 when your father died and the business had been running at a loss for seventeen years previous, did the trade name of E. C. Hazard & Company have any value then? A. I certainly don't think very much.

Q. Do you think it had any? A. Of necessity, it had some.

Q. What would you estimate as the value of the trade name or the good will of the business in 1905, considering the fact that the business had been conducted up to that time at a loss every year since 1893? A. I don't think it was worth anything.

Q. And if it wasn't worth anything in 1905, it certainly wasn't worth anything in 1913, in your judgment? A. No.

Q. And was it worth anything between 1905 and 1913? A. Only whatever——

Q. Was it worth anything? A. In business—I don't think it could be sold for anything.

Q. You have admitted a moment ago that it wasn't worth anything in 1905? A. No, sir.

Q. And you admitted that it wasn't worth anything in 1913? A. No, sir.

Q. It certainly couldn't have been worth anything then between that period, could it, between 1905 and 1913? A. Only as a going business, whatever little value it might have, for what business it was doing.

Q. Wasn't it a going business in 1905? A. Yes.

Q. It wasn't worth anything then? A. No.

Q. How could it be worth anything between 1905 and 1913? A. I am qualifying my answer by saying that it could not be sold for anything at any time, to my knowledge, and I have tried pretty hard to sell it.

Q. And it wasn't worth anything in 1905; you say it was worth something previous to that? When did the value of this trade name or good will cease? A. I think the asset value of the good will and trade mark ceased—or of the trade mark, if you designate it as a trade mark, ceased in 1888, at the time of the fire, when they couldn't supply the goods to the trade.

Q. And in your judgment, the name of Hazard and E. C. Hazard & Company and Shrewsbury had no value whatever from that time on? A. Only a relative value as a going business.

Q. Considering it as a going business, what value do you think it had in 1905; the business was going at that time? A. I don't think it had a monetary value.

Q. You don't think it had a monetary value at that time, even in connection with that going business? A. No, I cannot reconcile my mind and a business to have a good will value that loses money.

Court: Were the formulas considered of any value, or were they generally known to the trade?

Witness: The formulas were sought, and yet they were absolutely worthless, because they were changed with every batch almost. As I have said heretofore, the process of the Shrewsbury business was experimental, and I don't think there was over four batches of any one thing made exactly the same.

Q. You were president of E. C. Hazard & Company in 1913, were you? A. Yes, sir, and I am president of it yet, I imagine.

Q. Do you remember having seen some letters to the trade in respect to the use by Mr. Powers of the name of E. C. Hazard & Company and Shrewsbury? A. I did send out a letter, yes, sir.

Q. You say a letter, you mean several letters? A. I sent out one lot of letters.

Q. Is that a copy of one that you sent out? (D 5.) A. Yes.

Q. Did your mother have anything to do with the preparation or circulation of that letter? A. Absolutely none. I got up that letter and had it printed in Long Branch.

Q. What was your purpose in sending out letters of this character?

Court: What difference does it make in this case?

Mr. Smock: That he has intimated that the trade name of E. C. Hazard & Company had no value and that Hazard had no value, and yet he is trying to restrain a man from using it.

A. I sent that letter out to notify the trade that Mr. Powers was trying to offer goods purporting to be Shrewsbury goods, and that he was the representative of the old established Hazard business, and I was simply setting them straight.

Q. If the old Hazard business and name had no value, what difference did it make whether he did represent himself as selling these goods or not? A. It made a difference to me.

Q. What difference did it make to you? A. Just that much difference that I went to the expense personally of getting out that letter and sending it out.

Q. If it had no value whatever, what significance would there be in trying to stop him from selling? A. It is a right that I have of my own, of what I care to send out.

Q. But if this had no value, what would be the advantage and your purpose in trying to stop it? A. I am not testifying to this; I say I sent that letter out without regard to what it cost me to send it out, to inform the trade of Mr. Powers allegations that he was selling these goods and had a right to.

Court: Was it because you wanted to protect the public?

Witness: No, sir.

Court: Was it for the purpose of getting even with Mr. Powers or protecting the trade?

Witness: Substantially so.

Court: Getting even with him?

Witness: Yes, sir.

Court: You thought he had done you an injury and you were trying to injure him?

Witness: Compensation, yes, sir.

Q. Is that the only reason you had for getting it out? A. That was my reason.

Q. And how did the fact that Mr. Powers marked the goods under the name of E. C. Hazard & Company and Shrewsbury interfere with the business which you were then conducting? A. At what time?

Q. You were operating in 1913 at Long Branch, you and Mr. Matthes? A. I don't know.

Q. When did you first come down to Long Branch? A. I think I went to Long Branch on the first of April or probably a few days prior to that.

Q. In 1913? A. 1913.

Q. How long did you remain there in business? A. It was a long time after we moved to Long Branch before I undertook to do any business there.

Q. When did you begin business there? A. I cannot say without referring to the records.

Q. Was it in the summer of 1913? A. I cannot say.

Q. Was it in the fall? A. I don't recall.

Q. You have no recollection? A. I don't recall whether it was subsequent to that letter.

Q. It was about the time of the writing of this letter? A. I didn't say so.

Q. Weren't these letters written for the purpose of protecting your own trade? A. No.

Court: Or to divert trade from Powers to yourself?

Witness: We would have been perfectly willing to have it done, if it had served that purpose. You have asked me the purpose and I stated the purpose was to injure him.

Court. And in part to injure him by diverting trade from him to you?

Witness: Yes, if it came along, we wouldn't refuse to accept it.

Q. Didn't you claim at that time to be the manufacturer of Hazard products? A. Who?

Q. E. C. Hazard & Company.

Court: Did you claim it?

Q. You did, didn't you, Mr. Hazard? A. Wait until I read this. (Reading circular letter.)

Q. I thought you had read it many times; you prepared it? A. This is just simply telling the trade that Mr. Powers had no right to use it.

Q. That is not responsive; didn't you claim at that time to be the manufacturer of Hazard products? A. At that time?

Q. No, when you were in business at Long Branch? A. I don't know whether we did or not.

Q. Didn't you advertise generally to be the packers of choice canned fruits, meats and vegetables, and the proprietors of Hazard Shrewsbury specialties, when you operated your canning plant, or whatever it was termed, at Long Branch, you and Mr. Matthes? A. No, sir.

Q. Wasn't this letterhead which I have just shown you, D 5, a letterhead that you used in connection with your business at Little Silver? A. No, sir, this was simply a letter marked from Shrewsbury, N. J., in the interest of, or apparent interest of E. C. Hazard & Company informing them that any claim that Powers made——

Q. That is not responsive. (Last question repeated.) A. I am answering the question.

Court: It doesn't refer to the contents of the letter; answer yes or no.

Witness: No. You mean in Long Branch instead of Little Silver?

Mr. Smock: Yes.

Q. Do you deny that you conducted your business at Long Branch by advertising and holding out to the public that you were dealing with Hazard's specialties and using the name Hazard and E. C. Hazard & Company? A. At what date?

Q. When you were in business at Long Branch. A. We were in business at Long Branch for quite a while; I don't know.

Court: His question covers the whole period you were there; during any of that time did you do this?

Witness: The business at Long Branch, the manufacturing was operated by the Little Silver Sauce Company.

Court: Strike it out.

Q. Do you deny that you conducted your business at Long Branch by advertising and holding out to the public that you were dealing with Hazard's specialties and using the name Hazard and E. C. Hazard & Company? A. When we were in business at Long Branch, to whom do you refer?

Court: You; he said you.

Witness: I was never in business in Long Branch.

Q. Who was conducting the business at Long Branch under the name of Little Silver Sauce Company? A. A corporation.

Q. And had you any connection with it? A. Yes.

Q. What connection? A. President.

Q. Is that the distinction that you wish to convey to the court, that you were not, but that you were as president of the Little Silver Sauce Company? A. The corporation was engaged in business at Long Branch, and which corporation I was president of.

Q. And that is the distinction which you now wish to make? A. No, I haven't answered yet. Mr. Matthes and Elmer C. Hazard——

Q. That is you? A. That is me—were engaged in a co-partnership at Long Branch in addition to this business of the Little Silver Sauce Company.

Court: You conducted business under what name, you and Matthes?

Witness: E. C. Hazard & Company, and we did nothing but sell goods.

Q. And you were also at the same time operating the Little Silver Sauce Company as its president? A. As president I was connected with it.

Q. You were doing business—these two concerns were doing business in the same place? A. Yes.

Q. And you were doing business with the same set of books? A. No, we kept separate books.

Q. Have separate bookkeepers? A. No.

Q. And did your own bookkeeping? A. Yes.

Q. When this letter, D 5, was sent out, this was sent out, then, in the name of E. C. Hazard & Company, E. C. Hazard, President; had that anything to do with this partnership arrangement you are talking about? A. Nothing whatever.

Court: Was that sent out by the sanction of Mr. Matthes, your partner?

Witness: I don't think he knew about it.

Q. Did any of the officers of the Little Silver Sauce Company know anything about it? A. No.

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Court: It was your personal matter?

Witness: Yes.

Court: You used the letterhead of your firm on which to send it out?

Witness: The letterhead was a letterhead, and printed simultaneously by the Long Branch Record.

Court: Was that the ordinary letterhead of your firm?

Witness, No, sir, that was simply——

Court: Was that special letterhead prepared in connection with sending it out?

Witness: It was gotten up at that time because we had no letterheads, because they were in the possession of Mr. Powers.

Court: Did you use that letterhead, you and Matthes, and your firm, for any other purpose than for this circular letter?

Witness: No.

Q. Did you use any similar one? A. Nothing like that.

Q. Did you in connection with the business conducted by these two concerns that you have now mentioned, at Long Branch, advertise or hold out to the public that you were dealing in products with the name of Hazard attached, or Shrewsbury, or E. C. Hazard & Company? A. No, the only thing that we turned out—we turned out nothing with the word Shrewsbury on it.

Q. And you made no use of that name whatever? A. No, sir.

Q. What name did you send out the products of the Little Silver Sauce Company under? A. Which products?

Q. Any products. A. The ammonia was put out as Green Label Brand Ammonia packed by the Little Silver Sauce Company, Long Branch, N. J. The sauce was put out as Green Label Worcestershire Sauce Company, packed by the Little Silver Sauce Company, Long Branch, N. J.—All new labels; the Maple Syrup was packed under the name of Green Label Brand Maple Syrup, Little Silver Sauce Company, Long Branch, N. J. Flavoring extracts under the same brand and name. We had a bluing called Celebrated Liquid Blue, which Elmer C. Hazard and Frank T. Matthes put out under the name of E. C. Hazard & Company, Long Branch, N. J., a new label.

Q. Who did you say put that out? A. Hazard and Matthes.

Q. Why did you use the name of E. C. Hazard & Company? A. Because we felt like it.

Mr. Smock: That is not responsive, I submit.

Court: It may be the only reason. Is that the only reason you had for using that name?

Q. You hadn't assumed the name of E. C. Hazard & Company in forming the partnership between you and Matthes? A. Yes.

Court: Were you trying to give the impression by the use of those initials that it was your father's old firm that was still putting these goods on the market?

Witness: No.

Court: They are both the same, aren't they, E. C.?

Witness: Yes, but we had the right to.

Court: You claim you purchased the right?

Witness: Yes, the corporation did.

Q. You had the right to use E. C. Hazard & Company? A. Yes.

Q. Didn't you use that name because you felt that it had some monetary value? A. No.

Q. None whatever? A. We used it very little.

Q. That had no influence on you? A. No, it had very little; it didn't produce $500 worth of sales.

Q. Did it produce some? A. Yes, not to exceed $500.

Q. How much was your total sales in any one year? A. Very, very little.

Q. The $500 you refer to is a yearly sale? A. I refer that we probably sold during the entire time we were in Long Branch $500 worth of Hazard Burnt Onion Sauce.

Q. But the question is what relative value had the name of E. C. Hazard & Company to you with respect to selling all your products, not Burnt Onion Sauce necessarily? A. That would be——

Q. You don't think it had any value?

Court: Did it affect your sales at all; would you have sold just as much if you

had done business under the Little Silver Sauce Company?

Witness: I think we would have sold more.

Court: So it was a detriment instead of a benefit?

Witness: I think it was.

Q. You said that you ceased to use the coat of arms which appears on the bottle, Exhibit C 8? A. Yes.

Q. You said you ceased to use that when, because you were restrained or something of that kind? A. I didn't say so.

Q. What did you say was the reason? A. I said the ruling of the Department of Agriculture said that it was illegal to attach a foreign coat of arms on a label.

Q. When was that? A. That was about the time the business went broke.

Court: I think you said about 1910, and you continued to use it up until 1913?

Witness: Yes, we used up what we had on hand and never ordered any again.

Q. Notwithstanding that ruling you continued to use it? A. I don't think that label was used after 1910, unless some case we packed up with that label on and sent out instead of being relabeled.

Q. I want to go back to the recording of these bills of sale; I think you said that the only reason you had for putting them on record was

because Mr. Sexton advised you to have them put on record? A. Yes.

Q. And that was the nineteenth of February, 1913? A. It was before that date.

Q. Right around that date; and up to that time there certainly had been no unpleasantness between Mrs. Hazard and Mr. Powers, had there? A. Not that I know anything about it.

Q. You certainly hadn't had any trouble with him? A. No.

Q. The first trouble you had with him was in 1913, March 15th? A. That was the first time there was any trouble.

Court: I understand this witness is going to Baltimore and will not return for at least a week, and as suggested, counsel may complete the examination of the witness before Mr. Bindseil as Master.

Adjourned to Tuesday, June 18th, 1918, at 10:30 A. M., at Newark.

Continuation of testimony in the foregoing cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, June 18th, 1918, at 10 A. M., in the presence of counsel as before stated.

BOWDEN HAZARD, sworn in rebuttal for complainant.

Direct examination by Mr. Sexton:

Q. You are a son of Edward C. Hazard? A. Yes.

Q. Also a son of Mrs. Hazard? A. Yes.

Q. How old were you at the time of your father's death? A. Twenty-four.

Q. You were of age? A. Yes.

Q. Do you recall an arrangement being made with Elmer Hazard in reference to the conduct of E. C. Hazard & Company?

Mr. Rosenberg: I object to it as immaterial.

Court: I will allow it.

A. Yes.

Q. Were you familiar with the business of E. C. Hazard & Company prior to that time? A. Yes.

Q. You knew who conducted E. C. Hazard & Company after that? A. Yes, sir.

Q. Who did? A. Frank Green, Elmer C. Hazard, George M. Archer and Theodore Stern.

Q. I show you note marked Exhibit C 9 for identification, and ask you if you know what that is? A. Yes, sir, that is a note for my interest in E. C. Hazard & Company.

Q. When was that given? A. May 1, 1905.

Q. What was the occasion of that being given? A. That was the occasion of the transfer of my father's estate to Elmer C. Hazard in order that

he could represent the interest as a member of the firm.

Q. When was it made? A. It is marked on the back—a couple of years afterwards, when the reorganization took place.

Q. What did you receive in payment of this note? A. Stock.

Q. Stock in what? A. E. C. Hazard & Company, a new corporation.

Q. Have you still that stock? A. Yes, sir.

Q. What was the character of the business conducted by the corporation E. C. Hazard & Company? A. General grocery jobbing.

Q. Where? A. New York and all over the United States.

Q. (By the Court) Canning? A. Yes, sir.

Q. Do you know that they had cigars and liquors? A. Yes, sir.

Q. And brands of liquors? A. Yes, sir.

Q. (By the Court) Did you take any part in the business? A. Yes, sir, brought up in it.

Q. (By the Court) I mean after the organization of the corporation you spoke of. A. Yes, sir.

Q. Did you hold an office? A. After the failure I became secretary of the corporation Hazard Manufacturing Company, at Shrewsbury, New Jersey.

Q. (By the Court) After the failure of the firm? A. Yes.

Q. Did you occupy any position in reference to E. C. Hazard & Company? A. Yes, sir, I was treasurer of it latterly.

Q. Were there different labels of liquors? A. Yes, sir, various labels.

Q. Labels devised or made up by whom, if you know? A. By E. C. Hazard & Company, my father and Mr. Green made up the labels, as a rule.

Q. (By the Court) You mean the brands? A. Yes, sir, the design.

Q. (By the Court) And the name of the brand was printed on the label? A. Yes, sir.

Q. In reference to the whiskey labels or the liquor labels and liquor brands, do you know how many there were? A. I should imagine about seventy-five different brands, roughly.

Q. (By the Court) Of liquors and ales? A. Yes.

Q. What became of the liquors? A. The stock of liquors when we wound up in Grove street was sold to Smith & Darling.

Q. What became of the brands and labels, the rights to manufacture under them? A. They were given to Smith & Darling when they bought the stock.

Q. Was any value attached to them?

Mr. Rosenberg: I object; attached by whom?

Court: By the firm, I take it.

Mr. Sexton: By the firm, E. C. Hazard.

Court: That is what you mean?

Mr. Sexton: Yes.

Q. Was any value placed upon them when they were sold by the firm? A. No, sir.

Q. Were there brands of cigars? A. Yes, sir.

Q. Can you estimate the number of brands of

cigars? A. I should say there were about twenty-five different brands.

Q. Was there a Shrewsbury brand of cigars? A. Yes, sir.

Q. What became of the cigars and brands and right to manufacture under those? A. The cigar stock was handled in the same way as the liquor stock and sold to Mr. Stern for the inventory, and the brands were given to him.

Q. Was there a Shrewsbury brand cigar? A. Yes.

Q. (By the Court) Was anything said when the whiskey and cigar business was sold or disposed of, about the brands at all? A. No, sir. Yes, they were discussed.

Q. (By the Court) As being included in the sale? A. Yes, sir. In fact they formed part of the sale, except there was no value attached to it.

Q. (By the Court) Anything paid for them? A. No, sir.

Q. You were present, Mr. Hazard, as I understand it, at the Fidelity office that night of the closing? A. Yes, sir.

Q. Were you at the Astor House? A. No, sir.

Q. Who was at the Fidelity? A. My mother, Mr. Joyce, Mr. Davis, Mr. Dickensheets, and Mr. and Mrs. Powers, and myself, to the best of my recollection.

Q. What was done, if anything, in reference to a contract of the sale of real estate? A. It was executed.

Q. How was it executed? A. After long discussion lasting several hours, it was finally executed and completed.

Q. (By the Court) How, he asked you. A. Mr. Powers gave Mrs. Hazard a mortgage, otherwise he adjusted a balance on the purchase price.

Q. (By the Court) She gave a deed to him? A. Yes.

Q. There was another contract, Mr. Hazard, in reference to what is known as a bill of sale goods; do you know of such a contract? A. Yes.

Q. Was there anything said in your presence concerning the closing of that contract? A. Yes, sir, a whole lot.

Q. That was quite a lengthy session, as already appears? A. Yes.

Q. What was said, as far as you can recall, in reference to the closing of that? A. There was a great deal said; it was the bone of contention of the whole evening.

Q. How was the matter finally adjusted in reference to that contract, referring to Exhibit D 3? A. As I understood it, that evening Mr. Powers took the personal property on condition that it could be delivered, and gave a conditional payment for it.

Q. Did you see a paper given by Mr. Powers to Mrs. Hazard that night, or a note with an endorsement on it? A. Yes, sir, I saw the note.

Q. I refer to a note of Mr. Powers which had upon it the endorsement:

> "This instrument shall not be considered as evidence of indebtedness or a chose in action accruing to the payee or her assigns until the title to the goods in payment for which this note is given is legally

vested in the maker or his assigns. When such title is vested by a bill of sale or assignment thereof, then a new note of like tenor and effect, bearing the same date, is to be executed by the maker of this note, or his heirs or assigns. (Signed) Harry L. Powers."

Did you see that? A. Yes.

Q. Do you recall anything being said in reference to Mrs. Hazard attempting to secure the title to the personal property mentioned in the contract for which this note was given? A. Yes, sir, she said that if Mr. Powers wanted to take it on that basis, that she would turn over the Matthes note to Powers.

Q. And it was refused? A. Yes, sir.

Q. Do you recall anything being said when she would endeavor to get the title for Mr. Powers? A. She said that she would immediately try to secure the title to it.

Q. Do you recall anything being said by Mr. Dickensheets in reference to her ability to turn over the title? A. Yes, sir.

Q. What was it? A. He said in his opinion she couldn't get title to the goods, inasmuch as she had already sold them.

Q. And this note was given for that? A. Yes.

Q. Do you recall anything being said by Mrs. Hazard in reference to not going on with the contract? A. Yes.

Q. What was said? A. That if Mr. Powers was not entirely satisfied with the deal, that she would

be pleased to call it off and settle with him the following day with money that she expected to obtain from Mr. Beadleston, and reimburse him for his outlay.

Q. There was talk there about the Eisemann judgment also? A. Yes, sir. a sum was set aside to satisfy it.

Q. (By the Court) Set aside that night? A. Withheld.

Q. (By the Court) Do you remember whether that was withheld then or later? A. My recollection is it was agreed to be withheld that night.

Q. (By the Court) Was any money paid to Mrs. Hazard that night? A. Yes, sir.

Q. (By the Court) How much? A. A check for six or seven hundred dollars.

Q. (By the Court) Representing the balance due her after all the claims had been paid? A. Yes.

Q. (By the Court) In addition to the amount of the mortgage, of course? A. Yes, sir.

Q. (By the Court) Why were you there? A. In an advisatory capacity.

Q. (By the Court) At whose request? A. My mother's.

Q. (By the Court) Did you participate in the discussion that arose from time to time? A. Yes, sir.

Q. (By the Court) After this lengthy session, Mr. Hazard, were the parties friendly? A. Yes, sir.

Q. (By the Court) Was anything said about trade marks on trade names that night? A. No, sir.

Q. (By the Court) Any reference made to them? A. No, sir.

Q. Where did you go after the closing? A. We left the Fidelity and went to a restaurant for something to eat.

Q. Do you know of your own knowledge who had goods in the factory at Shrewsbury? A. Yes, sir.

Q. Who? A. E. C. Hazard & Company.

Q. (By the Court) At this time, I suppose? A. Yes, E. C. Hazard & Company, Little Silver Sauce Company, my mother and Mr. Beadleston.

Q. Do you know that Mr. Adams had had some goods previous to that? A. Yes, he had had some.

Q. What became of his goods? A. He ordered them shipped to his store in the Bronx.

Q. And were they shipped? A. Yes, sir.

Q. Where did you live at this time? A. Shrewsbury.

Q. With your mother? A. No, sir, with my wife at Shrewsbury.

Q. Not in the home? A. No, sir.

Q. How far was your home from the Hazard manor house? A. About a mile or a little over.

Q. What did you do the next evening? A. I went back to Brooklyn from Newark, with my mother, and remained with her all day and went with her to Shrewsbury that afternoon.

Q. (By the Court) What time did you arrive? A. In the afternoon sometime, I don't know exactly.

Q. Where were you in the evening? A. I went to my own house and returned after dinner and was there that evening.

Q. (By the Court) At your mother's house? A. Yes.

Q. (By the Court) Did you expect Mr. and Mrs. Powers to call that night? A. Yes, I knew they would be there, they said so.

Q. (By the Court) Where had you left them? A. At the Fidelity—Newark or New York, wherever we separated.

Q. Who was present at the manor house that night? A. Elmer Hazard and his wife, and my mother, Mrs. Powers, Mr. Powers and myself.

Q. How was the evening spent? A. Very pleasantly.

Q. Was it a business meeting or not? A. No, sir, purely social.

Q. Did you see Elmer Hazard there? A. Yes.

Q. What was he doing? A. He was sitting at the north end of the table drawing some sort of a design for a label or something; he never said anything.

Q. Was the table in the center of the room? A. Yes, sir, dining table.

Q. Did Elmer Hazard and Harry Powers talk? A. No, sir, only in the briefest way.

Q. (By the Court) What were your relations with Mr. and Mrs. Powers? A. Very friendly.

Q. And had they been for some time? A. Yes, sir.

Q. What social diversions took place, if any, that night? A. No particular social diversions. As I understood it, before the meeting took place, Mr. Powers and Mrs. Powers were to come there to have a talk with the Doctor.

Mr. Smock: I move to strike that out.

Examination by the Court:

Q. Where did you get that understanding? A. At the Fidelity the night before.

Q. What was said which led you to have that understanding? A. Mr. Powers and my mother were discussing the factory business and factory generally, and on the way home from the Fidelity Mr. Powers and Mrs. Powers stated that they would be there that night to see my mother.

Mr. Smock: I move to strike out the answer that he had given.

Q. How did you get the understanding that they were coming to talk to the Doctor? A. That is what they said.

Q. How did you get an understanding that they were going to talk to the Doctor, if they were coming to see your mother? A. They were coming to my mother's and meet him.

Q. For what purpose? A. To discuss the factory and purchase of the property.

Q. What was there to be discussed? A. To get the keys, as I understood it.

Q. Won't you tell us all that was said about it? A. That is all I recall being said about it.

Q. The whole matter was closed, as far as related to the real estate, at the Fidelity in a harmonious way, and you broke up harmoniously? A. Yes.

Q. And went to your respective homes? A. Yes.

Q. You made a statement that you understood the purpose of Mr. and Mrs. Powers' call at the

home the following night was to have a talk with the Doctor about it? A. Yes, that is the idea.

Q. I am at a loss to understand as to what he was to talk with the Doctor about. A. They were to get the keys to the factory and the Doctor was supposed to have possession.

Q. Won't you tell me what was said, so I will understand whether your understanding is right? A. I have described all the conversation that I heard at the Fidelity Trust Company.

Q. And yet I cannot understand how you gained the impression, from what you have told me, that they were going to talk with the Doctor. A. From what Mr. and Mrs. Powers told me themselves, I gathered it.

Q. What did they tell you? A. They said they were going there that night to see Elmer to get the keys of the factory.

Q. When did they tell you that, before you broke up? A. No, before they went there.

Q. That same day? A. The night before, at the Fidelity.

Q. (By Mr. Sexton) Did you hear anything said there that evening, when you were all at the house, denying Powers' possession to the premises? A. No, sir.

Q. Was anything said about possession? A. No, sir.

Q. Do you know whether Mr. and Mrs. Powers did have a talk with the Doctor? A. I know they did not, because I was there all the time.

Q. And they didn't accomplish the purpose of their visit? A. No, sir.

Q. Nothing said about the keys? A. No, sir, not a word.

Q. Any unpleasantness at all that evening? A. No, sir.

Q. (By Mr. Sexton) Did you go home with him? A. I went home with Mr. and Mrs. Powers.

Q. Was anything said by Mrs. Hazard to the effect that she had given a lease to Elmer? A. No, sir, absolutely nothing said about a lease at all.

Q. What time did the party break up? A. About quarter after ten or half past ten.

Q. You went home with Mr. and Mrs. Powers? A. I went as far as Borden's corner with them.

Q. They drove you to that corner? A. Yes.

Further direct examination by Mr. Sexton:

Q. What kind of a wagon? A. A buggy.

Q. Do you know where they were going? A. Red Bank, to the Globe Hotel, they said.

Q. Do you know where they got the horse and rig? A. I don't know.

Q. Who was driving? A. Mr. Powers. I went as far as Borden's corner and Sycamore Avenue. That is the cross roads.

Q. Where is the church; is that on one corner? A. Yes; they wanted to take me all the way home, and I said I would get out there and walk up the rest of the way.

Q. (By the Court) Your mother's house wasn't far from the corner where you got out? A. About half a mile.

Q. What conversation took place between you and Mr. Powers while on the way home? A. Very little. Mr. Powers simply remarked that he didn't

like Elmer's attitude, his silence, because he didn't offer him the keys or say anything to him about the property.

Q. Is that all that was said? A. That is all.

Q. Mrs. Powers was along? A. Yes, sir.

Q. Anything said about when he was going to take possession? A. No, sir.

Q. What time was it that they left you at Borden's corner? A. I should imagine about half past ten; I cannot say exactly.

Q. To go from the Hazard manor house to drive to your house you would drive west, would you not? A. Yes.

Q. And your residence would be further west than the cross roads? A. Yes, sir.

Q. You were not present the next morning? A. Yes, I came down there the next morning.

Q. (By the Court) Before or after the trouble started? A. After.

Q. (By the Court) About how long? A. A couple of hours.

Q. (By the Court) Had you heard of it before going there? A. Yes, sir.

Q. (By the Court) What condition did you find the premises in when you arrived? A. I was only at the house; I didn't go to the factory.

Q. Did you have any conversation with Mr. Powers? A. The next morning?

Q. Yes. A. No, sir.

Examination by the Court:

Q. Did you get there before or after he was arrested? A. I presume it was after, a couple of hours after.

Q. Any conversation with Elmer that morning? A. Yes.

Q. Did he state that he had made a complaint against Powers? A. Yes.

Q. Did he say what for? A. Yes, he said he had taken such violent possession, and one thing and another.

Q. Why did he object to Powers taking violent possession? A. Because, as I understood it, he said to me that Mr. Powers had agreed to let him remian there for a reasonable length of time.

Q. Did he say when Powers had made that agreement with him? A. Previous to the closing, and at the closing.

Q. At the closing at the Fidelity? A. No, previous to the closing; as I understood it, this conversation took place between the fifth of February and thirteenth of March.

Cross-examination by Mr. Smock:

Q. When they left the Fidelity that night, there was no dispute as to the fact that Mr. Powers could take possession the next day, was there? A. No, sir.

Q. How does that comport with the idea that he was going to let Elmer remain in possession? A. Only what Elmer told me that Powers said to him, that is all.

Q. But at the Fidelity your mother didn't undertake to restrain him from having possession the next morning? A. No, sir.

Q. (By the Court) When did you understand Powers was to go into possession while at the

Fidelity? A. I understood he was to take actual possession probably the next day.

Q. You were interested in E. C. Hazard & Company? A. Yes, I am yet.

Q. You were just as much interested as Elmer was?

Q. (By the Court) Did you tell Elmer that that was the understanding which you had had at the Fidelity, and ask him why he had Powers arrested for taking possession of what he bought? A. No, sir; I never said anything about it.

Court: There seems to be a good deal of mystery about this particular phase of the case that I cannot get explained to me.

Q. You had been giving your attention to the business previous to this meeting in the Fidelity, hadn't you? A. No, sir.

Q. You had not? A. No, sir.

Q. (By the Court) Were you acting as treasurer then? A. No, sir.

Q. When had you ceased being treasurer? A. 1912 I resigned from the company and had nothing to do with it whatsoever except being a stockholder.

Q. (By the Court) And your interest at the Fidelity meeting was merely as a representative of your mother—a sort of an advisor? A. A sort of an advisor? A. A sort of an advisory capacity.

Q. (By the Court) Not acting for yourself individually at all? A. No, sir, not in any way.

Q. What purpose did you have in going to the factory the morning after the meeting at the

manor house the night before? A. I didn't go to the factory the next morning.

Q. You went to the house? A. I was summoned there by my mother.

Q. And you were summoned there that morning by your mother? A. Yes.

Q. Did she tell you why she wanted you? A. Yes.

Q. Why? A. To assist her to remove the furniture from the house.

Q. To assist her in removing it? A. Yes.

Q. Did you actually remove it at that time? A. Yes, I assisted in it.

Examination by the Court:

Q. Was there anything said about your mother being entitled to remain there if she saw fit, by Mr. or Mrs. Powers? A. Yes, I heard Mr. Powers make that statement.

Q. What did they say? A. They said that she could remain there; there was no hurry for the use of the house.

Q. What did they say about the furniture and effects? A. My mother said she would permit the furniture to remain in the house.

Q. Did they reach any misunderstanding about Mrs. Hazard remaining in possession? A. Because of this row they had at the factory the next morning.

Q. Did they revoke their permission to Mrs. Hazard to remain? A. No.

Q. It was optional with her whether she should leave at that time or not? A. Yes.

Q. Was she annoyed or angry at the fact of this trouble at the factory? A. They seemed to be displeased about it.

Q. And it was because of that she was moving? A. Yes, she was advised to remove it.

Q. By counsel? A. I believe so.

Q. Advised to remove it? A. Yes.

Further cross-examination by Mr. Smock:

Q. Who was the counsel? A. I don't know.

Q. Then so far as you knew, there was no reason why Mr. Powers should not take possession the next morning? A. No, sir.

Q. And that was the understanding when you left the Fidelity? A. Yes.

Q. And Mr. and Mrs. Powers were not living on the premises at that time, but were staying at the Globe Hotel? A. Yes, sir, temporarily, I believe.

Q. And their intention, as expressed to you, was to go down and see Mrs. Hazard the next day and get the keys? A. The next evening.

Q. And Elmer was there at this meeting? A. Yes, sir.

Q. And Elmer didn't say anything about his right to retain possession, did he? A. No, sir.

Q. And notwithstanding their intention of going down there to get the keys, nothing whatever was said about it? A. No, sir.

Q. Mr. Hazard, you are very certain you were there that night? A. I am positive.

Q. There cannot be any question about that? A. No, sir.

Q. Mrs. Hazard in her testimony made no ref-

erence to your presence? A. I am aware of that.

Q. Elmer Hazard in his previous testimony made no reference to your presence; in fact, not until this case was testified to by anybody that you were there that night? A. I was there, though.

Q. Notwithstanding that, you still are emphatic in your answer? A. I am emphatic, no matter what anybody should say about it; I went home with the Powers.

Q. You were there all evening? A. Yes.

Q. Where did you get in the buggy that night? A. At the back door.

Q. Your mother says you got in under the porte cochere in the front? A. I cannot help what anybody else says, I know where I got in.

Q. The horse and buggy were tied over on the Sickles property adjoining it? A. I don't know where it was tied; Mr. Powers got it and my sister and I got in.

Q. (By the Court) There isn't any possible room for confusion about this night and some other night? A. No, sir, not the slightest.

Q. That night at the Fidelity I suppose you heard read, or read, that $11,400 contract, didn't you? A. Yes, I heard it read.

Q. And called for the delivery of four notes? A. Yes, sir.

Q. And did Mr. Powers have the notes there that night? A. I think he did.

Q. Who was it that made the suggestion that only one note should be given, rather than four? A. I, myself.

Q. Why did you make that suggestion? A. Because I didn't see any necessity for having four

notes, as long as they were going to stretch over a long period of time; I thought one note would be sufficient.

Q. What was the object in covering that long period of time; what was the purpose? A. I don't know; Mr. Powers covered the period of time.

Q. Mrs. Hazard wanted the notes in such form that they would be available to her to use as money? A. That is the idea.

Q. And she had in her original contract, drawn in February, stipulated that the notes should be payable at four different periods? A. Yes.

Q. Running certain months? A. Yes.

Q. This new arrangement made her notes run over eighteen months? A. Yes.

Q. Which was in ordinary practice a non-negotiable-nonbankable note? A. Yes.

Q. Ordinary banks wouldn't take a note for that length of time? A. Mrs. Hazard didn't want to take it, and didn't take it.

Q. Why did you suggest it? A. I didn't suggest the length of time; I suggested one note to cover four notes—instead of four notes, I presumed that the note would be a reasonable length of time, such as four to six months.

Q. You saw it after it was given? A. Yes.

Q. Did you demur to the length of time? A. I did to my mother.

Q. And she didn't acquiesce in it? A. I don't understand what you mean.

Q. Agreed to it? A. She demurred also; she set up the contention that the note wasn't a bankable note, and if it was she would guarantee to deliver the goods.

Q. She finally accepted it? A. Yes.

Q. Mr. Joyce took it? A. Yes.

Q. He represented your mother? A. Yes.

Q. He didn't represent Powers? A. No, sir.

Q. Whom did he take the note for? A. I don't know.

Q. (By the Court) What was the object of giving a note at all that night? A. I don't know.

Q. (By the Court) When the goods could not be delivered by Mrs. Hazard? A. As I understood it that evening, and have understood it ever since, the object of giving this additional note was to cover a sort of a tentative arrangement made with them, that if Mrs. Hazard was ever able to deliver the title to these goods, then this deal would be a binding note, and a new bankable note given; and if not, it was to be no contract; it was so arranged, and so arranged that night.

Q. (By the Court) Do you know why that wasn't put in writing? A. No.

Q. (By the Court) That understanding? A. I don't know.

Q. Are you friendly with your mother at this time? A. Yes.

Q. And have been for some time? A. I have always been friendly with my mother.

Q. Had you talked with her about this proposed sale to Powers? A. Only in a very tentative way.

Q. You knew that she had made the sale? A. I did.

Q. And she told you the price? A. Yes.

Q. Did she tell you that she had contracted to sell this personal property that she had received from E. C. Hazard & Company as security? A. Yes, sir.

Q. And did you know at the time that she had actually sold this same property to Matthes? A. I didn't know very much about it, except that it was developed some two weeks before.

Q. That isn't responsive. A. I am trying to lead up how I did understand.

Q. Did you or did you not? A. I did, yes, sir.

Q. And when she told you that she had sold it to Powers, did you state to her that she had previously conveyed it by bill of sale to Matthes? A. Yes, she knew that.

Q. Did she say why she had entered into this agreement, in the face of these bills of sale? A. Yes, she told me that if Mr. Powers would buy the goods from her, she would turn them over to him; she would rescind the contract that she had with Frank T. Matthes and E. C. Hazard and give them to him.

Q. When could she have it rescinded? A. Only the right to take it back.

Q. She had executed a solemn bill of sale; how did she expect to get them back? A. They would have been glad to have sold out, I guess.

Q. Why didn't they, then? A. I don't know; I understood it was all spoiled by the possession Mr. Powers took of the factory.

Q. Didn't you say to your mother that she made a mistake when she had executed that contract with Powers, in view of the fact that she had already parted with her title to this property? A. No, I simply asked her how she was going to do it, and that is what she said.

Q. You knew she had no right to do so? A. Not unless she got consent from them. If she got

the bills of sale back from them and permission from them to dispose of the goods, then she had a right.

Q. She hadn't said anything to them about taking them back? A. To whom?

Q. Matthes. A. I don't know what she said to him.

Q. Did she tell you whether she had or not? A. No, sir.

Q. Do you know anything about who had the right to use or the title to the trade name of E. C. Hazard & Company? A. Yes.

Q. Who? A. E. C. Hazard & Company only.

Q. Isn't that one of the things that had been given as security to Mrs. Hazard? A. Not to my recollection.

Examination by the Court:

Q. Do you know what property passed to Mrs. Hazard as collateral? A. Yes, sir, approximately.

Q. Then you are positive that no trade marks or trade names or labels or brands were included? A. No, sir, because the corporation wouldn't have the right to assign them.

Q. Why not, as well as assigning any other property that it owned? A. A different sort of property; we always understood their merchandise.

Q. It is true, it belonged to the company; it had a right to do with its own property—— A. We always thought it would take a vote of the stockholders instead of the directors to assign them.

Q. Was that discussed? A. At the meeting?

Q. At any time. A. My relations with E. C. Hazard & Company ceased in 1912.

Q. At the time that this collateral was being talked of, about giving Mrs. Hazard collateral to secure her other liability on these notes, was anything said or discussed about giving her the trade marks or trade names or labels or brands? A. No, sir, not prior to 1912; I don't know what they did after that.

Q. Anything that you know of? A. No, sir.

Q. Was your mother crying on this night when you met at the home? A. No, sir.

Q. Was she despondent? A. No, sir.

Q. Or say anything about Elmer being disgruntled or dissatisfied over the sale? A. No, sir, nothing said.

Q. Was he actually disgruntled over it? A. He didn't seem to be; he was simply busy there at the table writing.

Q. Have you any explanation as to why Powers broke into the factory the following morning? A. Only that connected with his statement going home in the carriage, wherein he said that he didn't like Elmer's attitude, his silence.

Q. Did it occur to you to suggest, "Why didn't you ask for the keys"? What did he say? A. He said it was Elmer's place to offer them to him, and I sort of admitted at the time that it was.

Q. It seems to me you were standing on a good deal of ceremony, all of you. A. It was a lack of aggression on both party's part; I personally had no interest in the matter one way or the other.

Further cross-examination by Mr. Smock:

Q. You were associated with the business there at Shrewsbury from a youth, I suppose? A. Yes.

Q. When did you first become identified with the business; I don't mean as an officer, but in the business in any way? A. I suppose as a boy fourteen or fifteen.

Q. And you are how old now? A. Thirty-seven.

Q. And at that time when you first became connected with the business, was the business a large or small one? A. A large one.

Q. You say a large business; how did it compare with canning factories in the neighborhood of—in Monmouth County, we will say? A. I think it was the biggest one in Monmouth County.

Q. Didn't it compare favorably in business and size with canning factories in the State of New Jersey? A. Yes.

Q. What would you say was the volume of business when you first became identified with the factory itself? A. I should say about $100,000 a year.

Q. And that was gross sales, you mean? A. Yes.

Q. How many men were employed there? A. In the summer time I should say about 150.

Q. (By the Court) Men and women? A. Yes.

Q. (By the Court) And children? A. Yes.

Q. Did they buy their tomatoes and other products from farmers? A. All farmers in the vicinity, yes.

Q. You contracted with a great many farmers for their sole output? A. Yes.

Bowden Hazard—Cross.

Q. You have seen times when there have been a string of wagons waiting to be unloaded for half a mile? A. Yes, sir.

Q. Was the business successful at that time, financially? A. No, sir.

Q. Was the factory ever successful financially? A. Yes.

Q. (By the Court) When? A. Between 1883 and about 1890; it used to make a net profit of about $18,000 a year in those years.

Q. (By the Court) How do you get that knowledge? A. From my father's statements and old balance sheets.

Q. (By the Court) If I recall Dr. Hazard's testimony, he said for about seventeen years it hadn't made a profit? A. Yes.

Q. (By the Court) Does that cover the period you refer to? A. I should imagine it would.

Court: He said seventeen years previous to 1905.

CHATHAM F. BEDELL, recalled for further

Direct examination by Mr. Skinner:

Q. In your testimony at Red Bank in this case you said that you had had a prospective buyer of the Hazard property? A. Yes.

Q. And on that occasion you testified that you could not remember who that person was? I ask you now if since that time you have been able to recall the name of that client of yours? A. I have.

Q. What was his name? A. William H. Cooper.

Q. (By the Court) Where did he live? A. At that time I think he lived at the corner of Riverside Drive and 86th street, in a private house that he owned.

Q. Had you ever had any business relations with him previous to this? A. Yes.

Mr. Smock: Objected to as irrelevant and immaterial.

Court: He has answered it; it will stand.

Q. Do you recall the amount of money involved in the other business propositions?

Mr. Smock: I object. What is your purpose, to show that he was financially able to handle a matter of this size?

Mr. Skinner: Yes.

Court: If that is it, I will let it go in.

A. I know only from hearsay; that is what I have got to explain.

Court: Then you cannot answer it.

Q. Did the other deal go through?

Mr. Smock: Objected to as immaterial.

Court: I will allow it.

A. Yes.

Q. Did you see the papers in the matter? A. I did.

Chatham F. Bedell—Direct.

Q. Can you tell from your knowledge of the document what the amount was involved? A. Yes.

Mr. Smock: Same objection.

Q. What was the amount? A. $57,000.

Q. Was that for real property, a tract of land? A. That was for vacant land in New Rochelle, water front.

Q. In New Rochelle, New York? A. Yes.

Q. (By the Court) Do you know how much real money was involved in the transaction? A. All cash.

Q. (By the Court) (Last question repeated). A. It was a cash transaction entirely.

Q. (By the Court) All cash? A. Yes.

Q. (By the Court) Furnished by Mr. Cooper? A. Furnished by Mr. Cooper.

Cross-examination by Mr. Smock:

Q. Whom was the contract made with? A. The contract was made with a man named Brower.

Q. (By the Court) For property where? A. At New Rochelle.

By the Court:

Q. Brower was the seller? A. I sold to Brower and he sold his contract two days afterwards.

Q. Was Brower to be the grantor? A. He was to be, but he was not.

Q. He was to be the grantee, wasn't he; who was the owner of the property? A. A party named Maloy.

By Mr. Smock:

Q. How many people were named as the grantees, the purchasers? A. Mr. Cooper.

Q. Mr. Cooper alone? A. Yes.

Q. Who else was interested in the transaction with him? A. No one that I know of.

Q. Do you know whether there was or not? A. No, absolutely.

Q. Wasn't he working for someone else? A. No, he never worked for nobody.

Q. Wasn't he actually dealing with this proposition for himself and others? A. No.

Q. Do you know that to be true? A. I knew that he never did in other properties.

Q. (By the Court) Is he a developer of real estate? A. Developer of real estate.

Q. In the developing of real estate didn't he associate himself with other people? A. Not to my knowledge.

Q. Under what name did he deal? A. His own.

Q. Did he use any corporate name? A. At times I think it was referred to as the Elmford Company.

Q. How many people were interested in it? A. I don't know anything about that.

Q. More than Mr. Cooper in the company? A. I don't know of anyone outside of his family.

Q. You didn't know? A. No.

Q. This Shrewsbury property was to be developed in the same way? A. By him, yes, sir.

Q. As a building site? A. Yes, sir.

Q. As far as you know, is Mr. Cooper alive? A. Yes.

Q. What is his address? A. I haven't any idea now, because I have been out of the business for a year.

Q. What was his address then? A. I think his last address that I had was New Rochelle.

Q. Where did you obtain this information about the name, from your records? A. No.

Q. Who told you? A. Nobody.

Q. Just your recollection? A. My recollection.

Q. You couldn't recall it the last time you were on the stand? A. I have been sick for ten weeks.

Q. What occurred to aid you in the recollection of this name? A. Only that I was annoyed that I couldn't remember, and thought it over, for no other purpose than to satisfy myself.

Q. You haven't consulted any of your records? A. No, I haven't any to consult.

Q. And the last known address was New Rochelle? A. That is my recollection; it may have been Hotel Gramaton, which is in the same section.

Q. That is Bronxville? A. Yes.

Q. You think it might have been the Hotel Gramaton? A. Yes, he lived at one time there; I haven't had dealings with him for at least two years.

Q. Did Mr. Cooper leave any money with you to bind the bargain in this case—Hazard case? A. No, I had had dealings with him and knew he was perfectly safe.

Q. He hadn't given you any money nor he hadn't signed any papers of any kind? A. No.

Q. Merely gave his word that he was willing to buy it? A. The usual way that I received offers.

JOHN F. JOYCE, sworn for complainant in rebuttal,

Direct examination by Mr. Sexton:

Q. Where do you live? A. 338 West 88th Street, New York City.

Q. What is your occupation or profession? A. Attorney.

Q. What state? A. New York.

Q. Connected at present with what office? A. Assistant District Attorney at the present time, New York County.

Q. Do you know Florence Hazard? A. I do.

Q. Do you know Mrs. Powers? A. I do.

Q. Do you know the Hazard family? A. Yes, sir.

Q. How long have you known the Hazard family? A. I think twenty years.

Q. Do you visit them? A. Very often.

Q. You visit them where? A. At Shrewsbury.

Q. Friendly with them? A. Very.

Q. Friendly with Mrs. Powers? A. Yes.

Q. Friendly with Mr. Powers, too? A. Well, I was up to the time I lost interest in him.

Q. When was that? A. When I realized that he was trying to do Mrs. Hazard.

Mr. Smock: I move to strike that out.
Court: Strike it out.

Q. When was that; give me the date? A. I think it was probably maybe several weeks after the closing of this title at the Fidelity; he was very congenial that night of the closing.

Mr. Rosenberg: I wish the witness wouldn't volunteer. He is supposed to be a lawyer; he ought to know better than that.

Q. You are not unfriendly with the Powers, either of them? A. No.

Q. (By the Court) I take it you mean now? A. Yes.

Q. You were at the Astor House, Mr. Joyce, on the fifth of February, 1913? A. Yes.

Q. What was the occasion of your going there? A. Mrs. Beadleston phoned me and asked me if I wouldn't go into the Astor House, that her mother was arranging or about to sell her Shrewsbury property to Powers.

Q. Who was there when you got there? A. Powers and Mrs. Powers, Mrs. Hazard and Elmer and Matthes.

Q. What conversation did they have, that is, Mrs. Hazard and Mr. Powers, in your presence, concerning this sale of the property? A. I told Mrs. Hazard how I happened to come in there, that Helen had called me up.

Q. That is Mrs. Beadleston? A. Yes; she said, "All right, we are talking over arranging to close up this matter." I said, "What are you going to do?" She said, "I am going to sell the house and farm down there." I said, "All right; have you got the data?" She said, "Well, it is not fully completed yet; we are talking it over here," so they did start to talk about it, and it was arranged that the consideration should be $60,000, and Mrs. Hazard agreed to subordinate her

$30,000 mortgage to a first prior lien of $30,000. I took that information and made a memorandum of it, just a little note paper I put in my pocket, which I usually do with a contract like that, and there was some talk there and Elmer got into the discussion, and Elmer said, "I don't know where I am going to get off; I haven't any place to go, if you sell that place down there." Elmer said, "I am trying to get some place but I haven't been able to close it up yet," and I remember it just as clearly as if it only took place five minutes ago. And Dr. Elmer was standing right at the entrance of the door going out into the small corridor, and Powers said to him, "Well, Elmer, don't worry about this thing; wait until it is all closed up, and I have taken title, and I am going to make a proposition to you," and he said, "You can stick around there and stay around there until the time arrives when we do arrange about something." I paid no attention to that particularly, except that I remember that very well.

Q. What became of the notes that you made on that occasion? A. I brought them back to my office, and I sent over to Gould's and got a New Jersey form of contract, because I didn't have any in my office, and I got that back and I sat down and I prepared the contract and I gave it to Miss Schurman. At the time I went to my office there was nothing I had in my mind, and intended to carry out nothing other than the drawing of a real estate contract.

Q. Was anything said in the Astor House about selling the personal property? A. Not a word.

Q. Have you the notes now that you made at the time? A. I had the notes, the Jersey form of contract.

Q. Have you the little notes you made at the Astor House? A. No.

Q. I show you a paper and ask you what that is? A. This was prepared by me in my office after I got back there; I had a note on a yellow paper.

Mr. Sexton: Referring to paper marked Contract.

Witness: It is a printed blank agreement for sale of property, New Jersey Form, No. 200, with pencil memoranda on it.

Mr. Sexton: I offer that in evidence.

(Marked Exhibit C 20 for identification.)

Q. Where did you obtain that blank, Mr. Joyce? A. I sent to one of the stationery stores—Gould I think I got it from.

Q. When was the pencil writing made in that paper? A. When I sat down ready to draw up the contract to give it to the stenographer, I prepared it that way, except that I worked out the description from the two deeds that I had received from Mrs. Hazard; I worked them out, changing where it said, "The property hereby conveyed by Sickles into Hazard"—I changed it, "Property hereby conveyed by someone into Hazard"; I changed that part, you know, and I just made that out, so Miss Schuman could sit down and draw the contract, and I gave them over to

her that way. This is what I had written out on the yellow sheet.

Q. When was any conversation had in reference to the second contract, referring to Exhibit D 3 for $11,400; when did that first come to your attention? A. That came to my attention the first time when I got in my office; I never heard a thing about this contract until I got there.

Q. (By the Court) Who brought it to your attention? A. Mrs. Hazard and Powers got talking.

Q. Was this before or after lunch? A. After lunch. I left there and they went to lunch and I went back to my office; they wanted me to go to lunch; I said, no, I would go back to the office, and I didn't think it would take me long to do it; I said, "When you are through with your lunch, come to my office," and they came to my office before I completed the real estate contract; I was in the act of working ou the description and when I gave that to Miss Schuman, they got talking about this contract which was drawn by that time, and Powers said, "There are a lot of things down there that I understand, Mrs. Hazard, you gave to Elmer, I would like to get them," and he said, "I understand they are worth a lot of money"; she said, "Well, yes, they are; there is probably sixty or seventy thousand dollars worth of goods in the contract." He said, "I would like to get them. I have got the factory down there, and probably I can go ahead and make money out of it. I can do it just as well as Elmer can," and she said, "If you want to give me a note and

you want to take a chance on getting that property, and take a change on my being able to get it for you, I will do it." They talked about the terms; she said that she received a note—I don't remember whether from Elmer or Matthes—by which they agreed to pay $11,400, which was in consideration of her having endorsed notes to the Nassau Bank and the Red Bank bank, and she said she got stuck on that, and that is the reason why this property was assigned to her; she said it wasn't any good to her, "and if you can pay me that money, you can have it," so on that, this agreement was drawn.

Examination by the Court:

Q. Do you mean to say she was going to turn over to Powers, as you presumed she had turned over to Matthes and Elmer, seventy or eighty thousand dollarsworth of goods for eleven or twelve thousand dollars? A. That is what this covers; that $11,400 covers property that was greatly in advance of what the notes then showed.

Q. Why was Mrs. Hazard selling it at such a sacrifice? A. She did it with Elmer and Matthes, and she said she would just as lief have Powers own it; she thought she could collect that just as well, quicker in fact.

Q. Why did you, as her attorney, allow her to sacrifice $60,000; why didn't you stop her; she was a woman and not a business man? A. There was a value there and that is why Powers wanted this bill of sale.

Q. I should think he or anyone else would, if

he could get seventy or eighty thousand dollars worth of property for that price. A. He wanted a list to compare, to see just what it was.

Q. Had you drawn these bills of sale? A. No, sir.

Q. To Elmer and Matthes? A. No.

Q. Did you know of them at the time you drew up the contract? A. They didn't mean anything to me.

Q. Had you heard of them? A. Never until that day.

Q. When you drew that contract there, why didn't you put a condition in it, so that Mrs. Hazard would not be obligated to convey to Powers unless she acquired the title from Elmer and Matthes; why didn't you protect her on that? A. I understood that Mrs. Hazard could get Elmer and Matthes to give back this stuff.

Q. Wouldn't it have been safer to say it was done on condition that she did get it back? A. Well, conditionally, it don't amount to much; it was only a conditional agreement; she couldn't get it; that is why we put through that subsequent agreement there in the Fidelity.

Q. That even wasn't reduced to black and white? A. I know, but that is the time when we first realized it; I thought this thing would go through, and I think Mrs. Hazard honestly thought so herself at that time.

Q. You drafted the $11,400 contract? A. Yes.

Further direct examination by Mr. Sexton:

Q. The parties had at that time returned to

your office? A. Yes, before the real estate contract was completed they returned, and I got the data on this and went out and sat down in my outer office at a desk, because Bess Hazard and Mrs. Hazard and Powers were sitting there.

Q. (By the Court) What property did you understand that contract referred to, the $11,400 contract? A. Certain property that was given over to Mrs. Hazard as security for the endorsement of notes, and which she had on the execution of those papers given over to Elmer and Matthes.

Q. Had you ever seen a list of that property? A. No.

Q. Did you ask for it that day? A. I did; I asked to have it sent to me.

Q. Was it sent to you? A. Yes, and I turned it over to Mr. Powers, and the reason why Mrs. Hazard said at that time that Elmer was working off this property——

Mr. Smock: I object.

Court: I will receive it.

A. She said Elmer was down there and was working off this property and was selling and disposing of it.

Q. The collateral property, so called? A. Yes, and it was at that time that Powers said, "Well, I will tell you, if you are selling it, I would like to know what I am buying, and I can get a list and see what is turned over and go down and check it up"; that was before these papers were drawn (referring to D 3).

Q. I show you D 1, the real estate contract;

that was prepared first? A. Yes.

Q. After it was prepared what was done with it? A. Before this contract was completed——

Q. (By the Court) What was done with it when it was prepared? A. It was finally turned over, a copy to Mrs. Hazard and one to Powers.

Q. What happened before the contract was finally prepared? A. While this contract was in the act of being drawn up, Powers said, "I will tell you that property down there, it hasn't been taken care of and it is going off a good deal, the leaders from the roof are frozen; there is no heat in the building, and I would like to get in there right away and fix up the place, because if there is a fire down there I want to be ready for it, and I would like to fix it up." I said "We have no objection to that. If you don't want to take care of the property, that doesn't bother us."

Q. What was done afterwards? A. Then I got back that paper there and filled in that form, that blank form, and put in where he had a right to go in the premises for the preservation of the same (referring to Exhibit C 20).

Q. And that was added to the contract marked D 1? A. It is part of this contract, it is typewritten in here; that part I just referred to is typewritten in here.

Q. (By the Court) There was an interlineation made? A. Yes.

Q. (By the Court) How did that come to be made? A. We were talking about what was in the place; of course, at the time we were talking about——

Q. This was in your office? A. Yes, Powers

made reference to this property that was in the factory at the time and which Elmer and Matthes had received from Mrs. Hazard; we talked about that and we talked about the E. C. Hazard & Company that were in there, the Little Silver Sauce Company, Elmer and Matthes were doing business; and they talked about all these things being there, and Powers said, "Mrs. Hazard, what do you own in there?" She said, "I don't know; I probably own some boilers or some engines, or something like that, that have been put in there while the property has been running." So he said, "I would like to get that." I said, "You can have it; you don't want it; it is no use to Mrs. Hazard"; she was cleaning out.

Q. (By the Court) Why didn't she make him pay for it? A. It was part of the building; she got it as part of the building.

Q. (By the Court) Were they fixtures actually? A. I don't know whether they were.

Q. (By the Court) Why didn't you make Powers pay for them, instead of giving them to him? A. I knew he had a building, he was talking about he wanted to have a fire in there to keep the place warm; he had to have engines and boilers and elevators; I didn't know what kind of hoists were in there. I don't think there were three minutes devoted to that interlineation. If it was of any importance, I certainly would have done the contract all over again.

Court: I am afraid that is the trouble; there wasn't enough time spent on it at all, for a seventy thousand dollar transaction.

Q. Was there anything said about the sale of trade names and trade marks? A. I never heard trade mark in this case until I understood this foreclosure was started.

Q. Did you testify in the previous case? A. I did.

Q. Were you asked anything in reference to trade marks? A. I wasn't asked nor heard anybody else asked about any trade marks or labels.

Q. (By the Court) Were they involved in any way in the other case? A. They never figured in the last litigation.

Mr. Rosenberg: They were not involved?

Witness: I had no part in the other suit, except as a witness.

Q. Other than the property that you have mentioned, such as boilers, engines and what not, of that collateral, was anything said that the property agreed to be conveyed by Mrs. Hazard to Powers by the real estate contract included any other personal property? A. No.

Q. Or any personal property?

Mr. Rosenberg: I object; the contract speaks for itself.

A. That interlineation was made for boilers and engines; that is what it was put in there for.

Q. What was that made to cover?

Mr. Rosenberg: I object. It is an effort to vary the contract by parole testimony.

Court: You cannot limit or enlarge it.

Q. (By the Court) Did this include Mrs. Hazard's furniture? A. No, that was specifically excepted in the contract.

Q. What was to become of the personal property that was in the factory, if you know?

Mr. Rosenberg: I object to that; the paper speaks for itself.

Court: That is the controversy here, isn't it? Mr. Powers' claim is that the personal property in the factory is his; you say it wasn't so, it belonged to a lot of other people and he had no claim to it. That is one of the questions I have got to settle, if I can.

Mr. Sexton: I claim, of course, that personal property refers to personal property of Mrs. Hazard.

Court: If there is any ambiguity there, you can clear it up. It doesn't appear to be on the face. I will have to determine whether you excluded, from the language employed, certain property.

Q. What was to become of the personal property in the factory other than that mentioned in the bill of sale goods?

Objected to. Objection sustained.

Q. What was said in Mr. Powers' presence as to removal of personal property from the factory? A. It was to be taken out.

Q. By whom? A. By Matthes and Elmer and

E. C. Hazard & Company, and Powers called me up two days afterwards, at my house, to get it out.

Q. At the time the interlineation was made, had this been said by Mr. Powers that the personal property was to be taken out?

Mr. Rosenberg: I object to that as leading.

Court: I will let it stand. You may answer it.

A. Yes.

Q. What had been said? A. It was arranged that everything should be gotten out of there; that is, this way: I will qualify it—that he was to stay there until Powers had talked with Elmer and them regarding to get their things out.

Q. (By the Court) Who was to stay there? A. That Elmer and Matthes were to stay there until Powers had made a deal with them.

Court: Strike that out; that isn't responsive to Mr. Sexton's question, which is leading enough to warrant the objection, but I am still permitting it.

Q. (Repeated). At the time the interlineation was made, had this been said by Powers, that the personal property was to be taken out? A. It was all to be taken out.

Q. And what property was to be left in the factory? A. Just some boilers and engines that belonged to Mrs. Hazard.

Mr. Rosenberg: I object.

Q. (By the Court) How do you reconcile that with your statement that this $11,000 contract was made by Powers in the expectation that he was going to get the property that was sold to Mathes and Elmer? A. E. C. Hazard & Company were in there and Little Silver Sauce Company, and everything was to be taken out of the place except what Mrs. Hazard owned, machinery and boilers.

Q. (By the Court) Why didn't you put such an exception in the papers? A. The space was very limited as to what I could put in there, and it was so clearly understood as to what was to actually pass.

Q. (By the Court.) What limitation had you except the labor of the typewriter; the sheets of paper, they were unlimited? A. Yes.

Q. (By the Court.) Where was the limitation that prevented you from putting an exception in the paper; I don't understand the limitation. A. I was drawing a contract here between mother-in-law and son-in-law and I thought everything was understood.

Q. (By the Court.) A most dangerous kind of a contract. A. I have noticed that since, and it was understood——

Mr. Rosenberg: I object.

Q. What was said by Mr. Powers, if anything, in relation to what personal property he was to purchase by the real estate contract? A. The boilers and engines.

Q. (By the Court.) Why didn't you say so, instead of saying all the personal property except that given as collateral? A. That was all that was put in there after the E. C. Hazard & Company——

Court: Strike it out.

Q. (By the Court.) When you made the interlineation you say it was limited to boilers and engines; why didn't you say so, instead of putting in all of Mrs. Hazard's horses, wagons, &c., except the collateral property? A. There was nothing said about horses and wagons.

Q. (By the Court.) Why didn't you state it so it wouldn't cover the horses and wagons, but only relate to the boilers and engines? A. That is all I figured, the boilers and engines; I was pressed for space there.

Q. Oh, no, it wouldn't have taken near as much space to say boilers and engines. A. That was in my mind at the time; that was the reason.

Q. What was the reason? A. Save space.

Q. (By the Court.) Look at that and tell me how you could have saved space; you took more space by two lines than to write "boilers and engines"; if I don't mistake the matter, I think you have two lines interlined there with a pen, haven't you? A. Yes.

Q. (By the Court.) Suppose you had written a line of four words, "including boilers and engines," it wouldn't have taken near the space? A. I suppose I could have done that, but that is not here nor there with me.

Q. You afterwards met at the Fidelity office? A. Yes.

Q. And in the meantime what had you done, if anything, towards answering the exceptions of the Fidelity Company relative to the title? A. I got some information about the search there, that there was some affidavit they wanted cleaned up, the title company, and I cleaned them up as best I could.

Court: Why go into that?

Witness: Then Mr. Davis, a relative of Powers, came in my office with the search——

Objected to.

Court: Strike it out. Let Mr. Sexton ask you questions and don't volunteer anything.

Q. When did you first become acquainted with the fact that the bills of sale had been recorded? A. When Davis came into my office and told me.

Q. The closing of the title was adjourned? A. For that reason, for the reason of cleaning up the title.

Q. You did meet on the thirteenth of March at the office of the Fidelity? A. Yes, sir.

Q. And the parties whom you mentioned were present? A. Yes.

Q. That was a lengthy session? A. Yes, it was.

Q. What was done, if anything, relative to closing the real estate contract? A. Powers came there with a lot of payments that he had made

out on account of the contract, he had taken them up, he had taken up that Nassau Bank one, which I had called on Mr. Earl to take up with him, and an attorney, I think his name was Stern, for the New Jersey Bank; I told him that he wanted to take care of those judgments.

Court: We don't care for that. What was done when you came here to close the title at the Fidelity?

Q. What arrangement did you make about having a representative of the bank here at the closing of title? A. The attorney told me that the judgment had been assigned to Powers.

Q. What was done then in reference to closing the title to the real estate contract on March 13? A. It was arranged, we went over there, I think, Mrs. Hazard and Bowden and myself.

Q. The real estate contract, what did you do about it? A. We adjusted all the figures and everything was all arranged and a hitch seemed to come on this personal property.

Q. You haven't yet answered; what did you do? A. The deed was delivered and bond and mortgage given back.

Q. (By the Court.) Who drew the deed? A. I did.

Q. (By the Court.) Who drew the bond and mortgage? A. I did.

Q. Did you draw the bill of sale? A. No, sir.

Q. Were you asked to draw the bill of sale? A. No, sir.

Q. Why didn't you draw a bill of sale for the personal property that Mrs. Hazard was selling to Mr. Powers under the $60,000 contract? A. Because I never figured any personal property was coming outside of the engines and boilers, and I knew that Mrs. Hazard would abandon the property and leave those things there; that is why I never made any mention of them; otherwise I would have retained a claim on it. I wouldn't realize anything; that was good for nothing.

Q. Was any demand made upon you at the time for a bill of sale against any personal property under the real estate contract? A. Not a word; that was a pleasant contract.

Q. Which was the unpleasant contract? A. We got around to this bill of sale thing.

Q. And then what occurred? A. Of course, we had a little hitch about the Eisemann claim or judgment, and we straightened that out; we made some kind of an agreement which we gave a note to Powers, with the understanding that he could discount it in the event that they ever pressed him for it, and we would stand liable.

Q. That is a copy of the contract (referring to Exhibit C 9 for identification)? A. Yes.

Court: Was that ever executed?
Mr. Sexton: Oh, yes.

Q. That got the Eisemann judgment out of the way, this agreement? A. Yes.

Q. And then you took up the $11,400 contract? A. Yes.

Q. And what was said and done generally in relation to that? A. I told him that we would have to provide for that contract while we were there, that I was going out there and let Mrs. Hazard go out with a binding contract standing here in which she was interested, and I told him that some provision must be made to cover it, so we knew when we went out of there that night where we stood, and it was because of that, Mr. Dickensheets—I think we held this down in the Board of Directors room in this building —Mr. Dickensheets went down to the other end of the room and sat there at some table and prepared something; he brought it back and showed it to me and I said, "Well, that is all right," but before we come down to the arranging of the terms of that note with the endorsement, Powers said, "As long as this has not been cleaned up tonight, we will have to make new arrangements; I will have to spend some money down there on that property, and under this agreement here——"

Q. Referring to what? A. Under that agreement of the personal property, the bill of sale agreement.

Q. The $11,400? A. Yes. I don't remember whether it was three or four or five or six notes—about four notes; he said, "I would rather not pay that money, and I would like to hold off on it, and it will require me to spend some money around there fixing that place up, and I will draw the agreement—we will draw the agreement in which I am to pay this money, within eighteen months," so we changed from the orig-

inal note of four, five or six, or seven, or whatever the terms were, to this one note, because he said he could use the money.

Q. (By the Court.) Was it done to accommodate Powers that you changed this? A. Yes.

Q. Or because you couldn't get title to the personal property called for by the agreement? A. No, we couldn't get it that night; we couldn't deliver that over there, and Mrs. Hazard said she would use every effort the following day to get it. The understanding was when we left there——

Mr. Smock: I object.

Q. What was said? A. When we left, Mrs. Hazard said she would see Elmer and get that stuff back from him, and as soon as she did, she would give it to Powers, and as soon as she delivered that over to him, he was to give her this note of $11,400 for eighteen months.

Examination by the Court:

Q. Didn't you know that Mrs. Hazard needed money at that time and was desirous of having a bankable note, whether it was one or four notes? A. Yes.

Q. How did you expect she was going to discount a note running for eighteen months for $11,400? A. I knew no bank would take it.

Q. Why did you let her do it? A. I did that for the purpose of providing for that open contract, that contract that stood open.

Q. Under the terms of the agreement endorsed on the note which was to run for eighteen months at Powers' option, where could she get any bankable interest? A. No, that note said that whenever Mrs. Hazard would hand over certain collateral security, then a note of like amount would be made out.

Q. Like amount and tenor; tenor means eighteen months? A. Yes, sir, from the handing over of the property to Mr. Powers.

Q. Why didn't you give him eighteen months credit? A. That is where he put one over on us; he wanted it and he got away with it; there was a little feeling about the thing at that time, and I got sore myself, and Powers, too.

Q. Were you folks awake, or were some of you asleep? A. No, we were very much awake, but a little grouchy.

Court: That might explain it. Some such explanation as that is required.

Q. I am going to press you a little more for an explanation; you are a man who is trained for this particular work. I can readily make allowance for what Mrs. Hazard and some of these lay witnesses would tell me, but I would like you to tell me in detail why this whole arrangement was changed from the $11,400 agreement to the arrangement that you now say is in existence. I would like the details of that. I don't understand, and it is quite a serious matter in this case. A. It might be a long story.

Q. Give me the facts; I want all that was said

and done that night, and then I will draw my own conclusions. A. I can confine myself to the Fidelity?

Q. To what was said here on that night. You say a new agreement was made at that time; I want to know what started that new agreement. A. Before we went there, the one that fixed the date to go there was Floyd Davis, and he fixed the hour; I communicated with Mrs. Hazard and told her to be in my office, and she was there with Bowden Hazard; we went over, and when we got there, we were in hopes that we would be able to get some notes from Powers at this time, and I think I brought over the notes from Powers.

Q. Drawn in accordance with this contract? A. Yes.

Q. You had prepared the notes for Powers to sign at the closing? A. Yes, in hopes that probably we could get him to step in our shoes and go against Elmer and Matthes; that was the reason for that. Mrs. Hazard I know at that time wanted some money.

Q. What is there in the contract that prevented you from demanding these four notes? A. From Powers?

Q. Yes. A. We couldn't carry out our contract.

Q. What had you done in the meantime to get in a position where you could carry it out, between February 5th and March 13th, with Elmer and Matthes? A. The first intimation I had was when I got information that the bill of sale was on record.

Q. What had you done to put Mrs. Hazard in a position where she could carry out the contract with Powers and demand the four notes from him? A. I put that up to Mrs. Hazard; I couldn't do anything at all; it was up to her to get it back from Elmer.

Q. What did you suggest she should do? A. I suggested that she should try to get it back from him.

Q. Did you ever call a meeting of Mrs. Hazard, Elmer and Matthes? A. No.

Q. You knew they had given her a $12,000 note in payment and paid $600 on account? A. Yes.

Q. You knew they owed her $11,400? A. Yes.

Q. And they were in default on it? A. I don't know that they were in default at that time.

Q. Do you know whether they were or not? A. I don't think they were.

Q. Do you know how much longer their note had to run? A. Several months, I think.

Q. Why didn't you limit Powers' payment to several months when that note had to run, instead of making it eighteen months? A. That was by arrangement Mrs. Hazard made with her son-in-law.

Q. She had you there representing her? A. At the closing of the contract I said, "Mrs. Hazard, why are you selling property for $60,000 and getting nothing back; if you don't mind, I would like to buy the property myself the same way.

Q. Wasn't she getting anything back for the $60,000? A. She was taking back a $60,000 second mortgage.

Mr. Sexton: $30,000.
Witness: $30,000.

Q. Wasn't she getting rid of obligations that were annoying her, to the extent of about $30,000 and some cash? A. Probably that was so, but the full consideration of the contract being taken up by mortgages didn't sound very good to me. I didn't like that at all, and Powers there volunteered; he said, "I will get $30,000 from Mr. Beadleston."

Q. Did you know of this offer that had been made on behalf of this man Cooper, that Mr. Bedell has testified to? A. No, I didn't know who the party was.

Q. Did you know there had been such a party? A. I knew there had been some talk about Mrs. Hazard saying in the Astor House, "If this thing isn't done, I will sell my property today at three o'clock."

Q. You couldn't influence Mrs. Hazard, then, to follow your advice not to sell it to Powers on these terms? A. I didn't try to influence her; I said in an offhand way it looked to me—it was something of a joke, the way I passed it off—"This is pretty soft; I would like to buy it myself at this rate," because he was going out to borrow a first mortgage of $30,000, and borrowing a second mortgage of Mrs. Hazard of $30,000; the only thing he had to pay out was the Fidelity Company charges.

Q. You offered to do the same? A. I didn't offer it. I didn't get in the contest to get the

property, because it had already been closed, but I said that to her in my office.

Q. It didn't occur to you to make an offer before the contracts were closed, then? A. No.

Q. I got you to the Fidelity and got you to the point where she hasn't delivered a property and cannot deliver it to Powers under the contract; who first suggested instead of Powers giving the four notes, that he should give one for eighteen months? A. Powers.

Q. What reason did he have to suggest that? A. He had to spend money fixing up the place, the ground.

Q. He knew that when he entered into the contract? A. I don't know what he knew, but I think he thought he had us cornered.

Q. How did he have you cornered? A. Because we were unable to carry out our agreement, which we tried to, on the personal property. We tried to call the whole thing off there. I said, "The only thing you are in a hole for here would be the Title Company charges"; we talked and Mrs. Hazard said, "I will get Honey Beadleston and he will give you the money back tomorrow morning."

Q. Powers wasn't willing to accept that? A. No, he said, "I will take this."

Q. When you found him so anxious to have it, why did you give him the extension of eighteen months? A. From the way he drew that agreement we were the ones that had the advantage of the whole thing.

Q. Why did you give it to him? A. We had the advantage in this respect, but it was a sort

of a give and take proposition; if we were able to get that property, we could go to Powers and Dickensheets and say, "This is the agreement we made, come on, what will you do about it?" Whereas, if we couldn't get Elmer and Matthes to come up and give us the property, that contract was—I don't know if any of us would have——

Q. Didn't you know he could sue Mrs. Hazard for not performing? A. No.

Q. What is there in the contract to prevent it? A. It says, "If in the event."

Q. In this contract? A. The note I refer to.

Q. I am talking about before you got to that note. A. That is why I jumped at that note, because I got this out of the way (D 3); I didn't want that hanging around Mrs. Hazard; I didn't want that open.

Court: I fully agree with your judgment; you didn't want that open.

Witness: No, you bet your life, I didn't.

Court: I don't know why you ever allowed it to be executed.

Further direct examination by Mr. Sexton:

Q. When this arrangement was made by taking the note, that was a new arrangement in reference to that $11,400 contract? A. Yes.

Q. (By the Court.) Why didn't you put that in the form of a formal contract? A. Mr. Dickensheets was drawing it up, I said, "He represents Powers; what he gives me, it is good enough for me." It was in his handwriting; I said, "I

didn't prepare this. Powers' own attorney prepared it, and I will stand by it."

Q. (By the Court): Where was the protection afforded Mrs. Hazard in that arrangement? A. I knew that Powers was very anxious to get this material, and if we could have brought it around tomorrow, we would have closed the thing up; I didn't know about the eighteen months. This was Mrs. Hazard's son-in-law; it was her own matter, whether or not she gave it to him for five years, I didn't care; she was satisfied; he gave her a good story about having to fix the place up.

Q. (By the Court): Didn't you know that Mrs. Hazard was worried over money matters and over her liability for these payments? A. Not when she said she could go out and get $30,000 from Honey Beadleston, I didn't think she was worried; I wasn't worried for her. I don't know whether it was two nights after or not, but I was not home for dinner, and when I came home the next morning, or late that night—I usually go in my mother's room—she said, "Powers called you up here." I said, "What for?" She said, "I don't know." I said to myself—I thought that was rather strange, why should he be calling me up; I don't know about this mix-up.

Mr. Rosenberg: Who is this conversation with?

Witness: My mother. She said, "He said he will call you up tomorrow." I don't know whether he called me in the morning or evening. I think it was the morn-

ing he called me up, and he said—I said, "I thought you were going in there and have possession of the property," and he said, "Elmer Hazard, E. C. Hazard & Company, Little Silver Sauce Company and everything is in that place, but I want it out." I said, "I don't know what I can do for you or have Mrs. Hazard do for you; I don't know what the practice is in New Jersey, but we haven't got the title to that real estate, and the only one that can help to get them is yourself. Get them out; you go ahead and I will make any affidavit that you want to give you possession, and I will have Mrs. Hazard do the same thing." I said, "We cannot do anything, we don't own the real estate."

Q. Did they submit an affidavit to you for possession? A. I think I did, I prepared an affidavit; I had Frank Hazard come over, and I gave them to him, and I think he went back and had his mother sign them in Brooklyn and brought them back to me. There were some affidavits drawn at the time to put him in possession.

Q. You had this memorandum in reference to a note of eighteen months, Mr. Joyce? A. I did, and held it.

Q. And it was produced at the case of the Little Silver Sauce Company versus Powers? A. Yes, I held that until I gave it to Judge Heisley.

Q. You haven't it now? A. No, I have never seen it since.

Q. The endorsement I have read to the witnesses previously, that is the endorsement as you recall it being on there? A. Yes.

Q. Do you recall having a talk with Mr. Dickinsheets in reference to Powers taking all the goods in the factory? A. Yes, I come there and saw Dickinsheets.

Q. When was that? A. That was after this trouble started, when the suits were started, and I don't know whether it was downstairs, seeing one of the Egners, but I went up and saw Dickinsheets——

Mr. Rosenberg: Objected to.

Court: Is there any foundation for this? I don't recall any.

Q. Was there anything done by Mrs. Hazard, or you through her, denying Powers possession of this property? A. Never.

Court: Through him, I suppose.

Q. Was there anything done by Mrs. Hazard through you in relation to bringing any suits against Harry L. Powers? A. In reference to what?

Q. Any of the personal property; did you bring any suits? A. No, I never brought any suits.

Q. (By the Court): There are three or four suits that have been referred to, such as the Little Silver Sauce Company and Hazard against Powers, did you know if Mrs. Hazard participated

in any of those actions? A. She never had any interest in them to my knowledge.

Q. (By the Court) Did she instruct you to assist them in any way? A. Never; I never knew anything about it until I was requested to appear as a witness.

Q. On the night of the closing, you closed subject to certain judgments that Powers had? A. At the time we closed Powers was talking—he wanted to get a policy on his property; I knew the only way to get it would be to clear off any judgments or outstanding liens, and I thought the best man to give them to was the man who owned the property, and I let him take possession of them; I was a New York lawyer and I wasn't going to chase over to Freehold, and I let him take them; he was to satisfy those right away; that was the understanding.

Q. Were they satisfied? A. I wrote him several letters requesting and demanding that he pay them.

Q. I show you a letter of June 9, 1913——

Court: Is there any dispute about this? You don't dispute the fact that Mr. Powers hasn't satisfied this judgment?

Mr. Smock: Not at all.

Mr. Rosenberg: We stand ready to satisfy them if they have not been satisfied.

Mr. Smock: We have never attempted to enforce them.

Mr. Sexton: Do you admit that demands were made upon you for the cancellation of those judgments and that they were not cancelled?

Mr. Smock: We don't admit that.

Court: What significance has it?

Mr. Sexton: It is part of our case; it shows that instead of our attempting to commit any fraud upon Harry L. Powers, he had contemplated cleaning out Mrs. Hazard, so to speak, and annoying her in any way.

Court: How is that involved in this issue? They put in the trade marks and trade names which are worth anywhere from $20,000 to $75,000.

Mr. Smock: Exactly.

Mr. Sexton: Are we to meet a claim for $11,400 on that particular item?

Mr. Smock: Yes, we never have had possession of those goods.

Court: She isn't suing on this note?

Mr. Smock: No.

Court: That is entirely independent of this transaction; that is a proper defence; if Mrs. Hazard should ever attempt to sue on that note for $11,400; they would say, "No, you have never given us anything," but I do see where they claim, under that interlineation in the $60,000 contract, all the personal property owned by her, other than that mentioned in the collateral arrangement between her and E. C. Hazard & Company. Now they say that among those things that she should have transferred, were the trade marks, trade names and other elements, formulas, &c., which were all included in the $60,000 con-

tract, and because she failed to do it, they have suffered damage in consequence to such a sum as the court may find the proofs to establish. But those are the two questions I have got to decide.

Cross-examination by Mr. Rosenberg:

Q. You testified in the previous suits? A. Yes.

Q. You were a witness in the three previous cases of the Little Silver Sauce Company, Matthes and Elmer Hazard? A. I don't know just what cases they were, who were the parties to it. I know I testified before you.

Q. You came down to Long Branch and you testified there, and you were in attendance at the various hearings of that case? A. No, I didn't attend all the hearings. I attended the days that I was on the stand.

Q. At whose request did you go at that time? A. I think Elmer Hazard asked me down.

Q. Wasn't it at the request of Mrs. Florence Hazard? A. No, I think not; I think I have a letter, to back me up on that, on my files.

Q. You attended voluntarily? A. I was asked to come down.

Q. And you went? A. Surely.

Q. And when did you cease to be Florence Hazard's attorney? A. I don't know; I have done some little things for her.

Q. You are her attorney yet? A. No.

Q. (By the Court) Not in this case, he doesn't mean, but generally? A. No, I am not doing any law work for her.

Q. She hasn't had any other attorney, so far as you know? A. I don't know.

Q. You remember there was a suit brought subsequently by E. C. Hazard & Company against Powers after those three suits in which you gave evidence? A. I don't know whether there was or not.

Q. Don't you know that such a suit was brought? A. I gathered that from the talk I heard at this trial.

Q. Didn't you know it before this trial came on? A. I don't know that I did.

Q. Didn't you know that such a suit was in contemplation before it was brought? A. No, I didn't.

Q. (By the Court) Have you been attorney for Elmer Hazard or any other members of the family? A. No, sir, I have never done a thing outside of for Mrs. Hazard.

Q. Are you connected in business with Mr. Skinner who is here? A. No.

Q. Have you ever sent him any business? A. I introduced Joe Skinner to Mrs. Hazard in this case; I knew he was a New Jersey lawyer, and he had formerly been in the District Attorney's office in New York; that is how I knew him.

Q. Didn't you introduce Mr. Skinner to Mrs. Hazard for the purpose of bringing the suit of E. C. Hazard & Company? A. Oh, no.

Q. You are sure of that, are you? A. I introduced——

Q. (By the Court) Are you sure of it? A. Yes.

Q. When did you introduce Mr. Skinner to Mrs. Hazard? A. To foreclose this mortgage.

Q. That was the first that he did any business for Mrs. Hazard? A. Yes.

Q. You are sure of that? A. That is my best recollection.

Q. You are sure that he wasn't connected with the case of E. C. Hazard & Company? A. I don't know if anything developed at the first meeting with Mrs. Hazard, but he was not brought in by me to represent E. C. Hazard & Company.

Q. Do you know the firm of Runyon & Autenreith, Jersey City? A. No.

Q. You didn't meet them in connection with any of this litigation? A. I don't think so.

Q. You never heard of them through Mr. Skinner? A. I don't think so. I have had very little to do with this matter since Mr. Skinner stepped in.

Q. When you say very little to do, what does that very little mean? A. That is about as small as I can put it; I have nothing to do with it.

Q. You had absolutely nothing to do with it? A. No, sir.

Q. Why do you say very little? A. There was a little question of doubt; maybe I might have telephoned Joe Skinner; I will get that in under that.

Q. You have been helping try this case? A. I have not.

Q. You have been advising with counsel in it? A. I have talked with them.

Q. Haven't you been giving the benefit of your suggestions? A. Of my knowledge of what matters I knew about it, yes—surely.

Q. You have been present on every day that this case has been on? A. I never knew when I was going to be called, that is the reason.

Court: You don't answer the question.
Witness: I was present, yes.

Q. And have been present on seven or eight days during this trial? A. Yes, sir.

Q. To the detriment of the administration of justice in the City of New York? A. I don't know about that, but any way I am here with the permission of my chief.

Q. The first that you knew of any transactions with Powers—between Mrs. Hazard and Powers, was when you were called up by Mrs. Beadleston on the fifth of February, 1913? A. Yes.

Q. That was the first you knew about it? A. Yes.

Q. How long had you known Mrs. Beadleston? A. I don't know, I suppose I knew her as long as I knew Mrs. Powers.

Q. You had known the whole family? A. Yes.

Q. More or less intimately? A. Yes.

Q. And you came down then at Mrs. Beadleston's request? A. I went down to the Astor House at her request.

Q. And there you met the people you have told us about? A. Yes.

Q. Thereupon you made memoranda of what was to be conveyed? A. Yes.

Q. You understood at that time that Mrs. Hazard was going to convey to Mr. Powers whatever she had in that factory, didn't you? A. No, I didn't.

Q. What did you understand? A. I understood that she was going to convey to him her house and the farm and the factory, that is all I knew about,—what was on the real estate there.

Q. The house and the farm and the factory? A. Yes.

Q. (By the Court) And what was on the real estate there? A. I mean the land and the building.

Q. The improvements on the ground, the real estate? A. Yes.

Q. And with that understanding you left the Astor House and prepared the first one of those contracts, the one which has been marked Exhibit D 1? A. Yes, that was in course of preparation at the time they came in.

Q. Then, if I understand you correctly, before that contract was quite finished, the parties came to your office, and then that interlineation was put in? A. Which?

Q. The interlineation in your handwriting. A. I believe the contract had been signed before that interlineation was put in there.

Q. Now you mean to say that the contract had been signed before the interlineation was made? A. Yes, I think so.

Q. (By the Court) Both contracts or only the real estate? A. Only the real estate contract; that was a sort of an afterthought, that interlineation.

Q. And that interlineation was put in to make it perfectly clear as to what was intended to be conveyed? A. Apparently it wasn't very clear, but I thought it was at that time.

Q. You thought a great many things at that time? A. No, I thought very few things.

Q. You were there to safeguard Mrs. Hazard's interest? A. But I wasn't suspicious of her interest being——

Q. Is that the method in which you conduct business as a rule, that you are willing when people deal at arm's length, to truth the other man; is that your method of doing business as an attorney? A. I don't know that that requires an answer; if you want it, I will give it to you.

Q. You want us to understand that you didn't put everything into that contract that might have gone in because you were willing to trust the other side? A. Everything went in there that was intended to go in.

Q. So the interlineation went in for everything that it was intended to cover? A. For the machinery and boilers.

Q. Why do you say machinery and boilers? A. Because that was specifically mentioned at the time.

Q. Who mentioned it? A. Powers. Mrs. Hazard never read the contract; I handed one to Powers and he read it and then he mentioned it.

Q. Then you permitted Mrs. Hazard to sign a contract which she hadn't read? A. I was representing her.

Q. You were willing to have her sign a contract which she hadn't read? A. Yes.

Q. You represented her? A. Yes.

Q. Where did you get the idea about boilers and engines? A. Powers mentioned it.

Q. And he mentioned he was going to get everything that was there? A. No, he mentioned that he wanted the boilers and engines.

Q. Why didn't you put in "boilers and engines," not "personal property"? A. Probably I made a mistake in not doing that; probably I should have been more specific.

Q. You told his Honor a little while ago that you put it in that shape because you wanted to put it in that space? A. Yes.

Q. "Boilers and engines" would have taken up very much less room? A. Before I put that interlineation in I didn't give much time to reflection as to how much I would put in the space.

Q. And the whole instrument took up the two full pages of typewriting? A. About four pages.

Q. Which could have been typewritten in twenty-five minutes? A. It meant drawing the whole contract over again.

Q. Wouldn't that have been what a careful lawyer would do? A. Maybe it might.

Q. Then you were going to limit the words "personal property" to "boilers and engines"? A. That was the idea.

Q. Do you remember that you testified on the last trial? A. Yes.

Q. Do you remember that you were asked these questions (page 201): "Now, when you were at the hotel and before you went to your office I think you said that something was said about

personal property?" to which you answered, "I didn't say the word personal property was mentioned. The word 'personal property' was not mentioned at the Astor House, but mention or reference was made to what I regarded as personal property." Was that correct? A. Yes, sir.

Q. That is what you were asked and what you answered? A. Yes.

Q. (By the Court) That was at the Astor House? A. It was never mentioned at the Astor House.

Q. Were engines and boilers mentioned at the Astor House? A. No.

Q. Then you were asked the further question: "What you as a lawyer knew was personal property?" and you answered, "Yes, sir." That is right? A. I presume so.

Q. "And the personal property mentioned in your hearing, I think you said, was boilers and machinery and the like? A. Boilers and engines, as I recall. That is true? A. Yes.

Q. That is correct? A. Yes.

Q. You were asked "Boilers and engines?" and you said, "Yes, sir." A. Yes.

Q. "And of course you as a lawyer knew that was personal property? A. Yes, sir." A. Yes, sir.

Q. Now you were asked the further question (page 207): "Now, assuming that that is so, how did this interlineation carry out your purpose to indicate that she was passing to him simply engines and boilers? I call your attention to the language 'All personal property not covered

by an assignment by E. C. Hazard & Company to the party of the first part is included in this sale'; I ask you how you accomplished that purpose by using the words 'all personal property not covered by an assignment is included in this sale'?" And you answered, "All personal property consisted of the engines and the boilers." Then you were asked, "Was that your idea from the knowledge of the business; was it your idea as a lawyer that the only personal property in that building was boilers and engines?" And you answered, "No, sir, I knew that E. C. Hazard & Company were doing business there, and the Little Silver Sauce Company and Elmer Hazard and Matthes——" You answered that, didn't you? A. Yes.

Q. When did you first learn that E. C. Hazard & Company and Little Silver Sauce Company and Elmer Hazard and Matthes were doing business in that place? A. I knew that they had always been doing business there.

Q. How did you know it? A. I had been in there many times myself.

Q. How did you know that Little Silver Sauce Company was doing business there? A. Because they talked about it.

Q. Who? A. I wouldn't say any particular person, but I knew that I heard some talk of the Little Silver Sauce Company; I knew that such a company existed from the time I first met the Hazards.

Q. How did you get that knowledge at the time that you first met the Hazards, that there was a company called the Little Silver Sauce

Company? A. I suppose that developed in the course of conversation.

Q. Can't you give me any better answer than that? A. I know it was very shortly after I met them.

Q. They were not doing any active business, the Little Silver Sauce Company? A. I cannot tell you whether they were or not.

Q. You didn't see any products of the Little Silver Sauce Company? A. I don't know that I did see it.

Q. Did you see any of the members of the reorganization of the Little Silver Sauce Company, to know them? A. What do you mean by "them"?

Q. Were you introduced to anybody as president of the Little Silver Sauce Company? A. No.

Q. Or as secretary of the Little Silver Sauce Company? A. No, I don't think I was ever introduced to anybody as any officer of the company.

Q. How did you know that there was a Little Silver Sauce Company; you say you never knew anything about the products or knew the officers, how did you know that there was a Little Silver Sauce Company? A. That is hearsay; I heard that.

Q. How did you know that Matthes was doing business down there? A. I don't know that I had ever seen Matthes before the day I saw him in the Astor House.

Q. (By the Court) Don't you say in the testimony that Matthes was doing business also?

Mr. Rosenberg: Yes, he does.

Q. (By the Court) How did you know that Matthes was doing business there? A. At the talk at the Astor House, when Powers told Elmer Hazard—when Elmer wanted to know where he was going, and Powers said, "Just take your time and be easy about this thing, and when I get the title I will take care of you and put up a proposition to you; I want to talk to you," but I only overheard that, because I was not present—the conversation was not made for the purpose of my hearing.

Q. But Matthes wasn't mentioned once during that conversation, was he? A. I don't know whether Matthes made any statement during that day or not about his being in the business with Elmer.

Q. That was the first time you had ever met Matthes? A. That was the first time I met Matthes. I never met him before that time, and I don't think I had seen Elmer Hazard in a couple of years.

Q. (By the Court) Was Mrs. Hazard very much exercised or worried that day over the verdict or judgment that had been rendered against her in the other case, that had been disposed of in New York? A. I don't think so.

Q. (By the Court) Did you notice whether she was in a frame of mind to closely attend to business details, or was she annoyed and worried over this Eisemann judgment? She had just received a verdict against her that morning? A. Yes.

Q. (By the Court) What was her condition? A. I didn't hear any talk on that.

Q. (By the Court) It was natural for her to be? A. I don't think I noticed any talk on that subject; they probably had that before I got there; I don't think my work kept me there over five or ten minutes at the most.

Q. (By the Court) Did Mrs. Hazard at that time express a desire to get rid of the property and get rid of all this annoyance and worry that the sons had brought upon her? A. It was an expense she was carrying.

Q. (By the Court) Did she express a desire to get rid of it on that account, on account of the boys and the anxiety they had brought on her by reason of being liable for their notes and debts? A. I don't think she was——

Q. (By the Court) Did she express it, I asked you? A. No, she didn't.

Q. You were asked by Mr. Wilson in the previous case (page 207): "If that be true, I ask you why you interlined in this instrument 'all personal property' except that which she had by way of security?" To that you answered, "Because the clause said nothing about personal property; it says property; it is an omnibus clause to cover everything." That was your testimony, wasn't it? A. I guess so.

Q. You were asked the further question, "And you put 'all personal property' in?" And you answered, "No, sir." Mr. Wilson asked you further, "And when you said 'all personal property,' being familiar with the premises and knowing what fixtures were not sold, you used the words 'all personal property'?" And you answered, "Yes, sir." "And you have given us absolutely

the best explanation you can give for using the words 'all personal property'? A. I mean to call attention to all personal property belonging to Mrs. Hazard." That was your testimony? A. After these fellows got out.

Q. That was your testimony? A. That was.

Q. (By the Court) Was anything said that day in your office how Mr. Powers was to identify the property that belonged to Mrs. Hazard, how he was to determine which was hers and what was someone else's? A. No. When she got out there would be just some boilers and engines there, and whatever they left there when they got out, Mrs. Hazard was careful that he should have it, because he wanted to go in and fix up the place, and he wanted to get in and take care of the thing.

Q. You were asked by Mr. Wilson: "And you have given us absolutely the best explanation you can give for using the words 'all personal property'?" to which you answered, "I meant to call your attention to all personal property belonging to Mrs. Hazard." A. If that is there, I said it.

Q. You were asked the further question: "But why did you use the expression 'all personal property' if you simply intended to express the idea that Mr. Powers was taking engines and boilers and possibly machinery?" to which you answered, "From what I heard and what I was told at this time I knew there was only some boilers and engines. I don't know how many boilers or engines there were." "Now, Mr. Joyce, I will ask you this question, as a lawyer, would you say

the expression 'all personal property' comprehended engines and boilers and machinery, appliances, material and stock in that factory? Will you answer that yes or no? A. I can't answer that yes or no, unless I qualify it.

Mr. Wilson: I submit that the question should be answered yes or no." That was correct?

A. Yes, if it is there, it is correct.

"By the Court:

"Q. Can you answer it yes or no? A. No, I can't." Thereupon you were asked by the Court, "What is your idea of personal property?" to which you answered, "I would say that personal property in a factory was anything—take for instance boilers and engines—that might be necessary to work the factory. While they would probably have to rip up the building, but where they would use screws and bolts and it was so the thing could be taken away, that I would say was personal property." That was your answer, was it? A. That was my answer. I didn't know whether they had a dynamo in there worth thousands of dollars.

Court: Strike that out.

Q. The further question was asked you: "I ask you again, Mr. Joyce, whether or not, from your knowledge as a lawyer 'all personal property,' as descriptive of the contents of that fac-

tory, would not include engines, boilers, machinery, appliances, implements and stock?" and you answered, "No, sir, it would not." That is true, is it? A. That is what I said.

Q. "And which of those things which I have mentioned would not be included in your opinion as a lawyer? A. Appliances, instruments and stock, I do not consider them as being personal property. I would not regard the last ones as personal property."

Court: What are they?

Q. (continuing) "I would not regard the last ones as personal property." Was that your testimony? A. That was my testimony at that time, but the idea was that all these other things were out.

Court: Do you wish that answer to stand?

Witness: Of course I didn't mean that.

Q. What did you mean? A. I don't mean that appliances and implements are not personal property, because they are, but the idea was that at the time when these people got out, the only personal property belonging to Mrs. Hazard were the boilers and engines.

Q. (By the Court) Did you have in mind that they were fixtures and passed with the real estate? A. That was a question, as to whether or not it would be a fixture.

Q. Then you were asked by the court, "You have just said that appliances, instruments and

stock you would not regard as personal property?" to which you answered, "That would be covered by this contract." That was your testimony? A. That was not to pass by this contract.

Q. You said that would be covered by this contract; that is what you said; that was your testimony?

Mr. Sexton: I object to the question, because it is apparent to your Honor that the way that Mr. Rosenberg is asking the question and the way he is bringing on the answer was not the intonation the witness used.

Court: That is there in cold type, and when I read it in cold type, it doesn't make any impression on me except as it is written there.

Q. Then you were further asked by Mr. Wilson: "Mr. Joyce, you have just now said that you would not regard tools and implements and stock personal property, in dealing with this contract?" and your answer was, "No, sir." Is that right? A. Yes, sir.

Q. And you were further asked, "May I inquire whether your definition of personal property was changed in any way for the purpose of drawing this contract?" to which you answered, "Why that was some of the personal property Mrs. Hazard——" and you were again asked, "No, answer the question," and the question was read to you, whereupon you answered, "It was changed

in any way since when?" Mr. Wilson asked you, "For the purpose of drawing this contract?" and you answered, "Well, yes." A. I think Mr. Wilson and I were having quite a heated argument at the time.

Q. And you were then further asked this question: "And then that same definition of personal property as applied to this contract might be quite different from some other definition of personal property you might give under different circumstances?" to which you answered, "Yes, sir." A. That was right, wasn't it? Yes.

Q. Then Mr. Wilson asked you: "And do you feel that that statement does justice to your profession, your learning and your candor?"

Mr. Sexton: We object as immaterial.

Q. (continuing) "And do you feel that that statement does justice to your profession, your learning and your candor?" to which your answer was, "That is a matter of opinion." Then you were asked, "Mr. Joyce, how old are you?" to which you said, "I am about thirty-five." "And how long have you been engaged in the practice of your honorable profession—in our common cause?" and you answered, "About eleven or twelve years."

Mr. Sexton: I object to it as immaterial and irrelevant.

Mr. Rosenberg: I am about through.

Q. (continuing) (page 210) "And in dealing

with this question of personal property, the opinion which you have advanced and applied to this case and this contract, you brought to bear upon the problem by your learning and experience?" to which you answered, "Yes, sir." A. That is correct. If it is there, it is correct.

Q. Then at that time you say that the contract D 1, the $60,000 contract, had been executed by Mrs. Hazard and Mr. Powers alone, and then you put in this interlineation, and that interlineation was requested by whom in the first place; Mr. Powers, was it? A. Yes, Mr. Powers. They are not his words; I got that up myself.

Q. But you understood from him what he said was that he was to get everything that was in that place? A. No, I never understood anything of the kind.

Q. How can you explain to us that any property was not to be conveyed to Mr. Powers when the one contract says that everything that is not embraced in the security from E. C. Hazard & Company is conveyed, and the other contract provides for all the property that is by way of security from E. C. Hazard & Company; will you explain to me what there could be there that wasn't intended to be conveyed to Mr. Powers? A. By this way: Mrs. Hazard at that time—Powers was talking about the personal property; he wanted to get certain personal property that Mrs. Hazard received by that assignment from E. C. Hazard & Company; he had been talking with Elmer Hazard in the Hotel Astor about making some arrangement with Elmer to stay. At the time that he had that talk with Elmer, I don't

know what he had in his mind, but he evidently knew that he was trying to get this certain collateral, and beside all that, that Elmer was going to continue business anyway.

Mr. Rosenberg: Will you kindly repeat my question to the witness?

(Last question read to the witness.)

Court: How do you claim that you were entitled to everything in the place, no matter to whom it belonged?

Mr. Rosenberg: No.

Court: Your question includes it.

Mr. Rosenberg: Strike out my question, and I will put it in this shape.

Court: Because they admit that she agreed to convey everything that she owned in the place, and also everything she was entitled to under the collateral agreement, but they now claim that that wasn't all that was in the place.

Q. Then do you mean to say that these two contracts before you, in one of which Mrs. Hazard agreed to convey everything that she had on that property, except the property which was held by her as security from E. C. Hazard & Company, and the other contract, in which she agreed to convey the property which she had by way of security from E. C. Hazard & Company—do you mean to say that there could be anything there that Mrs. Hazard owned that she did not intend to convey to Mr. Powers? A. Of E. C. Hazard and the E. C. Hazard & Company and

Little Silver Sauce Company there was to be nothing left in the factory except boilers and engines.

Court: That is not responsive. Strike it out. You don't understand the question, apparently.

Q. Then do you mean to say that these two contracts before you, in one of which Mrs. Hazard agreed to convey everything that she had on that property, except the property which was held by her as security from E. C. Hazard & Company, and the other contract, in which she agreed to convey the property which she had by way of security from E. C. Hazard & Company—do you mean to say that there could be anything there that Mrs. Hazard owned that she did not intend to convey to Mr. Powers? In other words, that whatever she had there, she intended to give Mr. Powers? A. After these people had moved out.

Q. (By the Court) They had a right to go in there and take possession and the other parties had a right to stay there for a reasonable time? A. I mean they had their hands—got their hands off what was there.

Q. Why didn't you put in some reference that that property was to go to Mr. Powers after they had moved out—after Elmer and the others had moved out of there; you said nothing about that in the contract?

Court: It is not a fact either according to the proofs.

Mr. Rosenberg: Yes, I know that, but he said it was so.

Court: That is nonsense on the part of the witness to make any such answer, and it is not according to his own statement or according to the testimony of anybody else in the case.

Q. Was there any list of any personal property handed at that time? A. No, I didn't see any.

Q. (By the Court) Was there any agreement made that day that a list should be prepared and delivered by you or Mrs. Hazard to Mr. Powers? A. I was to get a list to hand over to Powers.

Q. Did you do it? A. Yes, subsequently.

Q. When? A. I don't know, a few days or a week.

Q. Where did you hand it to him? A. In my office, I think.

Q. I show you a paper which has been marked Exhibit D 8, is that the paper? A. It is pretty hard to say; I didn't even look at it; it was given to me and I handed it right over to him.

Q. Who gave it to you? A. I think Mrs. Hazard gave it to me.

Mr. Rosenberg: Suppose you testify for yourself, Mr. Joyce, without looking at Mrs. Hazard.

Q. (By the Court) Do you recognize that as the paper which you received? A. I know it was something like this kind of writing; I know it was written out like this.

Q. When did you first hear about the two bills of sale from Florence A. Hazard to Frank Matthes? A. You mean the recording of them?

Q. (By the Court) When did you first hear about the bills of sale—about the papers themselves being in existence? A. I don't know that the word "bill of sale" was used at any time; the only thing was that a list had been given over.

Q. Call it a transfer, call it any old thing, when did you know they claimed to own the property? A. The day I drew up the contract in my office.

Q. You then knew that Matthes claimed to own them? A. I knew Mrs. Hazard said she had given them to them.

Q. Did she say so that day? A. Yes.

Q. To you? A. Right to Powers, too, and she would get it back.

Q. She said that that day in your office or at the Astor House? A. At my office.

Q. What did she say? A. He said he would like to get that stuff that was covered by that assignment, and she said, "Well, you give me your note, you can have them; I would rather have your note than Elmer's, because it will be easier to get it from you than Elmer."

Q. Then she was talking about Elmer's note? A. About this note.

Q. What note? A. This note that was given in payment for it.

Q. Whose note was it? A. I don't know whose note it was.

Q. You just said it was Elmer's note; did she use anybody's name in connection with that note? A. I think she used Elmer Hazard's name.

Q. And that was all; then you didn't know that Matthes had anything to do with the personal property? A. Yes, they were connected together.

Q. You knew that of your own knowledge? A. Never before that moment.

Q. How did you get the idea that they were connected together? A. I just grasped it; I simply got that idea from the way the talk was, that they were doing business and they were selling this stuff off—this material.

Q. What talk? A. That Mrs. Hazard had this security.

Q. What did you get that idea from, what talk? A. The talk between Powers and Mrs. Hazard.

Q. Was Matthes' name mentioned then? A. Yes, that Matthes and Elmer were working the stuff.

Q. Did Powers say that or Mrs. Hazard say that? A. Mrs. Hazard.

Q. That Elmer and Matthes were working the stuff? A. Yes.

Q. That is all you heard about it? A. Yes, under that agreement.

Q. You are sure that was said on that day? A. Positive.

Q. When did you first hear about these bills of sale being recorded? A. When Floyd Davis came to my office and told me about it.

Q. That was the first you knew there were any bills of sale? A. The first I knew there were any bills of sale? A. The first I knew there were any recorded.

Q. You lay stress on the word "recorded"; when did you first know there were any bills of sale at

all? A. I don't know just when I did hear about it.

Q. You don't remember anything clearly about that? A. I know that Mrs. Hazard had said in my office——

Q. Do you? A. I say Mrs. Hazard told Powers at the time that she had given that property away and they were working it for her, and Powers said they were paying it off; I think she said that they paid her something on account—I don't know just what it was, and Powers said, "I will tell you, as long as they have been doing it, I would like to get a list of just what you did give to them, so I can go down and look it over and see whether or not that property is still there, and if they have used it all up, I want to know, because I will not give you a $11,400 note unless the stuff is there."

Q. And that was said that day? A. Yes, in my office.

Q. Since when have you begun to recollect that? A. I don't know that I had ever forgotten it.

Q. You never testified to that at the previous trial? A. Nobody asked me about it.

Q. Are you sure about it? A. Did anybody ask me about it?

Court: Don't ask questions; you answer.

Witness: I don't know whether I did or not. That is the way I would have testified, though.

Q. Who asked you to draw the deed for this property? A. I don't think anybody asked me; I thought that went with my being engaged.

Q. Who asked you to draw the bond and mortgage? A. I did myself; I drew that up.

Q. You asked yourself to draw it? A. No. You know perfectly that I was going to get the security for Mrs. Hazard, and the only way to get it was to draw my own bond and mortgage the way I saw fit.

Q. The fact is, that no one asked you to draw the deed, nor draw the bond and mortgage; that is a fact? A. I assumed that that went with my being employed.

Q. (By the Court) No one told you specifically to prepare those papers? A. No.

Court: Your assumption is all right; having drawn the contracts you were expected to continue.

Q. Was any chattel mortgage ever prepared or mentioned? A. No, sir, and there certainly would have been if we were giving anything other than the real estate.

Mr. Rosenberg: I object.

Court: Strike it out. Let the answer stand there was no such thing prepared—intended to be prepared.

Q. (By the Court) Did you attend to the insurance policies? A. No.

Q. Having them made payable to Mrs. Hazard under the mortgage? A. No, I understood that was all to be arranged.

Q. (By the Court) By whom? A. I thought Powers would do that.

Q. When you come to the meeting at the Fidelity, at which this non-negotiable note of $11,400 was given, you gave us this morning several reasons why you permitted your client to take the note in that shape and to arrange for a note at eighteen months; you gave four or five reasons; have you any more than that? A. I don't know.

Q. Which of the reasons that you gave this morning is the correct one? A. I don't know; you might enumerate what those four reasons were and I will pick out one.

Q. I am asking you now. A. I don't know what my four reasons were.

Q. Give me your reason now again, why it was that you were willing to have your client take a note for $11,400 running for eighteen months. A. That is the best proposition we could make with Powers at that time.

Q. You knew Mrs. Hazard stated on that occasion that she wanted a negotiable note, didn't she? A. In exchange for this?

Q. Yes. A. Yes, the following day we expected a negotiable note if we could have handed that material over to him.

Q. So that if she had been able to deliver possession of that personal property Mr. Powers would have been compelled to exchange that non-negotiable note that was drawn by Mr. Dickensheets for another note running at eighteen months? A. Yes.

Q. You knew then that Mrs. Hazard wanted a note which she could take to the bank and raise money on? A. Not that night; I didn't expect

that she was going to take a note we could put in the bank.

Q. Didn't she say that night that she wanted a note that she could get money on in a bank? A. Exactly.

Q. Yes or no? A. Surely.

Q. And yet you permitted her to agree to take a note at eighteen months; didn't you know that she couldn't get any money in the bank on an eighteen months note? A. I didn't know anything about that; I don't know what banking arrangement Mrs. Hazard has with anybody.

Q. Don't you know that there is no bank in this country that will discount an eighteen months note? A. I don't know that.

Q. You are by this time between thirty-seven and thirty-eight years old? A. Yes.

Q. You have been practicing law actively in the City of New York? A. Yes.

Q. You have had clients who are in business and in active business? A. Yes.

Q. You mean to tell me that you don't know that Mrs. Hazard could not have discounted that eighteen months note? A. I don't know if she could or not; she may have gone down to Mr. Beadleston and gotten it from him.

Q. You testified that she said that she wanted a note that she could take to a bank and get money on? A. Yes.

Q. And you mean to say now that after she had made that statement, you yet permitted her to contract to take an eighteen months note? A. That is the best we could do that night.

Q. You knew that Mrs. Hazard needed this

money in order to pay off judgments and claims against her and to take her jewelry out of pledge, didn't you, and that she needed the money for this transaction, the $30,000? A. No, I don't think I did.

Q. You didn't know that? A. I didn't know what Mrs. Hazard's financial condition was.

Q. From what she said that night, you knew she wanted to get some money immediately, some cash, the night of the closing? A. I don't know whether she expressed herself that way or not; she wanted a note for the payment of that.

Q. (By the Court) Did you know that she wanted money? A. I don't know; I don't think so, no.

Q. By that time you had known that Mr. Powers had taken up quite a large amount of her debts? A. Yes, sir.

Q. Amounting to almost $30,000? A. Nearly the full consideration.

Q. And then you heard her say, as you have testified, that if Mr. Powers wasn't willing to close on her terms, she could get Mr. Beadleston to give him back his money the next day? A. Yes.

Q. Didn't it appear strange to you that under those circumstances she couldn't have borrowed that money from Mr. Beadleston to pay off these judgments and claims? A. I don't know; I suppose that Mrs. Hazard would have seen that Powers was put right; he had an assignment of judgment.

Q. That isn't an answer to my question. A. I know she told me that she would pass the money over to him the next morning.

Q. (By the Court) Didn't it seem strange that she didn't borrow the money before selling the property to Powers? A. No—I didn't know about that.

Q. If she could have borrowed it from Beadleston the next day, she could have borrowed it from him the day before or a month before? A. You will have to ask Mrs. Hazard about that.

Q. You never concerned yourself about that at all? A. No.

Q. (By the Court) Were you asked to do anything more in this matter than to draw papers, or were you acting as the adviser as well as the scrivener in the case? A. I was first drawn in to close up the papers, and it got complicated, and I tried to extricate her.

Q. (By the Court) What did she pay you for, just drawing the papers; did you act as her counsel in the matter, or merely as a scrivener? A. No, I came in as counsel that night of the closing, but at the time of the contract, I drew the papers the same as I would any other contract.

Q. What do you mean, that when clients come to you and ask you to draw contracts for the sale of property, you content yourself with merely the drafting of the contracts—what we might call the mechanical work of the profession? A. Of course I would consider who the people were.

Q. In this case your client was a woman? A. Yes.

Q. And you didn't go out of your way to do anything except to put down on paper an outline of what you thought that contract was going to be? A. To find out what Mrs. Hazard wanted to

sell to Powers and to see that we gave it to him.

Q. (By the Court) Why didn't you go on a step further and not give him any more than he was paying for? When you were acting for a woman, and here a business man dealing with her, it was your duty, as you know, without my saying so, as a lawyer, to protect her; I want to know why you didn't see that Powers didn't get one iota more than he paid for, from her? A. We had the settlement of that closing which was different from the contract.

Q. (By the Court) I speak of the fifth of February; I am going back to that; that is the time I am trying to find out why you didn't see that Powers didn't get one postage stamp from her that he didn't pay for? A. I say my mind was made up that he wasn't going to get any more than we agreed to give, and I thought the way I made that contract, that was clearly understood; whether or not there was any interpretation put on it, I don't know.

Q. (By the Court) That is your answer; you think that the contracts as prepared, covered it? A. Yes, it covered the intention of the parties.

Q. (By the Court) And protected Mrs. Hazard? A. Yes.

Q. Do you remember at the Fidelity that Mr. Powers wanted to close the one contract without clsoing the other; he wanted to close the $60,000 without closing the $11,400? A. I wouldn't put it exactly that way, because one couldn't be closed without the other.

Q. (By the Court) Did Powers express the wish

to do so, of closing the $60,000 contract and letting the other stand open, or let something else happen to it; did he say anything of the kind? A. Yes, he was perfectly willing to take the real estate.

Q. (By the Court) That isn't the question. Was Powers willing to close one contract and not close the other? A. I don't know that we ever got down to that.

Q. Nothing of that kind was ever said in your hearing? A. We didn't arrive at that.

Q. Isn't it a fact that Mr. Powers said that when he found that the title to the security property was in Matthes, he said he would close the $60,000 contract, but not the other; is that so or not? A. That wasn't said until we agreed to make this other agreement on the back of that note, because everything was signed right at the same time.

Q. And that was said after the agreement was made? A. When we decided that that is the way we would do it, and I had looked at the note that Dickensheets had drawn up, and Powers and we had some talks as to just how it would be drawn up, and I talked with Mrs. Hazard, and then it was decided what we would do, and we sat down and signed the papers.

Q. That was the last you had to do with the transaction? A. Yes.

Q. And that was about half past two in the morning? A. I don't think it was that late, because people were out in the restaurant in Newark, after the theatre; I don't know just how late it was.

Q. Up to that time you had been on very good terms with Mr. and Mrs. Powers, had you? A. I had never been much of a friend of Powers.

Q. You were of Mrs. Powers? A. Always.

Q. Are you now? A. Yes, sir.

Q. The friendly relations have lasted up to the present time? A. I haven't seen much of Bess Powers since she got married.

Q. You and Mrs. Powers haven't spoken? A. Surely, we spoke; only this morning I talked with her.

Q. You are not on the same friendly terms with Mr. and Mrs. Powers that you used to be? A. I don't have occasion to see her as much.

Q. Is that the only reason? A. That is the only reason that I know of. I have no feeling against Bess Hazard.

Q. Have you any feeling against him? A. No, I haven't; I am a little sort of disgusted with them, what I know of their trying to do, that is all.

Re-direct examination by Mr. Sexton:

Q. Reference has been made to some testimony given by you on cross-examination, where you were interrogated by Mr. Wilson. What was happening just about that time, the time of the giving of that testimony? A. I don't know; it was a sort of repartee pulled off between Mr. Wilson and myself; he was trying to corner me and trying to show me up, I thought.

Q. And when the question was asked, "If you

feel the statement does justice to your profession, learning and candor," that was an instance where he was trying to show you up? A. Very sarcastic, I thought.

Q. And when he went along and asked you further about your legal education and the schools you attended? A. I thought that was childish for a man of Mr. Wilson's standing at the bar.

Court: Why do you take up time on that?

Q. Will you look at the question in the book? You were asked by the Court, referring to page 209: "You have just said that appliances, instruments and stock you would not regard as personal property?" A. My answer will be, "That would be covered by this contract."

Court: He means to say that there should be added to the question, "was not such personal property as would."

Q. You said you had a letter in your files about appearing as a witness? A. Yes.

Q. Witness shown letter bearing date December 16, 1914, to Mr. E. C. Hazard, Long Branch, New Jersey, headed, "My dear Elmer," is that a copy of the letter? A. Yes.

Q. Does that refresh your memory as to at whose solicitation you attended the previous hearing? A. At Elmer Hazard's.

Court: What does the letter say?

Mr. Sexton: (Reading.)

"December 16, 1914.

Mr. E. C. Hazard,
Long Branch, New Jersey.

My dear Elmer:

I am in receipt of your letter in reference to the Powers case coming up for trial on Thursday the seventeenth, and requesting my presence. I will take an early morning train and get there as near 10:30 as possible. I will meet you at the City Hall in Long Branch.

Yours very truly."

I will offer that in evidence.
(Marked Exhibit C 21.)

(Mrs.) HELEN F. H. BEADLESTON, sworn for complainant,

Direct examination by Mr. Sexton:

Q. You are a daughter of Mrs. Hazard? A. Yes.

Q. You are the widow of whom? A. Alfred Nash Beadleston.

Q. Are you engaged in any business now? A. I am.

Q. What? A. Secretary and treasurer of Beadleston Works.

Q. Do you recall the time that your mother was contemplating selling a piece of property that she owned at Shrewsbury, or selling property at Shrewsbury to Mr. Powers? A. I do recall it distinctly.

Q. What did you do, if anything, in reference to Mr. Joyce? A. I knew that my mother had left our house that morning to go up and meet Mr Powers and Mrs. Powers, and knowing that mother was not any kind of a business woman whatsoever, I took it upon myself to call up Mr. Joyce, who was a great friend of the family, and asked him as a special favor to go and look out for mamma's interest, and the relation between Mr. Powers and Mrs. Powers and ourselves were always very friendly, and I naturally thought that they were going to do the right thing.

Mr. Smock: I move to strike that out.
Court: That doesn't hurt you.

A. (Continuing) And Mr. Powers had come to the house and Mr. Beadleston's office in reference to Mr. Beadleston taking a first mortgage on the property, and Mr. Beadleston to my absolute knowledge said that he would take a mortgage on the property providing my mother was not in it whatsoever.

Q. (By the Court) Did you hear him say that? A. I heard my husband say so.

Q. (By the Court) Was that prior to the time when Mr. Powers undertook to purchase? A. Yes, before Mr. Powers undertook to purchase the property.

Q. (By the Court) How much of a mortgage was he negotiating for? A. For $30,000, and Mr. Beadleston told him that he would take the mortgage for $30,000, provided Mrs. Hazard was not in it whatsoever. Mr. Powers was to get a second mortgage somewhere else or the money, we didn't know.

Q. What was the reason that Mr. Beadleston refused subsequently to loan the $30,000?

Mr. Smock: I object.

A. Because my mother was in it.

Court: It does you no harm.

Q. Do you know that Mr. Beadlestone was willing to loan your mother $30,000? A. He was.

Court: He was willing to loan $30,000 on the property if she were not in it.

Q. Do you know that he was? A. I know that he was willing to loan to my mother $30,000, and in fact, would have given it to her, if she wanted it.

Mr. Smock: I move to strike it out.

Mr. Sexton: But she says that she knows.

Q. (By the Court) How do you know? A. Because he told me that he would.

Q. Did you hear him tell Mrs. Hazard? A. I heard him tell my mother many times that he would.

Q. Did you hear anything of that time shortly before the closing of title in this matter on March 13th? A. Yes, indeed, I did; it was only two days before the settling of the property.

Q. That what occurred? A. That Mr. Beadleston told her that he would give her the money on the property, or without the property.

Court: I should think it should stand, because it goes to bear out the statement that is said to have been made at the time of closing the title, that if Mr. Powers didn't want it, that she would have offered him the money the following day.

Witness: Mr. Beadleston was prepared to loan the money on the first mortgage, but he told Mr. Powers that he would not have anything to do with it if mamma was in it, and he didn't want to have to foreclose the property and leave mamma with a white elephant, and he said, "Mrs. Hazard, you and I would still be owning the proptray; Mr. Powers is buying it on a shoestring." Those are his exact words, and mamma went up there and——

Mr. Rosenberg: How does that answer bind us in any way?

Court: It doesn't bind you at all; it simply goes to bear out the statement, when she testified that she said to Mr. Powers that if he didn't want to close at the Fidelity that night, he could have the money back the next day, and she could get it from Mr. Beadleston, and I will admit it on that ground.

Q. Mrs. Beadleston, was Mr. Beadleston of sufficient means that he could advance $30,000? A. He could have, and at that moment he had that much so he could have gotten it on a day's notice.

Q. What was his business? A. Brewer, a capitalist.

Q. Connected with what concern? A. Beadleston & Woerz.

Q. And had considerable money invested in the capital of that business? A. Yes.

Mr. Rosenberg: We are willing to admit that Mr. Beadleston was a man of ample means.

Court: I knew both gentlemen when they were alive, and they had the reputation of being men of means.

Cross-examination by Mr. Smock:

Q. When did Mr. Beadleston first know that Mrs. Hazard was unable to deliver the property described in one of these contracts? A. I don't understand your question.

Q. When did Mr. Beadleston first know that Mrs. Hazard was unable to give to Mr. Powers this personal property? A. Mr. Beadleston knew nothing about it.

Court: What difference does it make when he knew it?

Q. Did you know that your mother had been

financially embarrassed up to the time she attempted to sell this property, or did contract to sell the property? A. I knew my mother had a great many notes in the bank.

Q. And did you knew that she had at that time jewelry that had been placed as security for a loan of money? A. It had been there several times and gotten out several times after the death of my father.

Q. Did you know that at the time she closed this contract with Mr. Powers or shortly before that, that she had jewelry pledged as security for money? A. Yes, I knew, and now.

Q. Did you know that Mr. Powers, just previous to closing that contract had redeemed that jewelry? A. I didn't know Mr. Powers was given that way.

Court: As part of his contract?
Mr. Rosenberg: Yes.
Court: As part of the $30,000 payment?
Witness: I may have known at the time.

Q. Did you know that Mrs. Hazard's property —some of it—was under foreclosure, and actually advertised for sale at the time Mr. Powers entered into this contract? A. I may have at the time; I don't remember now.

Q. Do you know whether Mrs. Hazard made any effort to borrow money from Mr. Beadleston to take up this particular debt, this one under forclosure? A. I don't understand what you mean, Mr. Smock.

Q. Do you know whether Mrs. Hazard ever

came to Mr. Beadleston and asked him to loan her enough money to pay off the mortgage which was then under foreclosure? A. My mother often times borrowed money from Mr. Beadleston.

Q. (By the Court) But you don't know whether it was borrowed for this specific purpose? A. No, she wished to sell the place to Mr. and Mrs. Powers to have as a home.

Q. You knew personally that the place was under advertisement under foreclosure? A. I may have at the time, but I don't remember now.

Q. You knew it was advertised under a judgment execution, too? A. I don't know about that.

Q. And if it had been, why didn't Mr. Beadleston loan Mrs. Hazard enough money to redeem the property and protect her before she undertook to sell to Mr. Powers at all? A. Because she wanted to sell it and get rid of it; she didn't have enough money to finance it, and living there was like a white elephant on her hands. Mr. Beadleston several times gave money to my mother to finance it.

Q. Then if she hadn't sold it to Mr. Powers, she would have lost it under the foreclosure? A. No, she would have gotten it from Mr. Beadleston, because he would have protected her equity.

Q. (By the Court) Your husband would have? A. Yes.

Q. Why didn't he protect her before she entered into the contract with Mr. Powers? A. Because Mr. Powers was very anxious to have my mother sell him the property; she didn't want Mr. Beadleston to have the property; Mr. Powers

was anxious to live there. Mrs. Powers pestered the life out of my mother to sell the property to him and her.

Q. And notwithstanding that fact, that Mr. Beadleston was willing to loan Mrs. Hazard $30,000 to pay back Mr. Powers after this contract had been signed, notwithstanding the fact that Mrs. Hazard at the time this contract of sale was entered into was embarrassed by judgments and by foreclosure proceedings and by debts generally, Mr. Beadleston had made no effort to give her enough money, at that time, to redeem the property? A. He told her that any time when it came to that point, he would protect her and help her out, and he would never let it go so far as that he wouldn't be there to protect her; and I know for a certainty he would have been.

Q. Do you know whether Mr. Beadleston actually came to Mr. Powers and told him that he would give him the money to put him back where he was before? A. Yes, Mr. Powers came over to our house one or two evenings about that place and also about raising the money.

Q. (By the Court) Before the sale? A. Before the sale.

Q. I am talking about after the sale. A. Why should he go after the sale?

Q. (By the Court) Did he? A. Mr. Beadleston never went to Mr. Powers.

Q. (By the Court) On that errand? A. No, or any other.

Q. After the signing of the contract and after the episode in the Fidelity Trust Company, did Mr. Beadleston ever go to Mr. Powers and offer

to give him back such money as he had advanced under that contract? A. I have just stated Mr. Beadleston never went to Mr. Powers for anything.

Court: I don't know why he should have done so, or why you should expect him to.

Re-direct examination by Mr. Sexton:

Q. What was the family name of your husband? A. Alfred Nash Beadleston.

Q. What did they call him around the home? Did they call him Honey? A. They did.

Court: Outside of these experts, have you anyone else you want to call, and outside of Mr. Wilson, have you anyone else you want to call?

Mr. Rosenberg: Possibly one or two more experts on the subject of the value of the trade mark.

Mr. Smock: We have two or three witnesses to contradict some testimony that has been given.

Court: Do you want to close this case before vacation; do you want to take the balance of the testimony before Mr. Bindseil?

Mr. Sexton: That is agreeable to me.

Mr. Smock: That is satisfactory to us.

Court: Counsel now, with the exception which they have generally indicated, rest on both sides, reserving the right to call additional witnesses and these experts who

have been especially referred to, and also the completion of the cross-examination of Dr. Hazard, and it is agreed that they may take the testimony either on notice or by agreement at any time which will be satisfactory before Mr. Bindseil, to whom, by consent, the matter is referred. If you will get the case in by the middle of July, I will endeavor to dispose of it, and the taking of testimony on both sides to be closed on July 5th, unless further time is granted, and if the matter is closed on July 5th, briefs are to be submitted by the twentieth of July. The right is reserved to either side to offer any exhibits marked for identification, before you close.

It is admitted that Mr. Powers called up Mr. Joyce within two or three days after taking possession of the factory, and that Mr. Powers talked over the telephone with Mr. Joyce in relation to the subject of taking these goods out which Mr. Powers claims he had purchased, this being a telephone to Mr. Joyce at his residence in New York City.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

and

HARRY L. POWERS, et als.,

Defendants.

Continuation of testimony in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Town Hall, Red Bank, New Jersey, on Thursday, October 17th, 1918, at 10:30 A. M.

APPEARANCES:

Mr. Charles F. Sexton for complainant.
Messrs. Edmund Wilson, Warren H. Smock and M. T. Rosenberg for defendants.

ELMER C. HAZARD, recalled for further

Cross-examination by Mr. Smock:

Q. Mr. Hazard, were you familiar with the bankruptcy proceedings of E. C. Hazard & Company? A. Yes, at the time.

Q. And when was the petition filed, do you recall in what year? A. It was August 21, 1907, as I recall it.

Elmer C. Hazard—(Recalled)—Cross.

Q. What were the assets of the company at that time, as you recall it, generally? A. I cannot say offhand.

Q. Approximately? A. The Receiver made his own estimate of the assets at the time.

Q. Did they have some merchandise at Shrewsbury? A. Yes, sir.

Q. Do you know about how much there was at Shrewsbury in the way of assets? A. According to our value placed on them, they were about seventy-five or eighty thousand dollars, as I recall it, but I think the Receiver valued them at about forty thousand.

Q. (By the Court) You say "our value"; you mean the company's value? A. Yes.

Q. The company's value was about seventy-five or eighty thousand dollars? A. I should say so.

Q. And the Receiver, however, put a value of about forty thousand dollars? A. That is my impression, yes, sir.

Q. Of what did those assets consist? A. They consisted of finished product and unmanufactured product at the factory.

Q. Was any mention made at that time of the trade mark and name of Shrewsbury? A. No.

Q. You considered it had no value at that time? A. Yes; we never carried it at any value.

Q. (By the Court) Is that true also as to the Receiver's action; did he not appraise it as having value? A. He never appraised the value of the trade marks.

Q. The schedule in bankruptcy was signed by you, wasn't it?

Court: Was it voluntary?
Witness: It was involuntary.

A. I don't know; so many papers were signed at that time.

Q. You were at least familiar with these values, and when you spoke of the value placed by you, you mean the value placed by your company, and you were one of the corporation; you were president at that time, were you not? A. No, sir, I was not.

Q. What office did you hold? A. I was a member of the copartnership at that time.

Q. (By the Court) It was a copartnership that went through bankruptcy? A. Yes.

Q. (By the Court) Not a corporation? A. No, sir.

Q. In the schedule filed in your bankruptcy proceeding, it shows the assets at Shrewsbury as being $41,076, doesn't it? A. Yes.

Q. Your recollection, then, about the value placed on them by your partnership was incorrect? A. No, our valuation wasn't incorrect.

Q. You said your valuation was about seventy-five or eighty thousand dollars? A. Yes.

Q. That is your valuation, isn't it? A. No.

Q. Whose valuation do you think that is? A. That is the Receiver's valuation.

Q. How do you reconcile that statement with the fact that this is a schedule signed by the E. C. Hazard Company, Elmer C. Hazard, Green, Archer and Steiner; this statement was made up by you for use in that matter? A. No, the proceeding occurred before the schedules were filed, because it was an involuntary petition.

Elmer C. Hazard—(Recalled)—Cross.

Q. That statement was made up by you and the other members of the partnership? A. I don't know; let me see it.

Court: Is this a certified copy of the paper?

Mr. Smock: Yes.

Mr. Sexton: This is back in 1907.

Court: I presume it will be followed down; it was continued more or less as a continuing matter from the inception of it. It has been more or less treated so by the testimony.

Q. That is true, isn't it? A. I would take it that this is a schedule made up at the time the Receiver finished up his affairs.

Q. This schedule was made by the copartnership, wasn't it? A. It is signed by the copartnership, yes.

Q. If it is signed by the copartnership and made up by the copartnership, the assets at Shrewsbury were valued at $41,076? A. That was the value put on them by the Receiver, that I know.

(Schedule referred to offered and marked Exhibit A for identification for defendant.)

Q. Do you deny then that the copartnership placed a valuation on these goods at that time at that amount just stated, $41,076? A. I say——

Q. Do you deny that?

Court: Your attention having been di-

rected to or refreshed by this schedule, do you deny that that was the valuation you put upon it?

Witness: This is a paper——

Court: Don't explain it. Mr. Sexton will give you an opportunity to explain, but just answer Mr. Smock's question.

Witness: I cannot answer it that way.

Mr. Smock: Yes, you can.

Witness: No, I cannot.

Court: Let me hear the answer you are trying to give, to see if it is responsive.

Witness: I say that that is the value arrived at by the auditors of the Receiver, and we were requested to sign it, that is all.

Court: That is not responsive to Mr. Smock's question; he is endeavoring to ascertain, as I understand it, no matter whether you were guided by the action of the auditors or Receiver, whether it was the judgment of your firm or the members of it, that that valuation was correct at the time you certified to it. I think that is the purpose of his question. Then, of course, if it was or was not, if you want to give any explanation, Mr. Sexton can bring it out on re-direct.

Witness: It is a statement and signed, and on the legal situation I presume that is a statement of the value that was determined at that time.

Court: By the members of the firm?

Witness: No, it was all worked by the Receiver and we simply signed what we were told to sign.

Court: The effect of the answer is that it was not the firm's valuation?

Witness: Our idea of the value of it was what it cost us. The Receiver's valuation was what he thought he could sell it for.

Q. Mr. Hazard, no matter who worked it out, that was the value of the goods at Shrewsbury placed by your firm at that time, was it not; I don't care how it was arrived at, whether by Receivers, by the assistance of auditors or by the assistance of someone else, that was the valuation that you placed upon it?

Mr. Sexton: That has a legal significance; on its face it shows an appraisement made in that manner.

Mr. Rosenberg: We can settle the question by letting the paper go in evidence.

Court: It is not in evidence as yet.

Mr. Smock: This is a certified copy of the petition and schedules, and if you are content to permit this to go in, instead of our obtaining an exemplified copy——

Mr. Sexton: If it is admissible at all, I will admit that it go in.

Court: Do you consent to it going in?

Mr. Sexton: According to the understanding I had with Mr. Wilson, if this paper is admissible at all, it could go in in the form that it is produced, subject to

the right of the other counsel to correct it or call your attention to any corrections, but I don't see how it is material to the issue we have here.

Court: I think the purpose of the offer —at least one of the purposes, is quite apparent to my mind; the members of the firm of Hazard & Company considered the trade marks to be of so little value that they didn't appraise them in their bankruptcy schedule, might be a question and fair comment could be made upon them. It may be that they considered that they didn't own them.

Mr. Sexton: I have no objection.

Court: It will be admitted. Describe the paper.

Mr. Smock: "Schedules of the property and liabilities of the copartnership of E. C. Hazard & Co.," filed in the bankruptcy proceedings in the United States District Court for the Southern District of New York. It appears to have been verified October 31, 1907.

(Marked Exhibit A for defendant.)

Q. You now say that the valuation of the property of this copartnership at Shrewsbury was or was not $41,076 at that time? A. The value of the stuff at Shrewsbury at that time——

Court: That question will admit of a responsive answer either yes or no, and if

there is any explanation necessary, Mr. Sexton will call for it if he deems it is required.

(Last question repeated.) A. It was of that value.

Q. Can you tell us of what the assets consisted generally? A. Labels, boxes, sauce base, finished product, machinery, equipment, sundries, corks; in fact, everything in the factory owned by the copartnership.

Q. Did it include as a matter of value any trade mark or name of Shrewsbury? A. No, sir.

Q. Did, in your judgment, the name have any value at that time, or did the trade mark have any value? A. Not in my judgment, no, sir.

Q. That was in 1907; did it acquire any value from 1907 on down to the time you sold it to Mr. Powers? A. I don't think so.

Q. You don't think it did? A. No, sir.

Court: He didn't sell it to Mr. Powers, did he?

Mr. Smock: The day it was sold to Mr. Powers.

Q. Do you remember having any business transactions with the National Nassau Bank of New York? A. Yes.

Q. Did you have any business transactions with them in the year 1911 and 1912? A. Yes, sir.

Q. For E. C. Hazard & Company? A. Yes, sir.

Q. What was it, a corporation then? A. Yes, sir, a corporation.

Q. And this corporation succeeded to the rights and assets of the co-partnership, didn't it? A. Yes.

Q. Do you recall having made any statement to the National Nassau Bank for the purpose of securing credit in 1911 and 1912?

Court: Statements on behalf of the corporation?

Q. (continuing) On behalf of E. C. Hazard & Company? A. Yes, we made statements every year to the bank.

Q. Do you remember having made statements to this particular bank in 1911 and 1912? A. I don't remember particularly the dates, but we always made statements to everybody, commercial agencies also.

Q. In 1911 and 1912—I cannot give you the months, but in those two years, the one of 1912 having been made in January, representing for the purpose of securing credit in that bank, that the value of the trade mark and trade name of Shrewsbury was fixed by you at $371,000? A. I remember statements being made up at the time the corporations were formed and continuously after that, where the agreed amount of stock of the corporation was agreed upon that was to be issued, then the entire assets——

Mr. Smock: This is not responsive.

Court: Do you understand the question? He asks you if in January, 1912, you did not present to the National Nassau Bank

a statement on behalf of the company for the purpose of securing credit, in which you valued the trade mark and trade name at $371,000; do you remember doing that?

Witness: I don't remember that particular incident, but I know there was such statements made to everybody that we were doing business with, that the value of the——

Q. That was the value of the trade mark and trade name, is the question. A. It was the value made up by the difference between the assets and the amount of stock of the corporation.

Court: Keep down to the question.

Witness: There was such statement made. I don't know whether it was made to the Nassau Bank, but I presume that it was.

Court: Was there such a statement made in regard to the value of the trade mark and trade name, placing that valuation upon them; that is the question.

Witness: Not alone, no, sir.

Court: You mean that that value did not relate to the trade mark and trade name alone?

Witness: That valuation was placed also on the trade mark, good will, formulas, boxes, printing plates and such intangible assets.

Q. The value that you gave to this particular

bank, and possibly to others—confine it to this particular bank—was the value of the trade name and trade mark of E. C. Hazard & Company and Shrewsbury, wasn't it, and formulas? A. Etcetera.

Q. What do you mean by that? A. Boxes, printing plates, stencils and things that were worth nothing.

Q. And the value you placed on these was $371,000? A. I didn't place it on them.

Court: That is what you were asked.

Witness: No, I didn't place it on them.

Q. Do you remember whether these two statements that I have called your attention to were signed by you, of 1911 and 1912? A. It might have been; I don't know.

Q. If you signed them yourself, wasn't that your value? A. No, that was the value—the balance—the transcript of the ledger. It was a transcript of the ledgers of the corporation.

Q. Were these items carried in your books of account? A. They were carried in our private ledgers, yes, sir.

Q. And notwithstanding the fact that you knew them to be worthless, as you have testified, even in 1907, you represented to the bank that they were in fact worth $371,000?

Court: In 1911 and 1912, did you?

A. The transcript of the ledgers, whatever the amount——

Court: They are asking about the representations you personally made, either in-

dividually or as an officer of the corporation, or both, to the Nassau Bank at that time in order to secure credit for the corporation; did that represent the value you put upon them in those years?

Witness: No, it does not represent the value that I put on them; it represents a transcript of the ledgers, which I signed as an official of the corporation.

Court: Who made up this ledger account or this ledger valuation that you adopted for the purpose of communicating with the bank?

Witness: I tried to explain that at the early phase of the situation; the stockholders, or the new stockholders, met for the purpose of organizing a corporation——

Court: You refer to that explanation you have already given?

Witness: Yes, and they agreed upon incorporating for a million dollars.

Court: You need not go all over that again.

Q. You knew at the time you made this statement and signed it that this trade name and trade mark and formulas were worthless, didn't you? A. Yes.

Q. And notwithstanding that, you signed these statements to the National Nassau Bank, representing their value to be $371,000, for the purpose of obtaining credit? A. No, we didn't get any credit on the trade marks.

Q. What did you make it for? A. We made it

because it was a transcript of the ledgers of E. C. Hazard & Company which would be given anyone who made inquiry for them.

Q. You mean to say that the National Nassau Bank asked you for this statement without regard to whether you were making any application for money or going to deal with them? A. The Nassau Bank required a statement from anybody doing business with them.

Court: The statement was given for the purpose of acquiring credit, wasn't it?

Witness: The general statement as a whole was, yes.

Court: That is what I mean.

Witness: Yes, sir.

Court: You need not fence about it.

Witness: It was given for the purpose of obtaining credit in response to the bank, but it wasn't given in 1912 for the purpose of getting credit, because we couldn't get credit.

Court: The statement of January, 1912?

Witness: No, that was not for the purpose of obtaining credit from the bank.

Q. What was it given for? A. Simply at their request; we were already owing them.

Q. Didn't E. C. Hazard & Company owe the National Nassau Bank money as late as 1914 or 1915? A. Yes, still owe it some.

Q. When was that credit obtained? A. Our credit with the Nassau Bank began in 1908 and continued right straight along up to the time that the company went busted.

Q. So that in 1912 when you made this last statement, you were indebted to the National Nassau Bank at that time? A. Yes.

Q. Do you deny that you obtained credit from the National Nassau Bank from January, 1912, down to the time E. C. Hazard & Company went out of business? A. That is my impression, yes, sir. The notes were renewed, because we couldn't pay them; I don't think we had any additional credit from them; I think we reduced rather than increased the line of credit.

Q. Regardless of whether you wanted to obtain credit or didn't, that statement in January, 1912, was made by you? A. Signed by me.

Q. Signed by you, and at that time you knew that the value of the trade mark and trade name and formulas, etc., was nil, and yet you represented them to be worth $371,000, regardless of whether you wanted to obtain credit or didn't? A. That is a question you are asking me to answer yes or no, and it cannot be answered yes or no. I am telling you how this value was arrived at, and the object and purpose of that valuation was simply to water the stock up to the difference between the asset value of the business and the amount of capital stock issued.

Court: Your personal representation to the bank, whether it was done for the purpose of obtaining credit, he is endeavoring to find out what knowledge you had and why you made it; if it was true, you made it because it was true; if it was false, why did you make it, if you knew it was false?

He is not going into the organization of the company. It can easily be answered as to whether you made that as a representation to the bank or did not, of the true tangible value of the things you referred to.

Q. This statement of January, 1912, and statement of 1911 fixed the value——

Mr. Sexton: Are you referring to statements now?

Mr. Smock: I am referring to statement I have called your attention to.

Court: Are you reading from them?

Mr. Sexton: If he is reading from a statement, the witness should be shown the statement.

Mr. Smock: I refer to the statements he referred to.

Q. These statements, January, 1912, and 1911, give the value of the trade mark and formulas alone at $371,000, Doctor, and make no reference to the other things that you mentioned. Do you deny now that the value as placed upon those two things, namely, trade mark and formulas, was $371,000 at the time these two statements were made?

Mr. Sexton: Objected to. The question is a simple declarative statement at the start; if he has a statement, he should produce it, or ask if the statement did have thus and so on it.

Court: I will admit it.

A. I admit that I made a statement; I don't know what statement it is, I haven't seen it. We made statements every year; the bookkeepers would draw off an abstract of the ledgers and they were brought to me as an officer of the corporation for signature.

Examination by the Court:

Q. Did your statement, or this statement that Mr. Smock has directed your attention to, place a valuation on these two items of $371,000? A. I don't know.

Q. If they did, were those the correct valuations or not? A. They were not.

Q. If they were not, why were the statements made by you at that time and why didn't you give them at the true value? A. They were given as an abstract of the manner in which they were carried on the ledger, and they were determined simply arbitrarily as the difference—as the balance between the value of the actual assets and the amount of capital stock that was issued at the time the corporations were formed.

Q. Was there any such explanation as that embodied in this statement, so the bank or anyone else reading the statement would understand that? A. Yes, because the assets would show what was cash, what was merchandise, and what was this and what was that, and the liabilities and the capital stock.

Q. There was no note of explanation that it was done for the purpose of, as you say, providing for the water in the capital stock of the company? A. No.

Elmer C. Hazard—(Recalled)—Cross.

Q. There was no explanation of that in the statement? A. No.

Further cross-examination by Mr. Smock:

Q. Do you remember writing a letter to Mrs. Harry L. Powers in December, 1911, outlining the plan for the reorganization of E. C. Hazard & Company? A. I don't recall that.

Q. You don't recall having written such a letter? A. No.

Q. I show you a letter dated December 27, 1911, addressed to Mrs. Harry L. Powers, 544 West 157th street, New York City, New York, and ask you if you ever saw that before; you don't need to read it all through; can't you tell from looking at these two sheets whether you sent that or not? A. No, I cannot.

Court: Read it, then; there is no signature, apparently, except the typewritten one.

Witness: This is a copy of the letter, according to the looks of it. Yes, I think I remember it.

Q. Was it written by you? A. It wasn't written by me, but it was sent out by me.

Q. Sent out at your behest? A. Yes.

Q. And it is signed E. C. Hazard, President? A. No, it is typewritten E. C. Hazard, President; it is a circular letter.

Q. It has the name at the bottom, "E. C. Hazard, President," hasn't it? A. Yes.

Q. That refers to you, doesn't it? A. Yes.

Elmer C. Hazard—(Recalled)—Cross.

Mr. Smock: I offer it in evidence.
(Marked Exhibit B for defendant.)

Q. Did you send similar letters to other people? A. Presumably.

Q. And for the purpose of reorganizing the company, wasn't it, and raising capital? A. Yes, we tried it a number of times to reorganize and had many meetings.

Q. Mr. Hazard, were the statements made by you in this letter true at that time? A. I presume so.

Q. Can't you answer yes or no? A. If I am to answer on that, I would like to read it very carefully.

Mr. Smock: I thought you read it.

Court: Do you want me to understand that you were sending out a letter that was false? I don't care whether you read it over again or not. You have taken your time quite deliberately. I don't propose to sit here all day and you or any other witness take time to refresh your memory. That is either true or false. Which is it?

Witness: This was substantially true.

Mr. Smock: I would like to read it in the record.

Mr. Sexton: I object to it as not binding on Mrs. Hazard in this proceeding.

Mr. Wilson: We withdraw the offer.

Q. You stated everything in this letter was substantially true? A. Yes.

Elmer C. Hazard—(Recalled)—Cross.

Q. I ask you whether this was or was not true:

> "With these properties we will be in a position to handle and market to great advantage Canned Tomatoes, Apples, Peas, String Beans, Corn, Lima Beans, Beets, Spinach and fruits with the jobbing trade, and under the 'Shrewsbury' brand label, E. C. Hazard & Company enjoy their best reputation on 'Canned Goods,' and until we adopt a more profitable manner of marketing our Specialties, the writer believes that 'Canned goods should be packed,' handling and shoving the Specialties with profits from the sale of the staple canned goods."

Was that true or not? A. Yes, sir.

Q. That was true? A. Yes, sir, that statement is true.

Q. How do you reconcile that with your testimony to the effect that the name of Shrewsbury and the trade mark of E. C. Hazard & Company was worthless and the business at Shrewsbury had been conducted at a loss for many years? A. Because this proposition embodied the taking in of industries that were organized out in the West, in running order, and could be packed at a price that we couldn't pack them at Shrewsbury, and if we could have gotten hold of those factories and properties and issued bonds, the business probably could have been made a success.

Q. (by the Court Why do you stress the fact in that connection that the word "Shrewsbury"

should be used? A. Simply because we had been using that brand; it had more value than brands that had never been on the market, of course.

Q. (by the Court) That is what Mr. Smock is directing your attention to, that that brand would have more value than a brand that had never been on the market? A. Sure.

Q. If the business at Shrewsbury had been conducted at a failure for years, and the trade name of E. C. Hazard & Company and the trade mark Shrewsbury were worthless, why were you panning under this reorganization to use that name instead of the name and trade mark of some of these other more profitable concerns? A. That was a plan to draw it out of the hole that the business was in.

Q. Why should you use the name of a profitless corporation to market these goods when you were planning to take in corporations that were apparently successful and active in business; why did you select the name "Shrewsbury"? A. Simply because it was a name that had been used.

Q. That having no value, in your judgment, and the business having been conducted for years at a loss, notwithstanding that, you chose the name "Shrewsbury" for the purpose of marketing these goods under this vast reorganization scheme? A. Yes.

Q. You proposed in this scheme of reorganization to obtain from individuals $300,000 in cash to use in this business which had for years been conducted at a loss, did you? A. Yes, that was my idea.

Q. And they were to take in return stock in a

corporation which could conduct a business similar to that conducted by E. C. Hazard & Company, which had been run at a loss for years, and to use the same name which that company had used in marketing their goods, is that true? A. Yes, whatever reorganization we could effect. It was a plan to get capital in the business, and never materialized.

Q. Did this plan represent a bona fide proposition, or was it a mere plan to get some more money to continue E. C. Hazard & Company? A. It was a bona fide proposition; we intended, if we could have put it through, to consummate it, but the people backed out on it.

Q. (By the Court) You mean the people associated with you or the people you expected to have come in? A. On both sides; our own stockholders seemed to think it couldn't be done, and the other people, they finally collapsed.

Q. Who were the other people? A. These different concrns; I don't recall the names of them now.

Q. Did you propose to buy these various concerns? A. Yes, that is, they were to come in.

Q. That collapsed because you didn't get the money to buy them in; you didn't succeed in raising any money under this plan? A. No, when these people went over the situation, they declined to entertain it.

Q. You never did think that this business could be run at a profit, did you? A. Yes, I think it could have, if it had capital enough.

Elmer C. Hazard—(Recalled)—Cross.

Q. Your father had plenty of capital in his lifetime? A. No, I don't think he did.

Q. You don't think he did? A. No.

Q. Wasn't your father worth a great deal of money at one time? A. Yes, before he came to Shrewsbury, but he lost it after he got there.

Q. He wasn't busted the first year he got there? A. I was pretty young; I don't remember.

Q. Your father had ample capital to conduct the business during his time, didn't he? A. No.

Q. Didn't you testify that your father lost money every year, and notwithstanding that, continued the business? A. I said the business at Shrewsbury ran at a loss for the last seventeen years, which is so, with the exception of one year, when it made ten thousand dollars. That was the year the Hazard Manufacturing Company was incorporated.

Q. I think you testified that you were receiving a salary of $10,000 a year? A. No.

Mr. Sexton: If your Honor is ready to rule that that paper is admissible in evidence——

Court: If you object, I will receive it at the proper stage; I think it is admissible.

Mr. Sexton: Then I consent that it may go in now.

(Letter referred to marked Exhibit B for defendant.)

Elmer C. Hazard—(Recalled)—Cross.

"Shrewsbury, N. J.,
74 Grove Street, N. Y.,
December 27th, 1911.

CONFIDENTIAL.

Mrs. Harry L. Powers,
544 West 157th St., N. Y.

Dear Madam:

The writer offers a plan of re-organization of E. C. HAZARD & COMPANY, as follows:

A new Corporation of the same name be formed under the laws of the State of New Jersey, Capital Stock to be $2,000,000, divided into $1,500,000 6% Participating Preferred Stock, par value $100; $500,000 Common Stock, par value $100.

The present stockholders to sell out their interests to the new Corporation on the following basis: Each stockholder to receive in the new company 50% of their present holdings in Preferred Stock of the new company, and 90% of their present holdings in Common Stock. In consideration of the proposition E. C. Hazard will obtain parties who will give to E. C. Hazard & Company $300,000 CASH, payable $50,000 within one (1) year, balance within three (3) years, and accept in payment $600,000 Preferred Stock and $250,000 Common Stock. This would then leave in the treasury of the new Corporation $775,000 Preferred Stock and $25,000 Common Stock, to be issued by the Board of Di-

rectors to take care of the future growth of the business.

The plan embodies acquiring by merger, canning industries now in existence at Baltimore, Md., Leesburg, N. J., New Paris, O., Rock Creek, O., and Monticello, Minn. With these properties we will be in a position to handle and market to great advantage Canned Tomatoes, Apples, Peas, String Beans, Corn, Lima Beans, Beets, Spinach and fruits with the jobbing trade, and under the 'Shrewsbury' brand label, E. C. Hazard & Company enjoy their best reputation on 'Canned Goods,' and until we can adopt a more profitable manner of marketing our Specialties, the writer believes that 'Canned goods should be packed,' handling and shoving the Specialties with profits from the sale of the staple canned goods.

During the re-organization of the business we require considerable cash, and in accordance with the view of the stockholders taken up at the last meeting, whereby the stockholders agreed to hypothecate with E. C. Hazard and F. A. Hazard, as Trustees, their stock to secure to them the payment of a loan to be made by them to the Company. Such loan is now about ready to be made to the Company. Upon the repayment of the loan the stock so hypothecated to be returned to the owners.

Your prompt reply is requested to this letter, and any questions will be fully answered promptly by return mail.

Yours truly,

E. C. HAZARD,
President."

Elmer C. Hazard—(Recalled)—Cross.

Q. Mr. Hazard, do you remember having a conversation with your wife, in the presence of Mrs. Georgie Hazard, shortly after Mr. Powers bought the property from your mother at Shrewsbury? A. I don't recall it.

Q. You have no recollection of a conversation with your wife at Mrs. Bowden Hazard's house? A. I was up at his house for a few days; I may have had a number of conversations.

Q. Shortly after the sale? A. Yes, it was after the rumpus down at the place.

Court: That was in connection with the sale?

Q. Either the 16th or 17th of March, 1913, do you remember such a conversation about that time? A. In regard to what?

Q. Do you remember having a conversation several days after the sale? A. No particular conversation.

Q. Is it or is it not true that you had a conversation with your wife at the house of Mr. Bowden Hazard at Shrewsbury, shortly after the sale was consummated between your mother and Mr. Powers, in which Mrs. Georgie Hazard said to you, "Why didn't you tell Mr. Powers what he bought?" and to that you replied, "I didn't want to, if I had, mamma would have lost her sale or bargain?" A. No, sir, no such conversation.

Q. No such conversation as that took place? A. No, sir.

Q. In the suit of E. C. Hazard & Company against Mr. Powers in the Court of Chancery,

you remember having made an affidavit in that cause? A. I think so.

Q. Do you remember having made this statement in that affidavit: "That the business of E. C. Hazard & Co. had been a large and prosperous enterprise and was founded by the father of this deponent, having for many years prior to March, 1913, been one of the largest concerns for the manufacture and canning of food products in the East, and having its factory in one of the factory buildings on the said property of Florence A. Hazard mentioned in the said bill of complaint"? A. I presume, if that is the wording of it——

Q. Was that statement true? A. It had been profitable.

Q. Was that statement true? A. Yes.

Q. It was true? A. Yes.

Court: When was that affidavit made?

Q. And that affidavit was made by you in July, 1916, that is true? A. Yes.

Q. How do you reconcile that with your statement in this cause that E. C. Hazard & Co. had not only not been prosperous, but they had lost money for seventeen years past, with the exception of one year? A. Prior to that time it was a very profitable business.

Q. Prior to what time? A. Prior to seventeen years ago.

Q. So that you still maintain that statement made in this affidavit is true? A. Yes, that it was formerly a profitable business; in later years it was unprofitable.

Q. (By the Court) To what years would your affidavit relate then? A. To the total business from the time of its early beginning, 1849, and in its early Shrewsbury days, was a profitable business.

Q. (By the Court) Down to when? A. I am not stating any particular time.

Q. (By the Court) I am asking you now to state a date; you have stated in your affidavit, which you say is true, and represented to the Court in that affidavit, that this was a prosperous business. I take it from the general substance of the statement you make, that it relates to the canning business and not to the general business of E. C. Hazard? A. That is the intention of it—the total business.

Q. (By the Court) It doesn't say so, as I recall the reading of it, and I am trying to find out up to what period you had the idea of its being prosperous, in mind, when you made the affidavit? A. The business was generally in New York.

Q. (By the Court) Let me tell you frankly what is in my mind, Doctor; you have left the impression on my mind that this whole thing was a failure, an absolute loss, for seventeen years, with the exception of one year, when they made ten thousand dollars. A. Yes, sir, the factory, and that is correct.

Q. (By the Court) I am talking of the Shrewsbury business, not the store in New York, now. As I read that affidavit, I gather the impression that you then informed the Court that it had been a prosperous business without exception. That is what I am trying to procure an explana-

tion of. A. That affidavit refers to the business as a whole, not up to any particular date, but that it formerly was a prosperous business, which is so, and in the early days in the Shrewsbury history of it, it was a very profitable business, and in later years a very unprofitable business, as manifested by the fact that it went bankrupt.

Q. You say, then, that the business was prosperous up to about seventeen years ago? A. Yes.

Q. How do you reconcile the statement which you have just made with this statement in the affidavit, "that the business of E. C. Hazard & Company had been a large and properous enterprise and was founded by the father of this deponent, having for many years prior to March, 1913, been one of the largest concerns," etc? A. That is so.

Q. Doesn't that imply that it was previous to March, 1913? A. It was previous to March, 1913, of course it was.

Q. (By the Court) That it was prosperous? A. Yes, it was prosperous from 1849, as far as I know, down to the last seventeen years of its existence.

Q. 1849 hadn't anything to do with the Shrewsbury, had it? A. No.

Q. Wasn't this affidavit made for the purpose of use in a suit relating to the property at Shrewsbury alone? A. It referred to the business of E. C. Hazard & Company as a whole.

Q. Wasn't this suit in which this affidavit was made, instituted for the purpose of impressing a trust upon property of E. C. Hazard & Company at Shrewsbury? A. Contained in the factory, yes, sir.

Q. It had no relation to the New York end of it, did it? A. Because at that time the New York end, the stuff had been moved down here.

Q. It had reference to the Shrewsbury business entirely? A. Yes, that was the only business at that time.

Q. And this bill was filed for the purpose of impressing a trust upon the goods of E. C. Hazard & Company in the factory at Shrewsbury? A. Yes.

Q. What was the result of that suit, Mr. Hazard, this suit we are just talking about, in which this affidavit was made? A. My recollection of it is that it was settled out of court.

Q. You say your recollection; you know all about it? A. Yes, it was settled out of court; that is my impression; the suit wasn't finished.

Q. You say it is your impression; do you mean to give the court the impression that you don't know what happened in this suit? A. What I understand is that it was settled out of court, and there was $1,800 paid.

Q. Who instituted the suit; in whose behalf was the suit instituted? A. I did, on behalf of E. C. Hazard & Company.

Q. Don't you know what the result of the suit was? A. I testified to the fact that it is my understanding it was settled out of court.

Q. (By the Court) That is not your knowledge. Don't you, the complainant, know how it was settled? A. As officer of the corporation I brought the action.

Q. (By the Court) Don't you personally know how it was settled? A. I am stating that my im-

pression is it was settled out of court for $1,800.

Q. (By the Court) Why do you qualify it; you have some knowledge on the subject? A. Yes, I have.

Q. (By the Court) Why don't you state what you know about it? A. Yes.

Q. This couldn't be settled without your consent to it? A. The lawyers settled it up.

Q. It wasn't settled without your consent, was it? A. Presumably not.

Q. Why do you qualify it by "presumably"; the suit was maintained and conducted—— A. Mr. Runyon suggested that it ought to be compromised for the money, and I said, "Go ahead."

Q. Didn't you authorize him to settle it? A. Yes.

Q. Was anyone else interested in the settlement of the suit? A. Nobody but the corporation.

Q. Who in the corporation knew about the settlement other than you? A. I guess Beadleston knew about it; Bowden knew about it; I knew about it.

Q. Who else? A. That is all.

Q. Did Mr. Beadleston have any stock in the corporation at that time? A. Yes.

Q. And Bowden? A. Yes.

Q. How many other stockholders were there? A. Fifteen or sixteen, I should think.

Q. Did any of the other stockholders know about the settlement? A. I don't know about that.

Q. Did any of the other stockholders know the suit had been started? A. I presume they did.

Court: Not what you presume.
Witness: I don't know.

Q. Did you, as president of the corporation, before you instituted the suit give any notice, official or otherwise, to the stockholders of your intention to bring this suit? A. I don't recollect whether I did or not.

Q. Do you deny that you did? A. I don't know whether I did or not.

Q. You mean to say that you don't know now whether you notified any of the stockholders of the intention of the corporation to institute this suit that we have just been referring to? A. No, I don't think I notified any of them particularly.

Q. Did you have any meeting of the corporation for the purpose of discussing this proposed action? A. I don't think so; I don't recall it.

Q. Did you have any meeting of the corporation for the purpose of discussing the compromise which was finally made; did you? A. I don't recall whether there was or was not.

Q. Do you deny that there was no meeting? A. I don't think there was any meeting; I don't recall it.

Q. And this suit involved about $63,000, didn't it? A. I don't recall that.

Q. Referring to the same bill of complaint and your affidavit attached, do you now deny or affirm that you made this statement in the affidavit: "That on March 13, 1913, in three of the factory buildings on the property of Florence A. Hazard, mentioned in the bill of complaint there was

located the entire plant and equipment of E. C. Hazard & Company, including all its merchandise, supplies, labels, cans, bottles, and all unfinished materials, materials in process of being manufactured or canned, with all of its other property, of the value of approximately the sum of $63,-204.46, as of January 2, 1912." A. If that is there, I made it.

Q. And was it true? A. As far as I know.

Q. You mean to say that you settled this suit involving $63,000 for seventeen or eighteen hundred before calling a meeting of the corporation or without notifying any of the stockholders, excepting the three you have mentioned? A. I may have.

Q. Did you? A. As far as I know, I did, yes.

Q. You knew that Mrs. Powers was a stockholder? A. Yes.

Q. And did you give her any notice? A. She had ample notice.

Mr. Smock: I object.

Court: Strike it out.

A. No, I did not give Mrs. Powers notice.

Q. Did you ever speak to her about it? A. No, I never did.

Q. (By the Court) The suit was between whom? A. E. C. Hazard & Company and Harry L. Powers.

Q. So that you settled this suit for seventeen or eighteen hundred dollars that involved over sixty-three thousand dollars, without calling a meeting or without consulting any of the fifteen stock-

holders, excepting Mr. Beadleston and Bowden Hazard, is that right? A. That is probably so.

Q. Dont' you know whether it is or not? A. I don't know who I communicated with at the time, but I know that it was settled, and whether I notified them that it was settled or not, I don't know.

Q. If you had sixty-three thousand dollars worth of stuff there, why did you settle it for the paltry sum of seventeen hundred dollars? A. Because I wanted to get though with it, I was sick of the whole shooting match.

Q. That is your only reason? A. That is my reason.

Q. What became of the money? A. Nine hundred dollars went to the lawyer and nine hundred dollars was turned over to me as president of the corporation.

Q. What did you do with it? A. I paid Florence A. Hazard nine hundred dollars for money that I was owing her.

Q. (By the Court) That you as an individual owed her? A. Yes. Runyon & Autenreith gave me a check for nine hundred dollars.

Q. (By the Court) You individually or as president of the company? A. As president of E. C. Hazard & Company, and I credited E. C. Hazard & Company with the money that they owed me.

Q. They were indebted to you for more than that at that time? A. They were indebted to me for more than twenty-five thousand.

Q. What was that for? A. Notes.

Q. You had loaned money for the company or had endorsed notes? A. I had loaned money,

endorsed notes, and borrowed money until it got me in a terrible condition.

Q. Loaned your own money? A. Some of it.

Q. How much have you loaned them? A. I don't know what I have loaned them.

Q. (By the Court) Have you any evidence of the company's indebtedness to you; have you notes or anything to show that the company owed you money? A. No, sir.

Q. (By the Court) Or anything to show you had loaned money or incurred liability for the company's benefit? A. No, the Nassau Bank has the notes.

Q. (By the Court) Endorsed by you? A. Yes, and notes made to the order of the company.

Q. E. C. Hazard & Company owed lots of money beside what they owed you? A. They certainly did.

Q. Was there a meeting of the corporation for the purpose of resolving that this money should be paid to you rather than some of the other creditors? A. No.

Q. You merely took it upon yourself? A. Yes.

Q. Did you consult any directors at all with respect to the disposition of the nine hundred dollars which you received? A. I don't think I did, no, sir.

Q. Mr. Hazard, you say the company owed you a considerable amount of money? A. Yes.

Q. Can you name one particular transaction where they borrowed any money from you or incurred any indebtedness to you whatever? A. During when?

Q. Over the entire time.

Elmer C. Hazard—(Recalled)—Cross.

Court: That is represented by this twenty-five thousand dollars you mentioned.

Q. Refer to one particular instance where you loaned them any money or they incurred indebtedness of any nature for which you were responsible. A. I don't know of any particular debt, but I know a whole lot of times I paid money into the corporation and loaned them money and gave them money, and worked for it for a long time, and salary was never paid to me.

Q. How much salary were you supposed to get? A. I don't know how much is coming to me; I lost track of it.

Q. (By the Court) How much did you expect to get a year? A. That varied.

Q. (By the Court) It appears on the books? A. Yes.

Q. You say you loaned them some money; name one particular amount that you ever loaned them? A. I cannot recall any amount.

Q. Name one particular time when you ever loaned it anything? A. I cannot name any particular time.

Q. Have you any evidence of any loan?

Court: Checks or vouchers?

A. I think so.

Q. What kind of evidence, note or check or what? A. I think I have some notes and some checks.

Q. Of E. C. Hazard & Company? A. No.

Q. Whose? A. Checks that I paid to E. C. Hazard & Company.

Elmer C. Hazard—(Recalled)—Cross.

Q. (By the Court) From your individual account? A. Yes.

Q. Did you have an individual estate? A. I formerly had money.

Mr. Sexton: Aren't we going quite far afield?

Court: I don't see how this is going to be brought home to Mrs. Murphy.

Q. You were connected with the Little Silver Sauce Company? A. Yes.

Q. A similar suit had been brought to impress a trust upon property in behalf of the Little Silver Sauce Company? A. Yes.

Q. And involved about forty thousand dollars? A. Whatever it was.

Q. And that had previously been disposed of, had it—settled? A. I don't think it had been settled at that time.

Q. The suit had been terminated, hadn't it, at that time? The court had decreed that the Little Silver Sauce Company was entitled to $11,400 at the time you began the suit we just referred to? A. It may have been, I don't recall. I don't recall the exact dates.

Q. You know when you brought this suit for E. C. Hazard & Company that the controversy in respect to the claim of the Little Silver Sauce Company had been settled, don't you, or at least determined? A. I think it had been determined, but I don't think it had been settled. That is my impression.

Elmer C. Hazard—(Recalled)—Cross.

Q. You knew that the Little Silver Sauce Company was attempting, before you started this E. C. Hazard & Company suit, to impress a trust for forty some thousand dollars upon this same property? A. No, not on the same property; I know that they did impress a trust for a certain amount of money, but I don't remember the exact figures.

Q. You knew they were trying to obtain from insurance money coming to Mr. Powers forty odd thousand dollars for the Little Silver Sauce Company; you knew that? A. I think it was something about that; I am not sure as to the amount.

Q. You were also familiar with the suit which you brought yourself, of course? A. Yes.

Q. And nothwithstanding that, you refrained from bringing this suit of E. C. Hazard & Company for sixty thousand dollars long, long after these other two suits had been tried and determined by the court? A. That may be so.

Q. Why didn't you bring that suit at the time you brought the Little Silver Sauce Company suit? A. I think the ones we had working was about all we could look after at the time. There were so many suits brought—there were twelve suits altogether, about.

Q. You say that the suit of E. C. Hazard & Company and the suit of the Little Silver Sauce Company involved different properties? A. Yes.

Q. What, generally, was the distinction between the properties in question? A. Different assets.

Q. What were they? A. I cannot enumerate

what were the assets of the E. C. Hazard & Company and Little Silver Sauce Company and Elmer Hazard and Matthes, without seeing the records and finding out what they were.

Q. Isn't it true, Doctor, that the property claimed in the suit of E. C. Hazard & Company and the property claimed by the Little Silver Sauce Company were identical? A. No, that is not so.

Q. Isn't it true that a large part of the property claimed in the suit of E. C. Hazard & Company was the same property claimed by the Little Silver Sauce Company? A. No.

Q. How did they differ? A. I think the papers ought to show; I cannot say.

Q. (By the Court) Do you know? A. No, I cannot recall.

Q. Do you mean to say that E. C. Hazard & Company and the Little Silver Sauce Company at the time of the fire had property in this factory valued at upwards of $100,000? A. I should say about eighty thousand.

Q. You had claimed sixty-three thousand dollars in one suit and forty in another; how do you reconcile that with your statement now that there was eighty thousand? A. Does it say that?

Q. Yes, you have already admitted that. A. It says "upwards."

Q. It says sixty-three thousand in one and forty thousand in another; how do you reconcile that with your statement now that it would be worth about eighty? A. I would like to see the statement; I cannot reconcile a thing.

Elmer C. Hazard—(Recalled)—Cross.

Q. You just admitted you made this affidavit involving sixty-three thousand in the E. C. Hazard & Company suit, didn't you? A. "Approximately the sum of $63,204.46," it says here.

Q. That doesn't mean twenty thousand difference, does it? A. No.

Q. How did you arrive at that amount? A. By deducting the amount of the claim of the Little Silver Sauce Company and the Matthes claim from the said value on a statement that I made.

Q. Then if the Little Silver Sauce Company had forty thousand and the sixty-three thousand was the balance, the total must have been upward of one hundred thousand? A. That may have been so; that is what the statement shows.

Q. Which is true, was there eighty or one hundred thousand in there? A. I think the value of all the stuff in the factory was about eighty thousand dollars.

Q. Why did you bring one suit for forty thousand and the other for sixty thousand? A. Because the suit of the Little Silver Sauce Compaiy for forty thousand, as you state it is, it may be more or less, I don't recall—the Little Silver Sauce Company had their assets listed as per the inventory, and the other stuff was the difference between that and the statement of all the stuff that was in the inventory.

Q. If that was the difference, if your sixty-three thousand was the difference between the total valuation of all the stock and the forty thousand of the Little Silver Sauce Company, that would clearly indicate that the total must have

been over one hundred thousand; isn't that so? A. Yes, but some of the stuff that was listed by the Little Silver Sauce Company wasn't ever the property of E. C. Hazard & Company at any time.

Q. Then if one hundred thousand was stated as being the value in those two suits, you now say that the real value was about eighty thousand, do you? A. As far as I can recollect, my impression is that the value of it was about eighty thousand.

Q. You were entirely familiar with the Little Silver Sauce Company suit? A. Yes.

Q. And were one of the institutors of it? A. Yes.

Q. And also fixed the valuations? A. Yes.

Q. You also made an affidavit about it? A. Yes.

Q. You just told us that the E. C. Hazard & Company suit, you started that? A. Yes.

Q. And fixed the value of that? A. Evidently.

Q. Which is correct, the real value of that property is about eighty thousand or over one hundred thousand, of the combined property? A. The total stuff in the factory at the time it was taken by Powers was approximately eighty thousand dollars.

Mr. Sexton: Can you give a better answer than that?

Witness: No.

Q. If you now say the value was eighty thousand, the gross value, how do you reconcile that

with the fact that you brought two suits in which you had full knowledge of the value and of the entire proceedings, in which you stated the gross value as being one hundred thousand? A. I told you a moment ago that the way it was arrived at——

Q. I want to know how you reconcile those two things. A. I am trying to explain how I reconcile it.

Court: Let us hear what it is.

A. (Continuing) I said I had a statement showing the assets of E. C. Hazard & Company in Runyon's office, and I deducted from that statement the amount of the claim of the Little Silver Sauce Company, which was valued by the Little Silver Sauce Company at the same value that it originally cost the Hazard Company, and deducting that from the statement left that balance.

Q. If they were worth eighty thousand, as you now say they were, and you deducted forty thousand, it would leave the claim of E. C. Hazard & Company at forty thousand, and not at sixty thousand, would't it? A. I am telling you how it was arrived at.

Court: There is no doubt about that. Did Mrs. Hazard, your mother, take any part, if so, what part, in either the Little Silver Sauce Company suit or the E. C. Hazard & Company suit?

Witness: She didn't take any part.

Elmer C. Hazard—(Recalled)—Cross.

Court: Was she consulted before either action was started?

Witness: No.

Court: Was she consulted at any time during the course of the litigation?

Witness: No, I think in the suit of the Little Silver Sauce Company she made an affidavit at our request.

Q. Was she a stockholder of E. C. Hazard & Company? A. Yes.

Q. (By the Court) And of the Little Silver Sauce Company, too? A. No.

Q. She was a large stockholder of E. C. Hazard & Company? A. Yes.

Q. (By the Court) Was she consulted along with Mr. Beadleston at the time you made your settlement for eighteen hundred of the E. C. Hazard & Company suit? A. No.

Q. Why wasn't she consulted? A. I don't know; I didn't consult everybody about it.

Q. (By the Court) You paid her the nine hundred you got? A. Yes.

Q. (By the Court) Did you tell her where it came from? A. I don't recall whether I did or not; I think perhaps I did.

Q. Don't you know that you did? A. I don't know that I did; I simply said, "Here is nine hundred on account of what I owe you."

Q. (By the Court) Did she approve or disapprove of the settlement? A. She didn't say anything about it.

Q. Did she know that you had brought this suit? A. No, sir.

Q. The E. C. Hazard & Company suit? A. No.

Q. She didn't know anything about it? A. I never consulted her about it.

Q. Or the Little Silver suit? A. I never consulted her about any of the suits, except asked her for an affidavit in the Little Silver suit.

Q. She testified in the suit of the Little Silver Company, didn't she? A. I think she did.

Q. Did the Little Silver Sauce Company, Mr. Hazard, continue its corporate activities down to the time Mr. Powers purchased the business? A. Yes.

Q. And had assets at that time, in your judgment, of forty-seven thousand dollars? A. At which time?

Q. Down to the time Mr. Powers bought? A. Yes.

Q. And he bought in 1913, didn't he? A. 1913.

Q. Did the Little Silver Sauce Company hold any meetings as late as 1913? A. Yes.

Q. Do you recall the date of the last meeting of the Little Silver Sauce Company? A. No, sir, I do not.

Q. You are sure that they had meetings as late as 1913? A. That is my impression.

Q. Did they have any meeting after that? A. I think so.

Q. Who were the stockholders of the Little Silver Sauce Company?

Court: Are the books in existence?

Witness: They ought to be.

Court: Do you know without reference to the books?

Witness: No.

Elmer C. Hazard—(Recalled)—Cross.

Q. Do you know how much the total authorized stock of the Little Silver Sauce Company was? A. Ten thousand dollars; that was the amount it was originally incorporated for, ten thousand dollars.

Q. Don't you know as a matter of fact that the Little Silver Sauce Company was terminated in 1911 and the entire capital stock surrendered and turned in to the company? A. I don't recollect the exact transaction at the time.

Q. You do know that the stock was all surrendered, don't you? A. That is my impression, all the capital stock was turned in.

Q. And when was that? A. I don't know.

Q. It was previous to 1913, wasn't it? A. Yes.

Q. (By the Court) Was the corporation formally dissolved? A. No, the taxes——

Q. Was it put out of business by the Governor's proclamation? A. No, it laid dormant and I took over the stock and paid the taxes.

Q. Have you the stock now? A. Yes.

Q. The stock of goods or certificate? A. The capital stock.

Q. What became of the capital stock? A. At the time the Matthes proposition came, the thing was reorganized in some shape or another, I don't recollect the exact detail of it.

Q. You say you purchased all the ten thousand of capital stock? A. Yes, I paid the taxes of the corporation——

Q. Did you purchase it—all the stock? A. Yes.

Q. From whom did you purchase? A. Hazard & Company, I presume.

Q. No, the individuals; you must have purchased from individuals, if at all? A. No, the individuals as I understand it of the——

Q. From whom did you purchase the stock of the Little Silver Sauce Company? A. It is my impression it came from the E. C. Hazard & Company.

Q. (By the Court) Do you know how they acquired the stock? A. As I recollect it, the money in the bank was distributed.

Q. (By the Court) The money in the bank of the Little Silver Company? A. Yes.

Q. (By the Court) Was distributed among whom? A. The original stockholders.

Q. Was it before 1913? A. Yes.

Q. And how else? A. And the stock was turned over to E. C. Hazard & Company.

Q. (By the Court) For what purpose? A. I don't know.

Q. And then you acquired it from E. C. Hazard & Company? A. Yes, I paid the taxes to the State of New Jersey.

Q. Have you the certificates of stock? A. Not that I know of.

Q. What became of them; didn't you take them? A. I don't recollect the details of it.

Q. You never have had the stock, have you, as a matter of fact, the certificates of capital stock of the Little Silver Sauce Company? A. I don't know whether I ever did or not.

Q. The company hasn't had any existence since long prior to 1913, as a matter of fact, has it? A. Yes.

Elmer C. Hazard—(Recalled)—Cross.

Q. You say the cash was distributed among the stockholders? A. Yes, that is my understanding of it; I didn't get any of it, I don't know.

Q. What about the other property they had on hand at that time? A. That stayed in the factory.

Q. Was there any distribution of that among the stockholders? A. Not that I know of; I don't know anything about the disposition.

Q. What disposition did the Little Silver Sauce Company make of this stock of merchandise at that time? A. I don't know.

Q. You bought the capital stock?

Court: What is the purpose of this line of examination?

Mr. Smock: I want to show that the Little Silver Sauce Company had no existence.

Court: Suppose it did not. What significance will it have as far as Mrs. Hazard is concerned?

Mr. Smock: She testified that the Little Silver Sauce Company did have existence and she did business with it. We propose to show that the Little Silver Sauce Company had no existence at all.

Court: I am willing to give you all the time you require, if it develops any information, but I don't see how you bring it home to Mrs. Hazard, who is the main party to this case on the complainant's side.

Q. Do you remember, Doctor, how much you

paid for the capital stock of the Little Silver Sauce Company? A. As I recollect it, it was only the taxes.

Q. I ask you if that paper sets forth the amount that was paid for the capital stock of the Little Silver Sauce Company at that time? A. Yes, that is the taxes.

Q. So that you acquired the capital stock of the Little Silver Sauce Company for ten dollars? A. Presumably, yes.

Q. Had it any assets at that time? A. Yes, it had its labels and its boxes and its aluminum slip top caps.

Q. How much value did they represent? A. I haven't any idea.

Q. Were they worth ten thousand dollars? A. No, I don't think so.

Q. Were they worth five thousand? A. In the sense of what they cost?

Q. No, real market value at that time? A. I don't know what market value they had.

Q. (By the Court) What were they worth to you? A. What it cost me to go out and buy new ones.

Q. (By the Court) What would that be, five thousand, three thousand? A. I don't know.

Q. (by the Court) You say they were not worth ten thousand; give me your judgment about it; somewhere in the neighborhood of five more or less? A. I should say less, a good deal less.

Q. Was this same stock of merchandise that you just mentioned on hand when you brought the suit against Powers?

Elmer C. Hazard—(Recalled)—Cross.

Court: You mean the forty thousand stock?

Mr. Smock: Yes.

Q. Belonging to the Little Silver Sauce Company? A. Yes, a lot of show cards there and labels and bottles.

Q. How much in addition to the stock on hand which were owned by the Little Silver Sauce Company when you purchased the capital stock, was there at the time you brought the suit against Mr. Powers—how much additional? A. Whatever the difference was, was stuff that came from Florence A. Hazard, which originally belonged to the Hazard Company.

Q. Do you know how much that was? A. No, because I don't know the value of the stuff that the Little Silver Sauce Company held there, that originally belonged to that corporation.

Court: I must confess I am at a loss to see what bearing this has on this case. I want to give you all the latitude possible, because of the peculiar situation and relation of the parties. Unless you show me that you are going to connect up any wrong doing or misstatements or misrepresentations or conduct or actions by Dr. Hazard with Mrs. Hazard, or Mrs. Murphy, it seems to me it is not going to affect the merits of her case. You may brand him in every way you please, but I don't see how it will affect her.

Mr. Smock: Does your Honor overrule it.

Court: No, but I will unless you connect it up with Mrs. Hazard.

Re-direct examination by Mr. Sexton:

Court: I might say for your information, you need not take up on re-direct examination all this detail we have gone into. If it should be connected up with Mrs. Hazard, I will give you an opportunity to go into it. If not, there is no use of going into it.

Q. I refer to Exhibits C 9 and C 8, being the notes which you testified that you gave to Bowden Hazard and to Florence Hazard Auersperg when you took over your father's interest from the heirs in the E. C. Hazard & Company, and ask you if you have been able to find any other of those notes? A. No, sir.

Q. You have testified that there were notes given at that time? A. Yes, sir.

Q. To the other members of the family? A. Yes.

Q. Have you been able to find any evidence in reference to those notes? A. Only checks for interest on some of them.

Q. I show you three parcels of checks and ask you what they are? A. These are a few of the checks to Florence A. Hazard, Guardian, on account of interest, on account of what I was owing.

Q. She was guardian for whom? A. She was

guardian for all those under twenty-five years of age.

Q. Was there a note given? A. Yes.

Q. And these represent the interest on the note? A. Yes.

Mr. Wilson: How is this relevant?

Mr. Sexton: These are checks for interest on the notes which we could not find.

I offer in evidence eight checks to Mrs. Florence Hazard as Guardian during the years 1906 and 1907.

(Marked Exhibit C 20.)

Q. Referring to another bundle, Doctor, these are checks to Elizabeth R. Hazard for interest—now Elizabeth R. Powers; they were interest on similar notes? A. Yes.

Q. (By the Court) Whose checks are they; your own or the company's? A. My individual checks.

Q. (By the Court) Each check for the same amount? A. Yes.

(Ten checks referred to offered in evidence and marked Exhibit C 21.)

A. (Continuing) These (indicating another bundle) are checks to the order of Florence A. Hazard for interest.

Q. And they had reference to what? A. The individual note to her, sir.

Q. (By the Court) As the widow? A. Yes.

(Five checks just referred to offered in evidence and marked Exhibit C 22.)

Mr. Sexton: Reserving the right to further examine if it should be developed——

Court: Yes.

Mr. Sexton: I would like to recall Harry L. Powers in rebuttal as my witness.

HARRY L. POWERS, called in rebuttal by complainant,

Direct examination by Mr. Sexton:

Q. You made an affidavit in the suit wherein the Little Silver Sauce Company was complainant and you and others were defendants? A. I did.

Q. And in that affidavit, speaking of the meeting in reference to the signing of the contracts, do you recall saying this: "It developed at that time"——

Mr. Wilson: The form of this question is objectionable. Mr. Powers is now his witness.

Q. (Continuing) Do you recall saying this: "It developed at that time that some of the personal property contained in said factory and upon said premises was formerly owned by E. C. Hazard & Company, and which personal property had been

transferred to Florence A. Hazard. Deponent therefore insisted that one agreement should be entered into whereby Flornce A. Hazard would agree to convey to this deponent the real estate and such personal property as was hers absolutely on payment of sixty thousand dollars." Do you remember stating that? A. Yes, I think that is correct.

Mr. Wilson: My objection is this method of examination; if this is his witness, I don't see how he is entitled to make his inquiry in that form.

Court: Possibly not; I don't know how far he is going to pursue this line. Is there much of it?

Mr. Sexton: No.

Court: I recognize the fact that Mr. Powers is the defendant. I am not saying he is hostile to Mr. Sexton.

Mr. Rosenberg: I have some general recollection that the records in the previous case should go in this case, so it is not necessary to examine Mr. Powers and ask him whether he made the affidavit; there is the affidavit.

Mr. Sexton: Yes.

Court: The purpose is to save offering the whole record.

Mr. Wilson: Read the other clause you wish to call attention to.

Mr. Sexton: "That in and by the terms of the aforesaid contract, thirty thousand dollars was to be paid in cash by deponent on account of the consideration for the

real estate, and such personal property as the said Florence A. Hazard and not conveyed or assigned to her by E. C. Hazard & Company, and eleven thousand four hundred dollars was represented by notes of deponent as consideration for the transfer of certain other personal property conveyed or to be conveyed or assigned to her by the said E. C. Hazard & Company."

Mr. Wilson: We have no objection to that going in as having been sworn to by Mr. Powers in a previous case.

Mr. Sexton: In the further affidavit by Mrs. Powers, will you admit that Mrs. Powers swore to the following:

"But finally concluded, as will appear by the agreements between deponent's mother and Harry L. Powers, dated February 5, 1913, to sell at $71,400, $60,000 of this amount represented the purchase price of the real estate and such personal property as said Florence A. Hazard owned not conveyed or assigned to her by E. C. Hazard & Company, and $11,400 stipulated in said agreement of February fifth, represented the purchase price of certain property therein mentioned."

Mr. Wilson: We admit she swore to that.

Court: It is admitted that Mrs. Powers made that statement in the suit of the Little Silver Sauce Company, complainant, and Harry L. Powers, et als., defendants.

Mr. Wilson: May I ask Mrs. Hazard an omitted question?

FLORENCE A. HAZARD, recalled for further

Cross-examination by Mr. Wilson:

Q. Mrs. Georgie Hazard is your daughter-in-law, is she? A. No, sir.

Q. Did she marry your son? A. Once upon a time she did.

Q. And she has since been divorced from your son, is that what you mean? A. I believe so.

Q. So that, with that trifling exception, she is your daughter-in-law, or has been? A. Yes, has been.

Q. And was Bowden the son that she married? A. Yes.

Q. And she was living with her husband in 1913 when you consummated your bargain with Mr. Powers, was she not? A. Yes.

Q. At Shrewsbury? A. Yes.

Q. Do you recall having visited her home at Shrewsbury after you had made your bargain with Mr. Powers and having spent the night there? A. Yes, the night we moved out at two o'clock in the morning—four o'clock in the morning.

Q. Do you recall having visited her house and stayed all night after you had made that bargain with Mr. Powers, and before you had delivered the papers? A. Oh, no, sir.

Q. Was it after you delivered the papers? A. Everything, yes, sir.

Q. Whether it was before or after you delivered the papers, on the occasion at her house when you were there spending the night, did you tell her that you had sold your factory and your business to Mr. Powers? A. No, sir; I never made such a statement.

Complainant Rests.

GEORGIE HAZARD, sworn for defendants in surrebuttal.

Direct Examination by Mr. Wilson:

Q. Where do you live? A. Red Bank.

Q. What is your business; what are you doing? A. I have a private school.

Q. Were you at one time the wife of Bowden Hazard? A. I was.

Q. And have you been divorced? A. I have.

Q. When you were living with Bowden Hazard were you both residing at Shrewsbury? A. We were.

Q. And was Bowden the son of Mrs. Florence Hazard? A. He is.

Q. Were you living in Shrewsbury in 1913? A. I was.

Q. Do you recall the occasion when Mrs. Florence Hazard came to visit you and stayed all night? A. I do.

Q. With respect to the time when Mr. Powers made his purchases of Mrs. Hazard, about when was it that she came there; was it before or after he had taken possession, or about when was it? A. The day after.

Q. (By the Court) He had taken possession or bought? A. The day after when he had taken possession.

Q. (By the Court) Was that after the trouble at the factory or before they had the trouble at the factory? A. What trouble do you mean?

Q. (By the Court) They had someone arrested? A. Yes.

Q. (By the Court) Was it before or after? A. The day after.

Q. Was it the day after that fuss at the factory? A. Well, it was the day—the night after they came away; they came away from the house, they gave it up.

Q. It was the night after they came away, you mean, after Mrs. Hazard left the large house? A. Yes, after they had moved.

Q. You think that was the day after Mr. Powers took possession? A. Yes, it was at the same time.

Q. On this occasion, no matter when it was, did she tell you that she had sold her factory and business to Mr. Powers? A. Yes.

Q. Do you recall an occasion when after the sale of the property to Mr. Powers and after Mr. Powers had taken possession, when Elmer Hazard and his wife were at your house? A. I do.

Q. And were they visiting there or were they calling, do you recall? A. They were visiting there.

Q. What was the occasion of the visit; what made the visit necessary? A. They had nowhere else to go, they said.

Q. I don't want that; was it before or after they had gone out of the homestead? A. It was after they had gone out of the homestead.

Q. And after they had gone out of the homestead, did they come to your house? A. They did.

Q. Immediately? A. Right away.

Q. How long did they stay there? A. They were there several weeks.

Q. Did you say "several" or "seven"? A. Several weeks; I don't remember just how many now.

Q. During that time, I ask you whether or not you recall an occasion when Elmer Hazard was talking with his wife about the purchase by Mr. Powers, and what Mr. Powers had bought, and did you on that occasion, if you recall the occasion, say to Mr. Elmer Hazard, "Why didn't you tell Mr. Powers what he bought?" and did he then reply, "I didn't want to, if I had, mamma would have lost her sale or bargain"?

Mr. Sexton: Objected to as a conversation between husband and wife after written contracts had been entered into, and not in the presence of Mrs. Hazard, relating to something that had happened anterior to it, even of the closing of the contract. The objection goes to the relevancy more than anything else.

Court: I will receive it. You may answer it.

A. I do remember that.

Q. Did that occur? A. It did.

Q. As recounted in that question? A. Absolutely.

Q. (By the Court) At this time and at the time of the conversation with Mrs. Florence Hazard, were you and she on friendly terms? A. You mean Mrs. Florence Hazard?

Q. (By the Court) Yes, your mother-in-law? A. Yes.

Q. (By the Court) At this time when you say she told you, when she came back from New York and stopped at your house? A. Yes, we were friendly.

Q. (By the Court) You were friendly with her at the time you now relate about the Doctor and his wife? A. Yes.

Q. You never have had any quarrel or unfriendly relation with her at all? A. No.

Q. The divorce to which you have referred, was it a divorce awarded on your seeking? A Yes.

Mr. Sexon: I object.

Court: I can answer it; I think I advised the decree. I will receive it, I think it is perfectly competent. There is no use leaving this woman in a false position.

Q. You recall having heard that there was a fuss or difficulty down at the Hazard homestead and factory when Mr. Powers undertook to take possession; you recall having heard that? A. Yes.

Q. And when did that come to your attention, with respect to the time that it occurred; did it come to your attention the same day or next week or when? A. The morning after.

Q. The morning after this occurence? A. Yes.

Q. The morning of the occurrence? A. The first I knew about that was in the morning the men sent up——

Q. In the morning of the day it happened? A. What happened?

Q. The trouble when Mr. Powers took possession of the factory. A. Yes, the very morning one of the men on the place was sent up and said that Mr. Powers had attempted to shoot somebody and they wanted Mr. Bowden Hazard to come down there right away.

Q. Let me ask you whether or not, the night before, either in the evening or in the night time, your husband was away from home or was he at home? A. He was at home that evening.

Q. The whole evening and night? A. Yes.

Cross-examination by Mr. Sexton:

Q. Are you positive that Bowden Hazard was home, Mrs. Hazard, that night? A. Yes.

Q. How do you recall the fact that he was home that evening? A. I remember his being at home and remember that the morning afterward, when he was sent for, I was surprised and he was surprised to find that so much had been done without his knowledge.

Q. (by the Court) Where were you living at that time, you and your husband? A. In Shrewsbury.

Q. (By the Court) How far from the homestead or factory? A. I should say a quarter of a mile, a short distance, ten minutes walk.

Mr. Wilson: It was the better part of three-quarters of a mile.

Q. Mrs. Hazard, about that time, Bowden Hazard was staying away from the home quite a little, was he not? A. Yes, he was.

Q. And in fact that was one of the allegations

in your bill, and your trouble with him, that he was staying away? A. Yes.

Q. And nevertheless you are quite positive on this particular night that he was there and he was at the house? A. Because he was away so much I can remember very clearly when he was home.

Q. That is the way you associate it, that it was unusual for him to be at home? A. Yes.

Q. Was he home all during the early part of the evening, do you know? A. Yes, he was home that evening, I remember it clearly.

Q. Do you remember anything particularly that happened that evening? A. No more than I remember his being in the house.

Q. Do you know whether he went out for any length of time at all? A. He did not go out; he was home all the evening, I remember it.

Q. When were you first asked after this trouble, Mrs. Hazard, referring to Mr. Powers taking possession of the factory, when were you first after that, asked whether Bowden was home that night, how long after? A. I don't quite understand.

Q. When was the question first asked of you whether Bowden Hazard was home on the night that Mrs. Hazard delivered possession of the place? A. You mean in connection with this?

Q. In connection with anything. A. Mrs. Powers met me on the street one day——

Witness: Shall I tell that?

Court: How long after?

Witness: It was recently, since this case has come up.

Q. A matter of two or three years, then, that you were first asked to recall whether Bowden was home that night? A. It was during the past summer sometime.

Q. (by the Court) Is there any way you have refreshed your memory in regard to that incident, whether he was home or not; have you anything that makes you positive about it? A. I remember his being home, because there was a general excitement at the time, and because the matter of the shooting frightened me somewhat, and everything about that day, the evening before and the day after the evening is quite clear because of that, because I was told that morning that Harry Powers had shot somebody, and naturally it stands out.

Q. (by the Court) Had your husband been out all that day, the day of the evening? A. He had been away that day, but where, I don't remember.

Q. (by the Court) Do you know if he drove home? A. I don't remember.

Q. (by the Court) Do you know if Dr. Hazard came with him or was with him? A. Dr. Hazard was not with him.

Q. (by Mr. Smock) What time did he get home? A. Early in the evening, at dinner time.

Q. (by Mr. Smock) He was there to dinner? A. Yes.

Mr. Wilson: I would like to recall Mrs. Florence Hazard again for another omitted question.

FLORENCE A. HAZARD, recalled for further

Cross-examination by Mr. Wilson:

Q. Mrs. Hazard, do you know a Miss Gentleman, a trained nurse? A. I don't know her, only as Mrs. Powers' nurse.

Q. You know there is such a person who is a trained nurse? A. Yes.

Q. Who has been employed by Mrs. Powers? A. Yes.

Q. Do you recall an occasion in January, preceding the February, when you signed your agreement with Mr. Powers, taking dinner at Mr. Powers' house? A. No, sir.

Q. You don't say you didn't take dinner, do you? A. I don't think so.

Q. In his apartment in 97th street, New York City? A. Oh, yes, that was long before we signed any agreement.

Q. I don't ask you that; I ask you whether or not you didn't go there and take dinner in his apartment in 97th street in the latter part of January, preceding the time when you sold this property to Mr. Powers? A. I don't remember just exactly.

Q. You don't recall whether you did or not? A. I might have, but I don't remember it.

Q. I ask you whether you didn't upon an occasion in the latter part of January, present yourself as a guest at his house, and as to whether or not Miss Gentleman wasn't at the dinner table with you and sat at the table with you? A. No, Miss Gentleman never sat at any table at Mr. Powers' house with me; no, never.

Florence A. Hazard—(Recalled)—Cross.

Q. I ask you whether or not it is not true that you were there at dinner in the latter part of January, that she was there also at the table, that Mrs. Powers was called to the telephone, which was in the same room, the dining room, and while she was giving attention to the telephone is it not true that you, as a part of continued conversation that related generally to the same matter, said to her, that if you hadn't followed Elmer's advice you wouldn't be in your present predicament or trouble—— A. I never made such a statement.

Q. I haven't finished the question—and that you were there then trying to sell the factory and the business and everything there was, to Mr. Powers? A. I never made such a statement to any human being, in my life, never; I never did such a thing.

ISABEL GENTLEMAN, sworn in surrebuttal for defendant.

Direct examination by Mr. Wilson:

Q. You are a trained nurse? A. Yes, sir.

Q. And have pursued that profession how long? A. Twenty-four years.

Q. Where do you reside? A. At present in Eatontown.

Q. You know Mrs. Powers? A. Yes.

Q. Have you ever served her professionally? A. Yes.

Q. Through a number of years? A. Nearly ten years.

Florence A. Hazard—(Recalled)—Cross.

Q. Do you recall having been in Mrs. Powers' apartment in 97th Street, New York City, in the latter part of January, just preceding the time when he bought this factory property? A. Yes, sir.

Q. Do you remember an occasion when you were at dinner with Mrs. Florence Hazard? A. At lunch.

Q. Not dinner, but lunch? A. Yes.

Mr. Wilson: My inquiry of her is faulty in that regard, but her denial was so sweeping——

Court: I don't think it is material; the occasion is sufficiently established, I think.

Q. While you were at dinner, I ask you whether or not Mrs. Powers was called from the table to the telephone, the telephone being in the same room, and whether or not Mrs. Hazard, as a continuation of the general conversation which you had been having, said to you, that if she hadn't followed Elmer's advice she would not now be in her present predicament or trouble? A. Yes, sir.

Q. And that she was then there trying to sell the factory and the business and everything there was to Harry Powers; did she say that to you? A. She said she was——

Q. Did she say that to you? A. Yes, sir.

Cross-examination by Mr. Sexton:

Q. What did Mrs. Hazard say? A. Mrs. Hazard said that if she had not listened to her son Elmer's advice she wouldn't be in the condition

she is at present, and that she was there to see Mr. Powers; Mr. Powers wasn't in, but she made arrangements to see him the next day about selling the business and the place, everything.

Q. What did she say she was going to sell? A. Everything.

Q. Are you sure she said everything? A. Everything.

Q. Did she say that she was going to sell everything that she owned there? A. Everything.

Q. Everything that she owned? A. Yes, everything.

Q. I am asking you whether she told you she was going to try and sell everything that she owned, or whether she was selling stuff that she didn't own? A. I don't know of any stuff that she didn't own.

Q. (by the Court) Can you recall her exact words? A. Yes, the place and everything, if I can tell it in my way.

Q. (by the Court) That is what we want you to do. A. The place was in such a condition and practically useless, and that she thought with Mr. Powers' ability he might raise it up. I wasn't in the conversation but she happened to pass that remark when Mrs. Powers was at the telephone.

Mr. Wilson: Mr. Powers was not present?

Witness: No, sir.

Florence A. Hazard—(Recalled)—Cross.

Q. When were you first asked about this conversation? A. When Mrs. Powers rose to the telephone.

Q. When since this conversation occurred was it that you were asked about it? A. I was asked about it four years ago and I said that was the only thing that I knew, that I couldn't understand about anything else after the business was sold, because I had not met anyone and I didn't know anything about that, but I knew only that, and that was of no use at the time, they said.

Q. Mrs. Powers' name has been mentioned that you have treated her for ten years; that is the mother of Harry Powers, is it not? A. No, sir; Mrs. Harry L. Powers; I have been with her with the children and with different other things.

Q. Are you with her now? A. No, sir.

Q. (by the Court) When were you last employed by Mrs. Powers? A. Nearly three years ago; I think it is three years in September or October—October.

Re-direct examination by Mr. Wilson:

Q. Your service was that of a trained nurse for the most part on the occasion of her various confinements? A. Everything, anything they had.

Q. You were not a child's nurse? A. No, sir.

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JOHN V. GREEN, sworn in surrebuttal for defendant.

Direct examination by Mr. Smock:

Q. What is your present occupation? A. Office manager.

Q. With whom? A. Junius H. Stone.

Q. Were you ever connected with the grocery business—wholesale grocery business? A. Yes, sir.

Q. (by the Court) What is the character of Stone's business? A. Importer and exporter.

Q. (by the Court) All groceries? A. No, general.

Q. When were you first connected with the Hazard grocery business? A. 1889.

Q. How long did you continue in that line of business? A. Until 1911.

Q. And in what capacity? A. I was office boy up to credit manager and general manager of the office.

Q. When did you become associated with E. C. Hazard & Company, if you ever were? A. Those are the dates that I mentioned here.

Q. (by the Court) You began your career with E. C. Hazard & Company in 1889? A. Yes.

Q. And continued how long? A. Until 1911.

Q. Continuously? A. Yes, sir.

Q. Through the various positions that you have mentioned? A. Yes.

Q. During what portion of this time were you familiar with the prices of goods sold by E. C. Hazard & Company and their market prices and

standard of quality? A. I should say during twenty years.

Q. And that, of course, was all prior to 1911 and up to that time? A. Yes.

Q. Were you ever a stockholder of E. C. Hazard & Company or a co-partner of E. C. Hazard & Company? A. No, sir.

Q. What, if any relation, does Mr. Green, the co-partner, bear to you? A. My father.

Q. (by the Court) What was Mr. Green's first name? A. Frank.

Q. How long was he in the Hazard business, if you know, how long prior to the time you became associated with it? A. I don't remember, sir.

Q. Some years? A. A number of years, yes, sir.

Q. (by the Court) Did he continue to be connected with the concern? A. Yes.

Q. (by the Court) Up to about what time? A. I think he retired in 1908 or 1909, I am not sure which.

Q. (by the Court) Somewhere about 1908? A. Yes.

Q. Do you know when the Little Silver Sauce Company was incorporated? A. It was incorporated in October, 1898.

Q. And for what purpose was that incorporated? A. For the marketing of a brand of ketchup.

Q. How did the quality of that ketchup compare, or was it to compare with the quality of the ketchup which had been produced by E. C. Hazard & Company? A. It was to be of a cheaper grade.

Q. Do you know at whose suggestion the company was formed? A. Yes, sir, J. M. Keen.

Q. Was he a member of E. C. Hazard? A. No, sir.

Q. What relation, if any, did he bear to the firm of E. C. Hazard & Company? A. None.

Q. How was he interested in the formation of the Little Silver Sauce Company? A. He had this brand of ketchup which he was anxious to put on the market, and he came to Mr. Hazard as one who was best able to give them the article that he wanted.

Q. Had he been selling the products of E. C. Hazard & Company? A. No, sir.

Q. What was his business? A. He was manager of Curtice Brothers.

Q. (by the Court) The tomato catsup people? A. Yes.

Q. What was their business? A. Makers of catsup and sauces.

Q. Was Mr. Green a stockholder of the Little Silver Sauce Company? A. Yes.

Q. (by the Court) You said he had a brand; you mean he had a grade of catsup? A. No, he had this name.

Q. Little Silver? A. No, called the Green Label.

Q. (by Mr. Wilson) And he wanted someone to make it? A. Yes.

Q. And was it to be produced as the Green Label Ketchup and manufactured by E. C. Hazard & Company? A. Yes.

Q. And put out under the name of the Little Silver Sauce Company? A. Yes.

Q. Mr. Keen was a stockholder of this corporation, was he? A. Yes.

Q. Who were the other stockholders? A. Mr. Hazard, F. B. Green and myself.

Q. And all except Mr. Keen were either members of E. C. Hazard & Company or employed by them? A. Employees, yes, sir.

Q. Do you know how long this Little Silver Sauce Company remained in existence as a corporation? A. The business was practically—nothing was done after about 1907 or 1908—1907, I should say.

Q. What happened at that time with reference to this company? A. It drew out and the business was dropped, that was all.

Q. What became of the capital stock, if you know? A. It was transferred to E. C. Hazard & Company, incorporated, in consideration of a payment of back taxes.

Q. Did the Little Silver Sauce Company at that time have any assets? A. They had a balance in bank of about $250, as I recollect.

Q. What became of that? A. It was divided amongst the stockholders pro rata.

Q. Did they have any other assets? A. No, sir.

Q. Of any kind whatever? A. Not that I am aware of.

Q. (by the Court) Did they have any labels or boxes or caps? A. The company was not in the manufacturing business at any time; it was simply a selling company.

Q. I understand I am to draw the inference

from that, that they didn't have these things that I directed your attention to? A. No.

Q. Did they have anything that has been called intangible property, such as trade marks or trade names or labels or bottles or caps or containers of any kind? A. Not at the time that I had to do with it.

Q. At the time you are speaking of, the payment of the tax? A. No.

Q. (by the Court) Who bought the company of E. C. Hazard & Company? A. The transaction was made with Elmer Hazard.

Q. Do you remember how much that tax was? A. Ten dollars.

Q. (by the Court) You were one of the parties that sold out your interest? A. Yes.

Q. (by the Court) You were a stockholder? A. Yes.

Q. What did you understand you were selling for the ten dollars? A. The name.

Q. (by the Court) The name Little Silver Sauce Company? A. Yes, that is all there was.

Q. (by the Court) That is all you had to sell? A. Yes.

Q. (by the Court) And that is all you understood you were selling? A. Yes.

Q. (by the Court) You didn't think it was worth more than ten dollars? A. No, sir, I didn't think it was.

Q. Do you know how much capital was paid in at the time it was organized, in cash or property?

Mr. Sexton: No one is disputing all this.

Court: The Doctor said ten thousand dollars.

Mr. Smock: That is the amount authorized.

Court: Wasn't it all issued?

Mr. Smock: No.

Q. Do you know whether these are the certificates of the capital stock of the Little Silver Sauce Company (witness shown papers)? A. Yes.

Q. They are the original certificates? A. Yes.

Q. All of them? A. Yes.

Q. (by the Court) Do you find yours among them? A. Yes.

Q. (by the Court) Who delivered them to Dr. Hazard, do you know? A. I don't think that they ever were delivered.

Q. (by the Court) Do you produce them today? A. No, sir.

Q. Do you know who last represented the Little Silver Sauce Company, what attorney? A. William F. Marsh.

Q. Do you know what his address is now, business address? A. 233 Broadway, New York City.

Q. Mr. Green, what was the reputation of the products of the E. C. Hazard & Company down to 1911? A. It was the highest; they were known as the highest class of goods on the market produced.

Q. Your business connection with the company was confined to the New York branch? A. No, sir, not altogether.

Q. You were familiar with the Shrewsbury part of it? A. I was.

Q. And the E. C. Hazard & Company sold other products than those manufactured at Shrewsbury, didn't they? A. Yes, sir.

Q. What have you to say in respect to the reputation of the products manufactured at Shrewsbury; confine it to those? A. They were the same high grade goods.

Q. How did they compare with products of similar character? A. They were equal or better.

Q. Can you tell us some of the products manufactured at Shrewsbury, to which you just ascribed this reputation? A. Tomatoketchup, Worcestershire Sauce, Burnt Onion Sauce, Mayonnaise Dressing and the canned tomatoes, asparagus, corn.

Q. (by the Court) Did those things have any distinguished name or brand? A. They were all known, or mostly, either as Hazard's or Shrewsbury brands.

Q. Were you, Mr. Green, familiar with the books of account of E. C. Hazard & Company? A. Yes, sir.

Q. Did you have anything to do with the keeping of the books of account? A. Some of them, yes, sir.

Q. When did Mr. E. C. Hazard, Sr., die? A. February, 1905.

Q. When after that was the corporation of E. C. Hazard & Company formed? A. The corporation was formed about 1908.

Q. (by the Court) After Mr. Hazard's death was the business continued by the family or

by a firm? A. There was a new firm organized.

Q. (by the Court) Do you know who constituted the firm? A. Yes, sir.

Q. (by the Court) Who was it? A. Elmer Hazard and Frank Green and Theodore Stern and George M. Archer.

Q. (by the Court) That is the partnership that went through bankruptcy about 1907? A. Yes.

Mr. Wilson: I understand it was Elmer Hazard as trustee for the Hazard interests. I think that already appears.

Witness: Yes, sir.

Q. (by the Court) Then the Hazard corporation was formed, E. C. Hazard, Incorporated? A. After the bankruptcy, yes, sir.

Q. And that took place in 1908, the incorporation? A. As I recall it, yes, sir.

Q. Were you familiar with the books of account of the corporation from 1908 down to the time you severed your connection with the company? A. Yes, sir.

Q. Were you acting as general manager during that period? A. I had charge of the office, yes, sir.

Q. Was there any value placed upon the trade name of E. C. Hazard & Company and the trade mark Shrewsbury or the name Shrewsbury? A. Yes, sir.

Court: By the corporation, you mean?

Q. By the corporation? A. Yes, sir, there was.

Q. Can you tell us what that valuation was during that period from 1908 down to 1911 when you severed your connection with the company? A. It was shown on the books as about $371,000.

Q. (by the Court) What did that value relate to, just the name Shrewsbury and Hazard & Company, or did it include a number of items? A. It included all the brands and trade marks.

Q. (by the Court) You mean formulas? A. Formulas and trade marks.

Q. (by the Court) And trade names? A. Yes.

Q. (by the Court) That is, the names for which labels were used? A. Yes.

Q. Like Burnt Onion Sauce? A. Yes.

Q. And Shrewsbury? A. Yes.

Q. Was it Shrewsbury Burnt Onion Sauce? A. Hazard's Burnt Onion Sauce.

Q. (by the Court) Was this valuation placed upon them in a lump, or separately valued, or did this $371,000 represent the total valuation? A. The total valuation.

Q. (by the Court) They were valued in a lump? A. Yes.

Q. (by the Court) Who made that valuation, who placed it upon them? A. I am unable to answer that.

Q. Were you ever consulted with respect to fixing its value? A. Not that I recollect.

Q. (by the Court) Where did you see it, in the books of the company? A. Yes, sir.

Q. (by the Court) Do you know how it was arrived at; have you any information on that subject? A. Nothing accurate.

Q. (by the Court) Can you tell me about how many trade names and trade marks or labels were included in that valuation, in number; whether three, five, ten or more? A. No, quite a number.

Court: I think there is some dispute whether they are all included or not; that is why I asked the question.

Q. I show you Exhibit D 2, being eighteen labels lettered from "A" to "R," and ask you if the particular brands as designated by these labels were included in the $371,000? A. They were all included.

Q. You didn't have the two which I now show you, did you? A. This was after the date that I was connected with the company (indicating Exhibit K and replica of K).

Cross-examination by Mr. Sexton:

Q. Speaking of the amount $371,000 carried on the books, that included the good will? A. Yes.

Q. Of the business in New York? A. It was the whole.

Q. Everything, good will and the cigar labels? A. All of them.

Q. Wheatena labels? A. Yes.

Q. Liquor labels? A. Yes.

Q. In fact, there were hundreds of brands in New York? A. I wouldn't say.

Q. Did you ever see a large book with hundreds

of labels in that book? A. We had a number of labels, yes, sir.

Q. This was an arbitrary figure, was it not? A. I imagine it was, yes, sir.

Court: He said he didn't know how it was arrived at.

Witness: That is right.

Q. You knew of your own knowledge that the business was going behind and had been for several years, the general business of Hazard & Company?

Court: Had it, prior to severing your connection with it?

Witness: Yes, the business was not as large as it had been.

Court: Was it being operated at a loss?

Witness: At times, yes, sir.

Court: How many years had it been operated at a loss?

Witness: I don't know that I am prepared to answer that at this time.

Court: Was the corporation organized in 1908 with which you continued for three years, very prosperous and successful?

Witness: No, sir, it was not.

Court: Was the old concern of Hazard & Company up to Mr. Hazard's death in 1905 prosperous or otherwise?

Witness: It was prosperous.

Q. Don't you know that before Mr. Hazard's

death the company did for years lose money? A. There were one or two years in which the profits fell off.

Q. Don't you know that it was actually operated at a loss, Mr. Green?

Examination by the Court:

Q. From 1889 until 1905, during that period, don't you know of any year that it operated at a loss? A. I know of one year that the profits were below normal.

Q. Would there actually be a loss below cost of operation? A. No, sir, not as I remember.

Q. What year was that? A. I think it was 1903 or 1904, I am not sure which.

Q. Going back from 1905, how far back of that date did you have such intimate knowledge and acquaintance with the affairs of E. C. Hazard & Company that you could tell whether it operated at a profit or at a loss? A. I had the making up of a number of statements.

Q. Beginning when? I want to find out when you did begin to have knowledge of that situation? A. I should say about 1898, somewhere around there; 1897 or 1898.

Q. Your knowledge then continued intimate and became more so as years progressed, up to 1905, when Mr. Hazard died? A. Yes.

Q. During that period, from 1898 to 1905, did the company ever operate at a loss in any one year except in 1903 that you mentioned when the profits were not normal? A. I wouldn't specify that as an actual year, 1903.

Q. What is your best recollection? A. I am not clear on that.

Q. But one year, anyway? A. It was a number of years since I had anything to do with it.

Q. There was one year when you think the profits were not normal? A. Yes.

Q. The other years did they operate as prosperously as usual, between 1898 and 1905? A. The business fell off the latter period up to 1905.

Q. Did it fall off to a pronounced extent? A. Enough to make it noticeable, yes, sir.

Mr. Sexton: What do you mean, enough to make it noticeable?

Witness: That is, with shrinking profit.

Q. Would you say one-fourth or one-third or half or more? A. No, not as much as that.

Q. What percentage would you say it fell off? A. Twenty per cent.

Q. I have the testimony before me that for practically fifteen or seventeen years, the Hazard business had been operating at a loss; how does that accord with your knowledge of the situation, say up to 1913, I think, particularly the Shrewsbury end of it; have you any information on that subject? A. My information would run up to 1911.

Q. Taking it up to 1911, and confining your attention to the Shrewsbury end of the Hazard business, what can you say about that being operated at a profit or a loss during the years that you were acquainted with the situation? A. During the period of the old partnership the Shrews-

bury business was run as a department of the New York business, and the figures were not segregated sufficiently to show actual profits.

Q. You say the old partnership, you mean the elder Mr. Hazard? A. Yes.

Q. What about the rest of the period? A. The whole business was unprofitable.

Q. Was it run at a loss? A. I don't recall each year, but there was a loss in running it, yes, sir.

Q. What I mean by a loss—maybe I am using the expression in a different sense from what you are—that they not only failed to make money, but that they had to use part of their capital or surplus to keep operating? A. Yes.

Q. You use the word "loss" in the same sense? A. I do here, yes, sir.

Further cross by Mr. Sexton:

Q. At the time that Mr. Hazard died, whether in that year or the preceding year, do you know whether the business was run at a loss? A. The whole business?

Q. Yes, New York and Shrewsbury. A. No, I don't remember that there was a loss in that year.

Q. Had there been years prior to that that the business had been run at a loss? A. No, sir, not that I recollect.

Q. It may have been and you did not know it, Mr. Green?

Court: Was your compensation contingent upon whether the company made any profit or not?

Witness: No, sir.

Q. And while the Little Silver Sauce Company was in operation they had goods that they put out with their name Little Silver Sauce Company on it, did they not, Mr. Green? A. They bought the goods of E. C. Hazard & Company.

Q. (By the Court) Then did they market them under the name of the Little Silver Sauce Company? A. Yes.

Q. And there were at the time referred to, namely, the time when the stock was surrendered and the money was divided, goods in the factory, labels for instance, with the words "Little Silver Sauce Company"? A. Yes.

Q. And there were show cards, "Little Silver Sauce Company"? A. Yes.

Q. Caps? A. Yes.

Q. Boxes? A. Yes.

Q. And what not, all in relation to the manufactured stuff of the Little Silver Sauce Company? A. Yes.

Q. (By the Court) Were they included in what you sold to E. C. Hazard & Company for ten dollars? A. They were the property of E. C. Hazard & Company.

Q. (By the Court) Not the Little Silver Sauce Company? A. No.

Q. The sale for ten dollars carried with it the right to manufacture under the Little Silver Sauce Company name, did it not? A. There was no mention of that right at the time.

Q. You sold the name, you already said that? A. Yes.

Q. And what rights they may have had under that name? A. Yes.

Q. (By the Court) If I understand you, you afterward sold all your stock to E. C. Hazard & Company; that was the transaction? A. Yes.

Q. (By the Court) And E. C. Hazard & Company became the owners of the Little Silver Sauce Company in that way, by owning the stock which had been issued and outstanding? A. Yes.

Q. (By the Court) And then Elmer Hazard paid the tax on the corporation, and that was ten dollars? A. He was to pay it.

Q. And he was to pay the Little Silver Sauce Company for the tax? A. Yes.

Q. (By the Court) Was he to have it, or was E. C. Hazard & Company to have it? A. E. C. Hazard & Company.

Q. (By the Court) Don't let us have any confusion about that. A. He purchased it for the corporation, E. C. Hazard & Company.

Court: Is there any question about it?

Mr. Sexton: I haven't seen it.

Court: It might make a difference whether the Doctor has it himself or bought it for E. C. Hazard & Company.

(Mr. Smock produces a paper and shows it to Mr. Sexton.)

Mr. Sexton: This is a receipt which reads as follows:

"Stockholders of the

Little Silver Sauce Co.

Gentlemen:—

We hereby offer in exchange for assignment to this Company of all stock of the

Little Silver Sauce Co. standing in your names, to pay to the State of New Jersey the tax now due against the Little Silver Sauce Co., amounting to Ten Dollars ($10.00).

Yours truly,
E. C. Hazard & Co.,
E. C. Hazard,
Secy. & Pres."

Mr. Smock: I offer that paper, and I will also offer this paper in connection with it, being the tax receipt.

Mr. Sexton: No objection.

(Marked Exhibits C and D for defendant.)

"MISCELLANEOUS CORPORATIONS.
1911

No Further Notice of This Tax Will Be Sent.

STATE OF NEW JERSEY,
Office of the Comptroller of the Treasury,

11918 Trenton, June 5th, 1911.

Little Silver Sauce Co.,
E. C. Hazard & Co.,
74 Grove St.,
New York City.

The State Board of Assessors have certified and reported to me that pursuant to

an act entitled 'An Act to provide for the imposition of State Taxes upon certain corporations, and for the collection thereof,' Approved April 18th, 1884, and the acts amendatory of and supplementary thereto, they have ascertained that the amount of tax due the State from the above corporation for the current year, is Ten dollars ($10).

This tax is due on the first Monday in June, and is subject to interest from the first day of July, 1911, at the rate of one per centum for each month until paid.

RETURN THIS STATEMENT WITH CHECK TO ORDER OF DANIEL S. VOORHEES, STATE TREASURER.

Very respectfully,

E. J. Edwards,
Comptroller.

TREASURER'S OFFICE
Trenton, N. J., Oct. 25, 1911.

RECEIVED Ten ..... dollars in settlement of above account.

Daniel S. Voorhees,
Treasurer.

Countersigned:
E. J. Edwards,
Comptroller.

KINDLY ENCLOSE ADDRESSED ENVELOPE FOR RETURN OF RECEIPT."

This Receipt is Void
if Detached.

Re-direct examination by Mr. Smock:

Q. You say E. C. Hazard & Company was operated part of the time at a loss; are you able to explain to the court any reason for that?

Court: Are you referring to the Shrewsbury end of it?

Mr. Smock: Yes.

A. During Mr. Hazard's life the business at Shrewsbury was operated more as a hobby than it was as a business proposition. His aim was always to produce the highest grade of articles and the cost of production was the last thing that he had in mind.

Examination by the Court:

Q. He was after quality? A. Always, and that is one of the reasons that the business was not profitable.

Mr. Smock: What about after he died?

Witness: I think bad management was the reason then.

Mr. Smock: Did capital have anything to do with it?

Q. Or lack of capital then, I will ask, have anything to do with the management, good or bad? A. It may have.

Q. Do you know whether it did or not; do you know whether the company was really short of capital, or the firm? A. Yes, it was short of funds.

Q. To operate the Shrewsbury end? A. To operate it properly, yes, sir.

Q. Did that shortage in capital result in any loss or cause it to be run at a loss? A. I should say it was one of the features.

Q. You say that from your recollection of the situation? A. Yes, sir.

Mr. Smock: Had the business the required amount of capital and with the proper management, in your judgment, could the Shrewsbury end of the business be conducted at a profit?

Witness: Yes, sir.

Q. Were there any other factors by way of competition or a more aggressive competition on the market to be considered as affecting the business of the company at Shrewsbury? A. I don't think to any degree.

Q. Was the management of the company after Mr. Hazard's death as experienced as it had been during his lifetime, aside from his own participation in the affair? A. The management in New York?

Q. I am talking of Shrewsbury. A. It was practically in the hands of Elmer Hazard.

Q. From your connection and observation did Elmer Hazard have the necessary experience and ability to manage it profitably? A. I don't think he had.

Q. What occurred in the New York end of the business that affected the prosperity of the Shrewsbury plant, if anything? A. A change in

the members of the firm, taking in a new partner who was not a real asset.

Q. Were all the goods of the Shrewsbury plant marketed through the New York office, the New York branch? A. Originally, yes, sir.

Q. When did that cease to be done exclusively through the New York Hazard office? A. I should say about 1905.

Q. After Mr. Hazard's death? A. Yes.

Q. And then how were the goods marketed? A. Some of them were marketed direct from the factory—factory sales.

Q. Did that have any effect on the prosperity of the business? A. No, sir.

Q. The amount of sales or extent of the company's business? A. No.

Re-cross-examination by Mr. Sexton:

Q. There were other brands of ketchup, such as Blue Label and that, coming in the market of recent years? A. Yes.

Q. And they were competitors? A. Yes.

Q. (By the Court) You said, however, that their competition didn't affect the company's prosperity to any noticeable degree? A. I don't think they did, sir.

Q. Do you say that they did not affect the prosperity of the company at all? A. I wouldn't give that as a reason for it.

Q. (By the Court) You mean it was so insignificant you wouldn't give it as a reason? A. No, I mean the fact of there being other brands on the market was not a reason——

Q. (By the Court) For the company not being prosperous? A. For the decrease in business.

Re-re-direct examination by Mr. Smock:

Q. The value of the trade name, good will and things you mentioned were fixed in 1908 at $371,000? A. Yes.

Q. Have you sufficient knowledge of the value of those things included in this $371,000 valuation to estimate intelligently the relative value of the trade name "Shrewsbury" and "E. C. Hazard & Company" with respect to the products manufactured at Shrewsbury?

Mr. Sexton: I object.

Court: He is asked if he can express an opinion about it.

A. All I could say on that is, that all the advertising was bent on the name "Shrewsbury" and the firm name of "E. C. Hazard & Company."

Q. So a great deal of prominence was given to the name "Shrewsbury"? A. Yes.

Q. Was there any reference to the name "Shrewsbury" on the cigar brands? A. We had one brand, as I remember it, of cigars under that.

Q. (By the Court) Liquors? A. No, sir.

Q. (By the Court) Any food products? A. Yes, sir.

Q. (By the Court) Such as Wheatena? A. We had a Shrewsbury brand of cereals.

Q. There were other brands with the word "Shrewsbury" on? A. Yes.

Q. (By the Court) Did you understand that that $371,000 in value represented the value that the corporation placed upon these trade names and labels and formulas and good will, or did you understand that it was placed there for the purpose of a stock manipulation, or representing certain shares of stock? A. As I answered before, your Honor, I have no accurate knowledge of how it was arrived at.

Q. (By the Court) What was the purpose of arriving at it; was it to represent actual assets of the corporation of that value, or was it only done for the purpose of producing enough assets to represent the total amount of stock that had been issued, and balance the books? Was it a mere bookkeeping item or a tangible actual asset? A. My own personal opinion would be that it was a bookkeeping transaction.

Q. (By the Court) Did you ever make up any statement for the concern to obtain credit? A. I probably have.

Q. Did you include that as one of the assets of that valuation on which you had credit based? A. Not that I recollect.

Mr. Sexton: You may have, Mr. Green?
Witness: I doubt it.

Q. Did you say you could or could not give us the relative value of the—— A. I answer that by saying all the advertising effort was put on the word "Shrewsbury," hence that was the chief value in the trade marks.

John V. Green—Re-re-direct.

Q. Are you sufficiently familiar with the character of business enterprise of this kind, to place a value upon the name of E. C. Hazard & Company and the word "Shrewsbury"?

Court: In 1913?

Mr. Smock: 1911.

Court: At the time of the sale to Mr. Powers?

Mr. Smock: I mean in 1911, when he was connected with it.

A. I wouldn't feel that I was, at the moment, to name an actual figure; I would say that I think the name and good will was valuable.

HARRY L. POWERS, recalled in surrebuttal for defendant:

Direct examination by Mr. Wilson:

Q. Mr. Powers, was Mr. Bowden Hazard present at Shrewsbury in the homestead of Mrs. Hazard on the evening previous to your taking possession of the factory?

Mr. Sexton: He has answered that.

Court: Yes, didn't he deny that he drove him home; haven't you covered that in Mr. Powers' testimony?

Mr. Sexton: I withdraw the objection.

A. He was not.

Harry L. Powers—(Recalled)—Direct.

Q. Do you know whether Bowden Hazard rode from your house that night in a horse and buggy? A. Not with me or Mrs. Powers.

Q. Not with you or Mrs. Powers? A. No.

Q. Do you know whether there was a horse and buggy there that night? A. I didn't see any horse and buggy or anybody else there.

Q. Did you have a conveyance there? A. Only on the Sickles place, the adjoining place, I left it in the barn and then walked over.

Q. What kind of a conveyance was it? A. An open runabout.

Q. What kind of a horse? A. One horse.

Q. Where were you staying at that time? A. Globe Hotel with Mrs. Powers.

Q. Who went with you that night, if anybody, to the Globe Hotel? A. Mrs. Powers.

Q. Anyone else? A. No one else.

Q. Not even as far as Shrewsbury? A. Not any distance was there anybody else but Mrs. Powers and I in that wagon that night.

Q. You paid, Mr. Powers, on account of the purchase price of this property, in all, thirty thousand dollars in cash? A. Yes.

Q. And did Mrs. Hazard, or anyone in her behalf, offer to repay you the thirty thousand dollars or any part of it? A. No, sir.

Q. Did Mr. Beadleston ever make such an offer? A. No, sir.

Q. Was there any suggestion made at the time of closing the title or at any other time—— A. No, sir, on the contrary——

Q. What to the contrary? A. She held me to the sale absolutely.

Harry L. Powers—(Recalled)—Direct.

Q. Where did you secure these certificates of stock of the Little Silver Sauce Company? A. From the attorney representing the Little Silver Sauce Company, on the closing in the office of McMillan & Co., of 233 Broadway, the Woolworth Building.

Q. What was his name? A. William F. Marsh.

Q. What closing do you refer to? A. The closing up of the Little Silver Sauce Company.

Q. And did you obtain Exhibits C and D for defendants from the same person? A. Yes, sir.

Q. (By the Court) Why were these delivered to you, these and the stock certificates? A. I went down and explaining that this suit was on here, and I had been held up by a concern by the name of Little Silver Sauce Company.

Q. When did you get them? A. Just the other day.

Q. They were merely loaned to you? A. Yes, and must be returned on short notice.

Cross-examination by Mr. Sexton:

Q. What do you mean, that the suit of the Little Silver Sauce Company was a hold up? A. I call it a hold up, absolutely.

Q. You say you were held up by a concern called the Little Silver Sauce Company? A. Yes, in my collecting my insurance and in collecting this property which I purchased was a hold up, absolutely, plain and simple.

Q. Did you testify before, Mr. Powers, of riding home in the evening from Shrewsbury—referring to the night you gathered there—in a

horse and runabout, or horse and buggy? A. I wouldn't say whether a horse and runabout; a horse and two passenger carriage.

Q. A buggy? A. A buggy has a top and a runabout is without a top; this was a wagon that held two people, with or without a top, I don't recollect.

Q. It may have had a top? A. It may and may not.

Q. Then it may have been a buggy? A. Yes, it may have been a buggy or runabout; it was a two-seated conveyance.

Q. Have you testified before in any proceedings that you went home that evening in a horse and buggy or horse and runabout? A. I may have testified that I went home in a carriage; I don't know whether I said runabout or buggy, but a horse and carriage.

Q. You had it at the Sickles place? A. It was at the Sickles place, they had a stable there, adjoining the Hazard place, and I left the horse there, and it was never on the Hazard property the entire evening.

Q. And when you went home what direction did you go? A. Towards the west, down Broad street.

ELIZABETH POWERS, recalled in surrebuttal for defendants.

Direct examination by Mr. Smock:

Q. You have already testified that you were present at the Hazard homestead on the even-

ing before Mr. Powers took possession of the Shrewsbury property? A. Yes.

Q. Was Mr. Bowden Hazard there that night? A. No, he was not.

Q. During no part of the evening? A. No part of the evening.

Q. How did you get from the Globe Hotel to the homestead? A. By going out the back door.

Q. How did you get from the Globe Hotel, Red Bank, to the homestead? A. In a horse and carriage.

Q. With Mr. Powers? A. Yes.

Q. (By the Court) What sort of a vehicle was it? A. A small carriage; my idea of it is that it was a buggy with a top.

Q. Held two people? A. Yes.

Q. Just one seat in it? A. Yes, one seat.

Q. Top up or down? A. I think the top was up.

Q. Over you? A. I wouldn't be positive about it, but I think it was up.

Q. Did you use the same mode of conveyance to get home that night? A. The same one.

Q. Who went with you going home? A. Mr. Powers.

Q. Anyone else? A. No one else.

Q. (By the Court) What time did you leave for home that night? A. Shortly after ten, between ten and ten-thirty.

Q. (By Mr. Wilson) when you speak of "home," you mean returned to the Globe Hotel, Red Bank? A. Yes.

Q. (By the Court) That is where your home was at the time? A. Yes.

Q. Mrs. Powers, of course you were present on the evening of the closing of this contract? A. Yes.

Q. During the entire session? A. Yes, sir.

Q. Was any offer made or suggestion made that the thirty thousand dollars paid by Mr. Powers would be returned to him upon his request? A. Never.

Q. Or any sum that he had advanced? A. Never.

Q. You know that he had advanced previous to the meeting that night quite a large sum of money? A. Yes, twenty-nine thousand and some hundred dollars.

Q. Did any one offer to pay back any part of that money that night, or any other night? A. They never did.

Q. (By the Court) Mr. Beadleston or anyone on his behalf? A. No, no one ever mentioned such a thing.

Q. Was any offer made to return this thirty thousand dollars or any part of it at any other time or place by any other person? A. Not that I remember now; not that I ever knew of.

Q. (By the Court) Or was any suggestion ever made to call the transaction off and return the money or any part of it? A. No, on the contrary, it was absolutely forced right through.

Cross-examination by Mr. Sexton:

Q. Did you testify concerning the fact that you

went home in a horse and carriage from the homestead, in the previous case or any other case? A. I think I did.

Q. Do you recall where the carriage was kept while you were at the homestead? A. Yes.

Q. Where? A. Up in a stable on the other place, the Sickle place.

Q. Did you go out to the stable? A. We both went out together, Mr. Powers and I. Mr. Powers got out at the stable and left the rig there, and when we got through at the house, we left there and walked over and got into the carriage at the stable.

Q. Do you recall the closing of the title at the Fidelity, that it was said by Mrs. Hazard or someone for her, that if Mr. Powers didn't want this property, he need not take it, that Honey Beadleston would let her have the money? A. I never heard such a thing.

Q. Either then or afterwards? A. Never at any time.

Q. You never heard it? A. I never heard it.

HARRY POWERS, recalled for further

Direct examination by Mr. Smock:

Q. Mr. Powers, did you receive from the National Nassau Bank recently statements purporting to have been made by E. C. Hazard & Company of the value of certain property of that company? A. I did.

Q. About when did you receive those statements? A. Sometime during our previous trial,

about two or three days before we were at Newark.

Q. You mean the previous hearing? A. The previous hearing which was held at Newark.

Q. How were they obtained? A. By my going to the Irving National Bank, which had taken over the business of the National Nassau Bank.

Q. Who gave you the statements? A. One of the vice-presidents.

Q. Did you tell him for what purpose you wanted to use them? A. I did.

Q. Where are the statements now? A. I don't know.

Q. What did you do with them? A. I suppose I gave them to Mr. Smock.

Q. Explain, if you please, what has become of them, to the best of your knowledge? A. They were in my possession; I gave them to Mr. Smock and supposed they were in those papers, and they haven't been able to be found since that time.

Q. (By the Court) They have been either lost or mislaid? A. Yes.

Q. Will you give us your best recollection of the contents of those two statements?

Mr. Sexton: Objected to.

Court: I will reserve that and let you search a little longer. I think it should appear what effort you made to find it. The right is reserved to recall Mr. Powers and also to place Mr. Smock upon the stand for the purpose of showing that these

certificates cannot be found, and for the purpose of establishing their contents by the proof; and also the right is reserved to call Mr. Houston, as requested by Mr. Wilson, before a Master.

EDMUND WILSON, sworn for defendants:

The firm of Wilson & Smock or Edmund Wilson as an individual, both, but representing one transaction and one employment, had charge of the affairs of Mr. Powers from the very time when he took possession of the factory property at Shrewsbury, which was sometime about the fifteenth of March, 1913, and the professional activities of Edmund Wilson and Wilson & Smock during that period of time down to a date just prior to the commencement of the present suit and after the settlement of the insurance matter with the insurance companies and the collection of insurance money, and the charge for the services rendered during that period of time, which Mr. Powers paid, was the sum of $10,000. This included services in two or more—two, possibly three—suits at law brought by Mr. Sexton immediately after Mr. Powers took possession, also services in a chancery suit brought by Mr. Sexton, and about the same time, also represented advice given Mr. Powers in connection with that same property at various times

and constantly; it also represented service rendered Mr. Powers in a number of suits brought against insurance companies to recover upon policies after the fire, and in particular, service rendered in three certain chancery suits, one brought by Elmer Hazard as an individual, one by Matthes as an individual, and one by the Little Silver Sauce Company, whereby, in which suits it was sought to impress a trust upon the insurance fund then due Mr. Powers under his policies, upon the theory that the property destroyed was the property of the complainants in those suits named. It also included service rendered Mr. Powers in connection with another chancery suit brought by E. C. Hazard & Company, by which was sought by the company to impress a similar trust upon the insurance funds; it also included all services down to and including the final adjustment with the insurance companies and the collection of about $101,000 of insurance money; the conduct and management of the three chancery suits, namely, one brought by Elmer Hazard and one brought by Matthes and one brought by the Little Silver Sauce Company, in time and in service rendered made necessary a large part of the work and service rendered. These suits were resisted by Mr. Powers, as the pleadings show, and as the fact is, not only because the claims themselves were not founded in fact, because the amount of the trust

sought to be imposed upon the insurance fund, according to his insistance, was inordinate and fraudulent.

Mr. Sexton: Objected to.

Witness: I am reciting what his claim was in the suit.

Court: I will hear it; that doesn't make it so.

Witness: And the Little Silver Sauce Company was demanding in the suit forty odd thousand dollars; Matthes several thousand dollars, and Elmer several thousand dollars. I advised Mr. Powers that it was necessary to resist these three suits, from any point of view, in order that the value of the property claimed by these three complainants might be judicially and accurately determined; and as a result in the litigation the value of the goods of the Little Silver Sauce Company was fixed at $11,400, I think; Mr. Matthes' property was fixed at $600, and it was determined that Elmer Hazard had no property at all. I think that I may fairly say, having examined the record and having searched my record as to the actual time spent upon his affairs, that at least half of the entire service rendered for Mr. Powers during the period and in the way which I have already described, was made necessary by reason of those last three suits, to which I have directed attention, and I think it only fair to say that at least three-quarters of the services rendered in those three

suits was made necessary in order that Mr. Powers might get fairly before the court his proof as to the value of the goods claimed by the Little Silver Sauce Company, Matthes and Elmer, respectively, and in order, also, to negative and answer the testimony offered by these three complainants in support of the claim set forth in their bill as to the value of the property.

Examination by the Court:

Q. In any or all of the litigation that you represented Mr. Powers in was Mrs. Florence Hazard a party complainant or plaintiff or Mrs. Murphy, the complainant in this cause, a party complainant or plaintiff? A. No, sir. I think it already appears in evidence that Mrs. Hazard made answering affidavits and she testified in support of the complainants and in support of the value of the property claimed.

Q. But she, as I understand you now, was not a party to any of this litigation brought against Mr. Powers or that he was obliged to institute? A. I do not think that she was a party to any of the suits.

Q. Mrs. Murphy was not, either? A. No, sir.

Q. Would you say that one-half of your fee, or the fee of Wilson & Smock, which you charged and was paid by Mr. Powers, should be chargeable for the services rendered in connection with these last three or four suits in chancery? A. I should say five thousand dollars was a fair charge for the services rendered.

Q. And the balance should be chargeable to his general services and the litigation over the insurance, &c.? A. Yes. And then I have endeavored to make clear that three-fourths of that five thousand dollars thus charged could fairly be ascribed to the——

Q. Unreasonable amount asked in defending those suits? A. Yes.

Cross-examination by Mr. Sexton:

Q. Three-fourths of the five thousand is the sum you ascribe due in this suit, that Mrs. Murphy, or Mrs. Hazard, should answer for? A. You don't want me to sum this case up now?

Court: In dollars and cents, he says if Mrs. Murphy should respond at all, it should be for the sum of five thousand dollars. That the litigation with the insurance companies and so on, it might be found, if the proofs warrant it, that she was also responsible for that litigation, and the other five thousand dollars should be charged against her. He is not limiting Mr. Powers' claim against Mrs. Murphy by any expression of his own.

Witness: That is it, except that I am endeavoring——

Court: The three-quarters related to the extent and nature of the services to prepare and meet the claim for forty-one thousand in one suit and sixty some thousand in the other?

Witness: Yes.

Mr. Sexton: I move to strike out this evidence of Mr. Wilson as not binding upon Mrs. Murphy or Mrs. Hazard.

Court: It merely goes to its weight. I will let it stand and your motion may be considered as having been made.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, *et als.*,

Defendant.

Continuation of testimony in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the City Hall, Red Bank, New Jersey, on Thursday, December 19th, 1918, at 10:30 A. M.

Present: Counsel, as before stated.

Mr. Wilson: We desire to offer in evidence two statements signed by E. C. Hazard & Co., by E. C. Hazard, President, one dated December 31, 1909, and one dated

January 2, 1912; these statements having been furnished by the National Nassau Bank, and being the statements referred to and admitted by Elmer C. Hazard in his testimony.

Court: Being the statements on which he obtained credit?

Mr. Wilson: The purpose being to show that at that time he carried in the formulas, trade marks, &c., in that statement of January 2, 1912, as being worth $371,973.51, and in the statement of December 31, 1909, he carried in the good will, trade marks, &c., at the same figure. These were the statements that were mislaid and could not be found when we desired to offer them.

Mr. Sexton: I enter an objection to their admission as certainly not properly proved.

Court: I will admit them and reserve the right to you, if you want to call the Doctor at any time before me when I am in Newark.

Mr. Sexton: That puts the burden on us.

(Statements marked Exhibits A and B, December 19, 1918.)

Mr. Wilson: I will call Mr. Powers.

HARRY L. POWERS, recalled for further

Direct examination by Mr. Wilson:

Q. You have seen these two statements just referred to when I addressed the Court, which have

been marked Exhibits A and B of December 19th, and I ask you in whose handwriting are the words as they appear upon these two statements, "E. C. Hazard & Company, E. C. Hazard, President"? "E. C. Hazard, Pres.," in whose handwriting is that? A. Elmer Hazard.

Q. Where did you get these statements from? A. I saw them——

Q. I didn't ask you that. How did you get them and where did you get them? A. The National Nassau Bank had turned them over to the City National Bank—I think it was—it is in the Woolworth Building, down town.

Court: The Irving.

A. (continuing) The Irving National Bank, and I went in and made a request that I might use the statements for the suit down here.

Q. And they surrendered them to you? A. Yes.

Q. (By the Court) You simply borrowed them for the purpose of this case? A. Yes.

Q. (By the Court) And you are to return them to the Irving or National Nassau Bank? A. Yes.

Court: I think they had better be copied in the record.

(Exhibit A, Dec. 19, 1918.)

Jan'y 2/1912.
O D Bk a/c

Cash	63.99	
Accts. Payable	11384.04	
Bills Payable	22359.82	
A. N. Beadleston	1750.00	10
F. A. & E. C. Hazard	2100.00	
Capital	412697.13	
Cash	447.75	
Insurance (unexpired)	497.26	
Expenses prepaid	78.94	
Accts. receivable	3354.81	20
Slow Accts. Rec.	10736.76	
Equipment	23040.72	
Formulas, trade marks, etc.	371973.50	
Supplies on hand	61.50	
Mdse. inventory	40163.74	
	450354.98	
		30
	450354.98	

E. C. Hazard & Co.
E. C. Hazard
Pres.

40

(Exhibit B, Dec. 19, 1918.)

ASSETS AND LIABILITIES

		December 31/1909.	
	Accounts receivable	25331.98	
	Cash	5479.84	
	Salesman	1431.56	
10	Accounts Payable		20466.36
	Equipment at Shrewsbury	15089.55	
	Equipment at New York	3052.88	
	Merchandise at Shrewsbury	74452.62	
	Merchandise at New York	18671.97	
	F. F. Eiseman	416.30	
	Supplies	156.58	
	Insurance prepaid	838.00	
20	Licenses prepaid	687.80	
	Suspense accounts	7379.40	
	Suspense accounts	79.20	
	Good Will, trade marks, etc.	371973.50	
	Expenses prepaid	395.01	
	Composition notes		990.89
	Accounts Payable		20609.49
	Capital		483369.47
30		$525436.21	$525436.21

E. C. Hazard & Co.

E. C. Hazard

Pres.

40

Edmund Wilson—Direct.

Mr. Wilson: I offer myself as a witness.

EDMUND WILSON, resumes the stand on behalf of defendant.

In behalf of the defendant Powers, I ascertained that the taxed costs paid by Powers to the complainant in the Chancery suit already referred to in the Little Silver Sauce Company case against Powers was $387.08, and that the taxed costs charged against Powers as a defendant in that action was $99.93, making a total of $487.02; and that in the Matthes Chancery case referred to in the testimony, Powers paid the complainant by way of taxed costs $104.89, and there was taxed against him as defendant in that cause $29.42, making a total of $135.31; and in addition Mr. Powers was obliged to pay the counsel fee of $350 allowed counsel for the complainant in the Little Silver Sauce Company case, and $50 in the Matthes case, these figures being subject to correction, as counsel may find, whether the $350 includes the allowance in both cases or was only made in one, and that the counsel fee, whether less or more, became part of the taxed costs.

Mr. Sexton: I enter an objection to this line of testimony as not binding upon Mrs. Hazard or upon the complainant, and move to strike it out.

Court: I will allow it to stand.

It is stipulated and agreed by counsel for the respective parties that everything which has been marked for identification by either side, will be considered as in evidence.

Court: And if anything has been offered as an exhibit, it shall go in on either side.

Decision.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE E. MURPHY,

Complainant,

—and—

HARRY L. POWERS, *et al.*,

Defendants.

Submitted February 8, 1919.

Decided April 12, 1919.

Mr. Charles F. Sexton and Mr. Joseph O. Skinner for complainant;

Messrs. Wilson & Smock and Mr. M. T. Rosenberg for defendants.

FOSTER, V. C.

This is a foreclosure suit in which complainant seeks to recover the amount due on a purchase

money mortgage for $30,000, covering lands at Shrewsbury in Monmouth County.

The controversy arises out of the sale of the mortgaged premises, which was made by Florence A. Hazard to the defendant, Harry L. Powers, on March 13, 1913. The property consisted of about 45 acres of land, factory buildings, certain personal property, a dwelling house and about 18 or 19 out-buildings. The purchase price was $60,000, of which $30,000 was paid in cash and the mortgage in suit was given for the balance, which was payable on March 13, 1916, and interest was payable quarterly at the rate of 5%. Mrs. Hazard assigned the bond and mortgage to her daughter, Mrs. Murphy, the complainant, and it is admitted that Mrs. Hazard is the real and beneficial owner of the bond and mortgage, although she may be indebted to some extent to complainant, who claims the bond and mortgage as security for this indebtedness, the amount of which has not been established; and it was stipulated that any defense which would be good between Mr. Powers and Mrs. Hazard should have the same force and effect as against the complainant.

On February 13, 1914, the factory and other buildings and contents were destroyed by fire and from the amount recovered on the fire insurance policies, $30,000 has been paid into Court to provide for the payment of whatever may be found to be due on the mortgage in question.

The defendants' answer is in the nature of a set-off in which the defendant, Harry L. Powers, asks to be allowed from any amount found due

upon the mortgage the damages he claims to have sustained through Mrs. Hazard's failure to perform her contract. The basis of the set-off is the claim that Mrs. Hazard agreed to sell and deliver to Mr. Powers not only the real and personal property which she did convey and deliver to him, but also certain other personal property including trade marks, trade names, good will, labels, the Hazard business name and the names "Shrewsbury" and "Shrewsbury Tomatoketchup"; that she gave defendant both an implied and expressed warranty of title of this personal property; that she has refused to perform the part of her agreement relating to this particular personalty and has not delivered the same to the defendant Powers; and that as a result she must answer in damage for the loss directly and naturally resulting to him from this breach of her warranty; that the agreeement to sell Powers this particular personal property is contained in a stipulation, interlined after the description of one tract of land, in the contract relating to the real estate, and which is hereafter called the real estate contract. This stipulation reads as follows: "All personal property not covered by an agreement as security by E. C. Hazard Co. to the party of the first part is included in this sale."

The right to set-off damage for these injuries, if they were sustained is not disputed and the law in relation to set-off in foreclosure suits is definitely settled by the statute relating to "Proceedings in foreclosure," by which it is provided that all just set-offs shall be allowed in ascertaining the amount due upon a mortgage sought to

be established in foreclosure proceedings. The act declares that the set-offs shall be allowed in the same manner and to the same extent as the like set-offs are allowed in actions at law (C. S. Vol. 1 p. 433, Sec. 61 Supplement to Chancery Act, P. L. 1915, p. 195 Sec. 54-57), and the right of the defendant to interpose the same equities and defense against the complainant as effectively as against the original mortgagee was settled by the Court of Errors and Appeals in Atwater v. Underhill, 22 Eq., 599.

And it is agreed by the parties that on whatever amount may be found due complainant there is to be credited $4,805.04, representing money deposited by defendant with the Fidelity Trust Co., to satisfy what the record calls the Eiseman judgment.

This is a family quarrel and this action is one of a number in which various members of the family and the defendant, Powers, who is Mrs. Hazard's son-in-law, have indulged since the sale of the property in March, 1913. A more comprehensive grasp of the situation may be had and a better understanding of the equities of the case obtained, if some of the family relations connected with the present situation are reviewed.

It appears that Edward C. Hazard, the husband of Mrs. Hazard, for nearly fifty years prior to his death in 1905 was engaged in the wholesale grocery and importing business in New York City; over thirty years ago he moved to Shrewsbury, in Monmouth County; the lands in question were purchased and title taken in the name of Mrs. Hazard. About twenty-five years ago most

of the buildings sold to Powers were erected, and machinery and equipment installed therein by Mr. Hazard; and then Mr. Hazard, and his partner, Mr. Frank Green, engaged extensively in the manufacture of condiments under the name of E. C. Hazard & Co.; the goods were manufactured at Shrewsbury in a factory on the premises which the firm rented from Mrs. Hazard, and were marketed and distributed through the Hazard store in New York, which also disposed of groceries, various brands of liquors, cigars and other goods under names and labels largely selected by Mr. Hazard. For a number of years the manufacturing business at Sherwsbury proved very profitable and many of its products had a very large sale and a very high reputation in the market, notably a tomato catsup which the firm manufactured and sold under the name or brand of "Hazard's Shrewsbury Tomato-ketchup. E. C. Hazard & Co., New York, Factory Shrewsbury, N. J." Some years before Mr. Hazard's death the business began to prove unprofitable and at the time of his death it was being conducted at a loss.

After Mr. Hazard's death, his son, Dr. Elmer Hazard, by some arrangement with the members of the family and assisted by some of his brothers and his father's old employees, attempted to continue the business at Shrewsbury and in New York, as a co-partnership under the name of E. C. Hazard & Co.; and up to January, 1907, this firm paid to Mrs. Hazard and her six other children, including Mrs. Powers, regular dividends, or interest, on their share or interest in the firm's

business; each of the children's interest was apparently valued at $13,104.37 in May, 1905. In August, 1907, this firm was placed in bankruptcy on an involuntary petition and about 1909 the parties interested organized a corporation to take over the business under the name of E. C. Hazard & Company. When Mr. Hazard died he owned a four-fifths interest in the original firm of E. C. Hazard & Co., Mr. Green owning the other one-fifth. In the settlement of his estate Mrs. Hazard was considered entitled to one-fourth of this four-fifths interest, and each of the seven children, to an equal one-seventh interest in the remainder; and apparently they were each given shares of stock in the corporation of E. C. Hazard & Co., to represent this interest and others beside the members of the family owned stock in the company. Under date of October 29, 1909, certificates for 107 shares of the common stock and 122 shares of the second preferred stock of the company were issued to Elizabeth Hazard Powers, the wife of the defendant, Harry L. Powers, and this stock was assigned by her to him on February 13, 1913, about eight days after the contract in question was executed, and Powers and his wife attended at least one meeting of the company. It appears that Powers was familiar in a general way with the factory and its output from boyhood. He married Miss Hazard about ten years ago, and after the marriage they lived at times in a small house near the factory. The corporation had not sufficient working capital and became financially embarrassed. Mrs. Hazard was called upon for assistance by Dr. Hazard and she loaned the cor-

poration money and endorsed its notes until she was liable on notes of the company in the Second National Bank of Red Bank and in the Nassau National Bank of Brooklyn for about $11,400, and had other liabilities on the Company's, or on her son's account that practically exhausted most of her estate. She had disposed of most of her effects and had even pawned her jewelry to help her son and the corporation to continue in business.

To secure Mrs. Hazard for her liability as an endorser on its notes the company assigned to her, as collateral security, the most, if not all, of its property, consisting of raw and manufactured stock, fixtures, machinery, furniture and equipment. By a bill of sale dated July 29, 1912, Mrs. Hazard, for the consideration of $10,000, represented by a promissory note, sold to Frank T. Matthes, "all the labels, good will, trade marks, machinery, etc., mentioned and specified in the annexed schedule and now in the factory building at Shrewsbury, New Jersey." By another bill of sale, dated August 3, 1912, Mrs. Hazard sold to Mr. Matthes certain other personal property apparently in the factory at Shrewsbury for $2,000, for which Matthes also gave her his note, all but $600 of which is still unpaid. Matthes had the property insured for his own benefit and he and Dr. Hazard continued for a time to manufacture goods in the facory, the E. C. Hazard corporation having apparently suspended operation; and later Matthes and Dr. Hazard organized the Little Silver Sauce Co., and Matthes transferred to this company the whole, or the greater

part of the property he acquired from Mrs. Hazard under the bills of sale, and Matthes and Dr. Hazard and their company continued the manufacture of their products in the factory until March, 1913, when Powers ejected them.

In the summer and early fall of 1912, Mrs. Hazard was being pressed for payment on the notes she had endorsed for the Hazard Company, and suits thereon were begun against her. She was worried and in great fear that she would lose her property at Shrewsbury through the liabilities she had assumed for the corporation. She made efforts to sell the property and had given an option for the sale of the lands and buildings for $80,000. In November or December, 1912, negotiations were opened between Mrs. Hazard and Mr. Powers that led to the making of the contract which has caused this controversy, and which now resolved itself into an inquiry respecting the kind and character of property Mrs. Hazard agreed to sell and deliver to Mr. Powers by the terms of the real estate contract, and whether she has performed her agreement. According to the version of the matter given by Mr. and Mrs. Powers, it appears that from November or December, 1912, for two or three months, on many occasions Mrs. Hazard importuned Mr. Powers to buy the entire property. At this time Mr. Powers was engaged in manufacturing carpets and rugs in New York City, and he and his wife claim that Mrs. Hazard offered to sell him the land and all the buildings with all their machinery and equipment, the goods on hand, the trade names, trade marks, good will, the right to use

the Hazard name in connection with the business, and in fact everything except her household furniture and effects; that she represented that her husband had spent a great amount of money in building up the business; that the business had been very profitable until her boys had ruined it; that with Powers' ability and energy he could again make it a success; that the labels were the best that could be made and that the word "Tomato-ketchup" could not be used by any other concern and was copyrighted. That Dr. Wiley had pronounced the catsup pure and she gave him at one of the conferences eighteen labels relating to the principal goods manufactured at the factory, which she informed him were included in the property which she offered to sell him for $60,000. That Mrs. Hazard frequently and repeatedly represented to him that she owned this particular property and claimed that she had inherited it from her husband, and that no one had any claim on it or any right to it, except herself; and that she did not disclose to him that she had sold any of the property in the factory to Matthes in the preceding July and August. Powers states that "the labels and the permission to use the labels and the name, the right to use the name and the name of this factory was of great value and the condition on which I bought it." A nurse employed by Mr. Powers states that while these negotiations were pending Mrs. Hazard told her she was "trying to sell the factory and the business and everything there was to Harry Powers"; and while another witness, Mrs. MacAnerny, was calling on the Powers in January,

1913, Mrs. Hazard told her "she was selling the property to Powers and that he was going to run the business at Shrewsbury"; and again, on the night the contract was signed, while the parties were calling on Mrs. MacAnerny, it was stated by Mrs. Hazard that she had "signed the contract to turn over the property at Shrewsbury to Mr. Powers and to run the business, that she had sold the factory, the old homestead, and the Manor house; that the business was to run under the old name and that nothing was said about the personal property." Mrs. Hazard's version of what led up to and happened during these negotiations is that her daughter and Mr. Powers about this time were begging her almost daily to sell Mrs. Powers the property; that her other children joined with them and often "told me it would be nice to have Bessie have the home; you sell it to her." That for sentimental reasons she refused at this time an offer of $65,000 for the place, because the purchasers wanted to wreck her husband's buildings and build cottages to sell to other people. That she had talked to Mr. Powers dozens of times about the sale of the property to him; that she first wanted $80,000, but felt he couldn't afford to pay that amount; that as he was her daughter's husband she decided to sell it to him as reasonably as she could, and her feelings in the matter was purely of a motherly kind to a daughter that she was very fond of; that Powers told her if he had her farm he could raise potatoes enough and could serve them to New York hotels; that if he had her

place in addition to his own adjoining he could make a fortune. He talked about his ability to run a farm profitably and she believed him. That Powers wanted to become a big farmer and suggested a number of things he could do with the place. She adds that in February, 1913, Powers spoke about buying the goods she held as collateral security for her endorsements on the E. C. Hazard Company notes and she told him he could have them for $12,000, the amount then due on the notes; that she didn't know what the collateral consisted of; there was a list but she had never seen it; that the collateral covered manufactured stock and raw material that could be sold at once; "that this collateral was no part of the E. C. Hazard estate but were things the Hazard Company had produced; the other goods was the heirs, they wouldn't be mine. Manufactured goods, they were goods to sell that I could get money for at once, I wouldn't take any of their old stuff, that wasn't any good to me." That she and Powers never talked about labels, she never gave him any, and that the trade marks, good will, labels, etc., never entered into the negotiations or contract.

She understood E. C. Hazard Company owned the trade names, trade marks, labels and the right to manufacture. She denies having told Powers that if he bought from her he would have the right to manufacture Hazard Shrewsbury Tomatoketchup under the E. C. Hazard & Company name, or that she ever called his attention to the word "Tomatoketchup." In some of these particulars she is corroborated by Dr. Hazard

and others. On cross-examination Mrs. Hazard stated that for $60,000 she intended to convey to Mr. Powers "my residence, my home, my property, my buildings, my land, everything except my horse and carriage and furniture." Everything that was in the factory that was hers, but what that included she states she did not know; that she never had anything to do with the labels although there were barrels of them in the factory and that they were never mentioned; and she denies she told Powers that Matthes had title to the collateral property and that through Dr. Hazard she could get it for Powers at any time. And complainant and Mrs. Hazard claim that if Powers is entitled to this particular property, he was to get it as part of the collateral security she held from the Hazard Company, and not under the interlineation in the real estate contract.

As a result of the negotiations the parties met at the Astor House in New York on February 5, 1913. At this conference there were present Mrs. Hazard and Mr. Joyce, her New York attorney, Mr. and Mrs. Powers, Dr. Hazard and Mr. Matthes, and there is no agreement between the defendants and the others regarding what was said and done there. The defendants state that Mrs. Hazard restated in substance, and in great detail, her former statements about what she was offering to sell to Powers for $60,000, and which included the personalty in question, and that she also agreed to sell Powers for $11,400 the property of the Hazard Company which she held as collateral. All the others present at this confer-

ence state that no such statements were made, that the conversation related solely to the sale of the lands and buildings. Mr. Joyce, who was present at the request of Mrs. Beadleston, a daughter of Mrs. Hazard, states that the sale of the personal property was not mentioned, although the machinery, equipment and appliances were. He made a memorandum of the terms of their agreement and returned to his office to prepare the contract. Later Mr. and Mrs. Powers and Mrs. Hazard met at Joyce's office before he had finished drawing the contract. Before the contract was signed, Powers told Mrs. Hazard there were a lot of things in the factory, things that he understood she had given to her son Elmer, which he (Powers) would like to have as he understood they were worth a lot of money, to which Mrs. Hazard replied, "Well, yes, they are, there are probably sixty to seventy thousand dollars worth of goods in the collateral contract," and she told Powers, "If you want to take a chance on getting that property and my being able to get it for you, I will do it." They talked about the terms and she told Powers she had a note from Elmer or Matthes for $11,400, which they agreed to pay and it wasn't any good to her and if he could pay her that money, the money representing the notes on which she was liable as endorser, he could have the collateral, as Elmer was selling it from time to time. As a result of this talk, Joyce prepared a second form of contract by which for $11,400 to be paid by Powers in seven months by four notes, Mrs

14th, there was no quarrel or dispute between them or any one else, although Elmer apparently was not pleased that his mother had sold the factory to Powers and that possession of the factory was not refused Powers and he had no reason to take forcible possession of it. Powers continued in possession of all the property, real and personal, until the buildings were destroyed by fire in February, 1914, and still has possession of the farm.

From this statement of the situation it will be seen that the first question to be determined is whether the property such as trade names, trade marks, labels, etc., which the defendant Powers claims he bought, were sold to him under the terms of the real estate contract, under the interlineation made therein, or under the contract relating to the Hazard Company collateral, or under a new and conditional contract made on March 13th, when the real estate contract was closed. It is admitted by counsel for the defendant that if Powers' right to the property in question is found not to rest on the real estate contract, then no right of set-off in these proceedings can be claimed by the defendants.

In the determination of this question regard must be had to the parties to the transaction as well as to the nature of the property involved, and consideration must be given to the fact that more than five years have elapsed since the conversations took place between the parties, that are now unhesitatingly given in so much detail by them and their witnesses; and that during this period the defendants and some members of

the Hazard family have been in almost continual litigation and that in consequence the breach between them has been considerably widened. From my consideration of the large volume of testimony and the numerous exhibits, I find that the trade names, trade marks, labels, etc., in question originally belonged to the old firm of E. C. Hazard & Co., and that Mrs. Hazard did not, and could not have inherited them from her husband, as is claimed; that on Mr. Hazard's death some arrangement was made, under advise of the family lawyer, whereby Dr. Elmer Hazard bought or acquired control of the interest or share of his mother and of his brothers and sisters in his father's interest in this firm; that thereafter this particular class of property was never owned or controlled by Mrs. Hazard, but that it was owned, or acts of ownership exercised over it, in turn, by the second firm of E. C. Hazard & Co., by the E. C. Hazard Corporation, by Mr. Matthes, by Elmer Hazard, and over some part of it, at least, by the Little Silver Sauce Co. I also find that both Mr. and Mrs. Powers knew this and that for about two years Mrs. Powers received some revenue from the exercise of such ownership by Elmer Hazard; and that later she was a stockholder in the Hazard Company and her stock interests therein she transferred to her husband eight days after the contract in question had been made. It also appears that Mr. Powers knew on February 20th, 1913, if not before, by the information given him by Mr. Davis, that under the Bills of Sale to Matthes the latter was the owner of record of at least part of the property

in question and apparently the most valuable part. The proof is not convincing that Mrs. Hazard made all the statements about the trade names, labels, trade marks, business and her ownership of them imputed to her by Mr. and Mrs. Powers, and the facts show there was no necessity for her to do so. Powers had married Miss Hazard five or six years before the date of the contract; he was familiar with the property, the business and the family almost from boyhood; he is apparently a very good business man, quite capable of taking care of his own and of his wife's interests. I cannot believe he was not sufficiently interested to look after his wife's interest in the Hazard estate, or in the firm, or corporation, in which such interests were to a large extent involved. He was dealing with his mother-in-law, a woman advanced in years and apparently of very little business experience or ability; and was acquiring the real estate and some personal property for $60,000, payable on the easiest possible terms; he was not required to invest a dollar of his own money, as he was privileged by the contract to negotiate a first mortgage for $30,000 on the property, and could pay Mrs. Hazard the balance of the purchase price by a second mortgage. He claims he was induced to purchase the property by the flattering and false representations Mrs. Hazard made to him, and by the fact that he could use the names of "Hazard" and "Shrewsbury" in connection therewith. As a man of ordinary sense he must have known, from his intimacy with all the circumstances, and even from the representations

themselves, assuming them to have been made as he claims, that Mrs. Hazard didn't know what she was talking about, as she admitted on the stand, when she used the term "collateral security," and when she asserted, as he states, that she owned this collateral absolutely, and had inherited some or all of this personal property from her husband. He knew that whatever personal property there was in the factory which Mrs. Hazard and his wife and the other children had obtained from the father's estate had been turned over to Dr. Hazard, and possibly some of the other sons, at the time they undertook through the second firm, or the Hazard Corporation, to continue the business, and he also knew that both the firm and the corporation had failed in their efforts to profitably utilize this particular property, especially the trade names and brands. He also knew that Mrs. Hazard had seriously involved herself and her estate in her efforts to help her sons and their firm and corporation in these and other matters; and that at the time he claims she was urging him to buy the property, she was being greatly pressed by her creditors; that the mortgage on her home was under foreclosure, and that her jewelry had been pawned for several thousand dollars; yet with knowledge of all these facts, he entered into the two contracts with her, and no mention is made in either of them of the trade marks, names or labels which were the things above all others that he says influenced and induced him to purchase her property. No satisfactory explanation is offered to show why he did not have inserted in the con-

tract the fact that he was buying this particular class of property, and have the items expressly or specifically named therein if he then considered the right to use the names "Hazard" and "Shrewsbury" as having anything like the value that is now placed upon them, viz., $75,000. The suggestion that the words interlined in the real estate contract, "all personal property," were so inclusive as to render this unnecessary, does not to my mind meet the situation. Before the contracts were prepared, Powers knew that Elmer Hazard, Matthes and the Little Silver Sauce Co. claimed to own some, if not all, of the personal property that was in the factory, and yet he did nothing to have their property distinguished or separated from the very valuable property he thought Mrs. Hazard was selling him, although he knew that Elmer was dissatisfied over the sale and over the fact that it would oblige him to move from the factory.

Assuming, however, that Mrs. Hazard made all the statements and detailed representations Powers claim, yet he was too familiar with her affairs and too intimately acquainted with the affairs of the Hazard estate and the Hazard firms and corporations to be deceived thereby. From his knowledge of the facts and circumstances he must have known that her claim of ownership of the property in question was not true; and yet he did nothing to correct any erroneous idea of ownership which she expressed, and made no inquiry to verify her statements, or to determine which, if any, of her statements were true and which were false, although he knew, at least as

early as February 20th, nearly a month before title was passed, that under the Bills of Sale to Matthes, that Matthes, and possibly Elmer Hazard, and the Little Silver Sauce Co. were the apparent owners of the exclusive right to use the trade names "Hazard" and "Shrewsbury," and were actually using them and other names and brands covered by the labels in question, and before and after the signing of the contracts he was at the factory and saw goods being manufactured there. He asked for no explanation for the presence of Matthes and Elmer at the Astor House conference before the contracts were signed, and according to their statement he then agreed to allow thm to continue to manufacture in the factory for a reasonable time after he had taken title.

When he took title on March 13th it is significant to note that although he had the deed and bond and mortgage prepared by the Title Company, no Bill of Sale transferring to him the personal property in question or any personal property was prepared or executed and that none was demanded by him or his advisers.

The conference when title passed lasted many hours; every phase of the transaction was apparently discussed, particularly the rights and title of Matthes and Elmer; at times this discussion became acrimonious. According to Powers, Mrs. Hazard throughout insisted on having her own way and on having both contracts closed in some way. Powers was being advised by two men both familiar with closing titles—his relative Davis and Mr. Dickensheets of the Title Com-

pany—and his interests were being safeguarded in every way. Without any apparent reason for doing so, Mrs. Hazard is said to have again reiterated her ownership of this particular property, and to again have repeated her intention to sell Powers everything she had inherited from her husband; and that she further insisted that Elmer and Matthes had no claim upon it; that she could compel them to surrender their rights in it, and also repeated her representations that neither they nor any one else had any lease upon the premises, or any right to occupy the same; and after all these representations were made and repeated, it was not thought necessary to have her execute a Bill of Sale for this property, or any part of it, but it was then considered by Powers and his advisers of the utmost importance to have Mrs. Hazard's statements about the absence of a lease and that nothing could interfere with Powers' right to possession put in the solemn and binding form of an affidavit. No explanation is offered why it was considered necessary to take this precaution about the matter of possession and leave the at least equally important matter of ownership of this valuable personal property undeclared and not transferred by any written instrument.

It further appears that at the settlement Powers, acting Davis and Dickensheets' advice, closed the $11,400 contract in a conditional way only; the four notes, all of which according to the contract were to be paid in seven months, were destroyed, and a new note payable in eighteen months was given in their stead, and by the en-

dorsment written thereon by Dickensheets, that note was made non-negotiable and valueless to Mrs. Hazard unless she, the following morning, or within a reasonable time thereafter, turned over to Powers the collateral property held by Matthes and Elmer. These precautions were taken to prevent Mrs. Hazard from obtaining from Powers any money, or security, to which she was not strictly entitled. If at that time Powers and his advisers thought he was entitled to the personal property he now claims under the interlineation in the real estate contract, I do not understand why they did not see to it that this property was not then properly and duly ransferred to him in part at least, or something reduced or retained from the purchase price of the real estate to indemnify him. Furthermore, at the closing Powers claimed to have disbursed over $29,000 in satisfying liens against the real estate and in the payment of Mrs. Hazard's debts; and it is significant to note, as an indication of the caution and ability with which Mr. Powers acted in the matter from the date the contracts were signed, that instead of paying and having satisfied of record the judgment of the two banks against her, amounting to $12,548, he had these judgments assigned to himself, and they were still open of record in his favor when the hearing in the case was held; and about $9,000 more of his disbursements were represented by the mortgage against the property and some small judgments against Mrs. Hazard subject to which he took title. Assuming that Mrs. Hazard received or had expended for her benefit

all of the money shown on Powers' statement, including several thousand dollars to redeem her jewelry, it appears she in this way realized about $8,000 out of the total purchase price of $71,400, and that of this amount she actually received about $1,000 in money. It seems incredible to me that Mrs. Hazard in order to realize this paltry sum from the sale of her property and to defraud her daughter's husband, should make the false statements and representations charged against her, particularly when it appears that she could about the time she made the sale to Powers, but for sentimental reasons, have sold her lands and buildings for $65,000 to strangers, without including in the sale any personal property, and also, when it appears that she personally could have realized so much from the mortgage loan of $30,000 which Mrs. Beadleston states her husband was willing to make her.

It also appears that whether Mrs. Hazard sold to Powers this particular property or not, that he obtained possession of it when he took forcible possession of the factory and its contents, and that later he had to settle with the Little Silver Sauce Co., Matthes and Elmer for their respective shares of it. Another feature of what occurred at the closing of title which is also significant and which I regard as a waiver on the part of Powers to have title to the property in question transferred under the real estate contract, assuming this contract in any way related to it, is the fact that he and his advisers knew at the time that Matthes and Elmer had title to this property, or some of it, under the Bills of Sale, and

that Powers and his advisers insisted that Mrs. Hazard therefore could not transfer this title to him until Matthes and Elmer had restored it to her; and he seriously doubted her claim that she could get the property for him the next morning, or at any other time, and he knew that unless she got it back from them she could not place him in possession of it; and he thereupon elected to close the real estate contract and to receive only title to the land and buildings and their equipment. The real estate contract being thus disposed of, the contract relating to the collateral security was apparently abandoned and the new and conditional arrangement or contract was made by Powers with Mrs. Hazard, by which he agreed to pay her his note for $11,400, in eighteen months, if, according to the endorsement thereon, she delivered to him the collateral security, included in which was the personality in question, the following morning, and vested title to it in him by Bill of Salae or assignment. If she did this then he was to give her a new note that would be negotiable, of like tenor and effect, bearing the same date; and if she did not do so, then the conditional note was valueless, and he could not be called upon to pay it; and it is not unreasonable to believe that Powers' drastic action the following morning in taking forcible possession of the factory and its contents, including property belonging to Matthes, Elmer and the Little Silver Sauce Co., was in a measure largely responsible for Mrs. Hazard's failure to get this property for him from them. The result of this new and conditional contract or arrangement has

been that Mrs. Hazard has never realized from Matthes, Elmer or Powers any part of the $11,400 due her from the collateral security, although Powers retained and used $12,500 of the real estate purchase money to take assignments of the bank judgments for the payment of which the collateral was intended to indemnify Mrs. Hazard.

There is another feature of the case that should be mentioned, and that is Powers' failure during the five years that have elapsed since the date of the original contract, to take any steps to have the contract rescinded. If he found he had been deceived by Mrs. Hazard's representations and desired to rescind the contract for that reason he was bound to act promptly when he discovered the fraud, and this disovery he claims he made before he took title to the real estate; but instead of seeking a rescission of his contract he elected at the closing of the real estate title to surrender whatever contract he had relating to the personalty, or to waive his rights thereunder, and made a new and conditional contract for the sale and delivery to him of the property in question, and paid when it was due, under protest, the interest on the mortgage for the first six months, without asserting that he had been defrauded in the transaction.

While the proofs do not satisfy me that Mrs. Hazard made the false representations charged against her and independent of the terms and effect of the real estate contract, which I find do not relate to this personal property; and while I am also satisfied the parties made a new and

conditional arrangement with respect to this personalty at the time of passing title to the real estate, the conclusion I have reached would not be altered if I found the false representations to have been made by Mrs. Hazard, because I also find, as I have stated, that Powers knew at the time they were made that they were false. As Vice Chancellor Van Fleet stated in Parker 1. Hayes, 39 Eq., 469, at 476:

> "A false representation made to a person who knows it to be false is not, in legal estimation, a fraud. True, it is a falsehood, and perhaps, judged according to moral standards, it is none the less sinful because spoken to a person who cannot be deluded by it, but a false representation, to be the proper subject of judicial action or cognizance, must be cause of legal wrong or injury, and no such result can follow where the representation is made to a person who knows it to be false, for in such case he cannot be deceived by it, and if he acts on it, his act will not be result of reception, but of his own folly."

My conclusion is that Mrs. Hazard did not make the false and fraudulent representations alleged; that from Powers' knowledge of all the facts and circumstances he was not deceived by anything Mrs. Hazard said in respect to the personal property or her title thereto; that his knowledge of the ownership of the particular personality placed it beyond the power of Mrs. Haz-

ard to deceive him respecting her ownership of it; and that she did not by the interlineation in the real estate contract agree to sell him the personal property in question, and that she has not in any respect failed, or refused, to perform any of the provisions of this contract; and that the defendants have not through any of Mrs. Hazard's representations or any breach of the real estate contract, suffered any legal wrong or injury for which she or complainant should compensate them or any of them by the payment of damages.

A decree will be advised for the amount due for principal and interest on the mortgage, on which amount is to be credited $4,805.04, the sum deposited, with accrued interest, to satisfy the Eiseman judgment.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE H. MURPHY,
Complainant,

—and—

HARRY L. POWERS, *et al.*,
Defendants.

This cause coming on to be heard in the presence of Charles F. Sexton and Joseph O. Skin-

ner, Solicitors, and of counsel, with the complainant and Edmund Wilson and Maxmillian Rosenberg, of counsel with the defendants, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments; and

It appearing to the Court that there is now due to the complainant for principal and interest on the mortgage set forth in the bill of complaint, the sum of thirty thousand dollars, the full amount of the principal thereof with interest thereon from September 13, 1913, to the 20th day of June, 1919, amounting to Ten thousand four hundred Dollars, making a total amount due for principal and interest the sum of Forty thousand four hundred dollars; and

It further appearing that there should be credited on the amount due complainant for principal and interest the sum of Four thousand nine hundred and nineteen dollars and sixty-five cents, being the amount paid by defendant, Harry L. Powers, with accrued interest to the 20th day of June, 1919, in satisfaction of the Eiseman judgment, which was a lien against the mortgaged premises at the time of the sale to Harry L. Powers, together with interest.

It further appearing that the sum of Thirty thousand dollars, insurance money recovered by reason of the destruction by fire of certain factory buildings covered by complainant's mortgage, has

been paid into Court to be applied to the payment of whatever sum may be found to be due on the mortgage in question; and

It appearing that the Second National Bank of Red Bank, New Jersey, did on the twenty-second day of December, 1914, obtain a judgment against Harry L. Powers in the New Jersey Supreme Court for the sum of Seventeen thousand one hundred and fifty dollars and twenty-nine cents, upon which said sum there has been paid the sum of Five thousand eight hundred eighty-five dollars and forty-six cents, leaving a balance due on said judgment of Thirteen thousand nine hundred dollars and ninety-one cents with interest from the fourth day of October, 1916;

And it further appearing that the Red Bank Trust Company of Red Bank, New Jersey, did on the twenty-second day of December, 1914, obtain a judgment against Harry L. Powers, in the New Jersey Supreme Court for the sum of Five thousand one hundred seventy-one dollars and forty-nine cents, which sum with interest thereon to October 4th, 1916, amounts to Five thousand seven hundred twenty-four dollars and eighty-three cents, upon which said sum there has been paid the sum of Seventeen hundred and seventy-four dollars and sixty-nine cents, leaving a balance of Three thousand nine hundred and fifty dollars and fourteen cents and interest of Five hundred twenty-nine dollars and thirty cents, making total amount Four thousand four hundred seventy-nine dollars and forty-four cents and interest thereon from June 20th, 1919. That an

agreement was entered into by the said Second National Bank of Red Bank, New Jersey, and the Red Bank Trust Company of Red Bank, New Jersey, wherein it was agreed that the liens of the respective judgments and the executions should be concurrent liens upon the land of the said defendant, Harry L. Powers, without the advantage of priority or otherwise, to either of said parties to said agreement, and it further appearing that the liens of said judgments of the Second National Bank of Red Bank, New Jersey, and the Red Bank Trust Company, of Red Bank, New Jersey, are subsequent to the lien of complainant's mortgage;

And it further appearing that the Colonial Bank of New York City, did on the twenty-second day of December, 1914, obtain a judgment against Harry L. Powers in the New Jersey Supreme Court for the sum of Six thousand two hundred and sixty-four dollars and twenty-nine cents, which said judgment has been paid in full; and

It further appearing that the Creamery Package Manufacturing Company, body corporate, did, on the Nineteenth day of August, 1916, obtain a judgment against Harry L. Powers in the Monmouth Common Pleas Court for the sum of Three hundred fifty-four dollars and eighty-nine cents, upon which said sum there has been paid the sum of One hundred dollars, that the balance now due on said judgment is the sum of Two hundred and fifty-eight dollars and thirty-nine cents, with interest from the fourth day of October, 1916, which lien of the judgment of the said Creamery Pack-

age Manufacturing Company, body corporate, is subsequent to the lien of complainant's said mortgage, and the judgments of the Second National Bank of Red Bank, New Jersey, and the Red Bank Trust Company, of Red Bank, New Jersey; and

It further appearing that the lien claims of John J. Travis against Harry L. Powers and others, Arthur G. Sickles against Harry L. Powers and others, George W. Sewing against Harry L. Powers and others, Charles Dunfee, trading as the Mitchell Floor Company against Harry L. Powers and Elizabeth Powers, as set forth in complainant's bill of complaint, are not liens against the property covered by complainant's said mortgage; and

It further appearing that the defendant, Harry L. Powers, filed with his answer a set-off and counterclaim and offered proof and evidence in support of the same;

It is on this 24th day of July, Nineteen hundred and nineteen, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant is entitled to have the principal sum of Thirty thousand dollars with lawful interest thereon from the thirteenth day of September, 1913, to the 20th day of June, 1919, amounting to Ten thousand four hundred dollars, making total amount due complainant for principal and interest the sum of Forty thousand four hundred dollars with interest from date of this decree (upon which sum is to be credited the sum of Four thousand nine

hundred and nineteen dollars and sixty-five cents, being the amount paid by the defendant, Harry L. Powers, with accrued interest, in satisfaction of the Eiseman judgment, together with interest from the 20th day of June, 1919) together with the costs of this suit to be taxed, raised and paid out of the premises described in said mortgage.

And it is further ordered, adjudged and decreed that the defendant, Harry L. Powers, is not entitled to set off and counterclaim against the amount due on the aforesaid mortgage the amount claimed by him in his aforesaid set off and counterclaim, except the aforesaid sum of Four thousand nine hundred and nineteen dollars and sixty-five cents, the amount paid by said Harry L. Powers in satisfaction of the Eiseman Judgment aforesaid together with accrued interest.

AND IT IS ACCORDINGLY FURTHER ORDERED, ADJUDGED AND DECREED that the sum of Thirty thousand dollars on deposit with the Clerk of this Court with accrued interest thereon to be paid by the Clerk of this Court to the Complainant or her solicitor and be applied toward the payment of said sum of money due complainant and that so much of the estate and premises covered by said mortgage as will be sufficient to raise and satisfy the said debt, interest and costs be sold; and that a writ of *fieri facias* do issue for that purpose out of this Court directed to the Sheriff of the County of Monmouth, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the

balance of debt, interest and costs and that he pay the same to the complainant or her solicitor and in case there should be any surplus from the sale of said mortgaged premises or any portion thereof, then the said surplus be applied:

FIRST: Toward the payment of the judgments of the said Second National Bank of Red Bank, New Jersey, and the Red Bank Trust Company, Red Bank, New Jersey, equally, in accordance with their said agreements; that their respective liens shall be concurrent liens; and after the payment of the said judgments of the said Second National Bank, of Red Bank, New Jersey, and the Red Bank Trust Company of Red Bank, New Jersey, with interest and costs, should there still be surplus money raised from the sale of said mortgaged premises or any portion thereof, then, the said surplus be applied:

SECOND: Toward the payment of the judgment of the Creamery Package Manufacturing Company, body corporate, with interest and costs, and in case more money should be raised by said sale of said mortgaged premises or any portion thereof, then shall be sufficient to pay the amount due said complainant and said judgments as aforesaid, such surplus money shall be brought into Court and deposited with the Clerk to abide the further order of this Court, unless otherwise disposed of by order of this Court; and that the said Sheriff make return to this Court of his proceedings by virtue of this writ.

Final Decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be allowed to the Solicitors of the complainant to be included in the complainant's taxable costs to be collected as part thereof a counsel fee of One thousand dollars.

Respectfully advised,

JOHN E. FOSTER, V. C.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE H. MURPHY,

Complainant,

—and—

HARRY L. POWERS, et al.,

Defendants.

On Bill, etc.

HARRY L. POWERS, one of the defendants in the above entitled cause, hereby appeals to the Court

of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court on the 24th day of July, 1919, as adjudges:

1. That the complainant is entitled to have the principal sum of $30,000 with lawful interest thereon from the 13th day of September, 1913, to the 20th day of June, 1919, amounting to $10,400, making a total amount of $40,400, with interest from the date of said decree, less the sum of $4,919.65, with interest from June 20, 1919, together with costs of suit, raised and paid out of the premises described in the mortgage referred to in said cause.

2. That the defendant, Harry L. Powers, is not entitled to set off and counterclaim against the amount due on the aforesaid mortgage, the amount claimed by him in his said set off and counterclaim, except the aforesaid sum of $4,919.65 and interest.

3. That the sum of $30,000 on deposit with the Clerk of this Court, with accrued interest thereon, be paid by the Clerk of this Court to the complainant or her solicitor, and be applied toward the payment of the said sum of money due the complainant; and that the defendant, Harry L. Powers, is not entitled to have paid to him the aforesaid sum of $30,000 and interest.

4. That so much of the estate and premises covered by said mortgage as will be sufficient to raise and satisfy the said debt, interest and

costs be sold, and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Monmouth, commanding him to make sale according to law of so much of said mortgaged premises as will be sufficient to satisfy the balance of debt, interest and costs.

5. That there be allowed to the solicitors of the complainant a counsel fee of $1,000.

EDMUND WILSON,
Solicitor for defendant, Harry L. Powers.

Dated, Sept. 11, 1919.

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

EDMUND WILSON.

Answer to Petition of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE H. MURPHY,
Complainant-Appellee,

—and—

HARRY L. POWERS, *et al.*,
Defendants-Appellants.

On Bill, Etc.

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

The answer of Florence H. Murphy, Complainant-Appellee in above stated cause respectfully shows that no error was committed whereby the Defendant-Appellant, Harry L. Powers, finds himself aggrieved by the final decree made in the Court of Chancery by his Honor, Edward R. Walker, Chancellor of the State of New Jersey, bearing date July 24th, 1919, in above-entitled cause, particularly in respect to the following, to wit:

1: No error was committed because said decree adjudged that the complainant is entitled to have the principal sum of $30,000 with lawful interest thereon from the 13th day of September, 1913, to the 20th day of June, 1919, amounting to $10,400,

making a total amount of $40,400 with interest from the date of said decree, upon which sum is to be credited the sum of $4,919.65 with interest from June 20th, 1919, together with costs of suit raised and paid out of the premises described in said mortgage referred to in said cause.

2: No error was committed by reason of said decree adjudging Harry L. Powers is not entitled to set off and counterclaim against the amount due on aforesaid mortgage.

3: No error was committed because said decree adjudged that the sum of $30,000 on deposit with the Clerk of this Court, with accrued interest thereon be paid by the Clerk of this Court to the complainant or her solicitor, and be applied toward the payment of the said sum of money due the complainant.

4: No error was committed because said decree adjudged that so much of the estate and premises covered by said mortgage as will be sufficient to raise and satisfy the balance of said debt, interest and costs be sold, and that a writ of *fieri facias* issue for that purpose out of this Court, directed to the Sheriff of the County of Monmouth commanding him to make sale, according to law, of so much of said mortgaged premises as will be sufficient to satisfy the balance of debt, interest and costs.

5: No error was committed because the said decree adjudged that there be allowed to the solicitors of complainant a counsel fee of $1,000.

WHEREFORE, the said Florence H. Murphy prays that the said decree entered in the Court of Chancery by his Honor, Edward R. Walker, Chancellor of the State of New Jersey, be in all things affirmed, together with the costs of this appeal.

Solicitor for Complainant-Appellee,
FLORENCE H. MURPHY.

Exhibit C, for Identification.

$13,104.37.

Red Bank, N. J., May 1st, 1905.

On the first day of May, nineteen hundred and nine, I promise to pay to the order of Florence Hazard Auersperg, or order, the sum of Thirteen Thousand, One Hundred and Four and 37/100 Dollars, with interest at six per cent, payable monthly, for value received.

(Signed) ELMER C. HAZARD.

Received payment and thereby cancel contract of April 27, 1905.

FLORENCE A. HAZARD,
Trustee.

Exhibit C, for Defendants.

Stockholders of the
Little Silver Sauce Co.

Gentlemen:

We hereby offer in exchange for assignment to this Company of all stock of the Little Silver Sauce Co., standing in your names, to pay to the State of New Jersey the tax now due against the Little Silver Sauce Co., amounting to Ten Dollars ($10.00).

Yours truly,

(Signed) E. C. HAZARD & CO.,
E. C. Hazard, Secy. & Pres.

Exhibit C 9, for Identification.

$13,104.37.

Red Bank, N. J., May 1st, 1905.

On the first day of May, nineteen hundred and nine, I promise to pay to the order of Bowdoin F. Hazard, or order, the sum of Thirteen Thousand, One Hundred and Four and 37/100 Dollars, with interest at six per cent, payable monthly, for value received.

(Signed) ELMER C. HAZARD.

(Endorsed) Received payment, BOWDOIN F. HAZARD, & Cancel Contract April 27/05.

Exhibit B, for Defendants.

Authorized Capital $1,000.000.00.
Established 1849 Incorporated 1908

E. C. HAZARD & CO.

PACKERS OF
Choice Canned Fruits, Meats and Vegetables and Manufacturers of Grocers'

Specialties

Telephone
With Private
Branch Exchange
Connecting
all
Departments

Proprietors—
Hazard's
Shrewsbury Specialties
New York Office
74 Grove St.

CONFIDENTIAL

Shrewsbury, N. J.,
74 Grove St., N. Y.,
December 27th, 1911.

Mrs. Harry L. Powers,
544 West 157th St., N. Y.

Dear Madam:

The writer offers a plan of re-organization of E. C. Hazard & Company, as follows:

A new Corporation of the same name be formed under the laws of the State of New Jersey, Capital Stock to be $2,000,000, divided into $1,500,000 6% Participating Preferred Stock, par value $100. 500,000 Common Stock, par value $100.

Exhibit B, for Defendants.

The present stockholders to sell out their interests to the new Corporation on the following basis: Each stockholder to receive in the new company 50% of their present holdings in Preferred Stock of the new company, and 90% of their present holdings in Common Stock. In consideration of the proposition E. C. Hazard will obtain parties who will give to E. C. Hazard & Company $300,000 CASH, payable $50,000 within one (1) year, balance within three (3) years, and accept in payment $600,000 Preferred stock and $250,000 Common stock. This would then leave in the treasury of the new Corporatoin $775,000 Preferred stock and $25,000 Common stock, to be issued by the Board of Directors to take care of the future growth of the business.

The plan embodies acquiring by merger, canning industries now in existence at Baltimore, Md., Leesburg, N. J., New Paris, O., Rock Creek, O., and Monticello, Minn. With these properties we will be in a position to handle and market to great advantage Canned Tomatoes, Apples, Peas, String Beans, Corn, Lima Beans, Beets, Spinach and fruits with the jobbing trade, and under the "Shrewsbury" brand label, E. C. Hazard & Company enjoy their best reputation on "Canned goods," and until we can adopt a more profitable manner of marketing our Specialties, the writer believes that "Canned goods should be packed," handling and shoving the Specialties with profits from the sale of the staple canned goods.

During the re-organization of the business we require considerable cash, and in accordance with the view of the stockholders taken up at the

Exhibit B, for Defendants.

last meeting, whereby: The stockholders agreed to hypothecate with E. C. Hazard and F. A. Hazard, as Trustees, their stock to secure to them the payment of a loan to be made by them to the Company. Such loan is now about ready to be made to the Company. Upon the repayment of the loan the stock so hypothecated to be returned to the owners.

Your prompt reply is required to this letter, and any questions will be fully answered promply by return mail.

Yours truly,

E. C. HAZARD, President.

C-21

(Miscellaneous checks made by Elmer C. Hazard.)

C-22

(Miscellaneous checks signed by Elmer C. Hazard.)

C-20

(Miscellaneous checks signed by Elmer C. Hazard.)

H for Complainant.

(Certified copy of petitions and schedules in matter of E. C. Hazard & Co., bankrupt.)

P-13

(Typewritten list of certain personal property.)

D-2

(18 labels letter A to R, inclusive.)

C-4

(Bill of sale from Florence A. Hazard to Frank T. Matthes, dated July 29, 1912, consideration, $10,000; acknowledged February 17, 1913, at Long Branch, Monmouth County, N. J., and recorded February 19, 1913, in Book P. of Miscellaneous Records, at page 373, in the Monmouth County Clerk's Office.

The schedule sets forth miscellaneous personal property and includes "Corporate name of E. C. Hazard & Co., and trade mark 'Shrewsbury'.")

C-5

(Bill of sale made by Florence A. Hazard to Frank T. Matthes, dated August 3, 1912, acknowledged February 17, 1913, at Long Branch, Monmouth County, New Jersey, and recorded February 19, 1913, in Book P of Miscellaneous Records, page 371, &c., in the Monmouth County Clerk's Office; consideration, $2,000.

The schedule includes miscellaneous personal property.

D-8

(List of miscellaneous personal property made by pencil.)

New Jersey Court of Errors and Appeals

Florence E. Murphy,
Defendant on Appeal

vs.

Harry L. Powers,
Appellant on Appeal

On Appeal from
Court of Chancery
Brief of Florence E. Murphy

STATEMENT OF CASE.

This action arises by reason of Florence E. Murphy having filed a Bill in Chancery seeking to foreclose a purchase money mortgage of Thirty Thousand Dollars given by Defendant, Harry L. Powers, to Florence A. Hazard, which mortgage bears date the thirteenth day of March, 1913, and covers property which on the said 13th day of March, 1913, was conveyed by said Florence A. Hazard to said Harry L. Powers, which property is situate at Shrewsbury, New Jersey.

Said mortgage was assigned by said Florence A. Hazard to said Florence E. Murphy, the defendant seeks to recoup damages from complainant setting up fraud and breach of contract and claiming the amount of damages, if any, should be deducted from the amount due on complainant's mortgage.

A fire occurred which destroyed the large factory building situate on the premises in question, and the complainant, Florence E. Murphy, impounded the sum of Thirty Thousand Dollars, insurance money, with the clerk of the Court of Chancery. By stipulation Page ..... 156 ..... of the printed case, the Thirty Thousand Dollars deposited with the Court of Chancery is to be applied so far as may be neces-

sary to the satisfaction of Complainant's mortgage now under foreclosure.

In view of the voluminous testimony taken, a more detailed statement of the facts is given:

It appears that during his lifetime, Edward C. Hazard was the controlling factor of the firm of E. C. Hazard and Company, a partnership which he had built up, and that the factory at Shrewsbury was but a minor branch of the E. C. Hazard and Company business. Upon the death of Mr. Hazard, the Hazard interests by Mr. Hazard's will were left to the widow and his children. The only person who at that time appeared to be capable of continuing the business was Elmer C. Hazard, that by an agreement drawn by Henry M. Nevins, of Red Bank, the interests of the widow and the several children were turned over to Elmer C. Hazard, he giving his notes (p 1012 and exhibits C-8 and C-9) to the widow and children for the amount of their shares and paying by his individual checks interest on the notes (p. 1013 and exhibits C-20 and 21); that Elmer Hazard was taken into the co-partnership and the business was run at a loss which resulted in an involuntary petition in bankruptcy being filed and in which proceedings a composition was effected and a reorganization took place by the incorporation of a company known as the E. C. Hazard and Company; that additional money was put in the business and stock was issued to various members of the Hazard family as well as to outsiders. The defendant's wife received her share of the stock which was endorsed to the defendant.

The corporation under the management of Elmer Hazard still proved unsuccessful and notwithstanding the fact that Alfred N. Beadleston put in $20,000 and Mr. Adams put in $20,000 the corporation was unable to meet its debts, and money was obtained upon the notes of the corporation by means of the endorsement of Florence A. Hazard. A number of notes were discounted upon the endorsement of

Florence A. Hazard and had to be renewed from time to time (p. 657.), and then various parcels of personal property were given to Florence A. Hazard as collateral security for her endorsements upon the notes. The corporation was unable to meet the demand for payment on two of the notes which Florence A. Hazard had endorsed, namely, Second National Bank of Red Bank and Nassau National Bank; the banks had obtained judgments against Florence A. Hazard on her endorsement and were pressing for payment. The business of E. C. Hazard and Company had ceased and Florence A. Hazard was receiving no revenue from the factory other than that which was being paid to her by Elmer C. Hazard and Frank T. Matthes, who were conducting a business at the factory under the name of the Little Silver Sauce Company, and Frank T. Matthes had bought from Florence A. Hazard the personal property which had been assigned to her as collateral security for her endorsement on the notes of the E. C. Hazard and Company. The sale to Frank T. Matthes being evidenced by the two bills of sale, bearing dates the 29th day of July, 1912, and the 3rd day of August, 1912, both of which were subsequently recorded at Book P of Miscellaneous Records at pages 371 and 373, etc., respectively, in the office of the Monmouth County Clerk's on the 19th day of February, 1913.

Florence A. Hazard was desirous of selling the factory and the buildings thereon, and had opened negotiations with one Mr. Bedell, which negotiations fell through; and in the conversation which she previously had with Harry L. Powers, she talked with him about selling her Shrewsbury property (p. 664), her place (p 663); later she met at the Astor House with Harry L. Powers and there agreed as she had before stated that she would sell to him the property at Shrewsbury (p. 664), the property "that was coming to me" (p. 670), everything except what was assigned to her as collateral security"

(p. 711), "everything that was mine" (p. 715), and when asked what that included, replied: "I don't know, sir, I want to be truthful to you, I tell you, I don't know" (p. 718).

The contracts, C-1 and C-3, which contracts are attached to defendant's answer and referred to as Schedules A and B, respectively, later drawn in Mr. Joyce's office, wherein Florence A. Hazard agreed to sell her farm at Shrewsbury, C-1, and the goods, if any, covered by the interlineation in said contract; and that by contract C-3 she agreed to sell to Harry L. Powers the personal property assigned to her by E. C. Hazard and Company as collateral security, at which time she explained to Harry L. Powers that she would sell it to him if she could get it from Elmer and Matthes (p. 672).

On the 19th day of February the bills of sale running to Frank T. Matthes were placed on record and actual knowledge thereof was communicated to Harry L. Powers, as he testified on the 20th day of February by Floyd W. Davis. Attached to the Bills of Sale C-4 and C-5 are itemized lists of the goods covered thereby and by the Bill of Sale C-4 it will be noted that among the goods conveyed thereby "CORPORATE NAME OF E. C. HAZARD & CO. AND TRADE MARK SHREWSBURY," so that at this time, namely, February 20th, Harry L. Powers had knowledge that he was to get the corporate name of E. C. Hazard and Company and trade mark "Shrewsbury" through the contract which he had made with Florence A. Hazard, D-3, which is the contract for the sale of the collateral property, and with this knowledge he and Mr. Davis and Mr. Dickensheet met Florence A. Hazard, John J. Joyce and Bowdoin Hazard in Newark to close the contracts marked D-1 and D-3.

After a protracted session, during which Harry L. Powers was told by Florence A. Hazard he need not close the contracts D-1 and D-3 at that time, but that he could have his money back the next morning

if he so desired, as her son-in-law, Alfred N. Beadleston, had promised to loan her $30,000 on this property, and in this she was corroborated by Helen Beadleston, the wife of Alfred N. Beadleston (p. 256), the contract D-1 was closed, as testified to by all the witnesses who were present, by the execution and delivery of her deed by Florence A. Hazard and the execution and delivery of two mortgages by Harry L. Powers, and none of the papers executed and delivered at that time to close D-1 related to any personal property. Furthermore, Harry Powers would not have lost any money by not carrying out the contract because while he had expended about $19,000 on account of the closing of the contract D-1, he had taken assignments of the two bank judgments and the property was of ample value for him to secure his money.

In reference to the contract D-3, it having developed that Florence A. Hazard could not get possession of the personal property covered by this contract as she had promised, the contract was closed as we respectfully maintain by the giving of the note referred to in this case as the non-negotiable note, and in reference to this note the attention of the Court is called to the fact that it was drawn for 18 months, which is a longer period than the time called for in the contract D-3, because Harry L. Powers and those representing him, Dickensheet and Davis, did not believe that Florence A. Hazard could get Matthes and Elmer Hazard to turn over the property the following morning as she hoped she could, and in fact it will be further observed that by the terms of the endorsement on this note no time was fixed when Florence A. Hazard was to deliver to Harry L. Powers the personal property mentioned in contract D-3. The note and the endorsement thereon are set out in full because it is deemed to have a very important bearing on contract D-3:

"$11,400. New York, March 13, 1913.

Eighteen months after date I promise to pay

to the order of Florence A. Hazard Eleven Thousand Four Hundred Dollars at 20 Vesey Street, Borough of Manhattan. Value received.

(Signed) Harry L. Powers."

Endorsed on back of the note:

"This instrument shall not be considered as evidence of indebtedness or a chose in action accruing to the Payee or her assigns until the title to the goods in payment for which this note is given is legally vested by a bill of sale or assignment thereof, then a new note of like tenor and effect bearing the same date is to be executed by the maker of this note or his heirs or assigns.

Signed (Harry L. Powers)."

So that at the conclusion of the closing at the Fidelity Offices, Harry L. Powers had title to the real estate and the delivery of the collateral personal property was expressly contingent upon the event of Florence A. Hazard being able to obtain the title to the collateral personal property from Frank T. Matthes and Elmer C. Hazard. At this time we should not lose sight of the fact that Harry L. Powers was not entitled to the corporate name of E. C. Hazard and Company and trade mark "Shrewsbury" because he had by his express agreement stipulated that Florence A. Hazard was first to be able to get the title from Elmer Hazard and Matthes, they being part of the collateral goods as before mentioned.

The parties met again at the manor house at Shrewsbury on the following evening, at which time there were Florence A. Hazard, Elmer Hazard, Harry L. Powers, Elizabeth Powers, Bowdoin Harard, Mrs. Pearl Hazard present. All the witnesses present on this evening with the exception of Harry L. Powers and the wife say that nothing was said by Florence A. Hazard denying Harry L. Powers possession of the factory. The only right that anyone would have had to the factory would be that license which Harry L. Powers himself had extended

to Elmer Hazard and Matthes when he said, as they have testified, that they could stay there and continue business just as they had been, and offered to lend his men to assist carting coal; in this, as before stated, Elmer Hazard and Frank T. Matthes are corroborated by the fact the coal was actually standing on the siding and demurrage was paid.

Bowdoin Hazard explains the E. C. Hazard & Company business relations as already set forth and testifies that he was present at the Fidelity and the next evening at the Manor House, he says: "Powers took the personal property on condition that it could be delivered, and gave a conditional payment for it" (p. 865). This shows that Bowdoin Hazard, a layman, had an absolutely correct conception of what had been done by legal documents that night. He testifies that Florence A. Hazard told Harry L. Powers that if he was not satisfied she would be pleased to call it off and reimburse him the next day (p. 867). He says that trade marks and trade names were not talked about at the Fidelity (p. 867). He was present at the Manor House the next night and was driven home by Powers as far as Borden's corner (p. 873). He remembers what Elmer was doing that night, sketching a cold cream advertisement, and that Powers and Elmer had very little conversation (p. 869); that Powers said to him going home in the buggy "that he didn't like Elmer's attitude" (p. 873). He says that neither Florence A. Hazard nor Elmer Hazard denied Harry L. Powers' right to possession (p. 871), and that nothing at all was said about a lease (p. 872). He testifies that he understood they were to go to the Manor House to get the keys and to discuss with Elmer the factory and purchase of the property (p. 870).

While it is true Georgia Hazard testified Bowdoin Hazard was home on this night, it is submitted that she could be mistaken as to that fact. Nothing appears that would fix this particular time in her mind,

and the testimony of Bowdoin Hazard is so clear and clean cut that unless he were at the house on this occasion it does not seem possible for him to have given his testimony in the manner in which he has.

Frank T. Matthes was not interested in Hazard matters until he went in business with Elmer Harard and then solely as a partner with Elmer and in the Little Silver Sauce Company. At the time of the Astor House meeting he had accompanied Elmer to New York in the matter of the Eisman judgment. He was present at the meeting and says that nothing was said at the Astor House about the sale of the personal property then in his possession (p. 457), and that as to the real estate he was interested only to the extent that he and Elmer would have to vacate the factory. As a matter of fact they had previously negotiated to move the factory to Matawan (p. 462). Even before the Astor House meeting Harry L. Powers had expressed his willingness (if he purchased the property), that Elmer and Matthes should have ample time to move, urged them to unload the car load of coal and loaned them assistance (p. 464). He says that Elmer and himself did not attempt to exercise any lease and that they had no license on the property except that given them by Harry L. Powers on different occasions (p. 467). He says that at the Astor House meeting nothing was talked about in his hearing of trade marks and labels (p. 473).

Elmer C. Hazard testifies as to the history of the business, which has been briefly outlined in so far as it applies to the questions in this case. After the failure of the old Hazard business, after the factory had stopped and the former New York City wholesale business and the condiments manufacturing side issue had proved unsuccessful, Elmer Hazard induced Matthes to go in with him. He testified as to Harry L. Powers' knowledge and familiarity as to the business and factory for a long period of time

previous to the Astor House meeting. It must be recalled in taking up the testimony of Elmer Hazard that for a period of weeks previous to the Astor House meeting Elmer and his mother had not been on very good terms (p. 752). This explains why Elmer Hazard had not been consulted more often about the contemplated sale. At the Astor House, Florence A. Hazard told Elmer that she was going to sell her "place at Shrewsbury." Elmer said, "To whom?" (p. 797).

"At the Astor House there were different conversations going on in different parts of the room at different times" (p. 795). Elmer then talked with Harry L. Powers about getting out of the factory. Harry L. Powers told him that there was no hurry about he and Matthes getting their stuff out of the factory, etc. (p. 795), and offered his men to help cart coal then at the station (p. 795). Harry L. Powers said to Elmer: "After I get title I will see you fellows" (p. 806). Elmer did not know his mother was going to sell to Harry L. Powers particularly until he reached the Astor House (p. 799). There was no reference made to the bills of sale (p. 799) or the said merchandise (p. 837). Elmer did not go to Joyce's office (p. 799). Elmer and Matthes had been negotiating for a factory at Matawan to move their merchandise C-4 and C-5 to (p. 811). Elmer had also rented a house at Matawan (p. 812). Elmer was not present at the closing at the Fidelity. Elmer and Matthes had merely a month to month lease of the factory (p. 811). Elmer was at the Manor House the next night working on a cold cream advertisement (p. 810). There was no quarrel among Florence A. Hazard, Elmer and Harry L. Powers that night, nor was there any denial of the right to possession (p. 810). The next morning Harry L. Powers took forcible possession of the factory (p. 818). After this several suits were brought, and it appears a letter was written by El-

mer Hazard, and in all the testimony it does not appear that Florence A. Hazard sanctioned or had any interest in any of the actions brought against Harry L. Powers nor did she or anyone else deny Harry L. Powers possession to the factory property. Florence A. Hazard had promised to endeavor to obtain title to the Bill of Sale goods from Elmer and Matthes for Harry L. Powers, and in this she was prevented by the seizure of the property by Harry L. Powers wherein he obtained all the personal property, whether entitled to it or not and without paying Florence A. Hazard for it or anyone else. It was destroyed while in his possession, and it was after this that Florence A. Hazard, on the earnest solicitation of Elmer Hazard, made an affidavit in the suits brought by Elmer and Matthes and the Little Silver Sauce Company for payment of their share of the goods destroyed by fire. When Florence A. Hazard testified in the Little Silver Sauce Company suit she was under subpoena.

John F. Joyce was at the Astor House meeting at the request of Mrs. Beadleston. At that meeting Florence A. Hazard said to him: "I am going to sell the house and farm down there." Data for that contract D-1 was obtained (p. 891). He did not know the contemplated sale of property in D-3 until they reached his office after lunch (p. 894). This was brought to his attention by Florence A. Hazard and Harry L. Powers talking, when Harry L. Powers said he understood there was a lot of things down there which Mrs. Hazard gave to Elmer and which he would like to get, and Mrs. Hazard said: "If you want to give me a note, and you want to take a chance on getting that property and take a chance on my being able to get it for you, I will do it." (p. 894). They talked over the terms, and Mrs. Hazard told Harry L. Powers that she received a note for $11,400 from Elmer and Matthes (p. 895), and "if you can pay me that money, you can have it, and so on that this agreement was drawn" (p. 895).

The interlineation was made at Joyce's office after a talk with Harry L. Powers about the property of E. C. Hazard and Company and others being in the factory, and Florence A. Hazard said "that she probably owned some boilers and engines or something like that; that have been put in there while the property has been running." And Harry L. Powers said: "I would like to get that" (p. 899). I said: "You can have it; it is of no use to Mrs. Hazard" (p. 899). Neither at the Astor House nor at his office did Joyce hear the trade marks mentioned (p. 900). At the time the interlineation was made it was said by Harry L. Powers that the personal property was to be taken out (p. 902). Elmer and Matthes were to stay there until Harry L. Powers had made a deal with them (p. 902). Joyce was at the Fidelity at closing and closed the real estate contract after the figures had been adjusted (p. 906). No Bill of Sale was drawn for any personal property covered in $60,000 contract, nor was any demand made by Harry L. Powers for any Bill of Sale (p. 907). And in reference to the Bill of Sale personal property Joyce insisted that some new arrangements be made; that he would not let Mrs. Hazard leave the Fidelity office with a binding contract standing there in which she was interested (p. 908). Dickensheets went down to the other end of the room and prepared something, showed it to me and I said: "Well, that's all right." But Powers said: "I will have to spend some money down there on that property fixing up the place, and we will draw the agreement in which I am to pay this money within 18 months, and to accommodate Powers a change to 18 months was made" (p. 908). Mrs. Hazard was to see Elmer and get the collateral stuff back (p. 909). And it was at this time that the note for 18 months, with the endorsement on the back, was made to close the agreement relating to collateral property D-3 (p. 915). Later, Harry L. Powers called on the 'phone and said to Joyce that

Elmer, E. C. Hazard and Company and Little Silver Sauce Company had everything in that place and that he wanted it off. Joyce told Harry L. Powers to get them out, that Mrs. Hazard would give him any affidavit he might want to give him possession (p. 916). I prepared an affidavit and had Frank Hazard come over and he got Mrs. Hazard's signature to it (p. 917). Joyce had nothing to do with the suits against Harry L. Powers (p. 919).

From the above it is submitted that by a clear preponderance of evidence, Florence A. Hazard has delivered to Harry L. Powers all the property she agreed to sell to him by the contract C-1, and that she has lived up to the terms of the contract C-3 as changed by the arrangement made at the Fidelity office. The reason that nothing further was done with this contract was that Harry L. Powers took possession of the personal property covered by this contract.

An analysis of the testimony as to the evidence given by the witnesses, both for complainant and defendant, is here given, and while some testimony is contradictory, yet the facts and circumstances bear out the contention of the complainant, Florence E. Murphy.

We find on behalf of defendant, Harry L. Powers, the following testimony:

First: The testimony of Harry L. Powers that Florence A. Hazard represented to him that she owned all the personal property in the factory, including the equipment, together with the trade marks and labels.

Second: The testimony of Elizabeth Powers, his wife, which is given in corroboration of the testimony of the defendant, Harry L. Powers, to the most minute detail, even to the startling attempt to corroborate his testimony by testifying to the conversation of a person at the other end of a telephone line (page 563).

Third: Floyd W. Davis, a cousin of Harry L. Pow-

ers, an employee of the New York Title and Mortgage Company and an expert on closing of titles, who was present, advising Harry L. Powers on the closing at the Fidelity, said that there were two contracts, one real and the other personal; that he remembered that Florence A. Hazard spoke in a general way of the machinery, lathes, pulleys, beltings and boilers, and also the trade marks, the good will and all this sort of thing (p. 399).

Fourth: Henry G. Dickensheet, the title officer of the Fidelity, employed by and advising Powers, at the closing said that she enumerated as the personal property as belonging to her, boilers, labels, good will of the business, the stock made up, the stuff in hogsheads there.

Fifth: Florence A. McAnerny, at dinner one evening with Florence A. Hazard and the Powers, says that Florence A. Hazard told her that she had sold the property at Shrewsbury to Harry L. Powers and that he was going to run the business (page 453).

Sixth: Isabel Gentleman, a nurse in the Powers household, says in reply to a leading question, that Florence A. Hazard, while at Powers' house, said she was trying to sell the factory and the business and everything there was to Harry L. Powers (page 1027).

AGAINST THIS TESTIMONY AND IN SUPPORT OF THE CONTENTION OF THE COMPLAINANT, FLORENCE E. MURPHY, WE HAVE THE FOLLOWING TESTIMONY AND FACTS:

Harry L. Powers, by his own testimony, lived next door to the Hazard factory for many years (page 212); he had been married for a period of ten years to Elizabeth Hazard; he wanted to purchase the property, because he was familiar with it (page 202); he took a great interest in the workings of the factory four or five years before he was married (page 202). He knew of the corporation of E. C. Hazard & Co. (page 202); he knew his wife was a stockholder; he knew that Messrs.

Beadleston and Adams were asked to put money into the proposition before the bankruptcy (page 203); he was well aware of the bankruptcy and the conditions then (page 203); he knew that George Archer was actively interested in E. C. Hazard & Co. and continued in the reorganized Company (page 204); he knew that Samuel G. Adams had put $20,000 in the business (page 204); he had the stock of his wife which was endorsed to him because she thought he was more capable to look after it (page 208); he had held that stock for 7 or 8 years (page 208); he knew that all the Hazard children had an interest in the reorganized company (page 208); as a business man he must have known that Elmer Hazard and Matthes were working at the factory for their own interest and not merely for the purpose of liquidating goods to the amount of $11,400 without expecting to receive compensation for themselves (page 141); he says that Florence A. Hazard was to sell "everything that she owned" (page 235); he knew that the trade marks, labels, etc., were in the bill of sale, C-4, and that the said bill of sale was on record (page 269); and knowing this he executes a note for 18 months, whereby the delivery of the title for the bill of sale goods was extended to such time as Florence A. Hazard could obtain the title from Elmer Hazard and Frank T. Matthes; he knew as well as Dickensheet and Davis that the bills of sale were on record (page 137); he knew that at the closing a deed was given and a mortgage taken back, neither of which covered any personal property; he had paid money to the banks before the 13th of March but he had taken assignments of the judgments and was fully protected (page 297).

Elizabeth Powers, the wife of the defendant, says that she knew there were others interested in the business outside the family; the testimony at page 593 will disclose her knowledge on that fact, and as her testimony is merely corroboration of her hus-

band's testimony as to every detail, it is not necessary to repeat the many facts already set forth in the previous paragraph.

Floyd Davis, who was an expert in closing, testified that he had received notice that the bills of sale were on record and that he advised Harry L. Powers of that fact (p. 394); he knew that Florence A. Hazard was not in a position at that time to transfer the personalty (p. 384); he talked that over with Harry L. Powers at the closing (p. 385); he knew that whether Harry L. Powers would ever get the said personal property would depend on whether Florence A. Hazard could obtain the same from Elmer and Matthes (p. 385).

Henry C. Dickensheets, the closing officer, says that he knew that the bills of sale were on record before closing (p. 430); he called Harry L. Powers' attention to it (p. 430); he knew from the searcher's abstract of the bills of sale that the trade names and trade marks were included in the said bills of sale (p. 444); he knew that Florence A. Hazard could not deliver title and did not believe she could the next morning, and told Harry L. Powers so, and for that reason drew up the note for 18 months (p. 448); he said that he could not recall anything that Florence A. Hazard said specifically about labels (p 442); he understood that Florence A. Hazard sold "everything she had" (p. 449).

Controverting and in answer to the defendant's contention we have the following facts and the testimony of the following witnesses:

1: Florence A. Hazard desired to sell the Shrewsbury property, consisting of the real estate and such personal property as she owned, and that negotiations were had between her and Harry L. Powers.

2: Bowdoin Hazard, who was present at the closing of the title at Newark and was present at the Manor House the following evening.

3: Frank T. Matthes, who was present at the

Astor House conference.

4: Elmer Hazard, who was present at the Astor House and at the Manor House the following evening, and who testified as to the arrangements made to move the plant of his and Matthes to Matawan.

5: John F. Joyce, who was present at the Astor House and later at his office, worked on the title and closed it at the Fidelity.

6: The lack of reference to trade marks and trade names during the Little Silver Sauce Company's suits, which cover nearly 1,500 pages, which suits had to do with the personal property held as collateral.

7: The two bills of sale, C-4 and C-5, as to their contents and date of filing.

8: The contract C-1 was closed by delivery of deed and mortgage, in which there is no mention of personal property.

9: The corroboration of the testimony of Elmer C. Hazard and Frank T. Matthes relative to their intention of moving their plant to Matawan, as shown by testimony of Henry H. Longstreet; the bill for coal; demurrage receipt.

10: Corroboration of Florence A. Hazard as to fact of option outstanding on Shrewsbury property for $80,000.

11: Corroboration of Florence A. Hazard that Mr. Beadleston was willing to loan her $30,000 by the testimony of Helen H. Beadleston.

From all of which testimony and the facts in relation thereto it is submitted that the contention of the complainant, Florence E. Murphy, is sound, and in attempting to decide the case by the evidence and facts the contention of Florence E. Murphy is clearly sustained by a clear preponderance of evidence.

It was not until this suit was brought to foreclose the mortgage in question, which was nearly four years after the purchase of the property by the defendant, Harry L. Powers, that any claim was made by him that he had purchased any personal

property by the real estate contract other than that which Florence A. Hazard owned, and as what would appear to be conclusive proof that this statement is correct by the affidavits of Harry L. Powers and Elizabeth Powers which were filed in the litigation between the Little Silver Sauce Company and Harry L. Powers, the said Harry L. Powers stated as follows:

> "It developed at that time that some of the personal property contained in said factory and upon said premises was formerly owned by E. C. Hazard and Company, and which personal property had been transferred to Florence A. Hazard. Deponent therefore insisted that one agreement should be entered into whereby Florence A. Hazard would agree to convey to this deponent the real estate and such personal property as was hers absolutely on payment of $60,000.00.

Later in the same affidavit Harry L. Powers makes the following statement (p. 1015):

> "That in and by the terms of aforesaid contract (referring to D-1), $30,000 was to be paid in cash by deponent on account of the consideration of the real estate, and such personal property as the said Florence A. Hazard owned and not conveyed or assigned to her by E. C. Hazard and Company, and $11,400 was represented by notes of deponent as consideration for the transfer of certain other personal property conveyed or to be conveyed or assigned to her by the said E. C. Hazard and Company."

and defendant admits that in an affidavit made by Elizabeth Powers, filed in the Little Silver Sauce Company suit, Elizabeth Powers swore to the following (p. 1016):

> "But finally concluded, as will appear by the agreements between deponent's mother and Harry L. Powers, dated February 5th, 1913, to sell at $71,100; $60,000 of this amount repre-

sented the purchase price of the real estate and such personal property as said Florence A. Hazard owned, not conveyed or assigned to her by E. C. Hazard and Company, and $11,100 stipulated in said agreement of February 5th, represented the purchase price of certain property therein mentioned."

With this understanding on the part of Harry L. Powers it will be seen that his attempt at this late date to offset a sum of money due to complainant on her mortgage is, by reason of defendant, created in his own mind, and not borne out by his positive statement at times made prior thereto.

The whole case resolves itself into one where Harry L. Powers was trying to drive a sharp bargain with his mother-in-law, Mrs. Hazard, a woman who was not familiar with business methods, whose own little estate had dwindled away by reason of her lending financial help to E. C. Hazard & Co., and who had endorsed the notes of E. C. Hazard & Co. and her real estate became liable for the payment of the judgment entered thereon, by reason of which she desired to sell the same.

Mrs. Hazard, at the time of the sale to Powers, had refused to sell the real estate to outsiders, because they desired to cut the tract into building lots, and she sold it to Harry L. Powers for Sixty Thousand Dollars, because, for sentimental reasons, she wanted the property to remain intact and she was willing that the husband of her daughter should have it.

Harry L. Powers closed his contract for the purpose of the closing of the real estate at the office of the Fidelity Company, taking his deed therefor, and giving to Mrs. Hazard the mortgage in question, for Thirty Thousand Dollars, and neither the DEED NOR THE BOND AND MORTGAGE CONTAINED ANY MENTION OF ANY PERSONAL PROPERTY. And it is inconceivable that Harry L. Powers, who appears to be a shrewd business man, would

close this contract in this manner and not make mention in any of the papers that these trade-marks and labels, of a value as he attempts to prove of Seventy-Five Thousand Dollars, were to go with the sale.

He received full value in the real estate for the money paid; in fact, Mrs. Hazard, in order to sell to Mr. Powers, has sacrificed several thousand dollars to sell to him.

We submit that it appears by the evidence that Mr. Powers had an ulterior motive in his negotiations with Mrs. Hazard. He felt that if he could get Mrs. Hazard to sell him the real estate and all the property she had obtained as collateral security, he could get possession of the assets of the corporation, E. C. Hazard & Co., by some other means. This accounts for his friendly attitude to all parties until he found he could not have his own way in dealing with the situation, for when he found that there was opposition to his getting the goods of E. C. Hazard & Co., he took forcible possession of the property, blew open the safe and confiscated books, papers, trade marks, labels, formulas and personal property of all kinds and description, the value of which was much in excess of $11,400, and in order to realize the magnitude of the amount taken, Exhibit P-13, offered on behalf of the complainant, is a list of the property left in the factory after deducting the bill of sale goods from the schedule made by the representative of Harry L. Powers and Elmer Hazard after Harry L. Powers had taken possession of the factory. The number of different items on this list are 767; the total number of items, as near as can be figured, are 4,312; the reason that Harry L. Powers took possession of the personal property in the manner in which he did was that he had formed a plan whereby he, after he had purchased the property, was to have Elmer and Frank T. Matthes enter into an agreement with him to run the factory, he, Harry L. Powers, to be the business manager, Elmer the

manufacturer and Matthes the salesman. The testimony to bear out this contention is as follows:

Powers knew of the condition of the business, the conditions at the factory, the fact that Elmer Hazard was a chemist and had a great deal of experience; that he understood the manufacture of condiments; Powers believed himself to be a good business man, and that Elmer Hazard was a very poor business man; Powers also knew that Matthes was a good salesman and had had a great deal of experience.

The testimony shows at many different places that business had failed because of the lax management; Powers knew the property, which is referred to all through the testimony as the $11,400, was actually worth a great deal more; that in several places in the testimony it is referred to as worth $80,000. Mrs. Hazard testified at page 658 that Powers had said to her that Elmer was a professional and not a business man; that he did not know how to run a manufacturing plant.

At the Astor house, Powers said to Elmer, as was testified by Elmer Hazard at page 806, "You fellows can go right ahead just as you have been doing; cart your coal in; my man is not busy, he will help you; after I get title I will see you fellows."

Mrs. Hazard testified at page 707 that Powers was going to invite Elmer and Matthes to go in business with him; at page 718 that several times Powers had said he wanted Elmer to go in business with him.

John F. Joyce testified at page 892 that Powers said to Elmer at the Astor House: "Elmer, do not worry about these things; wait until it is all closed up and I have taken title and I am going to make a proposal; you can stick around there until the time arrives we do arrange about something." Also at Joyce's office, Joyce said at page 902, in Powers' presence, at the time the interlineations were made, it was arranged with Elmer

and Matthes that they should stay there until Powers had a talk with Elmer Hazard in regard to getting their things out; at the same time, Powers said, referring to the personal property D-3: "I would like to get them; I have the factory down there and probably can go ahead and make money out of it." Joyce said at page 931, under cross-examination, when Elmer Hazard wanted to know at the Astor House where they were going, Powers said to Elmer: "Just take your time, be easy about this thing; when I get title I will take care of you, put up a proposition to you. I want to talk to you;" and at page 938, John Joyce, under cross-examination, said Powers "was talking about the personal property; he wanted to get certain personal property that Mrs. Hazard received by assignment from E. C. Hazard and Company. He had been trying at the Hotel Astor to make some arrangement with Elmer to stay. At the time he had had that talk with Elmer I do not know what he had in his mind, but evidently knew he was trying to get this certain collateral; outside of that Elmer was going to continue business anyway."

At the Fidelity at the time of closing it will be noted that Powers was willing to make changes in the contract regarding the personal property, because, as it has just been shown, Powers had a very definite idea in his mind that he was going to make a triangular affair of it with Matthes as salesman, Elmer with the scientific end and himself the business end, and it was for this reason he wanted to give the note for 18 months. He fully expected to get the property, either through Elmer Hazard and Frank T. Matthes going into business with him, or through Mrs. Hazard obtaining it from Elmer Hazard and Matthes and turning it over to him. If the first were true they would not have been compelled to give a note payable in a short time; if the second, he wanted as long a time to pay it as possible.

At the Manor House the night after the Fidelity

meeting Powers called there, as had been arranged before for the purpose of talking with Elmer Hazard about the proposed combination, and Florence A. Hazard testified at page 746 that they were to meet at the Manor House and talk about business. They did meet at the Manor House and Elmer was busy working on an advertisement and very little conversation took place between Elmer Hazard and Harry L. Powers. Elmer Hazard on this night made no advances to Powers, held himself aloof and Powers expressed himself to Bowdoin Hazard on their way home (p. 872) as not liking Elmer Hazard's attitude, and seeing a possibility of his plans failing and not wanting to abide the terms of the contract made at the Fidelity for Florence A. Hazard to get the title from Elmer and Matthes, on the following morning seized everything in sight, and from that time has adopted the attitude of retaining everything, changing his policy from time to time to resist any attempt to get away any of the property he had seized and not offering to pay for anything. And in this suit, notwithstanding it was not mentioned in the Little Silver Sauce Company suit, asked for damages for trade marks and labels, and it would seem plain that this suit is a striking illustration of the equity of the maxim, that he who would seek equity must do equity.

A feature of the case which seems to be controlling and absolutely refute the contention that he, Powers, was to get the labels and trademark "Shrewsbury Tomato Catsup" by the real estate contract is the fact the bills of sale which represented the personal property which Mrs. Hazard agreed to sell to Harry L. Powers for $11,400 contained in the schedule the very item "Labels and Trademark Shrewsbury," and Powers had actual knowledge that this item was in the bills of sale long before he closed the real estate contract, and it is admitted by Counsel for Powers that if the Labels and Trademark Shrewsbury passed by the $11,400

contract, then he, Powers, has no standing in this case.

The question of the value of the trade mark has not been discussed for the reason that it is believed that the evidence has not reached that stage where value would become a factor. It might be said, however, in passing, that the evidence submitted of value is vague and uncertain and not based upon existing facts and given by witnesses whose experience is so limited that their testimony was merely a guess. All witnesses who testified that there was a value testified that the value is still as great at the time of giving his testimony as of March 13, 1913. Whatever reference has been made as to any value carried on the books of E. C. Hazard and Company, both Elmer Hazard and John V. Green testified that that figure was but an item to balance the books. And it should be noted that the best test that these items were valueless were the facts that E. C. Hazard and Co. could not raise a dollar on its own notes and Florence A. Hazard had to endorse their notes to raise money, and so it was with other trade marks, those for the cigar brands and liquors and condiments. They were either allowed to die for want of use or given away with the sale of personal property.

From the above it is respectfully submitted that Florence A. Hazard agreed to sell Harry L. Powers her real estate and such property as was owned by her. Harry L. Powers was fully cognizant of the fact that he was to get only such personal property as did not belong to any person or corporation which was contained in the factory buildings; that he had elected to receive the Bill of Sale of personal property contingent upon Florence A. Hazard being able to secure the same from Elmer Hazard and Frank T. Matthes; that he received all the property that Florence A. Hazard agreed to sell him; in fact, by his own act when he seized all the personal property contained upon the premises, he closed the door

from ever after asserting that Florence A. Hazard did not deliver said personal property to him; he seized all the labels, blew open the safe and got formulas, all bottles and other personal property required by him to manufacture Shrewsbury goods. And if he was entited to the use of any trademark or trade name no act was done by Florence A. Hazard to deny him that right, nor in fact was any action taken by anyone relative to the trade marks and trade names except the letter written by Elmer Hazard, which is not associated in any manner with Florence A. Hazard. The idea that this was framed in any of the transactions of Florence A. Hazard manifestly upon perusal of the evidence is dispelled. And in the last analysis, Florence A. Hazard parted with her real estate which is covered by this mortgage which was clearly of the value of the $60,000 paid for it, and she should not be deprived of one cent coming to her upon the evidence submitted. Florence A. Hazard, rather than suffer damage by having her money taken from her, it seems, should be pitied in a Court of Equity in this whole transaction. She endorsed notes discounted in the Nassau and Second National Banks, the money was taken from the purchase price to pay these notes, and she took the note of Matthes for the purchase of the personal property held as collateral security. That note has not been paid (p. 4 86), and Powers, by his action in seizing the property after he made the agreement at the Fidelity, made it impossible for Florence A. Hazard to do anything further in the undertaking endorsed on the 18 months' note, and finally after the property was destroyed in Powers' possession, Powers now says, in spite of the fact that the trade mark "Shrewsbury" and the trade name "E. C. Hazard and Company" were contained in the Bill of Sale goods that Florence A. Hazard should pay him a large sum of money for these two items and for the whole of which the Little Silver Sauce Company was awarded as its value the

sum of $11,400. There is no item of evidence in all the testimony that points to Florence A. Hazard as being responsible for any of the litigation which Powers incurred and for which Mr. Wilson and the firm of Wilson and Smock charged the sums of money that they have testified to and far and above anything else that may have been said in analyzing this case, the rule that the burden of proof is upon the defendant in this case to prove his allegations by a fair preponderance of evidence has not been met, and for that reason, if for no other, the defendant should not prevail.

It is further desired to call attention to the fact that even though, admitting for the sake of argument, that representations were made by Mrs. Hazard, that Powers at all times had knowledge of the exact facts, the representations were false.

See Parker vs. Hayes, 39 Eq., Pg. 476, where Vice Chancellor Van Fleet states:

> "A false representation made to a person who knows it to be false is not, in legal estimation, a fraud. True, it is a falsehood, and perhaps, judged according to moral standards, it is none the less sinful because spoken to a person who cannot be deluded by it, but a false representation, to be the proper subject of a judicial action or cognizance, must be cause of legal wrong or injury, and no such result can follow where the representation is made to a person who knows it to be false, for in such case he cannot be deceived by it, and if he acts on it, his act will not be the result of deception, but of his own folly."

And it is earnestly urged that the findings of the Court of Chancery should be sustained.

Respectfully submitted,

CHARLES F. SEXTON,
JOSEPH O. SKINNER.

Solicitors for and and of Counsel with Defendant on Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

FLORENCE E. MURPHY,
Complainant-Appellee,

—and—

HARRY L. POWERS, et al.,
Defendants-Appellants.

BRIEF FOR DEFENDANT-APPELLANT, HARRY L. POWERS, ON FINAL ARGUMENT.

I.

Introductory Statement.

The case was originally brought and heard in the Court of Chancery. The relief sought by the defendants was denied by his Honor, Vice Chancellor John E. Foster. An appeal was taken, and the case is now before this Court on that appeal.

The issues of fact and law in this case are raised upon foreclosure of a purchase money mortgage. On the 13th of March, 1913, Harry L. Powers purchased from Florence A. Hazard by deed bearing that date the Hazard Property (so called) at Shrewsbury, Monmouth County,

New Jersey. It consisted generally of factory buildings, with certain personal property; also dwelling house and numerous outbuildings. The tract contained approximately 45 acres. The purchase price as fixed by the parties was $60,000, $30,000 was paid in cash, and the purchase money mortgage now in suit was given for the balance of the purchase money. Eight days afterward (on the 21st of March, 1913) Florence A. Hazard assigned this mortgage to Florence E. Murphy, her daughter, who is now the record owner.

The defendant set up in his answer and offered to prove that Florence E. Murphy holds the mortgage in trust for her mother, and that she is not in fact the beneficial owner. No evidence was offered in support of this averment, because at the time of trial the complainant stipulated that any defense which would be good as between Powers and Florence A. Hazard should be accepted with the same force and effect as though against Florence E. Murphy (p. 12). Moreover, the law seems well settled that even though Florence E. Murphy holds the mortgage as *bona fide* owner and for full value, any defense which would be good as between the original mortgagor and mortgagee might be interposed on foreclosure with the same effect as though the mortgage were still held by the original owner. *Atwater* v. *Underhill*, 7. C. E. Green, 599, at 606 (Court of Errors and Appeals).

For convenient reference, a memorandum of controlling dates may be of service to the Court:

Negotiations for purchase were begun in the fall of 1912 and continued to February 5, 1913.

Feb. 5, 1913.—Two contracts were signed in the city of New York.

Feb. 19, 1913.—Was the day named in the contracts for closing the transaction.

Feb. 19, 1913.—Two certain bills of sale were recorded at eight o'clock in the morning.

July 29, 1912; Aug. 3, 1912.—Respective dates of bills of sale.

March 13, 1913.—Title closed at Fidelity Trust Company, deed delivered and purchase money mortgage given.

March 14, 1913 (evening).—Meeting at Homestead.

March 15, 1913.—Powers took possession of factory buildings.

March 21, 1913.—Purchase money mortgage assigned.

Feb. 13, 1914.—Factory buildings and contents destroyed by fire.

It is clear that the real estate was conveyed and the purchase money mortgage given in accordance with the provisions of a certain written contract dated February 5, 1913. By the terms of this contract, Powers was bound to pay $60,000 upon receiving a conveyance for certain real estate and was to take in addition certain personal property. The precise words in the contract descriptive of this personal property are: "all personal property not covered by an assignment as security by E. C. Hazard & Company to the party of the first part (Mrs. Hazard) is included in this sale." The defendant has filed a set-off, which he insists should be allowed in computing the amount, if any, due upon the mortgage. This claim (speaking generally) is based upon the theory that Florence A. Hazard bargained to sell and deliver in return for the purchase

money not only real estate, but also certain personal property, including trade mark, good will, and the Hazard business name; that she was not only required to do so by the terms of the contract, but that she also definitely promised to deliver possession of this and other personal property on the morning of the 14th of March, 1913; that the circumstances were not only tantamount to a warranty under the statute which has relation to the Sale of Goods, but that the vendor, in fact, gave an express warranty of title; that her conduct in this respect was fraudulent, and whether fraudulent or not, she was bound to carry out her undertaking, that she neglected and refused to turn over the personal property above particularly named, including good will, trade mark, labels, etc., and that, as a result, under the statute which relates to the Sale of Goods, she must answer in damage for "the loss directly and naturally resulting in the ordinary course of events from the breach of warranty."

Several elements of damage arise for particular consideration, notably, however, the reasonable value of the trade mark, trade name, and good will, including labels; also for the defendant's costs in taking and maintaining possession of the factory building; also for his reasonable costs and charges in defending certain suits in courts of law and equity, which became necessary by reason of the breach of warranty.

The right to set off these injuries (if they were sustained) is not challenged. It is admitted that the present state in relation to set-off in a foreclosure suit is adequate and controlling and meets this emergency. Now by statutory pro-

vision (changing the common law) "all just set-offs" shall be allowed in ascertaining the amount due upon a mortgage sought to be established in foreclosure proceedings. The act declares that the set-off shall be allowed "in the same manner and to the same extent as the like set-offs are allowed in actions at law." Pamphlet Laws, 1902, p. 532; C. S. Vol. 1, p. 433, Sec. 61. In actions at law under the present Practice Act, "The defendant may counterclaim or set-off *any cause of action* * * *." See Pamphlet Laws 1912, p. 379. See also Supplement to Chancery Act, Pamphlet Laws 1915, p. 195, Secs. 54 to 57.

The equities of the parties under the circumstances thus presented must be determined by an ascertainment of the real bargain into which Mrs. Hazard and Powers entered, and which was consummated on the 13th of March, 1913, at the office of the Fidelity Trust Company in Newark, when and where the deed was delivered and the purchase money mortgage given.

II.

The Controlling Facts Ascertained and Discussed.

This brings us to consider not only what occurred on the 13th of March, but certain negotiations and the contractual relation and rights which were established prior to that date.

The negotiations for purchase were initiated sometime in the fall of 1912. It appears that at that time, Mrs. Hazard, though the owner of the property in question, was heavily in debt

and was being harassed by her creditors, and that it was she who opened the matter of purchase with Powers, her son-in-law, who at that time by the uncontradicted proof, was the owner of, and was successfully operating, a rug and carpet business in the city of New York. Mrs. Hazard eagerly sought to perfect the sale. In a number of interviews with Powers she held out to him a flattering business prospect and described minutely the property, real and personal, which she proposed to sell for the sum of $60,000. In these interviews she commented especially upon the value of the trade marks, and the name "Shrewsbury Tomatoketchup." One of these interviews was within a few days, possibly a week, prior to the 5th of February, 1913, when the contract in question was signed. I quote from the testimony given by Powers. She said:

> "This business my husband has spent a great deal of time over it; it has been very widely advertised; it is a wonderful business; he has made a great deal of money; my children have put it out of business; you can take it, with your energy, and carry it to success; no reason why you should not make half a million dollars out of it in a short time. The labels are the best labels that have ever been made, costing the most money. The word 'Tomatoketchup' cannot be used by any other concern." See p. 31, near bottom.

She represented also, prior to February 5th, and as an incident of the then pending negotiation,

that the output of ketchup had been approved by the Federal authorities; that Dr. Wiley, when at the head of the Pure Food Department, had tested some "thirty different makes of ketchup" tested and pronounced Shrewsbury Tomatoketchup the only pure and unadultered product, being entirely free from coloring matter, preservatives, etc. She said that Mr. Hazard in his lifetime had been offered large sums of money by the Government "to send it down for the use of soldiers in the Spanish-American War." She displayed to Powers a letter, which she said had been received from Dr. Wiley, setting forth that he had tested 36 varieties of ketchup and that the Shrewsbury Tomatoketchup was the standard of purity, being wholly free from coloring matter and adulteration. She expressed herself as willing to sell "the entire business and equipment" and to sell "the name of E. C. Hazard & Company and the trade mark" for the sum of $60,000. On one of these occasions prior to February 5th, when exploiting the value of the trade mark and the business, she gave him 16 sample labels. This was at the 97th Street apartment then occupied by Powers, and about a week before the 5th of February. She explained that Mr. Hazard had spent a great deal of money in preparing these labels and in the selection of certain quotations from Shakespeare which were printed upon them. She further said that "her husband was the first one to get out what they call a 'Love Apple' label," as descriptive of canned tomatoes; that her husband had made a great deal of money out of the product and that Powers "could go on and accomplish the same thing." She further said

that the words, "Hazard's Shrewsbury Tomato-ketchup" were copyrighted at Washington, and that as copyrighted, "Tomato" and "Ketchup" appeared as one word, and that no other concern could make use of this arrangement of words. She repeatedly stated that she herself owned the name of E. C. Hazard & Company, the trade mark, and the labels, and had the right to use them. She stated that her husband, by reason of the excellency of these food products, had been awarded a prize at Paris, and that thereafter, and in recognition of the fact, he had placed in the factory a suitable tablet. Powers had asserted that these representations in respect to the value of the trade mark and labels, good will of the business, etc., induced him to consummate the purchase and to pay the $60,000. Powers said in this connection: "the labels and the permission to use the labels and the name, the right to use the names and the name on this factory was of great value, and the condition on which I bought it." See p. 39. All this preceded the 5th of February, 1913. On one occasion at least Elmer Hazard was present when the matter was under discussion at Mr. Hazard's house in Brooklyn. See p. 41. The statements made by Mr. Powers are corroborated by the testimony of his wife, who invariably accompanied her husband when the matter was under discussion. See p. 31 and pages following, to and including p. 40. See also pages 513 and 523.

Notwithstanding Mrs. Hazard's denial, it is very evident from the testimony that she was eager to sell at the price named, and that she was at the time laboring under great financial

embarrassment. The suggestion that Mr. Beadleston, her son-in-law, was willing to relieve her seems incredible in view of the admitted fact that between the 5th of February, 1913 (the date of the signing of the contract) and March 13th, 1913 (when the transaction was closed) Powers had advanced in cash on account of the purchase money and for the benefit of Mrs. Hazard, upwards of $29,000. This money he had applied to two certain judgments, one held by the Second National Bank of Red Bank, and one by the Nassau Bank of New York, and the balance of the money was advanced by paying obligations of hers, including the redemption of certain articles of jewelry which she had pawned, in the sum of approximately $7,000. See Exhibit D-9, schedule of disbursements made prior to February, 1913, as prepared by Dickensheets. There was also a mortgage under foreclosure affecting the premises in question. This was a mortgage held by the Prudential Insurance Company. At that time there was due upon the mortgage about $8,000, and an execution in the foreclosure proceedings had already issued. See pages 16 and 85.

With this prelude, it appears that the parties met at the Astor House in the city of New York on the morning of the 5th of February, 1913. Mrs. Powers accompanied Mr. Powers. He was not aided by any legal representative. Mrs. Hazard appeared with (or was shortly joined by) her son, Elmer, and Matthes. Later, apparently at the suggestion of Matthes, Joyce, her attorney, was sent for. The persons named do not agree as to what was said and done on that occasion.

Elmer denies that there was any talk about the sale of personal property. This denial is joined in by Mrs. Hazard, who ultimately admitted, however, that in the trial of the former Chancery case, she testified that she agreed to sell "barrels and boxes and thousands of them, enough to cover the farm;" that "they had been there for thirty years;" that she proposed to sell "machines," "and those were the things * * * which had come to her through her husband's estate." She admitted that on the former trial she was asked, "What was the character of that property?" (which she proposed to sell) and that she answered, "I don't know except that it was a factory and it had boilers and machinery and tin cans and bottles and glass;" that she was then asked if this included *"labels," and to this she replied, "Yes, sir."* See pages 738 and 739, where her attention is called to this testimony given by her in the former case.

What Joyce said in this connection is far from convincing. He at first solemnly averred that there was no discussion as to the sale of the personal property, and then sought to justify the truth of that statement by explaining that he did not regard machinery, equipment, appliances, and the like as personal property. See pages 995 and 996.

Mr. and Mrs. Powers, who corroborate each other in all essential particulars, say that upon this occasion Mrs. Hazard reiterated not only in substance, but in detail, her former statements as to what property she proposed to sell. They say that she offered to sell the real estate, the factory building, together with the business, trade

marks, labels, and good will, for the sum of $60,000, and in addition, upon payment of $11,400, a certain lot of personal property which had formerly belonged to the E. C. Hazard Company, and which she had taken as security. These two contracts were to cover everything in the factory. See pages 34, 178, and 179.

The version given by Mr. and Mrs. Powers seems the more probable since it is entirely consistent with the trend of events, and is in accord with the contracts signed the same day. Their story fully explained what occurred in Joyce's office within an hour or two after the parties had met at the Astor House. Mrs. Hazard took lunch at the Astor House with Mr. and Mrs. Powers. Joyce, who had been present at the conference, and who had taken notes, went to his office for the purpose of drawing the necessary papers. After lunch, Mrs. Hazard and the two Powers repaired to the office of Joyce, and there the contracting parties signed two separate instruments in writing. The first of these had relation to the real estate proper and certain personal property, and named as the consideration, $60,000. The second fixed as the consideration, $11,400, and contemplated the sale of property which she claimed to own and which she had taken originally as security from the E. C. Hazard Company. These two papers are marked in the case Exhibits D-1 and D-2, respectively. It is an established fact that in D-1, the instrument which named as the consideration $60,000, and which had relation in part to the sale of real estate, certain words were interlined in ink, and in the handwriting of Joyce and at his office, on the day in

question. These words were inserted after a general description of the land. They are as follows: "All personal property not covered by an assignment as security by E. C. Hazard & Company to the party of the first part (Mrs. Hazard) is included in this sale." Mr. Joyce says that originally he prepared this contract without the words interlined; that there was no talk about the sale of the personal property until the parties had reached his office, and so only one paper was at first drafted by him. This seems wholly unlikely, especially in view of the fact that all the witnesses admit *that the purchase price contemplated was $71,400,* and this sum was $11,400 in excess of the $60,000, which was concededly the price of the real estate together with certain personal property which Mrs. Hazard herself admits she agreed to sell. It is impossible to suppose that with these details of negotiation established, and with a total consideration of $71,400 contemplated and wrought out at the Astor House conference, Joyce should have gone to his office and prepared only *one instrument* which named as a consideration $60,000. The circumstances under which the interlineation was made in Exhibit D-1 are illuminating. Powers says that both papers were shown to him when he reached the office, and that when he read them both he saw that no reference had been made to personal property which she claimed to own and which she took from her husband's estate. Thereupon, having called attention to the omission, Joyce interlined the words just quoted. See pages 29 and 30. Mr. Powers was informed by Mrs. Hazard that there words would

include "machinery in the factory, the general equipment of the factory, and it was the name Shrewsbury, and the right to use E. C. Hazard & Company, and the labels, and the only thing exempted out of the sale was the furniture in her house." See p. 28. It may be asked why Powers did not insist upon having the words "good will, trade mark, business," etc., inserted at length. Under the circumstances, this would seem to have been unnatural and unnecessary. The words of general description were inclusive and comprehensive. It would have been impractical and unnatural to have named some items of personal property without naming all. Besides the words inserted were descriptively complete. They included *"all personal property"* not covered by the security assignment. If all personal property was comprehended, there would seem to have been no utility in specificially naming *some* items of the personal property.

But we need dwell no further upon this phase of the matter. The parties must be concluded, after all, by the recitals of the contracts. No matter what happened at the Astor House or prior thereto, the two contracts in question were signed in Joyce's office, and so far as they are complete, the rights of the parties were established by the terms of these two instruments. It is important, however, in this very connection, to ascertain from a disinterested source, if possible, what the plan of purchase and sale was which the parties had in contemplation.

The testimony of Isabella Gentleman and Mrs. McAnerny is useful for this purpose. Miss Gentleman was a trained nurse who had served at in-

tervals through a series of years in the Powers household. When taking lunch one day at the Powers house in New York City, and while the negotiations were in progress, Mrs. Hazard was present. She told the witness that she, Mrs. Hazard, "was trying to sell the factory and the business and everything there was to Harry Powers." She said that "she was going to sell everything," and added that the place was in such condition as to be practically useless, and she thought that Mr. Powers, with his ability, "might raise it up." See pages 1118 and 1119.

Mrs. McAnerny, who is evidently a lady of refinement and who is clearly without interest in the controversy, testified that in the month previous to the signing of the contract, that is to say, sometime in January, 1913, she was at the Powers' apartment. Mrs. Hazard was there, and on that occasion told Mrs. McAnerny that she was about selling the property to Powers, and that "he was going to run the business at Shrewsbury." On the very night of the day when the contract was signed, Mr. and Mrs. Powers, with Mrs. Hazard, called at the McAnerny apartment to spend the evening. Mrs. Hazard said that "she had signed the contract to turn over the property at Shrewsbury to Mr. Powers and to run the business; that she had sold the factory, the old homestead, and the manor house." "I (Mrs. McAnerny) asked her the question if Mr. Powers was going to run the business, and she said yes, under the same name." On cross-examination, she testified that Mrs. Hazard said that "the factory was sold and the business was to be run under the old name." See pages 421, 422, and

423. It seems to be established, therefore, by fair inference and from witnesses who are wholly disinterested and whose veracity has not been impeached, that Mrs. Hazard, both before and after signing the contract, admitted that she proposed to sell to Powers not only the buildings, but "everything," including the business, and that Powers was going to run the business "under the same name," and "under the old name."

Two days after the signing of the contracts, Mrs. Hazard gave Powers an inventory of the goods which she said belonged to her and which she had *originally taken as security from the E. C. Hazard Company.* See p. 72. She does not deny this. It was this property which she claimed to own and which she had undertaken to convey under Exhibit D-2. The inventory is in the handwriting of Elmer. We do not recall that the statement made by Powers in this connection is contradicted by either Mrs. Hazard or Elmer. She represented that Elmer would check up the property with Mr. Powers. Thereupon Powers sought Elmer out for that purpose, but the work could not be arranged apparently at the convenience of Elmer, and was never done. This inventory is marked Exhibit D-8. It is very important, in this connection, to bear in mind that the inventory is concededly in Elmer's handwriting, *and that it contains no mention of labels, good will, trade marks, and the like.*

The contracts contemplated the closing of the sale on the 19th of February. For various reasons which are unimportant, the matter was deferred until the 13th of March. On that day, the parties met at the office of the Fidelity Trust Company

in Newark. In the interval between the 5th of February and the 13th of March, and probably within a day or two of the 13th of March, Powers learned through Davis that two bills of sale had gone on record affecting some of the personal property in question. He at once called Mrs. Hazard on the telephone, and she replied, "Don't mind that, that is nothing; that is only to protect you and my interest in this case, so I can give you a good title to them." See pages 77 and 78.

The matter rested thus until the parties met at Newark, as already stated, on the 13th of March. What occurred upon this occasion is of crucial importance, and in our opinion, the equities of the case must be determined in accordance with the true facts as now ascertained by the Court. It appears that Mrs. Hazard was there, and her attention was for a second time called to the two bills of sale which had been recorded at eight o'clock in the morning on the 19th day of February. Her explanation as to their execution and presence upon the record was substantially the same as that given to Powers over the telephone. There were present on this occasion Mrs. Hazard, her son, Bowdoin, and Mr. Joyce. Mr. and Mrs. Powers were there also, and were accompanied by Floyd Davis. Mr. Dickensheets, an officer of the Fidelity Trust Company, was present. He was acting in the matter for Mr. Powers. In consequence of the recording of the bills of sale, Mr. Powers, or perhaps Davis in his behalf, suggested that the contract embodied in Exhibit D-1 be carried out, and that the contract embodied in Exhibit D-2 be held in abeyance until

the bills of sale had been nullified and rendered inoperative. To this, Mrs. Hazard, according to the version given by Powers and his witnesses, demurred. She took the position that both contracts must be consummated or the transaction must go down. She made no offer to restore the money which Mr. Powers had advanced up to that time, amounting to upwards of $29,000, nor did she manifest any ability to raise such a sum. The contingency that she might be aided by Beadleston was not mentioned or suggested. At that time she represented that the contract known as D-1, which is referred to in the evidence as "the real estate agreement," comprehended "the labels and the name of E. C. Hazard & Company and the trade marks," and said this class of property had come to her from her husband. She again insisted that such personal property as she obtained from E. C. Hazard & Company in the security transaction was owned by her absolutely. She explained that Elmer and Matthes were simply "down there taking charge of it as her agent, and they were working this property out into cash income;" that she had become "the owner of it through E. C. Hazard & Company;" that if there was any trouble with either Matthes or Elmer, "she would choke them and throw them out if they didn't give it to her." She made an affidavit to the effect that neither they nor anyone else had a right to the possession of the factory building. See p. 80 and pages immediately following. She assured Powers that she would put him in possession of the real estate and all the personal property for which he was then bargaining, in the morning. She solemnly

asserted that as a part of the property which was to pass upon the payment of $60,000, was to be included not only the real estate, but "the equipment of this factory and the labels and the name of E. C. Hazard & Company and the trade marks." P. 80, near middle. The real estate transaction (so called), together with certain personal property already referred to, was under these circumstances closed. Powers advanced a further sum in cash (only a few hundred dollars) but sufficient to make up the cash payment of $30,000, and gave the purchase money mortgage in question. As satisfying the contract known as D-2, he gave a note drawn in the amount of $11,400. This had upon its back an endorsement which made it non-negotiable and practically of no value until his title to the personal property for which it was given as consideration had been delivered to him. This note was payable in eighteen months, but there was an express understanding upon her part to deliver to him possession of the personal property which it was to pay in the following morning. He was then to give her a new note without qualification, payable in eighteen months or original five notes. It was suggested by counsel for the complainant at the time of argument that Mrs. Hazard, by virtue of the arrangement made on this occasion, might at any time within the period of eighteen months close the transaction and deliver possession of this type of property. This is not in accord with the proven facts. While the note was payable in eighteen months, it was expressly agreed that she must deliver possession the following day, and a new note payable

in eighteen months was to be given as consideration. What was done in respect to Exhibit D-2, would seem to be relatively unimportant. We do not claim that the business trade marks, labels, and good will passed under D-2. We insist that this type of property passed under D-1. If it did not so pass, no right of offset in the present emergency (in this feature of the case) can be claimed by the defendant. Accordingly, further comment on D-2 would seem to be unnecessary.

We have thus far detailed the version of what occurred on the 13th of March as given by Mr. and Mrs. Powers. We think the conclusion is inevitable that if this is a true recital of facts, and if the Court finds that, under the circumstances just recited, Powers closed the contract known as D-1 with her solemn representation that with it he became the owner of the business, the name, the good will, trade mark, labels, etc., then whether she owned this type of property at that time or not becomes inconsequential. She was bound in such a posture not only under an implied warranty, but under an express warranty, and she must answer in damage for all injury which would legally follow upon a breach of such warranty.

We have now to inquire how far this version is established by disinterested and convincing testimony. Mrs. Hazard makes a flat denial. Indeed, it may be said, speaking generally of her testimony, that she made denial (in her examination, direct and cross) of every fact or circumstance which could weigh against her. In general, it may also be said that her testimony is

filled with contradictions, and that her story is left in confusion. She does not deny that the conveyance of personal property was discussed at length. Her explanation, however, is out of harmony with her former conduct. She says that she agreed to convey the personal property which she took as security from the Hazard Company only in the event she was able to secure possession of it. Why, then, we inquire, should she have made this qualification when on the 5th of February (her inability to deliver being the same then as at the time of closing) she had signed a contract in which, *without qualification,* she had agreed to sell this very property, and had by the instrument itself asserted her unconditional ownership in the same? What she claims to have said at Newark and the paper which she signed on the 5th of February are in fatal conflict. The statement made by Bowdoin, her son, is not only lacking in particularity, but is no more convincing. Joyce raises a flat issue of veracity between himself, Mr. and Mrs. Powers, Davis and Dickensheets. Dickensheets seems to be a witness wholly without interest in the controversy. Let us see what there is in the record confirmatory of the version given by Mr. and Mrs. Powers. They are corroborated in every essential detail by Floyd Davis and other witnesses. Important evidence is given by Georgie Hazard. She testified that on the night of the 15th of March, after the transaction had been closed and after Powers had taken possession, Mrs. Hazard was staying at her house. That evening Mrs. Hazard admitted in the presence of Georgie Hazard that she had previously "sold her factory and business to Mr.

Powers." See p. 1107, near bottom. Davis is a mortgage salesman and title insurance solicitor connected with the New York Title & Mortgage Company, 135 Broadway, New York City. He says in summary that he asked Mrs. Hazard (on the occasion of the Newark meeting) how she proposed to convey the personal property with the bills of sale outstanding; that she replied that "the goods were at all times hers and that she had made the bill of sale to Matthes for protection for herself against her creditors; that at all times she owned the goods in question that she agreed to convey to Mr. Powers." He himself suggested that the real estate contract, together with the personal property comprehended by it, should be closed, and the other contract deferred. He says that Mrs. Hazard absolutely refused to consent to any such arrangement; that, when he asked how she expected to deliver title to the personal property, she said "she could control her son and he would do exactly what she told him." Davis then called attention to the fact that it was not her son who held the bill of sale, but Matthes, and she replied that she "could control Mr. Matthes, too." Davis inquired, "How are you going to make your son give you—reassign that bill of sale to you" and she said, "I will take him by the throat and choke him until he does do it." She promised to deliver possession of all personal property in the morning if the money was paid that night, and said that no one had a right to occupy the premises. She asserted that the goods were at all times hers. He said without qualification that Mrs. Hazard told Powers that he was getting under the real estate

contract (so called) "all the personal property which she had gotten from her husband through his death." She said that she obtained title by reason of the fact that she had inherited it from her husband.

This question was asked:

> "Q. Did she enumerate any of that class of personal property (passing under D-1)? A. Excepting so far as I know in a general way, the machinery and the lathes and pulleys and belting and boilers, and also the trade marks, the good will, labels, and all this sort of things."

See pages 340, 341, 342 and 358. It will be noted that this is explicit corroboration of the Powers story in every essential particular. It may be said, however, that thus far, in the defendant's behalf, we have dealt with testimony which manifestly comes from an interested source; that Mr. and Mrs. Powers have a vital interest in the outcome of the present controversy, and that Davis is remotely related to him. This impeachment of Davis, we remark in passing, would seem to be rather feeble and ineffective. The matter, however, does not rest here. We have still to consider the testimony given by Mr. Dickensheets. We think what he has said does not leave the judicial mind in doubt. If Powers and his wife were prompted by interest, the same comment may be made, we think, in respect to Mrs. Hazard, her son Bowdoin, and Joyce also. On the other hand, Dickensheets was a witness apparently impartial between the parties. He has no interest,

remote or otherwise, in the eventuation of this suit. He is admittedly a man of probity and standing. What he has said, in our opinion, must settle all mooted questions of fact which arose on the evening of March 13th. When witnesses testify in direct conflict of each other, there is but one test to which courts may have resort for the purpose of ascertaining the truth. That test is this: such available testimony as is reasonable in character and which emanates from a disinterested source. What Mr. Dickensheets has said as to the occurrences of March 13th, measures up to this crucial test. At the time his testimony was given in this case, he was the Chief Examiner of the Farmers' Loan Division of the Metropolitan Life Insurance Company of New York City. At the time the transaction was closed on the 13th of March, 1913, he was acting in the responsible position of Settlement Officer for the Fidelity Trust Company. Let us see in detail what his version of the occurrences of that night is. He says that the attention of Mrs. Hazard was directed to the two bills of sale; that she thereupon asserted "that the property was hers and that they (referring to Matthes and Elmer) were simply making up the goods down there and that she would put Mr. Powers in possession of the goods the next morning."

> "Q. Did she say who was the owner of that stock? A. Yes, that she was the owner of it.
>
> "Q. Do you recall that one of those agreements, both of which you have already identified, and I am referring now in particular to Exhibit D-1, had certain words

interlineated in ink; I direct your attention to page 3? A. Yes, sir, I am quite sure they were there.

"Q. They read: 'All personal property not covered by an assignment as security by E. C. Hazard & Co. to the party of the first part (that is, Mrs. Hazard) is included in this sale'; the personal property, except the property that she held as security? A. Yes.

"Q. At that time to which I have directed your attention, did Mrs. Hazard make any statement as to what personal property was intended to be covered and passed under the terms of this D-1 which I have just shown you, D-1 being the paper which also has reference to conveying the real estate? A. My understanding of the transaction, from the conversation between Mrs. Hazard and Mr. Joyce, was, that the contract number one there, which embraced the real estate contract, under that she conveyed everything except the goods that were held as security for that assignment.

"Q. And did she make any enumeration or description of the property that did accompany that paper number one, as you call it? A. Mr. Powers raised the question that he wanted the receipts and the formulas, the trade name, everything connected with the business, so that he could operate it; that that was supposed to go under that number one contract.

"Q. And raised the question to Mrs. Hazard? A. Raised the question to Mr.

Hazard and Mr. Joyce and Mr. Davis. (Evidently by Mr. Hazard the witness intended to refer to Mrs. Hazard.)

"Q. And what response did Mrs. Hazard make as to whether that passed under that number one paper? A. She agreed to convey everything under that number one—

"Q. Except what? A. Except the goods which were held as security for this assignment, which were being made up by the Hazard boys and Matthes, whoever he was.

"Court: Did you understand that the trade marks and trade names were not included in the excepted goods, or included in the goods in the real estate contract?

"Witness: I understood that they were included in the goods under the real estate contract. The controversy under the contract was an after consideration and raised by reason of the fact that Mrs. Hazard wouldn't let the deal go through as originally planned; that is, without both going through at once. That is what prompted me to prepare the note which I prepared." See p. 395, beginning at the bottom, through p. 397.

And again, at p. 416, bottom, she made it clear that the real property and all personal property which she had, everything she had except such as she held as security, was sold with Exhibit D-1 for the consideration of $60,000.

"Q. Did she say what passed with that? A. Yes, that is the contract I closed and was responsible for.

"What did she say passed with that? A. Everything in it except the goods that were covered by the $11,400 bill of sale or note.

"Q. Did she say whether or not the good will and trade name and what not passed with that, or whether it passed with the security contract? A. Did she say whether it passed or not?

"Court: With the $60,000 contract?

"Witness: Yes, it passed with the $60,000 contract." See also p. 417.

Here, then, is positive corroboration on the crucial and controlling fact in the case. Incidentally, too, Mr. Dickensheets corroborates Mr. and Mrs. Powers in all other essential details. He says that Powers was desirous of taking title to the real estate contract and the personal property which was to pass with it; that Mrs. Hazard refused to accede to such an arrangement, and said that he must "take both or drop the matter." She represented that the personal property passing with the real estate contract was property that she took from her husband's estate. He identified the memorandum showing advancements made prior to that date by Powers, and corroborated him as to the amount of these advancements. He said in further corroboration that Mrs. Hazard explained that the bills of sale were given by her to protect herself, but that she would surrender possession of all the property in the morning, and that if she was met by any resistance by either Elmer or Matthes, she "would take them by the throat and choke them." See

pages 395, 396, 397, and 398. She kept asserting that the property which she held as security from the E. C. Hazard Company belonged to her. When the suggestion was made that she might not be able to get possession in the morning from Elmer and Matthes, she said, "I will go down there and throw him out by the neck in the morning." Her relation to the transaction that night was "not passive," but "most active." And further, she made an affidavit in which she solemnly swore that she was in possession of the property, and that no one had any right to possession other than herself. He was referring to the affidavit found on p. 124.

We think that the version thus given by Mr. Dickensheets should be accepted. If treated as a verity, it follows indutiably that upon the passing of the deed and the payment of $60,000, Powers was to receive, in addition to the real estate, all personal property which Mrs. Hazard possessed (connected with the business) except such as she held as security, etc., and that this type of personal property which thus passed included the name, good will, business, labels, and trade mark. We must also conclude that she repeatedly asserted her ownership and undertook as to the "security property" to deliver possession in the morning. If so, then the essential foundation for the set-off is laid, and we may now proceed to discuss the measure of damage.

Before passing to a consideration of the measure of damage, there are several incidental matters which require comment. It appears that one of the bills of sale running from Mrs. Hazard to Matthes, and which purported to convey some of

the property which she took as security from the E. C. Hazard Company, made particular mention of labels, and named "Shrewsbury" and possibly other trade names as well. It is insisted that the record of the bill of sale containing these words of description put Powers upon at least constructive notice that the trade mark, trade names, labels, etc., were not the property of Mrs. Hazard on March 13th, 1913, and that her warranty would not, therefore, be extended to cover property which the vendee knew she did not own. Two answers present themselves:

First, the record of the bill of sale in Miscellaneous Records, under out statute, does not amount to constructive notice. The bill of sale was recorded in fact in Miscellaneous Records. Constructive notice is therefore lacking and actual notice is lacking also, because Mr. Powers had no definite knowledge as to the details of personal property described in the bills of sale or either of them. This is his testimony, and no one contradicts him.

There is a second and equally conclusive answer, however, which presents itself. It is this: Assuming (without admitting) Powers had knowledge, actual or constructive, that the trade mark, trade name, and certain other personal property had, at the time of the closing of the sale, previously passed to another by virtue of the bills of sale, even this would not defeat his right of recovery. The reason is obvious. When the attention of Mrs. Hazard was directed to them at the time of closing, she gave an explanation as to their execution and their presence on the record which rendered them innocuous and harmless.

She asserted that the property which they conveyed was hers, and that the papers had been recorded for her safety and convenience, and notwithstanding their then presence upon the record, she would surrender possession in the morning to the property which the bills of sale described. She also asserted that the business, good will, name, labels, etc., were a part of that class of property which she took from her husband and which were comprehended by the "real estate contract," so called, and had no relation to the other personal property which she had taken originally as security from the E. C. Hazard Company. As we have already seen, these statements made by her are conclusively established by the evidence of Mr. Dicknsheets. What he said in this regard we believe will be accepted as a verity by the Court. If so, and under the circumstances disclosed, Powers was justified in accepting Mrs. Hazard's explanation as to the harmless character of the bills of sale. He was justified also in relying upon her promise to surrender possession of the property in question and also in relying upon her warranty which expressly covered the name, good will, trade mark, etc., as well as other personal property. The present case does not fall within the principle which holds that a warranty is not to be extended to cover obvious defects of title or quality, because even such defects may be cured by express warranty if there be (as here) an express promise to cure them.

III.

Damages to be Allowed as Set-off.

A.

Rule as to Measure of Damages.

We have now to discuss the legal rule as to measure of damage in the light of what we believe are the established facts. The transaction, so far as it related to the trade mark, labels, business, and good will (and certain other personal property) and the right of possession, all of which passed with the giving of the deed and the purchase money mortgage, involved upon the part of Mrs. Hazard not only an implied warranty, but was also accompanied, as we have seen, by her express warranty. The measure of damage under such circumstances has been embodied in the statute of this state known as the "Sale of Goods Act." This statute is a codification of the law and is a declaration (in part at least) of the common law as it probably stood in the State of New Jersey at the passage of the act. It was enacted in the year 1907. Sec. 13 (see p. 4650, Compiled Statutes) reads as follows:

> "In a contract to sell or a sale, unless a contrary intention appears, there is an implied warranty on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of a contract to sell he will have a right to sell the goods at the time when the property is to pass."

Section 69 (see p. 4664) reads as follows:

> "The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty."

Independent of the statute and under the established law of this jurisdiction, if the vendor has acted fraudulently in the giving of a warranty, the measure of damage would be *any loss* which the vendee sustained and which was a natural consequence of the breach, and might be regarded as fairly within the contemplation of the contracting parties. This rule also applies where the vendor by his own act has voluntarily put it beyond his power to make a good title. Such is the deliverance in *Brown* v. *Honniss,* 70 Law, 260. This case was reviewed, and the entire question of damages considered (where fraud is present) in the Court of Errors and Appeals. See *Brown* v. *Honniss,* 74 Law, 501.

> "In cases of fraud, the true rule of damages is, that the wrong-doer must answer for those results, injurious to the other party, which must be presumed to have been within his contemplation at the time of the commission of the fraud." *Crater* v. *Binninger* (decided in Court of Errors and Appeals) 33 N. J. Law, p. 513.

It cannot be denied, in the light of established facts (some of which will be hereafter reverted to) that the vendor, Mrs. Hazard, made representations as an incident of her warranty which were knowingly false and fraudulent.

Accordingly it would appear that the vendee, Powers, may recover the reasonable value of the Hazard name, good will, trade mark, labels, etc. This is true because such a loss was "a loss directly and naturally resulting in the ordinary course of events," and will also be presumed to have been within the contemplation of the parties.

It cannot be seriously contended that the defendant by the payment of interest has waived his rights to interpose his present defense. He vehemently protested against the adverse and hostile claims as to title and ownership made by Mrs. Hazard and Elmer for himself and others as early as the night of the 14th of March, 1913, and on the morning of the next day he forcibly took possession of the real estate and certain personal property. To Mrs. Hazard later and to those claiming adversely under her, he protested against any interference with his use of the trade mark, trade name, etc. On the 18th of September, 1913, a check was sent to Mrs. Hazard by Wilson & Smock, attorneys for Powers, covering interest upon the mortgage. The letter contained the recital that the money "is paid upon the express understanding that none of the equities of the said Harry L. Powers in respect to the mortgage are waived by this payment of interest, and further in the payment hereof the said Harry L. Powers reserves the right to set-off against the principal and interest of said mortgage whatever may now be due or hereafter come due from the said Florence A. Hazard to Harry L. Powers. All rights of the said Harry L. Powers in respect to said mortgage are hereby reserved, and none are waived by the payment of the interest." See p. 103.

B.

Value of Trade Mark, Trade Name, etc.

Two questions now present themselves:

First: Was he in fact presented or hindered by the vendor of those claiming under her from making use of the Hazard name, good will, trade mark, labels, etc.?

That he was so prevented and hindered would seem to be not in dispute. On the night of the 14th of March, at the Hazard homestead, and after the transaction had been closed in Newark and the purchase money mortgage given, Elmer, in the presence of his mother, and with her approval and assent (expressed even in words) was claiming the right to use these business adjuncts, and informed Powers that he, Powers, was not the owner of them. He was informed that Elmer and Matthes had rented the factory for a period of three years "without rent;" "that Elmer and Matthes were putting up there goods for her * * * the Shrewsbury goods, and they were putting out these goods—this tomatoketchup and other goods, under these labels, and I was prohibited from taking possession." Bottom p. 61, top p. 62. In the same connection he was told that Elmer and Matthes were "entitled to everything." "Trade mark was mentioned" in this connection. P. 60, middle. In December following, Mrs. Hazard called at the Powers house to thank him for some kindness he had shown her son. Powers said, "If you are so thankful to me, put me in possession of these goods and this name and this

Shrewsbury factory and these goods and stop this litigation * * * give me the right to do business here, as I am entitled to." P. 64, top. Mrs. Hazard promised to do this. She did not keep this promise. She was as faithless in this regard as she had been in the solemn undertaking which she had made in Newark in respect to the delivery of the property.

This claim of Elmer's, which was destructive of the business plan which prompted Powers to buy, was reiterated and ratified by Mrs. Hazard. Page 91, bottom. At this time Elmer was President of the E. C. Hazard Company, and was also the President and executive head of the Little Silver Sauce Company.

The Little Silver Sauce Company had done no business of any kind for a period of twelve years, and was in fact out of existence. The stockholders had long since surrendered their stock for cancellation and a small amount of cash then in hand had been distributed among the stockholders. A few tangible assets had been turned over to E. C. Hazard & Company. All this had been done with the purpose of putting the company out of existence, although no legal formalities were resorted to to dissolve the company. Moreover, the charter of the company had been forfeited by due proclamation for failure to pay franchise tax, and no new company had ever been formed. All of these facts were known to Mrs. Hazard. Mrs. Hazard as executrix of her husband's estate had surrendered stock in this company, and notwithstanding this knowledge, she aided and assisted Elmer to secure for the Little Silver Sauce Company $11,400.

The evidence in the former trial was not sufficient to establish the non-existence of the Little Silver Sauce Company, but it was certainly conclusive in this case.

It further appears that when Powers had seriously entered upon the problem of manufacturing ly entered upon the problem of manufacturing food products and sought to use the trade mark and the trade names, he was warned by Elmer Hazard not to do so, and letters were sent, running in the name of E. C. Hazard & Company, signed by Elmer Hazard as President of that company, to various merchants in the trade, informing them that Powers had no right "to use or employ" such trade marks and trade names. See Exhibit D-5. In this letter the trade is informed "that one H. L. Powers, trading unlawfully as 'The Hazard's Shrewsbury Manufacturing Company,' is representing that he is the manufacturer of the 'original Shrewsbury products and specialties.' This statement is positively fraudulent. * * * Mr. Powers bought the factory building, formerly leased to E. C. Hazard & Company, and nothing else. Mr. Powers has absolutely no right to use the name 'Hazard' or any combination of words containing the name 'Hazard and Shrewsbury' or any trade marks of this firm in the sale of food products, and any such representation is absolutely illegal, and we will use every effort to stop the fraud being perpetrated upon the public." These letters to the trade were dated November 20, 1913. This was about the time when Powers had manufactured a stock and was endeavoring to sell his food products. It appears by uncontradicted testimony that Powers in consequence did not use the trade name and

trade marks, and that as a result he was unable in many instances to make sale of his output.

The second injuiry which now presents itself is: What, under the proofs, is the reasonable value of the trade mark and the trade name?

The only testimony offered by the complainant touching this subject was that of Elmer. He said that for several years prior to the Powers purchase the business of the Hazard Company had been unsatisfactory, not only as to volume of output, but also as to quality of goods manufactured; that, in consequence, the value of the trade mark and trade name was of negligible value, and the Court was asked to conclude that, therefore, the defendant on this branch of the case would be entitled at most to damage which was merely nominal in amount. The force of what Elmer said seems to be wholly emasculated by certain other declarations made by him entirely inconsistent with his present contention. On the 27th day of December, 1911, we find him as President of the E. C. Hazard Company writing a "confidential" letter to the various stockholders of the company. In it he outlined a plan of reorganization. He proposed an incorporation with a capital stock of two million dollars. He asserted his belief that upon organization *he* would "be able to obtain parties who will give E. C. Hazard & Company $300,000 in cash." In this same letter he referred to the "Shrewsbury" brand label and said that under this label the company "enjoyed their best reputation on 'Canned goods'." See Exhibit B for defendant. At that time the chief asset of the company was manifestly the value in its trade

mark and trade names. Again, on the 2nd of January, 1912, twelve months before the Powers purchase, Elmer as President of the E. C. Hazard Company rendered a formal statement to the National Nassau Bank for the purpose of obtaining credit for the company. This statement is signed by Elmer as "President" in his own proper hand. A like statement was given to the Irving National Bank, but under a different date. In the first statement is found this item, "Formulas, trade marks, etc., $371,973.50." The sceond contains the item, "Good will, trade marks, etc., $371.973.50." This estimate of value was doubtless an exaggerated one, but we are bound to assume that when the statements were made to the banks by Elmer he regarded the trade mark and trade names as assets of substantial value.

On the other hand, testimony offered touching this matter by the defendant clearly establishes that the trade mark and good will were assets of very definite and considerable value. Matthes, *a witness produced by the complainant,* when asked on cross-examination to fix the value, said it was fairly worth from twenty-five to fifty thousand dollars. See p. 461. Traute and Lawler, when asked a similar question, each fixed the value at from twenty to twenty-five thousand dollars. See pages 488 and 500. Lawler had been for twelve years connected with the Butler chain of grocery stores. Prior to that time for twenty-one years he had been connected with E. C. Hazard & Company, and at the time of Mr. Hazard's death was the buyer and general manager of the sales department of the company. Accordingly he had intimate and personal knowl-

edge which justified his expression of opinion. See p. 494. Weddle fixed the value at from thirty to forty thousand dollars. See p. 509. These estimates were made after the attention of each witness had been called to the possible contingency that the business had been in dilapidation for several years, and its food products during this period had not been up to standard, either as to volume or quality. We should remember in this connection that each of these witnesses had definite knowledge as to the commercial value of this trade mark and trade name and its selling power in disposing of the factory's output. Each withness spoke with such definite information as to these details as that the opinion expressed cannot be relegated to the unimportant status of mere conjecture. Weddle had also been connected for a number of years with the Hazard Company, and was likewise in a position to speak with convincing authority in respect to this particular matter.

We make no attempt to suggest a definite sum which should now be allowed by way of set-off. This, in the nature of the problem, rests in the sound discretion of the Court. It may be said that even the lowest estimate of $20,000 is too high, but it is respectfully insisted that, under the proofs, a large and substantial sum should be awarded the defendant. What that sum should be is with confidence left to the sound discretion of the Court.

It was said on the argument in behalf of the complainant that Powers (quite apart from the recording of the bills of sale) knew Mrs. Hazard did not own the trade mark and the trade name,

and that, therefore, his attempt to hold her upon the warranty must fail. It was argued in this connection that his wife was a stockholder in the Hazard Company; that he acted with her and for her in her activities as stockholder and, therefore, he knew that the trade mark and trade name were not the property of Mrs. Hazard, but belong to the Hazard Company. This would seem to be a logical *non sequitur*. Both Mr. and Mrs. Powers deny such knowledge, and no one contradicts them. Moreover, even though Powers knew that formerly the trade mark and the trade name were assets of the Hazard Company, yet he would have been entirely justified in relying upon Mrs. Hazard's solemn representation (established by the evidence of Mr. Dickensheets) that she owned this valuable asset at the time the title was passed, that she had "inherited it from her husband's estate" and that he, Powers, was to receive it as a part of the consideration for the purchase money which he then paid, amounting to $60,000. He might well have been confirmed in that belief when upon examining (as he did) the inventory of property which she claimed to own as security from the E. C. Hazard Company, written in Elmer's handwriting, he found *no mention of labels, trade name, trade marks, and the like.*

Again, it was suggested at the argument that at the time of purchase Powers attributed no value to these particular assets, and that he was prompted to buy because he believed he had a good bargain in the real estate and the factory buildings. Even if this were true, he could not be deprived of the benefit of his bargain. But it

is not true. He himself has testified (as already pointed out) that he was induced to purchase becauses of the assurance that he might use the trade name and the trade marks, and that he bought intending to enter upon the business of manufacturing food products. This scheme of business activity was painted in alluring colors by the vendor. That Powers entertained such a purpose at the time of purchase cannot be doubted, and this Mrs. Hazard knew. P. 126, middle. She told Miss Gentleman that he had bought "the business—everything there was." She told Mrs. McAnerny that Powers was to conduct the business and run the factory "under the old name * * * under the same name." In preparations for the purchase, the conceded fact is that Powers closed out his carpet and rug business in the city of New York, which was then a going and profitable enterprise. Immediately upon taking possession of the factory, he entered energetically upon his activities as a manufacturer. This is not denied. He spent eight or ten thousand dollars in rehabilitating the factory buildings and making the machinery effiective and serviceable, spent more than twenty-five thousand in cash to farmers for products for his factory. P. 127, near middle. He manufactured stock to a large amount, using tomatoes as a basis. At the time of the fire, which occurred on the 13th of February, 1914, he had on hand manufactured stock to the value of $56,000. See p. 132. Accordingly it seems to us incredible to suppose that Powers was induced to make the purchase merely upon the theory that a good bargain had been offered to him in respect to real estate, quite apart from

his future manufacturing activities. *It is confidently asserted,* having due regard to the circumstances surrounding the purchase and the *character of the property acquired, that no one would have paid $60,000 except in the well founded belief that the factory would be available for manufacturing certain food products which* had been rendered marketable, if not famous, by the "Hazard" and "Shrewsbury" trade names.

Finally, it was urged upon the argument that the fixing now of a substantial value upon the trade mark and trade names is inconsistent with the decree in the Court of Chancery which determined that the value of property claimed by the Little Silver Sauce Company was $11,400. This suggestion seems valueless. The Court of Chancery in the former suit was seeking to ascertain the value of *tangible property* owned by the Little Silver Sauce Company, and which was destroyed by fire on the 13th of February, 1914.

(It is obvious that the trade mark was not destroyed. Its value did not enter into the former litigation. No proof was offered in respect to its value, and the finding of this Court made then could in no way establish, even by inference, the value of these valuable assets, *which have not been destroyed, but are still in existence.*)

C.

COST OF LITIGATION.

There is another element of substantial damage to which the defendant is entitled. He should be allowed all his reasonable charges in defending suits brought which attacked his title. The

measure of damages on breach of warranty as fixed by the statute should be borne in mind. The complainant may have charged against her "loss directly and naturally resulting in the ordinary course of events from the breach of warranty," and also any loss which ought fairly to have been within the contemplation of the parties if the original representations of the vendor were knowingly false and fraudulent. See Compiled Statutes, p. 4664, Sec. 89 and cases cited supra. The cost of the ltitgation referred to falls within these rules as to the measure of damage. It may not be true that the cost of suits defending title may be recovered if such suits are not defended in good faith and under circumstances which ordinary prudence and vigilance would justify. This then (in the aspect most unfavorable to the defendant) would seem to be a fair test: Was the defense in the various litigated matters involving title made in good faith? Was it made by Powers in the exercise of that reasonable prudence and vigilance which would naturally actuate a vendee who entertained a sincere belief in the validity of his title? If so, his reasonable charges in resisting suit by which his title was attacked may be recovered, since such charges result in "a loss directly and naturally resulting in the ordinary course of events," and will be presumed to have been in the contemplation of the parties if fraud was present. In this case the loss, as we have already argued, was the natural and immediate consequence of the vendor's fraud. In order to apply this test, let us examine the facts and circumstances which would naturally control the vendee, Powers, in the emergency with which he

was presented by suits which were brought (involving title) both in law and in equity. The representations of the vendor at the time of sale were comprehensive and convincing. She asserted her present ownership and her ability and willingness to deliver immediate possession. This powers relied upon. Twenty-four hours after the passing of the title, at her home in Shrewsbury, she manifested her bad faith by repudiating this warranty, and supported Elmer in his adverse claim. When, shortly afterward, suit was brought in equity in behalf of the Little Silver Sauce Company by Mr. Sexton, she sought to support the claim thus made. After the fire, three actions were brought attacking Powers' title to the personal property which belonged to him of right upon paying the purchase money of $60,000. By these three suits it was sought, in the interest of Elmer Hazard, Matthes, and the Little Silver Sauce Company respectively, to impress a trust upon insurance money—this upon the theory that the property had been destroyed and the trust would, therefore, devolve upon the money which represented its value. Still later, and after these suits had gone to decree, a similar action was brought by E. C. Hazard & Company, and the effort was made to fasten a similar trust upon the same goods now claimed by that company. In all these Chancery proceedings it appears that Mrs. Hazard made her affidavits in support of rules to show cause which were issued as initial steps. In each of these affidavits she nowhere admits that any personal property was sold by her to Powers. The intended force and effect of her sworn statements was that no such sale had been made and

that none of the personal property then drawn into litigation belonged to him. In one of these affidavits she even denies his right of peaceable possession of the factory building. This affidavit stands over and against her sworn statement made in writing at the Fidelity Trust Company on the night of the 13th of March. See p. 402. In respect to that affidavit in the sworn statement (above referred to) attached to one of the bills in Chancery, she says that it was obtained from her "by fraud and deceit." See p. 124. This affidavit attached to the Chancery bill was purposely misleading in that it contained this recital, "Deponent denies that the said Powers ever paid any money for either the real estate or the personal property. The said Powers executed two mortgages of thirty thousand dollars each on the real estate and nothing for any personal property." See p. 125, near top. On the trial of the Chancery causes, she appeared as a witness in behalf of the complainants, and sought to establish not only the adverse ownership of the complainants, but to fix an inordinate value upon the goods which had been destroyed by fire. Again, note (as bearing upon the propriety of the conduct of Powers in defending the litigation which attacked his title) that neither Elmer, Matthes, Mrs. Hazard, nor any other person suggested any adverse ownership until the evening of March 14th, twenty-four hours after he had parted with his money. He was told by Mrs. Hazard that Elmer would check up the items on the inventory of personal property which she gave him a day of two after the contracts were signed on the 5th of February. Elmer was in-

vited to carry out this plan. Even then adverse ownership was not suggested. On the night of March 14th, Mrs. Hazard stood by, assenting to and reiterating the adverse claim of Elmer, then presented for the first time. Within a day or two thereafter, Elmer was discussing with his wife the sale and the confusion which had arisen. This was in the hearing of Mrs. Georgie Hazard, who testified that when Elmer's wife inquired why he had not informed Powers as to exactly what he, Powers, was buying, Elmer replied, "I didn't want to, if I had, mamma would have lost her sale or bargain." See bottom of p. 1108 and top of p. 1109. It is significant that though this statement is said to have been made by Elmer in the presence of his, Elmer's wife, yet she does not appear as a witness in the case and does not contradict what Georgie Hazard said. Again, the bills of sale under which the adverse claim of title was made are pregnant with suspicion, if not redolent with fraud. They were prepared by Elmer. One of them is in Elmer's handwriting. They were not acknowledged at the time of execution, but merely witnessed by him. They were dated respectively July 29th, 1912, and August 3, 1912. The acknowledgment was finally perfected (after the contract of sale was made on February 5th, 1913) by the oath of Elmer as subscribing witness. They were never recorded until eight o'clock in the morning of the 19th of February, 1913, the very day upon which, according to the terms of the original contracts, the deal was to be consummated.

These, then, were the circumstances confirmatory of his rights and suggestive of bad faith

upon the part of the vendor which we are to consider in applying the test as to whether or not Powers made his defense to the litigation in good faith; and as to whether or not this defense was made in the exercise of that reasonable prudence and vigilance which would naturally actuate a vendor who entertained a sincere belief in the validity of his title. We think his conduct measured up to this test.

What we have thus far said in this connection is recited as a justification for presenting a complete defense to the various actions. It supports the theory that he may now charge against the vendor all the expense he thus incurred.

There is another phase of the matter, however, which must be commented upon. In any aspect, Powers was clearly justified in defending the Chancery suits brought respectively by Elmer, Matthes, and the Little Silver Sauce Company. The demands made in these three suits as to the value of the goods involved were inordinate, if not fraudulent. If Powers had not resisted, the entire insurance money would have been exhausted, that too under circumstances where it appeared that he had filed his proofs of loss without claiming for any of the property in dispute. He had confined his proofs of loss merely to such property as he had acquired after he took possession of the factory on the 14th of March, 1913. See pages 133 and ? . His statement in this particular is not disputed. In the Little Silver Sauce Company case, the amount demanded and sought to be established by proof was $46,356, in the Matthes case $2,971.78, and in the Elmer Hazard case $3,610.78. It is stipu-

lated in the present case that the values fixed in the Court of Chancery shall be regarded as *res adjudicata.* The values thus fixed are as follows:

Property claimed by Little Silver Sauce Co., $11,400.

Property claimed by Matthes, $600.

No valuation was fixed upon the property claimed by Elmer for the reason that the Court found that Elmer had no property which was destroyed in the fire. See pages 97, 98, 99 and 100. By the decree in the same proceeding the Court fixed the value of personal property owned by Powers and destroyed in the fire at the sum of $45,984.70. See conclusions of Court offered in evidence.

Powers was called upon to defend still another and final suit in Chancery. When the three original suits had been disposed of by decree, a similar suit, as already stated, was brought by the E. C. Hazard Company. In that suit insurance money to the amount of $63,204.46 was sought to be obtained by the company as representing goods of that value owned by it and destroyed in the fire. This group of property was practically identical with the items claimed by the litigants in the three former suits. Powers bought his peace, which he was obliged to do in order to perfect his settlement with the insurance companies, by payment of $1,800. Of the amount thus paid, it appears from Elmer's admission that $900 was retained by the solicitors of record, and the remaining $900 was turned over to Mrs. Hazard. See pages 1078 and 1079. We think that the money thus spent should be charged against Mrs. Hazard. It is true that he paid

$1800 as the price of peace, but it was a peace which she had helped disturb. He was under duress of circumstance, which she helped create and by which she profited, and his failure to pay would have resulted in the withholding of the insurance settlement. Moreover, it must be obvious that, had he litigated the matter, the cost of such litigation would have undoubtedly equalled, if not exceeded, the amount paid upon settlement.

There is no dispute as to the amount Mr. Powers actually expended in defending the various litigated matters. He paid taxed costs to the Little Silver Sauce Company, complainant, amounting to $387.08, defendant's taxed costs $99.73; taxed costs to Matthes, complainant, amounting to $104.89, defendant's taxed costs $29.42. In addition, he paid by way of incidental expenses, summoning witnesses, stenographer's fees, etc., $1,000. A separate stenographer's bill was paid by Wilson & Smock, but from his funds, to the amount of $587.40. Pages 108 and 109. Powers when upon the stand was in doubt as to whether this item was paid by him or paid by his counsel. Subsequent investigation by his counsel discloses that the payment was made by them from the insurance fund which they collected. If this statement be not assented to, we beg leave to offer proof in support of the fact. He also paid Wilson & Smock $10,000 for legal services extending over a period of approximately three years. This included also services, however, in no way connected with the defenses of title. It was estimated by Mr. Wilson that at least one-half of the charge, namely $5,000, would fairly represent service ren-

dered in the three Chancery suits brought respectively by Little Silver Sauce Company, Matthes, and Elmer, and that at least three-fourths of the $5,000 would fairly represent service rendered in defeating the inordinate demand as to the value of the goods claimed by the respective complainants. See pages 1159 to 1163, especially at pages 1162 and 1163.

The cost of litigation after warranty and when the title of a vendee is attacked has been repeatedly recognized in jurisdictions which sought to apply the common law merely, and where no such statute as ours was operative.

In *Johnson* v. *Meyers,* 34 Mo., 255, a suit on warranty of title to a slave, it was held that the measure of damages was the value of the slave with the costs of his keep and the expense of defending a suit by the person holding paramount title.

In *Brown* v. *Woods,* 3 Coldwell (43 Tenn.) 182, a suit on a warranty of title to a colt, it was held that if the vendor impliedly and falsely and fraudulently warranted title, the damages are the value of the colt and all costs necessarily expended in reasonable defense of title.

In *DuBois* v. *Herrmance,* 56 N. Y., 673 (a case not fully reported) the question involved was a warranty of purchase of property and a business, and it was held that the plaintiffs were entitled to recover the costs and disbursements in defense of a previous action.

In *National Metal Box Company* v. *Gotham,* 109 N. Y. Supp., 450 (N. Y. Supreme Court), on a

sale of screens which infringed a patent, the Court held that there was an implied warranty of title; that actual eviction was not necessary, there being in existence an outstanding paramount title. The language of the Court clearly indicates that, had a defense been interposed when title was attacked, the defending vendee would have been entitled to his costs of suit, and that these would have gone to swell the damages which were recoverable against the warrantor.

See also Sedgwick on Damages, 8th Ed., Vol. 1, p. 349, Sec. 236; Cyc., Vol. 38, p. 480.

D.

MISCELLANEOUS ITEMS OF DAMAGE.

There are other details of incidental damage and loss resulting to Powers. He was embarrassed in the prosecution of his business. His credit was unnecessarily impaired. He was arrested for having forcibly taken possession of the property which he had purchased. He was arraigned in a police court and afterward indicted and required to plead. This appears to have been done under circumstances where Mr. Sexton, now and then the Prosecutor of the Pleas and solicitor for the present complainant, admitted in open court upon the argument that the indictment had not been and could not be successfully pressed. It may well be, under the present evidence, that the amount of damage thus resulting cannot be measured by any definite sum. But on the other hand, the Court may conclude that punitive damage should be assessed against Florence A. Haz-

ard, who, by stipulation (p. 12) is to be regarded as the real complainant. There there is no standard of measurement. The degree of punishment, for the law regards such recovery as a punishment, must depend upon the circumstances of the case. If the Court should find that Mrs. Hazard acted willfully and maliciously, then exemplary damages may be awarded.

> "Our courts have decided that malice in law as a basis for punitive damages, signifies nothing more than a wrongful act done intentionally without just cause or excuse." Court of Errors and Appeals in *Wendelken* v. *Stone,* 86 Atl. Rep., at p. 376.
>
> "Without stopping to review the history of this class of so-called damages, it is sufficient to say that the right to award them rests primarily upon the single ground —wrongful motive. The engrafting of this notion on to personal suits has resulted in an anomalous rule, the doctrine of punitive damages being a sort of hybrid between a display of ethical indignation and the imposition of a criminal fine. But, whether we regard it in the one light or the other, it is the wrongful personal intention to injure that calls forth the penalty." *Haines* v. *Schultz,* 21 Vr., p. 481.

It seems rather a novel suggestion that punitive damage may be awarded in a court of equity, but the measure damage is now regulated by a new statutory provision which declares that in a foreclosure proceeding set-offs shall be allowed "in the same manner and to the same extent as the

like set-offs are allowed in actions at law." If we were seeking damage in a court of law, exemplary damage would be a proper subject matter for the jury's consideration, because the present Practice Act declares that the defendant may counter-claim or set-off *any cause of action.*

It is admitted that the defendant is entitled to a credit for the amount which he was obliged to pay to satisfy the Eiseman judgment. This was an outstanding lien upon the land at the time of purchase. For this item, by stipulation, he should be allowed $4,000, with interest from October 6th, 1913. See p. 2, middle.

There is another item of loss with which the complainant would be chargeable, and which has been definitely ascertained. This is the expense Powers incurred in maintaining his possession of the factory building. He employed two watchmen and paid them the sum of $100 each. In addition, he spent $50 for material and labor in barricading the windows. This seemed to be necessary in view of the adverse, violent, and hostile conduct of the Little Silver Sauce Company, Elmer, and Matthes, who were claiming under Mrs. Hazard, and with her knowledge and assistance. See p. 93, top.

It is most respectfully submitted that there is no question in this case but that at the time of the giving of the mortgages there was also a transfer of certain personal property, and in reading the case in all its entirety it is apparent that Mrs. Hazard gave the defendant-appellant both an implied and express warranty of title to the personal property. The mere fact that the stipulation was interlined after the description of one

tract of land shows that the defendant-appellant was obliged to make a claim for something in the shape of personal property which Mrs. Hazard had failed to comply with shows that Mrs. Hazard had failed to do something in relation to the personal property which she had promised to do, and therefore there was embodied in what were the real estate contracts these words: "All personal property not covered by an agreement as security by E. C. Hazard & Company to the first part is included in this sale."

In commenting on the decision of his Honor, Vice Chancellor Foster, the defendant-appellant disclaims any intention of fault finding or unfair criticism. This case, however, has been dragging along for a long term and the honorable court's decision seems to be based on conclusions not warranted by the evidence. For instance, on page 1076, section 30, the honorable Vice Chancellor said, "Up to January, 1907, the firm of E. C. Hazard & Company paid to Mrs. Hazard and her six other children, including Mrs. Powers, regular dividends on their shares or interest in the firm's business," when as a matter of fact the evidence shows that Mrs. Powers only received a dividend for a year and a half after her father's death and no dividend after she was married.

On page 1077, section 20, the Vice Chancellor is mistaken in stating that any stock of E. C. Hazard & Company was passed to Mrs. Powers on February 13, 1913, and we most respectfully submit that he is also mistaken in his statement, on page 1077, section 30, that Mr. Harry L. Powers, one of the defendant-appellants, was familiar in a general way with the factory and its output from boyhood.

On page 1078, sections 20, 30 and 40, reference is made to the Little Silver Sauce Company and we fail to see where his Honor, the Vice Chancellor, is justified in referring to the said company as a factor in this controversy, as the evidence is undisputed that the affairs of the Little Silver Sauce Company had long before been closed up and it was not an element in this transaction. It will be observed that Mrs. Hazard in her testimony keeps constantly repeating that she had no authority to sell personal property. But if she didn't have the authority how is it that she could give a bill of sale for this personal property to Matthes?

On page 1081 of the Vice Chancellor's decision, section 20, he says that Mrs. Hazard, for sentimental reasons, refused at this time an offer of $65,000 for the place. The proof is absolutely lacking that there ever was a genuine offer of $65,000 for the property in question.

On pages 1090 and 1091 the observations of the testimony of Mrs. Hazard that for $60,000 she intended to convey to Mr. Powers her residence, home, property, building, land, and everything except the horse and carriage and furniture, while the truth is that the horse and carriage was not excepted.

On page 1086 of the Vice Chancellor's decision the court, speaking of the meeting at the Fidelity Trust Company building, to close the title, said that Mr. Davis and Mr. Dickensheets represented Mr. Powers. This is an error. Mr. Davis was a layman, merely a friend, and Mr. Dickensheets was the settlement officer of the title company and represented no interest except the interest of the Fidelity Trust Company.

On pages 1090 and 1091 the observations of the court, we most respectfully submit, are not warranted by the evidence in the cause. Mrs. Hazard's affairs were in the most precarious condition; the business had virtually gone to pieces, and she was more than anxious to dispose of the same. Certainly the buildings and the ground, without the personal property claimed by Mr. Powers, would be of little value to carry on the business. As we have before stated Mr. Powers was not so thoroughly familiar with the property and the business; in fact, he had a very large business of his own. He was not dealing with an unprotected mother-in-law far advanced in years and of apparently very little experience, as the Vice Chancellor states on page 91, sections 10, 20 and 30. On the contrary, Mrs. Hazard shows all throughout this transaction that she was a woman in the very prime of life, astute, clever, so clever that she could consummate a transaction involving real estate and personal property and conceal from the party that she was doing business with the fact that she had already transferred a part of the personal property under consideration. She was at all times under the guidance and protection of her sons and business friends. With the greatest respect for the honorable court we insist that the language used on pages 1090, 1091 and 1092 of the decision, where it seems to be concluded by the court that Mr. Powers was taking advantage of the age and inexperience of Mrs. Hazard, was entirely unjustified. Mr. Powers being in business himself naturally would not want to go into this other large enterprise without he had money left to carry on the business.

On page 193 the Vice Chancellor lays great stress on the right to use the names Hazard and Shrewsbury. We fail to see how the good will of a business that is run down, or the right to manufacture goods under certain labels, could be of very much value when the business itself had gone to seed. Standing alone the use of the names Hazard and Shrewsbury were of but very little value. They become an asset entitled to serious consideration when they can be used in conjunction with a well equipped building, personal property and stock therein to conduct it, and capital to keep it going.

Again, on page 1093, the honorable Vice Chancellor makes use of the expression [Section 10] "Before the contracts were prepared Powers knew that Elmer Hazard, Matthes and the Little Silver Sauce Company claimed to own some, if not all, of the personal property that was in the factory." We fail to see where there is proof of this. In fact, on the contrary, the evidence throughout the case shows that Elmer Hazard never stated what his complaint was, nor Matthes either, until after the arrangement had been completed, and that Matthes's bill of sale had to be discovered by chance. The Little Silver Sauce Company couldn't have any claim to some of the personal property in the factory because there was no such a company in existence; it had been liquidated and closed up.

On page 1093, Section 20, the Vice Chancellor says "notwithstanding that Mr. Powers knew that Elmer Hazard, Matthes and the Little Silver Sauce Company claimed to own some if not all of the personal property that was in the factory, yet

he did nothing to have their property distinguished or separated from the very valuable property he thought Mrs. Hazard was selling him, although he knew that Elmer was dissatisfied over the sale and over the fact that it would oblige him to move from the factory." This is quite incorrect, first, because there was nothing to separate. Then again he was not familiar with conditions, and the very valuable property, as designated by the Vice Chancellor, which Mrs. Hazard was selling him, could not have been so very valuable or she would have been enabled to find a purchaser before.

Again, on page 194 [Section 40] the Vice Chancellor says that Mr. Powers was advised by two men, both familiar with closing titles, his relative, Mr. Davis, and Mr. Dickensheets of the title company. This is not correct. Mr. Dickensheets represented the Title company alone, and Mr. Davis was such an unimportant personage in the transaction that his whole testimony covers but five pages of the case, from 383 to 398, including direct, cross, redirect and recross.

On page 1095, Section 20, the language of the Vice Chancellor, in his decision, would lead one to suppose that the affidavit referred to was requested by Mr. Powers, while the evidence shows that Mr. Dickinsheets, of the Title company, suggested that.

Attention is called to Section 40 of the Vice Chancellor's decision [page 1095] in which reference is made to a new note, payable in eighteen months, which was valueless to Mrs. Hazard. But the Vice Chancellor refrains from stating, or forgets to state, that the note was paid by Mr. Powers.

On page 197 the Vice Chancellor does not state that the judgments against Mrs. Hazard were paid by Mr. Powers, but insists again that the lands and the buildings could have been sold for $65,000 to strangers, but for sentimental reasons was sold for a less sum to Mr. Powers. Again, we most respectfully submit, that there was no proof that this building could have been sold for $65,000 to strangers and that notwithstanding the honorable court seems to be impressed with the love and affection on the part of Mrs. Hazard towards her daughter and her son-in-law, Mr. and Mrs. Powers, from the beginning to the end of this case there is nothing to disprove that Mrs. Powers herself had the deepest love for her mother, Mrs. Hazard, and this was shared in by her husband, Mr. Powers.

The Vice Chancellor, in commenting on the case [page 1098] seems to forget that on the very night of the settlement Mrs. Hazard was claiming that notwithstanding Matthes and Elmer had some claim under some form on the personal property, she could control it, and that she would place Mr. Powers in possession of it.

In the concluding part of his decision [page 111] the Vice Chancellor uses these words: "The conclusion I have reached would not be altered if I found the false representation to have been made by Mrs. Hazard, because I also find, as I have stated, that Powers knew at the time they were made that they were false." We fail to see how the honorable Vice Chancellor can justify this finding. We submit not only that Powers did not know, but that there is no way that he could know.

On page 1099 the honorable Vice Chancellor speaks of Powers failure during the five years that have elapsed since the date of the original contract to take any steps to have the contract rescinded. We do not think that this should be considered at all in reaching a decision in this case. This was a family quarrel, evidently distasteful to the principal parties in this case, but fermented and advised by others. Mr. Powers's whole conduct from the very beginning of this business has been honorable, and he has shown a disposition to go to the limit of his resources in helping Mrs. Hazard out of her difficulties when those who are her close advisers now could not or would not assist her. Mr. Powers's failure, or rather reluctance, to do anything else but to defend his rights, under consideration here, is more to his credit than a subject of criticism.

As a summary of the whole case which is not disputed, we take the liberty of calling the court's attention to some of the salient features thereof. Mrs. Hazard did arrange with Mr. Powers that he should buy the place and business with two mortgages, so he could use his cash to run the business after it came into his possession, and he did expend many thousands of dollars in buying goods. In fact, more than $25,000 went out to farmers in the summer of 1913, for raw tomatoes. Mr. Powers would not have considered the purchase of this property except with two mortgages on it because he couldn't handle it in any other way. Mrs. Hazard knew it, as he needed the cash to carry on the business.

The furniture was also to be left in the house for their use, and not to become their property.

Therefore, when by the contracts Mr. Powers was to buy everything down there, it was considered only necessary to exclude one thing, namely, the furniture, which was done.

Mrs. Helen F. H. Boedelston, in her testimony [page 954] said: "The place was a big white elephant and Mr. Boedelston didn't want to own it even for $30,000. That was the amount of the first mortgage. Nor did he want my mother to own it, for it would have remained a big white elephant had not Powers purchased it. It would have brought very little under the hammer." Mr. Boedelston had already lost, in E. C. Hazard & Company, $22,000, and having had dealings with the Hazard family before he had lost it, it would hardly seem natural to assume that he would come forward with $30,000 for a property that was a white elephant; and what is more, if it was claimed he would have helped, why didn't he? We fail to find in any part of this case where Mr. Boedelston ever offered to redeem the jewelry of Mrs. Hazard or take care of any of the judgments.

Mr. and Mrs. Powers insist strongly that Mrs. Hazard's contention that she could have received help from Mr. Boedelston rests upon a very slight foundation, and they are substantiated by at least two witnesses, one of them Mr. Dickensheets of the Fidelity, being an entirely disinterested party.

Some comment has been made on the fact that stock which was issued to Elizabeth Hazard Powers was turned over to her husband, Harry Powers. There is nothing in this, because it was the most natural thing to do after Powers had

bought the property to turn over this stock on the day he had title. If it is true that on the 5th day of February Mr. Powers wanted to put both contracts on file and did not do so at the earnest appeal of Mrs. Hazard, giving as a reason that she did not want anyone to know how much she had received for the property, the question might be naturally asked: was this an evidence of good faith on the part of Mrs. Hazard or was she acting under the advice of someone who desired to injure Powers? If Mr. Powers had been a clever business man, a shrewd individual, a false friend and son-in-law of Mrs. Hazard, that the honorable Vice Chancellor would seem to make it appear he was, would he not instead of complying with Mrs. Hazard's wish and refraining from putting the contracts immediately on file, immediately have filed them the very day he received them, thus putting them ahead of the bill of sale of Matthes and thereby saving himself from all the trouble, expense and worry of this litigation? It would be observed that when Powers received the contract Matthes' bills of sale had not been put on file, and in fact were not filed until the 19th of February. The Vice Chancellor said that Powers attended at least one meeting after he contracted to buy this business. We fail to find any evidence of this on either side. On the contrary, Powers testified that it was over a year before he attended his first annual meeting. Powers was a very busy man and lived near the factory only in the summer, coming down from New York late Saturdays and returning Sunday evening or Monday morning. He knew very little about this business except to know that it was practically dead.

There has not been contradiction of the testimony of Powers and his wife that they both loved Mrs. Hazard and that they would have accepted almost anything she said as being true. When therefore Mrs. Hazard said that these goods had been given to Matthes to keep the Sheriff from taking them, and for her protection alone, both Mr. and Mrs. Powers believed them.

Attention just here is called to a very remarkable statement of Mrs. Hazard's [page] "How could I sell Mr. Powers's stuff that belonged to E. C. Hazard & Company?" Yet, after making this remarkable statement as an explanation of why she didn't sell the personal property, as Mr. Powers claimed, to him, she admits she did sell it to Mr. Matthes and took from him his note, and gave him a bill of sale, which was filed. The question naturally arises, if she couldn't sell it to Powers because she didn't own it, how could she sell it to Matthes? And does not this pretty clearly answer the query as to whether Mrs. Hazard was an unsophisticated, inexperienced business woman or not? Mrs. Hazard was but forty-nine years of age at the time it was claimed she sold these goods to Mr. Powers. She has shown herself all through this case a clever capable woman. When she testifies that there is a Little Silver Sauce Company she knows full well that she turned in the entire stock, as executrix of her husband's estate, in 1911, and that for years the concern was not doing business and had stopped, and that no new concern had ever been started to take its place. On cross examination she admits that she did not tell Mr. Powers about the two bills of sale running to Matthes on the

5th of February and that Mr. ~~Matthes~~ Powers didn't know about their existence until notified by the Fidelity Trust Company. In view of this how can it be said that an inexperienced, innocent woman, was being taken advantage of by Mr. Powers.

It seems for the time being the great one and important question in this case is whether Mrs. Hazard did not sell to Mr. Powers the personal property he claims she did, the personal property she has conceded was absolutely necessary for him to have in order to do business, and without which his factory and land therein would be practically useless. We are nevertheless confronted with the bald proposition that Mrs. Hazard did not inform Mr. Powers of the true condition of that business or property; that she concealed it from him either by reason of her own shrewdness, or acting under the advice of a person or persons more shrewd than her, and endeavored to induce him, and did induce him, to purchase substantially the factory and buildings while she secretly kept from him the knowledge as to the condition of the personal property which she knew he absolutely needed to carry on his business. When he was informed of the true conditions that information came to him not from Mrs. Hazard, nor from her sons, nor from her advisers, but from an independent source, namely, the Fidelity Trust Company. From the very beginning to the end of this transaction this action on the part of Mrs. Hazard stands out alone, conspicuous and indefensible, and should, we submit, throw much light as to which of the parties in this transaction was telling the truth.

It is well to bear in mind, while we are on the

subject of the bill of sale to Matthes, that according to his own testimony [page 455] he first became acquainted with Mrs. Hazard and with Elmer Hazard, her son, in 1912, and previous to this time he was not in the business or known by any of the Hazard family. He admits, furthermore, that no one mentioned the words bill of sale at the meeting at the Astor House, referred to by all the parties. On page 426 he contradicts Mrs. Hazard's testimony as to why Joyce happened to be there. On page 434 Matthes admits his fire insurance policy ran out, but does not remember the amount of fire insurance he carried. The truth is he didn't carry any fire insurance. On page 442 he says he bought from Mrs. Hazard the goods in the factory for $10,000, after he had decided to take the balance of the goods in the factory for $2,000, without mentioning what other goods there were for which the $2,000 additional was to be paid.

We must respectfully submit, therefore, that a full consideration of this case does not justify the Honorable Vice Chancellor in concluding that Mrs. Hazard did not make the representations alleged or in saying that from Powers' knowledge of the facts and circumstances he was not deceived by anything Mrs. Hazard said. On the contrary, we respectfully insist that the only fair inference to be drawn from all the evidence in this case is that Mrs. Hazard had the real and personal property and the good will of her business, which had depreciated greatly in value, with no immediate prospects of reviving it; that in a very short time she would be without real estate or any personal property of any kind or

description; that the so-called good will, trade-marks and labels would soon have become almost valueless; that notwithstanding repeated efforts made by her to raise money she was steadily going behind, her jewelry in pawn, judgments accumulating against her and credit at a low ebb; that in her despair she turned to Mr. Powers, her son-in-law, for help, and finding that he could not advance the cash necessary to carry on the business, they entered into an agreement by which he could take over the business and have some money to carry it on; and acting in good faith he attempted to take possession of his property, and suddenly found himself in a dispute with his wife's relatives. Acting in good faith he has spent thousands of dollars which the complainant now seeks to make a total loss. We do not believe that an impartial consideration of the testimony in the case, which for many reasons has been pending for a long period, justifies the conclusion of the honorable court from which this appeal is taken.

CONCLUSION.

It is insisted that the defendant-appellant Harry L. Powers should be awarded by way of set-off the various items and allowances which have been presented in detail. A decree comprehending them seems to us to be justified by the facts and in harmony with the equities which govern the case.

Respectfully submitted,

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