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Notice of Appeal.

In Chancery of New Jersey

Between	}	71-517. On Bill, etc. Notice of Appeal.	10
PATRICK KANE, Complainant,			
<i>and</i>			
JAMES F. KANE, Defendant.			

The complainant, Patrick Kane, hereby appeals from the final decree made in the above entitled cause on the 12th day of November, 1929, and advised by Hon. John J. Fallon, V. C., and from the whole and every part thereof to the Court of Errors and Appeals in the last resort of all causes. 20

Dated December 3rd, 1929.

To the above named Defendant, or David A. Newton, his solicitor.

RICHARD DOHERTY,
Solicitor for and of counsel
with complainant. 30

I conceive that there is good cause for appeal in the above entitled cause.

RICHARD DOHERTY,
Of Counsel with complainant. 40

Petition of Appeal.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	PATRICK KANE, Complainant-Appellant, <i>vs.</i> JAMES F. KANE, Defendant-Appellee.	} On Appeal from the Court of Chancery. } Petition of Appeal.
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20 *To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:*

The petition of Patrick Kane, the appellant in the above entitled cause, respectfully shows that:

- 30 1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, as advised by Hon. John J. Fallon, V. C., bearing date November 12th, 1929, in a certain cause in said Court of Chancery wherein the said Patrick Kane was complainant and the said James F. Kane was defendant, in this respect, to wit, that the said decree dismissed the bill of complaint, as amended, of the said complainant, whereas in equity and good conscience said decree should have adjudged that the alleged deed, vesting a joint tenancy in the complainant and defendant of the premises described in the bill of complaint, should have been so reformed as to express that the defendant had no right, title or interest in said premises during the life-
- 40 time of the complainant, and that he should have

Petition of Appeal.

been enjoined from exercising during said period the rights or privileges of a joint tenant.

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

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RICHARD DOHERTY,
Solicitor for and of counsel
with Appellant.

Bill of Complaint.

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

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The complainant, Patrick Kane, of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

1. May 12th, 1908, the complainant, Patrick Kane and Mary Kane, his wife, were seized in fee simple as tenants by the entirety of certain lands and premises in Jersey City conveyed to them on the date aforesaid by deed of Margaret Tremper, recorded in the office of the Register of Hudson County in Book 1010 of Deeds, page 270, and which premises are described as follows:

30

BEGINNING at a point in the southerly line of Ninth Street, distant seventy-five (75) feet westerly from the southwesterly corner of Monmouth Street and Ninth Street; thence running southerly and parallel with Monmouth Street to, through and beyond the center of a party wall standing partly on the premises hereby conveyed and partly on the premises next adjoining easterly thereto fifty

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Bill of Complaint.

10 (50) feet; thence westerly and parallel with Ninth Street twelve (12) feet, six (6) inches; thence northerly and parallel with Monmouth Street, to, through and beyond the center of the party wall standing partly on the premises hereby conveyed and partly on the premises next adjoining westerly thereto fifty (50) feet to the southerly line of Ninth Street, thence easterly along the said southerly line of Ninth Street twelve feet six (6) inches to the point or place of BEGINNING.

20 March 23rd, 1914, the complainant and his said wife were likewise seized in fee simple as tenants by the entirety of certain other lands and premises in Jersey City adjoining those last described, which premises were conveyed to them on said date by deed of Mary St. John, recorded in the office of the Register of Hudson County in Book 1178 of Deeds, page 393, and which premises are described as follows:

30 BEGINNING at a point in the southerly line on Ninth Street distant sixty-two feet six (6) inches westerly from the southwesterly corner of Monmouth St. and said Ninth Street; thence running southerly and parallel with Monmouth St. fifty (50) feet; thence westerly and parallel with Ninth Street twelve (12) feet six (6) inches; thence northerly and parallel with Monmouth Street to, through and beyond a party wall standing partly on the premises herein conveyed and partly on the premises next adjoining westerly thereto fifty (50) feet to the southerly line of Ninth Street; thence running easterly along the said southerly line of Ninth Street twelve (12) feet six (6) inches to the point or place of BEGINNING.

40 2. The complainant and his said wife continued to be so seized of the premises both described

Bill of Complaint.

until the death of his said wife, which occurred December 24th, 1923, whereupon the fee to the same vested solely in the complainant. The complainant was then of the age of about 65 years, had been married to his said wife for about 22 years, and there were born of a previous marriage three sons, John Kane of the age of 33 years, Patrick Kane of the age of 24 years, and the defendant, James F. Kane, of the age of 34 years. During the lifetime of complainant's wife they resided together, their children residing elsewhere, and the complainant's said wife attending to the conduct of the complainant's home. 10

3. Upon her death the sorrow of the complainant was extreme, and his said wife having been his sole and intimate companion, as well as the mistress of his household, the complainant was completely bewildered as to what course to adopt in the direction of establishing a future home with the ordinary accompaniments of home life. The complainant was, and still is, wholly illiterate beyond the ability to scribble his own name, in which regard he has never acquired a proficiency to spell his first name correctly, his ability being limited to the spelling of Patrick in the form of "Patt". His said wife was a woman of much higher intelligence and greater education, and during her lifetime was the adviser of the complainant in all such business affairs as he ever attempted. The employment of the complainant was always at manual labor, having worked in the freight department of the Old Dominion Steamship Line for upwards of 30 years at small wages. The persistency of his toil, and the necessity of close application to his work, in order to fulfill his obligations towards the maintenance and education of his family which consisted of 20 30 40

Bill of Complaint.

his said wife and three sons, as well as his illiteracy, kept the complainant at all times in ignorance of the affairs of business and the existence and operation of legal principles. On the contrary, his son, the defendant, James F. Kane, who was then of the age of about 34 years had been provided with a good education, was a man of far higher intelligence than the complainant, had been raised in Jersey City in association with others of business training and knowledge, and had acquired an insight into the application of law to matters of business and real estate conveyances.

4. A few days after the death of the complainant's wife, and while the mental state of the complainant was benumbed with sorrow and worry as to his future arrangements, the defendant, James F. Kane, approached him, and professing greatly to sympathize with his desolate condition and asserting an earnest and filial interest in the complainant's future ease and comfort, proposed to him that he, the defendant, should take up his home with the complainant, and relieve his solitude and worry. In the complainant's unhappy condition he accepted the proposal of the defendant, and told him that he would welcome the kindness that was suggested. In the conversation which followed, the defendant further proposed that their mutual relations would be closer, and more satisfactory, if the complainant would execute a deed of the two parcels of property above described, whereby the same, upon the death of the complainant, would devolve wholly upon the defendant, James F. Kane, to the exclusion of the complainant's other two sons. The proposal was repeated by the defendant over and over, and he

Bill of Complaint.

laid stress upon the fact that he did not seek, and would not interfere with, the complainant's ownership and management of the property during his lifetime, but sought merely an arrangement whereby, upon the complainant's death, the property would go exclusively to himself. The conversation was had between the complainant and the defendant while they were entirely alone, and the defendant urged that the matter would be arranged without any loss of time. So distracted was the complainant by his fresh bereavement, and so inferior was his intelligence in contrast with that of the defendant, that he was unable to offer any argument in objection to the defendant's demand, and, yielding to the pressure imposed by the latter, he consented to sign a deed, the effect of which would be that the complainant's complete ownership, control and power of disposal over the said two pieces of property during his lifetime would be unaffected, but that after his death the said property would vest in the defendant. At the time when such consent was given, the complainant rested under no financial obligations to the defendant, but on the contrary the defendant's past conduct towards the complainant and his said wife had been, in a great measure, lacking in affection and natural devotion, and had been characterized by selfishness and disrespect. 10
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5. On the day following the conversation last recited, the defendant went to the office of Richard Doherty, counselor at law, and informed the latter that he had been sent by the complainant to direct the drawing of a deed, whereby the property would be held jointly by the complainant and the said defendant, to the end that, upon the complainant's death, the same would devolve entirely 40

Bill of Complaint.

upon the defendant. Following such consultation, the defendant returned to the complainant, and told him that he had directed the said Richard Doherty to draw such papers as would be necessary to insure the vesting of the property in the defendant after the death of the complainant, but which would likewise operate to give the complainant complete ownership, control and power of disposal during his lifetime; and thereupon represented to the complainant that the said Richard Doherty had undertaken the drafting of such a deed, and that the same would be presently ready for execution. Acting upon such instructions received through the defendant, and so represented to come from the complainant, the said Richard Doherty prepared two deeds conveying the said two tracts, one in which the complainant, as grantor, conveyed both parcels in fee simple to William P. Gannon, unmarried, (an attorney in the office of the said Richard Doherty) and the other whereby the said William P. Gannon, as grantor, conveyed the said two parcels to the complainant and the defendant as joint tenants, and not as tenants in common. Both said deeds bear the date of January 3rd, 1924, the first of which was recorded in the office of the Register of Hudson County in liber 1516 of deeds, page 24, and the second of which was recorded in said office in liber 1516 of deeds, page 25.

6. At the time of the execution of said deeds the said Richard Doherty, who was then unaware of the fact and character of the conversation which had taken place between the complainant and the defendant respecting said transaction, and likewise unaware of the complainant's illiteracy, explained to the complainant that said transaction

Bill of Complaint.

constituted the complainant and the defendant as joint tenants of the property, and that upon the death of either the property would be owned by the survivor. It was likewise explained by him that in the event of the marriage of either of the parties, the wife of such marrying owner would have no dower right in the premises. There was no inquiry made by the complainant, nor any information given, as to the right of the defendant to exercise any control over the property during his lifetime, he refraining from making such inquiry as to the legal effect of the deed, because of the assurance given to him by the said defendant that he did not design to interfere with his complete control and power of disposition so long as he lived, and because of his further assumption that the said defendant had truthfully stated to the said Richard Doherty what the design of the complainant was in respect thereto. 10
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7. This complainant in the giving of the consent heretofore stated, in his attendance at the office of the lawyer as above described, in the signing of the said conveyance to William P. Gannon and in his approval of the said deed by Gannon creating a joint tenancy in the defendant and himself, was the victim of the defendant's false representation that he did not desire or design to exercise any control over the said premises during the lifetime of the complainant, and the further false representation that he had fully disclosed to the said Richard Doherty that the arrangement was that the complainant would retain complete control of the property as the result of his transaction with the defendant; at the time of the signing of the deed, relying upon such representations to him by the defendant, the complainant assumed that the said Richard Doherty was 30
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Bill of Complaint.

aware of the complainant's intention, and that he had drafted the deeds in such form as to carry the same into effect.

8. Since the execution of the said deeds the complainant has solely defrayed all the charges
10 in the way of taxes, water rents, etc., levied against the property, except the sum of \$38 which the defendant volunteered to pay, and which payment he used as the opportunity for directing the municipal authorities to change the record as to the ownership of the property so as to have it appear that the said defendant was owner thereof. Said payment was made by the defendant at the
20 time when he was heavily indebted to the complainant for board and lodgings which he had while living with the complainant from the time of the death of the complainant's wife in December, 1923, until the marriage of the defendant, about June, 1926.

9. After the defendant's marriage, he removed from the household of the complainant, and the latter was obliged to engage a housekeeper for the management of the same, which housekeeper in March, 1928, left the complainant's service, and thereafter the complainant was
30 without the benefit of home life. Thereupon the defendant proposed to the complainant that the defendant and his wife should come to live with the complainant, and that in consideration of their rent being fixed at the low figure of \$30 per month (the premises then having a rental value of \$40 per month), they would supply the complainant with free board. This arrangement was acceptable; the defendant and his wife moved in, and on April 9th, 1928, paid the complainant in
40 advance \$30 as rent. Upon the third month's

Bill of Complaint.

rent falling due on June 9th, 1928, the defendant refused to pay the same unless the complainant agreed to pay \$10 per week board. To this the complainant assented, and on the following Monday the defendant demanded of the complainant the amount of the board money in cash. The complainant stated that he would be satisfied to have the rent set off against the board money, whereupon the defendant became enraged, insulting and violent, ordered the complainant out of the house, called him a "skunk", opened the door and commanded the complainant to leave, threatening that in the event of his refusal he would throw him out and his clothes after him. The complainant, in fear of bodily harm at the hands of the defendant, left the house, and has not returned to the same, and the said premises, being the parcel secondly described herein, have been hitherto in the exclusive possession and enjoyment of the said defendant. The taxes and water rents falling due thereon have been defrayed by the complainant.

10. The said defendant falsely claims and pretends that by reason of the said conveyances he has a present ownership, title and right to the possession and enjoyment of not only in, to and of the premises which he now occupies, which is known as street number 329 Ninth Street, being the premises secondly described herein, but that he likewise has a title, interest and right of enjoyment in, to and of the premises firstly described herein, and known as street number 327½ Ninth Street, which interest, right to possession and enjoyment he may freely exercise during the lifetime of the complainant; whereas this complainant avers that said deeds are, and should be declared to be, void and of no effect, because of

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Bill of Complaint.

10 the mistake and ignorance of the complainant as to the legal effect thereof, which error and mistake were induced by the false representations of the defendant, his concealment from the scrivener of the purpose of said transactions, and the harsh and inequitable importunity and pressure of the defendant as herein set forth, and the complainant further avers that the defendant from the outset fraudulently and secretly designed, through the making of such proposal and misrepresentations, to defraud the complainant of the complete control, management and power of disposal of said property which he acquired through the death of his said wife.

20 The complainant has no adequate remedy at law, or elsewhere, but in this honorable court.

The complainant prays that a writ of subpoena may issue, directed to the said James F. Kane, defendant, that he may be required to answer this bill of complaint; that the said deeds herein described respectively from the complainant to William P. Gannon and from the said William P. Gannon to the complainant and defendant may be declared to have been obtained by the defendant fraudulently, and through a mistake as to their legal effect promoted in the mind of the complainant by the said defendant; that they may be declared to be void and of no effect and the same decreed to be cancelled; that the defendant may, during the pendency of this suit and permanently, be enjoined from occupying or exercising any control over the premises in said deeds described, or in any wise interfering with the ownership and enjoyment thereof by the complainant; that a receiver may be appointed during the pendency of this suit to receive and collect from the defendant the amount of the rent so agreed by him to be

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Bill of Complaint.

paid, and that the complainant may have such other and further relief as the Court may seem just.

And the complainant will ever pray, &c.

RICHARD DOHERTY,
Solicitor for, and of Counsel with,
Complainant. 10

Answer.

IN CHANCERY OF NEW JERSEY.

Between PATRICK KANE, Complainant, <i>and</i> JAMES F. KANE, Defendant.	}	20 71-517. On Bill, etc. Answer.
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The answer of James F. Kane, defendant, to the bill of complaint of Patrick Kane, complainant. 30

This defendant James F. Kane, answering the bill of complaint, says that:

1. He admits paragraph 1, except that for the exact tenor and effect of said deeds he prays reference thereto when produced and proved before this honorable Court.

2. He admits paragraph 2, except that he says that he is 39 and not 34 years old, and except that 40

Answer.

10 he says that he did not live with his father and stepmother while in the Regular Army of the United States in this country and in France from 1913 to March 3, 1920, but that on being mustered out of the army on the latter date he went to live with his father and stepmother and resided with both until the latter's death on December 24, 1923, and with his father until July 31, 1926.

3. He denies paragraph 3, except that he admits that his father cannot read and can only write his name; and he further says that he (this defendant) is a chauffeur and is now employed as a chauffeur's helper. He admits that complainant was employed for many years in the freight department of the Old Dominion Steamship Line.

20 4. He denies paragraph 4, and further says that the said deeds were made on the suggestion of complainant and that on the death of his stepmother he and his father continued to live together and at the suggestion of his father this defendant contributed to a common fund for the maintenance, repair and upkeep of said lands and premises described in paragraph 1 of the bill; that defendant did so contribute and in order not to deplete his father's money in bank this defendant
30 paid the funeral expenses of his stepmother and a balance due on the funeral of his own mother and divers repair bills for said premises and a bill for a cemetery monument; and that the taxes and other charges on said premises were paid from said common fund until complainant ordered this defendant, without cause, from said premises.

40 5. He denies paragraphs numbered 5 and 6, except that he says that complainant was in frequent consultation with said Richard Doherty

Answer.

before and after the death of defendant's stepmother, said Doherty being attorney for his stepmother in a personal injury action, and except that he admits the drawing and execution of said deeds by and in the presence of said Doherty.

6. He denies paragraph 7. 10

7. He denies paragraphs 8 and 9, except that he admits that he paid the taxes on said land and premises for the year 1927 and divers other water bills, repair bills and other maintenance charges.

8. He denies paragraph 10.

9. And for further answer this defendant says that on his return from the army as aforesaid he resided amicably with his father; that on the death of his stepmother on December 24, 1923, he continued to reside with his father; that he and his father both contributed to a common fund for living expenses and for the maintenance, repair and upkeep of said premises, and part of said common fund was banked in a joint account in the name of his father and himself; that this defendant contributed from \$30 to \$35 a week to said common fund from shortly after the death of his stepmother until July 31, 1926, except for a period when defendant was ill; that this defendant was married on July 11, 1926, and this defendant and his wife continued to reside with his father until on July 31, 1926, complainant, without cause, ordered this defendant and his wife out of the house; that defendant and his wife left and remained away until June 27, 1927, when, at the solicitation of his father, he returned with his wife to 327½ Ninth Street, one of the premises described in the bill, his father living with a housekeeper in the adjoining premises, 329 Ninth 20
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Answer.

Street, being the other premises described in the bill; that on March 16, 1928, complainant dismissed his housekeeper and asked this defendant to move into 329 Ninth Street with his wife and live with complainant, which this defendant did and where he still resides; and that in June, 1928,
10 complainant remarried and went to live with his third wife in premises owned by her at 288½ Ninth Street, Jersey City, New Jersey.

10. And this defendant further answering says that said arrangements between his father and himself were fully disclosed to said Richard Doherty by this defendant and his father; that this defendant concealed nothing from said Doherty or from his father; that said deeds of January 3, 1924, from complainant to said William P. Gannon and from said Gannon to complainant and defendant as joint tenants were made at the
20 suggestion of complainant upon the advice of said Doherty and after full disclosure to him by this defendant and his father of all the facts and circumstances and that both complainant and defendant acted and relied upon said deeds and jointly maintained said premises until July 31, 1926, when complainant ordered defendant and his wife from said premises, and then, for the
30 first time, claimed that this defendant had no rights whatever in said premises; that complainant again lived with defendant from March 16, 1928, to June, 1928, when complainant remarried; and that from June 27, 1927, until June, 1928, complainant and defendant jointly maintained said premises; and that the first intimation that defendant had that his father claimed that he was entitled to the exclusive control and possession of
40 said premises was derived by this defendant from the bill of complaint in this cause.

Answer.

11. And this defendant further answering says that he disclaims any right to the exclusive possession of said premises and says that his rights and obligations with respect thereto are only as joint tenant with his father.

12. And this defendant further answering says that he has expended large sums of money for account of his father and for the maintenance, upkeep and repair of said premises. 10

13. And this defendant further answering says that complainant is in gross laches; that his alleged rights, if any, accrued on July 31, 1926, and that complainant has slept on his alleged rights since that time.

14. And this defendant further answering says that on the facts and deeds aforesaid recited the complainant is estopped in equity, by deed and *in pais*, from maintaining his said bill of complaint for the relief prayed therein or any relief against this defendant. 20

15. And this defendant further answering says that under the statute of New Jersey, commonly called the Statute of Frauds, complainant is barred of any relief against this defendant by reason of any pretended agreement, contract or trust concerning the lands mentioned in the bill of complaint. 30

16. And this defendant further answering says that the said bill of complaint on its face discloses no cause of action warranting the relief prayed in said bill or any relief against this defendant; and he prays the same advantage as if he had demurred or objected in point of law to said bill.

17. And this defendant further answering says that the said bill of complaint is not drawn accord- 40

Answer.

ing to the rules and practice of this Court and does not state a cause of action cognizable in a Court of Equity.

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DAVID A. NEWTON,
Solicitor for and of counsel
with defendant.

Replication.

IN CHANCERY OF NEW JERSEY.

20	Between PATRICK KANE, Complainant, <i>and</i> JAMES F. KANE, Defendant.	}	Replication. On Bill, etc. 71-517.
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For replication the complainant joints issue on the answer of the defendant.

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RICHARD DOHERTY,
Solicitor of Complainant.

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Minutes of Final Hearing.

IN CHANCERY OF NEW JERSEY.

Between PATRICK KANE, Complainant, <i>and</i> JAMES F. KANE, Defendant.	71-517. On Bill, etc.	10
Minutes of Final Hearing.		

Final hearing before Hon. JOHN J. FALLON,
 Vice-Chancellor—Chancery Chambers, Jersey
 City, October 23, 1929.

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Appearances:

Mr. RICHARD DOHERTY, for Complainant.

Mr. DAVID A. NEWTON, for Defendant.

The Court: You may proceed. I have
 read the pleadings.

30

COMPLAINANT'S CASE.

PATRICK KANE, being sworn.

Direct examination by Mr. Doherty:

Q. Mr. Kane, you are the complainant who
 brings this suit, are you? A. Yes, sir.

Q. And you are the father of the defendant
 James F. Kane? A. Yes, sir.

40

Patrick Kane, Complainant—Direct.

Q. How old are you? A. Going on seventy.

Q. Where were you born, Mr. Kane? A. In Ireland.

Q. When did you come to this country? A. I come in 1888—the year 1888.

10 Q. Can you tell us what your age was at that time? How old were you when you came? A. I couldn't tell you exactly.

By the Court:

Q. Can you tell us about how old you were? A. I was about twenty-five.

Q. That was 1886? A. 1888.

By Mr. Doherty:

20 Q. Up to that time you lived in Ireland? A. Until I came here.

Q. You did not travel around? A. No. Ever since I come to this country I have lived here in Jersey City.

Q. Will you tell the Court, Mr. Kane, what education you had? A. I have no education.

Q. Did you go to school at all? A. I did not. There was no schools around our place at that time.

30 Q. Are you able to read and write? A. No, sir; I can't read or write.

By the Court:

Q. Can't read anything? A. No, not handwriting; I can't do it.

Q. And you are 41 years in this country? A. Yes, sir.

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. What has been your ability to write your name? A. You see I can sign my name "Patt" but I can't write my name in full.

Q. You can't write that? A. No, sir.

Q. When you came to this country were you married? A. No, sir; I wasn't. I got married right after. 10

Q. When you came here what sort of work were you engaged in? A. I was a freight handler for the Erie.

Q. How long did you work there? A. I was seven years there and went with the Pennsylvania Railroad. I was working there at the time of the Spanish-American War, and after that I went back to the Old Dominion. 20

Q. What kind of work did you do for the Pennsylvania Railroad? A. Freight handling.

Q. Labor work? A. Yes.

Q. And in the Old Dominion Line? A. Laboring work—loading ships.

Q. Were you what was known as a longshoreman? A. A longshoreman, yes.

Q. You are married at the present time, are you? A. Yes, sir.

Q. How many times have you been married? A. This is the third time. 30

Q. When did you marry the first time, can you tell us? A. Over 25 years—over 20 years. Over 25 years.

Q. Is it true you have sons around 40 years of age? A. I have three sons.

Q. I am asking you the time you got married first. If you can't tell us, don't undertake to tell us. Can you give us the year you first got married? A. I didn't keep track of the years. 40

Patrick Kane, Complainant—Direct.

By the Court:

Q. How long were you in Jersey City before you became married? A. Two years.

Q. You were about 27 years old? A. Yes, sir.

By Mr. Doherty:

10

Q. You are telling us you are 70 years old and also announced you were about 27 years old when you were married. Can you tell us from that how long you were married? A. No, sir.

Q. You haven't got that mathematical ability? A. No, sir.

The Court: Why do you say he is 70? He is 66. He said he was 25 when he came here and he was here 41 years.

20

The Witness: Going on 70.

By Mr. Doherty:

Q. Do you remember the date when your first wife died? A. No, I don't remember that either.

Q. You have told us it was around the year of the Spanish-American War? A. She was dead at that time.

30 Q. Do you know the year in which the Spanish-American War was declared? A. I don't remember that either. I haven't kept track of that. I wasn't educated to keep track of that in my head.

By the Court:

Q. You could read the newspapers? A. No, I couldn't.

By Mr. Doherty:

40 Q. Were you able to read newspapers? A. No, sir.

Patrick Kane, Complainant—Direct.

By the Court:

Q. You vote, don't you? A. Oh, yes.

Q. You sign your name to the registry list? A. Patt. I can't write it full. I can spell it, all right, but I can't write.

10

By Mr. Doherty:

Q. You say that you worked for the Old Dominion Line. For how many years did you work for them? A. Well, thirty years.

Q. Until what time did you work for them? A. I worked last December.

Q. Then what happened? A. The old people, you know, the Old Dominion, they sold during the war. They sold the line and wouldn't take the line back until they got other people with them.

20

Q. What happened to you? A. We were working there. When the new people took it they got their own pier and cut out the Old Dominion.

Q. And you were put out? A. Yes, I was one who was put out.

Q. How long were you out of work? A. Nine months.

Q. Have you another occupation? A. I am working now.

Q. Where are you working? A. The Seaboard.

30

Q. Doing what kind of work? A. Cleaning up the building, going through the rooms—the fruit rooms and the cheese rooms, keeping them clean.

Q. Do you remember what your wages were during those different occupations? A. We were paid twenty-seven dollars a week.

Q. Take, first, the Erie. How much did you get at the Erie? A. Twenty-five or thirty a week.

Q. Did you get that when you worked for the Erie? A. When I worked for the Old Dominion. On the Erie it was only seventeen cents an hour.

40

Patrick Kane, Complainant—Direct.

Q. Can you remember how much you got from the Erie on your first job? A. Seventeen cents an hour.

The Court: How am I concerned with that?

10 Mr. Doherty: To show the capacity of his mind.

Mr. Newton: There isn't any charge in the bill.

The Court: As long as counsel wants it.

By Mr. Doherty:

Q. Can you recall what you got when you worked for the Pennsylvania? A. The same thing—seventeen cents an hour.

20 Q. What were your wages in the Old Dominion? A. The wages in the Old Dominion were fifteen dollars a week and thirty cents an hour for Sundays and holidays.

By the Court:

Q. What time are you talking about? A. When I worked for the Old Dominion.

Q. When did you leave the Old Dominion? A. Last December.

30 Q. You certainly got more at that time? A. Yes.

Q. For a good many years past you got one dollar an hour as longshoreman? A. No—seventy-five cents an hour.

Q. Longshoremen's pay is one dollar per hour and was for the past fifteen years? A. We didn't get that. We weren't around the river front at all. We stood in the one place.

By Mr. Doherty:

40 Q. Now, going back to your first marriage. Your wife's name was Bridget? A. Bridget Talty.

Patrick Kane, Complainant—Direct.

Q. Were any children born of that marriage?

A. I had three.

Q. Were they boys or girls? A. Three boys.

Q. Can you tell us the year in which they were born—their ages? A. I couldn't tell you.

By the Court:

10

Q. Who was the first born? A. There is the first over there (indicating).

Q. What is his name? A. James.

By Mr. Doherty:

Q. Who was the next child? A. Johnnie Kane.

Q. And the last one was whom? A. Patty.

Q. Are all three alive now? A. The three are alive, and none of the three—

20

The Court: You are only asked whether they are alive. Counsel will bring that out.

By Mr. Doherty:

Q. Can you tell us the ages of those three boys at the present time? A. I could not.

Q. Don't you know about how old James is? A. Going on forty, I guess.

By the Court:

30

Q. It is said in the amended answer he is thirty-nine. Is that about his age? You said about forty. A. Something around that.

By Mr. Doherty:

Q. No children were born of the second marriage? A. No, sir.

Q. And you were married the third time in 1928? A. Yes.

40

Patrick Kane, Complainant—Direct.

Q. Where were you living during the upbringing of those boys, in Jersey City? A. In Jersey City; yes, sir.

10 Q. And referring particularly to James, what was the character of his education that you supplied him with? A. He ain't got much education. He went wild around the city and went on the bum.

Q. You sent him to school, didn't you? A. Yes. Sure enough.

Q. What school? A. He was going to 21, I guess.

Q. And how many years did he go to 21 School? A. He was going four or five years, I guess. You know, when their mother died——

20 Q. Never mind that now. Do you know whether James can read or not? A. Yes, he can write and read a little more than I can.

Q. At what age did James go to work? A. About fifteen or sixteen years of age when he went to work.

Q. Do you know what kind of work? A. In the Wells-Fargo.

Q. Doing what? A. A helper on one of the trucks.

30 By the Court:

Q. Freight handling? A. Yes.

By Mr. Doherty:

Q. You mean a freight handler or a helper on the wagon? A. He was on the wagon with the driver.

Q. Extra driver? A. Yes.

40 Q. Do you know how long he did that kind of work? A. He was there until he went—he got laid off, I don't know how, but he went on the bum

Patrick Kane, Complainant—Direct.

around Jersey City and never came near us at all. Then he goes and joins the Army.

Q. Do you know of any earlier occupation that James had? A. No. Yes; he was on the bum, and I brought him to the Old Dominion, and he worked there four or five years.

Q. Doing what kind of work? A. Pulling a hand truck. 10

By the Court:

Q. You mean a longshoreman? A. Yes. And he turns around and drops that, and he goes and joins the Army. He went down to Texas.

Q. Do you remember about what year that was he joined the Army? Was it before the war? A. Oh, yes, it was before the war he went.

Q. Can you give the Court some idea of his age when he went into the Army? A. I couldn't tell you. 20

Q. Was he a full grown man? A. Yes, he was a full grown man at the time, and he goes into the Army and never wrote to know whether I was living or dead. He went a broker and came back a broker.

Q. How long was he gone? A. He was gone seven years.

Q. Can you tell us when he came back? A. After the war was over. 30

Q. Can you tell us what year it was? A. I can't tell you, your Honor.

Q. Do you know how long after the war he came back? A. About a month or two after the war was over, I guess he came back.

Q. You say when he came back he was in funds? A. No, sir; he had nothing only what he brought with him on his back.

Q. Where did he settle when he came back? A. He settled with me. 40

Patrick Kane, Complainant—Direct.

Q. You were then married to your second wife, Mary? A. Yes, sir.

Q. And were living on Ninth Street? A. 329 Ninth Street.

10 Q. Suppose we stop at this point and ask you when you got the house 329 Ninth Street. When did you acquire that? A. I don't know what year. The old man can tell you. I bought that place from John Gannon & Sons.

Q. You remember you bought two places? A. Yes, sir.

Q. And do you remember the names of the parties who deeded it to you? A. Yes, sir.

Mr. Newton: The bill sets them out.

The Court: Why not offer the deeds?

20 Mr. Newton: No objection.

Mr. Doherty: There is offered and admitted in evidence deed, Margaret Tremper to Patrick Kane and Mary Kane, his wife, conveying premises on the southerly side of Ninth Street known as 327½ Ninth Street, dated May 12, 1908, and recorded in Book 1010 of Deeds on page 270 on May 13, 1908.

30 (Deed marked Exhibit C-1 in evidence.)

Mr. Doherty: There is also produced and admitted a deed, Mary St. John, widow, to Patrick Kane and Mary Kane, his wife, conveying premises on the southerly line of Ninth Street and known as 329 Ninth Street adjoining the premises conveyed in the preceding deed, dated March 23, 1914, recorded March 27, 1914, in Book 1178 of Deeds, page 393.

40 (Deed marked Exhibit C-2 in evidence.)

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. With whose funds were those two pieces of property purchased, Mr. Kane? A. Mine.

Q. And you got the money through the saving of your earnings? A. My own savings.

Q. Did you still own the both pieces of property at the time that James returned from the Army? A. I certainly did. 10

Q. Were the premises at that time subject to any mortgage? A. No mortgage; but when I bought the first one Mr. Richardson down on Montgomery Street had a mortgage of \$700.

Q. And you paid that off? A. Yes.

By the Court:

Q. Did you give a mortgage on the property when you bought the other one? A. No. There was a mortgage on it of \$700.00. 20

By Mr. Doherty:

Q. And the property is still free and clear? A. Yes, sir; there is no mortgage on any part of it.

Q. What was the type of buildings there? A. Two one-family houses. 30

By the Court:

Q. Brick or frame? A. Frame.

By Mr. Doherty:

Q. Built together? A. Built together. A stoop for each house, you know.

Q. And the property has not much frontage, has it? A. No.

Q. Each house is 12 feet 6 inches wide? A. The sidewalk covers the both fronts. 40

Patrick Kane, Complainant—Direct.

Q. Is it true the two houses together have a combined frontage of 25 feet? A. Yes.

Q. When James returned from the Army and came to live with you and your second wife, where were your other two sons? A. They were away. One of them joined the Navy and he
10 stopped out west and got married out west.

Q. That was John? A. Yes. And he never came in since he went away.

Q. What was the connection of Patrick when James came home from the Army? A. He was married.

Q. So you and your wife were living alone until James returned and joined the family circle? A. Yes, sir.

Q. What employment did James get after that?
20 A. He went to work in the Wells-Fargo Express after he came back from the Army.

Q. Doing what kind of work? A. A helper on the wagon; a driver's helper.

Q. Did he live with you up to the time of the death of your wife? A. Yes, sir.

Q. Continually? A. Yes, sir.

Q. Did he pay any board? A. Yes, he paid ten a week.

Q. Paid it to whom? A. He paid it to the
30 step-mother.

Q. Do you know what his wages were from the Wells-Fargo? A. I couldn't tell you what his wages was then.

Q. Do you know what, if anything, James did with his money outside of what he paid for his board? A. No, I don't know what he done with it.

Q. Do you know as a matter of fact what he did with the surplus money he earned after paying his board? A. I do.

Patrick Kane, Complainant—Direct.

Q. What did he do? A. When he came back I made him put so much aside and got a bank book for him.

Q. You mean the step-mother? A. Yes.

By the Court:

Q. How do you know that? A. She told me.

10

The Court: I will strike that out.

By Mr. Doherty:

Q. Were you ever present at any talk or conversation between Mrs. Kane and James as to what he should do with his money? A. She told me herself she made him get a bank book.

Q. Do you know what James did with his money except what your wife told you? A. No. 20

Q. Did James ever tell you what he done with his money? A. He never told me anything about it.

Q. Your wife died when, Mr. Kane? A. 1923, I guess.

Q. What time of the year? A. In December.

Q. What part of December? A. It was Christmas Eve.

Q. December 24, 1923? A. Yes.

Q. At the time of your wife's death or any time after that did you ever learn from Jim what he had done with the money that he earned while working for the Wells-Fargo? A. No, sir. 30

Q. Did you ever have any conversation with Jim as to the extent of his wealth or what money he had? A. No, sir.

Q. Let me call your attention to the circumstance of you and Jim going to a bank. Do you remember that? A. Yes, I remember that.

Q. What bank was it? A. Chambers Street bank. 40

Patrick Kane, Complainant—Direct.

Q. When you and Jim went to the Chambers Street bank do you know whether he had any money at that time? A. Yes, he did. He had \$1200.00.

Q. How do you know? A. Well, he took it out. He came up to me and he says—
10

By the Court:

Q. He took it out? A. Yes. I went over—

By Mr. Doherty:

Q. What did he take it out of?

By the Court:

Q. You mean he took it out of the bank? A. Yes.
20

Q. From the Emigrants Bank? A. Yes, sir.

Q. Where did he place it? A. In my book and we both went in joint owner in the book.

Q. In the same bank? A. Yes.

By Mr. Doherty:

Q. How long after Mrs. Kane's death was that time you and he had that transaction? A. About two weeks.

Q. Have you any good idea of time, of what constitutes a week, or a month or a year? A. It was the same year, but I don't know the date.
30

Q. Have you any memory of paying Thomas F. Carey, the undertaker, for the funeral of Mrs. Kane? A. Yes, sir.

By the Court:

Q. Did you personally pay it? A. I certainly did.
40

Patrick Kane, Complainant—Direct.

Q. With your own funds? A. Yes, your Honor.

By Mr. Doherty:

Q. How near to that time that you paid Mr. Carey was it that you and Jim went to the bank on that transaction? A. We went to the bank— 10

Q. How near to the date you paid Carey was it? A. The day we came from the bank.

By the Court:

Q. Was it before you paid Carey the money? A. No. We went to the bank and he fixed the money to pay the undertaker. When we came from the bank we went in and paid the undertaker.

Q. Did you draw that money for the undertaker from your account or his? A. He drew it from his account and put it in my account. The funeral expenses he took out of that and puts it in mine. I had \$2300.00 there and I let him in 50-50. 20

By Mr. Doherty:

Q. Do you know whether you got a receipt from Carey? A. We got the receipt from Carey, yes.

By the Court:

Q. You are asked whether you got the receipt from Carey? A. Yes, sir. 30

By Mr. Doherty:

Q. Do you know enough about reading to tell us whether that is the receipt (showing witness a paper)? A. I couldn't read it; no, sir.

By the Court:

Q. Can you read the printed matter at the top? A. Carey; that's all I can say. 40

Patrick Kane, Complainant—Direct.

Q. You are squinting one of your eyes in reading. Do you always do that? A. Yes.

Q. Can you read with glasses? A. I can't read with glasses.

Q. Put your glasses on and look at that paper and tell me what it is? A. No, sir; I couldn't tell you what it is.

Q. You mean to say you can't read it with the glasses? A. If I could read with glasses I could read without glasses. I am telling the candid facts.

Q. How long have you been wearing glasses for any purpose? A. Well, about a year now. My sight is running away back of me. I can't see nothing now.

Mr. Newton: We have the original bill.

Mr. Doherty: The receipt reads, "Paid in full—Thomas F. Carey, January 2, 1914."

The Court: Your attention is called to the date on it, 1929. They say they have the original. You examined it. Doesn't it go in evidence?

Mr. Doherty: I haven't examined him on that.

The Court: But you examined that paper and under the rules of evidence doesn't it go in evidence?

Mr. Doherty: Not until I examine the witness.

The Court: All right.

By Mr. Doherty:

Q. Can you give us any idea where this paper came from? A. I can't; no, sir.

Mr. Doherty: I ask it be marked for identification?

Patrick Kane, Complainant—Direct.

(Paper marked Doherty 1 for Identification.)

Q. On the occasion of paying the undertaker's bill, who was with you? A. He was with me (indicating).

Q. Referring to James, the defendant? A. Yes, 10
sir.

Q. Where was the bill paid, in Carey's place?
A. In his own office.

Mr. Newton: At the same time do you mind asking which one of the Careys was present?

By Mr. Doherty:

Q. To whom did you actually make the payment in Carey's place? A. Thomas F. Carey himself. 20

By the Court:

Q. The one who was former commissioner of Jersey City? A. I don't know, sir.

By Mr. Doherty:

Q. Mr. Carey is dead now? A. Yes, he is dead.

Q. You say Mrs. Kane died on Christmas Eve? 30
A. On Christmas Eve when I come home from work she laid across the bed dead.

Q. She was buried on what day? A. On Monday. No, a Wednesday, I guess. She was there four days.

Q. How long after her death was she buried? How many days? A. Four days.

Q. After the funeral you and Jim went to live where? Where did you and Jim go to live after the funeral? A. In the same house. 40

Patrick Kane, Complainant—Direct.

Q. Nobody else was in the family but the two of you? A. Yes, sir; the two of us.

By the Court:

10 Q. Where were your other children at that time? A. They were married.

By Mr. Doherty:

Q. Can you tell us what was the state of your feelings and mind after the death of your wife that you can describe? A. Well, a few days after she died—

20 Q. I am asking you how did the occasion of her sudden death affect you? A. It affected me the same. I was bewildered. I didn't know what I was doing.

The Court: I will strike out the last statement.

The Witness: I was crazy. I didn't know what I was doing.

The Court: I will strike that out.

By Mr. Doherty:

30 Q. Can you tell us whether or not her death produced any change in your feelings—in your personal feelings? A. Well, at that time it did. It had me crazy. I didn't know what I was doing. She was a good woman.

The Court: I will strike that out. You are not a crazy man by any means.

By Mr. Doherty:

40 Q. Will you tell us what you mean by your announcement that you were crazy? A. I was bewildered. I didn't know what I was doing.

Patrick Kane, Complainant—Direct.

By the Court:

Q. You were in extreme sorrow because of the death of your good woman? A. Yes, your honor; a good woman.

By Mr. Doherty:

10

Q. After the funeral when you and Jim were living alone in the house what was Jim's treatment of you? How did he act to you?

Mr. Newton: Objected to as calling for a conclusion.

The Court: Yes, it does. Ask what was said and done in the household.

By Mr. Doherty:

20

Q. When you and Jim were living in the house immediately after your wife's funeral you were on speaking terms with each other, weren't you? A. Yes, we were.

Q. And your relation to each other, was it friendly at that time or otherwise? A. Yes, sir.

Q. Jim and you had conversations, didn't you? A. Yes, sir.

Q. To what did the conversations relate? I am speaking immediately after the funeral. A. Well, he turned around and he wanted me not to do any more work. He said, "Pop, you can't do any more work; I will keep you".

30

Q. Can you tell us how long after the funeral Jim made that proposal? A. Three or four days after the funeral. He says, "You don't have to work any more; I will keep you". I went and got a housekeeper.

Q. Do you mean that day you went and got a housekeeper as soon as Jim said that? A. No. About a week after I got a housekeeper.

40

Patrick Kane, Complainant—Direct.

Q. Where were you when Jim made that proposal that you need not work any longer and he would care for you? A. In the house.

Q. What was your answer to that suggestion? A. Well, I didn't make him any answer that day because I couldn't stay in the house. I went to work sooner than be stuck around the house.

10

Q. You were a man in good physical condition? A. I was.

By the Court:

Q. You are now, aren't you? A. Yes, I am in good physical condition.

By Mr. Doherty:

20 Q. Did Jim after that first occasion ever refer again to your not going to work? A. No, he didn't say anything. I went to work myself.

Q. Did he more than one occasion make any reference to your not going to work? A. He told me twice not to go to work. "You don't need to do any work; I will keep you."

By the Court:

30 Q. You didn't pay any attention to it? A. No, I went to work.

By Mr. Doherty:

Q. When was the second time Jim said that? A. About a couple of days after when I was going to get a housekeeper. He said, "You don't need to; I will keep you". I didn't pay any attention to that and I went and got a housekeeper. I paid her twenty dollars a month from my own wages.

40

Q. When you say you paid no attention to it are we to understand—

Patrick Kane, Complainant—Direct.

The Court: That is not a good question.
I will overrule that.

By Mr. Doherty:

Q. What do you mean by your statement that you paid no attention to what he said? A. Well, I mean I didn't want to be in the house; I wanted to go to work. I couldn't live in the house. 10

Q. When Jim promised that he would take care of you and relieve you of the necessity of working further did you believe him?

Mr. Newton: I object to it.

The Court: I will let him answer it.

(Witness.) A. That was up to him. Of course, I didn't believe him. 20

By Mr. Doherty:

Q. Why didn't you believe him? Did you have any reason to disbelieve him? A. No, sir; I did not. I went to work myself.

Q. In other words, you didn't want to be laddy-gadding around the house. You felt physically fit and wanted to go to work? A. Right you are.

Q. Did Jim make any other proposals to you? A. No. Everything was going all right until—— 30

Q. No, did Jim——

Mr. Doherty: I don't want to lead, but at the same time his illiteracy and mental condition is bad.

The Court: Nothing to indicate to me his mental condition is bad. I think he is mentally alert as he has manifested it thus far.

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. Will you tell us after Jim announced to you that you need not work and he would take care of you whether you have told us all that Jim said at that time? Is that all that he said? A. That's all
10 he says. Yes, sir, that what he said.

Q. In this case you say that you signed some deeds to the property that you have testified about and you understand that this is an action to afford you some relief against signing those deeds. You understand that, do you? A. When he came up—

By the Court:

Q. Do you know what this case is in court here for? What do you understand the case to be to-
20 day? A. He told me—

Q. What are you suing for? A. He stole my deeds and took my deeds out of a tin box. He had a key. I had two keys locked in a drawer in a steel box and when I opened the drawer I find that key in its place. The false key was in my drawer. He took my deeds out of there and other papers.

Q. And then what? A. That's all. I couldn't
30 find them.

By Mr. Doherty:

Q. I show you a paper that has your name signed to it— A. Here it is.

By the Court:

Q. What is? A. Patt Kane. That's all I can make out of it.

Q. What's that for? A. I signed like that.

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. Do you know what the paper is that you have identified as detailing your signature? Do you know what this is?

The Court: Let him look at it.

The Witness: I can't read. 10

The Court: Look it over carefully. You have looked at it scarcely a second the other time.

The Witness: I would be looking at it the whole day and couldn't read that.

The Court: Have it marked.

Mr. Doherty: I am offering it. There is offered in evidence a deed Patrick Kane, widow, to William P. Gannon, unmarried, signed "Patt" Kane, consideration one dollar lawful money, and conveying two tracts of land on the southerly side of Ninth Street, being the same property described in the individual deeds already in evidence, Exhibits C-1 and 2. It bears date of January 3, 1924, and was recorded January 4, 1924, in Book 1516 of Deeds, page 24, witnessed by Richard Doherty and acknowledged before Richard Doherty on the date of January 3, 1924. 20 30

(Deed marked Exhibit C-3 in Evidence.)

By Mr. Doherty:

Q. The paper which has just been put in evidence has been described as a deed in which you conveyed to William P. Gannon the two pieces of property on Ninth Street which you have described that you owned. Will you now tell us in your own way how you came to sign that deed? 40

Patrick Kane, Complainant—Direct.

A. The way I signed it I only signed it beneficiary after my death. He told me——

Q. You are referring to James when you say he told you? A. He called me one night and he says, "See here, will you sign as beneficiary after your death to make me beneficiary after your death?" I didn't say whether I would.

By the Court:

Q. Was it before you signed the paper you had this talk with him you just mentioned? A. Yes, I think it was.

By Mr. Doherty:

Q. Mr. Kane, will you center your attention on that and tell us when you had the conversation with James in reference to your signing any deed? When was the first talk you had with him? A. It was right after my wife died. Two weeks after she died.

Q. Right after she died? A. Yes.

By the Court:

Q. How long after? A. Two weeks.

Q. Was that before you drew the money out of the bank or after? A. After the money was taken out of the bank. He came up to me and he says "Now, Pop, I will keep you", he says, "And you don't need to work no more. But, he says, we will put our name on the book, on the one book. We will have only the one book and I will put my money in the book and we will be joint owners."

By Mr. Doherty:

Q. What did that refer to? Did it refer to the property on Ninth Street? A. No, it didn't refer to that.

Patrick Kane, Complainant—Direct.

Q. What did it refer to? A. About having both our names on the book.

Q. It referred to the money, didn't it? A. Yes.

By the Court:

Q. You have testified before you told him you would go 50-50? A. In the bank.

Q. You were over at the bank and were talking about the book? A. Yes, we would go 50-50. When I was going up to your office he came up to me and he says to me "Pop, will you make me beneficiary in your place after your death?" I told him I didn't know whether I would or not. He asked me again. The third time, and I says "Yes, but not until after my death." I don't know how he got the deeds.

10

20

By Mr. Doherty:

Q. Never mind that. How many times did you and he talk about making him the beneficiary after your death? A. Only once.

By the Court:

Q. When was that about? A. My lawyer can tell you.

30

Q. No, you have to say it. A. I can't remember the date of that.

Q. You must have remembered something. You told your lawyer? A. He can remember the time, but I can't remember it.

By Mr. Doherty:

Q. You say this conversation was two weeks after your wife's death? A. Yes.

40

Patrick Kane, Complainant—Direct.

Q. Do you know that two weeks after your wife's death would bring you up to about January 4th? Can you compute that time? A. I don't remember.

By the Court:

10

Q. Well the fact apparently is that two weeks after your wife's death would bring it a few days after the first of January. That is the time you are referring to? A. Yes, sir.

By Mr. Doherty:

20

Q. Do you admit or do you dispute that the deed that you have looked at with the name of "Patt" Kane on was signed by you on the third of January? A. Yes, sir.

Q. Was it signed on the third of January? A. Yes.

Q. Have you got an individual recollection of it? A. I can't remember. My head is gone.

By the Court:

Q. Take a look at it! You can read? A. No, I can't.

30 Q. I noticed you wanted to take a look at it. You looked as though you wanted to read it. A. I can't read it.

By Mr. Doherty:

40

Q. Which conversation between you and James took place first? Was it the one about the two of you putting your money in the joint bank account or was it the conversation about you making him a beneficiary after your death? Which was first?

Patrick Kane, Complainant—Direct.

The Court: Do you understand the question?

(Witness.) A. The bank account.

By the Court:

Q. Did you first speak with him about the bank moneys or about putting his name in as beneficiary? A. When we went to pay the funeral expenses is the time we put the money in the bank, and then he drew what he had left of the sum of \$1,200.00. He took out \$750.00 out and the rest he put in my book. I had \$2,000.

10

Q. Was it before that time or on the same day or after that that you had the talk with him about the real estate? A. No, it wasn't that day. It was a week after.

20

By Mr. Doherty:

Q. What happened a week after? A. He wanted me to turn around and make him beneficiary after my death and I didn't give him no answer, and he asked me the third time, and I said: "Yes, after my death".

By the Court:

30

Q. Are you referring to all property you died possessed of, or the real estate alone? A. The property.

Q. The real estate—the two houses. That's what you were talking about, is it? A. Yes, sir; the two houses.

Q. You have been using the word *beneficiary*. I want to know whether that related to the two houses? A. Yes, sir.

40

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. Can you give us any idea, Mr. Kane, when you paid the funeral expenses and fixed up the joint bank account? A. The same date I paid also the funeral expenses.

10 Q. You have told us the bank transaction was done on the same day, but tell us what day? A. I can't tell you.

Q. Can you tell us how long after the burial of your wife? A. It was about two weeks after we paid the funeral expenses.

By the Court:

Q. Was it before New Year's Day or after New Year's Day? A. It was after New Year's Day.

20

By Mr. Doherty:

Q. You know that January 3rd is two days after New Year's? A. Yes.

Q. It was after January 3rd that you fixed up the bank account, are we to understand that?

The Court: He can't say that. I will strike that out.

30 By Mr. Doherty:

Q. Can you tell us the month when the two of you opened up the joint bank account? A. I couldn't tell.

The Court: Can't we definitely determine that by offering the bank books in evidence. They will tell the date of the withdrawals.

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By Mr. Doherty:

Q. A deposit book was issued on the joint account with you and Jim? There was a book issued? A. Yes, it was all in the one book.

By the Court:

Q. Who kept the books? A. We had two books, and we put it in the one book. When he put his money in mine we each got a book—so much for me and so much for him.

10

By Mr. Doherty:

Q. Where are the books? Do you know what became of the book you got when you opened the account with Jim? A. Oh, we done away with that.

20

Q. How did you do away with it? A. It wasn't no good any more. I left it in the drawer. I got the right book.

By the Court:

Q. You drew the money out of the bank at some time—the Emigrants Bank? A. I took a little of it when I was out of work.

Q. Is the account closed—the account that you and Jim had in the Emigrants Bank? A. The old account was closed. We got new books.

30

Q. You mean the account was closed and you divided the money that was in the account? A. Yes.

Q. When was it that you made that division? How long after your wife's death? A. About three weeks.

By Mr. Doherty:

Q. Do you mean it was two or three weeks after your wife's death you divided the money, or

40

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was it the time you put the money together? A. We put the money together.

Q. His Honor has asked you when was it that that account was closed and the two of you divided the money. When did that take place? A. After he got **married**.

10 Q. About when did he get married? A. That's another thing I couldn't tell you, when he got married.

Q. Can you tell us about how many years this joint account between the two of you ran out?

The Court: In the Emigrants Bank.

A. It was only a few months after it was put in. About two or three months.

20 By Mr. Doherty:

Q. Isn't it true it ran for four years and a half, or a number of years?

The Court: We are speaking of the length of time you and your son had this joint account in the Emigrants Savings Bank.

30 A. About three years, I guess.

By the Court:

Q. Why did you say three or four months before? A. It is around three or four months. We had it that long. It was after she died. It was not until he got married and he didn't want his money in the bank he wanted to break loose from me.

Q. When was he married?

40 The Court: Will you concede that?

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Mr. Newton: July 11, 1926.

The Court: It is conceded by counsel that James was married July 11, 1926.

By Mr. Doherty:

Q. When the joint account was closed at the time of Jim's marriage whose proposal was it that it should be closed? 10

The Court: What was said?

By Mr. Doherty:

Q. What was said between you and Jim about closing that account when he got married? A. Because he commenced to kick.

20

By the Court:

Q. What was said? A. There was nothing said.

Q. How did you come to divide the money? A. Just because he commenced to kick. He was sorry he put his money in. I said "All right, you can go over and break loose." I got one book and he got another.

Q. You both went together? A. Yes, he got a book and I got a book.

30

Q. You agreed between the two of you how much each should get? A. Yes, so much each—an equal share.

Q. Did you divide it equally at that time? A. Yes.

Q. 50-50 as you called it? A. Yes, sir.

Q. So whatever moneys were in that account when you and your son went over there you divided it 50-50? A. Yes, sir.

Q. During the running of that joint account what were the funds used for that were contained 40

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in it? A. I had mine until I got out of work and I had to spend a little of it to keep me.

Q. You drew it from the bank? A. Yes.

By Mr. Doherty:

10 Q. Was there any agreement made for the account at all or was it a case of you both constantly adding to it? A. I was putting my money in until I got out of work and I had to take money out. I was eight or nine months idle. I had to live.

Q. Let us go back Mr. Kane to the real estate which you stated he mentioned to you more than once you should make him the beneficiary of your property. A. He did.

20 Q. How many times did he mention it? A. Three times he asked me.

Q. Can you tell us whether those three times were before the deed was actually signed? A. Before it was signed?

Q. Yes. Was it? A. Yes.

By the Court:

30 Q. And within what period of time was it? A week apart these talks or the same day or months apart these three times you speak of? A. He asked me to make him beneficiary after my death. He asked me again and I made him no answer. The third time he asked me and I said "After my death, but not before."

Q. Did they all occur on the one day? A. Yes.

By Mr. Doherty:

40 Q. If your wife died on December 24th and was buried four days after on December 28th, and if the deeds appear to have been executed on Janu-

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ary 3rd, does that help you to recollect between what dates it was that Jim asked you to make him beneficiary of the real estate? Doesn't that information help you to settle your recollection?
A. I don't understand it.

By the Court:

10

Q. Your wife died December 24th. It is said she was buried December 28th. This deed that Mr. Doherty has called your attention to is dated January 3rd. A. Yes.

Q. Do those dates indicate to you when it was that your son spoke to you about making him beneficiary, as you call it, of the real estate—the houses? A. Yes.

Q. When was it? A. That was about three weeks after she was dead. After I buried her. 20

Q. Let's try and get your recollection back. Your wife died on December 24th? A. Yes.

Q. On the 24th of December, 1923, your wife died? A. Yes.

Q. You say she was buried four days after on December 28th, is that right? A. Yes.

Q. Now, between December 28th and January 3rd, which happens to be the date of this deed to which you have just had your attention called to, five or six days had elapsed—we will say six days had elapsed. Was it within that period of time that you and your son had the talk, between the time of your wife's burial and the date of that deed? A. There was no talks or anything until after she was dead. 30

Q. How long after she was buried was it that the talks were had if it was had after she was buried? A. About three weeks after she was dead the whole thing came up. 40

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Q. And it came up in the way you have described and he asked you three times? A. Yes, sir. That's the time he pulled the wool over my eyes.

10 Q. This deed your attention has been called to is dated the 3rd of January, 1924, and it was signed by you before Richard Doherty, your present lawyer? A. Yes.

Q. Now, January 3rd was ten days after your wife's death. In view of that, do you mean to tell me it was after January 3rd you first had the talk with your son about these houses? A. Yes, it was after that; yes, sir. He wanted me to put him in for everything.

By Mr. Doherty:

20 Q. Isn't this the truth, that between the time you came home from the funeral and the time you signed the deeds Jim talked to you about the property? Isn't that true? Is that the time he did the talking? A. That's the time he did the talking, right.

Q. And was it during those two occasions that he talked to you the three times that you have testified to? A. Yes, sir.

By the Court:

30 Q. Was it the day after your wife's burial he talked to you? A. No.

Q. Was it the second day after he commenced to talk to you? A. No, sir.

Q. Was it the third day after your wife's burial he talked to you? A. It was two weeks after.

By Mr. Doherty:

40 Q. Can you explain to us, Mr. Kane, how it is that this deed, which was signed by you, got in

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the Register's Office on the 4th of January, Exhibit C-3, which is only about eleven days after your wife died? No, it is ten days after your wife died. Can you explain that? That ten days after your wife died the deed was in the Register's Office being recorded with your name on it and still you say that Jim didn't talk to you until two weeks after your wife died. Can you state that chronological mystery to us? A. No matter what it was he fooled me. 10

The Court: You cannot say that.

The Witness: He fooled me right to my very eyes.

The Court: I will strike that out.

By Mr. Doherty: 20

Q. You still stick to your testimony it was two weeks after your wife's death that Jim spoke to you? A. Yes, sir.

Q. Can you recall the language that he used when he was asking you to make him the beneficiary? Can you recall his words? A. Well, he wanted me—

The Court: Tell us what he said, if you recall. 30

A. I don't recollect. He said so many things.

By the Court:

Q. I am trying to give you an opportunity of stating according to your best recollection just what the conversation was that passed between yourself and your son respecting the houses? A. He wanted me to make him beneficiary.

The Court: I will strike that out. 40

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Q. I want you to give me the conversation that passed between you as best you recollect? A. The conversation was when I took him in with me to live together he turns around and puts me on ten dollars a week board.

10 Q. You are not referring to the talk you had with him when he three times asked you to make him beneficiary? A. No, sir.

By Mr. Doherty:

Q. After the funeral did you go right back to work? A. No, I was two weeks off.

Q. How long did you lay off? A. About three or four weeks.

20 Q. At that time was Jim himself working? A. Yes, sir.

Q. How soon after the funeral did he go back to his job? A. He went back the day after.

Q. Can you remember in what part of the house or what time of the day or any of the surrounding circumstances when Jim asked you to make him the beneficiary? Where was that talk? A. In the house.

Q. In what part of the house? A. In the dining room.

30 Q. At what hour of the day? A. About two o'clock when we were going up to your office.

By the Court:

Q. Was there any person present other than you two? A. No, just the two of us.

By Mr. Doherty:

Q. How many times did you come to my office on this deed? A. Once, so far as I understand.

40 Q. On the occasion of that once when you came did you sign a paper before you went home? A.

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Yes, I signed the paper and signed for beneficiary after my death, but not before.

The Court: I will strike that out.

By Mr. Doherty. .

Q. You were at my office once and that was the time the paper was signed by you? A. Yes. 10

Q. Do you recall whether or not when you arrived at my office these deeds were all ready for you to sign? Do you remember that? A. I remember signing it but you never told me what was in the deeds.

By the Court:

Q. You don't think Mr. Doherty deceived you? A. Oh, no, your Honor; not at all. 20

By Mr. Doherty:

Q. Did you do anything in the way of asking me to draw this deed that you signed? A. No, I did not.

Q. Do you know from whom I got the instruction to draw the deeds? A. You didn't get it from me. You got it from him, I suppose (pointing to the defendant). 30

By the Court:

Q. Who told you to go to Mr. Doherty's office to sign the deed? A. That's the time he went up with me.

Q. When you say that you mean your son? A. Yes, sir. That's the time he asked me to make him beneficiary. I went up and he came up after me. I made him beneficiary after my death.

Q. You had occasion to go to Mr. Doherty about some other matter? A. Yes. 40

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Q. What was the matter, you wanted to go to Mr. Doherty's office that day? A. The woman before she died, may the Lord have mercy on her soul, fell, and she wanted money from the people who owned the sidewalk and she gave the case to Mr. Doherty. I was going up to see Mr. Doherty about it. That's the time he wanted me to make him beneficiary.

10 Q. You wanted to go to Mr. Doherty's office about your wife's case? A. Yes.

Q. And did your son Jim know you were going, or did you tell him? A. He said, "As long as you are going up there make me beneficiary after your death".

Q. That is the time you had these talks with him? A. Yes.

20 Q. That was the very day you went to Mr. Doherty's office? A. Yes.

Q. And did that occur on the very date you signed the deed in Mr. Doherty's office? A. Yes.

By Mr. Doherty:

Q. Going back to the time he spoke to you three times? A. Yes.

30 Q. Do I understand he spoke these three times to you on the same day? A. Before I went up there.

By the Court:

Q. Did it all occur the one day? A. Yes.

By Mr. Doherty:

40 Q. So three times on the day when you signed the deed he asked you to make him the beneficiary? A. Yes, sir.

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Q. Do you remember what hour of the day you came to my office to sign that deed? A. It was in the afternoon when we left the house.

By the Court:

Q. You said it was about two o'clock? A. Yes. 10

By Mr. Doherty:

Q. Wasn't it any later than that? A. I don't believe it was any later than I know.

Q. Now, did Jim at the time when he asked you to sign the deed say anything about—

The Court: Don't lead him.

Mr. Doherty: I don't want to.

The Court: I will let you bring out what was said and done. 20

By Mr. Doherty:

Q. Can you comply with the direction of his Honor and tell everything that was said to you by James about the signing of this property over to him as a beneficiary? Don't wander. Tell us what was said by him and what was said by you and when and where it was said. A. He says to me, "Pop, you don't need to work; I will keep you," he says, "but sign for me as beneficiary after your death." That's what it was about. 30

By the Court:

Q. You said no? A. I didn't say no, so he asked me the second time and I didn't say anything. The third time I said, "Yes, after my death; but not before."

Q. You used the words, sign for me as beneficiary. Did he say that or did he mention something? A. Of the property, yes. 40

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Q. Did he mention property, or what did he say? A. Property, yes.

Q. What did he say? A. To make him beneficiary of the place after my death.

Q. What property? A. That's what I mean when I said place.

10 Q. I want to know what he said? A. To make him beneficiary of the property after my death. I made him no answer and he asked me again and I made him no answer, and the third time I said, "Yes, I will after my death, and not before." That's when I signed in your office (indicating Mr. Doherty).

By Mr. Doherty:

20 Q. How long after you gave him your answer on the proposition was it he told you to come up to my office to sign the deed? A. I don't know. Didn't we sign them that day? I know I signed as beneficiary after my death.

By the Court:

30 Q. Mr. Kane, I understood you to say that on the very day that you have mentioned that he made these requests of you as you have described them, that he knew you were going to Mr. Doherty's office, your lawyer's office, about your wife's case? A. Yes.

Q. And he went up to Mr. Doherty's office? A. Yes, sir.

Q. I understood you to tell me it was that very day and at the time when you went to Mr. Doherty's office you signed that deed that is referred to, is that so? A. Yes, that's the time.

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By Mr. Doherty:

Q. Do you remember Mr. Gannon, who is a lawyer working for me, being there at the time the deeds were signed? A. No.

Q. Do you remember the fact the deed you signed was a conveyance of your property not to Jim but to William P. Gannon, the clerk in my office? Do you remember that? A. No, sir; I don't remember that. When I signed the deeds I signed after my death, but not before. 10

The Court: I will strike that out.

By the Court:

Q. You know that Judge Doherty when you signed the deed explained the deed to you, did he not? A. That I didn't understand. 20

Q. He read something? A. He explained; but I didn't understand.

Q. Did he read it or explain it? A. I couldn't tell you.

Q. Didn't he tell you you were making a deed to that man direct and that man was to make a deed to your son Jim? A. I don't remember.

By Mr. Doherty:

Q. Don't you remember any advice I gave you as to where you and Jim would stand in respect to the property after these papers were signed up? A. I couldn't tell you. 30

By the Court:

Q. Did he tell you what would happen in the event your son Jim married after you made this deed and what interest his first son Jim's wife would have in the property, if any? A. No, not 40

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that I know of. It was only made for beneficiary after my death and not before.

The Court: I will strike that out.

10 Q. Do you mean to say you told Judge Doherty that in his office when you were signing the deed?
A. Yes, I told him beneficiary after my death, but not before.

Q. Are you sure you told that to Judge Doherty? A. I did.

Q. You are sure of that? A. Yes. I told him after my death, but not before.

By Mr. Doherty:

20 Q. Can you remember anything else that was said at the time the papers were signed? A. No, sir; I don't remember.

Q. These deeds were signed—

The Court: There is only one deed in evidence. You didn't put the other in yet.

By Mr. Doherty:

30 Q. You say you don't remember anything about you having deeded the property to William P. Gannon? A. No, sir.

Q. Have you any recollection of Mr. Gannon deeding the property back to you and James as joint owners? A. No, I don't remember it.

By the Court:

Q. Didn't you see the man? You knew this Gannon that we are speaking about that used to work in Judge Doherty's office? A. I know the old man, but I didn't know the son.

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By Mr. Doherty:

Q. You don't know what this deed that I now show you is at all, do you? A. No, sir.

Mr. Doherty: I now offer in evidence a deed from William P. Gannon, unmarried, to Patrick Kane and James F. Kane, conveying the two premises on Ninth Street referred to in the previous deeds, Exhibits C 1, 2 and 3, and particularly the property described in C 3, dated January 3, 1924, recorded January 4, 1924, in Book 1516 of Deeds, page 25, witnessed by Richard Doherty and acknowledged before Richard Doherty on January 3, 1924, and containing this covenant: "It is expressly set forth that it is the intention of the parties to this indenture to create hereby an estate in joint tenancy and not an estate of tenancy in common."

(Deed marked Exhibit C 4 in evidence.)

Q. At the time of the transactions with Jim which you have testified to respecting the property, you were living in which place, 329 or 327½? A. 329.

Q. And who lived in the adjoining property at 327½, a tenant? A. A tenant.

Q. Paying rent? A. Yes.

Q. How much rent? A. Thirty-five dollars.

Q. And after the deeds were executed who collected the rent? A. I collected it.

Q. Who has since that time collected the rent of 327½? A. I collect it, whatever I get.

Q. You and Jim continued to live at 329? A. He was living at 327½ and I took him in there. I had my four nieces who were looking for rooms and I put them in there.

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Q. How long after the signing of these papers did you and Jim live together at 329? A. We lived together at 329 until he got married.

Q. Isn't it true that Jim was sick some time between the death of his step-mother and his marriage? A. Yes.

10 Q. And when was Jim taken sick? A. He got out of his head.

Q. When was that? A. I couldn't tell you.

Q. About how long after the death of your second wife was it that Jim took sick with a mental ailment? A. About three months.

Q. Was his sickness such as to require him to go to a hospital? A. Yes, sir.

Q. What hospital? A. City Hospital.

Q. How long? A. Ten days.

20 Q. Any other hospital? A. Up to Laurel Hill.

Q. How long? A. About four or five weeks.

Then he came home and was in the house and was just as bad in the house. He was idle for twelve months. When he went back to the express they wouldn't give him a job there.

Q. As a result of his condition he was out of work for twelve months? A. Yes.

30 Q. And your impression is that started about three or four months after you signed for the property? A. Yes, sir.

Q. After your wife's death what provision did you make for housekeeping or running the place? A. Well, I got a housekeeper in and gave her twenty a month and I paid for the support of the house out of my own wages.

Q. How much did that require for the support of the house outside of the housekeeper's pay?

A. I was running it at fifteen a week because none of us were at dinner and had no meals to get.

40 There was only one meal to be got. She was an old woman.

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Q. Jim was working during part of that time you say? A. Yes.

Q. Was he contributing anything at all towards running the house? A. I couldn't tell you what he disbursed or anything, but I was paying the support of the house and the housekeeper out of my own wages. 10

Q. Did Jim pay you any board? A. He never paid a cent of board since she died. For the whole twelve months I ran the house.

By the Court:

Q. You wouldn't expect a man who was in the condition he was to pay board? A. No, sir; and I never asked him to. 20

By Mr. Doherty:

Q. At the time you signed the papers for the property did you receive anything from Jim for signing the papers? A. No, sir.

Q. That was the first business transaction you ever had with Jim, wasn't it? A. Yes, sir.

Q. Were you in any way indebted to Jim at that time? A. No, sir.

Q. And your signing of the property over to him was a gift that you made? A. Yes, sir. 30

Q. To take effect when? A. After my death.

The Court: I am not going to permit any more testimony in that respect.

Mr. Newton: I haven't objected at all. I wanted to give him all the opportunity he wanted.

The Court: Unless you want to be a witness in the case Mr. Doherty, and that he was deceived by the paper he signed. 40

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10 Mr. Newton: I object. It is irrelevant, incompetent and immaterial in the face of the fact that he could not overcome the force of the deed itself; that even where there is a nominal consideration expressed in the deed that no evidence can be admitted overcoming that consideration. The cases hold that where a deed expresses a money consideration, though nominal, it raises a conclusive presumption that the grantee is to take the benefits as well as the real estate in the absence of fraud or mistake.

20 The Court: This complainant is charging fraud and he is charging mistake. I don't know whether he is charging that fraud or mistake against his lawyer or his own son, the grantee in the deed. So far as the pleadings are concerned he is not charging his lawyer with mistake. From the testimony thus far he says Mr. Doherty was his wife's lawyer and he was going to see him on the day the deeds were signed about a case his wife instituted or thought she had prior to her death, and that the son James knowing that he was going there asked leave to go with him and they came there and this transaction is said to have taken place. But in view of the acknowledgment attached to the deed which acknowledgment was taken before an officer of this court, Mr. Richard Doherty, I have got to require pretty strong proof from this witness that any deceit, imposition, fraud or undue influence was imposed upon him.

30 I will receive it subject to your objection, Mr. Newton. I have stated what I said

40

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so Mr. Doherty could appreciate what is in the court's mind.

By Mr. Doherty:

Q. Why do you say it was to take effect after your death, Mr. Kane? A. Well, after a man is dead nothing more will bother him. 10

By the Court:

Q. You are asked why you say now that this gift which you make to your son in the manner in which it was made was only to take effect for him after your death? A. I wanted my living out of it while I lived.

By Mr. Doherty:

Q. Did you say anything to Jim about your desire to have it during your life? A. No. 20

Q. Did you say that to him that you wanted it during your life? A. I told him it was mine and he had no claim on it during the time I lived.

By the Court:

Q. You told me a moment ago you wanted a living out of it as long as you lived? A. Yes.

Q. Tell us what you said? A. I said it was my living and I earned it and I put it together and I didn't get a cent from him or anybody else. 30

Q. Counsel and I are trying to find out from you just what it was you said to your son about your alleged interest that you wanted to retain. A. I told him after my death but not before.

Q. Is that all you said? A. That's all, sir.

By Mr. Doherty:

Q. When did you tell him that? A. When he asked me to make him beneficiary. 40

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Q. In your house? A. Yes.

By the Court:

Q. The third request? A. The third request.

Q. The first two you didn't answer? A. No.

10

By Mr. Doherty:

Q. Do you recall ever having expressed that it was to take effect after your death? A. Not until he went to throw me out and called me a skunk.

Q. Let your mind go back to the time when the deeds were signed. You say down at the house that you finally told him you would deed the property but only on the understanding that you would have it during your life and he would after your death. Do you remember that? A. No, sir.

20

Q. Did you say it to him in my office when the papers were signed?

By the Court:

Q. Do you understand the question? A. Yes, sir; I did. I told him after my death but not before.

Q. Did you say that in the presence of Mr. Doherty? A. Yes, sir.

30

By Mr. Doherty:

Q. Why did you say it again in my office? A. When I told him in your office after my death but not before.

By the Court:

Q. How did that talk come about? A. After I made him beneficiary—after my death but not before. That's the way I did it.

40

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Q. Who did you say that to? A. To Mr. Doherty.

By Mr. Doherty.

Q. And you don't know anything about the advice I gave you? A. No, I don't remember anything. 10

Q. That it would go to him after your death. Do you remember my telling you that? A. I don't remember anything about it. That's how he made a fool out of me.

The Court: I will strike that out.

By Mr. Doherty:

Q. Do you remember my telling you what would happen if he died first and you lived? A. I don't remember. 20

Q. Do you remember anything being said about what interest the other person would have in the property if you died? A. I was bewildered. I didn't know what I was doing. There is no use of asking me, I don't remember.

Q. Do you remember my saying anything about the effect of you and Jim getting married? A. No. 30

By the Court:

Q. Can you tell us what was said in Mr. Doherty's office at the time you were signing the deed? A. No, sir. I don't remember a word about it.

By Mr. Doherty:

Q. Do you remember anything about it? A. No, sir. 40

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By the Court:

Q. You have known Mr. Doherty for a good many years? A. I never had much dealings with Mr. Doherty. The only time I knew was when my wife went up when she broke her hand.

10

By Mr. Doherty:

Q. How long before this transaction respecting the deeds had you and I met for the first time? A. About once, isn't it?

Q. And that was on that occasion that we met before? A. When I came up to you about the case.

Q. Once before you mean to say it might have been you had been up to my office to find out what progress I was making with your wife's case? A. Yes.

20

By the Court:

Q. Who brought the case to Mr. Doherty, you or your wife? A. My wife.

Q. Did you go with her? A. No, but she told me he had the case.

By Mr. Doherty:

Q. After your wife's death you entertained the idea that this injury might have some bearing upon the liability of the house-holder and you were going to come up and see me about that? A. Yes. That's the time he walked up my sleeve.

30

The Court: I will strike that out.

By Mr. Doherty:

Q. When you came to my office do you remember Mr. Kane saying anything about your wife's case?

40 A. No.

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By the Court:

Q. You went up there to inquire about it. What did you say to Mr. Doherty about it? A. How about the case that was coming up.

Q. What did he say? A. He told me he could do nothing about it—he couldn't help me. 10

Q. Did he tell you why? A. He said "I can't help God's will."

Q. But you did talk to him about your wife's case? A. Yes.

Q. Was your son Jim there when you were talking with Mr. Doherty about your wife's case? A. Yes. That's the time he took the deeds out of my house.

Q. How long were you talking with Mr. Doherty about your wife's case before the deeds came up? A. Right after that. 20

Q. How long did you stay in the office after you concluded your talk about your wife's case? A. About a half an hour.

Q. Were you just sitting there all the time or were you waiting for somebody? Were you waiting for Mr. Doherty all the time? A. Yes.

Q. For a half an hour? A. Yes, we were in there about a half an hour.

Q. You weren't talking an hour about your wife's case? A. No. 30

Q. What else were you talking about with Mr. Doherty? A. We were just talking there—sitting down. It didn't last long. He wanted me to make him beneficiary.

Q. Who? A. This fellow here (indicating defendant).

Q. Tell us what conversation was had in front of Mr. Doherty? A. I couldn't tell you.

Q. Did your son Jim say anything in Mr. Doherty's office about the deeds in your presence? A. I couldn't tell you. 40

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Q. Did he say anything to Mr. Doherty in your presence and hearing while you were in Mr. Doherty's office about the deeds? A. No, sir; not that I know of.

By Mr. Doherty:

10

Q. Did you hear anything said by me about making a will instead of a deed? A. I didn't.

By the Court:

Q. Did you offer to make a will and did your son object and say you could change the will any-time? A. No, sir; there was no talk about a will at all—but beneficiary.

20

Q. And Judge Doherty didn't mention anything about a will, did he? A. I couldn't tell you that; he might have.

Q. Why do you tell me there was no talk about a will then? A. I didn't have no talk about a will.

By Mr. Doherty:

Q. Did you have any talk with Jim about a will before you came up? A. No; no talks about a will at all. He only wanted me to make him beneficiary after my death.

30

The Court: You have said that a good many times.

By Mr. Doherty:

Q. Do you know who paid me for drawing the papers? A. I didn't.

By the Court:

40

Q. Are you sure of that? A. I am sure of that, yes.

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By Mr. Doherty:

Q. Do you recall anything of me having possession of two old deeds at the time when the new papers were signed? A. No, sir; I do not. I don't remember.

Q. Eventually you got back from me those papers which were signed when you and Jim came up. They were returned to you weren't they by me? A. You turned them over to him. It was he who brought them home. 10

By the Court:

Q. The Judge is asking whether he returned the papers to you. A. Yes.

By Mr. Doherty: 20

Q. That was on February 19th? A. Yes.

By the Court:

Q. What date was it? A. I couldn't tell you.

Q. Why do you say so readily it was February 19th? A. I thought he knew.

The Court: Bear in mind Mr. Kane you are sworn to tell the truth.

The Witness: I have no memory. 30

By Mr. Doherty:

Q. Do you remember how you came to my office to get these deeds? Why you came up to get them? A. Did I sign for them after?

Q. How did you come for the deeds to my office? What brought you up? A. To get them.

Q. Did you get a letter from me to come up? A. I am not sure. 40

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Q. You don't remember? A. I don't remember.

Q. You don't think it was you that paid me? A. I don't remember.

By the Court:

10 Q. But you said before you didn't? A. I didn't go for the papers.

Q. You said before you did not pay for them? A. Oh, no; I did not pay anything.

Q. Did you get the deeds back from Mr. Doherty after they were recorded? A. I guess I got them.

Q. You didn't get them without paying for drawing them? A. He was right there.

20 Q. You mean by that you went there to get the deeds? A. Yes.

Q. How long was it you got the deeds back after you signed it if you got them back? A. About a week or two.

Q. And you mean to say you got them back without paying for them? A. He had them and put them in his pocket. I didn't get them at all. I didn't pay for them.

By Mr. Doherty:

30 Q. You said he put them in a drawer? A. I had two keys and he had one, and after he got married he took them out. After he got married he locked the key in the drawer and I found a false key in its place.

Q. What other papers did you treasure in that same drawer? A. That's all—the deeds.

Q. Where did you keep the bank books? A. In the tin box. He couldn't get that.

40 Q. Were the deeds also kept in the tin box? A. Yes, and I had it locked and I had the keys under-

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neath the box and the deeds were taken out and no stranger took them. My name was on the book. That would be no good to him.

Q. Let's return to the matter of the bank accounts. You say you opened a joint account some months after your wife's death—you and Jim? A. Yes.

10

Q. Both of you at that time having individual accounts in the Emigrants Savings Bank? A. Yes, sir.

Q. And it was agreed the two of you would make a common fund or pot and thereafter share it 50-50? A. Yes, sir; that was done.

Q. You contributed to that fund how much? A. After we made it I put in as much as I could.

Q. How much did you put in when you were making up the fund? A. We had that there before the wife died.

20

By the Court:

Q. At the time you put that in how much was yours and his? A. I don't know how much he put in but what was left in the drawer amounted up to \$4,000.

Q. You are asked about the original deposit made for the benefit of yourself and your son whereupon it was to be 50-50. How much was it of yours that was put in and how much was your son's? A. It was even.

30

Q. He had only \$1,250.00 in his book and he withdrew it from his account? A. And when we went over to pay the funeral expenses he drew all his money and put it in my book.

Q. How much did he put in? A. Seven hundred and some odd. What he had he put in mine. I had two thousand in.

40

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Q. You say you had two thousand in at that time? A. Yes.

By Mr. Doherty:

10 Q. And James had \$1,250.00 at that time? A. Yes.

Q. And you say he put in what was left of that fund? A. In mine.

Q. After taking what out of it? A. The funeral expenses.

Q. He took out of his \$1,250.00 the funeral expenses and that reduced his contribution to somewhere around four or five hundred? A. Yes. He put it in with me.

20 Q. Will you explain to the Court on what arrangement you pooled your \$2,000 and your son pooled his \$500.00 the account was thereafter to be carried on between you and he 50-50? How were contributions to be equalized according to your understanding? A. After he took the money out we were even. I left my \$2,000 in.

By the Court:

30 Q. Was anything said between you and your son as the amounts of moneys which were to be deposited in that fund thereafter? A. No. It amounted to \$4,000.

Q. I don't care about that. Was there anything said he was to put in a certain amount and you were to put in a certain amount? A. No, sir.

By Mr. Doherty:

40 Q. You having \$2,000 and being responsible for your wife's death, if you paid that money to the undertaker it would reduce your fund to about \$1,250.00, and then Jim having \$1,250.00 of his

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money if he came in that would bring the two of you about even. Jim had \$1,250.00 which he either put in the account with you or else he paid the undertaker, relieving you of your responsibility, and in that way you got evened up each on \$1,250.00? A. That's right.

10

By the Court:

Q. Are you sure of that? A. No, I had \$2,000 in the bank and he took out his \$1,200.00. He kept the funeral expenses out of that and put what he had left in with my \$2,000.

Q. You knew you were supposed to pay the funeral expenses? A. I allowed him that in the \$2,000 I had.

20

By Mr. Doherty:

Q. Why if you having the money in hand to pay the funeral expenses did Jim pay it? A. We both went to Carey and paid him the money.

By the Court:

Q. Who actually handed the money out? A. I did.

Q. So Jim took \$750.00 from his account and gave it to you? A. Yes.

30

Q. You say now he actually gave into your hands this \$750.00 to pay Carey, is that right? A. Yes.

Q. Are you sure he did not give the money to Carey? A. I paid Carey. I am sure of it.

Q. Did you actually deliver to Mr. Carey the money or did your son? A. I did.

Q. Did you receive that money from your son? A. Yes, I got it. I gave it to Carey.

40

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By Mr. Doherty:

Q. And then you say you fixed it up between the two of you on the joint bank account? A. Yes—50-50.

Q. You haven't got the bank book, have you?

10 A. No.

Q. What did you do with it? A. It is up to the house.

Q. Here is a bank book which was sent for today. You sent your daughter-in-law for a bank book. Is this the bank book you sent your daughter-in-law for? A. Yes.

Q. It is a joint account between Patrick Kane and wife, Mary Kane. Who is Mary Kane, your present wife? A. Yes, the present one.

20 Q. Then this is not the book. Is your present wife's name Mary? A. Yes.

Q. This is an account between the two of you? A. Yes.

Q. I ask you where is the deposit book when you and Jim opened the account? A. That's the book we had when I got married.

The Court: Read into the record the name of the bank.

30 Mr. Doherty: I think it ought to be marked for identification.

(Bank book marked Doherty 2 for Identification.)

Mr. Doherty: There is offered for identification and marked pass book #1053110 Emigrants Industrial Savings Bank, New York City, issued to Patrick Kane or Mary, his wife. The first entry is made July 10, 1926.

40

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Q. You don't know of any other book relating to a joint account in the Emigrants Saving Bank but this one here? A. No, sir.

By the Court:

Q. You did have one before? A. Yes, there was one, but I did away with it. I let him in for 50-50. 10

By Mr. Doherty:

Q. While this joint account was running between you and Jim how much did you contribute to the original deposit you made?

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

Mr. Doherty: I will withdraw that. 20

Q. After that account was opened with you depositing your \$2,000 in it, did you thereafter deposit more in the account? A. Oh, yes.

Q. What's your recollection as to how much and when and the circumstances of your adding to that fund?

By the Court:

Q. Did your son put any money in that account thereafter? A. No, he did not. 30

The Court: Then I will overrule your question Judge Doherty because the records of the bank will have to be brought over. He said James put no money in it and the book would be the best evidence.

Mr. Doherty: The book is out of the state.

The Court: Anybody can get a transcript from a bank. 40

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10 Mr. Doherty: I offer in evidence memorandum of account #989,095 with the Emigrants Industrial Savings Bank, an account with Patrick Kane or son James F. or the survivor, the first entry is January 2, 1924, by deposit \$2,170.01, and on the same day a further deposit of \$630.00.

(Marked Exhibit C-5 and admitted by consent of both counsel.)

Mr. Doherty: I call on the defendant to produce the receipt for the funeral bill.

Mr. Newton: There are two—one for the wife.

By Mr. Doherty:

20 Q. You have testified that on the day you opened the account you paid the funeral bill and got a receipt? A. Yes, sir.

Q. Can you identify that as being the receipt that you got? Are you able to read it? A. I can't read it.

Mr. Doherty: By consent I will offer it in evidence.

30 (Marked Exhibit C-6 by consent of counsel.)

40 Q. By the account that the bank renders the first transaction on the joint account with you and Jim was on January 2, 1924, on which date there were two deposits made, one of \$2,170.00 and the other on the same day of \$630.00. Can you tell us now why it is that those two deposits were separately entered on the bank book? A. I couldn't tell you that, no.

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Q. Did you and Jim go to the bank together on that day? A. Yes, we did; on the same day.

Q. Do you remember whether you went more than once on that day? A. No, once. We went to the bank and put 50-50.

By the Court:

10

Q. This bank transaction took place while the both of you were there at the one time? A. Yes, when we put the money in; when he put his money in with me. But we went over again for him to get his book and for me to get mine.

By Mr. Doherty:

Q. The next deposit made in that account was January 8th—six days after the account was opened. At that time \$100.00 was put in. Who put that in? A. I did.

20

By the Court:

Q. Where did you get that from? A. I got it up in the drawer. I put it there until I had \$100.00.

Q. Why didn't you put it in when you and your son opened the account? A. We couldn't put it in then. We had to wait a week.

30

By Mr. Doherty:

Q. The next deposit was April 15th. That was more than three months afterwards, and \$200.00 was added to the account. Who made that deposit? A. That was made up between the two of us. We put it in there until we had \$4,000 in the bank.

Q. I am talking about the \$200.00 that was put in about three months after the account was opened. A. Whatever I put in I put it in.

40

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By the Court:

Q. Didn't you say you and your son put money in the drawer together? A. Yes; but how much did he put in?

By Mr. Doherty:

10 Q. Can you give us any information about the \$200.00 that was put in on the 15th of April? A. I put it in.

Q. Do you remember whether that day of April 15th Jim had been stricken with his sickness or was he moving around? Was it before or after April 15th Jim had his trouble? A. It was around April 15th.

20 Q. You don't remember whether it was before or after? A. It was a Monday morning.

By the Court:

Q. Do you remember whether it was before or after April 15th? A. It was after.

Q. How many months after your wife's death, that is Jim's step-mother, did Jim become sick? A. About three months when he got up one Monday morning—

The Court: You have told me.

30 By Mr. Doherty:

Q. Have you given us all your information as to the deposit of \$200.00 on April 15th? A. All that was deposited I put in. I used to go to that bank.

By the Court:

40 Q. You took it from the drawer in which you and your son both put money? A. Yes, sir; and put it in the one book.

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By Mr. Doherty:

Q. When you speak of putting the deposit in do you mean you were the actual traveler going over to put it in or was it your own money you put in?
A. Between the two of us.

Q. But you brought it over? A. Yes, sir. 10

Q. What information can you give us as to the next deposit, August 15th, \$50.00. That was the middle of the following summer. Where did that come from? A. That came from myself.

Q. What was the condition of Jim? A. He wasn't able to get out.

By the Court:

Q. Instead of putting the money in the drawer you were helping him get better? A. Yes. 20

Q. And that's the reason between April and August you only had \$50.00 to put in the bank?
A. Yes, sir.

By Mr. Doherty:

Q. Along in about the fall on October 21st there was a deposit of \$200.00. What do you know about that? A. I put it in.

By the Court: 30

Q. Where did you get it to put it in? A. We earned it—I earned it.

Q. You said *we earned it*? A. Whatever it was he put it in and I put mine in.

Q. You trusted one another? A. Yes.

Q. Did you personally bring those deposits over, that is the one in January of \$100.00, the one in April of \$200.00 and the other in August of \$50.00? Did you bring them over? A. Yes, sir. 40

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Q. And what about the other deposit of October 21st of \$200.00? Did you bring that over? A. Yes, sir. I brought all of them over that went in that book.

10 Q. Your son never brought any over? A. Not that I know of, unless he brought it with his own book after when he got away from me.

By Mr. Doherty:

Q. What information can you give to the Court of the amount Jim supplied to this account? Before you answer me I will outline for your mathematical intelligence there was \$950.00 put in the account by separate deposits after you and Jim opened the account.

20 The Court: Put in between January and October?

Mr. Doherty: Between the opening and the closing of it.

Q. Who put that \$950.00 in that was deposited in the account between the day you opened it and the day you closed it? A. \$4,000 was in the bank.

30 The Court: This doesn't make \$4,000 yet. (Witness) A. If it was put there I put it there because there was never a cent put in that bank that I didn't put in. The woman used to put it in. After she died I put it in.

By Mr. Doherty:

40 Q. Do you know anything about the withdrawals from that account? According to the account on December 5, 1925, almost two years after the account was opened, \$100.00 was taken out. Did you take it out? A. Yes, I did; I took \$100.00 out.

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Q. Now six months after that in 1926 \$200.00 was taken out. Who took it out? A. He drew it out.

By the Court:

Q. How do you know? A. When he was getting married. He loaned me \$100.00 of that. 10

By Mr. Doherty:

Q. Three days after that the account was closed. Did the fact that he took the money out have anything to do with the closing of the account? A. No, sir.

By the Court:

Q. You knew he was going to take the \$200.00? 20
A. He used to kick about having the money in there with me.

Q. I am asking you when he was married did you know he had drawn \$200.00? A. I went and told him as long as you are kicking I will go over to the bank. The Friday before he had gone over and taken out \$200.00.

Q. How did you know he took out the \$200.00?
A. When I got the book and showed it to my niece she said, "There is \$200.00 gone out of this". 30

Q. And you and your son quarreled about it?
A. No more than I said, "Come on over and we will split it up 50-50".

The Court: I am wondering why this evidence is going in. They did split it up.

Mr. Doherty: To show the action of the defendant even in regard to splitting up.

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By Mr. Doherty:

10 Q. According to the splitting up there were two checks issued by the bank to you and Jim, one for \$1,903.43 and the other for \$1,903.44. You got one of those checks did you—\$1,903.44? A. That's more than I know about. I got no checks from that bank.

Q. Didn't you get any money from the bank when you were closing it up? A. I got a book.

Q. And the book you got was the one that was issued to you on July 10, 1926, and containing an original deposit of \$1,903.44, is that true? A. Yes.

20 Q. This book which you have heretofore identified, being Doherty 2 for Identification, is the book which was issued to you when you closed up the account with Jim, is that right? A. Yes.

Q. At that time the name *Mary* was not on the book? A. No.

Q. That was added when you got married to Mary? A. Yes.

Q. And out of the money you and Jim had in the joint account you got \$100.00 by drawing it and a check for \$1,903.44, and he got \$200.00 by drawing and also a check for \$1,903.43? A. Yes, sir.

30 Q. After you signed the deed you say you collected the rent of the place next door? A. Yes, sir.

Q. Jim never collected any rent, did he? A. Oh, no.

Q. And who discharged the taxes and water rents? A. I paid them.

Q. Did Jim contribute anything at all? A. No, sir.

By the Court:

40 Q. You received the rents and you paid the carrying charges? A. He refused to pay any.

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Mr. Newton: There is a dispute about that. It was all pooled together.

By Mr. Doherty:

Q. Is it true the rents and everything were pooled between you and Jim while you were living together and out of that pool the taxes came? A. He was living at 327. 10

Q. Before he got married when you were living together? A. Oh, when we were living at 329 we had the other rents.

By the Court:

Q. What became of the rents? A. It was put in the same drawer. 20

Q. And from that the taxes and water rents were paid from the rents and the other moneys each one of you put in the drawer? A. Yes, sir.

By Mr. Doherty:

Q. What knowledge have you of any money Jim ever put in that drawer? A. I never asked him how much he put in the drawer. What I had left I would put in the drawer.

Q. After the signing of the deeds were there any conversations between you and Jim as to how your financial affairs would be handled between the two of you? A. No, sir. I never crossed him in anything like that. 30

Q. Whose proposal was it that the rents and the earnings be put in a drawer and constitute a sort of a family pot between the two of you? Who suggested that? A. The both of us consented to put it in a drawer what we would have left. There was more that went in his pocket than went in the drawer. 40

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The Court: I will strike that last part out.

By Mr. Doherty:

Q. You don't know how much he put in? A. No, sir.

10 Q. Do you know how much you put in? A. No, sir; I do not.

Q. So far as you were to contribute to that fund what was your purpose? What was you to do about it?

The Court: I will overrule that unless he states the conversation. We will now take a recess until two o'clock.

20

AFTERNOON SESSION.

PATRICK KANE, recalled.

Direct examination continued by Mr. Doherty:

Q. Mr. Kane, during the time that you and James were contributing to the fund that you say was resorted to for carrying the expenses of the house, can you tell us what your expenses were outside of taxes, water rents, food and the hire of a housekeeper? A. Well, I was paying for the support of the house.

The Court: That is not the question you are asked.

(Last question repeated.)

A. I wouldn't say there was any expenses outside of that.

40

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By Mr. Doherty:

Q. Did the wages of the housekeeper come out of that fund? A. It came out of my earnings.

By the Court:

Q. Your earnings went into this drawer? A. 10
Yes, sir.

Q. Did the pay for the housekeeper come out of that drawer? A. No, sir; I gave her the wages when I was paid.

Q. Before you put it in the drawer? A. Yes.

By Mr. Doherty:

Q. Did the money for the provisions and the food? A. Came out of me.

20

By the Court:

Q. Then you didn't put anything in the drawer?
A. What I had to put in I did. I would put in maybe five or ten dollars after the expenses of the house.

Q. You didn't buy the supplies at all, did you?
A. I gave her the money to supply the stuff.

By Mr. Doherty:

30

Q. Can you tell us what expenses would come out of that money in the drawer? A. Well, what we had left over would go in the bank.

By the Court:

Q. Left over what? A. Left over the support of the house I put into the drawer, but I don't know what he put in the drawer.

40

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By Mr. Doherty:

Q. But you have told me that the moneys for the support of the house as represented by the housekeeper's wages and the food supplies came out of your personal pocket? A. It did.

10 By the Court:

Q. And not out of the drawer? A. No.

Q. What would come out of the drawer for expenses? A. Taxes. I would save up for the taxes and water rents and insurance.

Q. Those came out of the drawer? A. Yes.

Q. Anything else come out of the drawer that you know of? A. Not that I know of.

20 Q. You ought to know? A. I only took out what I needed.

By Mr. Doherty:

Q. Can you tell us, not having the tax bills here, what the taxes were for the years during which this money was being contributed to the drawer?

The Court: I won't permit him to testify to that.

30 Mr. Doherty: We have manifested a certain amount was deposited in the bank and he said that represented the balance after the deduction of charges for taxes and insurance. I am trying to develop what was the full amount that was put in there.

The Court: He doesn't say. I would be glad to have you show that but not by paying the taxes.

By Mr. Doherty:

40 Q. Will you say there was something taken from that drawer for taxes, water rents and insurance? A. Whatever the amount would be.

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By the Court:

Q. How much money did you put in that drawer? A. I put so much a week.

Q. How much? A. Maybe five and sometimes ten.

Q. You are guessing? A. Five and ten a week. 10
Whatever he put in I don't know.

Q. You are not sure what you put in? A. I am, yes. I used to put in five and ten.

Q. How many weeks did you put in five and ten or three dollars? A. I never put in as low as three dollars. Sometimes as high as fifteen and twenty.

Q. Can you tell me how many weeks you put in five and ten and how many weeks you put in fifteen and twenty? A. When I had it. 20

Q. Can you tell me how many weeks? A. I used to put it in every week.

Q. What did you put in? A. Five, ten or fifteen, whatever I had.

Q. I am trying to find out. If you are guessing at it don't tell me. A. That's what I put in.

Q. What? A. Five, ten, fifteen or twenty every week. Maybe some weeks I didn't put anything in.

Q. How much did you put in the first week in January, 1924? A. I put twenty dollars.

Q. How do you figure that? A. Well, when I 30
had it I put it there.

Q. How do you know you had twenty dollars that week? A. Because I had it in my pocket.

Q. How much did you put in the second week? A. Ten.

Q. Are you sure of that? A. Yes.

Q. How much did you put in the third week? A. Five.

Q. How do you know that? A. According to 40
how I had it.

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Q. Why didn't you put in twenty each week?

A. I couldn't afford it.

Q. You weren't paying taxes and water rents and insurance these weeks? A. No.

10 Q. You were only buying the food stuff for the house and the housekeeper's wages? A. It came out of one man's wages.

Q. That came out each week, didn't it? A. Yes.

Q. How much did you earn the first week of January, 1924? A. It was \$28.80 a week.

Q. How much did you pay the housekeeper? A. Twenty a month and fifteen a week to run the house.

Q. That is eighty dollars a month and you were earning twenty-eight a week? A. Yes.

20 Q. That is \$112.00 a month. It cost you \$80.00. Do you mean to tell me you can tell definitely how much you put in in these several weeks in January, 1924? A. I couldn't tell how much I put in. Whatever I had I put in over and above.

The Court: I am going to rule out all this testimony which indicates it is guess work upon the part of the witness. I don't see the significance as to the issue before me and I don't want to lose time on it.

30 By Mr. Doherty:

Q. Do you know that James contributed anything to this common fund to run the property after the deeds were executed? A. He didn't contribute nothing.

Q. Do you know whether or not he put anything in it? A. No, sir.

Q. Do you know he did not put anything in it? A. I know he didn't.

40

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By the Court:

Q. Tell me how you know it? A. I know it.

Q. How do you know? A. Because it wasn't in the drawer. Anytime I went to any expense he was supposed to give me a hand-out.

Q. Who had access to this drawer? A. He did, and I did. 10

Q. Did anybody else? A. No.

Q. Was the drawer locked? A. Yes, and he had a key.

Q. Did you keep a record of what was withdrawn from the drawer? A. No, I did not.

Q. Did you keep a record of how much you put in the drawer from time to time? A. No, sir; I did not. But whatever would be there when it come to one hundred or two hundred I would put it in the bank. 20

By Mr. Doherty:

Q. All the money that was put in the drawer you put in?

The Court: I will overrule any further examination along this line.

By Mr. Doherty:

Q. After you opened the bank account who paid the taxes? A. I paid them. 30

By the Court:

Q. Did you personally bring the money to the tax department or send somebody with it? A. I gave it to this man here.

Q. You mean your son? A. Yes. I gave him \$69.71 a half year's taxes for the two.

Q. Each year? A. Once or twice—twice a year. 40

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Q. And you gave him how much? A. \$69.71 out of the drawer.

Q. Twice a year? A. Yes.

Q. For how many years did you do that? A. For about three years.

10 Q. The same amount each year? A. Yes, sir.

By Mr. Doherty:

Q. What is your answer Mr. Kane to the question whether or not Jim contributed anything to the taxes, the water rents, the insurance, or any other maintenance of that property from the time that the deeds were made? A. He paid for six months taxes for me, but that was the agreement I made with him when I took him in.

20 By the Court:

Q. What year was that? A. I don't know. I forget all these things.

By Mr. Doherty:

30 Q. Will you tell us how he came to pay the six months taxes? What were the surrounding circumstances? A. Sooner than I have it idle for the winter I told him to pay a half year's taxes—so he paid it.

By the Court:

Q. How much was it, do you know? A. \$69.71.

Q. You say that your son only paid \$69.71 for what? A. For a half year's taxes—six months taxes.

Q. He never paid any other sum of money? A. No, sir.

40 Q. In the amended bill of complaint, paragraph 8, it is recited in your behalf that he paid \$38.00

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on one occasion. What was that, do you know?

A. That is more than I know about it.

Q. Paragraph 8 reads—"Since the execution of said deeds the complainant has personally (meaning you) defrayed all the charges in the way of taxes, water rents *et cetera* levied against the property except the sum of \$38.00 which the defendant (meaning your son) volunteered to pay and which payment he used as the opportunity for directing the municipal authorities to change the record as to the ownership of the property so as to have it appear that the said defendant was owner thereof. Said payment was made by the defendant at a time when he was heavily indebted to the complainant for board and lodging which he had while living with the complainant from the time of the death of complainant's wife in December, 1923, until the marriage of the defendant about June, 1926." Now what do you say about that recital in that paragraph? A. Whatever trouble was there the son made it.

Q. I am speaking about the \$38.00. A. I couldn't tell you about the \$38.00.

Q. You don't know anything about your son having paid \$38.00? A. No, sir; I don't know anything about it.

By Mr. Doherty:

Q. Mr. Kane, I show you what purports to be a receipted tax bill for 1927 and 1928 which exhibits that the half yearly taxes on both pieces of property taken together are \$69.71. A. Yes, sir.

Q. Can you tell us more accurately in respect of what payment Jim furnished the money? Was it the first or second half of 1927 or the first or second half of 1928? A. I couldn't tell you what date, but all he offered was six months taxes.

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By the Court:

Q. And you said there was never a time when he paid \$38.00? A. I don't remember anything about that. What I can't remember I can't say.

10 By Mr. Doherty:

Q. You can say the semi-annual taxes on 329 were \$39.32. You know that? A. Yes.

By the Court:

Q. Do you know what the taxes are or do you have to look at the bills? A. I couldn't look at the bills. I know what the taxes were.

20 By Mr. Doherty:

Q. Jim lived with you until he got married in 1926? A. Yes.

Q. Occupying 329? A. Yes.

Q. And when he got married where did he go to live? A. Across Pavonia Avenue there.

Q. How long did he live there, do you know? A. He was there ten months I guess, or so.

Q. Now during that period did Jim contribute anything to the upkeep of the place or did he get any of the rents? A. No, sir.

30 Q. Did nothing at all with respect to the ownership of the property? A. Did nothing at all.

Q. When he moved from Pavonia Avenue, which was his first habitation after he was married, where did he go to? A. I brought him to 327 alongside of me and I told him he could have free rent provided he paid six months taxes. He agreed to it. The following March I brought him in myself and let the housekeeper go.

40 Q. Did he pay the taxes? A. No. I am the man that paid the taxes.

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Q. You said you told him he could have free rent if he paid the taxes. Did he pay the taxes?

A. Yes, the first six months.

Q. And that amounted to \$69.71? A. Yes.

Q. How long did you tell him he could live at 327½ with free rent? A. Until I could get a tenant for it. When I got a tenant for it I took him in myself and said we could live together. As soon as he got the furniture in there they told me what they felt like. In fact they were poison. 10

Q. When you got married your house was maintained by a housekeeper, wasn't it? A. Yes, sir.

Q. And you still had the housekeeper working for you when he was living next door at 327½?

A. Yes, sir.

Q. And you got a tenant for 327½ and dismissed your housekeeper? A. Yes, sir. 20

Q. And you asked him and his wife to come into your house to live? A. Yes, sir.

Q. What were the arrangements between you and Jim when he was going in the house to live with you? What he should contribute there?

The Court: What has that got to do with the issue I am trying here?

Mr. Doherty: It shows the construction the parties put themselves upon the deeds and the transaction. 30

The Court: I can't see it but I will allow it.

Mr. Newton: That might be true if there was any ambiguity in the deed. I object to it.

The Court: I will receive it subject to your objection, but an objection stated without grounds does not mean anything.

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By Mr. Doherty:

10 Q. Now, Mr. Kane, tell us what the business arrangements were between you and Jim when he came in to live with you? A. He told me as soon as he come I should pay them ten dollars a week board money, and I told him "No, you have free rent and that ought to be enough for you, and if you can't keep me for the free rent you are not fit to live." He put on his coat and ran after me and said "Get out you skunk! Get out!"

Q. When was that? A. A couple of weeks before I got married.

Q. What year or month? A. 1928.

Q. What time in 1928 did Jim move into the house—Jim and his wife? A. In March.

20 Q. When was it he asked you to pay ten dollars a week board to him? A. When he got in there.

Q. How long after? A. About a week after.

Q. Up to that time was there any conversation between the two of you? A. No conversation at all, no, sir. Then he put me out. "Get out!" he says "You skunk."

30 Q. Was there any talk between you as to what rent he should pay? A. No. Free rent just to keep me, and we would live together. He said I was to pay up ten dollars a week.

Q. Did he pay you any rent? A. He paid me two months rent and when I went to get the third month's rent he refused me and said he had as much right as I did. I went down to the city hall. First came the tax bill *and others*. I wanted to know who the *others* were.

Q. For what months did he pay you rent for the occupancy of 329? A. April and May.

40 Q. How much rent did he pay per month? A. \$30.00.

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Q. How did he come to pay you \$30.00 rent?

A. He agreed to. He said "I will give you \$30.00 a month, but you will have to put up \$10.00 a week for your board money."

By the Court:

Q. That is you would put up \$40.00 a month and they were to pay \$30.00? A. Yes.

10

By Mr. Doherty:

Q. Were you to stand the board money or rent money? A. No. I offered him free rent provided he kept me, but it wouldn't go.

By the Court:

Q. Didn't you know the deed of the property was then in your name and his name—both of you? A. I didn't know until I went for the rent and that's the time I woke up. When I went to look for the deeds they were out of the drawer. He took them out of the drawer.

20

Q. When you got the deeds from Judge Doherty after they were recorded didn't you know the property was in your name and your son's name? A. I didn't understand it, no judge.

Q. What did you have in mind was the purpose of making these deeds in Judge Doherty's office? A. The way I brought it out I signed for him as beneficiary after my death but not before. In the place of that he had his name put in the deeds and I didn't know the first thing about it.

30

Q. You told us before you told Judge Doherty who was acting as your lawyer that the deeds should mention that your son should have the benefit of the property after your death. Is that it? A. And not before, yes.

40

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Q. But after your death? A. Yes, he was supposed to have it.

Q. If you were willing to make that transaction with your son what are you coming into court for now? What is your purpose in coming into court now? A. Because he threw me out and called me a skunk and told me to get out.

10

By Mr. Doherty:

Q. After Jim put you out of the house did you ever come back there? A. Oh, yes, I came back in my own room and stood there for four or five weeks.

Q. How long after that was it you got married? A. About four weeks after.

20 Q. Then you moved in the other place with your present wife? A. Yes.

Q. Since you left has James paid any rent? A. No, he owes fifteen months rent.

The Court: I will strike that out.

By Mr. Doherty:

Q. Has he contributed anything to the taxes? A. No, sir.

30 Q. And the carrying charges? A. No, sir.

The Court: I am admitting it but I see no obligation on his part to do it as the deeds seem to indicate.

Mr. Doherty: We have a right to ask this bill be translated into a bill for an accounting.

40 The Court: That is within the discretion of the court to permit it. As indicated by the prayer of the amended bill this complainant and those advising with him have

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had lots of time to think what the bill should be. It seeks a cancellation of the deeds upon the allegation of a mistake having been occasioned as to the legal effect of those deeds. I won't be able to say until the case is closed and until I hear counsel's suggestion as to the change of pleadings what the suggested change might be. There is a lot of testimony which is not germane to the issue I am trying. 10

By Mr. Doherty:

Q. Between the time that Jim first spoke to you about deeding the property over and the actual execution of the deeds did he mention anything to you as to whether he had hired an attorney to draw the deeds? A. No, sir. 20

Q. He didn't? A. No, sir.

The Court: That statement of the witness seems to be in direct conflict as set up in the bill of complaint.

Mr. Doherty: Positively. That's all.

Cross-examination by Mr. Newton:

Q. Mr. Kane, how long did Jimmie live with you from the time he got back from the army until your second wife died? A. From the time he got back he was always living with me. 30

Q. How many years was that? A. About five years, I guess. I think five years.

Q. And during that time he was paying his board? A. Yes, sir.

Q. Now then his step-mother died on December 24, 1923, isn't that so? A. Yes.

Q. And naturally after she died you got talking about how the two of you were going to live together after that, didn't you? A. Yes. 40

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Q. And as a result of those talks you went over to the bank and he drew out his money? A. He drew it out?

Q. Yes, didn't he? He drew his money out of his individual account? A. What did he draw?

10 The Court: We are speaking about the \$1,250.00 withdrawn from the Emigrants Bank. Counsel is referring to the time when you and your son opened up a joint account. You are asked whether your son did not go over there and draw out from the Emigrants Savings Bank the moneys which were deposited to his credit there.

Witness: I don't know.

20 By the Court:

Q. Didn't he draw it out and put it in your account? A. Yes, and we went 50-50.

By Mr. Newton:

Q. He put in your book what he had left after paying the undertaker's bill? A. Yes.

Q. How much was the undertaker's bill for Mary Kane? A. \$760.00 wasn't it.

30 Q. \$765.00. He also paid the balance due on the undertaker's bill for your first wife? A. He did not. I am the man that done that.

Q. You did that? A. I did; that is right.

Q. Did he pay anything else for a monument? A. No, he did not. I paid the monument. No, sir, he did not.

Q. Didn't he pay \$68.00 on account of a monument? A. He did not.

Q. How much did the monument cost altogether? A. About three—

40 Q. \$368.00, wasn't it? A. Yes.

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Q. You paid the \$68.00, did you? A. Me paid the \$68.00?

Q. Yes. A. Look out I didn't pay the \$368.00.

The Court: You are asked didn't you.

Witness: I did.

10

By Mr. Newton:

Q. Where did the \$300.00 come from which was used to pay the balance on the monument? A. I don't know.

Q. You paid altogether for the monument \$368.00? A. Yes.

By the Court:

Q. You say you paid that? A. Yes.

20

By Mr. Newton:

Q. It was your money? A. Yes.

Q. It wasn't Jimmie's money? A. No, it was not.

Q. And it didn't come from this common pot either, did it? A. No, it did not.

Q. You are quite sure of that? A. Yes.

By the Court:

30

Q. Where did you get the \$368.00 to pay that bill? A. I had a few hundred laid over after my wife's death.

Q. You have told us a little while ago after your wife's death you deposited \$100.00 over in the bank in New York? A. Yes.

Q. Isn't that all the money you had? A. That was about six months after she died I did that. Whatever moneys I had in the house went for this and that.

40

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10 Q. Get your mind on this. Your counsel called your attention to a transcript of account of you and your son James with the Emigrants Industrial Savings Bank which indicated that on January 8, 1924, you deposited \$100.00 in that account. Do you remember that? A. Yes.

Q. Now that \$100.00 you told the court you took from the drawer where this common pot was and brought it over. Is that right? A. Yes.

Q. When you took that money from the drawer did you leave any money in the drawer? A. No, that's all was in the drawer at that time.

Q. Where did you get this \$300.00 which you paid for the monument? A. We didn't pay for that right away.

20 Q. How much was the first payment you paid on it? A. \$50.00 I guess.

Q. And how much was the second payment if you remember? A. \$60.00.

Q. Was it paid in small payments like you indicated—\$50.00 and \$60.00? A. Yes.

By Mr. Newton:

30 Q. At the time your second wife died you had \$2,170.01 in the Emigrants Bank, didn't you? A. Yes.

Q. And you put that in this joint account with you and Jimmie? A. Yes.

Q. What other moneys did you have at that time? A. He had—

Q. I am talking about you. What other moneys did you have besides what was in the Emigrants Bank? A. It was in the drawer.

Q. What did you have in the drawer? A. I paid my expenses outside of the funeral expenses.

40 Q. Answer the question. How much did you have in the drawer? A. I had \$300.00.

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By the Court:

Q. Are you sure of that? A. Yes.

By Mr. Newton:

Q. When did you pay this \$300.00 to the monument man? A. About twelve months after it was erected. 10

By the Court:

Q. About twelve months after it was erected?
A. About six months.

By Mr. Newton:

Q. When was it erected? A. 1923, I guess.

Q. You don't mean that. She didn't die until Christmas Eve, 1923. Now when was the monument erected? A. The following summer. 20

By the Court:

Q. What was the name of the man that erected the monument? A. Harper.

Q. Did you sign a contract for the monument with Harper? A. Yes.

By Mr. Newton:

Q. Have you the receipted bill for the monument? A. I gave it all to the lawyer. 30

By the Court:

Q. Did you get a receipt each time you paid money? A. No.

Q. This bill you got from Harper was a bill you got a short time ago, wasn't it? A. Yes. This fellow here got the bills. 40

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Q. You mean your son? A. Yes. He took them all out of the drawer. Then I had to get a duplicate from both Carey and Harper.

By Mr. Newton:

10 Q. Now, Mr. Kane, you had to make some repairs to these houses since the step-mother died, didn't you? A. Yes.

Q. Who paid for them? A. I am the man that paid for it. He had a man put some floors there. When he was drunk he kept him in the house until I came in to pay the man.

Q. You paid for all the repairs? A. Yes.

Q. Jim hasn't spent a single cent on the house? A. He spent nothing on the house, no.

20 Q. After you went to the bank in New York and you went 50-50 on the bank account— A. I let him in 50-50 and \$200.00.

The Court: Wait until the question is asked.

By Mr. Newton:

30 Q. After you went to the bank in New York on Chambers Street and both moneys were put in your book, when was that? A. Right after the woman died. About two or three months after she died we went over and fixed it.

Q. About two or three months after she died? A. Yes.

Q. When did you go up to Judge Doherty's office about these deeds? A. He will tell you that.

The Court: You are asked.

40 (Witness) A. At the time he asked me to make him beneficiary after my death.

The Court: You are asked when that was.

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(Witness continuing) A. About six months after she died he got after me.

By Mr. Newton:

Q. After you went up to Mr. Doherty's office and these deeds were prepared by Judge Doherty you and Jimmie continued to live together? A. We always lived together until he got married. 10

Q. Can't you answer that *yes*? A. Yes.

Q. And while you were living together where did you sleep? A. In the one bed.

Q. And there was a bureau in the bedroom? A. There was.

Q. And that bureau had a drawer in it? A. It certainly did.

Q. And there were two keys to that drawer? A. Yes. 20

Q. And you had one key and Jimmie had the other? A. Yes.

Q. Why did you each carry a key to that drawer? A. What he would have to put in and I gave him a key to put in whatever he wanted to put in.

Q. Did you ever see him put any money in that drawer? A. I never saw him put nothing in it.

Q. On Saturday nights you used to put your money in the drawer? A. I never asked him. 30

By the Court:

Q. He never asked you either? A. No.

By Mr. Newton:

Q. But he never put money in the drawer? A. I don't know. I never asked him. I never asked him. 40

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Q. He said he did but you didn't believe him?

A. If he did he would not have as much in his pocket as he did.

Q. You don't believe he put a nickel in that drawer? A. I did not ask him. I wasn't that quizzent with him.

10 Q. How much a week were you making when your second wife died? A. \$28.00.

Q. And you were putting in five, ten and fifteen dollars a week in that drawer? A. I was paying \$15.00 a week to the housekeeper to keep the house, and what I would have left, unless I wanted a dollar or two for something else, I would put it in the drawer.

By the Court:

20 Q. You mean you paid \$15.00 for the foodstuffs and you paid her \$20.00 a month for herself? A. Yes, out of my own wages.

By Mr. Newton:

Q. You never took the housekeeper's wages out of the drawer? A. No, I paid her myself when the month was up.

30 Q. Occasionally you would go to the Emigrants Bank and deposit some money in the joint account? A. Yes.

Q. Where would you take that money from? A. My money was in the book.

Q. Where would you get the money to deposit? A. Oh, I would save it until I would have fifty or one hundred dollars and put it in.

Q. You would take it from the drawer, wouldn't you? A. Yes.

40 Q. And some of that money was Jim's and some was yours? A. I couldn't swear to that.

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By the Court:

Q. You told me before from your wages you paid this housekeeper \$20.00 every month? A. Yes.

Q. And you also paid her \$15.00 each week to buy foodstuff for the house? A. Yes. 10

Q. When the time came around for the housekeeper to get her money some weeks she would get more than \$20.00. You would give her \$20.00 and you would give her \$15.00, and that you say you gave from your wages? A. Yes, sir.

Q. You only got \$28.00 a week? A. Once a month she would be paid.

Q. I know that, but you couldn't give her \$35.00 a week out of \$28.00? You would have to go to the drawer? A. I would give her \$15.00 of that 20 to run the house for the week.

Q. And \$20.00 for herself? A. Not every week.

Q. I am speaking about the week she would get the \$20.00. She was paid monthly? A. Yes.

Q. So the week you would give her \$20.00 you would give her \$20.00 for herself and \$15.00 to buy the food for the house? A. Yes.

Q. That would be \$35.00 you would have to give her that week? A. Yes.

Q. You only earned \$28.00 a week? A. Yes. 30

Q. So to give her \$35.00 you had to go to the drawer to make the difference up? A. Yes, I did because I put it in the drawer. I would save for three or four weeks so I would have her money for her.

Q. You saved it by putting it in the drawer? A. Yes.

By Mr. Newton:

Q. You and Jim lived together from the time the step-mother died and you had this arrangement about the drawer, didn't you? A. Yes. 40

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Q. How long did that continue? A. Until he got married.

Q. When did he get married? July, 1926, wasn't it? A. Yes.

10 Q. How long did you stay with Jim and his wife after he got married? A. I didn't stay any longer. I told them to go some place else.

Q. Didn't you live with them after they got married? A. The second time he came back I took him in and I lived with him for three or four weeks and I got married. It is a good thing I did or I might be under the earth now.

The Court: I will strike that out.

By Mr. Newton:

20 Q. But you didn't live with him at any time after Jim was married except when he came back? A. Yes. That's the only time I did live with him.

Q. Who did he marry?

The Court: What is her name you mean.

(Witness) A. Kitty Duffy.

By Mr. Newton:

30 Q. Wasn't she the housekeeper? A. Yes, but how long? She was only three weeks in the house when she started to chew the rag with me.

By the Court:

Q. You got sore? A. Yes. She started to chew the rag with me and I said, "Go, now, and I will pay you a month's salary."

By Mr. Newton:

40 Q. How long did you stay away from Jim and his wife? A. About two years—about a year.

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Q. After they married and before you went to live with them how long were you apart? A. About a year or so.

Q. After Jim was married where did he first live? A. On Pavonia Avenue.

Q. Didn't he come back to one of your houses? A. Yes. He was going to move and one of the places was idle. 10

Q. He was married on July 11th and came back and lived in one of your houses? A. Yes.

Q. Which one? A. 327½.

Q. And how long did he live there with his wife? A. About eight months or nine.

By the Court:

Q. How long after his marriage did he come back to 327½ to live? A. About nine months. 20

By Mr. Newton:

Q. On the very day he was married didn't he come back to the house 327½? A. He didn't come back to me.

By the Court:

Q. Did he come back to that house? A. That was the agreement. I told him he could come back until I got a tenant. The following March I got a tenant and I brought him in. 30

By Mr. Newton:

Q. Before he moved to Pavonia Avenue? A. He was with me.

Q. And he was with you about three weeks, wasn't he? A. Yes.

Q. How did he come to get out of 329 three weeks after he was married? A. I told him I would turn him away if he married her. I didn't want him to marry her. 40

Patrick Kane, Complainant—Cross.

Q. Did you want to marry her? A. No, sir—
Oh, nothing doing. Oh, boy! No, no.

Q. How long did he stay away on Pavonia Avenue? A. I couldn't tell you. I kept no track of when he was away.

10 Q. But he did come back to 327½? A. He did.

Q. Who told him to come back? A. He was going to move out of Pavonia Avenue and I told him, "If you want to come back you can take it and I will leave you free rent provided you pay six months' taxes." So I left him in and then the following March I got my four nieces and brought them down there. I rented the place to the nieces.

20 Q. How much rent did you get from your four nieces? A. \$30.00.

Q. And then you invited Jim to move next door with you? A. I invited him, and as soon as he got in he put his furniture in and threw my furniture around.

Q. When Jim moved into 327½ he made some repairs to the place? A. Whatever repairs was done I done it.

30 Q. You know Joe Scott? A. I know Joe Scott, but that wasn't up to me. The place was all right. It just suited him to do the repairs. It wasn't up to me.

Q. He made some repairs there? A. If he did it was up to him.

The Court: You asked whether he did.
(Witness) A. He did some painting upstairs.

By Mr. Newton:

40 Q. You didn't pay for it? A. No. If you don't like it you needn't take the rooms. They are not supposed to do work for you.

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Q. In March, 1928, you asked him to come into 329, didn't you? A. I asked him in with myself, I did. I brought him in to live together and I asked him free rent provided he kept me and he absolutely refused and put me under \$10.00 a week board.

10

Q. I suppose you had changed your opinion about his wife, hadn't you?

The Court: In other words you didn't want his wife there first but you did afterwards.

(Witness) A. I gave her a chance to see what she would do, but this is what she did. She tried to poison me. The meat she put in my lunch she would have it in the pot for a whole week and when I went to work I would have to throw it away.

20

By Mr. Newton:

Q. How long did you live with Jimmie and his wife after March, 1928? A. Two months.

Q. Until you got married the third time? A. Yes.

Q. When did you get married the third time? A. In June, I guess.

30

By the Court:

Q. What year? A. 1928.

By Mr. Newton:

Q. You lived with Jimmie up to the very day he got married? A. Yes. I would go upstairs and go to bed and not bother him at all.

Q. But you lived with him up to the very day he got married? A. Yes.

40

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Q. And then you got out? A. I left; yes, I did.

Q. That was in 1928? A. Yes.

Q. And you went to live with your third wife?
A. Yes.

Q. In a house that she owns, is that right? A.
Yes.

10 Q. This deed was made in January, 1924? A. I
don't know what time it was made.

The Court: Yes, you do. You said it
was shortly after your second wife's death.

(Witness) A. Yes.

By Mr. Newton:

20 Q. And you didn't start this suit Mr. Kane un-
til four years afterwards—pretty near five years
afterwards? A. We didn't start no suit because
he refused me rent and I wanted to find out the
idea.

Q. Why did you wait so long? A. I wanted to
see if we could live together but I saw I couldn't
stand it. You wouldn't like to walk into a thing
you couldn't use for your purpose.

By the Court:

30 Q. That's the only thing that concerned you?
A. Yes.

By Mr. Newton:

Q. Your third wife didn't have anything to do
with bringing this suit, did she? A. No, she has
nothing to do with it. The woman has her hands
out of it altogether.

40 Q. When you went up to Judge Doherty's office
you say that Jimmie asked you to make him bene-
ficiary of the property? A. After my death.

Patrick Kane, Complainant—Cross.

Q. After your death? A. Yes.

Q. And Judge Doherty at that time was handling a case regarding Jimmie's step-mother? A. Yes.

Q. Your second wife, is that right? A. That's right.

Q. And you went up there? A. Yes, and that's the time he asked me if I would make him beneficiary.

Q. Have you any recollection at all of signing any paper in Judge Doherty's office? A. I did, but I didn't sign it—

The Court: You are merely asked if you have any recollection of signing a paper. You say you did. Never mind what the paper was.

(Witness) A. I signed.

By Mr. Newton:

Q. Have you any recollection of how it is you were in Judge Doherty's office that day? A. I can't tell how long I was there.

By the Court:

Q. About how long were you there? A. I don't know; I can't tell you now. We might have been there an hour or a half hour.

Q. Have you any recollection at all? A. No.

By Mr. Newton:

Q. Have you any recollection of Judge Doherty explaining to you the nature of the paper you signed? A. I didn't understand it.

By the Court:

Q. But he explained something? A. Yes, that I didn't understand.

Patrick Kane, Complainant—Cross.

Q. Did you tell him you didn't understand?

A. I didn't.

Q. If you didn't, why didn't you say to him you didn't understand? A. I didn't understand it.

10 Q. Why didn't you tell him you didn't understand it? You had confidence in Mr. Doherty?
A. I certainly did.

Q. Why didn't you tell him you didn't understand the paper and you would like to have him explain it further? A. I had no reason for it. I was bewildered.

The Court: I will strike that out.

By Mr. Newton:

20 Q. Didn't Judge Doherty tell you that you and Jim would be joint tenants? A. I couldn't tell you that.

Q. Didn't he also tell you that if either of you married your wives wouldn't have any dower? A. No, I don't remember anything like that.

Q. Do you remember who were present when you signed that deed? A. When I signed it I signed it as beneficiary after my death but not before.

30 The Court: I will strike that out. You are merely asked who was present when you did sign it.

(Witness) A. Only the two of us—the three of us.

By Mr. Newton:

Q. You are now sure that Jim was there when you signed it? A. Yes.

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By the Court:

Q. Are you sure of it? A. He was there when I signed it.

Q. You say that Jim, your son, and Judge Doherty were the three who were present when you signed? A. That's all I saw there. 10

Q. Are you sure he was present? A. Yes, he was there.

Q. At the time you signed it? A. Yes. That's the first time I went there. I understand he was there before.

The Court: I will strike that out.

By Mr. Newton:

Q. At any time when you were up there did Judge Doherty tell you anything about the deed when Jim was not present? A. No. I was with Jim only once. 20

The Court: The question now is, did Judge Doherty talk to you about that deed at any time when your son Jim was not present?

(Witness) A. I don't know anything about it.

30

By Mr. Newton:

Q. Why did you put Jimmie's name on the deed? A. Why did I put it on the deed?

Q. Yes. A. I didn't put it on the deed.

By the Court:

Q. Why did you agree to put it on the deed? A. I did not agree to put it on the deed. I didn't want his name on the deed. I only signed for beneficiary. 40

Patrick Kane, Complainant—Cross.

Q. You said he was to be the beneficiary after your death? A. Yes, but not to put his name in the deed. But it was in the deed unbeknown to me.

Q. Don't you understand that's the way the deed now reads? A. Yes.

10 Q. Is that what you meant that after your death you wanted him to get the property? A. Yes, but being as he spoke to me and told me I was a skunk and to get out——

Q. You became sore at him and became angry because he called you names and you thought you would start a suit to set aside the deeds? A. He took off his coat to hit me.

20 Q. Is that the reason why you started this suit because you were angry with him? A. When I found out his name was on the deed. I have two other sons.

Q. When did you first find out that his name was on the deed? A. When I went for the rent.

Q. When was it he called you a skunk? That was the time you seem to have found it out? A. A week after he was married.

Q. And he was married in 1926, is that right? Was that in the year 1926? A. It was in 1928 he gave the deeds to me.

30 By Mr. Newton:

Q. When did you first find out Jim's name was on the deed? A. When I went down to the city hall.

Q. When was that? A. Just after it happened.

Q. It was after he was married? A. He was married a long time when he came back the second time.

40

Patrick Kane, Complainant—Cross.

By the Court:

Q. Can you tell us when that was—what year?

A. 1928, I guess.

Q. 1928 is last year. Was it last year or the year before? A. Last year.

Q. What time in last year? A. It was May, I 10
guess.

Q. In May of last year? A. 1928.

Q. If you found out his name was in the deed in 1928, why did you wait until February, 1929, before you started this suit? Why did you wait from May, 1928, to February, 1929, before you started this suit? A. I don't understand anything about that. When I found out what was the idea—when I went to the city hall and found out *Patt* Kane and others. I wanted to know 20
what the *others* was and his name was shoved in.

By Mr. Newton:

Q. That day you went to Judge Doherty's office you went up there of your own free will, didn't you? A. It wasn't me own free will. I make him beneficiary, but I didn't want his name in the deeds.

By the Court:

30

Q. Mr. Kane, didn't you tell me you went there to see Judge Doherty about your wife's case? A. Yes.

Q. Then you went of your own free will? A. Yes, sir; that occasion I went there of my own free will.

By Mr. Newton:

Q. But you have no recollection as to whether 40
or not it was explained to you? A. No.

Patrick Kane, Complainant—Cross.

Q. You wouldn't say it wasn't explained to you?

By the Court:

10 Q. You said Judge Doherty did explain it but you didn't understand it? A. Yes, he explained something, but I didn't know what it was.

Q. If you didn't know, why didn't you have it explained to you more fully? A. The man explained it but I didn't understand it.

Q. You didn't tell Judge Doherty you didn't understand it, did you? A. I didn't tell him that, no.

By Mr. Newton:

20 Q. Why did you sign it if you didn't understand it? A. When I was signing I was only signing as beneficiary. I didn't think for one minute he was going to put his name in the deeds.

Q. Was there any discussion at the time you signed the deed about a will? A. At the time you signed the deed in Judge Doherty's office, was there anything said about a will?

The Court: Your will.

(Witness) A. No, I don't remember.

30 By the Court:

Q. Did you offer to make a will leaving the property to him by will and did he object and say you could destroy the will and make a new will at any time? A. I don't remember.

By Mr. Newton:

40 Q. Was there anything said about a will at all? A. Not that I know of. It was only beneficiary after my death but not before.

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Q. What do you understand by the word *beneficiary*, Mr. Kane? A. To have it after my death.

Q. At any time that Jimmie and you were discussing the deed did you ever use the expression 50-50? A. No, I don't know nothing about it.

Q. You were to go 50-50 on the bank account, weren't you? A. Yes. 10

Q. But you weren't to go 50-50 on the houses? A. Oh, no.

Q. Isn't it the fact, Mr. Kane, that the reason you put Jimmie's name on the deed was that Jim was to continue living with you and you were to pool the money and take care of taxes and the housekeeper and repairs and everything else? A. He done no repairs for me.

The Court: You are asked what the truth was. 20

(Witness) A. I paid for everything. He bulldozed me.

The Court: I will have to strike that out.

(Witness continuing): He said, "I will keep you and board you and you won't have to work no more."

By Mr. Newton:

Q. Jim has never had a nickel of rent from either of those houses, has he? A. No, sir. Why should he receive it? 30

Q. You collected the rent ever since? A. I collected the rent for one house and he owes me fifteen months rent.

Q. And you invited him back in the house he is living in now? A. I certainly did.

Q. What did you tell him when you asked him to come back? A. I told him to come back and let the housekeeper go, and as soon as he had his foot 40

Patrick Kane, Complainant—Cross.

in there and a few pieces of furniture he put me on ten dollars a week board money. I said "No, I wouldn't pay board in me own house."

Q. Didn't you tell him to pay the taxes? A. No.

Q. He did pay six months taxes, didn't he? A. We agreed to that first when I let him in the house.

10

Q. You did tell him if he moved back in the house he was to pay the taxes? A. No, there was no agreement to that. I told him if he came back he would keep me, and there was no talk about taxes.

Q. You weren't living with him then? A. I certainly was, the second time.

Q. He moved from Pavonia Avenue to 327, didn't he? A. Yes.

20

Q. And he and his wife lived there? A. Yes.

Q. And you lived next door with your house-keeper? A. Yes.

Q. When you invited him to move into 327 what did you tell him? A. I told him he could move in with me.

Q. Before they moved in with you? A. I told him he could move in when he was living in the house. The four nieces were looking for a place to move and I told them I would get the place fixed up.

30

Q. That was 329, wasn't it? A. Yes.

Q. But previous to that time he was living in 327, wasn't he? A. Yes.

Q. How did he come to move into 327? A. I took him in and let the four nieces in the house he was in—in 327. After he was in here is what I got.

Q. How long did Jim and his wife live in 327 before your four nieces moved in? A. About eight or nine months, I guess.

40

Q. And you let him in there? A. Yes.

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Q. Under what arrangement? A. Providing he would pay half years taxes for me.

Q. Yes, and make some repairs too? A. That was up to himself, but the repairs he done was painting a few rooms.

Q. The place needed repairing, didn't it? A. 10
It was all right, but he done it to suit himself.
So when the girls came down I took them in my—

Mr. Newton: You have answered the question.

By the Court:

Q. Mr. Kane, in the sixth paragraph of the amended bill of complaint filed in this suit in your behalf it is recited that the transaction relating to the deed which took place in Mr. Doherty's office constituted you and your son James as joint tenants of the property, and that upon the death of either, that is, upon the death of either you or your son, the property should be owned by the survivor, that is, the one that would be left between the two of you. Is that what you understood as set forth in the bill? Was that your understanding with your son? A. I am stupid. 20

Q. The complaint in the same paragraph also says that it was likewise explained to you, that is, by Judge Doherty, that in the event of the marriage of either you or your son the wife of the one who married would have no dower right in the property. Do you remember Mr. Doherty explaining that to you? A. No, sir; I don't remember nothing. 30

Re-direct examination by Mr. Doherty:

Q. Will you make it a little clearer how it was in May, 1928, you first found out that James name 40

Patrick Kane, Complainant—Re-direct.

was on the deed? A. The only time I found that out judge was when I went down to the city hall. I walked around the city hall and saw the name *Patt Kane* and others.

10 By the Court:

Q. How many years had you been receiving tax bills *Patt Kane* and others before you went down to the city hall? A. Oh, I think about 18 years, since I bought the property.

Q. I mean before you went to the city hall to make that inquiry. Had you received tax bills more than one year from the city hall with *Patt Kane* and others? A. Yes, but I didn't understand that.

20 Q. When you first received the tax bills *Patt Kane* and others why didn't you go to the city hall? A. I didn't understand it at that time.

Q. Why didn't you go to the city hall to find out what that meant? A. If I knew anything I would.

Q. What prompted you to go when you did go? A. Because he refused to pay the rent.

Q. When he refused to pay the rent? A. I went down to the city hall and found the name *Patt Kane* and others.

30 Q. And you found the *others* meant your son? A. Yes, that's the way I took it. That's the way it was on there.

By Mr. Doherty:

Q. What was your understanding as to the effect of those two deeds that I handed back to you on February 19, 1924?

40 Mr. Newton: Objected to as improper.
The Court: State your objection.

Patrick Kane, Complainant—Re-direct.

Mr. Newton: I object to the question on the ground first it calls for a conclusion as to the legal effect of certain instruments, and of course the instruments themselves are the proper source of the Court's enlightenment on that.

10

The Court: I will sustain the objection and overrule the question, and particularly on the ground we are not concerned about the witness' understanding as to the effect of what the instruments were.

Mr. Doherty: It might be the illiteracy of the witness.

The Court: He is not illiterate in my judgment.

Mr. Doherty: I mean unable to read. When he received the deeds which I handed him in 1924 if he was a man of letters he would see what the purport of those deeds are. I am asking him what sort of substituted understanding he had as to the import of those deeds being a man who is unable to glean from their substance what they mean.

20

The Court: I will overrule the question because the deeds contain a certification by you as a Master in Chancery of New Jersey indicating clearly you make known to him the contents of those papers, and he thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. If we were to permit people to come into Court and upset instruments of this kind from time to time there would be no certainty in deeds. Aside from that there is a case in which a blind man was held to the deed he made. The circum-

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40

Patrick Kane, Complainant—Re-direct.

stances of that case was he was bound by it, as I remember the decree of the Court, if he had any reason to believe he did not thoroughly understand the nature of it he should have sought advice from somebody else. In this particular case this man went to a lawyer in whom he had confidence, one whom he says represented his wife in a case which she had pending at the time of her death, and he said that lawyer to which he went handled this transaction and as this witness said explained to him the deed and he said he didn't understand it, and I said "If you didn't understand it why didn't you ask to have it explained?", and he couldn't give me any reason. The certificate attached to these deeds is pretty strong evidence that he did understand the deeds.

Mr. Doherty: He says I didn't satisfy him as to the true tenor and effect of those deeds. I want to find out to what extent he did have an intellectual impression of what was going on.

The Court: I will let you ask him what happened and what was said.

Mr. Doherty: Counsel on cross-examination has asked him as to his understanding.

The Court: He has a greater latitude on cross-examination.

Mr. Doherty: My purpose is to correct the purpose of the cross-examination.

The Court: I will overrule the question.

By Mr. Doherty:

Q. What was there in my statement to you at the time when the deeds were executed that you

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did not understand? A. I didn't understand you Mr. Dougherty?

By the Court:

Q. You didn't understand what? A. I didn't understand what they were brought out. 10

Q. What was it with respect to these two deeds on this date which your attention was called to that you did not understand? There is plenty of opportunity for you to state anything you wish.

A. I was not educated enough to do that.

Q. To do what? A. To understand it.

Q. Judge Doherty spoke plain English to you? He talked very plainly to you? A. Yes, but I didn't understand him.

Q. Do you remember what he said? A. I 20 couldn't tell you.

Q. Didn't he tell you that deed was to be made to Mr. Gannon, his clerk, and Mr. Gannon, his clerk, was to make a new deed to you and your son whereby you and your son was to hold the property as joint tenants, and that the survivor, the one that lived the longest between the two of you, was to get the property? A. I didn't understand it.

Q. Did he explain anything like that? A. He 30 might have, but I didn't understand.

Q. Did he explain to you that in the event that either one of you married the wife would have no dower right in the property? Do you remember him stating that to you? A. No, sir; I do not.

By Mr. Doherty:

Q. Do you remember whether or not my advice to you was given before the paper was signed at all? A. Yes, you did; but I can't remember it. 40

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Q. And whatever I said to you was before the papers were signed? A. I don't remember it.

Q. Do you recall the date I gave the deeds back to you? A. I don't.

10 Q. When I wrote you to come up and get the deeds. Do you remember the time when you came up? A. I don't remember.

The Court: Have you a copy of the letter?

Mr. Doherty: Yes.

The Court: Read it to him. Perhaps it will refresh his recollection.

By Mr. Doherty:

20 Q. Do you remember getting from me a letter of which this is a copy—"February 1, 1924. Mr. Patrick Kane, 329 Ninth Street, Jersey City. I have received from the Register's Office the deeds left with me for record and will surrender them to you when you find it convenient to call. Yours very truly—Richard Doherty." Do you remember that? A. No, I don't remember it.

Q. And you don't remember coming up about three weeks after and getting the deeds?

30 By the Court:

Q. Do you remember going to Mr. Doherty's office the second time? A. When I signed as beneficiary, but no other paper.

Q. After that time when you signed that paper? A. Yes.

Q. Do you remember going to Mr. Doherty's office again several weeks later? A. I don't remember.

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By Mr. Doherty.

Q. And you don't remember we were alone at the time I handed the deeds over to you? A. No, I don't remember.

By the Court:

10

Q. Do you remember a time when you went to Mr. Doherty's office when your son James was not with you? A. No, I don't remember, as far as I know. I couldn't tell you. I won't tell you I did. I couldn't tell you.

Mr. Doherty: I would like to introduce Miss Brauer to the court.

20

RICHARD DOHERTY, being sworn.

Direct examination by Mathilda Brauer:

Q. You name? A. Richard Doherty.

Q. You are a solicitor and counsel? A. I am solicitor for the complainant in this suit.

Q. Who retained you to draw up the deeds involved in the matter here? A. I can only answer that by relating the circumstances.

30

The Court: I would be glad to have you recite them fully.

(Witness) A. Around January 1, 1924, I am unable to state whether it was January 2nd or maybe a day or two before the first, but around that time, James Kane, the defendant, called on me for the purpose of—

40

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By the Court:

Q. Tell us what was said. A. He communicated to me first the death of his step-mother which occurred on Christmas Eve, and inquired whether that circumstance would have any bearing on the liability of a landowner against whom she had a possible claim for injury through falling on snow. I answered his question and he then stated that his father wanted me to draw a deed covering the two places on Ninth Street, the effect of which would be that upon the death of the father the property would go entirely to James to the exclusion of the other two sons. I remember informing him that that could be accomplished through a will, but he said that he and his father had talked it over and they had decided to have a deed drawn. I had met James Kane maybe once or twice before that on occasions when he came up to inquire what progress I was making on the step-mother's claim. I met the complainant Patrick Kane possibly twice before that, maybe only once, he having called on me for the same purpose. I knew nothing at the time of the intimacy existing between the two parties and knew nothing of the illiteracy of the complainant. I have a specific recollection of James bringing me up the old deeds on that occasion, but the fact I had the old deeds in my possession and afterwards turned them over to Mr. Kane, Sr., leads me to the indication I prepared the new deeds from the old deeds. If that was so then I received the deeds from James on the occasion when he came up to see me first. I believe that it was January 2nd that he came up because the transaction was very speedily consummated and I imagine he was up after New Years on account of the deeds having been signed on January 3rd. On the occasion when the deed

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was signed James and his father were both there. They came up together. Neither were talking. I cannot recall anything that either of them said. The father was particularly taciturn and quiet at the time and I attributed it to his grief.

Q. Did the father talk about the wife's claim and ask you about it? A. I don't recall that he did. 10

Q. You heard him testify that was what he went there for and he spoke to you? A. I don't recall that, but it is not unlikely I mentioned something about the wife's claim. I don't recall him coming up for that primary purpose.

Q. Did you in the year 1924 keep a record indicating the names of your callers as clients? A. No. 20

Q. Did you keep a record showing what papers were prepared by your employees? Didn't your stenographers keep a record of papers prepared by them so you would know how to charge? A. No, not especially. 20

Q. Who was your stenographer in January, 1924? A. According to the initials on the letter which I sent to the complainant in February a young lady by name of Miss Preston.

Q. Did she keep a record of the daily work done in the way of preparation of papers so that you could make a charge? A. No, I keep that myself in a sort of a diary. I imagine I have a record of the first date when James called on me. 30

Q. Can you tell me who it was that actually paid you for your services in drawing those deeds? A. I think I would like to look at the account book. My impression is that it was the old gent.

Q. Can you tell us to whom you delivered the deeds after being recorded? A. Yes, to the complainant. 40

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By Mr. Newton:

Q. How do you know that? A. Because I made a memorandum on the folder there. Without not recollecting the verbal instructions I am satisfied I told James when to bring his father up to sign the deeds and they arrived if I am able to recall about four o'clock on the afternoon of January 3rd. I reported then to Patrick Kane sufficient of what transpired when James came up to have him understand what the instructions were that James gave me.

Mr. Newton: I ask that be stricken out.

(Witness continuing.) I will make it specific. I reported to Patrick Kane that James had informed me it was Pat's desire to have deeds drawn the effect of which would be to vest the title in James after the death of Patrick, and instructed him as to the characteristics of a joint tenancy, informing him of the feature of survivorship, that if either died the property would go to the other. That if he died before James it would be James and if James died before him it would revert to himself. I also told him in the event of either becoming married there would be no dower right ensue. I am inclined to disavow having instructed him as to the right of joint occupancy or the right of joint possession.

By the Court:

Q. You mean you didn't go that far? A. No, because I was not advised of the circumstances between them that would render that prudent. They appeared to be on terms of very close amity. In that situation and upon the parties all indicating they were satisfied he signed his deed to Gannon and Gannon signed the deed back to them.

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Q. Was Gannon there present at the time the deeds were signed? A. I have no specific recollection of Gannon being there. I have asked him to come here himself. The deeds were recorded by me the next day and on February 1st I wrote to Patrick Kane he could come and get them and he did come on February 19th. Is it necessary for me to make further inquiry as to whether the fee was paid by Patrick or James? I think it was Pat. That's all I know until I was consulted by the complainant last fall and received his startling account that he did not know what— 10

The Court: You can't say that.

Q. It was last fall you were consulted by him? A. And I wrote to the defendant promptly and I think there was some sort of negotiation with Mr. Newton for sometime before the institution of this action. 20

Mr. Newton: I have the last letter July 12, 1928.

(Witness continuing.) That was written on the day on which Patrick Kane called on me first to tell me of his disillusion.

The Court: I will strike that word *dis-* 30
illusion out.

By Miss Brauer:

Q. Did you ever have any business dealings with Patrick Kane before the signing of the deed? A. No.

By the Court:

Q. Judge, you have been practicing a good many 40
years? A. Over thirty.

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Q. And you have had a good deal of experience in realty transactions? A. Yes, sir.

Q. And in your realty transactions, in the making of the deeds from Kane to Gannon and from Gannon to the Kanes, did you make it your practice to explain to the grantee in each deed the pur-
10 port of the deed? A. Hardly. I didn't tell Gannon what his deed was which he was making to the Kanes because he was an employee.

Q. I understand that. A. Yes.

Q. He was given to understand by some conversation had by you in the presence of the Kanes, or one of the Kanes, that he was acting as an intermediary for Patrick Kane and James Kane?
A. My explanation was to the parties themselves.

Q. And the recital you put in the deed from
20 Patrick direct to Gannon was to effectuate what was the purpose between the two parties? A. It was to put into the effect the statement of the defendant as to what the wish of his father was.

Q. And which you made known to Patrick Kane when he came to see you? A. Yes, I told him what James told me.

Q. Did Patrick ask you for any explanation as to the deeds, saying he didn't understand any-
30 thing? A. He was particularly pensive and quiet and I thought it was due to his grief. I thought he was a man of average intelligence.

Q. You as a lawyer if you thought he didn't understand it would have made it your business to have him understand it? A. If I didn't think he understood it it would have been dropped right there.

By Miss Brauer:

Q. Who was present at the time of the signing
40 of the deeds? A. I can only remember the two

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Kanes and myself, although Mr. Gannon was hovering about.

Cross-examination by Mr. Newton:

Q. Are you quite sure that James F. Kane was present when Pat actually signed the deed? A. Oh, yes. 10

Q. Did you talk to the father separate and apart from the son? A. No.

Q. Was there any discussion at that time about a will? A. I think the discussion was with James about the will.

Q. Between whom? A. Between James and me.

Q. When was that? A. That was on the occasion of James coming up to tell me what to do. I told him his father could obtain that result by making a will, but he said "No, they decided on a deed." 20

Q. How long were they in your office on this occasion? A. Well, that is kind of hard to say. I shouldn't say more than a half an hour or twenty minutes.

Q. Were the deeds drawn at the time Patrick came and appeared there? A. I am pretty sure they were.

Q. You are not certain? A. Yes, I am certain they were drawn. They were drawn during the interim of James' visit and the execution. 30

Q. How did you notify them to appear? A. My present recollection is I told James when to bring his father up.

Q. Have you any recollection when James came to see you? A. Excepting it was about eleven o'clock one morning.

Q. Was it before or after New Years? A. If it was after New Years it was the 2nd of Janu- 40

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ary. Whether it was that date or some day before I don't know.

Q. This law suit which you spoke of had been started I gather in the lifetime of the step-mother?

A. There was no law suit started. She slipped on some snow.

10 Q. And the father had discussed the matter with you in the lifetime of the step-mother? A. Yes, once or twice.

Q. Now, getting down to the execution of the deeds. Did you explain to the father why it was necessary to have Gannon as an intermediary?

A. I don't think I explained the legal technic at the time.

20 Q. Did you read the deed to the father? A. I don't recall reading it. I am inclined to think I told him the purport of it.

Q. I show you a letter dated July 12, 1928, to James F. Kane, and ask you if that is the letter you referred to on your direct examination? A. Yes.

Mr. Newton: I offer it for identification.

(Letter marked Newton 1 for Identification.)

30 Q. I understand that no question was directed by you to either the father or the son with reference to control of the property during the lifetime of either? A. No, except you are to understand I explained to them it was a joint tenancy.

Q. I take it you assumed the object was to create a joint tenancy?

The Court: Not only assumed but recited in the deed.

40 (Witness) A. Yes, it was explained to both of them what joint tenancy was.

Richard Doherty, for Complainant—Cross.

By Mr. Newton:

Q. Did you make any inquiry of the father as to what was the consideration of the deed? A. No, I did not.

Q. What did you take it the transaction was?
A. That the father was desirous of uniting the affectionate attitude of his son towards him at the time of his sorrow and they started off on a new basis of life. 10

By the Court:

Q. What led you to have in mind it was uniting his affection at the time of sorrow? A. James on the previous occasion said he and his father decided the property would be so acquired by deed that James would get it after his death and the other heirs would be disinherited. From that I gathered they were on close terms. 20

By Mr. Newton:

Q. Of course you conveyed any statements that James made to you when you saw the father, didn't you? A. To the extent that the father did not dissent from any statement that James had told me. I regarded that as a verification.

By the Court: 30

Q. Was there any talk between you and the father as to his making the deed over to himself and his son whereby the son would have the survivorship and to cut off the other children? A. That was fully explained.

By Mr. Newton:

Q. What did you say when it was fully explained? A. I explained to him that the deed if executed would constitute them joint tenants and 40

Richard Doherty, for Complainant—Cross.

10 upon the death of either the other would take the property absolutely by survivorship and that it would not be interfered with by the fact that either one would marry, because the wife would have no dower. If James died first the property would come back to the father. If the father died it would be the son's.

By the Court:

Q. Was anything said about the other two children? A. No.

By Mr. Newton:

20 Q. Did Pat, the father, take part in any discussion at the time he signed the deed? A. I can't recall him expressing a word. He was just an existence there.

By the Court:

Q. In taking his acknowledgment you went through the formula of satisfying him that he understood what he was about and he acknowledged that he executed the deed. You went through that form? A. Yes.

30 By Mr. Newton:

Q. Did you ask the father to read the deed? A. I did not.

Q. Why not? A. Because I explained to him the contents thereof.

Q. Was there anything said at that time about their opening this joint account? A. No, sir.

Mr. Newton: That's all.

40 The Court: Any other witnesses.

James F. Kane, Defendant—Direct

Mr. Doherty: No, sir; except I ask for the reservation of putting Mr. Gannon on.

The Court: As soon as he comes in while the case is going on.

10

DEFENDANT'S CASE.

JAMES F. KANE, being sworn.

Direct examination by Mr. Newton:

Q. You are the defendant in this case? A. Yes, sir.

Q. And you are the son of Patrick Kane? A. Yes, sir.

Q. How old are you? A. Thirty-nine.

20

Q. Your step-mother died December 24, 1923? A. Yes.

Q. How long had you lived with your father and step-mother at that time? A. At the time of her death?

Q. Prior to her death. A. From July 31, 1926.

Q. But before your step-mother died how long had you lived with your father and step-mother? A. 1920, in March.

Q. And prior to 1920 where were you living? A. 329 Ninth Street.

30

Q. Prior to 1920. A. In the army.

Q. How long were you in the army? A. Seven years.

Q. As soon as you were mustered out of the army you went to live with your father and step-mother, is that right? A. Yes.

Q. After the death of your step-mother when did your father first talk with you as to any arrangement for your living together after that? A. It was on a Saturday morning.

40

James F. Kane, Defendant—Direct

Q. Your step-mother died on a Friday? A. No, on a Monday—December 24th.

Q. When was she buried? A. On a Friday.

Q. And your father talked with you on Saturday, the next day? A. Yes.

10 Q. Now state that conversation as near as you can recollect it? A. Well, on Saturday morning he says to me— He suggested that I should pay one-half of the funeral bill. I says, “Why should I? You pay that; you have money.” I says, “There is \$2,100.00 in the bank left from you and the step-mother”, so I says, “You pay it and we will live together just as well as we were before the death.”

20 Q. That was around December 28th or 29th? A. About that date. It was a Saturday morning—the day after the burial.

Q. Did you have any further discussion with him that day? A. He said he was willing to go half each way and he suggested I put my money in with him and go 50-50.

Q. What did you say to that offer? A. I said, “All right, if you want it that way my name goes on the deed to the two houses as well as 50-50.”

Q. What did he say to that? A. He started to think it over and then said, “All right.”

30 Q. Who was present when you made that arrangement? A. Just the two of us.

Q. Do you recall when you first went to the bank? A. December 31, 1923.

Q. Are you sure it was December 31st? A. I am almost sure it was on a Monday.

40 Q. What did you do when you went to the bank? A. Well, first we drew up an affidavit to have the money that was on the book of him and my step-mother to put it in him.

James F. Kane, Defendant—Direct

Q. That is you drew up an affidavit that the step-mother had died, is that it? A. Yes.

Q. Your father was with you? A. Yes, he was with me at that time.

Q. What did you do then? A. After we had the affidavit drawn and had the money into his name I went and withdrew all my account. 10

Q. How much did you have in your account at that time? A. \$1,530.00.

Q. How much did your father have in his account? A. \$2,100.00 and some change.

Q. What became of the twenty-one hundred and some odd dollars your father had? A. It was put on the book which he had alone.

Q. And what became of the \$1,530.00 which you had? A. I withdrew my account altogether and kept \$900.00 and put the other \$630.00 in the book which had joint account with him. 20

Q. What did you do with the \$900.00? A. We immediately came over and went to Mr. Carey, the undertaker, Thirteenth and Grove, at that time.

Q. What did you do when you went to Carey's office? A. I paid him the balance of the funeral bill. At least I paid him all the bill. There was no balance to it.

Q. How many funeral bills did you pay? A. 30
Two.

Q. I show you Exhibit C-6 and ask you if that is the receipted bill that you received at the time you paid it? A. Yes, sir.

Q. It is signed "Received payment—Thomas F. Carey, per M. C." To whom did you pay the money? A. To Martin Carey.

Q. I also show you a receipt for \$71.50 and ask you if you received that receipt at that time? A. 40
I received it with the other bill.

James F. Kane, Defendant—Direct

Q. Where did the \$71.50 that is represented by this receipt come from? A. That was a balance of an old bill that wasn't paid.

Q. Where did the money come from which paid it? A. Out of the money I had in the bank.

10 Q. Out of the \$1,530.00? A. Yes, sir.

Mr. Newton: I offer it in evidence.

(Bill marked Exhibit D-1 in evidence.)

Q. Did you from that \$1,530.00 make any other payments? A. Yes, I made payment similar to that to the church expenses.

Q. How much was that? A. Around \$70.00.

20 Q. To whom did you pay it? A. The Sisters of St. Michaels. About \$30.00 I think it was for clothes.

Q. For a shroud? A. Yes.

Q. What was the other \$40.00? A. The other went for the mass.

Q. Of course you didn't get any receipt for that? A. No.

Q. Did you make any other payments? A. Well, I made arrangements for a monument and I paid \$68.00 for that.

30 Q. I show you a receipt dated February 29, 1924, on billhead of Albert H. Hopper, and ask you if you paid the \$68.00 represented by that receipt? A. Yes, sir.

Mr. Newton: I offer in evidence that, and I might state we are not contending that James paid the \$300.00 entirely. We simply offer it to prove the \$68.00 and we got that receipt for it.

Mr. Doherty: No objection.

40 (Receipt marked Exhibit D-2 in evidence.)

James F. Kane, Defendant—Direct

By Mr. Newton:

Q. When did you first speak to Judge Doherty with respect to the two houses? A. Why that Saturday morning it was suggested about this 50-50. My father told me to go to Judge Doherty to see about the case. I says, "All right, and when I go up I will explain about the deeds" 10

Q. Did you go alone? A. At that time, yes.

Q. What did you tell Judge Doherty at that time? A. I told him "How about the step-mother's case", first.

Q. What did you tell him with respect to your father—about the two houses? A. I had the two deeds with me and I showed them to Mr. Doherty and I told him how me and my father was in it 50-50, and I was to have my name on the deeds. He told me to bring my father. 20

Q. Is that all you told Judge Doherty? A. At that time, yes.

Q. Did you go back to the house and talk with your father? A. Yes.

Q. What did you tell your father? A. I told him about the case. "You might as well give it up as long as Judge Doherty told me as being she was dead now he couldn't get anything out of the case." 30

Q. What did you tell your father with respect to the two houses? A. I told him he told me he wanted him up there. I told him Judge Doherty wanted him up there concerning the deeds.

Q. Did you tell him when? A. Not just when.

Q. Did you go back again with your father? A. Not that day.

Q. When did you go back? A. It was on Wednesday, January 2nd.

Q. January 2nd? A. Yes. 40

James F. Kane, Defendant—Direct

Q. Are you sure of that? A. I am not sure. It was around that time.

Q. You went to Judge Doherty's office with your father? A. Yes.

Q. Tell us what happened when you got there?

10 A. I told him, "These are the deeds".

Q. You had left the deeds there before that? A. Yes. I told him how we were to go 50-50 on everything and my name was to be on the deeds as 50-50.

Q. What did Judge Doherty say to your father?

20 A. Well, he didn't have time to talk at the time. My father started to bring it up as a will. When he got done talking I said, "No, you live up to what you said when I withdrew my money from the bank". I said, "You will make no will with me. You can turn around and break it the next day. You can turn around and make it 50-50 or I will withdraw my money".

Q. How did your father come to change from his idea of making a will to a deed? A. I don't know how he come to change his mind on that. It took me off my feet.

Q. He simply signed a deed? A. Yes.

30 Q. With whom did he talk to before he signed the deed? A. I don't know. I wasn't present at that time.

Q. How long were you there when you took your father up to Judge Doherty's office? A. I should judge about a half an hour.

Q. Did you leave before your father? A. No, we both left together. I don't think the deeds were drawn up that time.

40 Q. I am talking when you went up with your father to talk with Judge Doherty the day your father signed the deed. Were you there when he signed it? A. No, I don't think I was.

James F. Kane, Defendant—Direct

Q. At that time did Judge Doherty talk with your father when you weren't present? A. Yes, he did.

Q. Tell us about that. A. After we started talking about this 50-50 stuff and my father brought it up as a will I objected.

Q. What did you say? A. He told me to go outside. 10

Q. What did you say? A. I told him I would withdraw my money out of the bank account as we had already done.

Q. What else did you say about the will? A. I told him if he didn't make it the way he said—50-50—as we spoke in the house, I wouldn't do anything. He turns around as to making a will. A will is not worth two cents to me. 20

Q. Tell us what was said between Judge Doherty and your father? A. I don't know. He told me to go outside.

Q. Who did? A. Judge Doherty.

Q. Did you go outside? A. Yes.

Q. And did your father talk with Judge Doherty when you were outside? A. Yes.

Q. How long did Judge Doherty talk with your father? A. About ten minutes.

Q. How did you come to go back? A. He said, "Your father is going to go 50-50". 30

Q. Who told you that? A. Judge Doherty.

Q. Did you stay there with your father? A. No, not at that time.

Q. Where did you go? A. I went outside.

Q. Did your father sign the deed in your presence? A. That I can't remember.

Q. You didn't pay Judge Doherty for drawing these deeds, did you? A. No, sir.

Q. In your discussion with your father before the deed was signed by him was there anything 40

James F. Kane, Defendant—Direct

said as to who was to control the property? A. Yes. He says, "It is all right now; it is 50-50". He says, "I want you to know if you get married your wife will not have nothing to do with it". I said, "It is that way from what Judge Doherty told me".

10 Q. You continued to live with your father after your step-mother's death. Tell us about your financial arrangements—how you worked it? A. Well, we had our money in the same drawer. First I suggested that I keep my money separate and he keep his, and he says, "No, put it all in the one drawer".

Q. Where were you working at that time? A. In the American Express.

20 Q. What were your wages? A. From thirty-five to forty a week.

Q. And did you put any money in the drawer? A. I put in from thirty to thirty-five a week.

Q. Why did your wages vary? A. Eight hours of my day's work and I would be working overtime.

Q. Would your father put any money in the drawer? A. Twenty to twenty-three a week.

30 Q. Did you ever put any money in that drawer when he was present and saw you do it? A. Yes, sir.

Q. How often did that happen? A. I would be in the dining room at the time and wouldn't be thinking about it, and when he come home he would call my attention to go upstairs.

Q. What would he say? A. "Come upstairs and put our money in together."

Q. What would you do? A. I would give him thirty or thirty-five to go in.

40 Q. Would you put it in the drawer or give the money to him? A. I would lay it there in front of him.

James F. Kane, Defendant—Direct

Q. What would he do? A. He would do the same thing.

Q. How long did that continue? A. Up to March. I don't know the exact date, 1925, the time I took sick.

Q. When you took sick you had to go away to Laurel Hill? A. Yes. 10

Q. You have been wounded in the army? A. No, I haven't been wounded.

Q. How long were you sick? A. It was around in May when I came back home again.

Q. What become of these moneys that were in the drawer? A. Well, when we put our money in together he would take \$15.00 and I would say, "Give that to the housekeeper." He would turn around and take out five and ten dollars a week out of it. 20

Q. What did he take the five or ten or fifteen a week for? A. He would use it for spending money.

Q. Did you make any withdrawals? A. I never withdrew a nickel. I kept what I wanted before I put it in there.

Q. On this receipt of Hopper I notice, "May 26, 1924, received balance in full—\$300.00" Where did that come from—referring to Exhibit D-2? A. From the money we pooled together. 30

Q. When did you take sick? A. In March, 1925.

Q. And when did you come back to the house again? A. In May, the same year.

Q. In May, 1925? A. Yes, sir.

Q. Did you go back to work? A. No, I didn't go back to work at all. I was lying idle four or five months.

Q. Did you go back to work again? A. I was working occasionally in different places.

Q. When you went back to work did you continue this arrangement about putting money in the 40

James F. Kane, Defendant—Direct

drawer? A. It was still the same until the day I got married.

Q. When did you get married? A. July 11, 1926.

10 Q. Did your father attend the wedding? A. He was there at the wedding.

Q. Where did you go to live after you were married? A. We were living with him.

Q. Where? A. 329 Ninth Street.

Q. How long did you continue to live with him? A. Until the end of the month—July 31st.

Q. Before you were married did you and your father go over to the bank where this joint account was? A. Yes, on a Saturday morning.

20 Q. Was it before you were married? A. The day before I got married.

Q. Tell us how that came about? A. Two weeks before I told him I was to draw \$200.00 out of the bank. He asked me why and I told him, "I am going to get married; I told you about a month ago". He says, "All right". He had the idea I couldn't draw any money.

The Court: Never mind that.

By Mr. Newton:

30 Q. Before you drew the money out you told him you were going to draw \$200.00? A. Yes.

Q. Did you draw the \$200.00? A. Yes.

Q. Did you tell him you were drawing the \$200.00? A. I didn't tell him that night I drew it, but I put the bank book on the top of the drawer so he could see it when he came home that night.

Q. Did he see it that night? A. I was sleeping downstairs.

40 Q. What happened? A. About eleven o'clock at night he woke me up.

James F. Kane, Defendant—Direct

Q. What did he say? A. He wanted to know what the \$200.00 was that was drawn out and I told him that was the \$200.00 I told him I was going to draw out to get married. He says, "All right, you stay home from work and come over to the bank with me tomorrow morning and split the money up." 10

Q. Did you do that? A. Yes, we did.

Q. And your father continued to live with you and your wife until when? A. July 30th or 31st. The last of the month.

Q. And tell us what happened then between you and your father? A. Well, the first week he was saying, "All right, stay with me and we will live together." I went looking for rooms and then the next week he would tell me and say, "Tell your wife to go around and look for rooms. You have got to get out." One week it was stay and the next week get out. 20

Q. Did your wife go to look for rooms? A. Yes.

Q. Did you get rooms? A. Yes, we got rooms.

Q. And you moved to the new rooms? A. Yes, sir.

Q. When did you move to the new rooms? A. Around the last of the month, I think, in July or August. 30

Q. How long did you stay in those rooms? A. Until March, 1927, I think.

Q. Are you sure it was March? Wasn't it later than that? A. Yes, it was in June 1927.

Q. What did your father say to you then? A. Well, previous to that he came around to see me occasionally.

Q. While you were living on Pavonia Avenue he came around to see you. How many times? A. I was there about two months when he first came around. 40

James F. Kane, Defendant—Direct

Q. How often did he come after that? A. Once every two weeks, on a Sunday.

Q. Didn't he come more frequently than that? A. No.

10 Q. How did you happen to give up the flat on Pavonia Avenue? A. The house 327½ was idle.

Q. And your father came to you? A. Yes, and he asked me to come around to 327½.

Q. What did you tell him? A. I told him I didn't care to go.

Q. Did you tell him why? A. No, I didn't say just why. I thought maybe we would disagree.

The Court: Never mind that.

By Mr. Newton:

20 Q. Did you return to 327? A. I did.

Q. Did your father tell you under what arrangement you could return? A. Yes. He says, "Go around there and fix up the house and pay the taxes and you won't have to bother paying me rent."

Q. Did you move in? A. Yes.

Q. Did you fix up the house? A. Yes.

Q. Who did you hire to fix it up? A. A friend of mine, Joe Scott.

30 Q. How much did you pay Joe Scott? A. \$131.00.

Q. Is that the receipt for the money you paid Joe Scott? A. Yes, sir.

Mr. Newton: I offer it in evidence.

Mr. Doherty: No objection.

(Receipt marked Exhibit D-3 in evidence.)

James F. Kane, Defendant—Direct

By Mr. Newton:

Q. Before you got married were there any repairs made to the house? A. There was some repairs made while we pooled our money together.

Q. I show you a bill of John Pellikan, dated January 10, 1925, for repairs at 327 Ninth Street. Do you remember when that was paid? A. I couldn't exactly recall the time. I remember we had our money pooled together before we had this fixed. 10

Q. Do you recall where the money came from that paid this bill? A. Out of the pool. He had to draw out \$100.00 to pay bills as we were low in funds.

Mr. Newton: I offer that in evidence.

Mr. Doherty: No objection. 20

(Receipt marked Exhibit D-4 in evidence.)

By Mr. Newton:

Q. So then you moved into 327½. And how long did you continue to live there? A. Until March, 1928.

Q. How did you happen to move in March, 1928? A. He came in and asked me to move next door as he is getting rid of the housekeeper. He says "It is too much for me to keep up this expense." I told him it was about time he got wise to himself. I explained to him where he was paying \$15.00 a week to her and \$20.00 a month to do the work. Now I says "If you give your consent we can move in together. You can pay what you want to her and I will keep the house going and pay the overhead expense and you will not have to pay anything else. I showed him where he 30 40

James F. Kane, Defendant—Direct

would be saving at least seven or eight hundred and he spoke to me about getting a car and he would go half and I would go half.

10 Q. What did you say? A. I said "If you are willing to do this I will pay the overhead expense and the car also. If you pay ten a week I will have some income coming in. Paying the overhead expenses and the car will cost me something." We got along all right until the day he got married.

Q. How much did he give your wife? A. I put a deposit on a car and I was there only about three weeks and he started to disagree.

Q. Did he pay any board while he was there? A. Yes, I believe he was paying ten dollars.

20 Q. What about rent? A. He didn't talk anything about rent until about a month and a half after we were in.

Q. What did he say then? A. We were fighting off and on.

Q. What were the fights about? A. I don't know. He didn't seem to be satisfied with nothing. I was fixing the place alone and having repairs made. Instead of him staying around and help me fix up the place he would go out. I asked him what was the matter and he wouldn't answer.

30 Q. Then he asked you for rent? A. Before that he stopped paying the board and the wife says "He is not giving me any money". I says "I don't know what the matter is. He is beefing and fighting and this and that." I asked him what was the trouble. He said "You are getting free rent", and I says "You are starting something else again." I says "All right, if you feel like that I will give it to you." I asked him how much rent he wanted and he said "Forty-five."

40

James F. Kane, Defendant—Direct

Q. What did you say when he wanted forty-five?

A. I told him he is crazy. I told him "You are not getting any forty-five." I told him I would go thirty. He said "Give thirty for forty-five?" I said "Rent the place."

Q. Was the place rented next door? A. Yes. 10

Q. How much? A. Thirty a month.

Q. Who was it occupied by? A. The four cousins.

Q. Is it the same kind of a house? A. Two identical houses.

Q. Your father continued to live with you from March, 1928, until he got married? A. Yes.

Q. When did he get married? A. In June, the same year.

Q. When did you learn he was going to re- 20
marry? A. A week before.

Q. How did you learn it? A. One of the good neighbors. Gossipers let it leak out. That's how I came to find out where all this trouble was coming from.

Q. Did he stay with you down to the time he was married? A. Right until the day he was married. He left me Sunday morning. That was the day he got married.

Q. He got married Sunday? A. Yes, sir.

Q. When was it that you first heard that your 30
father was going to start a suit about this deed he signed? A. The first time I lived on Pavonia Avenue. The first time he came around in two months. Two months after he came around to me and he asked me to sign some papers. That was in 1927—1926.

Q. When you were living on Pavonia Avenue he came around and asked you to sign some papers?
A. Yes. 40

James F. Kane, Defendant—Cross.

Q. What did you say? A. First I said "What are they?" He wouldn't tell me what they were, so I says "All right, bring them around and let me see them." He brought them around and I wanted to look at them and he wouldn't let me read them.

10 Q. He wouldn't let you read them? A. No, he wanted me to sign my name. I says "If I can't read them I won't sign them." I found out afterwards—

The Court: No. Strike that out.

By Mr. Newton:

Q. Did you get this letter from Judge Doherty dated July 12, 1928? A. Yes.

20

Mr. Newton: I offer it in evidence.

By the Court:

Q. In what year was it you were living on Pavonia Avenue? A. 1926.

(Letter marked Exhibit D-5 in evidence.)

By Mr. Newton:

Q. Did you ever throw your father out of the house? A. No, sir.

30

Mr. Newton: That's all.

Cross-examination by Mr. Doherty:

Q. You never had any business transactions with your father at all until your step-mother died? A. No, sir.

Q. And previous to that occasion you were working at good wages? A. Yes, sir.

40

James F. Kane, Defendant—Cross.

Q. Paying ten dollars a week board to your step-mother? A. Yes, sir.

Q. And saving a large amount of your earnings? A. Yes, sir.

Q. But your father never suggested to you anything of a business character until your step-mother died? A. No, sir. 10

Q. And then the day after the funeral you say he asked you to pay half of your step-mother's funeral expenses? A. Yes, sir.

Q. And you refused that motion, didn't you? A. Yes, sir.

Q. And wanted to know why you should pay half of his wife's funeral expenses? A. Yes, sir.

Q. And what was the reason he gave you as to why you should pay half of it? A. He just said "You pay half." I said "Why do you want me to pay half?" I says "It is your place to pay." He suggested we go 50-50 and I put my money in with his. 20

By the Court:

Q. What reason did he give you for wanting you to pay any part of your step-mother's funeral bill? A. I don't know.

By Mr. Doherty: 30

Q. You said you asked him for a reason and he didn't give any? A. No, he wouldn't tell me why.

Q. You said you asked him to give you a reason why you should pay half of your step-mother's funeral expenses and he wouldn't give you any reason? A. I didn't say he wouldn't give me any reason. I asked him why he wanted me to pay half of the funeral bill.

Q. Did he give you a reply? A. No. 40

James F. Kane, Defendant—Cross.

Q. And all at once suggested to you that the two of you put your money in the bank and go 50-50 on the money in the bank account, is that true? A. Yes.

10 Q. You then announced to him he had \$2,100.00 in the bank? A. Yes.

Q. How did you come to know that? A. Because I saw the bank book.

Q. You saw what book? A. There was a joint account of his and the step-mother that died.

Q. Where did you see it? A. In the drawer.

Q. You concerned yourself in looking for bank books when your step-mother died and you found it in a drawer? A. They were in the drawer, yes, sir.

20 Q. In whose drawer? A. In the drawer that he and the step-mother had.

Q. And while your step-mother lay dead you were exploring the bureau drawer for bank books? A. No, I didn't bother with nothing at the time of the death. This was after the death took effect.

Q. Did you ever see the bank book before you found in the drawer? A. The day after the burial was when I had the bank books. He had the two of them together. That's when I found out. I didn't know at that time.

30 Q. You had at that time \$1,560.00? A. Yes, sir.

Q. And you tell us that the proposition that your father made to you when you refused to pay half of the funeral expenses was that you put your \$1,560.00 in the bank against his \$2,103.00, and the two of you to go 50-50. Do you mean to tell us he proposed that to you? A. That I put my money in with his and we go 50-50.

40 Q. That meant your \$1,500.00 and his \$2,100.00? A. Yes, but then the funeral bill was all paid.

James F. Kane, Defendant—Cross.

Q. Up to that time nothing was said about real estate, was there? A. Yes. I suggested to him that if he wanted to go 50-50 with me my name would go on the deeds.

Q. So the idea about the real estate came originally from you? A. No, it came from the 50-50 basis.

10

Q. Haven't you told us on your direct examination that as long as he wanted you to go on the bank book with him that it was necessary your name should also go on the real estate? A. Yes.

Q. You have told us that? A. Yes.

Q. So the idea of putting your name on the deeds did come from you, didn't it? A. Through the 50-50 basis.

Q. And just as soon as your father spoke any business at all with you in the way of suggesting two things, first that you pay the funeral bill and second that you go 50-50 on the bank account, you came back at him right away with the proposition to put your name on the deeds? A. Yes.

20

Q. That was Saturday after the funeral? A. Yes, sir; after the funeral.

Q. You say your proposition to him at that time was he put your name on the deeds so the two of you should operate 50-50, as you say? A. Yes.

30

Q. What do you understand 50-50 means in connection with title to real estate? A. That I would be half on the houses as well.

Q. A half owner of the houses? A. That's it.

Q. So that when he dies owning the other half of the houses that that would go to his heirs and not to you. Is that what you understood.

The Court: Does it make any difference what he understood?

40

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. Was your proposal to him that you were to get the houses when he died or was your proposal that you would get half the houses while he lived?

10 The Court: I think I had better hear what was said between the parties. I don't mind having everything brought out what was said between the parties but I don't want this witness to state his conclusion. You can ask him everything what was said.

By Mr. Doherty:

Q. What does 50-50 mean on real estate?

20 The Court: I will overrule that question as calling for a conclusion. I am not concerned what his idea of 50-50 was. Anything that was said between the parties is evidential and may be brought out.

By Mr. Doherty:

Q. When you said to your father you wanted him to put your name on the deeds so that the two of you would henceforth deal 50-50, what did he say? A. All right.

30 By the Court:

Q. Tell us the conversation between you. What did you say to him and what did he say to you about the real estate? A. I said to him if he wanted it 50-50 it would be 50-50 on the houses as well. He said "Suppose you get married?". I said "That would have nothing to do with it."

40 Q. What did he say? A. "All right; that is satisfactory to me."

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. Was that said between the two of you that 50-50 everything goes to you and if you died everything comes back to him? A. That's the way we talked it over.

Q. Was it said between the two of you what 50-50 would mean? A. That's the way he explained that we go 50-50. If he dies I get everything. If I died everything goes back to him—the bank account and everything. 10

By the Court:

Q. That was talked over when you went to the bank? A. Yes.

By Mr. Doherty:

20

Q. Did the 50-50 proposition mean that if you died he would get all the real estate and if he died you will get all the real estate? A. Yes, sir.

By the Court:

Q. That's the conversation was it? A. Yes.

By Mr. Doherty:

Q. And was that all that was said? A. That's all we said at that time. 30

Q. Was there anything said about you collecting the rent of the property during your lifetime? A. No, sir.

By the Court:

Q. Was there anything said about who was to collect the rents during his lifetime? A. No, sir.

40

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. Anything said about who would manage the property or do the renting after that deed was signed? A. We were to take care of the house together. Whatever repairs was to be done he would pay half and I would pay half.

10 Q. Who said that? A. My father, when we were living together.

Q. I am speaking about the day after your step-mother's funeral.

By the Court:

Q. Was anything said about managing the property? A. The property would be managed by the both of us.

20 Q. Then it was said? A. Yes.

Q. On the same day? A. On the day we said we would go 50-50.

By Mr. Doherty:

Q. What else was said about the real estate—50-50 in the real estate? What would happen when either of you would die? How the property would be managed during your lifetime? A. I don't know what he means by that.

30 Q. Was anything else said that day except those things? A. No, not that day.

Q. Your father didn't owe you anything on this Saturday when you had the conversation? He wasn't in your debt, was he? A. No, he didn't.

By the Court:

Q. Did either one of you owe the other money at that time? A. No, sir.

40

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. All accounts were square between the two of you at that time? A. Yes, sir.

Q. When was it you came up to see me? A. It was on a Saturday.

Q. A Saturday? A. Yes. 10

Q. The same day you had the conversation with your father? A. Yes, sir. The day he offered to me to go 50-50.

Q. The same day was it? A. Yes.

Q. Are you sure it wasn't Monday? A. I can't swear to it.

Q. Don't you remember that New Year's was on Sunday that year? A. No, I think New Year's was on a Tuesday that year.

Q. You came up to see me at once after the conversation with your father, did you? A. Yes, sir. 20

By the Court:

Q. Why did you go to Judge Doherty? A. My father wanted me to go up and find out about the case concerning my step-mother.

Q. When you went up there you spoke to him about it? A. Then I spoke about the deed.

By Mr. Doherty: 30

Q. Isn't it true you came up the same day to give me instructions about fixing up the deed? A. Yes.

Q. And you brought the old deeds with you? A. Yes, sir.

Q. So you didn't come up to see me for the express purpose of discussing this claim which your mother had against the McLaughlin estate. Your main purpose was to bring up the deeds? A. No, sir. 40

James F. Kane, Defendant—Cross.

Q. Anyhow you brought up the deeds? A. Yes.

Q. Where did you get them from—the drawer, too? A. Yes.

Q. Did your father know you had them? A. Yes.

10 Q. You took them yourself out of the drawer?
A. Yes, sir.

Q. Was he present when you took them? A. Yes, he was.

Q. And you left those deeds with me that day? A. I did.

Q. And it was on some later day when you and your father came up to talk the matter over further, wasn't it? A. Yes, sir.

20 Q. After you told me that your father wanted me to draw a deed that would establish you in the ownership of the property 50-50? A. Yes, sir.

Q. Don't you know those words weren't used at all in my office? There is no such slang as that used in my office. A. I told you it was 50-50. The way you want to bring it out I don't know. I am not well educated. I am not used to the big words.

30 Q. In talking to me on that Saturday you have in mind did you use the statement 50-50? A. Yes, sir; I told you 50-50. I told you we were to go 50-50 on a deal that we had. He says something to the effect that I go 50-50. I told him, "All right, I will bring the deeds up as well as the other case."

By the Court:

Q. You told Judge Doherty you have an arrangement with your father whereby you had a 50-50 transaction with your father? A. Yes.

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. Don't you recall there was no such slang in 1925? It was a new one?

The Court: I used it in 1918.

By Mr. Doherty:

10

Q. Did you give me any instructions about the deed that was to be drawn except 50-50? A. No. You just said bring your father up.

Q. Did I tell you when to bring him up? A. No.

Q. Didn't I tell you to bring him up at a certain time to sign the deed? A. You might have told me that later.

Q. Wasn't there an appointment made to bring your father up to sign the deed? A. Yes, sir.

20

Q. And you and your father did come up at the time appointed? A. Yes.

Q. You say when your father got in my office he stayed talking about an hour? A. Yes, sir.

Q. And he wanted to make a will? A. Yes, sir.

Q. Did you hear him say he wanted to make a will? A. I was alongside of him.

Q. Did you hear him say he didn't want to sign that deed—he wanted a will drawn up? A. He said he wanted to put it in a will and I says, "No. You offered down at the house to me that we go 50-50 on everything. Now you are going to have it that way or I will withdraw my money out of the bank from yours."

30

By Mr. Doherty:

Q. You were perfectly aware of the difference between a will and a deed at that time? A. Yes, sir.

Q. And you knew that a will could be changed or revoked or cast aside? A. Yes, sir.

40

James F. Kane, Defendant—Cross.

Q. But that a deed would clinch the matter? A. Yes, sir.

Q. And you wanted it settled by a deed? A. Yes, sir.

10 Q. Do you remember when you came up to see me on Saturday that I explained to you that the proper way to fix it up was by will, and that you said that you and your father had already agreed upon a deed? Do you remember that? A. Yes, sir.

Q. Your father was inclined you say to give the deed even though—

The Court: He hasn't said anything like that. I don't mind you bringing out what was said.

20

By Mr. Doherty:

Q. What were the words your father used when he said he wanted a will? What did he say? A. He just said he wanted to make it a will to leave me everything if he died. I objected to it.

Q. Then I told you to go out of the room? A. Yes, sir.

Q. Where did I tell you to go? A. Out in the hallway. In the corridor out in the hall.

30 Q. In a waiting room? A. Outside where the office was.

By the Court:

Q. Outside the office or outside the room?

By Mr. Doherty:

Q. In a waiting room? A. Yes. Whatever you want to call it.

40

James F. Kane, Defendant—Cross.

Q. Did you sit down? A. Yes.

Q. Was the door closed? A. Your door was closed, yes.

Q. When you went out was the door closed? A. Yes.

Q. Do you know why it was closed? A. I don't know. 10

Q. You say you were left out there for ten minutes? A. About five or ten minutes.

Q. And then the door was opened? A. Then you called me back.

Q. Where was Mr. Gannon? A. Mr. Gannon wasn't there when we first came up there about the deed.

Q. Was he there the next time you were there? A. That I couldn't recollect. 20

Q. How many times were you in the office altogether about the deeds? A. Twice.

Q. That was the time when you brought up the old deeds and gave me the instructions and the next day the deed was signed? A. It wasn't signed the next day.

Q. You say Mr. Gannon was there the second time? A. I didn't know Mr. Gannon.

Q. You say after waiting outside for five or ten minutes I said "All right; it is all right. It is going to be 50-50." Did I say that to you? A. I don't know whether you said 50-50 but that is the opinion I had. 30

Q. Did I use those words "It is all right; it is 50-50"? A. I can't swear you said 50-50.

Q. What did I say? A. I don't know.

Q. What I said to you was that you and your father had agreed on Saturday that the property would go to the other when one died and that was the kind of an arrangement you wanted. Did you tell me that? A. Yes, sir. 40

James F. Kane, Defendant—Cross.

Q. And did you tell me that not only the first day you came up but also the second day when the deeds were signed? Did you tell me again?

A. Yes, sir.

10 Q. Will you say now that you ever used to me or in my presence the phrase 50-50? A. Yes, sir; I said 50-50.

Q. You remember using those words? A. Yes, sir.

Q. On the Saturday that you came up? A. Yes, sir.

Q. It was the day before the deeds were signed that the bank account was changed, was it? A. No, it was the 31st of December—the day before New Years.

20 Q. Did you see the bank books here that shows it was on the 2nd of January? A. It might be the 2nd of January.

Q. That would be the day before the deeds were signed, wouldn't it? A. Yes.

Q. And that time you say you had \$1,560.00? A. Yes, sir.

Q. You put in the bank only \$630.00, didn't you? A. Yes, sir.

Q. Alongside of your father's \$2,000? A. Yes, sir.

30 Q. And you retained some money to pay to Carey? A. Yes, sir.

Q. All of it? A. Well, about eight hundred some odd dollars. I don't recall the exact amount.

Q. You drew out over \$900.00, didn't you? A. I withdrew mine out altogether and kept \$900.00, and the other \$630.00 I put in with his account.

Q. And you disbursed to Carey \$800.00 and you kept \$100.00 yourself? A. That went into the pool.

40 Q. The pool was opened the same day the bank account was opened? A. Yes, sir.

James F. Kane, Defendant—Cross.

Q. You said you paid Carey the old bill for burying your mother at the same time you paid your step-mother's bill? A. Yes, sir.

Q. Explain to us please how it is the receipt was given to you December 6, 1924, eleven months after that?

10

The Court: That don't show it was receipted on December 6th. One of them is dated December 31st. You can't go by the dates on top.

Mr. Doherty: Here is a dated receipt.

The Court: If it is it is a different bill from the one I saw.

By Mr. Doherty:

Q. How can you explain that bill?

20

The Court: That is exhibit what?

Mr. Doherty: D-4.

(Witness.) A. He has got the dates wrong; that bill was paid with the other.

Q. You see it is dated on the top December 6, 1924, and you can't explain it? A. No, sir. The date on the top has nothing to do with the date.

By the Court:

30

Q. You said you paid it at the same time you paid the other bill? A. Yes, sir.

By Mr. Doherty:

Q. After the payment of those bills to Carey how much do you say you had left which you put into the drawer? A. I don't remember the exact amount that I put into the drawer.

40

James F. Kane, Defendant—Cross.

Q. You weren't working at the time, were you?

A. Yes, sir.

Q. Weren't you home on account of the death in the family? A. I was home for about two weeks.

10 Q. That is two weeks after the funeral? A. Not two weeks after the funeral.

By the Court:

Q. About two weeks in all? A. Yes, about two weeks in all.

By Mr. Doherty:

20 Q. During that two weeks, you didn't put any money in the pool except the money you didn't turn over to Carey? A. Yes, sir.

Q. How were you paid on your job, weekly or semi-monthly? A. Weekly.

Q. And out of your first week's pay how much did you put in the pool? A. Thirty dollars.

Q. Why did you put in thirty dollars? A. That's what I could afford to put in there. According to my wages how much I was making. I would always keep seven or eight a week.

30 Q. You told me it was to be 50-50 on the bank account and 50-50 on the real estate. What was the arrangements as to the pool? A. We didn't say the exact amount. We put in whatever we could put in.

Q. And what was the money to be used for? A. To maintain the houses and the upkeep of the houses and all that.

Q. And it was to run the house—that pool? A. Yes, to run the house as well.

40 Q. Your father would put in twenty or twenty-five a week? A. Yes, sir.

James F. Kane, Defendant—Cross.

Q. And you would put in thirty or thirty-five a week? A. Yes, sir.

Q. And that would be from fifty to sixty dollars a week put in that drawer to run the house, is that true? A. Yes, sir.

By the Court:

10

Q. Your father says he put in five a week, ten a week, and fifteen and twenty? A. He is lying. We both put our money in together.

The Court: I will strike that out.

By Mr. Doherty:

Q. You put in thirty or thirty-five. What was your pay? A. From thirty-five to forty-five and forty-eight. Something like that.

20

Q. So you put all the money you earned into this pool to run the house?

Mr. Newton: I object to that.

The Court: He said he withheld about seven or eight dollars.

By Mr. Doherty:

Q. Now, two months after that you took sick, didn't you? A. No, sir.

30

Q. Wasn't you taken sick in March? A. When we made the pool was in 1924.

Q. Wasn't it 1924 you were taken sick? A. No, sir, 1925.

Q. And during that time you contributed to this pool you say regularly thirty to thirty-five a week? A. Yes, sir.

Q. You realize how much that constitutes in a year, thirty or thirty-five dollars. It is upwards of eighteen or nineteen hundred dollars you put in there during a year? A. Yes, sir.

40

James F. Kane, Defendant—Cross.

Q. And you kept that going for a year and a quarter? A. Yes, sir.

Q. Did you put in around \$2,000 in a year and a quarter? A. Yes, sir.

10 The Court: What's the use of saying that? You a lightning calculator in making it eighteen or nineteen hundred a year.

Mr. Doherty: A year and a half.

By Mr. Doherty:

Q. It was up around eighteen or nineteen hundred? A. Something like that.

Q. Will you tell us what happened to that money?

20 The Court: What became of the money you put in the drawer.

(Witness) A. When we would have two or three hundred together we would put it in the bank.

By Mr. Doherty:

Q. In what bank? A. The Emigrants Bank.

By the Court:

30 Q. Did you ever put in any money yourself?
A. Yes, I did.

The Court: The bank books shows about six deposits.

Mr. Doherty: Yes, sir.

By Mr. Doherty:

40 Q. There were about six deposits made in the account after it was opened—January 8th, April 7th, August 15th, October 21st, January 10th and March 2nd? A. Yes, sir.

James F. Kane, Defendant—Cross.

Q. Which of these deposits did you bring over?

A. I brought over the two hundred dollar one.

Q. When was that? A. This one in August—
this one on October 21st.

Q. Where did you get the money from? A. Out
of the drawer.

Q. What other deposit did you bring over? A. 10
The other two hundred.

Q. Which one? A. At the start off I brought
over two hundred.

Q. Read off from the memorandum the dates
you brought over the deposits? A. I can't. There
is a couple of times I went over with \$200.00 each.
I can't give the exact time but it has several
\$200.00 deposits. This all was put in the pool.

By the Court: 20

Q. There are four deposits of \$200.00 each. A.
I can't give the exact dates when I took them over.

The Court: We will now adjourn until
10 o'clock tomorrow.

30

40

James F. Kane, Defendant—Cross.

IN CHANCERY OF NEW JERSEY.

10	Between PATRICK KANE, Complainant, <i>and</i> JAMES F. KANE, Defendant.	} } }	71-517. On Bill, etc. Minutes of Final Hearing.
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Continuation of final hearing before Hon. John J. Fallon, Vice-Chancellor.

20 Chancery Chambers, Jersey City, October 24, 1929.

JAMES F. KANE, recalled.

Cross-examination continued by Mr. Doherty:

30 Q. You recall Mr. Kane that you made two deposits over there? A. I can't exactly recall them, but we had the money in together. Whichever had a chance to go over with the money went over with it. I had always deposit slips from the bank in the house. I made out the deposit slips and whichever had the chance to go over went to the bank.

By the Court:

40 Q. Your father testified he brought all the deposits there? A. I brought several myself.

James F. Kane, Defendant—Cross.

Q. But you don't remember which ones? A. I made out the deposit slips, but I don't remember which ones I brought over.

By Mr. Doherty:

Q. Was a track kept of the amount of money that was in the drawer so that the both of you at all times could tell what the proper balance should be there after paying the expenses? A. Yes, sir. 10

By the Court:

Q. Were you expected to put an equal amount in the drawer? A. As much as we could.

By Mr. Doherty:

Q. Each of you to determine for yourselves how much it would be proper for you to put in? A. We didn't make no paper agreement what to put in. We put in what we could put in. Some weeks I put in thirty and thirty-five and he put in twenty and twenty-five. So we counted it up together and in the meantime before we counted the amount what was in that week I gave him fifteen dollars to run the house for the week out of what we pooled each week on a Saturday night. 20

30

By the Court:

Q. Your father said he used to pay the house-keeper fifteen dollars a week out of his pocket? A. He is mistaken about that.

Q. That is not so? A. No, sir.

By Mr. Doherty:

Q. Why was it that you regularly put in this drawer more than he did instead of keeping the 40

James F. Kane, Defendant—Cross.

thing equalized? What was your purpose in doing that? A. My purpose was what was his was mine, and I figured what I put in was just the same. We were partners with it.

By the Court:

10 Q. You mean in the bank account? A. Including everything.

By Mr. Doherty:

Q. That was in fulfillment of your suggestion that everything would be 50-50 between the two of you? A. Yes, sir.

20 Q. But Mr. Kane, that 50-50 arrangement was to apply only to the ownership of the bank account when one of you died, wasn't it? A. It was to apply to the property including the bank account.

Q. When some one died? A. When we died— whoever died everything went to the survivor including the property and the bank money.

Q. And that was what the 50-50 meant? A. Yes, sir.

30 Q. Neither of you according to the terms of your bargain would have the right to go to that drawer and pull out any money for your own use? A. On Saturday night I would have about seven or eight or ten dollars or so and I would tell him what he should take for the week. I wouldn't take anything out and the next week I would discover there was five or ten dollars taken out and I would ask him what he did with it. He said he spent it, that's all.

Q. You have told us in your direct examination that when your father discovered that you shortly before your marriage drew out \$200.00 that he was sore, is that true? A. I told him—

40

James F. Kane, Defendant—Cross.

By the Court:

Q. Did your father express anger when he found out you had taken out \$200.00? A. Yes, sir.

By Mr. Doherty:

Q. He told you that performance was not part of the bargain; that you should not have drawn the money. Did your father say that to you? A. No, sir. 10

Q. Tell us just what he said? A. He said, "You stay home from work tomorrow morning and go to the bank with me and we will withdraw 50-50".

Q. He told you why he wanted to break up the arrangement? A. Because I drew this \$200.00 out.

Q. And gave you thoroughly to understand that sort of liberty wasn't any part of your arrangements? 20

The Court: What did he say?

By Mr. Doherty:

Q. What did he say to protest against your drawing this \$200.00? A. He didn't protest about it. I told him a month before I drew it out I was going to draw \$200.00 to get married; for expenses of my marriage. 30

By the Court:

Q. What did he say? A. He said, "All right". He was satisfied. Then the day I did draw it out he was dissatisfied and he wanted me to go over to the bank the next morning and split it up 50-50.

Q. And you were satisfied? A. I didn't want it that way but he did, and to please him I went and did it. 40

James F. Kane, Defendant—Cross.

By Mr. Doherty:

Q. In the original conversation between you and your father the arrangement was that the property, bank account and the management of the household were all three to be on a basis of 50-50?

10

The Court: I will overrule that question. That is based upon an unwarranted assumption of fact from the testimony adduced.

By Mr. Doherty:

Q. In the conversation three subjects were discussed between you. How the household should be run, how the bank accounts should be conducted and how the property in the future should be disposed of, is that true?

20

By the Court:

Q. Were they discussed at one time or different times? A. Discussed all at one time. We were to work it that way.

By Mr. Doherty:

Q. As to the running of the household the arrangement was that both of you——

30

The Court: I will overrule that question. You have no right to state what the arrangement was. You are undertaking to say what the arrangement was. You are adducing something from what he said.

By Mr. Doherty:

Q. In that conversation did you and your father agree that the two of you would contribute out of

40

James F. Kane, Defendant—Cross.

your earnings sufficient to pay the housekeeper, supply provisions and that the surplus would be put into the joint bank account?

The Court: I will overrule the question for the reason it is calling for a conclusion as to whether or not he said his father agreed. What they said can be brought out. 10

By Mr. Doherty:

Q. Will you tell us again just what was said by you and by your father as to how the houses should be managed by the two of you from thenceforth, and what was to be done with the surplus money? A. Put our money in the drawer every saturday night. 20

By the Court:

Q. Tell us what he said and what you said? A. He wanted me too——

Q. Tell us what he said to you? I am concerned about getting the conversation as to what the arrangement was. A. To put the money in as 50-50 and run the house and fix it, and what expenses was to be met was to come out of the fund that we put in together.

Q. Who said that? A. My father. 30

Q. What did you say? A. I said "All right."

By Mr. Doherty:

Q. And the surplus was to go into this joint bank account? A. What was left of any we had we would take it over to the bank. I would write out a deposit slip and whoever would go over with it would go with the money.

Q. And did he say that bank account on the death of one or the other would go to the one who survived? A. Yes, sir. 40

James F. Kane, Defendant—Cross.

Q. Who said that? A. That's the way the bank account read, if one should die the money would go to the survivor.

10 Q. What the Court would like to be informed did somebody propose that and did the other assent? A. He suggested at the start to put in my money with his as 50-50.

Q. And you agreed to it? A. I told him "All right; if he wanted it 50-50 I will go that way."

Q. And it was after those two things were proposed you suggested to him that the real estate also be so fixed that that would be included in the 50-50 arrangement? A. Yes, sir.

Q. All those three things were together? A. Yes, sir, altogether—the three things.

20 Q. Where did you get the deeds that you brought up to me? A. In the drawer.

Q. You took them out of the drawer yourself? A. Yes, sir. He was there when I was upstairs.

Q. And you say your instructions to me that day was to make up a deed that would arrange the property 50-50? A. That was on a Saturday we discussed that.

30 Q. Did you tell that to me when you brought up the deeds? A. When I brought up the deeds he said—

By the Court:

Q. You are asked what you said to Mr. Doherty. A. I asked you, "I have deeds here concerning me and my father to go 50-50 on everything we done."

40 Q. Who suggested the joint tenancy? Did you say anything about joint tenants? Did you know what that meant? A. No, I didn't know what that meant.

James F. Kane, Defendant—Cross.

Q. Did anybody explain to you what it meant?

A. As far as I know it meant—

Q. Did anybody explain it to you? A. I don't remember.

By Mr. Doherty:

Q. When you told me that the arrangement between you and your father was to have the deeds 50-50 did you further explain to me that the two of you understood by 50-50 that the property was to go entirely to the one who lived the longest?

10

The Court: I will overrule that question. Let this witness tell what was said. I am not concerned with what he understood.

Mr. Doherty: I am cross-examining the man.

20

The Court: I want you to bring out what was said—not what he understood.

Mr. Doherty: I am asking him whether he told me that was the arrangement between the father and himself and if that was their interpretation of 50-50.

The Court: Let him tell what was said.

By Mr. Doherty:

Q. Have you told all the information you gave me when you brought up the deeds? A. Not at first.

30

Q. What additional information did you give me besides what you told the Court? A. It was a few days previous. First you told me to bring my father up to sign the deeds. That was about three weeks before I brought my father up. He started to bring it in as a will and I objected.

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James F. Kane, Defendant—Cross.

By the Court:

Q. You told us that. On the first day you went to Judge Doherty's office and you brought with you these old deeds. Tell us what you said to Judge Doherty about deeds to be drawn to you and your father? A. To the best of my memory it was 50-50.

Q. Tell us what you said. You understand the English language. I don't care what you understood. A. I went to the bank the previous day and we had our money put together.

Q. I am only concerned about the deeds. Tell us what you told Judge Doherty about the deeds? A. That I wanted my name on the deeds with my father.

20 Q. What else did you say to him? A. The agreement was to be on a 50-50 basis.

Q. What did Judge Doherty say to you then? Tell me the whole thing. A. He told me he would take it up with Mr. Gannon that day and as far as I remember I don't think Mr. Gannon could be found that day, and he told me to come up the next day concerning the deeds. When we came up the next day he told us to wait outside. In the meantime he came in. He said for my father to go in and he told me to stay outside. You said you didn't need me with this transaction with Mr. Gannon and my father wanted to put my name on the deeds. Whatever way that was put I don't know. In the meantime you told me not to go away you wanted me to sign some papers concerning it afterwards which I don't remember just what they read about. There were a few words which I couldn't quite understand, but so far as I recollect he said there was nothing to worry about only to put my name on the deeds with my father.

40

James F. Kane, Defendant—Cross.

Q. Did you see some paper there? A. I did, but I don't know what it was.

Q. Who told you to sign it? A. Judge Doherty.

By Mr. Doherty:

Q. Go back to the first trip. Did you tell me 10
what 50-50 meant?

The Court: I am going to overrule all questions as to whether or not this witness told you what 50-50 meant. I am not concerned with it. All I want is to detail what the conversation was.

Mr. Doherty: We are contending what was done was not in effectuation of the intention of the parties.

The Court: I will overrule that line of 20
examination as you put it.

By Mr. Doherty:

Q. You saw the papers signed, didn't you when Gannon was there? A. I don't remember.

Q. You testified on your direct examination that there were no papers signed in your presence?

Mr. Newton: I object to that. 30

By Mr. Doherty:

Q. Did you testify to that on your direct examination? A. I don't remember.

Q. Do you remember Mr. Gannon being there? A. I don't know. There were several persons there, I don't know Mr. Gannon, coming off and on into the office in the meantime. I was outside at the time this was going on.

40

James F. Kane, Defendant—Cross.

By the Court:

Q. You testified before Mr. Gannon may have been there. If he was you did not know him? A. No, sir.

10 By Mr. Doherty:

Q. You said a moment ago that when you and your father were entering my office I stopped you and kept you out. Did you say that? A. Yes, sir. You told me to stay out and then you would explain concerning putting the transaction of the deeds in me and my father's name on the deeds.

Q. Do you remember your testimony of yesterday concerning that? A. I don't remember.

20 Q. Didn't you testify yesterday you were in my office and that your father proposed a will and that you said there would be no will or you would withdraw your money from the bank? A. Yes, sir.

Q. And then I asked you to step outside and I closed the door? Do you remember that? A. That was the first day, yes, sir.

By the Court:

30 Q. The first day? A. I don't mean the first day I went there. It was a day previous to that. We went up there and you said to me, "My father would have my name on the deeds and you would see Mr. Gannon."

By Mr. Doherty:

Q. I told you I would take the matter up with Mr. Gannon? A. Yes, sir.

40 Q. And discuss it with him? A. Yes, you said you would have it go through Mr. Gannon.

James F. Kane, Defendant—Cross.

Q. Do you remember the size and dimensions of my office where you and your father were? A. Yes, sir.

Q. Do you remember it is a room about 18 feet square? A. Yes, sir.

By the Court:

10

Q. Do you remember it was that square? A. I remember it was.

Q. Was it a room 18 feet square? A. Yes, sir.

By Mr. Doherty:

Q. Do you remember that my desk is over in the corner far from the door? A. It is over there, yes, sir.

Q. And you still say when I was talking to your father that I put you out of the room and I shut the door? A. Yes, sir.

20

Q. You still say that? A. Yes, sir.

Q. And then when I opened the door that I said to you, "All right, your father is willing to go 50-50"? A. You said my father was willing to have my name on the deeds.

Q. You testified on your direct examination your father is willing to have it 50-50?

The Court: You don't know whether he did. He is after telling you now his father is willing to have his name on the deeds. I don't think you ought to put it that way.

30

By Mr. Doherty:

Q. Will you tell us again what the language was I used when I opened the door? A. "My father is willing to have the names on the deeds and you would have it done through Mr. Gannon." That was on a Wednesday.

40

James F. Kane, Defendant—Cross.

Q. Is that all I said? A. Yes, sir. And you said you would call him up—I don't remember whether you would call him up or send for him, but I remember you said you couldn't get Mr. Gannon that day and to come up the next day and Mr. Gannon would be there. So that was the day it was fixed up.

10

Q. You saw Mr. Gannon there finally? A. I didn't know Mr. Gannon. He might have been there. I saw several people coming in and out of the place. There were several persons there.

Q. Do you remember seeing the papers themselves—the deeds on the desk or anything done in connection with the signing of the papers? A. No, sir.

20

Q. You said I asked you to sign something? A. You asked me to sign some paper.

Q. Did you sign it? A. I did; yes, sir.

Q. What was it? A. That I can't remember. You told me it was the transaction of the deeds to me and my father on the one deed. Something to that effect.

Q. What did the paper say? A. There were some words in there I couldn't understand.

By the Court:

30

Q. Was it read to you or did you read it? A. I asked him to explain it to me.

Q. Did he explain it? A. He explained it was only a matter of my name going on the deed with my father through Mr. Gannon. Something to that effect.

By Mr. Doherty:

40

Q. Was it a legal paper? A. No, just an ordinary paper you had typewritten from your secretary or stenographer.

James F. Kane, Defendant—Cross.

Q. How many papers did you see altogether?

A. Just that one. As far as the deeds, I didn't see any of them at that time.

Q. You have had considerable business experience, haven't you, Mr. Kane? A. In what way?

Q. Previous to this transaction you bought and paid for fifteen lots down in Lakewood, didn't you? A. Yes, sir. 10

By the Court:

Q. Previous to that time? A. I had sixteen lots in Lakewood.

Q. Before that time? A. Yes.

By Mr. Doherty:

Q. That you paid for? A. Yes, sir. 20

Q. And you know something about business, don't you? A. What business?

Q. I say you had experience with real estate business and deeds and so on and you knew what a deed was? A. I didn't have no experience. Just the buying of lots, that was all.

Q. When you came back from the army you went to live with your step-mother and father, didn't you? A. Yes, sir.

Q. I am asking you now whether you didn't go to live with them only because you believed that living with them would help you in some way to get control of this property? 30

Mr. Newton: I object to it.

The Court: I will let him answer it.

(Witness) A. No, sir.

By Mr. Doherty:

Q. Is your brother Pat here? A. Yes, sir. 40

James F. Kane, Defendant—Cross.

Q. Do you remember a conversation you had with Pat in which you told Patrick he was a fool not to go to live with your father and step-mother because the step-mother might get the property away from your father? Did you say that to Pat? A. No, sir.

10 Q. Before the war, or at any time? A. No, sir.

Q. After the death of your step-mother when you went to the drawer to look for the bank account did you then have in mind getting an interest in the real estate? A. No, sir.

Q. Do you know a man named Chris Hanley? A. Yes, sir.

Q. Did you have a conversation with Chris Hanley after your marriage in which you told him you had taken the deeds out of the drawer and that your father would get the surprise of his life when he went there? A. I don't remember.

20

By the Court:

Q. You don't remember what? A. Having any conversation with this Mr. Hanley.

Q. You have testified before you only took those deeds out of the drawer the same day you went to Judge Doherty's office? He is talking about what happened afterwards. A. I had no dealings with Mr. Hanley at the time Judge Doherty is talking about.

30

Q. You think the question Judge Doherty is referring to is a question referring to the deed in your name and your father's name? A. Yes, sir.

By Mr. Doherty:

Q. You did take those deeds away from your father? A. Yes, sir.

40

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Q. When? A. When I came back the second time.

Q. I am speaking after the deeds were executed and you were leaving the house didn't you take those deeds out of the drawer? A. No, sir.

Q. You remember your counsel had them yesterday and he produced them. Did he get them from you? A. When I went back to the house the second time I took them. 10

By the Court:

Q. When did you take the deeds? A. Around March or April.

Q. Of what year? A. 1928.

Q. Where did you get them? A. Out of the drawer. 20

By Mr. Doherty:

Q. Why did you take them? A. That's the time all this trouble was going on.

By the Court:

Q. What trouble? A. Concerning the house.

Q. What trouble are you talking about? I haven't heard much about trouble only your father said you called him a skunk? A. I wasn't satisfied with the way things were going on. He made a suggestion to do this and that and the next week he would change his mind. 30

Q. That is what you mean by trouble? A. Yes, sir.

By Mr. Doherty:

Q. In March, 1928, you moved into your father's house from 327? A. Yes, sir. 40

James F. Kane, Defendant—Cross.

Q. And it was at the time you moved into the house you took the deeds? A. Yes, sir.

By the Court:

Q. Right away? A. Not right away.

10

By Mr. Doherty:

Q. How soon after? A. About a month before he got married.

Q. Why did you take those deeds? A. Because I knew there was trouble coming up and I had an idea he was going to get married and I couldn't prove it until a week before he got married. I knew there was trouble coming and I took the deeds.

20

Q. When you moved in your father's house at 329 there was some trouble about you paying rent? A. No, sir.

Q. Didn't your father want you to pay \$45.00 a month rent? A. No, sir.

Q. When was the conversation about you paying \$45.00 rent? A. Through this trouble coming up. You know I was to pay as we were when I was living at 327½. He suggested I move in with him.

30

The Court: Suppose there was trouble about the rent and suppose there was trouble about his father saying this and that. Suppose the father made a gift of this property could he revoke it at his leisure?

Mr. Doherty: To show what his conception was of the legal effect of that deed.

40

The Court: He may have misconceived the legal effect of it just the same as your

James F. Kane, Defendant—Cross.

client. Anything that was said subsequent to the gift being made as to this man paying rent and the father paying rent would have no concern with this case.

Mr. Doherty: What more relevant testimony could be introduced as to the time they made the transaction to show how they acted in respect to that transaction subsequent— 10

The Court: I suppose I will save time by permitting you to do it. It wasn't objected to.

By Mr. Doherty:

Q. What was the conversation between you and your father about paying rent for the occupancy of the place you lived in? A. The only conversation brought up about the rent at that time was when he wanted me to live in with him in March. He was talking about getting a car. It was in March he wanted me to move in with him in 329. I was living at 327 at the time. 20

Q. There was talk then about you paying rent when you moved into 329? A. No, sir; there was no talk of rent then.

Q. When was it? A. That rent come up on an argument we had when he stopped paying my wife ten dollars and she asked me, "I don't know what is getting into his head. He won't pay any more." 30

Q. How long after you moved in was the argument? A. About five or six weeks after.

Q. And in that argument there was talk about free rent? A. He said, "You are getting free rent, ain't you?", and I said, "Where do you get this stuff bringing up free rent?" So he says— No, I says— 40

James F. Kane, Defendant—Cross.

By the Court:

Q. You asked him where he got this stuff about the free rent? A. Yes.

Q. What else? A. Later on I started thinking it over.

10 Q. I am not concerned about that. Did you settle the conversation? A. I said, "Sure I will give you rent", I says. "How much do you want?" He says forty-five.

The Court: He has detailed all that before. Do you want it in again?

Mr. Doherty: No.

By Mr. Doherty:

20 Q. At the time that you made the offer to pay the rent you did not understand that those deeds made you one of the owners of the property?

Mr. Newton: I object. It is irrelevant, incompetent and immaterial and not within the issue.

The Court: I will sustain the objection. I don't care what he understood.

By Mr. Doherty:

30 Q. When you were living at 327½ you paid the taxes, did you? A. I only paid one year's taxes.

Q. That was when you were living at 327½? A. Yes, sir.

Q. And you paid that one year's taxes to compensate your father for letting you use the place, didn't you?

Mr. Newton: I object to it. It calls for a conclusion.

40 The Court: He can say whether that was the reason he paid it.

James F. Kane, Defendant—Cross.

(Witness) A. He wanted me to come back to 327½ and pay the taxes.

The Court: Read that last question.
(Last question read by stenographer.)

“Q. And you paid that one year’s taxes to compensate your father for letting you use the place, didn’t you?” A. Yes, sir. 10

By the Court:

Q. Is that so? A. Not the way he wanted. He wanted—

Q. Mr. Kane, you are not stupid. If you will listen to questions. You never paid a year’s taxes?

A. Not a whole year.

Q. That question suggested you paid a year’s taxes. I am losing a lot of time here on a lot of extraneous matter which has absolutely no relevancy to the issue I am trying, and unless it is curtailed pretty soon I am going to hold the parties to the strict issue. I ask you again did you ever pay one year’s taxes? A. Only a half year’s. 20

Q. The question was, did you pay a year’s taxes? Are you listening to the questions? A. Yes. I only paid a half year’s taxes.

30

By Mr. Doherty:

Q. Weren’t you mistaken when you say you were taken sick in March, 1925? A. No, sir.

Q. Isn’t it a fact you were taken sick in March, 1924, about three months after your step-mother died? A. No, sir.

Q. Have you found out yet whether it was on the 2nd of January or on the 6th of December, 1924, that you paid Carey the balance due on the funeral expenses of your mother? A. That I 40

James F. Kane, Defendant—Cross.

don't remember. My judgment at the time when I went with my mother's bill I didn't even know that bill was in effect until my father told me that. I asked Mr. Carey about it and he didn't know about it at the time. When it was paid later it was paid from the funds we had together.

10 Q. Are you willing to say you paid both bills on January 2nd? A. I couldn't swear to that but I know the bill was drawn up on that day.

Q. Did you make two trips to Carey to pay bills? A. No, sir.

Q. And if you didn't pay the old bill on the 2nd of January then you didn't pay it at all?

Mr. Newton: I object to it.

The Court: I will let him answer it.

20 (Witness) A. I don't know whether he paid it or I did. That bill if it was paid was paid out of the funds we had together.

Q. In my office you told your father that if he insisted upon making a will that you would withdraw the money you put in the bank account. You told him that, didn't you? A. Yes, sir.

Q. I ask you now did you say that as a threat to frighten your father?

30 Mr. Newton: I object to it.

The Court: I will sustain the objection. My observation was his father indicated he couldn't be threatened by any action of this witness. The father is a man physically and mentally fit. Anyhow what his purpose in saying it is inconsequential.

Mr. Doherty: I think the actual design of this man in getting the deed is highly important.

James F. Kane, Defendant—Cross.

The Court: I can't say there is any proof in this case that there was any such action. I will overrule the question.

Mr. Doherty: On the argument of the case I hope to convince your Honor we have made out a case for relief.

The Court: I am furthermore impressed with the idea here today this witness is not very careful in the answers he is making. He is not listening very closely to the questions.

Mr. Doherty: We can only say that he is unreliable.

By Mr. Doherty:

Q. You said you paid a bill for the repair of 327½? A. Yes, sir. 20

Q. That was painting, wasn't it? A. Some plumbing and painting and papering walls included in everything.

Q. The bill was paid to Joe Scott? A. Yes, sir.

Q. He was a plumber, was he? A. Yes.

Q. Was he a licensed plumber?

Mr. Newton: I object.

The Court: I will let him answer it.

(Witness) A. I don't know whether he is a licensed plumber. 30

By Mr. Doherty:

Q. Did he also do painting? A. Yes, sir.

Q. He was an intimate friend of yours, was he not? A. Yes.

Q. And you actually paid him the amount of money as indicated by the bill? A. Yes, sir. 40

James F. Kane, Defendant—Cross.

Q. Is Mr. Scott here? A. No, he isn't here. I paid him that in the presence of my father that night. I called him in to let him know I was paying it.

Q. You never made any demand on your father for a share of the rents he collected? A. No, sir.

10 Q. You did not consider you were entitled to them?

The Court: I will overrule that question. He may yet make the demand if he is entitled to it.

By Mr. Doherty:

Q. Did your father ever order you out of 329? A. Yes, sir.

20 Q. And you refused to go? A. I didn't refuse to go. I went.

Q. That was when you got married? A. Yes, sir.

Q. And then for a period of many months you did not come near your father nor near the place? A. No, sir.

By the Court:

30 Q. But your father did visit you? A. He did later on; yes, sir.

By Mr. Doherty:

Q. When your father left in June, 1928, you say it was to get married? A. Yes, sir. He got married in June, 1928.

Q. At that time the relations were unpleasant between the two of you?

40 The Court: I will overrule that question. There isn't a bit of proof to indicate the re-

James F. Kane, Defendant—Cross.

lations were unfriendly at any time. There is some proof he was dissatisfied because the son withdrew moneys.

Mr. Doherty: There is in evidence by the complainant this man ordered him out of the house and called him a skunk.

The Court: Yes, that is likely to happen in the best of families on the spur of the moment when something happens. 10

By Mr. Doherty:

Q. You are still living in the house, are you?
A. Yes, sir.

Q. You are not paying any rent? A. No, sir.

Q. You are not paying any taxes? A. Yes, I paid taxes, but couldn't get the taxes this year. 20

Q. You paid no taxes since your father moved out? A. No, sir.

Q. You have paid no taxes since 1927? A. Since 1927.

Q. Do you consider you owe your father any money for rent?

The Court: I will overrule the question. These deeds certainly made them joint tenants and unless you succeed in setting aside those deeds this man is entitled to an accounting from the father. What his idea of the matter is not going to help. It is a question that is to be considered as to whether he is entitled to half of the profits. 30

By Mr. Doherty:

Q. At the time when you and your father discussed the arrangements on the real estate was there anything said either by you or by him as to the two of you becoming joint tenants? A. Yes, sir. Joint tenants meant we were to be 50-50. 40

James F. Kane, Defendant—Re-direct.

The Court: Leave out what was meant. You are asked whether anything was said about joint tenants.

(Witness continuing.) I don't know what to say.

10 The Court: If you don't, say so. You are asked whether anything was said about joint tenants.

Mr. Newton: He said by you and your father at the time you first talked about the real estate.

The Court: I will have the question repeated.

(Last question read by stenographer.)

20 "Q. At the time you and your father discussed the arrangements on the real estate was there anything said either by you or by him as to the two of you becoming joint tenants?" A. No, sir. Nothing said about joint tenants at all.

Re-direct examination by Mr. Newton:

Q. How were the taxes paid when you and your father lived together before you were married?

A. It was paid with what funds we had together.

30 Q. In the drawer? A. In the drawer.

By the Court:

Q. Your father in his amended bill of complaint in paragraph 8 says that after the execution of the deeds that have been referred to wherein you and your father were made joint tenants, as it has been called, your father alone defrayed all the charges in the way of taxes, water rents *et cetera* levied against the property except the sum of \$38.00
40 which you volunteered to pay, and which payment

James F. Kane, Defendant—Re-cross.

you used as an opportunity for directing the municipal authorities to change the record as to the ownership of the property so as to have it appear that you were the owner thereof. Did you pay any such sum as \$38.00 at any time? A. No, sir.

10

Re-cross-examination by Mr. Doherty:

Q. You paid about \$38.00 on one piece of property and about the same amount on the other piece, didn't you? A. No, sir. I paid no \$38.00 on any property.

Q. How much did you pay? A. On what property?

By the Court:

20

Q. How much taxes did you pay? A. Around sixty some odd dollars. I don't remember exactly.

By Mr. Doherty:

Q. Didn't you pay \$69.00? A. Something to that effect.

Q. You paid \$69.00 on two pieces of property instead of paying \$38.00 on one piece of property? A. Yes, sir.

Q. And when you made the payment at the city hall did you mention anything to them about your having an interest in the property? A. No, sir.

30

Q. You didn't direct any clerk down there to change the record of ownership? A. No, sir.

Q. You were not aware that from 1927 on the tax—Do you know that the tax bill that you paid at that time was made out to your father alone? A. It was always made out to my father.

Q. Alone? A. Yes, sir.

40

Katherine Kane, for Defendant—Direct.

Q. You are not aware that from 1928 the taxes were made out to your father and another person? A. I don't know nothing about that.

Q. You never saw the tax bills for 1928 and 9? A. No, sir.

10 Q. And you don't know after you went down to the city hall the bills were made out to "*Patt Kane, et al.*"? A. I don't know nothing about that.

The Court: Your own client's testimony is to the effect, Mr. Doherty, that in 1928 when he went down to city hall he went there because he had been receiving tax bills for several years past in the name of *Patt Kane* and others.

20 Mr. Doherty: I don't suggest this complainant is an observant man. He is a dense imperceptible person. That's all.

KATHERINE KANE, being sworn.

Direct examination by Mr. Newton:

30 Q. You are the wife of the defendant James F. Kane? A. Yes, sir.

Q. When were you married to him? A. July 11, 1926.

Q. And after you were married where did you go to live with him? A. The day I was married, on a Sunday, Mr. Kane attended my wedding supper and my husband and I—

Q. I didn't ask you that. I asked you where you lived after you were married? A. We returned to 329 Ninth Street.

40 Q. Who lived with you? A. My husband and I and Mr. Kane, his father.

Katherine Kane, for Defendant—Direct.

Q. How long did he live with you? A. Until July 31st.

Q. What year? A. 1926.

Q. And did you leave there then? A. Yes, sir.

Q. Tell us how you came to leave there? A. Well, that week that I was married why Mr. Kane— 10

Q. Pat Kane? A. Yes. He told my husband he was married now and he would have to provide a home for himself.

By the Court:

Q. Did you hear him tell that? A. No.

The Court: Strike that out. Just tell us what you know of your own knowledge.

(Witness) A. I don't know only what my husband told me. 20

Q. Unless he told you in his father's presence? A. No.

The Court: Then strike it out.

By Mr. Newton:

Q. Did you go to look for rooms? A. Yes.

Q. Did you find rooms? A. Yes, sir. 30

Q. After you found the rooms, did Pat Kane say anything to you? A. Yes.

Q. What did he say? A. My husband told him I had found rooms on Pavonia Avenue—312 Pavonia Avenue, and he said "Never mind the rooms". In my presence he said this.

Q. He said it to you, didn't he? A. Yes. He said "Never mind the rooms. You stay where you are", and I said, "Well, it is too late now, I have found rooms and I have put a deposit on it and I have selected furniture for my home." He 40

Katherine Kane, for Defendant—Direct.

says, "That is all right, stay here; there will be plenty rooms. If you ever need rooms there will be plenty more rooms." I said, "I have selected furniture for those rooms and there is no room here." Then he said "All right, why don't you furnish up the back parlor?"

10

Mr. Doherty: I object to it.

The Court: I will allow it.

(Witness continuing.) I said "It is too late." And I said "I don't care to give up rooms for just——"

By Mr. Newton:

20 Q. Did he speak to you more than once about giving the other rooms up and staying where you were? A. Yes. He spoke to me about three times.

Q. Now, after that, what did he say that made you get out? A. Why, one night my husband was asleep in the chair in the dining room and he woke him up and he told him to tell me to look for rooms the next morning.

Q. Was that before or after he told you? A. After.

30 Q. Were you there at the time? A. No, sir.

The Court: I will strike out the testimony of this witness in which she detailed some statement alleged to have been made by the father to the son. Don't tell anything except what was said to you or in your presence by Mr. Patrick Kane.

By Mr. Newton:

40 Q. After Mr. Patrick Kane told you to stay there did he tell you to get out? A. Yes, sir.

Katherine Kane, for Defendant—Direct.

Q. When did he do that? A. He told me that on a Friday.

Q. When did you get out? A. We got out that evening.

Q. And you went to live where? A. 312 Pavo-
nia Avenue.

Q. And did Mr. Pat Kane visit you there? A. 10
Not until the following December.

Q. When did you leave, in July? A. I left his house on July 31st.

Q. And he came to visit you the following De-
cember? A. On a Christmas Day.

Q. And did he continue his visits after that?
A. Yes, he always continued his visits after that.

By the Court:

Q. How often? A. At the rate of once a week
on a Sunday. 20

By Mr. Newton:

Q. How did you come to go back to Ninth
Street? A. He asked my husband.

By the Court:

Q. Did you hear him ask him? A. No.

The Court: Don't be telling us anything
you didn't hear. 30

By Mr. Newton:

Q. You went back to 327½ Ninth Street. Be-
fore you went back, did Mr. Pat Kane say any-
thing to you about going back? A. No, sir.

By the Court:

Q. Did he ever say that to your husband in
your presence? A. No, sir; not in my presence. 40

Katherine Kane, for Defendant—Cross.

By Mr. Newton:

Q. After that you moved into where? A. 329.

Q. Did Pat Kane say anything to you or to your husband in your presence before you moved into 329? A. Yes, sir.

10 Q. What did he say? A. He said, "I think it would be better for us if the three of us go together and that he would have the house fixed up 327 for his nieces". That he would like to have the nieces next door to him as near to him as he could.

Q. Did you and your husband move next door?

A. Yes.

Q. When was that? A. March 14, 1927.

Q. Are you sure of that? A. 1928.

20 Q. How long did the three of you live together? A. From March 16, 1928, to June 17, 1928.

Q. And what happened then? A. Well, Mr. Kane left to get married.

Q. In your presence did you ever hear your husband order his father out of the house? A. No, sir; positively not.

By the Court:

30 Q. Did you ever hear your husband call his father a skunk? A. No, your Honor; I did not.

Cross-examination by Mr. Doherty:

Q. Did you ever hear any talk between them about your husband paying rent? A. I told you—

By the Court:

40 Q. Did you hear them talk? Yes or no? A. Yes.

Katherine Kane, for Defendant—Cross.

By Mr. Doherty:

Q. When was it? A. That was after he first started to give me ten dollars a week. The first week that I had came into 329.

Q. What did the elder Mr. Kane say and what did your husband say? A. About the rent? 10

The Court: Yes.

(Witness continuing) Mr. Patrick Kane paid me ten dollars a week for about three or four weeks and then he discontinued paying.

By the Court:

Q. You are asked what was said by the elder Patrick Kane and his son? A. That I don't remember. 20

By Mr. Doherty:

Q. But you did hear the talk about the rent? A. Yes.

Q. And did you hear your husband agree to pay rent to your father-in-law? A. Not the figure Mr. Patrick Kane wanted.

By the Court: 30

Q. Did you hear what was said? A. Yes.

Q. What was said? A. He said he wanted my husband to pay forty-five a month rent.

Q. What else was said? A. And my husband said that he didn't care to pay that amount, and then he said, "If you don't pay that then you can get out", he said. So my husband said, "All right". Then the following night again he asked my husband to stay and everything would be all right and my husband said, "All right, I will pay 40

Katherine Kane, for Defendant—Cross.

you thirty a month rent and you pay my wife ten a week board'', and he consented to do that.

Q. Don't say that. Tell us what he said? A. He said, "All right".

Q. Previous to that you said he had been paying you ten a week board? A. Yes.

10 Q. For how many weeks? A. For about three or four weeks. I don't remember the exact time.

By Mr. Doherty:

Q. Did your husband ever pay the rent? A. Yes, he paid two months' rent before Mr. Kane got married.

Q. And after Mr. Kane got married did your husband pay any rent? A. No.

20 Q. You are living there rent free, are you? A. Yes.

Q. Do you know anything about your husband paying the taxes while you were living at 327½? A. Yes, my husband paid a half year's taxes, so far as I remember.

Q. Do you know why he paid the taxes? A. That was in the agreement with them.

By the Court:

30 Q. How do you know he paid taxes, madam? A. Because I gave him the money.

Q. And he went out of the house and came back with a receipted bill? A. Yes.

By Mr. Doherty:

Q. Did you hear the agreement? A. We were to fix up the house and pay a half year's taxes, and I gave my husband the money out of the household money to pay the taxes.

40

William P. Gannon, for Complainant—Direct.

Q. That was to be paid instead of rent? A. At 327½ it was.

By the Court:

Q. Did you understand that question it was the agreement to pay instead of rent? A. Yes, sir. 10

Mr. Newton: That's my case.

COMPLAINANT'S REBUTTAL CASE.

WILLIAM P. GANNON, being sworn.

Direct examination by Mr. Doherty:

Q. You are a solicitor, Mr. Gannon? A. Yes, 20
sir.

Q. And you were formerly associated with me?
A. Yes, sir.

By the Court:

Q. How long have you been practising? A.
1923.

By Mr. Doherty:

Q. On January 3, 1924, you were in my office,
were you? A. Yes. 30

Q. There is in evidence Exhibit C-4 in this case,
a deed which purports to contain your signature.
Is that your signature? A. That's my signature.

Q. Have you any recollection of the transac-
tion? A. No, I haven't, judge.

Q. Since you arrived in Court today Pat Kane
has been pointed out to you. Do you remember
him? A. I do not. 40

William P. Gannon, for Complainant—Direct.

Q. The defendant James F. Kane is now indicated to you. Do you remember him? A. No, sir; I do not.

Q. Do you remember the occasion of either of these gentlemen being in the office? A. No, I do not, judge.

10

Mr. Doherty: I think that's all.

By the Court:

Q. Were you accustomed to act as intermediary for the passing of titles more than once while you were in Judge Doherty's office? A. No.

Q. Do you recall that you acted as the intermediary in this particular case? A. I see from the instrument itself. It refreshes my recollection.

20

Q. You as a lawyer, I presume, either had the deed explained to you or read it before you signed it? A. I suppose I did.

Q. In the deed there is a clause about joint tenancy whereby you conveyed—at least this property was conveyed to you by Patrick Kane, and you as a conduit conveyed it to Patrick Kane and James Kane, his son, and there is a recital in that deed that they were to hold the property as joint tenants. Do you remember that transaction? A.

30

No, I don't.

Q. Do you recall whether or not—you don't recall anything about it? A. No, I do not, judge. I do know it is my signature. That's about all.

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Patrick Kane, Complainant—Direct.

PATRICK KANE, recalled.

Direct examination by Mr. Doherty:

Q. Mr. Kane, on the Saturday after the burial of your wife did you ask your son James to pay half of your wife's funeral expenses? A. No, sir. 10

Q. On the occasion when you and he came up to my office together did you say anything there about wanting to give a will and did he say, "No, if there is any talk about a will I will withdraw my money from the bank account"? Anything like that said? A. I wanted to make a will.

Q. Oh, Mr. Kane! I am asking you whether that was said in my office?

The Court: He started to tell you.

Mr. Doherty: I object. It is not responsive. 20

By the Court:

Q. You said you wanted to make a will. Tell us what you said at that time to which the question relates? A. I wanted to make a will and he says, "No, you can break that".

By Mr. Doherty: 30

Q. Did you tell him in my office you wanted to make a will? A. Yes, sir.

By the Court:

Q. Was that said in the presence of Judge Doherty? A. No, sir.

Q. But it was between you and your son in his office? A. Yes. He said that will can be broken.

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. Was it in my office that the conversation took place? A. Yes.

Q. Or at your home? A. In both the home and the office.

10 Q. On what day was the conversation in your home? A. I couldn't tell you that.

By the Court:

Q. Was it the same day you went to Judge Doherty's office? A. Yes.

Q. You heretofore said the day you and your son talked about the matter you twice said, "No", and the third time you said, "Yes, you would make him the beneficiary after your death", and
20 you then went to Judge Doherty's office? A. Yes.

Q. That was the day the will was spoken about? A. Yes.

By Mr. Doherty:

Q. When the two of you were at my office did I either stop James when he was coming in and kept him in the outer office, or did I tell him to leave my room and go to the outer room and shut the door? A. No, you did not. I am sure of that.
30 You did not.

Q. On the 2nd of January at the office of Mr. Carey did James pay the balance due on the funeral bill of your first wife? A. No, sir; I paid it.

By the Court:

Q. On that day? A. No, not on that day.

Q. When did you pay it? A. About a month
40 after.

Patrick Kane, Complainant—Direct.

By Mr. Doherty:

Q. During the conversation with James at your house about the property was anything said by you or by him as to putting the title in the names of the two of you in joint tenancy? A. No, there was no talks about that. 10

Q. Did you know then what a joint tenancy was? A. I didn't understand it.

Q. Do you know now what a joint tenancy is? A. I know now, yes.

By the Court:

Q. Who explained it to you? A. Mr. Doherty.

Q. Did he explain it to you at the time the deed was passing to you and your son? A. I didn't understand. 20

Q. He did explain the deed but you don't remember what it was? A. I didn't understand about joint tenancy.

Q. I am going to assume he made you understand it because he certified to the deed. I am asking you whether joint tenancy was mentioned at the time the deed was passing? A. No.

Q. Are you sure, or you don't remember? A. I don't remember, to tell the truth.

By Mr. Doherty: 30

Q. You said you understood what a joint tenancy is. Will you tell us what your understanding is of what constitutes a joint tenancy?

Mr. Newton: I object.

The Court: I will let him tell it.

By Mr. Doherty:

Q. What do you understand joint tenancy means? 40

Patrick Kane, Complainant—Cross.

The Court: I will overrule that question as to what he understands joint tenancy means because he said you told him what a joint tenancy was. I will let him say what you told him what joint tenancy was.

10 Mr. Doherty: I suppose I have the benefit of my objection.

Cross-examination by Mr. Newton:

Q. Yesterday you said you were stupid and bewildered and didn't remember anything what happened up at Judge Doherty's office? A. Neither I did.

Q. But you remember this morning? A. He fooled me in everything there.

20 The Court: I will strike that out.

By the Court:

Q. What makes you think of it today and not yesterday?

Mr. Doherty: I object to it.

By the Court:

30 Q. You said you were stupid and bewildered at Judge Doherty's office? A. Yes.

Q. You didn't remember what was said by Judge Doherty then, did you? A. I couldn't tell you.

Q. But he did explain the deeds to you? A. Yes, but I didn't understand them, and I don't yet.

40 Q. And you told him you didn't understand them at that time? A. I am not sure whether I did or not.

Patrick Kane, Complainant—Re-direct.

Q. If you did tell him you didn't understand them did Mr. Doherty explain them to you the second time? A. He did, I guess.

By Mr. Newton:

Q. Did you talk with anybody before you testified yesterday? A. No. 10

Q. Did you talk with anybody before you testified today? A. No.

By the Court:

Q. You talked this case over since yesterday? A. Oh, yes; since yesterday.

Re-direct examination by Mr. Doherty:

Q. Will you tell us just what the explanation you heard me make when the deeds were signed? What did I explain that you can remember? A. I can't remember. 20

Q. But you have told his honor that I explained to you what the deed contained and what was a joint tenancy. We must insist you tell us what my explanation was. What was it? A. I couldn't tell you that neither.

By the Court: 30

Q. You mean you don't remember? A. I don't remember.

By Mr. Doherty:

Q. Is it true as his honor concedes that what your present understanding of a joint tenancy is was derived from what I told you? Is that true?

Patrick Kane, Complainant—Re-direct.

By the Court:

Q. Do you understand that question? A. I don't understand it.

By Mr. Doherty:

10 Q. You have told me that you now understand what a joint tenancy is. Now you said I explained to you but you don't remember my explanation. Now the question is if you did not find out from me what a joint tenancy is, from whom did you find it out? A. I didn't find it out from nobody yet. I didn't understand it. I don't understand it.

The Court: I will strike that out.

20 By the Court:

Q. You said a few minutes ago in answer to Judge Doherty's question as to whether you knew what a joint tenancy was that you knew now and you said it was explained to you by Judge Doherty. Is that so? Did Judge Doherty explain to you what a joint tenancy was? A. He did.

Q. When? A. You want to know from me?

30 Q. When you went on the stand you said he explained to you what a joint tenancy was and you said you knew what a joint tenancy was. When did Judge Doherty explain to you what a joint tenancy was? Was it at the time the deed was made or was it yesterday or today? A. It was up in the office.

Q. At the time the deeds were signed? A. Yes.

Q. Do you feel sure of that now? A. I ain't.

By Mr. Doherty:

40 Q. Now what was the explanation I gave you? A. The explanation was that I wanted to make a

Patrick Kane, Complainant—Re-direct.

will and he wouldn't stand for it and it could be broke at any time.

By the Court:

Q. What was said about deeds then? A. He said he would draw his money. So that's all it was about. 10

Q. How did the deeds come to be drawn? I am speaking now about the conversation in Judge Doherty's office. A. I don't understand anything about the deeds. The deeds were taken out of my place.

Q. I am asking you what was said in Judge Doherty's office about the deeds and joint tenancy, if anything was said. A. I couldn't understand it.

Q. You are after telling me Judge Doherty explained to you on the day you and your son were there about joint tenancy, but you don't remember now what was said, and you also said you remember he explained to you about joint tenancy. Are you sure of that? A. When I went up to Mr. Doherty I made him beneficiary of the place after my death, but not before. 20

Q. What did Judge Doherty explain to you what was the effect of the deeds you signed there? A. I don't remember. 30

By Mr. Doherty:

Q. Do you today know what a joint tenancy is? A. No.

Q. You don't know what it means? A. I don't understand it at all.

By the Court:

Q. What did you mean a little while ago when you said you knew what it was and you knew it 40

Patrick Kane, Complainant—Re-cross.

because Judge Doherty explained it to you? What did you mean by that? A. I don't know what it means.

10 Q. I have just had the stenographer refer to his minutes and read the question that was asked of you by Judge Doherty with respect to joint tenancy. He asked you if you understood what a joint tenancy was and you said "Yes, it was explained to you by Judge Doherty". Are you sure of that now or are you mistaken? A. I am mistaken. I don't understand it. It was to go 50-50.

Q. You testified repeatedly that when you went to Judge Doherty's office you went there for the purpose of having your son named as you called it beneficiary after your death? A. Yes, but not before.

20 Q. And you testified you meant during your life you wanted to have a say about the property? A. Yes.

Q. Did you say that to Judge Doherty? A. I did. I told him he——

Q. Did you tell that to Judge Doherty what I am interrogating you about now? A. I did. I was to have the say while I lived.

Re-cross-examination by Mr. Newton:

30 Q. But Judge Doherty explained the deed to you and you signed it? A. Yes, sir; beneficiary after my death.

By the Court:

Q. Judge Doherty explained the deed to you in what way? A. That's the way I understood it.

Patrick Kane, Complainant—Re-direct.

By Mr. Newton:

Q. Did you ask him any questions before you signed it? A. No.

By the Court:

Q. You said you did. You said you didn't understand it and I asked you whether you told him you didn't understand it and you said yes, and he explained it the second time. Is that so? A. That's all. I don't understand it. 10

Q. But Judge Doherty explained it to you twice at the time the deed was being made? A. Yes, but I didn't understand anything about joint tenancy or anything else.

Re-direct-examination by Mr. Doherty: 20

Q. I ask you again will you tell us what I explained or what I did. You say I explained the purport of the deed to you. Can you tell us what my explanation was?

The Court: In other words what did Judge Doherty say to you?

(Witness) A. I don't remember what he said.

By the Court: 30

Q. But you can remember that he said something to you about those deeds and you told him you didn't understand them and then he repeated it to you again? A. Yes, sir.

Mr. Doherty: That's all.

Harold T. Carey, for Complainant—Direct-Cross.

HAROLD T. CAREY, being sworn.

Direct examination by Mr. Doherty:

Q. Mr. Carey, you are in the undertaking business, are you? A. Yes, sir.

10 Q. And you have succeeded to the business of Thomas F. Carey, deceased? A. I am employed by the estate of Thomas F. Carey.

Mr. Newton: I consent to have the entry read.

By Mr. Doherty:

Q. Have you the custody of the books of account of Thomas F. Carey? A. Yes.

20 Q. Will you tell us what the books of account show as to the payment of the balance that was due on the funeral expenses of Bridget Kane who died in 1898? A. The record shows that Bridget Kane was buried on January 31, 1898, from 565½ Henderson Street. The total came to \$141.50.

Cross-examination by Mr. Newton:

30 Q. Tell us how that was paid? A. There was a payment made on October 24th which presumably was in 1898.

By the Court:

Q. The words 1898 are not there in the book? A. No.

Q. It says October 24th \$40.00? A. Yes.

Q. And there is another payment May 22, 1899, \$30.00? A. Yes, leaving an unpaid balance of \$71.50.

40 Q. Now this entry "Paid in full—Thomas F. Carey, December 6, 1924". When was that written, if you know? A. On December 6, 1924.

Harold T. Carey, for Complainant—Cross.

Q. How do you know? A. Because I wrote it.

Q. Is it your handwriting? A. Yes.

Re-direct examination by Mr. Doherty:

Q. The entry was made at the time of the transaction? A. Yes, sir. 10

Q. And the money was paid then? A. Yes, sir.

Q. By whom? A. That I couldn't say. It was evidently paid to my father and I was told by my father to make the bill paid in full.

By the Court:

Q. The money was not paid to you? A. No.

By Mr. Doherty:

Q. Did you have anything to do with the collection of the funeral expenses of the second Mrs. Kane—Mary Kane? A. No, I had nothing to do with it. It is noted on the books. 20

Q. Will you turn to the entry?

By the Court:

Q. This bill, Exhibit C-1, is that signed by Thomas F. Carey himself? A. Yes.

Q. And this reading in here which is typewritten "Paid in Full" and in pen "Thomas F. Carey per Harold T. Carey", is that in your handwriting? A. Yes. 30

Q. And in typewriting it says "December 6, 1924"? A. Yes.

Mr. Newton: I object to this. It is the second wife.

The Court: There is a question who paid it. 40

Harold T. Carey, for Complainant—Re-direct.

By Mr. Doherty:

Q. When does that account show the payment was made? A. On January 2, 1924.

Q. Does it show by whom personally it was paid? A. The bill was made out to Patrick Kane, living at that time at 329 Ninth Street, Jersey City.

Q. Does the account show anything that bears on the contribution for the mass in this case? A. Yes, the mass was paid for by the family.

By the Court:

Q. Is it included in the undertaker's bill? A. Yes, it had been included, but deducted "High Mass \$30.00". They paid the priest and it is deducted from our bill.

By Mr. Doherty:

Q. Does it show that the \$30.00 was given to the undertaker and by him turned over to the clergy? A. No, it was turned over to the clergy direct.

By the Court:

Q. The book doesn't show it? A. No, but from my personal knowledge.

Q. You don't know by whom it was actually paid? A. No.

Re-cross-examination by Mr. Newton:

Q. Was there anybody connected with your firm whose initials were M. C.? A. Yes.

Q. Who was that? A. Martin Carey.

Q. The initials M. C. are the initials on the bill of Mary Kane? A. Yes, that is Martin Carey's handwriting.

*Patrick Kane, Complainant—Direct—Cross—
Re-direct.*

PATRICK KANE, recalled.

Direct examination by Mr. Doherty:

Q. Who supplied the money for the mass that has been referred to? A. I did.

By the Court:

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Q. Who actually paid the money over to the priest? A. I did. I paid the money.

Q. Are you sure? A. I am sure.

Q. To whom did you pay it? A. I paid it to Father McWilliams.

Q. Your son said he paid it? A. He did not pay it. I remember that.

Q. You paid it to Father McWilliams? A. Yes, and I paid the funeral expenses.

20

Q. I am not asking you that. We are only asking you about the money for the mass? A. I paid it.

Cross-examination by Mr. Newton:

Q. Where did you get the money from to pay it?
A. Where did I get it?

Q. Yes. A. I had it in my drawer.

By the Court:

30

Q. Did you take it out of that fund you spoke of? A. Yes.

Re-direct examination by Mr. Doherty:

Q. Mr. Kane, the contribution was made before the funeral, wasn't it? A. Yes, sir.

Q. And at that time there wasn't any fund between you and James? A. No, sir.

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Patrick Kane, Complainant—Re-direct—Re-cross.

Q. So it was out of your own money? A. Yes.

Re-cross-examination by Mr. Newton:

Q. Are you sure it was paid before the funeral?

A. Oh, I know when it was paid.

10

By the Court:

Q. You paid it before the funeral or after? A. Before the funeral it was paid.

Q. Are you sure of that? A. Yes.

Q. Did you go to the priest's house and pay it?

A. I went to the rectory and paid it.

Q. Before the funeral? A. Before the funeral. Yes, before the day of the funeral. Three days after she was dead.

20

Q. Who arranged for the high mass? A. Father Coughlin.

Q. Did you arrange it or your son? A. He arranged it.

Q. Who? A. This fellow—my son.

Q. Your son James? A. Yes.

Q. He arranged it but you paid it? A. Yes, sir.

By Mr. Newton:

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Q. After he arranged it you went to the rectory and paid it? A. Yes.

Q. Before the funeral, is that right? A. Yes.

Re-direct examination by Mr. Doherty:

Q. Do you know whether or not that is the requirement of the church that the mass be paid before?

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Mr. Newton: I object to it.

Colloquy of Counsel.

The Court: I will sustain the objection. I think priests like others will take it when they get it. It depends upon how good the parties are.

Mr. Doherty: Now I make a motion for leave to amend the pleadings to translate the bill of complaint into one for reformation in order to conform to the evidence in the case, that the parties naturally intended a transaction whereby the real estate would upon the death of one or the other and only upon such occurrence vest a title in the survivor.

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Mr. Newton: I think I am entitled to know before I answer that motion whether or not it is based upon an abandonment of the present prayer for cancellation of the instrument.

20

The Court: Yes, you are entitled to know that.

Mr. Newton: I ask counsel through your Honor does he abandon the prayer for cancellation?

Mr. Doherty: I said yes. The request is that the bill stand for reformation to determine the intention of the parties to be that the interest of the defendant would ensue only upon the predecease of the complainant, and until the happening of that event he should be restrained from any interruption or enjoyment of the title.

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Mr. Newton: May I ask whether the amendment is to base upon new proofs?

Mr. Doherty: No, on the evidence in the case.

Mr. Newton: Then I object on the ground there is no warrant for it.

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Colloquy of Counsel.

The Court: If the proofs don't sustain the bill as amended for reformation it can't hurt you any.

Mr. Newton: I don't think it can.

10 The Court: Inasmuch as there is no objection I will grant your request and will consider that this bill of complaint is for the reformation of that instrument and not for the cancellation, as you indicated. Will you state in the record, Judge, what form of amendment you wish to make to the bill?

20 Mr. Doherty: It is requested that the deed be reformed in order to consound with the undisputed testimony in the case that the parties agreed that such an instrument would be executed as would operate only to vest in the defendant title to the property by survivorship upon the death of the complainant, but that such instrument was not to have the ordinary and normal operation of creating a joint tenancy to the extent that both parties were to have joint enjoyment of the property *per my et per tort*, and that the court in effectuation of the reform should enjoin the defendant from in anywise exercising during the lifetime of the defendant privileges of a joint tenancy. I will state the purpose of the amendment is to give effect to the agreement and the mutual understanding of the complainant and defendant as arrived at previous to the date of the execution of the deed and which agreement and understanding was not accurately incorporated in the deed as executed.

40 The Court: All right, what have you to say, Mr. Newton?

Colloquy of Counsel.

Mr. Newton: I have nothing to say.

The Court: Then the case is closed.

Mr. Doherty: Yes, only to discuss the evidence.

The Court: All right, go ahead.

(After oral argument of counsel.)

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The Court: The bill of complaint in this case appears to have been filed February 8, 1929, and the prayer of the bill requests the cancellation of the two deeds therein mentioned, one of which from the complainant to William P. Gannon, and the other from William P. Gannon to the complainant and the defendant as joint tenants. An amended bill was filed in the hearing of this case on October 23, 1929. There appears to me to be no substantial difference between the original bill and the amended bill except in minor particulars with reference to the prayer of the respective bills. In the original bill complainant prayed that the two deeds in question be declared to have been obtained by the defendant fraudulently and through a mistake as to their legal effect promoted in the mind of the complainant by the said defendant. That latter language "promoted in the mind of the complainant by said defendant" is repeated in the amended bill. Both the original bill and the amended bill sought the cancellation of the two deeds and prayed that during the pendency of the suit the defendant be enjoined from occupying or enjoying any control over the premises described in the deeds or in anywise interfering with the ownership and enjoyment of the

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complainant. It also prayed that a receiver be appointed during the pendency of the suit to collect and receive from the defendant the amount of rent alleged to have been agreed to have been paid by him, and the prayer is for such further relief as the court may see fit. This case was

10 apparently tried before me on the theory that a fraud or imposition had been perpetrated by the defendant upon his father, the complainant, as a result of which the two deeds in question were executed, that is, the deed from the father to Gannon and the deed from Gannon to the father and to the son. At the conclusion of the hearing counsel for the complainant conceived the idea that he should further amend his bill of complaint by seeking a reformation of the deeds rather than

20 a cancellation of them, and he has expressly abandoned his right to relief as originally sought, that is, for the cancellation of the instruments, and now relies upon relief claimed in behalf of the complainant for a reformation of the instruments. The reformation sought, as I recall the statement of counsel as dictated into the record, relates to the alleged right of the father who is the complainant here to enjoy the beneficial use of the two properties mentioned in the two deeds which

30 were admitted in evidence in this case and which are in controversy to some extent, throughout his life, and that the defendant be denied any right to participate in anywise in the emoluments of the property during complainant's lifetime. The complainant's testimony is to the effect that his purpose in making the deed to himself and his son James, the defendant, which deed clearly recites they are to hold as joint tenants, was to give to his said son the right to enjoy the property absolutely after his death, that is, after the

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complainant's death. Throughout the case the complainant used repeatedly the expression that his son was to be "beneficiary after my death". There is very much testimony in the case that clearly, in my judgment, has no application whatever to the issue which was presented to the court for determination under the amended bill of complaint filed October 23, 1929, and such testimony in my judgment is likewise not applicable to the issue now presented to the court wherein the complainant seeks a reformation of the deeds to effectuate what he claims was to have been his purpose of retaining throughout his lifetime a beneficial use and right to the enjoyment of the property described in the deeds and the granting to the defendant James the right to enjoy the property after his death. It has been stated by counsel for the complainant both in the bill of complaint and also orally to the court throughout the hearing of the case that the complainant is illiterate, so much so, that he is unable to comprehend the nature of the transaction that he entered into with his son James, the defendant. The import of the statements contained in the bill of complaint and also in these oral statements made by counsel to the court appear to me to be that the father was imposed upon by the son, and that as a result of that imposition, tantamount apparently as is said to fraud or undue influence, the father executed the deed to Gannon through which Gannon executed a deed to the father and the defendant, his son. I find no evidence in the case to indicate to me that the son in anywise imposed upon the father or in anywise unduly influenced him, or that the son was capable of unduly influencing him, or that he was capable of being unduly influenced by the son. The complainant appears to be a man

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66 years of age and he has been a hard working man throughout his life, his work principally being the field of labor known as a longshoreman. He has apparently been thrifty and has annexed some financial means, so much so, that he not only had money in the bank to the extent of several thousand dollars at the time that his second wife died, but also acquired by purchase two parcels of land in Jersey City described in the deeds referred to which he fully paid for; no mortgage whatever appears to be on said property nor does it appear that the property is in anywise encumbered. In fact it has been indicated to the court by the proofs that the property is unencumbered. I observed the complainant quite closely while he was on the witness stand and also while he was sitting in court while off the witness stand. He impressed me as being physically and mentally healthy. While it is true he testified that he could not read or write, and while it is true that he emphasized upon the witness stand by his statements he was unable to sign his name other than abbreviating the word Patrick as Patt, nevertheless I am of the impression from my observation of him and observing his mannerism in testifying and listening to all that he said, that he is not the illiterate individual he is pretended to be by his counsel.

He has been in this country upwards of forty years as I recall it. He has brought up a family of three boys, the oldest of which, the defendant in this suit, being as the complainant has said about forty years of age. The other two children are also fully grown. He has married three times. Two of his wives he has buried and he is now living with the third whom he married in the year 1928. I believe it was said to be June or July,

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1928. My impression of the complainant is that he is not an individual that could be easily imposed upon or easily influenced. He indicated that to a considerable extent to my satisfaction in his testimony wherein he stated that on the date the deeds were made, whatever the date happened to be—there is some conflict in the testimony as to what date that was—he says his son asked him to make the title to his property in their joint names and he, the complainant, did not answer. That on the same day the son again spoke to him about the same matter and again he did not answer. That the son, the defendant, spoke to him again the third time on that same day and he, the complainant, then said that he would make the deeds so as to make the defendant beneficiary of the property after his, complainant's death. The testimony discloses that on that day or a few days later, although he says it all occurred the one day the talks were had with his son and the visitation to the lawyer's office, he visited with his son the office of Richard Doherty, who is acting as solicitor for the complainant in this case. That he knew that Mr. Doherty had in charge what was thought to be a cause of action in behalf of his wife who had just then previously died, and that his purpose in going to Mr. Doherty's office was to inquire about the status of that matter. He says that his son James, the defendant, accompanied him to Mr. Doherty's office. What really transpired at that office is not very certain from the testimony. The testimony as to that visit of the father and son to Mr. Doherty's office is very conflicting. I think the testimony fully and clearly discloses that the defendant himself went to Mr. Doherty's office first and brought with him the original deeds for the property and made known

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to Mr. Doherty that he and his father had had a talk with respect thereto as a result of which the father wanted the property placed in both their names, that is, the names of the father and the son. It appears that Mr. Doherty arranged with the son for him and the father to return to the office at a later time to execute the deeds which would be prepared, and it was a day or so later from the visit of the son that the father and the son visited Mr. Doherty's office. The son says that on this latter occasion he and his father were in Mr. Doherty's inner office, that is, his private office I take it to be, and while there Mr. Doherty asked him to step outside for a moment so he could talk to the father, and that he ushered the son out of the door to an adjoining room and closed the door between the two rooms and that five or ten minutes thereafter Mr. Doherty opened that door and bid James to re-enter his private office and then stated to James that it was all right, the deed was to be drawn in both of their names. Counsel for the complainant interrogated James considerably as to whether the term 50-50 was used on that occasion. My recollection is that James testified not only that 50-50 was used on that occasion but also that he testified that Mr. Doherty said that the deeds were to be made in both names and that he also wanted that thoroughly understood it was so to be. The son James testified that on that occasion there was some talk between him and his father, and he claims it was in the presence of Mr. Doherty, with respect to the idea having been suggested to the father that he, the father, would make a will to effectuate the purpose that he had intended with the son, and that he the son remonstrated saying something to the effect that he realized a will could be changed and he insisted

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upon deeds being made as claimed to have been agreed between themselves before they went to Mr. Doherty's office. Considerable was brought out in the testimony about the father and the son having agreed to go 50-50 as was said on some bank account that each of them had in the Emigrants Savings Bank in New York City. I do not feel that I am much concerned with that arrangement entered into between the father and son with respect thereto, for the reason that whatever the arrangement was it was put an end to by the act of both parties subsequently. It appears that both father and son went to the Emigrants Savings Bank and the son withdrew from his account the amount of money credited to his account and retained therefrom a sum of approximately \$900.00 which he stated he contemplated using towards defraying the expenses or funeral bill for his lately departed step-mother. The sum of approximately \$600.00 of the son's money was to be redeposited and an account established in the name of the father and son or father or son as I remember the language of the book, the survivor to take all. My recollection is there is such an inscription on the bank book which was referred to. But whatever the fact may be with respect to that arrangement was put an end to subsequently by the parties themselves. It has been clearly indicated by the testimony that both father and son voluntarily went to the Emigrants Savings Bank and put an end to that relationship, and as the father testified each one obtained a book for himself and they disbursed the moneys that were then in the account 50-50 as the father testified and as also the son testified to. In my judgment the talks between the father and son with reference to the moneys in bank have no application whatever to the re-

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relationship of the parties with respect to the real estate. It may be as indicated by counsel for the complainant that either one of them may have had a mistaken idea of the law with respect to the operation of the deeds which were prepared by Mr. Doherty at the request of these parties, primarily at the request of the son. The testimony of the father is to the effect that when he visited Mr. Doherty's office to execute the deed he did not fully understand the deed and that he asked Mr. Doherty to explain it to him. He says that Mr. Doherty explained the deed to him the second time. It does not appear that he sought any further explanation thereafter. The father signed the deed—I am referring now to the deed from the father to Gannon. That deed is witnessed by Mr. Doherty and the certificate of acknowledgment attached to it is made by Richard Doherty, one who has been engaged in the practice of the law in this state for a good many years past and one who is well known to all of us as not only a judge of the Common Pleas Court of the County of Hudson for a number of years, but also a Circuit Court judge of this State for a period of time. This deed from Patrick Kane to William P. Gannon, which bears date January 3, 1924, and is marked Exhibit C-3, describes the two properties then owned by the complainant. My recollection is it was described as 327½ and 329 Ninth Street, Jersey City. The deed just referred to appears to be absolute on its face and bears the stated consideration of one dollar. That deed as I just now observed by reading and referring to it indicates that Richard Doherty has even another title to which I will now refer and that is Supreme Court Commissioner of New Jersey. The deed appears to have been acknowledged on the 3rd day of Jan-

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uary, 1924, before Richard Doherty, Supreme Court Commissioner of New Jersey, by the grantor Patrick Kane, also known as "Patt" Kane, and that certificate, as is customary in such certificates, reads that Patrick Kane personally appeared before Mr. Doherty and the recital then is "who I am satisfied is the grantor named in the within deed, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed." Now, knowing Judge Doherty for the many years that I do know him, and having in mind the very capable lawyer that he has been throughout all of his years of practice, and the very able jurist that he was during the time he served as such, I am convinced that Judge Doherty fully explained the purport of this deed to the grantor when it was executed by the grantor.

It appears also that William P. Gannon on the same date, January 3, 1924, executed a deed to Patrick Kane and James F. Kane. Of course it is apparent and has been brought out in the case that William P. Gannon was merely the intermediary or conduit in the deed from Patrick Kane to William P. Gannon and William P. Gannon to Patrick Kane and James F. Kane. This latter deed is marked Exhibit C-4 and it contains a recital "Being the same premises conveyed by Patrick Kane to the party of the first part (meaning William P. Gannon) by deed recorded simultaneously herewith", and also "It is expressly set forth that it is the intention of the parties to this indenture to create a joint tenancy and not an estate in tenancy in common." This deed was also witnessed by Richard Doherty and it was likewise acknowledged before him as Supreme

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Court Commissioner of New Jersey by William P. Gannon. The testimony discloses that William P. Gannon at the time of the execution of the two deeds mentioned was employed in the office of Richard Doherty. He was then as I recall his testimony a solicitor of this court and an attorney-at-law. My recollection is he stated he has been such from 1923. Now section 15 of our statute relating to conveyances, referring to the creation of joint tenancies, says—"No estate after the fourth day of February, one thousand eight hundred and twelve, shall be considered and adjudged to be an estate in joint tenancy, except it be expressly set forth in the grant or devise creating such estate that it was or is the intention of the parties to create an estate in joint tenancy and not an estate of tenancy in common, any law, usage, or decision heretofore made to the contrary notwithstanding." In the case of *Coudert v. Earl*, 45 N. J. Eq. 654, it was held that the use of the words "joint tenants" in the appropriate places in a deed of conveyance, is sufficient to create an estate in joint tenancy under the statute of this State, without the use of the words "and not an estate of tenancy in common", or their equivalent. So in this case it appears that Richard Doherty, a learned lawyer and jurist that he was, took particular pains to comply with the statutory qualification by making it expressly appear in the deed made by Gannon to the Kanes that it was a joint tenancy and not other than that. The very fact that these certificates of acknowledgment have been made by Mr. Doherty, whom I refer to occasionally as Judge Doherty, is convincing to me that he fully made known to both Gannon and to Patrick Kane the full legal effect and significance of those deeds. My judgment in that re-

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spect is fortified by the interrogations put to the complainant by his solicitor, Mr. Doherty, and by recitals contained in the bill of complaint that a joint tenancy was clearly intended. The proofs before me disclose that Judge Doherty explained to the complainant the effect of a joint tenancy, particularly in so far as the right of the wife of either one of the parties would be in and to the property in the event that they married. He clearly made known to them that the character of the estate mentioned in the deed was such that the wife of either one of them would have no right, title or interest in the estate by virtue of the marriage relation. With respect to conversations had at Judge Doherty's office at the time the deeds were signed and as to the undertaking by the complainant to make a will, I am convinced that the narration of that incident by the defendant is the truthful one, because the complainant when called to the stand by way of rebuttal clearly amplified the testimony of the defendant with respect to that question of the will. He, the complainant, also testified there was some talk about the making of a will and the defendant objected to a will for the reasons stated by him in his testimony, but the complainant says that his recollection is that that conversation with respect to the will between himself and his son was not in the presence of Judge Doherty but in an outer room, but he clearly said it was stated between the parties in Judge Doherty's office as well as between the parties prior to their going to that office.

Counsel for the complainant manifests that the agreement between the father and son was that it was to be a so-called 50-50 arrangement between the parties only with respect to the money but not

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with respect to the real estate. Yet both father and son expressly mentioned the 50-50, and I don't think that either one of them are in substantial disagreement as to the purpose of making those deeds, that is, that after the death of either one the survivor should expressly own the property.

10 Such clearly was the intention of the father because he says, and he says it repeatedly, that after his death his son was to be the beneficiary of that real estate. That he thoroughly understood, and apparently the parties got along very harmoniously until shortly before the complainant thought he would take unto himself a third wife, and then at or about that time, or shortly prior to it, as indicated by the testimony of the son, there was

20 dissatisfaction between the father and the son about money matters, so much so, that the father and the son had words, if the testimony of the father is to be believed. He says the son called him a skunk and that evidently got under his skin, the name being regarded as opprobrious, he thought he would have to get out of that house. The son denies he called him any such name. The testimony of the father in the beginning indicates to me he was incensed against his son and had been incensed against him for years. He started

30 by saying he was a bum and was parading the streets. He indicated he did not have any liking for that son. Apparently he did have a liking for him while living together and had the business dealings, because as I view the case from the proofs before me there was not one particle of influence manifested or exercised by the son towards the father to warrant the father in undertaking with the son these joint undertakings. Why the father was so willing to cut out his other two

40 children has not been disclosed in this case. Not

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a word has been said in this case why he did that, but he knowingly did it, as I judge from the proofs in this case. He realized fully that in making the transaction with his son James that he was cutting off his other two children from any benefit from his property. I say that, disregarding the fact that I am convinced that Judge Doherty clearly explained to him the effect of the deeds referred to, and having in mind the testimony of the complainant himself repeated from time to time that he intended to make his son James his beneficiary after his death. Now, it is a well-known principle of law, of course, that fraud is never presumed, and whenever fraud or anything akin or tantamount to it is charged against a person, that must be proved by substantial proof. It has been held from time to time that the proof must be conclusive to warrant the Court in giving heed to it. It does not appear to me in this case as though the father, even assuming what he says to be true, is in anywise being injured, except perhaps if it should eventuate that he may be obliged to account to his son James for the rents and profits of the property during the life of him, the complainant. I cannot anticipate any such thing in this case. It is true that the deeds as on their face appear the son would be entitled to a joint entity with his father in the property and the emoluments of it, but there is no proof before me that the son ever made any claim of his father for what might properly be regarded by him as his rights if those deeds are what they on their face pertain to be. Much has been said by counsel for the complainant about an incident that is alleged to have occurred and which seemingly did occur between the father and son in the year 1928, wherein the father stated to the son he considered

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he should pay rent to him, and it appears that the sum of thirty dollars or thereabout was paid for a short period of time—two or three months.

10 It also appears that the father was paying ten dollars a week board to the wife of the defendant for a period of five or six weeks after they went to live together the last time. The mere fact that the son, in order to appease the father, and to appease his wrath by the payment of rent, followed his dictation and paid over to him a sum which might be called rent is of no consequence in this case. It may have been called rent, but if as I regard it to be in this case, the son were entitled under the deed made to him and his father through Gannon as a joint tenancy, then the son was not obliged to pay rent to the father any more than the father would be obliged to pay rent to the son. True each one would be obliged to account to the other for the receipts and expenses of the property, but even so each one could be made to account to the other therefor. There is some testimony in the case which has not been denied by the complainant which seems to be somewhat significant as to where the truth lies. It has been testified in the year 1926 and from then to 1927 the defendant lived on Pavonia Avenue, and for a period of about ten months as I recall it—perhaps eight months—the parties seemingly were so far estranged that the father did not visit the son and the son did not visit the father. But on Christmas Day, 1927, the father did visit the home of the son on Pavonia Avenue and thereafter made frequent visits, usually on Sunday. Christmas Day is the day of the year when cheer abounds with peace, and it seems to me the father must have had in his heart at the time he called to see the son and the son's wife a contrition for

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what may have passed between himself and his son previously, and he wanted to make amends for it by taking that particular day to pay his visit in order to make amends with his son, and make amends he did, because he thereafter invited the son and his wife to again re-establish themselves in the property on Ninth Street. The son testifies that while he was living on Pavonia Avenue the father brought to him some papers which he the father asked the son to sign, and when the son asked the father to let him see the papers the father wouldn't comply with his request, and the son said he would not sign the papers unless he was permitted to read them. Not one word has been testified to by the father to deny that. 10

Mr. Doherty: May I request that the case be opened in order to testify about it? 20

The Court: No. As to what those papers were were left in the air, so as to speak. Whether they related to this property by which the father and son hold the property as joint tenants has not been mentioned. Whatever they were they have not been offered in this case or explained. If the complainant did not fully comprehend the transaction which he entered into with his son, the defendant, at the time it was entered into I fail to appreciate why, in view of the fact he said he received tax bills indicating the bill was being issued to Patt Kane and others, he did not immediately make inquiry to find out what they and others meant on the tax bills. His testimony was he was concerned about it at one time, about that recital and others, and he said he went to the city hall and found out, as he claims, his son had his name added to the record. There was a recital contained in the complainant's bill that the son on one occasion paid thirty-eight dollars towards 30 40

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taxes, water rents, insurance, or the like. It is mentioned in paragraph 6, as I remember it, of the bill—paragraph 8 of the bill—and yet when I interrogated the complainant about that he had no knowledge whatever thereof, and the son denied that he paid any such item as thirty-eight dollars at any time. The father and son have both agreed in their testimony that the son on one occasion did pay a half year's taxes which amounted to sixty-nine dollars and some odd cents. I am omitting to state anything particularly with reference to that so-called common hoard which the father and son had which was kept in the drawer in one of the receptacles in their home, and I am omitting it because I consider it non-evident in the matter under consideration by me under the original bill of complaint or latterly under the amended bill of complaint.

Paragraph 6 of the bill of complaint indicates that his counsel, Mr. Doherty, explained to the complainant that the transaction relating to the deeds constituted the complainant and defendant as joint tenants of the property, and that upon the death of either the property would be owned by the survivor, and that it was likewise explained to him that in the event of the marriage of either of the parties the wives of such marrying owner would have no dower right in the premises. Notwithstanding that recital in the bill of complaint, the complainant in court would seemingly have the Court believe that he never understood the conveyance or the transaction entered into between himself and his son. I am convinced that he fully understood the transaction he was entering into with his son and entered into with him. I am convinced of that not only because of what the complainant testified that the deed was ex-

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plained to him twice by Judge Doherty, but because both the deeds themselves bear the certificate of acknowledgment by Judge Doherty, and I am convinced of it also by his quiescence from January, 1924, down to February 8, 1929, when this bill of complaint was filed, excepting the letter of July, 1928, which was written apparently by Mr. Doherty, as attorney for the complainant, to the defendant. As I recall the proofs, until July, 1928, not one word was uttered by the father or in his behalf to indicate that he was in anywise dissatisfied with the transaction he had entered into with his son. His remaining dumb from January 3, 1924, to July, 1928, is a further indication he fully understood what the transaction was between them, and he was satisfied therewith. And I am further convinced of that because of his statement in court that he wanted his son to be his beneficiary after his death. To the complainant is attributable laches in this case if he were required to prosecute his claim against the defendant in this suit, and the defendant relies apparently as indicated by his answer, upon laches. This suit is not in anywise a case such as frequently comes before the Court as between parent and child, where it is claimed that the parent by the conveyance or gift in question did so improvidently, that is, stripped himself of his property absolutely and left him practically dependant upon the county of the donee or grantee; nor is it a case in which independent advice is suggested as not having been afforded the complainant at or before the time when the alleged transaction took place. In this particular case, it seems to me that Judge Doherty, as a lawyer, represented the father as well as representing the son. The father in many instances has clearly indicated to me that

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he does not recall what transpired, or he is withholding information which he considers might have been harmful to his side of the case. My recollection is he said he did not pay Mr. Doherty the fee for recording the deeds. My recollection is that Mr. Doherty says his best recollection is that the complainant did pay him, although, to be sure, he would have to refer to his records. The defendant denies that he, the defendant, paid Mr. Doherty for drawing the deeds. Mr. Doherty's testimony indicates, and his questions to the complainant, furthermore, indicate, that he, Mr. Doherty, after the deeds were executed saw to the recording to the deeds, and on February 19, 1924, as I recall the date, as a result of a letter written by him to the complainant, delivered those deeds to the complainant and the complainant had those deeds in his possession thereafter until the time they were taken from some receptacle in the complainant's house by the son, which, as I recall it, was in the year 1928. It clearly appears to me in this case that the act of the father in the making of that deed on January 3, 1924, effected a gift from the father to the son insofar as the interest taken by the son thereunder was manifested, and it is clearly the law not only of our own State but generally it is stated to be the settled rule of law that a gift once made cannot be revoked at the caprice or whim of the donor. Once having been made, the property right becomes vested in the donee and the donee cannot be stripped thereof except upon the ground of fraud, mistake, undue influence, or the like, which would have to be regarded as tantamount to fraud.

The complainant in his testimony clearly indicates that he intended that his son was to have the property after his, the complainant's, death.

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Now, it is clear in this case that the joint tenancy which is manifested by the deed made by Gannon to the father and son clearly indicates that element. That property upon the death of Patrick becomes absolutely the property of the son. When the son dies during the lifetime of Patrick Kane that property reverts back to the father, and he has absolute control of it, to do with it what he wishes. Neither the wife of the father nor the wife of the son have any right, title or interest whatever in and to that property, joint tenancy that it is, and upon the death of either of those husbands the wives cannot claim any right, title or interest in that property by way of dower, and that seemingly was pretty clearly explained to the complainant by Mr. Doherty, his solicitor and attorney, when the matter was before them. I am very strongly inclined to regard the testimony of the son as to the happenings that took place in Mr. Doherty's office as to the conversations there had with his father to be reliable, particularly for the reason that the father does not expressly deny them, but merely indicates that he does not remember all that took place. It has been indicated by counsel for the complainant in his summation of the matter there was some confidential relation existing between the complainant and the defendant. I do not find in this case any proof of it whatever. The mere relation of father and son does not necessarily imply such a confidential relation as has been referred to, and consequently, in my judgment, inasmuch as there was no confidential relation between the father and son, the ordinary rule of law that might be regarded as applicable to a transaction of this kind, if such a relationship was established, is not here evident, that is, the casting upon the defendant of the bur-

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den of proof of establishing that the complainant well understood what he was doing at the time he did it, and there was no mistake as to the transaction, and there was no fraud, undue influence, imposition or otherwise exercised by the son against the father which brought about the effectuation of this transaction. It appears to me to warrant a decree in behalf of the complainant as now sought by the complainant, that is, that the deed in question should be so reformed as to evidence that the father throughout his lifetime should enjoy the emoluments of the property, and the defendant to have the title only after the complainant's death, would require proof that would have to be regarded as practically conclusive, and the evidence to substantiate the complainant's case in that regard would have to be clear and convincing. Such I take it is the established rule of law in the case of *Hupsch v. Resch*, 45 N. J. Eq. at p. 657, and also stated in *Green v. Stone*, 54 N. J. Eq. 387 at p. 399, "the proof must be clear and convincing, and upon testimony that is unexceptionable". It has been indicated by counsel for the defendant in his summation of this case that a deed expressing a money consideration, though nominal, represents a conclusive presumption that the grantee is to take the beneficial as well as the legal estate, and that no extrinsic evidence is admissible to contradict the recital as to consideration except in cases of fraud or mistake. It is perhaps needless for me to comment upon the rule of law as to kind of a mistake that would have to be urged by the complainant for the reformation of this instrument, because the rule of law has been repeatedly held that the mistake relied upon would have to be mutual, not unilateral. For instance, if the complainant merely understood

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that he was to do a particular thing and he did something to the contrary, that in itself would not be sufficient to bring it in the category of mutual mistake. It would have to be established that the parties intended a particular transaction and that they were understood and agreed upon that transaction, but that the transaction as effectuated was not the transaction originally contemplated and agreed upon between the parties, and that both the complainant and the defendant by their proofs in this case or evidence before the Court would clearly indicate that they both mistakenly entered into the latter transaction believing it was an effectuation of the former transaction that was originally agreed upon. As to the statement about the consideration in the deed, I agree with counsel for the defendant that the rule of law as to what is clearly established in the case of *Dougherty v. Dougherty*, 98 N. J. Eq. 126. In the case of *Fretz v. Roth*, 68 N. J. Eq. 516, it appeared that the grantor in that case had no advice and that the conveyance was improvident and that he parted absolutely with all his property. That case and the law applied to it is not applicable to the matter under consideration, because here I find that the complainant understood well what he was doing, that he had ample advice as obtained from Judge Doherty before he executed the deed, and that he did not in any wise render himself in any wise improvident. Furthermore, it clearly appears from the proofs that the deed created the status that if the son predeceased him that then the father will again regain the title and ownership of the real estate. I do not know that there is anything else I feel I ought to state at this time. I have undertaken to declare that which I recall of the testimony which

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I deemed it necessary to refer to, appreciating, as I indicated before, that there was very much brought out in the case which I regard entirely inapplicable to the issues presented for my determination by the amended bill of 1929 or the amendment made at the conclusion of this hearing. I will advise a decree dismissing the complainant's bill.

10 Mr. Newton: May I put my amendment on record?

The Court: State it on the record.

Mr. Newton: In view of the amendment granted to the complainant at the close of the case the defendant amends his answer by adding thereto a paragraph 18, reading as follows: "18. And this defendant further answering denies the statements of fact set forth in the amendment just
20 allowed the complainant and reiterates against such amendment the averments of paragraphs 9 to 17 inclusive of the amended answer."

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Exhibit C-1.

DEED.

Margaret Tremper, widow

to

Patrick Kane and Mary Kane, his wife. 10
Covers premises in question. First Tract.

Dated May 12th, 1908

Recorded: May 13th, 1908 in the office of the
Register of Hudson County.

Book 1010 of Deeds, Page 270 &c.

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Exhibit C-2.

DEED.

Mary St. John, widow

to

Patrick Kane and Mary Kane, his wife.
Covers premises in question. Second Tract.

Dated: March 23rd, 1914

Recorded: March 27th, 1914 in the office of the
Register of Hudson County.

Book 1178 of Deeds, Page 393 &c.

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Exhibit C-3.

THIS DEED made the third day of January in the year One Thousand Nine Hundred and Twenty-Four between PATRICK KANE (Widower) also known as Patt Kane of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part, and WILLIAM P. GANNON (unmarried) of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the second part.

10 WITNESSETH, that in consideration of One Dollar lawful money of the United States, the said party of the first part does grant, bargain, sell, release and convey unto the said party of the second part heirs and assigns forever;

20 ALL those two certain lots, pieces, tracts or parcels of land and premises, hereinafter particularly described, situate in the City of Jersey City, in the County of Hudson and State of New Jersey.

(Description.)

TO HAVE AND TO HOLD the same with the appurtenances unto the grantee his heirs and assigns forever.

30 IN WITNESS WHEREOF the grantor has hereunto set his hand and seal the day and year first above written.

PATT KANE (Seal)

Signed, sealed and delivered
in the presence of
RICHARD DOHERTY (no stamps).

Acknowledgment by Patrick Kane before Richard Doherty, a Supreme Court Commissioner.

40 Rec'd. in the office and recorded on Jan. 4, 1924
@ 12:03 P. M. #145.

Exhibit C-4.

THIS DEED made the third day of January in the year One Thousand Nine Hundred and Twenty-four between

WILLIAM P. GANNON (unmarried)

of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part; and 10

PATRICK KANE and JAMES F. KANE

of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the second part.

WITNESSETH, that in consideration of One Dollar lawful money of the United States, the said party of the first part does grant, bargain, sell, release and convey unto the said party of the second part their heirs and assigns forever, 20

ALL those two certain lots, pieces, tracts or parcels of lands and premises, hereinafter particularly described, situate in the City of Jersey City, in the County of Hudson and State of New Jersey.

(Description.)

Being the same premises conveyed by the said Patrick Kane to the party of the first part by deed executed and delivered simultaneously herewith. 30

IT IS HEREBY expressly set forth that it is the intention of the parties to this indenture to create hereby an estate in joint tenancy and not an estate of tenancy in common.

TO HAVE AND TO HOLD the same with appurtenances unto the grantee his heirs and assigns forever. 40

Exhibit C-6.

THOS. F. CAREY

Undertaker and Embalmer

575 Grove Street

Jersey City, N. J. December 31st, 1923 10

Mr. Patrick Kane,
329 Ninth St., Jersey City, N. J.

Funeral Expenses of Mary Kane.

To Casket, handles and plate.....	\$450.00	
Automobile Hearse	15.00	
Six cars at \$10.00 each.....	60.00	
Embalming	15.00	20
Candelabra and candles.....	15.00	
Hardwood Box	45.00	
Pedestals and Rugs.....	5.00	
4½ doz. chairs at \$1.00 a doz.....	4.50	
Flower crepe	5.00	
New Grave and Opening.....	116.00	
Four Porters at \$6.00 each.....	24.00	
Death Notices	5.82	
Box Mat	5.00	
	<hr/>	
	\$765.00	30

Recd Payment
Thos F Carey

Exhibit D-1.

THOS. F. CAREY

Undertaker and Embalmer

575 Grove Street

10 Jersey City, N. J. December 31st, 1923

Mr. Patrick Kane,
565½ Henderson St., Jersey City, N. J.Funeral Expenses of Bridget Kane, Died Jan.
28th, 1898

	To Casket, handles, and plate.....	\$ 65.00
	Hearse	10.00
20	Three coaches at \$4.00 each.....	12.00
	Embalming	7.00
	Candelabra and Candles.....	12.00
	Robe	13.00
	Box and Permit.....	5.50
	Opening grave	5.50
	Draping windows	5.00
	Death notices, gloves and chairs.....	6.50
		<hr/>
		\$141.50
	By Cash Oct. 24th 1899.....	40.00
30	By Cash May 22nd 1899.....	30.00
		<hr/>
	Balance due.....	\$ 71.50

Received payment in full,

Thomas F. Carey
per Harold T. Carey

December 6th, 1924

40

Thos F Carey

Exhibit D-2.

Jersey City, N. J. Feb. 29, 1924.

Mr. P. Kane

To ALBERT H. HOPPER, Dr.

Monumental Works 10

Near Holy Name Cemetery
West Side Ave.
Cor. Montgomery Street
Jersey City, N. J.

Opposite Main Entrance
Holy Cross Cemetery
Ridge Road
North Arlington, N. J.

Phone Bergen 4508

Rec'd Payment of \$68.00
on account of head stone
number 1399

J. C. E. J. PARD 20
May 26/24

Received balance \$300.00
in full

A. H. HOPPER WILLIAM KOENIG

30

40

Exhibit D-3.

	50 lbs. of White lead.....	7.50
	5 gal. linseed oil.....	6.25
	1 " turpentine	1.30
	1 " shellac	3.00
10	1 " varnish	3.50
	1 " white enamel	3.00
	3 lbs. of French ochre color.....	.90
	1 " of Prussian Blue "40
	1 lgth 1½ galv. pipe.....	3.00
	2 " ½ " "	3.75
	1- 1½ " elbow35
	4- ½ " "60
	2- ½ " fleck fittings40
	2- ½ " tryangles15
20	1- 2" cast iron tu.....	.90
	2- 2" full s. lead trap.....	2.75
	1- 2 x 1½ brass ferrule.....	.35
	1- 1½ " solder bushing20
	2 ft 1½ lead waste pipe.....	.52
	25 squire ft. of wanscoting.....	2.65
	7 lbs. of solder.....	2.80
	Time 7 days 2 hours.....	87.00
		<hr/>
		131.27

30

Paid in full

JOSEPH SCOTT.

40

Exhibit D-4.

Jersey City, N. J. Nov 10 1925

Mr P Kane, 329 Ninth Street, Jersey City N. J.

To JOHN PELLIKAN, Dr.

Carpenter and Builder

10

270 Seventh Street

Nov. 4 at 327 Ninth Street, Jersey City, N. J.

Windows, floors, doors, etc. repaired

3—2"x10" beams 12 ft.... 5 40

260 ft yell pine flooring.... 13 00

Time 2 carpenters 6 hours 21 00

1 man 2 " 3 50

5 2 " 4 " 14 00 20

2 window catches..... 36

1 pair hinges..... 55

Panel moulding 50

2 panels 80

6 Time 3 hours..... 5 25

64 36

Painting house Paid..... 140 00

papering room 77 00

30

281 36

Paid November 20—1925

JOHN PELLIKAN.

Exhibit D-5.

Law Offices
RICHARD DOHERTY

Trust Company of N. J. Building
Jersey City, N. J.

10 Telephone Bergen 9520

July 12, 1928.

James F. Kane, Esq.,
329 9th St.,
Jersey City, N. J.

Dear Sir:

20 Mr. Patrick Kane has consulted me respecting the legality of your present attitude towards your rights in the above premises, calling on me, doubtless, because of my complete familiarity with the circumstances in which deeds were executed in February, 1924. At that time it was the design of both yourself and your father that a deed should be executed that would insure the devolution of the property upon yourself after your father's death, but there was no purpose expressed, or indicated, by either of you that your rights of ownership should mature before that

30 time.

Your father's disclosure to me is that you have recently asserted the right to control the property exclusively, and that you have gone to the length of requiring him to remove therefrom. This situation is entirely inconsistent with the tenor of the deed, as well as with the avowed purpose of you both, and if your understanding is that you have any right of proprietorship before your father's death, it would seem necessary that

40 proper measures should be adopted to procure a reformation of the deed.

Exhibit D-5.

I am writing to ascertain from you whether you would be willing to reconvey the premises to your father, in view of your apparent lack of appreciation of the benevolence which he has undertaken to show you, and likewise to suggest that in the event of your reluctance to agree to this course that your father may feel compelled to resort to proceedings to protect his interest in the property and his investment therein. 10

Will you kindly let me hear from you at your earliest convenience.

Yours very truly,

RICHARD DOHERTY.

RD/MB.

20

Amended Bill to Conform With Proofs.

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

The complainant, Patrick Kane, of the City of Jersey City, County of Hudson and State of New Jersey, for an amended bill to conform to the proofs submitted in this cause shows: 30

1. May 12th, 1908, the complainant, Patrick Kane, his wife, were seized in fee simple as tenants by the entirety of certain lands and premises in Jersey City conveyed to them on the date aforesaid by deed of Margaret Tremper, recorded in the office of the Register of Hudson County in book 1010 of deeds, page 270, and which premises are described as follows:

BEGINNING at a point in the southerly line of Ninth Street, distant seventy-five (75) feet 40

Amended Bill to Conform With Proofs.

10 westerly from the southwesterly corner of Monmouth Street and Ninth Street; thence running southerly and parallel with Monmouth Street to, through and beyond the center of a party wall standing partly on the premises hereby conveyed and partly on the premises next adjoining easterly thereto fifty (50) feet; thence westerly and parallel with Ninth Street twelve (12) feet, six (6) inches; thence northerly and parallel with Monmouth Street, to, through and beyond the center of the party wall standing partly on the premises hereby conveyed and partly on the premises next adjoining westerly thereto fifty (50) feet to the southerly line of Ninth Street, thence easterly along the said southerly line of Ninth Street twelve feet six (6) inches to the point or place of BEGINNING.

20 March 23rd, 1914, the complainant and his said wife were likewise seized in fee simple as tenants by the entirety of certain other lands and premises in Jersey City adjoining those last described, which premises were conveyed to them on said date by deed of Mary St. John, recorded in the office of the Register of Hudson County in book 1178 of deeds, page 393, and which premises are described as follows:

30 BEGINNING at a point in the southerly line on Ninth Street distant sixty-two feet six (6) inches westerly from the southwesterly corner of Monmouth Street and said Ninth Street; thence running southerly and parallel with Monmouth Street fifty (50) feet; thence westerly and parallel with Ninth Street twelve (12) feet six (6) inches; thence northerly and parallel with Monmouth Street to, through and beyond a party wall standing partly on the premises herein conveyed and partly on the premises next adjoining westerly thereto fifty (50) feet to the southerly line of Ninth Street; thence running easterly

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Amended Bill to Conform With Proofs.

along the said southerly line of Ninth Street twelve (12) feet six (6) inches to the point or place of BEGINNING.

2. The complainant and his said wife continued to be so seized of the premises both described until the death of his said wife which occurred December 24th, 1923, whereupon the fee to the same vested solely in the complainant. The complainant was then of the age of about 65 years, had been married to his said wife for about 22 years, and there were born of a previous marriage three sons, John Kane of the age of 33 years, Patrick Kane of the age of 24 years and the defendant, James F. Kane, of the age of 34 years. During the lifetime of complainant's wife they resided together, their children residing elsewhere, and the complainant's said wife attending to the conduct of the complainant's home. 10
20

3. Upon her death the sorrow of the complainant was extreme, and his said wife having been his sole and intimate companion, as well as the mistress of his household, the complainant was completely bewildered as to what course to adopt in the direction of establishing a future home with the ordinary accompaniments of home life. The complainant was, and still is, wholly illiterate beyond the ability to scribble his own name, in which regard he has never acquired a proficiency to spell his first name correctly, his ability being limited to the spelling of Patrick in the form of "Patt". His said wife was a woman of much higher intelligence and greater education, and during her lifetime was the adviser of the complainant in all such business affairs as he ever attempted. The employment of the complainant was always at manual labor, having worked in 30
40

Amended Bill to Conform With Proofs.

10 the freight department of the Old Dominion
Steamship Line for upwards of 30 years at small
wages. The persistency of his toil, and the neces-
sity of close application to his work, in order to
fulfill his obligations towards the maintenance and
education of his family which consisted of his
said wife and three sons, as well as his illiteracy,
kept the complainant at all times in ignorance of
the affairs of business and the existence and
operation of legal principles. On the contrary,
his son, the defendant, James F. Kane, who was
then of the age of about 34 years had been pro-
vided with a good education, was a man of far
higher intelligence than the complainant, had
been raised in Jersey City in association with
20 others of business training and knowledge, and
had acquired an insight into the application of
law to matters of business and real estate con-
veyances.

4. A few days after the death of the complain-
ant's wife, and while the mental state of the com-
plainant was benumbed with sorrow and worry
as to his future arrangements, the defendant,
James F. Kane, approached him, and professing
greatly to sympathize with his desolate condi-
tion and asserting an earnest and filial interest
30 in the complainant's future ease and comfort,
proposed that the complainant should desist from
further laboring for a livelihood and permitting
defendant to support him thenceforth, and that
in consideration thereof the complainant and de-
fendant should deposit in the Emigrant Savings
Bank of New York the money which they had then
saved, being respectively \$2,100.00 belonging to
the complainant and \$1,600.00 belonging to the
40 defendant, and that the same should remain intact
until the death of the complainant whereupon the

Amended Bill to Conform With Proofs.

fund would belong to the defendant as survivor. The defendant further proposed to the complainant that the latter should execute a deed of the two parcels of property above described whereby the same, upon the death of the complainant, would devolve wholly upon the defendant, James F. Kane, to the exclusion of the complainant's other two sons. The complainant did not at once accept the proposals; they were repeated by the defendant and he laid stress upon the fact that he did not seek, and would not interfere with, the complainant's ownership and management of the real estate during his lifetime, but sought merely an arrangement whereby, upon the complainant's death, the property would go exclusively to himself. The offer was accepted by the complainant, and it was mutually agreed that the title to the property above described be so adjusted that, upon the death of the complainant, the defendant would succeed to the title thereof, but that until then he should have no right of present enjoyment thereof or control of the same.

5. Within a day or two thereafter the defendant called upon Richard Doherty, counselor-at-law, and instructed him to prepare such deeds as might be necessary to vest the title to said property in both the defendant and complainant, but gave to him no instructions in respect of the said deeds restraining the defendant's right to enjoy or control the property during the lifetime of the complainant. Acting upon such instructions the said Richard Doherty prepared two deeds conveying the said two tracts, one in which the complainant, as grantor, conveyed both parcels in fee simple to William P. Gannon, unmarried (an attorney in the office of the said Richard Doherty) and the other whereby the said William P. Gannon, as

Amended Bill to Conform With Proofs.

10 grantor, conveyed the said two parcels to the complainant and the defendant as joint tenants, and not as tenants in common. Both said deeds bear the date of January 3rd, 1924, the first of which was recorded in the office of the Register of Hudson County in liber 1516 of deeds, page 24, and the second of which was recorded in said office in liber 1516 of deeds, page 25.

20 6. At the time of the execution of said deeds the said Richard Doherty, who was then unaware of the fact and character of the conversation which had taken place between the complainant and the defendant respecting said transaction, and likewise unaware of the complainant's illiteracy, explained to the complainant that said trans-
30 action constituted the complainant and the defendant as joint tenants of the property, and that upon the death of either the property would be owned by the survivor. It was likewise explained by him that in the event of the marriage of either of the parties, the wife of such marrying owner would have no dower right in the premises. There was no inquiry made by the complainant, nor any information given, as to the right of the defendant to exercise any control over the property during his lifetime, he refraining from making such
40 inquiry as to the legal effect of the deed, because of the assurance given to him by the said defendant that he did not design to interfere with his complete control and power of disposition so long as he lived, and because of his further assumption that the said defendant had truthfully stated to the said Richard Doherty what the design of the complainant was in respect thereto.

7. This complainant in the giving of the consent heretofore stated, in his attendance at the

Amended Bill to Conform With Proofs.

office of the lawyer as above described, in the signing of the said conveyance to William P. Gannon and in his approval of the said deed by Gannon creating a joint tenancy in the defendant and himself, acted under a mistake of law; and the complainant and defendant, in the acceptance as joint grantees of the deed latterly referred to both acted under a mistake as to the legal effect of the deed and in ignorance of the fact that it failed to express the mutual intention of the complainant and defendant, that is to say, that the defendant should not have any right to possession or enjoyment of the property until after the death of the complainant; and both complainant and defendant at the time erroneously assumed that the legal effect of said deed was to carry out the said intention which they mutually fostered in that respect.

8. Since the execution of the said deeds the complainant has solely defrayed all the charges in the way of taxes, water rents, etc., levied against the property, except the sum of \$38.00 which the defendant volunteered to pay, and which payment he used as the opportunity for directing the municipal authorities to change the record as to the ownership of the property so as to have it appear that the said defendant was owner thereof. Said payment was made by the defendant at the time when he was heavily indebted to the complainant for board and lodgings which he had while living with the complainant from the time of the death of the complainant's wife in December, 1923, until the marriage of the defendant, about June, 1926.

9. After the defendant's marriage he removed from the household of the complainant, and the latter was obliged to engage a housekeeper for the management of the same, which housekeeper,

Amended Bill to Conform With Proofs.

in March, 1928, left the complainant's service, and thereafter the complainant with without the benefit of home life. Thereupon the defendant proposed to the complainant that the defendant and his wife should come to live with the complainant, and that in consideration of their rent being fixed at the low figure of \$30.00 per month (the premises then having a rental value of \$40.00 per month), they would supply the complainant with free board. This arrangement was acceptable; the defendant and his wife moved in, and on April 9th, 1928, paid the complainant in advance \$30.00 as rent. Upon the third month's rent falling due on June 9th, 1928, the defendant refused to pay the same, unless the complainant agreed to pay \$10.00 per week board. To this the complainant assented, and on the following Monday the defendant demanded of the complainant the amount of the board money in cash. The complainant stated that he would be satisfied to have the rent set off against the board money, whereupon the defendant became enraged, insulting and violent, ordered the complainant out of the house, called him a "skunk", opened the door and commanded the complainant to leave, threatening that in the event of his refusal he would throw him out and his clothes after him. The complainant, in fear of bodily harm at the hands of the defendant, left the house, and has not returned to the same, and the said premises, being the parcel secondly described herein, have been hitherto in the exclusive possession and enjoyment of the said defendant. The taxes and water rents falling due thereon have been defrayed by the complainant.

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10. The said defendant falsely claims and pretends that by reason of the said conveyances he has a present ownership, title and right to the

Amended Bill to Conform With Proofs.

possession and enjoyment of not only in, to and of the premises which he now occupies, which is known as street number 329 9th Street, being the premises secondly described herein, but that he likewise has a title, interest and right of enjoyment in, to and of the premises firstly described herein, and known as street number 327½ 9th Street, which interest, right to possession and enjoyment he may freely exercise during the lifetime of the complainant; whereas this complainant avers that according to the mutual intention and agreement of himself and the defendant the defendant has no such interest or right to possession and enjoyment, and that the said deeds erroneously and mistakenly operate to vest in the defendant such interest and right. 10

The complainant has no adequate remedy at law, or elsewhere, but in this honorable Court. 20

The complainant prays that a writ of subpoena may issue, directed to the said James F. Kane, defendant, requiring him to answer this bill of complaint; that it may be decreed that the said deed from William P. Gannon to the complainant and defendant was executed by the said William P. Gannon and accepted by the complainant and defendant under a mutual mistake by the complainant and defendant as to the legal operation thereof; that the said deed should be decreed to operate to vest in the defendant, James F. Kane, a title to the property only by survivorship upon the death of the complainant, and that the same have no other operation as an instrument creating a joint tenancy; that the said deed be reformed so as to express such as being the true intention of the complainant and defendant at the time of the execution thereof; that the defendant be henceforth enjoined from in anywise exercis- 30 40

Amended Bill to Conform With Proofs.

ing, during the joint lives of the complainant and
 the defendant, any further rights and privileges
 of a joint tenant in respect of the said real estate,
 and from occupying, or exercising any control
 over, the premises in the said deeds described, or
 income therefrom, or in anywise interfering with
 10 the complainant's sole ownership and enjoyment
 thereof; that a receiver may be appointed during
 the pendency of this suit to receive and collect
 from the defendant the amount of the rent so
 agreed by him to be paid, and that the complain-
 ant have such other and further relief as to the
 Court may seem just.

And the complainant will ever pray, &c.

20

RICHARD DOHERTY,
 Solicitor for, and of counsel
 with, Complainant.

Final Decree.

IN CHANCERY OF NEW JERSEY.

30

Between

PATRICK KANE,
 Complainant,

and

JAMES F. KANE,
 Defendant.

71-517.

On Bill, etc.

Final Decree.

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This cause coming on to be heard on amended
 bill of complaint, answer and replication and on
 amendment to the bill of complaint allowed in

Final Decree.

open Court at the conclusion of the taking of proofs, in the presence of Richard Doherty, Esq., of counsel with the complainant, and David A. Newton, Esq., of counsel with the defendant, and the Court having examined the pleadings and having taken proofs orally and in open Court and heard and considered the arguments of counsel thereon; and being of opinion that the complainant is not entitled to any relief under the said bill of complaint as amended as aforesaid: 10

It is, on this 12th day of November, in the year of our Lord one thousand nine hundred and twenty-nine, on motion of David A. Newton, solicitor for and of counsel with defendant, by his honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED and the said Chancellor, by virtue of the power and authority of said Court, does hereby ORDER, ADJUDGE AND DECREE that the bill of complaint herein as amended as aforesaid be and it is hereby dismissed, with costs to the defendant to be taxed, including a counsel fee of two hundred and fifty dollars, which is hereby allowed the solicitor of defendant. 20

Respectfully advised,

E. R. WALKER, 30
C.

JNO. J. FALLON,
V. C.

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New Jersey Court of Errors and Appeals

Between

PATRICK KANE,
Complainant-Appellant,

and

JAMES F. KANE,
Defendant-Appellee.

On Appeal.

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Court of Chancery of New Jersey dismissing the bill of complaint (Decree, p. 162). The proceeding is between father and son, and the bill was originally for the cancellation, on the ground of fraud, of two deeds through which the father created a joint tenancy between himself and his son of all of the real estate which he theretofore owned solely. At the hearing it developed that there was no disagreement between father and son, that the mutual intention was to establish the son as the father's sole beneficiary at the latter's death; in the situation thus developed leave was granted to amend the bill to one for reformation in accordance with such proof (p. 220). An amended bill, framed in accordance with such leave, was afterwards filed (p. 253). The bill was dismissed on the stated ground that the facts did not entitle the complainant to any equitable relief whatever.

Facts.

The complainant had no education whatever, is unable to read or to write beyond the ability of signing his name "Patt"; worked all his life as a

longshoreman and his ignorance is such that he is unable to compute when, or how long, he was married (pp. 19, 20 and 21). He came from Ireland in 1888 when about twenty-five years of age, and was about sixty-four years old at the time of the transaction with the defendant who was then about thirty-three years (p. 25, l. 32). The latter went to a public school until about the age of sixteen years when he engaged in work as a helper on an express wagon (p. 26, ll. 10-30). Later he joined the army (p. 27, l. 2), and upon his return lived with complainant and his wife, paying board to the latter; was thrifty in money matters, purchased and paid for sixteen lots at Lakewood, N. J. (p. 183, l. 10), and in addition accumulated a fund in a savings account amounting to \$1,530.00 (p. 31, ll. 1-30; p. 139, l. 12). Defendant is complainant's son by the latter's first marriage, and it was with complainant and his second wife that defendant lived as set forth.

During the lifetime of the second wife she and complainant maintained in their joint names a bank account at the same institution where defendant deposited, and at the time of her death, December 24th, 1923, she and complainant had a balance to their credit of \$2,170.01 (p. 29, l. 15; Exh. C-5, p. 246). Complainant and his second wife through his savings acquired the two pieces of property described in the bill as tenants by the entirety, and at the time of the wife's death both parcels were free and clear (p. 29, ll. 1-29) After the funeral of the wife, complainant and defendant constituted the remaining family, two other sons having settled elsewhere (p. 30, ll. 5-15). Father and son returned to the home together, and the complainant describes his state of mind in his bereavement as follows: "I was bewildered; I didn't know what I was doing; it had me crazy. She was a good woman and I was in extreme sor-

row because of the death'' (p. 35, ll. 30-40; p. 36, ll. 36-37).

The day after the funeral the defendant rummaged through his father's bureau where the pass book of the joint account was kept, and learned from it the amount of the balance to the complainant's credit (p. 154, ll. 10-30). The same day, and immediately after the discovery of the bank book, the complainant and defendant had their first conversation relative to the transaction which afterwards was had (p. 38, l. 5).

The complainant's account of the inception of the negotiations was that defendant suggested to him that he retire from work and that defendant would keep him (p. 37, ll. 25-40), that both bank accounts, father's and son's, be united and that thenceforth they be joint owners of the composite fund. Although the proposal to maintain the father was repeated a couple of days after, the complainant was not impressed by it, and proceeded to engage a housekeeper for \$20.00 a month, which complainant paid out of his wages during the period of her service (p. 38, ll. 20-40). The father, however, did accede to the proposal that they pool their savings; that both add to the deposit such amounts as they would thenceforth be able to save and that the account be jointly maintained. To this end they went to the bank, had a new account opened in both names, and there was an express agreement that they would "go 50-50" (p. 42, ll. 30-40; p. 43, l. 10).

According to the father, shortly after the arrangement of the bank account his son approached him and bluntly asked him to sign to make him beneficiary of the real estate. The father did not respond (p. 42, ll. 6-22), and the defendant repeated the request twice, and on the third solicitation the father answered, "Yes, after my death" (p. 43, l. 12; p. 45, ll. 10-30). The father

admitted that the purpose of so arranging the bank account was to create a common fund which they would thereafter "share 50-50" (pp. 73, 74 and 75).

The defendant's account is slightly variant. He stated that on the day after the funeral his father suggested that he, defendant, should pay half of the funeral bill. To this defendant objected and said, "You pay it and we will live together just as well as we were before the death" (p. 138, l. 10), and that the father thereupon proposed that they unite the two bank accounts into a joint one and "go 50-50". Defendant claimed that he answered, "All right, if you want it that way, my name goes on the deed to the two houses as well as '50-50'", and that to this the complainant assented (p. 38, l. 23).

The defendant then obtained the former deeds, brought them to the lawyer and gave him the mere explanation that he and his father were in it "50-50", and that he was to have his name on the deeds. The lawyer told him to return later with the father, and when both did arrive the lawyer had already prepared two deeds, one from the father to an intermediary and another from the latter to father and son creating a joint tenancy (p. 128). Before they entered the presence of the lawyer the father proposed to the son that their understanding be carried out through the making of a will. To this the son protested, saying, "You will make no will with me; you can turn around and break it the next day; you can make it 50-50 or I will withdraw my money" (p. 142). Thereupon they went into consultation with the lawyer and before the deeds were executed the lawyer reported to the father that the son had informed him of the father's desire to have deeds drawn, the effect of which would be to vest the title in the son after the death of the

father, and further informed him of the characteristics of joint tenancy so far as they related to the future of survivorship, cutting off the other children and the preclusion of dower rights in the event of the marriage of either tenant. He did not instruct them as to the right of joint occupancy or the right of joint possession, because of his impression that father and son were then on close and affectionate terms (p. 130, ll. 20-30; p. 135, ll. 10-20). The scrivener was unaware of the illiteracy of the complainant. The latter could not recall the complainant expressing a word at the time, and described his manner as plainly pensive and quiet, which was ascribed to his grief (p. 132, ll. 25-35; p. 135, l. 30; p. 136, l. 15).

After the signing of the deed the father and son lived together in the household managed by the housekeeper. In a bureau drawer they kept a box into which each deposited such amount of money as they cared to devote to the savings account, and periodically the father gathered up this sum and deposited it in the bank, the father never inquiring of the son how much he put in the drawer, but stated that they trusted each other (p. 81, l. 35; p. 85, l. 25 and pp. 86 to 91). The son testified that it was his understanding that the bank account, the management of the household and the disposition of the real estate were all elements of a general understanding that he and his father were to "go 50-50" on everything (p. 166, ll. 30-40; p. 171, ll. 15-30; p. 172, ll. 1-25; p. 174, l. 25; p. 176, l. 15).

For about a year they lived together without incident, occupying one of the houses, the father collecting the rent of the other, and paying the taxes on both (p. 84, l. 30). The son was taken sick about a year after the transaction, and for the period of his long disability in a hospital con-

tributed nothing to the common fund. Upon his return he lived with the father and shortly afterwards announced his intention to be married (p. 167, l. 30). The father then suggested that they divide the amount in the bank and resume their separate bank accounts and this was done (p. 173). After his marriage, July 11th, 1926, the son lived elsewhere until June, 1927, when one of the premises in question, 327 Ninth Street, Jersey City, being unoccupied, the father proposed that if the son and his wife would move in and fix up the house and pay the taxes they might have the place rent free. The offer was accepted and the son had repairs made at a cost of \$131.00 and paid six months' taxes (p. 148, l. 20; p. 92, l. 12; p. 94, l. 35). This arrangement continued from June, 1927 until March, 1928.

At that time the housekeeper who served for the father in the adjoining property, 327½ Ninth Street, was about to leave, and the father proposed to the son that he and his wife move into the old home and pay \$30.00 a month rent, the father becoming their boarder. This the son did, paying the rent for two months. About the time that the third month's rent fell due he heard that his father contemplated another marriage, and apprehending that there was trouble coming, on that account he took possession of the deeds which were in his father's custody (pp. 185 and 186), and when approached by the father for the rent refused to pay the same, called him a skunk and put him out of the house (pp. 96 and 97). This occurred in July, 1928, and the father immediately consulted counsel who on July 12th, 1928, communicated with the defendant, protested against the son's assumption of possession, asserting that the same was contrary to the intention of the parties and calling upon the defendant to reconvey the property (Exh. D-5, p. 252). The son procured

counsel and unsuccessful negotiations for the settlement of the matter were conducted prior to the institution of the suit (p. 131, l. 20).

On this evidence the Vice Chancellor who heard it found that:

1. There was no proof whatever of any confidential relation existing between the complainant and defendant (p. 239, l. 30).

2. The contemporaneous dealings between the father and son respecting the union of their individual bank accounts had no application to the relationship of the parties with respect to the real estate (p. 227, l. 38).

3. There was no substantial disagreement in the proof as to the purpose of making the deeds, that is, that after the death of either one the survivor should expressly own the property (p. 232, l. 5).

4. Associated with the father's purpose of vesting the title in the defendant at his death was the father's further purpose to cut off his other two children from any benefit from the property (p. 233, l. 5).

5. It clearly appears that the act of the father in making the deed effected a gift from the father to the son (p. 238, l. 25).

6. The deeds were drawn primarily at the request of the son (p. 228, l. 8).

7. The son went to the scrivener's office bringing the original deeds for the property, and stated to the scrivener that the father wanted the property placed in both their names (p. 225, l. 37).

8. The complainant upon arrival at the scrivener's office purposed to make a will, and was silenced by the threat of the defendant that he

would withdraw his money from the joint bank account (p. 231, l. 18).

9. There was no influence manifested or exercised by the son towards the father to warrant the father in undertaking with the son these joint undertakings (p. 232, l. 35).

10. There was no evidence to indicate to him that the son imposed upon the father, or in anywise unduly influenced him (p. 123, l. 35).

11. The lawyer acted as the representative of both the father and the son (p. 237, l. 38).

12. The certificates of acknowledgment on the deeds signed are convincive that the complainant knew their full legal effect and significance, and the conclusion is fortified by the questions put to the complainant by his solicitor and the recitals contained in the bill of complaint (p. 230, l. 35).

13. The admission of the complainant that the deed was explained to him by the scrivener, the certificate of acknowledgment and his quiescence from the date of execution down to the time of the filing of the bill, are likewise convincive that he fully understood the transaction he was entering into (p. 236, l. 35).

14. The effect of a joint tenancy in respect of a widow's dower was explained to complainant at the time of the execution (p. 231, l. 5).

15. There was no proof that the son ever made any claim of his father for his rights as a joint tenant (p. 233, l. 35).

16. The son for a period of two or three months paid rent to the father for part of the premises which he occupied (p. 234, ll. 1-3).

To the foregoing findings of fact the Vice Chancellor applied the following equitable principles:

1. The expression of a money consideration, though nominal in a deed, represents a conclusive presumption that the grantee is to take the beneficial, as well as the legal, estate, and no extrinsic evidence is admissible to contradict the recital as to the consideration except in case of fraud or mistake (p. 240, l. 25; p. 241, l. 18).

2. A gift once made cannot be revoked at the caprice or whim of the donor, nor except for fraud, mistake, undue influence or the like (p. 238, l. 30).

3. Fraud, or anything akin to it, never being presumed, it must be proved by substantial proof (p. 233, l. 15).

4. In order to obtain the relief of having the deed reformed to express the actual intention of the parties, the burden rested on the complainant to submit proof that would be practically conclusive, clear and convincing (p. 240, l. 10).

5. The suit is not in anywise a case between parent and child where it is claimed that the parent by improvident gift stripped himself of his property and left him practically dependent on the bounty of the donee (p. 237, l. 25).

6. A confidential relation not being implied from the relationship of father and son, there was no applicability to the transaction of the rule casting on the defendant the burden of establishing that the complainant understood what he was doing and that there was no mistake, fraud, etc., exercised to bring about the transaction (p. 239, l. 28).

7. It is not a case in which independent advice was required (p. 237, l. 34).

8. A deed creating a joint tenancy is a proper manifestation of a purpose to vest title in the

grantee after the grantor's death, because of the possibility of reverter on the predecease of the grantee and the preclusion of dower rights (p. 238, l. 38).

9. Complainant is not in anywise being injured through the deed operating *in presenti* instead of *post mortem*, except perhaps that he may be obliged to account to the defendant for the rents and profits during the complainant's life (p. 233, l. 25).

10. *Fretz vs. Roth*, 68 N. J. Eq. 516, is not applicable (p. 241, l. 28).

11. Dismissal of bill is required by the finding that the complainant understood well what he was doing, had ample advice from the lawyer who was representing both parties, did not render himself in anywise improvident and upon the predecease of the son will again regain the title and ownership (p. 241, l. 30).

Dealing with these factual misconceptions *seriatim* the following observations are to be made:

Instead of no actual confidence being proved, it was established and uncontradicted that father and son after the stepmother's death constituted the entire remnant of the family; when the proposal was made by defendant the father was bewildered in respect of his fresh grief and as to how his domestic affairs could be thenceforth conducted; the son ingratiated himself through professing his willingness to support the father without working, thereby pretending to recognize his father's age and present sorrow; the arrangements had for their ultimate object the designation of the defendant as the father's sole beneficiary and the disinheritance of the other two sons to which the complainant assented; the bank accounts of both were pooled with the understand-

ing that they should be owned jointly with right of survivorship, irrespective of the amount thenceforth contributed by each; each would be on his honor as to the amount so contributed (p. 85, ll. 25-40), and there was further in the case the express testimony that father and son trusted each other (p. 81, l. 35).

Instead of their contemporaneous dealings with the bank account having no bearing upon the real estate transaction, the testimony was precisely to the point that the disposition of the real estate, the union of the bank accounts and the future management of the household, were all elements of one arrangement (p. 171, ll. 15-30; p. 172, ll. 1-25; p. 174, l. 25; p. 176, l. 15); in the defendant's language, "We were partners with it, including the bank account". However, when the father proposed to carry out his purpose of making the defendant his beneficiary by means of making a will, the defendant overwhelmed him with the threat that he would withdraw from the banking arrangement; the defendant thereby advertised his own understanding that he reserved a power of revocation in respect of his money in the joint deposits. If both the bank accounts and the real estate were to be pooled on the same basis, inexorably, a reciprocal power of revocation was reserved to the complainant in respect of the real estate.

The finding that there was no disagreement in the proof that the purpose of making the deeds was that after the death of either the survivor should expressly own the property, is a sufficient declaration that a deed creating a joint tenancy, *per my et per tout* and vesting rights *inter vivos* which the defendant is exercising, did not carry out the mutual intention. It is the complainant's contention that upon this finding his right to a reformation of the deed and to an injunction re-

straining the defendant from interfering with the complainant's possession during his lifetime is unquestionable. The Vice-Chancellor by plain import found that the deed did not express the intention of the parties and that the mistake was mutual.

The finding that associated with the father's purpose of vesting title in defendant at his death was the further purpose to disinherit the other children is but confirmation of the fact that the transaction was testamentary in its object, and that the deed however framed should be given only a testamentary operation.

The finding that the act of the father effectuated a gift, in the light of the foregoing conclusions of the Vice-Chancellor, made it a gift *causa mortis*. This determination involved principles of equity totally at variance with those applied to the case, and demonstrated the injustice of defendant attempting that control *inter vivos* of which the father complains.

The finding that the deeds were drawn primarily at the request of the son manifests an eagerness to involve the father in a business transaction at a time when his discretion was disarmed; this, in connection with his threat to withdraw his money from the bank account and withdraw from the comforting arrangements made for the future household management, signifies a self-serving purpose and a willingness to exert pressure and imposition to attain his end.

The finding that when the son went to the scrivener's office bringing the original deeds he stated to the scrivener merely that the father wanted the property placed in both names and concealed from the scrivener that the true arrangement was that the property should remain intact until the father's death was a virtual finding of fraud. The son testified explicitly that the

full scope of his previous conversation with the complainant was that he should have the property only on his father's death (p. 157, l. 10). In his directions to the scrivener he suppressed the truth and expounded a falsehood.

The finding that the complainant, upon arrival at the scrivener's office, declared his desire to make, not a deed, but a will and that he was dissuaded by the defendant's prompt threat to withdraw from the bank deposit and from the household, leaves no doubt as to his exercise of undue influence; the whole case shows that the threat, and the threat alone, produced the deed, and that the defendant made it for his own self service. According to his own testimony he said, "You will make no will with me, you can turn around and break it the next day; you can make it 50-50 or I will withdraw my money. My father brought it up as a will and I objected; a will is not worth two cents to me" (pp. 142 and 143). As his offer to support the father, to live with him and share the household expenses, to join with him in the production of a common hoard were all ostensibly designed to promote the father's comfort and lighten his sorrow, so did the threat menace him with submersion into a life of helplessness, misery and loneliness. The circumstance of the father at that stage proposing a will was indicative either that he had not previously agreed to a deed, or, that if he did so agree, he desired to recant and his change of course was deterred by the defendant's bullying.

The finding that there was no influence exercised by the son, or imposition practiced upon the father, is in total disregard of the son's own admission as to how he handled the transaction. In addition to the foregoing facts of pressure it was in evidence that the son had had previous real estate transactions in the purchase of fifteen lots

at Lakewood; on the day after the stepmother's funeral his avarice tempted him to pry into a bureau drawer to find out the details of the joint bank account of his father and the deceased stepmother, and the steps immediately taken by him strongly indicate that he fostered the project of succeeding the late stepmother in respect of both the bank accounts and the real estate. But slight deductive faculty is necessary to arrive at this conclusion when it is remembered that he never asserted any right of present ownership but, on the contrary, was willing to pay rent for the occupancy of the place until a week before his father's next marriage when he learned of the plan (p. 151, l. 20), conceiving that there was trouble coming on that account he purloined the deeds (p. 86, l. 10), a couple of days later refused a demand to pay the rent then due and calling the complainant a skunk, put him out of the house, which constituted part of the premises in question. On this occurrence the complainant protested that the defendant's rights were not to be effective until after his death (p. 66, l. 12; p. 96, ll. 1-20).

The finding that the lawyer acted as the representative of both the father and son is a negation that the father had independent advice within the definition of the same.

The finding that the certificates of acknowledgment on the deeds are convincible that the complainant knew their full legal effect and significance is entirely novel. Were the transaction one for an ordinary conveyance between strangers the issue would be the mutual intention of both. It, however, was found to be a voluntary gift from father to son, and under the cases the principal issue was whether the father fully understood that a power of revocation was omitted. The Court's conclusion was that from the officer's explanation that upon the death of one tenant the

other took by survivorship unhampered by dower rights, this aged, illiterate and sorrow-laden complainant fully understood the relationships *inter vivos* between joint tenants. It is notable that not only the complainant stated that he was ignorant of such legal consequences, but that the defendant testified that *he* did not know anything of the fine points of joint tenancy (p. 176, l. 35). In his pronouncement as to the effect of the explanation given by the officer to the complainant the Vice Chancellor very evidently disregarded the processes of the transaction. The deed which the complainant acknowledged was Exhibit C-3 whereby the complainant conveyed to the intermediary (p. 244). The deed establishing the joint tenancy was Exhibit C-4 whereby the intermediary conveyed to the parties (p. 245). There was no evidence specially showing what explanation was given to the complainant when he was signing over to the intermediary. The writer knows of no rule whereby a certificate of acknowledgment is *convincive* of anything; it has always been held to be *prima facie* proof of its contents, and it includes merely the statement that the officer made known to the grantor the contents of the instrument without any dilation upon the legal consequences. The Vice Chancellor's statement that his conclusion as to the convincive character of the certificate was fortified by the questions propounded to the complainant by his solicitor is not so intelligible as to be capable of answer.

The finding that the complainant's admission that the deed was explained to him, and his quiescence from the date of the execution to the time of filing the bill are likewise convincive that he fully understood the transaction, requires a reference to the testimony. The complainant stated that while the transaction was explained to him he did not understand its nature because he was

bewildered (p. 59, l. 20; p. 67, l. 25). This was in reference to the deed which he, himself, signed, and which evidently he believed was the instrument creating the defendant's rights as beneficiary. He acquiesced to no extent whatever in the defendant's claim to enjoy the property as a joint tenant. He was ejected by the defendant in June, 1928, and on June 12th, 1928, his solicitor wrote to the defendant calling his attention to the fact that his right of possession was intended to be deferred until the father's death, enjoining him to desist from the exercise of present ownership and calling upon him for a reconveyance (Exh. D-5, p. 252).

The finding specifically was that the effect of a joint tenancy was explained to complainant only to the extent of the features of survivorship and the exclusion of dower. The complaint here is that four years after the transaction the defendant, who has abided by the complainant's original intention up to that time, suddenly decided to stand upon the letter of the deed, not only to exercise his rights *per my et per tout*, but in addition excluded the complainant from part of the premises. By his conduct he effected a present partition of the property, he holding possession of one parcel and permitting the complainant to collect the rent from the other; the complainant had no premonition of any such event through an explanation that the survivor would take and widows would not be endowed, and this concededly was the full extent to which he was forewarned.

The finding that the son never made any claim for his rights as joint tenant, but on the contrary paid rent to the father, affords cogent proof of what was the intention of both parties and their original understanding as to the effect of the transaction.

POINT I.

Each and every principle of equity invoked in the dismissal of the bill was misapplied.

Recurring to the equitable conclusions of the Vice-Chancellor heretofore set forth, they are amenable to the following objections:

The conclusive effect of a stated consideration in a deed has no application to a case of confidential relations, fraud, mistake or undue influence, nor has the rule as to irrevocability of a completed gift, nor has the rule that fraud must be shown by substantial proof. The fact was found that pressure was exerted on one who desired to make a will, and a joint tenancy was created as the result of a mutual mistake. Where a deed of voluntary gift is made without a power of revocation, the omission in all cases is presumed to be a mistake. In cases where the transaction is between those standing in a confidential relation, the burden is on the donee not to show absence of fraud merely, but to show absence of misunderstanding on the part of the donor.

Instead of the burden resting upon the complainant to show by proof, clear and convincing and practically conclusive, what was the actual intention of himself and his son, the true rule is that a voluntary settlement should contain a power of revocation, and if it is omitted the parties who rely on it must prove proper advice to the grantor and his thorough understanding of the effect of omitting the power of revocation.

The conclusion that the suit was not one between parent and child where improvident gift and stripping donor of his property was claimed, was in total disregard of all the evidence in the case. The proof was that through his savings as

a longshoreman the complainant acquired the two pieces of property which by frugality he paid off. There was no evidence that he owned any other property, but it was in evidence that he regarded the rent of the premises conveyed as his living (p. 65, l. 15). The son time and again testified that his arrangement with the father was that upon the latter's death the defendant would get *everything*.

The oddity of the finding that a confidential relation is not implied from the kinship of father and son may be overlooked in view of the abundant proof that at the time of the transaction the actual relations of the parties were those of extraordinary confidence; they constituted all the members of a household; were projecting the continuance of their intimacy and were entering upon confidential relations in which the interests of each were to be identical with those of the other; each designed to lean fully upon the industry, honor and affection of the other. The conclusion of the Vice-Chancellor that the father and son dealt as total strangers at arm's length, that each should have watched the other and that the defendant was exonerated from showing that the complainant understood what he was doing has no support in precedent nor equity.

The conclusion that this was not a case in which independent advice was required leaves the mind bewildered as to how such a case could exist if not in the present circumstances. Not only was the defendant required to show independent advice, but he was further required that, in accordance therewith the transaction was characterized by providence, fulfillment of intention and an intelligent purpose to omit the power of revocation. In the language of Lord Eldon his duty was to show that the gift was the "pure, voluntary, well-understood, act of the grantor's mind".

The conclusion that a deed creating a joint tenancy was a proper manifestation of a purpose to vest title in the grantee after the grantor's death, and this because of the possibility of reverter on the predecease of the grantor and the preclusion of dower rights, is tantamount to saying (a) that a gift *inter vivos* carries out the purpose of a gift *causa mortis*, (b) that no distinction lies between the right of present ownership and that of future ownership, and (c) that the complainant's right to control the entire property for the period of his life is no more valuable than his right to have one-half of the income, with the defendant taking the other.

The conclusion that the possibility of regaining all the property through the predecease of the son compensates the father for the present loss of one-half of it is absurd. The undisputed proof in the case was that father and son agreed that the latter should have an estate upon condition precedent to take effect at the father's death. The holding below was that this purpose was effected by the deed of joint tenancy establishing the son as co-tenant instant.

The conclusion that the complainant is not injured through the deed operating *in presenti* instead of *post mortem* except to the extent that he may be obliged to account to the defendant for the rents and profits and pay over to the defendant the balance so struck and that thereby he cannot complain, is difficult to understand. It is to obtain relief from that very injury that the suit is brought.

In his conclusions the Vice-Chancellor cited no authority on which he rested, and contented himself with declaring that *Fretz vs. Roth*, 68 N. J. Eq. 516, is not applicable. Insofar as the case dealt only with a husband's right in his wife's bank account and the impressment of a resulting

trust, the case was not applicable, but in its reliance upon the doctrine of *Garnsey vs. Mundy*, 24 N. J. Eq. 343, it contained the true rule of guidance in the present matter.

The Vice-Chancellor's final disclosure of his reasons for dismissing the bill were (a) complainant understood what he was doing, (b) had ample advice from the lawyer who was representing both parties, (c) did not render himself in anywise improvident, and (d) upon the predecease of the son will again regain the title and ownership. This expressly recognized that it was not necessary that the complainant should fully and clearly understand and appreciate both the nature of his act, and its legal consequences and effects; that it was not necessary for him to have advice that was independent and disassociated from the interest of the other party; but on the contrary that his suit must fail because he was unable to show that the loss of his present control was complete and that future recoupment was wholly impossible.

POINT II.

The deeds designed to effectuate the voluntary gift should be reformed so as to establish the defendant's interest as an estate upon condition precedent after the father's death, and the complainant afforded suitable auxiliary relief by way of injunction.

The complainant, willing to abide by his actual intention, improvident though it may have been, seeks only such reformation as is necessary to carry it into effect. Under the authorities hereafter cited a cancellation might have been insisted upon because of the omission to reserve a power

of revocation; because of the defendant's failure to bear the burden of proving that such omission was done understandingly; because of his failure to show that the transaction was conducted without imposition or improvidence and with the benefit of competent and independent advice, but the complainant does not demand that measure of relief.

On the finding of the Vice-Chancellor that it was the mutual intention that the defendant would have no estate except upon the condition of the father's death, the complainant's right to have the joint tenancy eliminated and such mutual intention properly expressed would appear to be plain, and this right would seem to be undeniable in the face of circumstances entitling him to the more radical relief of cancellation.

The following cases hold that in the circumstances of this matter the complainant would be entitled to cancellation:

- Huguenin vs. Baseley*, Leading Cases in Equity 1156;
Story's Equity Jurisprudence, Par. 706-b;
Guernsey vs. Mundy, 24 N. J. Eq. 243;
Anderson vs. Ellsworth, 3 Giff. 154;
Houghton vs. Houghton, 15 Beav. 278;
Toker vs. Toker, 31 Beav. 644;
Phillipson vs. Kerry, 32 Beav. 628;
Lister vs. Hodgson, L. R. (4 Eq. cas.) 30;
Coutts vs. Acworth, L. R. (8 Eq. cas.) 558;
Wallaston vs. Trive, L. R. (9 Eq. cas.) 44;
White vs. White, 60 N. J. Eq. 104;
Grant vs. Baird, 61 N. J. Eq. 389;
Foley vs. Kirk, 33 N. J. Eq. 170;
Martling vs. Martling, 47 N. J. Eq. 122;
Mott vs. Mott, 49 N. J. Eq. 192;
Hall vs. Otterson, 52 N. J. Eq. 522;
Thorp vs. Smith, 63 N. J. Eq. 70;

Collins vs. Collins, 63 N. J. Eq. 602;
Fretz vs. Roth, 68 N. J. Eq. 516 and 70
 N. J. Eq. 764;
Stites vs. Stites, 69 N. J. Eq. 249;
Groff vs. Stitzer, 75 N. J. Eq. 452;
Seibold vs. Zieboldt, 93 N. J. Eq. 327;
In re Fulper's Estate, 99 N. J. Eq. 306.

As to the reformation of a deed where there is a mutual mistake of law attributable to the agent of the party now seeking to take advantage of it, see

Green vs. Morris, 15 N. J. Eq. 469;
Stern vs. Connolly, 95 N. J. Eq. 395;
Gibbs vs. Gibbs, 95 N. J. Eq. 272;
Eaton vs. Eaton, 37 N. J. Eq. 190.

For power to reform where necessary stipulations are kept out of a contract by fraud, see

Cobberly vs. Cobberly, 39 N. J. Eq. 514.

As to the necessity of independent advice being entirely disassociated from the interests of the donee, see

Post vs. Hagan, 71 N. J. Eq. 234.

It is submitted that the decree of the Court of Chancery should be reversed and the case remitted with instructions to enter a decree reforming the deed (Exh. C-4, p. 245), so that the true tenor and effect thereof shall be that the complainant holds the same in fee simple, and that the defendant has no interest therein until the performance of the condition of the father's death occurring in defendant's lifetime, and that the defendant should be enjoined from interfering with the complainant's present enjoyment thereof.

RICHARD DOHERTY,
 Solicitor for and of Counsel with
 Complainant-Appellant.

New Jersey Court of Errors and Appeals

(No. 8. OCTOBER TERM 1930.)

Between PATRICK KANE, Complainant-Appellant, <i>and</i> JAMES F. KANE, Defendant-Respondent.	}	On Appeal from Chancery.
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BRIEF FOR DEFENDANT-RESPONDENT.

Abstract of the Case.

This is an appeal by complainant from a final decree in Chancery dismissing a bill praying reformation because of mutual mistake in deeds made by complainant (through a straw man) to himself and the defendant (his son) conveying two parcels of land in Jersey City, as joint tenants and not as tenants in common.

Prefatory Statement.

The original bill (Case, pp. 3, 12), sought cancellation of the deeds as having "been obtained by the defendant fraudulently and through a mistake as to their legal effect promoted in the mind of the complainant by the said defendant" (p. 12, l. 28). The case was heard on this bill.

At the conclusion of the testimony (p. 219), complainant's counsel moved to amend the pleadings so as to change his bill into one for reforma-

tion of the deed creating the joint tenancy so that such deed should "not have the ordinary and normal operation of creating a joint tenancy" except the attribute of survivorship. In making the amendment counsel in terms abandoned his charge of fraud and his prayer for cancellation (p. 219). An amended bill was filed (p. 253). In the State of Case this bill is titled "Amended Bill to Conform with Proofs". It did not conform with the proofs except in the mind of complainant's counsel. This amended bill eliminates the charges of fraud and the prayer (p. 261), seeks reformation because of alleged mutual mistake by the complainant and defendant as to the legal operation of the deed and seeks decree "that the said deed should be decreed to operate to vest in the defendant James F. Kane a title to the property only by survivorship upon the death of the complainant and that the same have no other operation as an instrument creating a joint tenancy" (p. 261, l. 30).

Vice-Chancellor Fallon then announced his conclusions (p. 221), which resulted in a dismissal of the bill.

BRIEF OF THE ARGUMENT.

The Facts.

Prior to December 24, 1923, complainant (father) and defendant (son) were living together at 329 Ninth street, Jersey City, one of the two parcels described in the deeds; the other being 327½ Ninth street (Exhibits C-3, and C-4, pp. 244-5). They lived with complainant's second wife, defendant's stepmother, who died that day (p. 137). They continued to live together and on the day after the funeral discussed the future (p. 138). The father suggested that the son pay

half the stepmother's funeral bill and that if the son would pool his savings bank account with his and go "fifty-fifty" with him on the funeral and other expenses, he would put the son's name on the deed to the two houses (p. 138, ll. 20-30). They both went to the bank on December 31, 1923, and opened a joint account. A transcript of it is Exhibit C-5 (p. 246). They opened the joint account by first closing out their individual accounts in the same bank in which the father had \$2,100 and the son \$1,530. The son deposited \$630 in the joint account and the father \$2,170.01 (pp. 139, 246). The son used the balance in his account, \$900, to pay funeral bills of the stepmother (pp. 139, 247), and a balance on an old funeral bill of complainant's first wife (Exhibit D-1, p. 248).

The father then directed the son to take the deeds for the two houses to Judge Richard Doherty, who was handling for the father a personal injury claim of the stepmother (p. 141). The son showed the deeds to Judge Doherty and says: "I told him how me and my father was in it 50-50 and I was to have my name on the deeds. He told me to bring my father" (p. 141). The son went back with his father on January 3d (the date of the deeds). The father suggested a will; the son objected and told the father that he could change a will at any time and insisted on a deed (p. 142). Judge Doherty then sent the son out into the corridor (p. 143), and talked with the father alone for about ten minutes. The son was called back and told by Doherty that the father would go 50-50 and the deeds were executed (p. 143). William P. Gannon, the grantor, in Exhibit C-3, was an associate of Judge Doherty. He had no recollection of the transaction (p. 203).

After the execution and delivery of the deeds on January 3, 1924, the father and son continued

to live together. The father worked as a stevedore; the son for the American Express. Each week they would put sums of money in a drawer in their bedroom in which they both slept (p. 144). The son put in \$30 to \$35 a week; the father \$20 to \$23 a week. They each had a key to this drawer (p. 105). This pooled money was used to pay household expenses and upkeep of the houses and some of it was banked in the joint account (pp. 145, 158, 168, 169, 246). The son never drew any money from this drawer (p. 145, l. 25); the father drew \$10 or \$15 for spending money from time to time (p. 145, l. 23).

The father and son lived happily together, all the time continuing this 50-50 arrangement, sharing the expenses and upkeep of the houses and banking some of the money in the drawer, until July 31, 1926, over two and a half years. On July 11, 1926, the son married a young woman who had been the housekeeper for father and son (pp. 108, 146). The son drew \$200 out to get married. At first the father consented to this (p. 146); then he insisted that the son go to the bank and split up the money in the joint account (p. 147). This was done. The father continued to live with the son and his wife. Just previous to July 31, 1926, the father told the son to have his wife look for rooms and said, "you have to get out". The son got rooms on Pavonia avenue and moved to them with his wife (p. 147). They stayed in the rooms until June, 1927. Then the father asked the son to move with his wife into 327½ Ninth street, telling him to fix up the house and pay the taxes (p. 148). The son moved in and spent moneys for repairs (pp. 148, 149, 250, 251). The father lived next door in 329 with a housekeeper (p. 149). In March, 1928, the father told the son he was getting rid of his housekeeper and the son asked the father to resume living with

himself and wife (p. 149). The father rejoined them. They got along fairly well, although the old gentleman would explode occasionally (p. 150). Then, in June, 1928, the father married for the third time (p. 151), and went to live with his third wife in her house (p. 112). July 12, 1928, defendant got the letter (Ex. D-5, p. 252), from Judge Doherty, and on February 7th, 1929, Judge Doherty filed complainant's bill.

An interesting sidelight on the father is thrown by the son's testimony (p. 152), that his father came to him when the son was living on Pavonia avenue after his marriage in July, 1926, and asked the son to sign some papers; but would not let the son read the papers (p. 152). The father did not deny this testimony (p. 235, l. 18).

The Court will observe, in reading the father's testimony, that all through it he kept repeating that the arrangement as to the deed was that his son should be "beneficiary after my death, but not before" (p. 55). He says he remembers signing the deeds, but at first said Judge Doherty did not tell him what was in the deeds, although he does not think that Judge Doherty deceived him (p. 55). He denies that there was any talk about a will, but admits that Judge Doherty might have mentioned a will (p. 70). He finally said he did not remember what Judge Doherty told him before he signed the deed (pp. 125, 126).

The father's testimony may be summed up in this wise: he understood that the son was to be beneficiary after his death, but not before; and Judge Doherty explained the deeds to him, but he does not remember what was told him.

Judge Doherty testified (p. 130):

"I reported to Patrick Kane that James had informed me it was Pat's desire to have deeds drawn the effect of which would be to vest the title in James after the death of Patrick, and instructed him as to the char-

acteristics of a joint tenancy, informing him of the feature of survivorship, that if either died the property would go to the other. That if he died before James it would be James' and if James died before him it would revert to himself. I also told him in the event of either becoming married there would be no dower right ensue. I am inclined to disavow having instructed him as to the right of joint occupancy or the right of joint possession.

By the Court:

Q. You mean you didn't go that far? A. No, because I was not advised of the circumstances between them that would render that prudent. They appeared to be on terms of very close amity. In that situation and upon the parties all indicating they were satisfied he signed his deed to Gannon and Gannon signed the deed back to them."

He admits that he conveyed to the father any statements that James made to him (p. 135). He explained the contents of the deed to the father and took the acknowledgment (p. 136). He was asked on cross-examination:

"Q. I understand that no question was directed by you to either the father or the son with reference to control of the property during the lifetime of either? A. No, except you are to understand I explained to them it was a joint tenancy."

The evidence of Judge Doherty demonstrates that he explained to the father that a joint tenancy was being created. The son says he and his father were to go 50-50. The father says they were to go 50-50 (p. 212, l. 15). He thinks Judge Doherty explained the deed twice (p. 209).

The fair inference from all the testimony is that the father understood that the son's name was to go on the deed and that they were to go 50-50. He is evidently one of those old gentlemen who change

their minds often, as is evidenced by his putting the son out and then asking him to come back. One can hardly resist the reflection that after the father married for the third time and went to live with that wife in her house (p. 112, l. 9), and the third wife learned that if the old gentleman died first she would have no dower, the old gentleman may have experienced considerable difficulty with the third wife, which prompted this suit. He could not explain why he waited nearly five years before bringing this suit, although he denied that the third wife had anything to do with it (p. 112).

The Law.

We start with the familiar rule that to justify reformation the proof must leave no rational doubt of the fact. *Green v. Stone*, 54 N. J. Eq. 387, is a leading case in this court. There Depue, J., said:

“To justify the reformation of a deed executed, delivered, accepted and acted upon, on the ground that it did not correctly express the agreement made by the parties, the proof must be clear and convincing and upon testimony that is unexceptionable, both with regard to the agreement actually made and the mutuality of the mistake through which a different agreement was put in the deed.”

I will not burden the Court with citations on this well known principle. Judge Doherty fully explained the deeds to the father. There is no evidence whatever of any mistake on the part of the son; and the father does not remember what was told him when he signed the deed (p. 55). Judge Doherty testified that he explained joint tenancy fully to the father, but is “inclined to disavow having instructed him as to the right of joint occupancy or the right of joint possession”

(p. 130). I don't know what he means by that, unless it be that he did not deliver a law lecture to the father on joint tenancy *per my et per tout*.

I am writing this brief without having been served with a printed copy of appellant's brief, although counsel served me with a typewritten memorandum labelled "Points and Citations", which I will now discuss.

He says that "The deed from William P. Gannon to the complainant and defendant constituted a deed of gift by complainant to defendant".

The proof was that the deed was made in pursuance of the "50-50" arrangement between father and son and that they pooled their savings and earnings and paid the upkeep of the property, repairs, taxes, etc., from this pool.

My adversary also says: "Such a deed is invalid and subject to cancellation or reformation when it is proved that it does not in a material respect conform to the intention of the grantor or that he executed it under a misapprehension as to its effect".

The evidence as to the intention of the father is that he understood the son was to be "beneficiary after my death, but not before". The arrangement agreed upon and acted upon by the father was that the son was to go "50-50" on the expenses and upkeep of the property. The father had no misapprehension of the effect of the deed until after he quarreled with the son and his wife. He insisted on his son maintaining the property and the son did so. The father cannot now be permitted to change his mind and have the deed reformed.

Judge Doherty also says in his "Points and Citations": "The deed in question did not express the intention of the complainant, and his cooperation in the execution of the same was under the misapprehension that he reserved a life estate in the premises."

The proofs will be scanned in vain for any testimony from the father to this effect except his repeated refrain about "beneficiary after my death, but not before". But the father knew he and the son were to go 50-50 (p. 212).

It is settled doctrine that in general a mistake of law, pure and simple, is not adequate ground for relief. Pom. Eq. Jur., 4th ed., sec. 842. There are exceptions, but the learned author in sec. 843 says that it is settled with perfect unanimity that "Equity will not interfere for the purpose of carrying out an intention which the parties did not have when they entered into a transaction, but which they might have or even would have had if they had been more correctly informed as to the law". The case *sub judice* demonstrates that the father had his own lawyer draw the deed, who fully explained it to him. The lawyer is "inclined to disavow" that he explained to the father the rights of joint occupancy and joint possession; but the lawyer knew the father and son were to go 50-50 on the property (p. 143, l. 30); and the father knew that (p. 212).

The expression "50-50" occurs throughout the testimony. To the man in the street that means that each of the joint tenants get half of the income and each pays half of the upkeep.

Discussion of Cases Cited by Complainant's Counsel.

Guernsey v. Mundy, 24 N. J. Eq. 243. Suit to cancel an irrevocable trust deed. The misapprehension as to the deed not being irrevocable was clear and it was set aside.

Foley v. Kirk, 33 N. J. Eq. 170. A reading of the syllabus will show that it is not in point.

Martling v. Martling, 47 N. J. Eq. 122. Deed executed without independent advice and after the son had taken advantage of his mother.

Mott v. Mott, 49 N. J. Eq. 192. A fraud case. Not in point.

Hall v. Otterson, 52 N. J. Eq. 522. The wife had no independent advice.

White v. White, 60 N. J. Eq. 104. A father, blind and illiterate, stripped himself of his property, and had no independent advice.

Grant v. Biard, 61 N. J. Eq. 389. A voluntary settlement where it appeared that the settlor clearly understood that the gift was to be irrevocable.

Thorp v. Smith, 63 N. J. Eq. 70. No independent advice.

Collins v. Collins, 63 N. J. Eq. 602. Material reservation omitted from the deed.

Stites v. Stites, 69 N. J. Eq. 249. Deed was not to take effect until after death of grantor.

Fritz v. Ruth, 68 N. J. Eq. 516, reversed in 70 N. J. Eq. 764. This case is helpful because it clarifies the law as it then existed and follows *James v. Aller*, 68 N. J. Eq. 666, not cited by appellant's counsel, but later discussed by me.

Groff v. Stitzer, 75 N. J. Eq. 452. The grantor was enfeebled by paralysis and had no independent advice.

Siebold v. Zieboldt, 93 N. J. Eq. 327. No independent advice and son used undue influence.

In re Fulper, 99 N. J. Eq. 306. No independent advice.

Oeding v. Schweinler, 101 N. J. Eq. 455. The scrivener failed to carry out the grantor's instructions.

The English cases counsel cites are not helpful. We have enough law on the point in our own State.

I adverted to *James v. Aller*, 68 N. J. Eq. 666, above. I submit it is controlling. This Court reversed *Emery, V. C.*, 66 N. J. Eq. 52. *Gummere, C. J.*, speaking for this Court, said:

“The respondent, in the prime of life, as has already been stated, in the full possession of his faculties, as the case shows, and without the exercise of any influence over him by his children, made this gift to them. At that time no conditions existed to justify the conclusion that the original relation existing between parent and child (i. e., a relation where the parent occupies the dominant position) had been reversed, and that the children then occupied that position. His purpose, at the time of making the gift, was to make them the absolute owners of the property donated. It was his to dispose of as he saw fit. The gift was intended by him to be and was irrevocable. That being so, he has no legal right to now require the return of the property with which he then parted.”

In the case *sub judice* it is not contended that the father made an improvident deed, or that he was misled. His counsel urges a plain mistake of law by him. Courts of equity do not relieve against mistakes of law unless a relation of confidence is shown between grantor and grantee and that confidence is abused. *Kelso v. Kelso*, 96 N. J. Eq. 354. None is shown here. The deed was fully explained to the father, and he and his son acted upon it for nearly five years before the father brought his suit. He now says the son should have no interest whatever in the property during his lifetime, although it is undisputed that when he was friendly with his son he insisted on the son sharing in the taxes and upkeep of the property. And the son did so. Complainant's case falls far short of the proof needed to reform an instrument because of mistake.

The decree below should be affirmed with costs.

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Of counsel with defendant-
respondent.



