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Writ of Certiorari.

(Filed Dec. 19, 1935.)

NEW JERSEY, ss.:

To MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, (L.S.) JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, GREETING:

We being willing for certain reasons to be certified of the judgment and order and proceedings given and made in the State Board of Education of the State of New Jersey, in a certain action brought by Clara L. Smith, appellant, against Board of Education of the City of Paterson and Guiana Realty Corporation, respondents, we command you that you send under your seal to our New Jersey Supreme Court at Trenton on the 8th day of January, next, the judgment, order and proceedings aforesaid, with all things attached concerning the same as fully and entirely as they remain before you together with this writ, that we may further cause to be done thereupon what of right should be done.

WITNESS, THOMAS J. BROGAN, Esq., Chief Justice of our Supreme Court this 19th day of December, 1935.

FRED L. BLOODGOOD,
Clerk.

LOUIS DWORETZ,
Attorney of Prosecutor,
Clara L. Smith.

Return to Writ.

This writ is allowed. Let it be sealed. Dated Dec. 19, 1935. Not to operate as a stay.

HARRY HEHER,
Justice of the N. J. Supreme Court.

Proof of service is hereby acknowledged by me as Secretary of the State Board of Education this nineteenth day of December, 1935.

CHARLES H. ELLIOTT,
Secretary of State Board of Education.

Return to Writ.

(Filed, , 193 .)

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF JUDICATURE OF NEW JERSEY:

In obedience to the command of this writ directed to the State Board of Education of the State of New Jersey, I hereby certify and send under seal of the State Board of Education to the Honorable Justices of the Supreme Court of Judicature of New Jersey the Decision of the State Board of Education dated July 20, 1935, by which a certain judgment or decision of the State Commissioner of Education dated February 8, 1935, was affirmed and by which Clara L. Smith was held to have been legally dismissed following a hearing upon charges before the Paterson Board of Education together with all things touching and concerning the same as fully and entirely before the State Board of Education they remain as is commanded.

IN WITNESS WHEREOF, I, the Secretary of the State Board of Education, set my hand and caused the seal of the State Board of Education to be affixed this 28th day of December, 1935.

(SEAL) CHARLES H. ELLIOTT,
Secretary, State Board of Education.

Exhibits Annexed to Return to Writ.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON,
Respondent.

Decision of the State Board of Education.

The appellant, a school teacher in Paterson, was dismissed by the Board of Education of that city on May 10, 1934, following a hearing on charges of conduct unbecoming a teacher. She appealed to the Commissioner who held that her dismissal was illegal because she did not have a fair trial, on the ground that one of the board members, who participated in the decision of her case, was absent during part of the trial. The Commissioner directed that she be reinstated, but did not remand the case for further proceedings, leaving it to the board to determine its future course of action.

Miss Smith was promptly reinstated by the board, but on the day of her reinstatement new charges, in substance the same as the former charges, were received by the board of education, being preferred by the same complainant, namely, the Guiana Realty Corporation. She was forthwith suspended pending a hearing on the new charges, was given notice thereof and appeared at the hearing, which was conducted on October 18 and 24, 1934. At the close of the hearing, she was again found guilty of conduct unbecoming a teacher and dismissed, the decision of the eight members of the board who were present being unanimous.

She appealed to the Commissioner of Education who, after considering all the grounds urged by her counsel in support of her appeal, found that "written charges were preferred against Miss Smith and served upon her, and a fair hearing was conducted by the Board of Education, at which she was represented by counsel, and the testimony supported the charges." He therefore decided that she was legally dismissed by the Paterson Board.

1. The principal ground of appeal from his decision to this Board is that the ruling of the Commissioner on the first appeal was a final disposition of the charges, and that therefore she could not be tried on new charges; in other words, that the Board of Education was estopped to renew the charges under the legal principle of res adjudicata. It is fundamental that this principle applies only to judgments on the merits and that decrees based on such technical reasons as that upon which the Commissioner's former decision was based do not stand in the way of the prosecution of a new suit or proceeding on the same cause of action. The Commissioner so held and, in our opinion, correctly.

2. Another ground of appellant's appeal is that the tenure of office statute does not contemplate the preferring of charges against teachers by persons outside the State, and that since the Guiana Realty Corporation was not a corporation of New Jersey, or authorized to do business in this State, it "was not a competent party complainant." Section 106-A of the School Law provides that "charges may be filed by any person whether a member of said School Board or not." Appellant insists that this language refers to a natural person having some interest in the public

instruction, either as parent, citizen, taxpayer, etc. We cannot agree, and think the Commissioner was right in over-ruling this ground of appeal. The purpose of the section of the Tenure of Office Act which authorizes the trial and dismissal of teachers and principals after preferring charges and giving them a fair hearing is to provide means by which boards of education may displace those whom they find to be incompetent or unworthy after they have served more than three years. It is clearly to the benefit of the public schools that where, at a fair hearing evidence is presented to a board of education which proves that an accused person has been guilty of "conduct unbecoming a teacher," to use the language of the statute, such teacher should not be retained in the school system. To do otherwise would be unfair to the pupils and injurious to the school system in general. If the charge of unbecoming conduct is proved to be true, the interests of the schools demand that the teacher should be dismissed, no matter by whom the charges are preferred. There is no limitation in the statute as to the source of the charges provided for therein, and we see no reason to read any such limitations into it.

Several other grounds of appeal are presented on behalf of the appellant, but we think the Commissioner has properly disposed of all of them, and further discussion seems unnecessary.

Examination of the record shows that the appellant received due notice of the charges, was given a fair hearing at which she was represented by counsel who received an opportunity to fully present her case, and that there was evidence to support the Board's decision. Indeed the chief grounds of attack on this appeal are directed more to what seem to us technical points than to the substance of the proofs.

Exhibits Annexed to Return to Writ.

The appellant, having received a fair trial and it not appearing that the decision of the Board was contrary to the evidence, we find, in accordance with the rule several times announced by this Board under similar circumstances, that the Commissioner's decision was right, and recommend that it be affirmed.

July 20, 1935.

BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH, *Appellant* *vs.* BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION, *Respondents.*	Notice of Appeal.

To the Respondents or their Attorney, Harold D. Green:

SIR:

PLEASE TAKE NOTICE that the appellant in the above-entitled cause appeals to the State Board of Education of the State of New Jersey from the whole of the decision of the Commissioner of Education, a copy of which decision is hereto annexed and dated February 8th, 1935.

Respectfully yours,

LOUIS DWORETZ,
Attorney for Appellant.

Exhibits Annexed to Return to Writ.

CLARA L. SMITH,
Appellant.
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON,
Respondent.

Decision of the Commissioner of Education.

Louis Dworetz, for Appellant.

Harold D. Green, for Respondent.

On May 10, 1934, the appellant was dismissed as a school teacher by the Board of Education of the City of Paterson following a hearing on charges of conduct unbecoming a teacher preferred by the Guiana Realty Corporation. Miss Smith appealed for re-instatement to the Commissioner of Education, who, without considering the merits of the case, decided that her dismissal was illegal for the reason that she did not have a fair trial because one of the board members, who was absent on certain evenings during the trial, participated in adjudicating her case. In support thereof, the Commissioner cited Kelly vs. Bishop, et al., 119 Atlantic 6, and Eisberg vs. Cliffside Park, 92 N. J. L. 321.

On October 11, 1934, the date of appellant's reinstatement, new charges against her were received by the Paterson Board of Education, who forthwith suspended her pending a hearing, which was conducted on October 18th and 24th. Again, Miss Smith was found guilty of conduct unbecoming a teacher and dismissed.

Exhibits Annexed to Return to Writ.

Counsel alleges that appellant's dismissal was invalid for the following reasons:

(1) The ruling of the Commissioner of Education dated September 5, 1934, was final disposition of the charges and complaint of October 11, 1934.

(2) The Guiana Realty Corporation is not a competent complainant.

(3) The matters set forth in the charges are cognizable, if at all, in a court of civil jurisdiction.

(4) The charges made by the complainant were not verified and represented a mere statement of facts without being sworn to.

(5) The Board of Education erred in rejecting very material and pertinent evidence.

(6) The complainant, the Guiana Realty Corporation, was guilty of laches.

(7) There was no creditable evidence adduced to support the dismissal of the appellant.

(8) The charges preferred by the complainant were plainly a subterfuge and calculated solely to harass and persecute the appellant.

(1) Since the former case the Commissioner did not render a decision based upon its merits, the legality of a retrial is supported by the following:

Exhibits Annexed to Return to Writ.

Corpus Juris, Vol. 34, par. 1210, p. 793, reads in part as follows:

"A judgment dismissing a suit on account of any technical defect, irregularity or informality, is not on the merits and is, therefore, no bar to subsequent action."

Par. 1501, p. 1063, reads:

"Since a former judgment between the same parties does not bar a second suit upon the same cause of action unless it was rendered on the merits, a plea of former adjudication must distinctly show that such former judgment was on the merits."

In Hughes vs. United States, 4 Wall, 232, the Court held:

"In order that a judgment may constitute a bar to another suit it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases and must be determined on its merits. If the first suit was dismissed for defect of pleadings or parties, or a misconception of the form of proceedings, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit."

The Commissioner cannot agree with appellant's counsel that the failure of the Commissioner's former decision to include a remanding order bars the bringing of a new suit under the condi-

tions in this case. As pointed out by attorney for respondent, to have remanded the case would require the board to continue it, when such action might not be desired. Failure to remand the case left to the discretion of the board the discontinuance of the prosecution or the conduct of a hearing on the same or new charges.

(2) Charges, reflecting upon the honesty and integrity of Miss Smith, were submitted by the Guiana Realty Corporation. Regardless of whether they were signed by the representatives, or agents, of a corporation, or whether the signers were residents of this State or elsewhere, the board acted within its rights in conducting a hearing to determine to what extent, if any, the teacher was guilty of the charges and whether, if guilty, her dismissal should follow.

(3) While charges of fraud and forgery are, of course, cognizable in the civil courts, certainly such cognizance does not bar a board of education from hearing charges involving the penalty of dismissal under the provisions of the Teachers' Tenure of Office Act; namely, inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.

(4) While the Janitors' Tenure Act, Chapter 44, P. L. 1911, requires a sworn complaint, the Teachers' Tenure of Office Act, Chapter 243, P. L. 1909, contains no similar provision. The latter act simply requires the signing of the charges by the person or persons making them and the filing thereof with the secretary of the board of education. Since the charges against Miss Smith were filed by the persons constituting the Guiana Realty Corporation, through their officers, they are legal.

(5) There is nothing in the testimony to indicate that the board of education rejected any evidence which affected her right to a fair trial.

(6) A delay by the Guiana Realty Corporation in presenting the charges in nowise constitutes laches by the board of education. When the conduct of the teacher was brought formally to the attention of the board of education, it proceeded with the trial; and since there was no delay by the board, there is no justification of a charge of laches against it.

(7) The board of education heard sworn testimony as to the acts of the appellant. There was no testimony to attack the credibility of the witnesses, the principal claim being that the testimony was incompetent because some witnesses came from outside the State. The charges appear to be reasonably supported by the evidence.

(8) There is no testimony to justify the allegation of counsel for appellant that these charges were brought to persecute and harass Miss Smith.

The Commissioner and State Board of Education have held in a number of cases that they will not disturb the findings of a local board of education in the dismissal of a teacher on charges, provided the board reached its decision after giving a fair hearing and there was no showing of passion or prejudice on its part.

Wallace vs. Greenwich Township Board of Education, 1932 Compilation of School Law Decisions, 859; Fitch vs. South Amboy, 1928 Compilation of School Law Decisions, 176; Cheeseman vs. Gloucester City, 1928 Compilation of School Law Decision, 159. In Martin vs. Smith, 100 N. J. L. 50,

Justice Minturn in delivering the opinion of the Supreme Court in a similar situation said:

"But the settled rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusion of guilt or innocence, this court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment. If the judgment of the trial court can be fairly supported by the record, the duty of this court is at an end so far as further investigation is concerned."

Since written charges were preferred against Miss Smith and served upon her, and a fair hearing was conducted by the board of education, at which she was represented by counsel, and the testimony supported the charges, the appellant was legally dismissed by the Paterson Board of Education.

(Sgd) Charles H. Elliott,
Commissioner of Education.

February 8, 1935.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 1st day of March, 1935.

Harold D. Green,
Attorney for Respondents.

Exhibits Annexed to Return to Writ.

BEFORE THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH, *Appellant,* *vs.* BOARD OF EDUCATION OF THE CITY OF PATERSON and GUIANA REALTY CORPORATION, *Respondents.*	On Petition, etc. Affidavit of Service.

State of New Jersey }
County of Passaic } ss.:

LOUIS DWORETZ, of full age, being duly sworn, according to law, upon his oath deposes and says:

1. I served a copy of notice of appeal together with identification of decision, also petition of appeal, together with copy of notice directed to the President of the State Board of Education and the Secretary of the State Board of Education, requesting an oral hearing in the above entitled matter, by leaving the same personally with Harold D. Green, Esq., attorney for the respondents at his office, 121 Ellison Street, Paterson, New Jersey, on the 1st day of March, 1935.

LOUIS DWORETZ.

Sworn to and subscribed to
before me this 1st day of
March, A. D. 1935.

GEORGE K. SLINGLAND,
M. C. C. of N. J.

Exhibits Annexed to Return to Writ.

BEFORE THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON and GUIANA REALTY CORPORATION,
Respondents.

Petition of Appeal.

The petition of the appellant, Clara L. Smith, respectfully shows:

1. She appeals from the judgment of the Commissioner of Education of the State of New Jersey entered on February 8th, 1935, confirming and sustaining the judgment of the Board of Education of the City of Paterson, on October 24th, 1934, dismissing the appellant as a teacher in the public school system in the City of Paterson on the complaint of the Guiana Realty Corporation, a corporation of the State of New York, of conduct unbecoming a teacher for the following reasons:

(A) That the Commissioner of Education of the State of New Jersey erred in giving judgment for the respondent instead of the appellant.

(B) That the Commissioner of Education of the State of New Jersey erred in affirming the judgment of the Board of Education of the City of Paterson, dismissing the appellant on Oc-

tober 24th, 1934 as a teacher in the public school system of the City of Paterson on the complaint of the Guiana Realty Corporation of the State of New York, of conduct unbecoming a teacher instead of reversing said judgment of the Board of Education for one or more of the reasons advanced therefor before the said Commissioner of Education of the State of New Jersey, to wit:

(1) That said suspension and dismissal of the appellant were both illegal and void.

(2) The Board of Education of the City of Paterson had no jurisdiction or authority to entertain the complaint of the Guiana Realty Corporation, a corporation of the State of New York, against the appellant, in that:

(a) The complainant, Guiana Realty Corporation, was not a citizen of either the City of Paterson, County of Passaic, or State of New Jersey.

(b) That the complainant, Guiana Realty Corporation, was not authorized to do business in the State of New Jersey at the time of the alleged indiscretions of the appellant.

(c) That the said complainant has never since, and is not now authorized to do business in the State of New Jersey.

(d) That the matters about which the said Guiana Realty Corporation complains pertain to a purely private transaction.

(e) That the charges preferred by the complainant in no wise connect the appellant, Clara L. Smith, with conduct un-

becoming a teacher in the public school system of the City of Paterson.

(f) That the matters set forth in the charges made by the complainant are cognizable, if at all, in a court of civil jurisdiction.

(g) That the complaint and all proceedings thereunder were in open defiance and in violation of the ruling of the State Commissioner of Education, made on September 25, 1934, in which the appellant herein, Clara L. Smith, was ordered to be reinstated as a teacher in the public schools of the City of Paterson.

(h) That the said ruling of said Commissioner of Education made on the date last aforesaid, was made in a proceeding in which the charges were identical with the charges made in this cause, and in which the testimony of the complaining witness was substantially identical.

(i) That by reason of the order of the Commissioner of the State Board of Education, there is no authority or provision for a new trial or a trial de novo by the Board of Education of the City of Paterson.

(j) That the right of the Board of Education of the City of Paterson, if any by reason of any grievances it might have as a result of the making of the order of the Commissioner of Education on September 25, 1934, was by way of appeal only to the State Board of Education.

(k) That the charges upon which the appellant had been previously tried, and which culminated in the order of the Commissioner of Education on September 25, 1934, are a complete bar to the prosecution of the charges made in this cause on October 9, 1934.

(l) That the charges preferred by the complainant were plainly a subterfuge and calculated solely to harass and persecute the appellant.

(m) That the charges made in this cause bear date October 9, 1934, which date, is prior to the date on which the appellant was reinstated, namely, October 11, 1934, in the public school system in pursuance of an order of the State Commissioner of Education made on September 25, 1934.

(n) That the charges were preferred in this cause prior to the compliance by the Board of Education of the City of Paterson with the order of the State Commissioner of Education made September 25, 1934.

(3) That the Board of Education of the City of Paterson erred in refusing to dismiss the charges preferred by the complainant, Guiana Realty Corporation, against the appellant in that:

(a) The appellant repeats and reiterates each of the grounds asserted under point 1-B-(2) herein.

(b) That the charges preferred are in no manner related to any of the causes for dismissal that might be set forth under the school law.

(c) That the charges made by the complainant were not verified and represent a mere statement of facts without being sworn to.

(4) That the Board of Education erred in refusing to take a vote on the motion of counsel for the appellant addressed to the Board of Education requesting a dismissal of the complaint prior to the hearing of the evidence.

(5) That the Board erred in denying the motion of counsel for the appellant to dismiss the charges after the complainant's evidence was taken.

(6) That the Board erred in denying the motion of the appellant to dismiss the charges at the conclusion of the entire hearing.

(7) That the Board erred in admitting into evidence over the objection of counsel for the appellant, the charges made by the Guiana Realty Corporation against Clara L. Smith, which ruling of the Board of Education was erroneous in that the said charges were irrelevant, immaterial, and incompetent for the reason that the Board of Education had no jurisdiction or authority to try the appellant on the said charges.

(8) The Board erred in refusing to grant the request of counsel for the appellant that the Board of Education take a vote on the motion made by the counsel for the appellant

before the hearing of the evidence, for a dismissal of the charges, which said ruling of the Board of Education was erroneous in that the chairman of the Board had no authority to exclude from the whole Board's consideration the request made.

(9) The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "When was the last time the Guiana Realty Corporation held a meeting?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

(10) The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Has the corporation still got a franchise, Mr. Sherrill?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

(11) The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Mr. Sherrill, as president of the Guiana Realty Corporation, can you tell us when the last annual report was submitted to the Secretary of the State of New York?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

(12) The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Is the Guiana Realty Corporation licensed by the banking department of the State of New York?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

(13) The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Mr. Sherrill, will you please write the name of Louis A. Bennert on that paper?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

(14) The Board erred in overruling the objection of counsel for the appellant contesting the right of the Board of Education to take a vote on October 25th, relative to a motion to dismiss complaint, motion to contest jurisdiction and authority of the Board, and motion to stay the proceedings, all of which had been made on October 18, 1934, and decision thereon noted in the record, which said ruling of the Board was erroneous in that the object of the Board overruling the objection of counsel for appellant was to alter and change the previous record of the said proceedings as evidenced by the stenographic notes of the same.

(15) The Board erred in refusing to grant to counsel for the appellant a continuation of the hearing, the purpose of which was to obtain testimony of one Cyril Wilson, teller in the Dunbar National Bank, which said ruling of the Board was erroneous in that the testimony to be elicited from the said Cyril Wilson was material, relevant, and competent, and would tend to disprove the charges made by the complainant.

(16) That the respondents are guilty of laches in that the charges upon which the appellant was tried were made more than two years after the alleged indiscretions, if any of the appellant, had taken place.

2. There was no basis for the proceedings wherein the appellant was dismissed on the 24th day of October, 1934, as the subject matter of the said litigation had been destroyed as a result of the Board of Education complying with the ruling of the State Commissioner of Education, made September 25th, 1934.

3. That the right of the Board of Education of the City of Paterson, if any, by reason of any grievance it might have as a result of the making of the order of the Commissioner of Education on September 25, 1934, was by way of appeal only to the State Board of Education.

4. Petitioner prays that by reason of the grievances hereinbefore stated, there is presented herein a controversy and dispute arising under the school laws of the State of New Jersey and under the rules and regulations of the State Board of Education of the State of New Jersey.

5. Petitioner further prays the judgment of the Commissioner of Education of the State of New Jersey for one or more of the reasons aforesaid be set aside and for nothing holden.

LOUIS DWORETZ,
Attorney for Appellant.

State of New Jersey }
County of Passaic } ss.:

CLARA L. SMITH, of full age, being duly sworn according to law, upon her oath, deposes and says:

1. That she is the appellant in the above entitled cause; that the statements contained in the above petition of appeal are true to the best of her knowledge and belief.

CLARA L. SMITH.

Sworn to and subscribed to
before me this 27th day of
February, 1935.

LOUIS DWORETZ,
An Attorney at Law of N. J.

Service of a copy of the within Petition of Appeal acknowledged this 1st day of March, 1935.

HAROLD D. GREEN,
Attorney for Respondents.

Exhibits Annexed to Return to Writ.

BEFORE THE STATE BOARD OF EDUCATION, STATE OF NEW JERSEY.

CLARA L. SMITH, *Appellant,* *vs.* BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION, *Respondents.*	Answer to Petition of Appeal.

Respondent, Board of Education of the City of Paterson, in the County of Passaic, answering the Petition of Appeal, says:

1. Respondent denies paragraph 1 (A) of the Petition of Appeal.

2. Respondent denies paragraph 1 (B) of the Petition of Appeal.

3. Respondent denies paragraph 1 (1) of the Petition of Appeal.

4. Respondent denies paragraph 1 (2) of the Petition of Appeal.

5. Respondent admits paragraphs 1 (a), 1 (b) and 1 (c) of the Petition of Appeal.

6. Respondent denies paragraph 1 (d) of the Petition of Appeal.

7. Respondent denies paragraph 1 (e) of the Petition of Appeal.

8. Respondent denies paragraph 1 (f) of the Petition of Appeal.

9. Respondent denies paragraph 1 (g) of the Petition of Appeal.

10. Respondent denies paragraph 1 (h) of the Petition of Appeal.

10 11. Respondent denies paragraph 1 (i) of the Petition of Appeal.

12. Respondent denies paragraph 1 (j) of the Petition of Appeal.

13. Respondent denies paragraph 1 (k) of the Petition of Appeal.

14. Respondent denies paragraph 1 (l) of the Petition of Appeal.

20 15. Respondent admits paragraph 1 (m) of the Petition of Appeal.

16. Respondent denies paragraph 1 (n) of the Petition of Appeal.

17. Respondent denies paragraph 3 of the Petition of Appeal.

18. Respondent denies paragraph 3 (b) of the Petition of Appeal.

30 19. Respondent admits that the charges made by the complainant were not verified and denies the balance of paragraph 3 (c).

20. Respondent denies paragraph 4 of the Petition of Appeal.

21. Respondent denies paragraph 5 of the Petition of Appeal.

22. Respondent denies paragraph 6 of the Petition of Appeal.

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23. Respondent denies paragraph 7 of the Petition of Appeal.

Exhibits Annexed to Return to Writ.

24. Respondent denies paragraph 8 of the Petition of Appeal.

25. Respondent denies paragraph 9 of the Petition of Appeal.

26. Respondent denies paragraph 10 of the Petition of Appeal.

27. Respondent denies paragraph 11 of the Petition of Appeal.

28. Respondent denies paragraph 12 of the Petition of Appeal.

29. Respondent denies paragraph 13 of the Petition of Appeal.

30. Respondent denies paragraph 14 of the Petition of Appeal.

31. Respondent denies paragraph 15 of the Petition of Appeal.

32. Respondent denies paragraph 16 of the Petition of Appeal.

33. Respondent denies paragraph 2 of the Petition of Appeal.

34. Respondent denies paragraph 3 of the Petition of Appeal.

35. Respondent denies paragraph 4 of the Petition of Appeal.

36. Respondent respectfully submits that the judgment of the Commissioner of Education of the State of New Jersey should be affirmed.

HAROLD D. GREEN,
Attorney for Respondent.

(Acknowledged service March 4, 1935.)

Exhibits Annexed to Return to Writ.

BEFORE THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH, *Appellant,* *vs.* BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION, *Respondents.*	On Petition for Appeal &c. Reply.

TO THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY:

The appellant by way of reply to the allegations contained in the answer filed herein in behalf of the respondents says:

1. She joins issue with the respondents respecting the statements contained in paragraphs 1-36.

2. The appellant begs leave to amend the petition of appeal so that she may include the following:

(a) That the respondents are guilty of laches in that the charges upon which the appellant was tried were made more than two years after the alleged indiscretions, if any, of the appellant took place.

LOUIS DWORETZ,
Attorney for Appellant.

Service of a copy of the within reply is hereby acknowledged this 5th day of March, 1935.

HAROLD D. GREEN,
Attorney for Respondents.

BEFORE THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION,
Respondents.

Request.

TO THE SECRETARY OF THE STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY:

SIR:

PLEASE TAKE NOTICE that the appellant in the above-entitled cause desires an oral hearing.

Respectfully yours,

LOUIS DWORETZ,
Attorney for Appellant.

Service of a copy of the within request acknowledged this day of March, 1935.

_____,

Exhibits Annexed to Return to Writ.

BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION,
Respondent.

Petition of Appeal.

TO THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY:—

The petition of the appellant, Clara L. Smith, respectfully shows:—

1. That on the 11th day of October, 1934, she was suspended as a teacher in the public school system in the City of Paterson pending the hearing of charges made against her by the Guiana Realty Corporation, a corporation of the State of New Jersey.

2. That on the 24th day of October, she was dismissed as a teacher in the public school system in the City of Paterson on the complaint of the Guiana Realty Corporation, a corporation of the the State of New York, of conduct unbecoming a teacher.

3. That said suspension and dismissal of the appellant were both illegal and void.

A. The Board of Education of the City of Paterson had no jurisdiction or authority to

entertain the complaint of the Guiana Realty Corporation, a corporation of the State of New York, against the appellant, in that:

(1) The complainant, Guiana Realty Corporation, was not a citizen of either the City of Paterson, County of Passaic, or State of New Jersey.

(2) That the complainant, Guiana Realty Corporation, was not authorized to do business in the State of New Jersey at the time of the alleged indiscretions of the appellant.

(3) That the said complainant has never since, and is not now authorized to do business in the State of New Jersey.

(4) That the matters about which the said Guiana Realty Corporation complains pertain to a purely private transaction.

(5) That the charges preferred by the complainant in no wise connect the appellant, Clara L. Smith, with conduct unbecoming a teacher in the public school system of the City of Paterson.

(6) That the matter set forth in the charges made by the complainant are cognizable, if at all, in a court of civil jurisdiction.

(7) That the complaint and all proceedings thereunder were in open defiance and in violation of the ruling of the State Commissioner of Education, made on September 25th, 1934, in which the appellant herein, Clara L. Smith, was ordered to be reinstated as a teacher in the public schools of the City of Paterson.

(8) That the said ruling of said Commissioner of Education made on the date last aforesaid, was made in a proceeding in which the charges were identical with the charges made in this cause, and in which the testimony of the complaining witness was substantially identical.

(9) That by reason of the order of the Commissioner of the State Board of Education, there is no authority or provision for a new trial or a trial de novo by the Board of Education of the City of Paterson.

(10) That the right of the Board of Education of the City of Paterson, if any, by reason of any grievances it might have as a result of the making of the order of the Commissioner of Education on September 25th, 1934, was by way of appeal only to the State Board of Education.

(11) That the charges upon which the appellant had been previously tried, and which culminated in the order of the Commissioner of Education on September 25th, 1934, are a complete bar to the prosecution of the charges made in this cause on October 9th, 1934.

(12) That the charges preferred by the complainant were plainly a subterfuge and calculated solely to harass and persecute the appellant.

(13) That the charges made in this cause bear date October 9th, 1934, which date is prior to the date on which the appellant was reinstated, namely October 11th, 1934.

in the public school system in pursuance of an order of the State Commissioner of Education made on September 25th, 1934.

(14) That the charges were preferred in this cause prior to the compliance by the Board of Education of the City of Paterson with the order of the State Commissioner of Education made September 25th, 1934.

B. That the Board of Education of the City of Paterson erred in refusing to dismiss the charges preferred by the complainant, Guiana Realty Corporation, against the appellant in that:

(1) The appellant repeats and reiterates each of the grounds asserted under point 3-A herein.

(2) That the charges preferred are in no manner related to any of the causes for dismissal that might be set forth under the school law.

(3) That the charges made by the complainant were not verified and represent a mere statement of facts without being sworn to.

C. That the Board of Education erred in refusing to take a vote on the motion of counsel for the appellant addressed to the Board of Education requesting a dismissal of the complaint prior to the hearing of the evidence.

D. That the Board erred in denying the motion of counsel for the appellant to dismiss the charges after the complainant's evidence was taken.

E. That the Board erred in denying the motion of the appellant to dismiss the charges at the conclusion of the entire hearing.

F. That the Board erred in admitting into evidence over the objection of counsel for the appellant, the charges made by the Guiana Realty Corporation against Clara L. Smith, which ruling of the Board of Education was erroneous in that the said charges were irrelevant, immaterial, and incompetent for the reason that the Board of Education had no jurisdiction or authority to try the appellant on the said charges.

G. The Board erred in refusing to grant the request of counsel for the appellant that the Board of Education take a vote on the motion made by the counsel for the appellant before the hearing of the evidence, for a dismissal of the charges, which said ruling of the Board of Education was erroneous in that the chairman of the Board had no authority to exclude from the whole Board's consideration the request made.

H. The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "When was the last time the Guiana Realty Corporation held a meeting?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

I. The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examina-

tion of the witness, for complainant, William Sherrill, "Has the corporation still got a franchise, Mr. Sherrill?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

J. The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Mr. Sherrill, as president of the Guiana Realty Corporation, can you tell us when the last annual report was submitted to the Secretary of the State of New York?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

K. The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Is the Guiana Realty Corporation licensed by the banking department of the State of New York?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

L. The Board erred in sustaining the objection to the following question asked by counsel for the appellant on cross examination of the witness, for complainant, William Sherrill, "Mr. Sherrill, will you please write the name of Louis A. Bennert on that paper?", which said ruling of the Board was erroneous in that the said question was relevant, competent, and material to the issues involved.

M. The Board erred in overruling the objection of counsel for the appellant contesting the right of the Board of Education to take a vote on October 25th, relative to a motion to dismiss complaint, motion to contest jurisdiction and authority of the Board, and motion to stay the proceedings, all of which had been made on October 18th, 1934, and decision thereon noted in the record, which said ruling of the Board was erroneous in that the object of the Board overruling the objection of counsel for appellant was to alter and change the previous record of the said proceedings as evidenced by the stenographic notes of the same.

N. The Board erred in refusing to grant to counsel for the appellant a continuation of the hearing, the purpose of which was to obtain testimony of one Cyril Wilson, teller in the Dunbar National Bank, which said ruling of the Board was erroneous in that the testimony to be elicited from the said Cyril Wilson was material, relevant, and competent, and would tend to disprove the charges made by the complainant.

4. Petitioner further says that by reasons of the grievances hereinbefore stated, there is presented herein a controversy and dispute arising under the school laws of the State of New Jersey, and under the rules and regulations of the State Board of Education of the State of New Jersey.

LOUIS DWORETZ,
Attorney for Appellant.

Exhibits Annexed to Return to Writ.

State of New Jersey, } ss.:
County of Passaic, }

CLARA L. SMITH, of full age, being duly sworn according to law, upon her oath, deposes and says:

1. That she is the appellant in the above entitled cause; that the statements contained in the above petition of appeal are true to the best of her knowledge and belief.

CLARA L. SMITH.

Subscribed to and sworn before
me this 22nd day of November, 1934.

GEORGE K. SLINGLAND,
A Master in Chancery
of New Jersey.

BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION,
Respondents.

Answer to On Petition for Appeal, &c.

TO THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY:

The respondent, the Board of Education of the City of Paterson, in the County of Passaic, respectfully says:

Exhibits Annexed to Return to Writ.

1. Respondent admits paragraph one of the Petition of Appeal.

2. Respondent admits that the appellant was dismissed as a teacher in the public school system in the City of Paterson, on October 24, 1934.

3. Respondent denies paragraph three of the Petition of Appeal.

4. Respondent denies paragraph A. of the Petition of Appeal.

5. Respondent has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph A (1) of the Petition of Appeal.

6. Respondent has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph A (2) of the Petition of Appeal.

7. Respondent has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph A (3) of the Petition of Appeal.

8. Respondent denies paragraph A (4) of the Petition of Appeal.

9. Respondent denies paragraph A (5) of the Petition of Appeal.

10. Respondent denies paragraph A (6) of the Petition of Appeal.

11. Respondent denies paragraph A (7) of the Petition of Appeal.

12. Respondent denies paragraph A (8) of the Petition of Appeal.

Exhibits Annexed to Return to Writ.

13. Respondent denies paragraph A (9) of the Petition of Appeal.

14. Respondent denies paragraph A (10) of the Petition of Appeal.

15. Respondent denies paragraph A (11) of the Petition of Appeal.

16. Respondent denies paragraph A (12) of the Petition of Appeal.

17. Respondent admits paragraph A(13) of the Petition of Appeal.

18. Respondent denies paragraph A (14) of the Petition of Appeal.

19. Respondent denies paragraph B of the Petition of Appeal.

20. Respondent repeats and reiterates each of the answers asserted under point 3-A of the Petition of Appeal.

21. Respondent denies paragraph B (2) of the Petition of Appeal.

22. Respondent admits as is set forth in paragraph B (3) of the Petition of Appeal, that the charges were not verified, but denies that they represent a mere statement of facts without being sworn to.

23. Respondent denies paragraph C. of the Petition of Appeal.

24. Respondent denies paragraph D. of the Petition of Appeal.

25. Respondent denies paragarph E. of the Petition of Appeal.

26. Respondent denies paragraph F. of the Petition of Appeal.

27. Respondent denies paragraph G. of the Petition of Appeal.

28. Respondent denies paragraph H. of the Petition of Appeal.

29. Respondent denies paragraph I. of the Petition of Appeal.

30. Respondent denies paragraph J. of the Petition of Appeal.

31. Respondent denies paragraph K. of the Petition of Appeal.

32. Respondent denies paragraph L. of the Petition of Appeal.

33. Respondent denies paragraph M. of the Petition of Appeal.

34. Respondent denies paragraph N. of the Petition of Appeal.

35. Respondent denies paragraph four of the Petition of Appeal.

HAROLD D. GREEN,
Attorney for Respondent.

Service of a true copy of the within Answer is hereby acknowledged this 26th day of November, 1934.

LOUIS DWORETZ,
Atorney for Appellant.

Exhibits Annexed to Return to Writ.

BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON, and GUIANA REALTY CORPORATION,
Respondents.

Reply.

TO THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY:

The appellant, by way of reply to the allegations contained in the answer filed herein in behalf of the respondent says:

1. She joins issue with the respondent respecting the statements contained in paragraph 2 to paragraph 35 of the answer.

2. With respect to the allegation contained in paragraph 1 of the Petition of Appeal, the appellant requests leave of the Commissioner to amend paragraph 1 of the same, which shall read as follows:

> That on the 11th day of October, 1934, she was suspended as a teacher in the public school system in the City of Paterson, pending the hearing of charges made against her by the Guiana Realty Corporation, a corporation of the State of New York.

3. That the respondents are guilty of laches in that the charges upon which the appellant was tried were made more than two years after the alleged indiscretions, if any, of the appellant took place.

LOUIS DWORETZ,
Attorney for Appellant.

Service of a copy of the within reply is hereby acknowledged this 27th day of November, 1934.

HAROLD D. GREEN,
Attorney for Respondents.

CLARA L. SMITH,
Appellant,
vs.
BOARD OF EDUCATION OF THE CITY OF PATERSON,
Respondent.

Decision of the Commissioner of Education.

Louis Dworetz, for Appellant.

Harold D. Green, for Respondent.

On May 10, 1934, the appellant was dismissed as a school teacher by the Board of Education of the City of Paterson following a hearing on charges of conduct unbecoming a teacher preferred by the Guiana Realty Corporation. Miss Smith appealed for reinstatement to the Commissioner of Education, who, without considering the merits

of the case, decided that her dismissal was illegal for the reason that she did not have a fair trial because one of the board members, who was absent on certain evenings during the trial, participated in adjudicating her case. In support thereof, the Commissioner cited Kelly vs. Bishop, et al., 119 Atlantic 6, and Eisberg vs. Cliffside Park, 92 N. J. L. 321.

On October 11, 1934, the date of appellant's reinstatement, new charges against her were received by the Paterson Board of Education, who forthwith suspended her pending a hearing, which was conducted on October 18th and 24th. Again, Miss Smith was found guilty of conduct unbecoming a teacher and dismissed.

Counsel alleges that appellant's dismissal was invalid for the following reasons:

(1) The ruling of the Commissioner of Education dated September 5, 1934, was final disposition of the charges and complaint of October 11, 1934.

(2) The Guiana Realty Corporation is not a competent complainant.

(3) The matters set forth in the charges are cognizable, if at all, in a court of civil jurisdiction.

(4) The charges made by the complainant were not verified and represented a mere statement of facts without being sworn to.

(5) The board of education erred in rejecting very material and pertinent evidence.

(6) The complainant, the Guiana Realty Corporation, was guilty of laches.

(7) There was no creditable evidence adduced to support the dismissal of the appellant.

(8) The charges preferred by the complainant were plainly a subterfuge and calculated solely to harass and persecute the appellant.

(1) Since in the former case the Commissioner did not render a decision based upon its merits, the legality of a retrial is supported by the following:

Corpus Juris, Vol. 34, par. 1210, p. 793, reads in part as follows:

"A judgment dismissing a suit on account of any technical defect, irregularity or informality, is not on the merits and is, therefore, no bar to subsequent action."

Par. 1501, p. 1063, reads:

"Since a former judgment between the same parties does not bar a second suit upon the same cause of action unless it was rendered on the merits, a plea of former adjudication must distinctly show that such former judgment was on the merits."

In Hughes vs. United States, 4 Wall, 232, the Court held:

"In order that a judgment may constitute a bar to another suit it must be rendered in a proceeding between the same

> parties or their privies, and the point of controversy must be the same in both cases and must be determined on its merits. If the first suit was dismissed for defect of pleadings or parties, or a misconception of the form of proceedings, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit."

The Commissioner cannot agree with appellant's counsel that the failure of the Commissioner's former decision to include a remanding order bars the bringing of a new suit under the conditions in this case. As pointed out by attorney for respondent, to have remanded the case would require the board to continue it, when such action might not be desired. Failure to remand the case left to the discretion of the board the discontinuance of the prosecution or the conduct of a hearing on the same or new charges.

(2) Charges, reflecting upon the honesty and integrity of Miss Smith, were submitted by the Guiana Realty Corporation. Regardless of whether they were signed by the representatives, or agents, of a corporation, or whether the signers were residents of this State or elsewhere, the board acted within its rights in conducting a hearing to determine to what extent, if any, the teacher was guilty of the charges and whether, if guilty, her dismissal should follow.

(3) While charges of fraud and forgery are, of course, cognizable in the civil courts, certainly such cognizance does not bar a board of education from

hearing charges involving the penalty of dismissal under the provisions of the Teachers' Tenure of Office Act; namely, inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.

(4) While the Janitors' Tenure Act, Chapter 44, P. L. 1911, requires a sworn complaint, the Teachers' Tenure of Office Act, Chapter 243, P. L. 1909, contains no similar provision. The latter act simply requires the signing of the charges by the person or persons making them and the filing thereof with the secretary of the board of education. Since the charges against Miss Smith were filed by the persons constituting the Guiana Realty Corporation, through their officers, they are legal.

(5) There is nothing in the testimony to indicate that the board of education rejected any evidence which affected her right to a fair trial.

(6) A delay by the Guiana Realty Corporation in presenting the charges in nowise constitutes laches by the board of education. When the conduct of the teacher was brought formally to the attention of the board of education, it proceeded with the trial; and since there was no delay by the board, there is no justification of a charge of laches against it.

(7) The board of education heard sworn testimony as to the acts of the appellant. There was no testimony to attack the credibility of the witnesses, the principal claim being that the testimony was incompetent because some witnesses came from outside the State. The charges appear to be reasonably supported by the evidence.

(8) There is no testimony to justify the allegation of counsel for appellant that these charges were brought to persecute and harass Miss Smith.

The Commissioner and State Board of Education have held in a number of cases that they will not disturb the findings of a local board of education in the dismissal of a teacher on charges, provided the board reached its decision after giving a fair hearing and there was no showing of passion or prejudice on its part.

Wallace vs. Greenwich Township Board of Education, 1932 Compilation of School Law Decisions, 859; Fitch vs. South Amboy, 1928 Compilation of School Law Decisions, 176; Cheeseman vs. Gloucester City, 1928 Compilation of School Law Decisions, 159. In Martin vs. Smith, 100 N. J. L. 50, Justice Minturn in delivering the opinion of the Supreme Court in a similar situation said:

> "But the settled rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusion of guilt or innocence, this court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment. If the judgment of the trial court can be fairly supported by the record, the duty of this court is at an end so far as further investigation is concerned."

Since written charges were preferred against Miss Smith and served upon her, and a fair hearing was conducted by the board of education, at which she was represented by counsel, and the testimony supported the charges, the appellant was legally dismissed by the Paterson Board of Education.

CHARLES H. ELLIOTT,
Commissioner of Education.

February 8, 1935.

Reasons for Reversal.

NEW JERSEY SUPREME COURT.

(Filed April 15, 1936.)

CLARA L. SMITH, *Prosecutor,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioner of the State Board of Education, of the State of New Jersey, *Respondents.*	On Certiorari. Reasons for Reversal.

The prosecutor assigns for reversal the following reasons why her conviction before the Board of Education of the City of Paterson on October 24, 1934, which was sustained by the Commissioner of Education and further sustained by the State Board of Education, the respondents herein, should not be set aside and for nothing holden:

1. That the Board of Education of the City of Paterson had no jurisdiction or authority to try the prosecutor on the complaint of the Guiana Realty Corporation, a corporation of the State of New York, dated October 9th, 1934.

2. That a ruling of the Commissioner of Education dated September 25th, 1934 was a final

disposition of the charges which were embodied in the complaint of October 9th, 1934.

3. That the charges set forth in the complaint of October 9th, 1934 were the same charges upon which the prosecutor was previously tried and which culminated in her dismissal as a teacher from the public school system of the City of Paterson, and which dismissal was subsequently reversed and set aside.

4. That the subject matter of the charges in the complaint of October 9th, 1934 were destroyed by the reinstatement of the prosecutor as a school teacher in the public school system of Paterson, N. J., dated October 11th, 1934, wherein the prosecutor was ordered to be reinstated and her salary from February 6th, 1934 was ordered to be paid and which said salary was actually paid.

5. That the Guiana Realty Corporation was not a competent party complainant under the laws of the State of New Jersey and in particular under Section 106A of the School Laws of this State.

6. That the matters set forth in the complaint dated October 9th, 1934 made by the complainant were cognizable, if at all, in a court of civil jurisdiction only.

7. That the charges made by the complainant were not verified and represented merely a statement of fact without having been previously swonr to.

8. That the complainant Guiana Realty Corporation was guilty of laches in that all of the alleged indiscretions of the prosecutor took place

on September 15th 1932, which was more than two years prior to the date of her trial, all of which was to the detriment of the prosecutor.

9. That there was no evidence adduced at the trial to support the charges made by the complainant.

10. That the Board of Education of the City of Paterson erred in sustaining the objection of its counsel to the following question propounded to William Sherrill, President of the Guiana Realty Corporation on cross examination by the attorney of the prosecutor:

> "When was the last time the Guiana Realty Corporation held a meeting?"

which said ruling of the Board of Education was erroneous in that the said question was material and relevant to the issues involved and had for its purpose the eliciting of information which would show or tend to show that the Guiana Realty Corporation was not a competent party to institute proceedings against the prosecutor.

11. That the Board of Education of the City of Paterson erred in sustaining the objection of its counsel to the following question propounded to William Sherrill, President of the Guiana Realty Corporation on cross examination by the attorney of the prosecutor:

> "Has the corporation still got a franchise, Mr. Sherrill?"

which said ruling of the Board of Education was erroneous in that the said question was material and relevant to the issues involved and had for its purpose the eliciting of information which

would show or tend to show that the Guiana Realty Corporation was not a competent party to institute proceedings against the prosecutor.

12. That the Board of Education of the City of Paterson erred in sustaining the objections of its counsel to the following question propounded to William Sherrill, President of the Guiana Realty Corporation on cross examination by the attorney of the prosecutor:

> "Mr. Sherrill, as president of the Guiana Realty Corporation, can you tell us when the last annual report was submitted to the Secretary of the State of New York?"

which said ruling of the Board of Education was erroneous in that the said question was material and relevant to the issues involved and had for its purpose the eliciting of information which would show or tend to show that the Guiana Realty Corporation was not a competent party to institute proceedings against the prosecutor.

13. That the Board of Education of the City of Paterson erred in sustaining the objection of its counsel to the following question propounded to William Sherrill, president of the Guiana Realty Corporation on cross examination by the attorney of the prosecutor:

> "Is the Guiana Realty Corporation licensed by the banking department of the State of New Jersey?"

which said ruling of the Board of Education was erroneous in that the said question was material and relevant to the issues involved and had for its purpose the eliciting of information which

would show or tend to show that the Guiana Realty Corporation was not a competent party to institute proceedings against the prosecutor.

14. That the Board of Education of the City of Paterson erred in sustaining the objection of its counsel to the following question propounded to William Sherrill, President of the Guiana Realty Corporation on cross examination by the attorney of the prosecutor:

> "Mr. Sherill, will you please write the name of Louis A. Bennert on that paper?"

which said ruling of the Board of Education was erroneous in that the said question was material and relevant to the issues involved and in that the object of the said question was to elicit information which would prove or tend to prove that the prosecutor did not commit the forgery alleged in the complaint, and for the additional reason that the answer to the said question would have a considerable effect upon the credibility of the witness.

15. That the Board of Education erred in refusing to the prosecutor the right of an adjournment for the purpose of presenting on her behalf a material witness named Cyril Wilson, which said refusal of the Board of Education of the City of Paterson was manifestly wrong and prejudicial to the prosecutor.

16. That the charges preferred by the complainant were plainly a subterfuge and calculated solely to harass and persecute the prosecutor for the purpose of compelling the prosecutor to pay a money obligation.

Reasons for Reversal.

17. That the Board of Education of the City of Paterson erred in denying the motion of the prosecutor to dismiss the charges at the conclusion of the complainant's case.

18. That the Board of Education of the City of Paterson erred in denying the motion of the prosecutor to dismiss the charges at the conclusion of the entire case.

19. That the charges made and the proofs submitted were in no wise related to the want of ability, efficiency, and integrity of the prosecutor in the public school system of the City of Paterson.

20. That the Board of Education of the City of Paterson erred in finding the prosecutor guilty of conduct unbecoming a teacher in the public schools of Paterson, New Jersey, and in dismissing her from the public school system of the City of Paterson.

21. That the Commissioner of Education for one or more of the reasons hereinbefore stated erred in affirming the action of the Board of Education of the City of Paterson in which the prosecutor was found guilty of conduct unbecoming a teacher.

22. That the State Board of Education for one or more of the reasons hereinbefore stated erred in affirming the action of the Commissioner of Education who sustained the conviction of the prosecutor by the Board of Education of the City of Paterson of conduct unbecoming a teacher.

Attorney for Prosecutor.

Service of a copy of the within reason for refusal is hereby acknowledged this 13th day of April, 1936, as of time.

HAROLD D. GREEN,
Attorney for Board of Education
of the City of Paterson in
the County of Passaic.

Transcript of Testimony.

BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC.

GUIANA REALTY CORPORATION,
Complainant,
vs.
CLARA L. SMITH,
Defendant.

Transcript of testimony taken in the above-entitled matter, before the members of the Board of Education of the City of Paterson, New Jersey, at the Board Rooms in the City Hall, Paterson, on the eighteenth day of October, 1934, at 8 P. M.

PRESENT:

Commissioners MARGARET I. FINN, President of the Board, MRS. NAN DONOHUE, DR. WILLIAM FLITCROFT, RICHARD K. O'DEA, ADRIAN PATMOS, BARTON H. WALKER, JAMES E. TORREY and SAMUEL GROBART.

Transcript of Testimony.

APPEARANCES:

HAROLD D. GREEN, Esq., Counsel for the Board, for the Complainant.

LOUIS DWORETZ, Esq., and PAUL RITTENBERG, Esq., for the Defendant.

Roll call by Secretary Thomas F. Kelley.

PRESENT:

Commissioners Donohue, Flitcroft, O'Dea, Patmos, Torrey, Walker and Finn.

ABSENT:

Commissioners Grobart and Federici.

Secretary Kelley read the following:

"Mr. Thomas F. Kelley,
Secretary, Board of Education,
Paterson, N. J.

My dear Mr. Kelley:

Please call a special meeting of the Board of Education for Thursday evening, October 18, 1934, for the purpose of considering charges against Clara L. Smith, a teacher in its department, for conduct unbecoming a teacher.

Very truly yours,

Margaret I. Finn,
President."

The President: Members of the Board, I wish to vacate the chair. Mr. Walker, will you take the chair?

(Mr. Walker takes the chair.)

Mr. Green: Where is the resolution that was passed at the meeting of the Board calling for this hearing?

The Secretary: I don't think they are written up yet.

Mr. Green: Well, where are the originals?

(The Secretary hands papers to Mr. Green.)

Mr. Green: The minutes haven't been written up yet. The original resolution was that "It is regularly moved that the charges presented here by the Guiana Realty Corporation, a corporation, against Clara L. Smith, be received, and the Secretary instructed to serve a copy of the same upon the said Clara L. Smith, forthwith, and that she be tried upon the charges on October 18th, 1934, at 8 o'clock P. M., in the office of the Board of Education of the City of Paterson, at the City Hall, Paterson, N. J., and that the said Clara L. Smith be advised that she have an opportunity at that time to defend the charges and present such witnesses as she may desire in the defense of the same."

That motion was carried, and the following motion was introduced and passed:

"I hereby move that Clara L. Smith, be suspended as a teacher in the Public School system of the City of Paterson, County of Passaic, pending the determination of the charges of the Guiana Realty Corporation."

Mr. Dworetz: Give me the date of the meeting when those resolutions were passed?

Mr. Green: The date was on last Thursday.

Mr. Dworetz: Was that the eleventh?

The Secretary: That was the eleventh.

Mr. Green: This is a case, ladies and gentlemen, brought under the school law of the State of New Jersey, wherein charges have been preferred by the Guiana Realty Corporation, a corporation, against Clara L. Smith, an employe of the Board of Education. In order to expedite matters, counsel for Clara L. Smith has consented to waive the reading of the charges, and I am going to ask that the charges be introduced into evidence.

Mr. Dworetz: Counsel objects to the introduction of the charges in evidence. I waive the reading, but I don't admit the charges going into evidence.

The Chairman: The objection will be noted.

Mr. Green: They have been properly served. Service has been acknowledged by counsel for the defendant, and I ask that the charges be marked in evidence.

Mr. Dworetz: We again object to the charges going into evidence.

The Chairman: We will note your objection. They will be admitted.

(Charges marked Exhibit P-1, and are as follows):

"Board of Education of the City of Paterson, in the County of Passaic.

GUIANA REALTY CORPORATION,
Complainant,

vs.

CLARA L. SMITH.

To the members of the Board of Education of the City of Paterson in the County of Passaic.

Ladies and Gentlemen:

"The Guiana Realty Corporation, a corporation, by William Sherrill, its president, does hereby charge that Clara L. Smith, a teacher in the employ of the Board of Education of the City of Paterson in the County of Passaic, is guilty of conduct unbecoming a teacher.

FIRST COUNT:

"1. That the Guiana Realty Corporation is a realty corporation, existing by virtue of and under the laws of the State of New York.

"2. That on or about the 15th of September, 1932, Clara L. Smith, a teacher in the Public Schools of Paterson, New Jersey, secured a loan of $500.00 (Five Hundred Dollars) from the Guiana Realty Corporation, evidenced by promissory note, the same to be paid in two installments, to wit, October 15th and November 15th, 1932, respectively.

"3. That on a questionnaire furnished for the benefit of the petitioner to the borrower, one of the endorsers, Filimore Smith, states that he is the owner of property valued at $9,000 and the other endorser Florence Smith states that she is the owner of realty valued at $8,000.

"4. That on the same questionnaire Clara L. Smith stated that she was not obligated or indebted to anyone other than a Building Association.

"5. That on the due dates, to wit, October 15th and November 15th, 1932, Clara L. Smith had tendered two worthless checks, neither of which has as yet been honored, though demand has been made for payment.

"6. That subsequent to this time, to wit, November 15th, 1932, Clara L. Smith defaulted in the payment of the note in question.

"7. That the Guiana Realty Corporation has numerous exhibits in the form of telegrams, letters, dishonored checks, deposit slips, etc., with extravagant promises to make payment which promises indicate the unreliability of Clara L. Smith.

"8. That the Guiana Realty Corporation is informed and verily believes that Clara L. Smith was indebted and obligated to numerous persons and institutions in various sums of money and at the time that she stated on the questionnaire that she was not indebted to anyone other than a certain Building Association, judgments had been obtained against her in the State of New Jersey for money due to others at the time that she obtained a loan from the Guiana Realty Corporation.

"9. That while Clara L. Smith was indebted to the Guiana Realty Corporation she attempted to secure a loan from J. W. Walker of New York City for the sum of $1,000 (One Thousand Dollars) and informed Mr. Walker that she was not indebted to the Guiana Realty Corporation but

that she had paid back to the corporation the loan previously secured from it.

"10. That in making the loan to Clara L. Smith the Guiana Realty Corporation had relied upon certain representations made by Clara L. Smith, relative to the availability of her New Jersey Pension and Annuity Fund money as security for the money borrowed from the Guiana Realty Corporation, and at the time Clara L. Smith secured the loan from the Guiana Realty Corporation, she exhibited to William Sherrill, its president, a statement from the Board of Education of Paterson, New Jersey, which by its terms stated 'Any teacher of our city who uses this fund as security in any transaction is really risking his or her position in case of default.' Miss Clara L. Smith did use this fund as security. Miss Clara L. Smith has defaulted in payment.

"11. That since November 15th, the day on which the note in question became due and payable, every effort has been made to collect the sum above mentioned, repeated demands have been made to Miss Clara L. Smith, the matter has been referred to the Board of Education of the City of Paterson, New Jersey, the Commissioner of Education at Trenton, New Jersey, the State Pension and Annuity Bureau and the Prosecutor of Passaic County and except for three Western Union checks in the aggregate sum of $154.00 (One Hundred Fifty-four dollars) Clara L. Smith has neglected and failed to pay the amount due to the Guiana Realty Corporation of $500.00 (Five Hundred Dollars).

(Twelfth paragraph struck out.)

"13. That the said Clara L. Smith was guilty of misrepresentation and fraud in the making of the application for the borrowing of the Five Hundred ($500.00) Dollars, as hereinbefore set forth.

"Wherefore, your complainant requests that the said Clara L. Smith, by virtue of her dishonesty, lack of integrity, fraudulent misrepresentations and forgery, be removed from her position as a teacher in the Public Schools in the City of Paterson, New Jersey, as a person wholly irresponsible and morally unfit to teach, supervise, or give moral guidance to the children under her direction.

GUIANA REALTY CORPORATION,

By William Sherrill,
President.

Dated October 9, 1934."

Mr. Dworetz: At this time, if it please the honorable members of the Board of Education, before entering a plea, or plead to these charges, the respondent, the defendant, Clara L. Smith, contests the jurisdiction and authority of the Board of Education in this matter for the following reasons:

In the first place, the complainant, Guiana Realty Corporation, a corporation, is not a citizen of either the City of Paterson, County of Passaic or State of New Jersey; that it is not authorized to do business in the State of New Jersey; that the matters about which the said Guiana Realty Corporation complain pertain to a purely private matter; that the charges preferred by the complainant in no way, shape, form or manner connect the defendant, Clara L. Smith, with conduct unbecoming a teacher in the Public School system

of the City of Paterson; that the matters set forth in the charges are cognizable, if at all, in a court of civil jurisdiction; that these proceedings, namely, the present complaint, is in open defiance to a ruling of the State Commissioner, Dr. Charles H. Elliott; that under a ruling and decision of Dr. Charles H. Elliott, Commissioner of the State of New Jersey, on the twenty-fifth day of September, 1934, ordered that the defendant in this case, Clara L. Smith, be reinstated, and that the Board of Education of the City of Paterson is directed to pay her salary from February 6th, 1934, and to immediately reinstate her as a teacher in its school system. There is absolutely no reference made in that decision by the State Commissioner of Education for a new trial or trial de novo; that these charges are identical with the charges against the respondent as in the previous case, and that these charges are merely a subterfuge, and for these reasons, ladies and gentlemen, the defendant contests the jurisdiction or right of this Board to try the defendant again.

The Chairman: Same ruling. Your exception will be noted. We will hear the evidence.

Mr. Dworetz: I, at this time, ask and request that the members take a vote on the motion.

The Chairman: We have all heard the motion. Now, we will vote on it. Those in favor of proceeding with the case, aye—contrary, no.

Commissioner O'Dea: What's the motion?

Mr. Green: I don't know what the motion is for the members to vote on.

Mr. Dworetz: Counsel for the defendant——

Mr. Green: You made no motion. You stated your objection. If you make your motion, I have no objection to it.

Mr. Dworetz: Setting forth the charges as just a moment ago referred to, I move for a dismissal of the charges on the same grounds as hereinbefore stated.

(At this point Commissioner Grobart enters the room.)

The Chairman: We will go on and vote on it.

Commissioner Torrey: That the motion be voted on? Any question or discussion in order?

The Chairman: I guess we just vote on it. The question is whether we go on—whether we should go on with the hearing. He objects to the jurisdiction of the Board to try it.

Commissioner O'Dea: We have already voted on that when we called this meeting on it.

Commissioner Torrey: Read the section of the State Commissioner's opinion stating the reason why the case was thrown back here.

Mr. Green: I would suggest that you vote on the motion.

Commissioner O'Dea: I think the motion should be explained. The Chair might explain what the motion is, repeat it.

The Chairman: Whether his objection will be sustained; whether we have jurisdiction to go on with it.

All those in favor of going on with it——

Mr. Green: Would you advise how the members of the Board are voting? If they vote yes, they are going on with it.

Commissioner O'Dea: If you vote yes, you vote to go on with the trial. If you vote no——

The Chairman: That is the purpose of the motion—whether we go on with the trial.

Commissioner Donohue: I am voting yes, to go on with the trial on the motion that counsel made as to dismissing the charges.

The Chairman: One is the same as the other.

Mr. Dworetz: I don't think I can make it any clearer than I have stated it. If it is not clear to the members of the——

The Chairman: Deny the motion. Let's go on.

Mr. Dworetz: Now I am asking for a dismissal of the charges that have been preferred by the Guiana Realty Corporation. In the first place, the charges entered by the said complainant, are in no wise or in no manner related to any of the causes that might be set forth under the school law. Further, that the charges in this matter are dated October 9th, 1934. This date is prior to the date the respondent was reinstated.

I also move for a dismissal of these charges on the grounds that the complaint has not been sworn to. It is merely a statement. They have not been verified. On those grounds I ask for a dismissal.

The Chairman: Your motion is denied. Exception noted.

Mr. Dworetz. Take an exception, and at this time ask for a vote of the Board on the question.

The Chairman: Motion will be denied, and we will proceed with the case.

Mr. Dworetz: I object to the refusal of the Board to take a vote on this matter.

The Chairman: Your objection is noted.

Mr. Dworetz: I ask for an exception.

The Chairman: Your exception is allowed.

Mr. Dworetz: At this time, ladies and gentlemen of the Board of Education, I move for a stay of these proceedings until such time as the Board shall fairly order an inspection and examination

of the books of the Guiana Realty Corporation and until such time as the respondent has had a reasonable opportunity to examine and inspect the same. We realize that the Board may have difficulty in this respect, since these books are in the State of New York. However, we request that the Board make it a condition upon the prosecution of this complaint, that the complainant submit its books and records so that the same may be inspected and examined by the respondent and her accountants. We respectfully ask that this matter be stayed.

Mr. Green: We have no right to do that, Mr. President. We have no power to enforce our request.

The Chairman: Your request will be denied.

Mr. Dworetz: Your Honor will allow me an exception.

The Chairman: Certainly.

Mr. Dworetz: Will your Honor vote on the matter?

The Chairman: I don't think it is necessary.

Mr. Dworetz: Allow an exception?

The Chairman: Certainly.

MR. JOHN A. WOOD, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Wood, you are secretary of the Teachers' Pension and Annuity Fund? A. Yes.

Q. And where is your office? A. In the City of Trenton.

Q. And in the capacity as secretary, you are in charge of the records of the pension fund relating

to the various teachers in the school system of the State of New Jersey? A. Yes.

Q. And have you the records of the pension fund relating to Clara L. Smith, a school teacher in the employ of the Board of Education of the City of Paterson? A. Yes, I have.

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

Q. Will you produce it, please? A. (Producing papers) I have it here.

Q. Just what money did Clara L. Smith have to her credit in the pension fund on September 15th, 1932?

Mr. Dworetz: I object to the question on the ground that it is immaterial and incompetent.

The Chairman: Objection is overruled.

Mr. Dworetz: Allow an exception.

The Chairman: Certainly. Exception is noted.

A. Clara Smith had in June, 1932——

Mr. Green: Just a minute. I withdraw the question.

Q. How much money did Clara Smith have to the credit of her pension fund on June 8th, 1932?

Mr. Dworetz: I object to the question on the ground that it is immaterial.

The Court: Your objection is overruled.

Mr. Dworetz: Allow an exception.

The Chairman: Exception allowed.

A. Your question can be answered I take it in this way, that the amount to her credit either of savings and equity of her own that was available for withdrawal, we quoted to her on June 8th, $891.54, as available in case of withdrawal during the month of June, 1932.

Q. You say you quoted that to her? A. Yes.

Q. How did it happen that you quoted to her the amount she had on deposit in the pension fund? A. In reply to a telegram which we received on the morning of June 8th which reads as follows, signed by Clara L. and Florence A. Smith: "Please tell us total amount which is standing to his credit including interest to date. Our numbers are 111557 and 1096. Mail each a beneficiary transfer blank. Telegraph information C. O. D. at once."

Q. And in reply to that telegram you answered in what fashion? A. A telegram to Clara L. Smith, July 1932,——

Q. Wait a minute. A telegram to Clara L. Smith?

Q. Dated when? A. June 8th.

Q. Addressed to whom? A. Addressed to Clara L. Smith, at the Telegraph Office of the Western Union in Paterson, New Jersey.

Q. And what did the telegram say? A. "July, 1932, withdrawal values assuming June contributions paid including 3½ percent interest approximately $891.54 and $1,146.96. Letter follows care of Mr. Kelley."

Q. And did you send a letter thereafter? A. Yes.

Q. What did the letter say? Have you got a copy of the letter that you sent to her? A. I am reading from the letter. It is the only copy I have of the wording of the telegram.

Q. Have you the original telegram with you that you received from Clara Smith? A. Yes.

Q. And have you a copy of it? A. Yes, I think I have extra ones. I have furnished copies of it and I have other copies of it here.

Mr. Green: Will you consent to the offering of a copy?

Mr. Dworetz: Yes, we will consent to it.

The Chairman: Do you want a certified copy?

Mr. Green: No, not if they consent to it.

Q. Have you got a copy of the letter that you sent to Clara L. Smith? A. Yes.

Mr. Green: Do you consent to a copy of the letter?

Mr. Dworetz: Consent to it.

Mr. Green: I offer the telegram.

Copy of telegram marked Exhibit P-2, and is as follows:

"Teachers' Pension and Annuity Fund, State House, Trenton, N. J.

"Please tell us total amount which is standing to his credit including interest to date. Our numbers are 11557 and 1096. Mail each a beneficiary transfer blank. Telegraph information C O D.

Clara L. and Florence A. Smith."

Mr. Green: And copy of the letter in evidence.

Copy of letter marked Exhibit P-3 and is as follows:

"June 8, 1932.

Miss Clara L. Smith,
c/o Thos. F. Kelley, Secretary,
Board of Education,
Paterson, N. J.

Dear Madam:

"Receipt is acknowledged of your telegram received this morning as follows:

"'Please tell us total amount which is standing to his credit including interest to date. Our numbers are 11557 and 1096. Mail each a beneficiary transfer blank, Telegraph information C. O. D. at once.'

"We sent you a telegram C. O. D. this afternoon as follows:

"'July, 1932, withdrawal values assuming June contributions paid including 3½ per cent. interest, approximately $891.54 and $1146.96. Letter follows care of Mr. Kelley.'

"Assuming that a contribution of $9.78 will be deducted from your June, 1932 salary as heretofore, you will have contributed to the fund a total of $754.70. Your sister, Florence A. Smith, will have contributed a total of $951.00. 3½ per cent. interest on these accounts to July 1, 1932, give the values quoted in our telegram and confirmed above.

"In compliance with your request, we enclose herewith form on which each of you may nominate a beneficiary of his equity in the Annuity Savings Fund in case of death while a member before retirement.

"If you contemplate leaving the service and withdrawing your money, form of application for withdrawal may be secured from the secretary of your employing board or from this office.

"The interest items quoted in this letter are not to be taken as estimates or guaranties but as an approximation furnished at your request.

"Very truly yours,

"JOHN A. WOOD,
"Secretary."

The Chairman: No objection. They will be received.

Mr. Green: I would like it noted on the record that counsel for Clara L. Smith has consented that copies be introduced.

Q. And this took place on June 8th, 1932? A. That's right.

Q. Who was the beneficiary of the pension fund of Clara L. Smith at that time? A. Her mother, Ella Lillian Smith.

Q. Was it changed after that date? A. Yes.

Q. When? A. On September 15th, 1932, the beneficiary was changed to the Guiana Realty Corporation, creditors.

Q. Are they still the beneficiaries of this pension fund? A. No.

Q. When was that changed? A. On August 11, 1934, we filed a request of Clara L. Smith for the renomination of her mother, Ella Lillian Smith.

Q. And her mother is now the beneficiary? A. Yes.

Q. Is the pension fund subject to being assigned as collateral security? A. No.

Q. And when a member of the pension fund changes the beneficiary, they reserve the right to change it at a subsequent date if they so desire? A. Always been so interpreted by our Board.

Q. So that if it is changed on September 15th, 1932, it may also be changed on September 16th, 1932, if the teacher so desires? A. That's right.

Cross examination by Mr. Dworetz:

Q. Was there a change made on the sixteenth of September, 1932? A. No. The last change which is still in force is the last one I read, that of August 11th, 1934.

Q. So that between September 16th, 1932, and August 11th, 1934, it was in the name of the Guiana Realty Corporation? A. That's right.

Q. As beneficiary? A. As beneficiary only in case of the death of the member.

Q. Is it not so, Mr. Wood, that a school teacher has the right to nominate and change the beneficiary as often as she pleases? A. That's right.

Q. And this information that you have given us in reference to the amount stated as due Miss Smith, was at the request of Miss Smith? A. We took it so. The telegram was sent by her or by her sister. It was a joint telegram.

By Mr. Green:

Q. And the answer was sent to Clara L. Smith, care of— A. Secretary of the Board.

Q. Secretary of the Board of Education? A. Yes.

Q. That's all. A. I believe that the answer—yes, that's right. It was sent to Clara L. Smith.

By Mr. Dworetz:

Q. Mr. Wood, did you testify in the previous trial in this case? A. Not personally, no. These records were brought up, I mean, from the office.

By Mr. Green:

Q. Just a minute. I just want to clarify that. What trial do you refer to, Mr. Wood? A. I don't have it very clear in mind, but I have plenty of subpoenas here. There were trials in one of the courts in New York City——

Q. That's what you refer to? A. I am giving you approximate—I can give you the dates.

Q. No. I am just interested in knowing whether it was in New York City or here in Paterson? A. Well, they were in New York City all April of this year.

By Mr. Dworetz:

Q. What date? A. On the first call for the ninth, and I believe the final hearing was the tenth. I don't believe that Mr. Bevan was asked to appear the first day of the trial.

Q. Do you know what happened to these charges over in New York? A. No, I don't know.

WILLIAM SHERRILL, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Sherrill, you are the president of the Guiana Realty Corporation? A. Yes, sir.

Q. Where is your place of business? A. 260 West 135th Street, New York City.

Q. And you are acquainted with Clara L. Smith? A. Yes, sir.

Q. When did you first meet Miss Smith? A. About the fourteenth or the fifteenth day of September, 1932.

Q. And where did you meet her? A. She came over to New York at my place. I met her at my place, 260 West 135th Street.

Q. Did you have a conversation with her? A. Yes, sir.

Q. What was it? A. She said she was referred to see me by Mr. John W. Walker in reference to obtaining a loan of five hundred dollars.

Q. And did you have a conversation with her regarding the lending of five hundred dollars to her? A. Yes, sir.

Q. Well, suppose you tell us just in your own words what took place from that time on? A. I said to Miss Smith: "Why should Mr. Walker send you to me?" Of course——

Mr. Dworetz: I object to what Mr. Walker told her.

Mr. Green: He is not saying what Mr. Walker told her. He is saying what he told Miss Smith.

Q. Go ahead, Mr. Sherrill? A. She said she was sent to Mr. Walker by a friend of hers, Mr. Thomas, and that Mr. Walker said he didn't have the money, and because he is a friend of mine also he referred her to me, and Miss Smith said to me she needed this money very, very badly, because she had had some trouble with the Board of Education before and she didn't want to be called about this, as her job—her job is at stake. She also showed me some checks—I have got one of the checks here—telling me there is some money coming back. She deposited some checks in some bank in this city, some checks given to her, and the checks bounced back to her. I got one of the checks here. Of course, there was several of them. Of course I gave her back the checks, and she said that her father was going to help her out on money that was coming to him, and that check bounced back, and if we didn't give her money she is going to lose her job because she was warned by the school board on several occasions previous. She also told me, she said: "Mr. Sherrill, we are very wealthy people over there." I said: "I

don't know about Jersey people. I have never been there." She said her father was a kind of magistrate, justice of the peace, and they owned lots of property, money in the bank, and the money was tied up over here. She said if I loaned her five hundred dollars she has got collateral. So I said: "What kind of collateral. I would like to see something." Miss Smith took out a letter reading that there was a lot of money to her credit and her sister's credit in Trenton, and the lettter outlined, I mean further outlined, that if they borrowed money against this fund, and if you complained to the Board of Education if they didn't pay up, they are subject to some scolding, something of that nature.

Q. (Showing witness) I show you a letter dated June 10th, 1932, and ask you if that is the letter you refer to? A. Yes, sir.

Mr. Dworetz: May I see that letter?

(Counsel is handed letter.)

Mr. Green: I offer the letter in evidence.

The Chairman: Any objection? No objection? It will be admitted.

(Letter is marked Exhibit P-4.)

Mr. Green: (Reading letter):

"Board of Education
Paterson, N. J.
Public School Number 18.

To Whom It May Concern:

"The Misses Smith, Florence A. and Clara L., have asked me to furnish the following information concerning the Teachers' Pension and Annuity Fund. Former has $1,845.16; credited to Clara L. $1,415.23.

"The fund consists of accumulated deduction from the salary of the teacher plus interest and any possible dividends. The teachers employed in the City of Paterson are forced to accumulate this fund which increases each month. Dues are deducted from each check before same is presented to the teacher. Thus, the teacher has no chance in defaulting membership.

"Each teacher has the sole privilege of naming the beneficiary. This may only be done by signing the proper nomination sheet and forwarding the same to our Trenton office. These blanks will not be furnished upon request if there are any claims or complaints against the teacher concerned. Thus, presentation of these blanks for proper signatures indicate that the teacher in question is permitted to transfer the fund.

"The fund will only be paid to the beneficiary after he or she has established his or her identity as the proper person to receive the same.

"This fund is not an insurance. It is paid to the beneficiary in case of the death or resignation of the teacher in question.

"Any teacher of our city system who uses this fund as security in any transaction is really risking his or her position in the case of default. However, the Board of Education will not entertain any verbal complaint. WRITTEN PROOF OF THE COMPLAINT MUST BE SUBMITTED.

"Any teacher who is employed by us for thirty-five or more years may retire, and, because of the strength of this

fund, receive half pay as long as he or she may live. In this case, the beneficiary has no further claim to the fund.

"I sincerely hope that this information will be of value and assistance to those concerned, and will go far enough to say that there are not, and never have been any claims listed by our Board of Education against either of the young ladies concerned.

Very truly yours,

LEWIS A. BENNERT,
General Supervisor."

In the lower left hand corner: "LAB/BBS"

Q. And that is the letter that Miss Smith gave you? A. Yes, sir.

Q. And then what happened? A. I gave her back—that is, I mean, I gave her back that letter and her papers. I told her that I would like to get the advice of my banker, and if she will come over the next day I will go with her to the Dunbar National Bank and see Mr. Thien, who is the vice-president there. I always consult him. In case of any advice, I would rather consult him.

Q. What other papers? You said you gave her back her letter and other papers. What other papers did she have? A. She had that paper, a nomination—you know, that paper.

Q. From the pension fund? A. Yes, sir, the one that she executed, you know, that said "Nomination Blank".

Q. Did you ask her what that was? A. Yes, sir, she said that was a nomination form in accordance with this letter.

Q. What did she want to give you that for? A. Because she said that is the form which she will have to execute if I am going to give her the money.

Q. Why was she going to execute that form? A. Well, she said that when she executed that form, that makes her borrow—I mean, if she borrowed the money from me, that money loaned would be secured. The loan would be secured.

Q. So you gave her the papers back on the fourteenth of September? A. Yes, sir.

Q. Did she come back the next day? A. She came back the next day. She told me she would be a little late getting here because she would have to get somebody to put in her place to teach, or get a doctor's certificate—you know.

Q. What time did she come back? A. She came back—it was between two and three, something like that, but it was before the bank closed. It was before the bank closed.

Q. What did you do then? A. I took her to Mr. Thien. I said: "Have you got those papers—"

Q. As soon as she got there you went right over to Mr. Thien? A. Yes. As soon as she got there I asked her: "Have you got those papers you showed me last night?" She said: "Yes." I said: "Come on. Come over to the bank." I told Mr. Thien: "This is a lady by the name of Miss Smith from Jersey. Mr. Walker sent her to me to get a loan of five hundred dollars, and she has some papers here and I want to get your advice," and Mr. Thien said: "Very well." So she opened her bag and showed Mr. Thien. Mr. Thien have a talk with her, asked her a few questions and so on, and ex-

changed ideas, because he is a Jersey man himself. Then Mr. Thien said to me, "Well, Sherrill, the letter speaks for itself, and the very presence of this nomination blank according to the letter. I think if the letter—if the facts are as they are as in the letter, I think it is a good risk," and I gave her the five hundred dollars, and she executed the thing first, of course.

Q. Did she tell you that if she put your name on that certificate, she would change it right after that again?

Mr. Dworetz: I object to the question on the ground that it is leading.

By the Chairman:

Q. What did she tell you with reference tothe paper? A. She told me that that was collateral and only one person could get that at the time. She told me she had two, one belonged to her sister. "Well," I said, "will you give me both, so I will have a copy so when I mail one to Trenton I will have a copy." So she gave me both. Mr. Thien told me: "By all means, mail it right out to Trenton." So I mailed it, and kept a copy.

By Mr. Green:

Q. After you spoke to Mr. Thien where did you go with Miss Smith? A. I went back to my office.

Q. And what did you go there for? A. I went back there to get her an application blank to fill out, one of my forms, you know, to fill out. She sat down there and she filled it out, and then I asked her who she knew in New York she

could get as endorser. So she said she had a very good friend, Mr. Thomas. So she went to Mr. Thomas and brought that paper back to me with Mr. Thomas' name and a letter of introduction.

Q. (Showing witness) Is this the application blank that you gave her? A. Yes, sir, that's the application blank.

Q. And she filled it out herself? A. Yes, sir, but I don't think she got the money that same day she filled out the blank, because I told her—she said that she have to get her sister to endorse —I mean, to fill it out, too, you know, to endorse. Her sister, too, is a school teacher, of course, I understand, and I told her whenever she completed the form to have it notarized, and she brought it back to me notarized with a Jersey man, notary, and then she got the money. Then I gave her the money.

Mr. Green: I will offer the application in evidence.

Mr. Dworetz: No objection.

(Application marked Exhibit P-5.)

Q. Who filled out these blanks here? A. Miss Smith filled it out herself. She sat down at the desk and filled it out. That's all her own handwriting.

Q. I notice on the application it says: "Do you own any of the following." Now, under certain of the things after that there are lines drawn under. What does that mean?

Mr. Dworetz: The application has been introduced in evidence, and the application speaks for itself. Let counsel read the whole application.

Mr. Green: I don't want to.

Q. It says: "Do you own any of the following: Real property"—underscored—"land, household furniture, office fixtures, automobile, piano"—underscored—"radio, jewelry, machinery fixtures, stock in any corporation. Give numbers and indicate by underlining items you own." Who underlined the words "Real property" and the word "Piano"? A. Miss Smith filled that application out herself in her handwriting.

Mr. Dworetz: I again object to it. The application speaks for itself. It has been introduced in evidence. Let counsel read the whole application.

Q. Miss Smith underscored that? A. Yes, sir.

Q. On the back of the application there is signed by Clara L. Smith, what is that? A. That's—

Q. On the back? A. This is the note part of the paper.

Q. That's the note? A. Yes, sir, this is the note part of the ——

Q. So that when you gave her the five hundred dollars, she signed this note agreeing to pay you $250 on October 15th, 1932?

Mr. Dworetz: I object to that on the ground that it is leading.

The Chairman: Well, I guess it is. There is no use in going all over it. Anything you want to read from it, read from it.

Mr. Dworetz: Read the entire application, just don't pick out special parts.

Q. What happened after that?

Mr. Dworetz: Just one minute. I wish counsel would be definite. Let's have a date.

Q. What happened after Miss Smith signed the application and brought it to you with the signatures that are on here now. What did you do then? A. I asked Miss Smith if she was sure she would pay me back this money without any trouble. Miss Smith said yes. I told Miss Smith that I am going to take some interest money that I should pay on my property to loan to her, because I didn't have to——

Mr. Dworetz: I object to that as entirely immaterial, and it is not responsive to the question.

A. Well, I am telling you what I said myself. Simply I gave her the money.

Q. What did you do, did you give her the money? A. Yes, sir.

Q. How did you give it to her? A. I gave her a check.

Q. (Showing witness) I show you a check dated September 15th, 1932, on the Dunbar National Bank, drawn by the Guiana Realty Corporation, signed by William Sherrill, president, to the order of Clara L. Smith, for five hundred dollars, and ask you if that is the check? A. Yes, sir, that's it.

Q. You gave her that when? A. Well, that date would be the date that is on the check.

Q. September 15th, 1932? A. Yes, sir.

Q. Do you know what time of the day it was? A. It was before three o'clock. It was before three o'clock.

Mr. Green: I offer the check in evidence.

The Chairman: No objection. It will be admitted.

(Check marked Exhibit P-6.)

Q. Do you know when she cashed the check? A. I guess she cashed it at the bank, because she asked me if she went back to the bank if they would cash it, and I told her: "Go and see that same gentleman, and he would see that the check is cashed."

Q. Did she pay it? A. Sir?

Q. Did she pay the loan back? A. No, sir.

Q. When did you next hear from her after you gave her the five hundred dollars? A. I was in the hospital shortly after I loaned her the money. I went for an operation in the hospital, and when the first installment was due one of my secretaries told me that they got a telephone call from Miss Smith or a letter, something, saying she would be in to pay the first installment and they never got the money, and I came out from the hospital from my operation, and I never got my money, only letters and promises, so finally I turned it over to Mr. Bragg to see what he could do about getting my money.

Q. When was the first time after October 15th that you received any checks from Clara Smith? A. After October 15th or September 15th?

Q. After October 15th, after the first note was due? A. What year?

Q. After October 15th, 1932? A. Oh, oh, I didn't get any checks from her. Mr. Bragg got some checks from her. Mr. Bragg got some money order, according to the office record——

Mr. Dworetz: I object to the witness reading from——

Q. Can you remember? A. No. This is from the ledger sheet.

Mr. Glass: I think the witness has a right to refresh his memory.

By the Chairman:

Q. Do you know what payments were made? A. (Indicating papers.) I would have to look here, sir, because this is from the ledger.

Mr. Glass: I object to looking at sheets. You have the entire book here. We don't know where that is taken from.

Q. Don't rely on this, but look at it first and testify from memory?

Mr. Dworetz: I object to it.

A. Mr. Bragg gave me three money orders.

Mr. Dworetz: I object to the witness reading from this memorandum unless he has the entire set of books.

Q. Does that refresh your memory? A. Yes, sir, it was in June, 19——

By Mr. Dworetz:

Q. Just one minute. Do you keep books? A. Sure I keep books.

Q. Where are they? A. The books are in my office.

Q. Why didn't you bring the entire book down? A. This is also the ledger sheet. There is noth-

ing on the ledger except this. This is the ledger sheet.

Q. Mr. Sherrill, why didn't you bring the entire books down? A. What other book, Mister? This is the ledger sheet. "Paid Clara L. Smith, September 15, 1932, $500.00."

Q. Mr. Sherrill, why didn't you bring the entire books down? A. What books?

Mr. Green: Just a minute, if you are going to cross examine. He has introduced a memorandum for the purpose of refreshing his memory and for no other purpose. It will not be introduced in evidence or anything else.

Mr. Dworetz: I certainly have a right to cross examine him on any statement he is reading from. That is our contention. He ought to have the entire books here and not one or two memorandas. I don't know what he has got in the book.

The Chairman: We will note your objection on it.

By Mr. Green:

Q. (Showing witness.) I show you a check dated October 24, 1932, drawn on the Franklin Trust Company in the sum of $500.00, and signed by Florence A. Smith, and ask you if you have ever seen that before? A. Yes, sir.

Q. When did you get that? A. Miss Smith and her sister Florence Smith came over to see me, and Florence Smith asked to loan her some money, and I said: "No, I have to collect this money first," and then they gave me this check, and when I deposited the check the check came back two or three times.

Q. And it was given to you for $500.00? A. Yes, sir.

Q. In payment of what? A. In payment of both installments. I mean the entire note.

Q. The loan to Clara Smith? A. Yes, sir.

Q. And you deposited that check for collection? A. Yes, deposited it through my bank.

Q. Was it paid? A. No, sir. It was redeposited today, and it came back.

(Check marked Exhibit P-6.)

Q. (Showing witness.) I show you a check dated November 5th, 1932, drawn on the Franklin Trust Company of Paterson, payable to the order of Harry Bragg in the sum of $575.00, and signed Florence A. Smith, and ask if you ever saw that check before? A. Yes, sir, Mr. Bragg gave me this check. He said he deposited this check three times and it came back.

Mr. Dworetz: I ask that that be stricken out what Mr. Bragg told him.

The Chairman: Strike it out, what Bragg said.

By the Chairman:

Q. You got the check back? A. Yes, sir.

By Mr. Green:

Q. What was that check given to Mr. Bragg for? A. In payment of the loan.

Mr. Dworetz: I object to that, as to what it was given to Mr. Bragg for.

The Chairman: He knows that. Of course he knows that.

Mr. Dworetz: I object to that. How does he know?

Q. It was given to Mr. Bragg to pay for this loan?

Mr. Dworetz: I object to this. How does he know? I object to it.

Mr. Green: I asked him if he knows and he says yes.

Q. Do you know what this check was given to Mr. Bragg for? A. Yes.

Q. For what? A. In payment of the loan by the Guiana Realty Corporation to Clara L. Smith.

Q. And was it deposited for collection? A. Yes, sir.

Q. Was it paid? A. No, sir.

Mr. Dworetz: At this time I ask that the testimony regarding the check that was given to Harry Bragg be stricken out on the ground that the check was not given to the complaining witness.

Mr. Green: Harry Bragg is here.

Mr. Dworetz: Let's have the best evidence. If he is here, let him testify. I ask that that be stricken out in regard to Harry Bragg, in regard to these checks.

Mr. Green: Harry Bragg was this man's lawyer, and he has a right——

Mr. Dworetz: If he is here, let him testify. Let's have the best evidence.

Mr. Green: You will have all the evidence.

Mr. Dworetz: That's what we want.

Q. From October 15, when the first part of the note was due, did you receive any correspondence from Clara Smith? A. Yes, sir.

Q. Relative to the payment? A. Yes, sir, I received a number of correspondence.

Q. Who is Miss Hawkins? A. Miss Hawkins is one—a clerk in the office.

Q. Of the Guiana Realty Corporation? A. Yes, sir.

Q (Showing witness). I show you letter dated October 31, 1932, and ask you if that was received by your office from Clara Smith? A. Yes, sir. Miss Hawkins brought this letter to me in the hospital and showed me that's all she got from Miss Smith.

(Letter marked Exhibit P-7.)

Mr. Green (Reading letter): "39 12th Avenue, Paterson, New Jersey.

October 31, 1932.

"Dear Miss Hawkins:

"Thanks so much for your kindness. However, this mixup is all without cause. I will phone you just what evening I'll be over. Please excuse the briefness of this note, but I was out awhile today against the Dr's orders and am paying up for it with aches and pains.

"Mr. Sherrill has our every good wish for his health.

Yours truly,
Clara L. Smith.

"P.S. We received our notice from the bank in Tuesday's mail, but they attempted to get us by phone before."

Q (Showing witness). I show you letter dated November 11th, 1932, addressed to you and sent by Clara L. Smith, and ask you if you received that from Clara L. Smith? A. Yes, sir.

(Letter marked Exhibit P-8.)

Mr. Green (Reading letter): "39 12th Avenue, Paterson, New Jersey.

November 11th, 1932.

"Dear Mr. Sherrill:

"We were all glad to learn that you are home again, and hope to see you some time soon. My cousin, William McAllister, died Wednesday, and services will be held at the Duncan Parlors tomorrow evening. It will be quite late when we get away from the family, so we will not plan to stop by your home. Also, if I am as nervous as I have been I am not going to the funeral.

"It was not necessary at all for that check to have been returned to you as it was and I really don't blame you for turning it over to a lawyer. After all, business is business, and should be kept separate from friendship, and since I mean nothing but right in my dealings, I never am afraid of lawyers. I guess Mr. Bragg told you of our communications. I would certainly have been to the office, but have been ill in bed with tonsilitis, and the continued unsettled weather makes me feel miserable.

"Please give my regards to Miss Hawkins.

Sincerely,
Clara L. Smith."

Mr. Green: Will you please go over these telegrams, so as to admit them?

Mr. Dworetz: I don't know what was done before, but I would like to see them now.

(Mr. Dworetz looks over telegrams.)

We will admit them all except this one.

Mr. Green: I would like to introduce nine telegrams—introduce them as one exhibit.

(Telegrams marked as one exhibit, Exhibit P-9.)

Q. (Showing witness) These telegrams here, they were sent to you and to your lawyer with reference to the loan of five hundred dollars to Clara Smith? A. Yes, sir.

Mr. Green: Telegram dated December 10, 1932:

"Attorney Harry Bragg
580 St. Nicholas Ave
Communicating with you Monday
Clara Smith."

December 12, 1932:

"Attorney Harry Bragg
580 St. Nicholas Ave

Regret many incidents connected with transaction it seems to be a jinx adjusting satisfactorily here can send cash before Wednesday three o'clock possibly Monday or Tuesday want to allow time for adjustment will pay you well for trouble caused please control situation until then not attending school due to illness
Clara Smith."

Q. Did she send the money in accordance with the statement in the telegram here? A. No, sir.

December 14, 1932:
"Attorney Harry Bragg
580 St. Nicholas Ave

Balance following trying to keep my word have papers to prove our account was made short due to a check given us."

Q. Did she send the money following that telegram? A. No, sir.

January 15, 1933:
"William Sherrill
260 West 135 St
New York N Y

I mean to do what is right by you and will prove same if given opportunity communicating with Mr. Bragg also

Clara Smith."

Q. Did she pay the loan after receipt of that telegram? A. No, sir.

January 15, 1933:
"Attorney Harry Bragg
580 St. Nicholas Ave
New York New York

Tried to phone you today regret that I have been such a nuisance adjustment can be made Thursday evening at your convenience delays were unavoidable you will understand explanations will pay for all extra trouble answer collect via Postal Telegraph communicating with Mr. Sherrill also

Clara Smith."

Q. Did she pay following the sending of that telegram? A. No, sir.

January 19, 1933:
"Harry Bragg
580 St. Nicholas Ave
New York New York

Just received some expecting rest later will forward money order to office will be over later Friday myself.

Clara Smith."

February 6, 1933:
"Attorney Harry Bragg
111 John St
New York N Y.

Phoned yesterday no answer will be to office Friday

Clara Smith."

March 2, 1933:
"Attorney Harry Bragg
111 John St
New York N Y.

Will meet you Tuesday evening at seven without fail

Clara Smith."

Q. Now, in pursuance of these telegrams, did you have any conversation with Miss Smith?

The Chairman: With Clara Smith.

Q. (Continuing) With Clara Smith, with reference to the signature of Benjamin Thomas as a co-maker on the note? A. Yes, sir. When I gave Miss Smith this application I told her that Jersey form collateral that she had was all well and good, especially since Mr. Thien seemed to think that——

Mr. Dworetz: I object to what Mr. Thien seemed to think. Let him testify directly.

Q. Go ahead. A. So I told her——

Mr. Dworetz: One minute. I move that the testimony in regard to Mr. Thien be stricken out.

The Chairman: We will strike out what he said in regard to Mr. Thien. Go ahead.

A. I told her in view of the fact that the other co-maker is her sister and her father is justice of the peace, I must have a New York person, and she said: "Yes, I have got a very good friend in New York, Mr. Benjamin Thomas, proprietor of the Broadway Auto School", and I said all right. She came with a letter from Mr. Thomas, Broadway Auto School, saying that anything done for her would be appreciated. I think I showed you this letter.

Q. Did you speak to Mr. Thomas after you gave her the five hundred dollars?

Mr. Dworetz: I object to that on the ground it is immaterial.

The Chairman: What is the purpose of this?

Q. Did you have a talk with Clara L. Smith after the loan was granted? A. Yes, sir.

Q. With reference to the signature of Mr. Thomas? A. Yes, sir.

Q. What was that conversation? A. She—Miss Smith told me that Mr. Thomas endorsed the note for her and gave her the letter. Now, knowing Mr. Thomas' letter-head, "Broadway Auto School", you know, I took it for granted——

Mr. Dworetz: Just a minute——

Mr. Green: Let him talk.

Mr. Dworetz: No, we are going to conduct this in an orderly fashion, I don't want any hearsay to go in.

Mr. Green: Let him answer.

Mr. Dworetz: He was characterizing the testimony of——

A. (Continuing) Miss Smith told me Mr. Thomas endorsed this note for her.

Q. Did you find out afterwards whether Mr. Thomas endorsed it for her or not? A. Yes, sir.

Q. What did you find out? A. When the note was due and the money wasn't paid, I sent Mr. Thomas a letter demanding payment as an endorser of this note, and Mr. Thomas sent me back an answer stating that it is true that he gave Miss Smith a letter——

Mr. Dworetz: Just one minute please.

Q. Not what he told you, but after he wrote to you or spoke to you, did you speak to Miss Smith about it? A. Yes, sir, I told Miss Smith.

Q. What did you tell Miss Smith? A. I said: "Miss Smith, how can you do such a thing, to bring me this note with Mr. Thomas' name saying he signed it, and Mr. Thomas said he didn't sign it.

Mr. Dworetz: I object to what Mr. Thomas said.

Mr. Green: This is a conversation with Miss Smith.

A. (Continuing) And Miss Smith told me: "He signed the note, and he is a friend of my father and he comes to my house, and he and my father have been friends so long."

William Sherrill, for Complainant—Cross.

Cross examination by Mr. Dworetz:

Q. Do you know Mr. Thomas? A. Yes, sir, I know Mr. Thomas.

Q. Did you notarize his signature? A. No, I didn't notarize his signature.

Q. (Showing witness application) Is this your signature? A. Yes.

Q. Now, as a matter of fact, you notarized Mr. Thomas' signature? A. I notarized Clara Smith's signature because she signed this in my presence in my office. She filled out that paper in my office.

Q. (Showing witness) Is this your signature? A. That's my signature. I notarized Clara L. Smith's signature.

Q. (Showing witness) Mr. Sherrill, can you tell us when that was stricken out? A. What?

Q. (Showing witness) I show you an application, and ask you if you know when that was stricken out? A. Well, I don't know, Mister. I have got secretaries in my office that do—I don't know.

Q. (Showing witness) That's your signature underneath that, isn't that right? A. Yes, sir.

Q. And isn't it true, as a matter of fact, that you notarized Mr. Thomas' signature? A. No. I said that I notarized Clara L. Smith's signature once. I told her: "These are Jersey people", and she must call and get that Jersey man.

Q. Mr. Sherrill, will you just read what is underneath your signature? A. I couldn't read more than I told you that I notarized Clara L. Smith's signature.

Q. Will you just read what is under your signature? A. "William Sherrill, Notary Public, New York County, expires"—is that what you want me to read?

Q. And whose signatures are above your signature? Will you please read this? A. Well, Mister——

Q. Will you please read the signatures that are on there above your signature? A. "Florence A. Smith, Benjamin Thomas, Fillmore Smith."

Q. Mr. Sherrill, do you know what was printed here on these lines that were stricken out? A. I told you no, I don't know.

Q. Do you know? A. I don't know.

Q. Was it an affidavit? A. I don't know. I don't know nothing.

Q. No? You don't know? A. No more than as far as that line is concerned. I have secretaries in my office. I don't do all the work myself.

Q. You took care of this transaction, did you not? A. Yes.

Q. Just answer the question? A. Yes.

Q. Mr. Sherrill, what is your relation with the Guiana Realty Corporation? A. President.

Q. Who are the other officers of the Guiana Realty Corporation? A. I don't have to discuss that. It is not necessary for me to discuss that.

Mr. Dworetz: Will the stenographer repeat the question?

Q. (Repeated by stenographer) Who are the other officers of the Guiana Realty Corporation? A. I refuse to answer. What do you call that legal technicality on the ground there, counsel? What is the answer to that? No, sir, I won't answer. It isn't necessary to tell that, who are the stockholders. My partners, why——

Mr. Dworetz: At this time I ask the Board to direct Mr. Sherrill to answer the question.

A. (Continuing) I have dealings with——

Q. Just a minute. You have been talking enough. Now, just a minute. A. You talk plenty, too.

Mr. Dworetz: I haven't started yet. At this time I ask the Board to direct the witness to answer the question.

A. I refuse to answer on the grounds——

Mr. Dworetz: I wasn't talking to you. Will you please keep quiet. I am directing this to the Board.

The Chairman: If you know. I suppose there is no harm in telling who the other officers are.

A. I am the President of the corporation. I had dealings with Miss Smith. I am President of the corporation.

Mr. Dworetz: I again make the request.

A. (Producing paper) If this will help him. This was sent to me from Albany, with all the people in the corporation on it.

The Chairman (Reading): "William Sherrill, Gerald Smith and Edward Howell."

Q. Who were the officers of the Guiana Realty Corporation in September, 1932? A. These same people.

Q. When was the corporation organized? A. There is the paper.

Q. I am asking you? A. See the paper. It is on the paper there from Albany. Got the paper to show you. I am not a college graduate. I got a paper. It is from the Secretary of State.

The Chairman (Reading): "Eighteenth of August, 1931."

Mr. Dworetz: If the Board please, I have asked the witness and I believe I am entitled to an answer from him.

The Chairman: He says these are the names in this paper.

Mr. Dworetz: I asked him who were the officers in September, 1932.

The Chairman: He said he was President.

Mr. Dworetz: I asked him who the officers were.

The Chairman: What officers do you want, which ones?

Mr. Dworetz: Who were the officers in 1932, all the officers.

By the Chairman:

Q. You were President at the time, weren't you? A. Yes, sir.

Q. Who was your secretary? A. At the present time Ada Howell is the secretary.

Q. Do you have a Treasurer? A. No, no. I am the President and Treasurer.

Q. The two main offices you hold? A. Yes, sir.

By Mr. Dworetz:

Q. Mr. Sherrill, who are the officers at the present time? A. These same people.

Q. When was the last time the Guiana Realty Corporation held a meeting?

Mr. Green: I object to that as immaterial, improper and irrelevant.

The Chairman: Objection sustained.

Q. Mr. Sherrill, what is the present status of the corporation?

Mr. Green: I object to that as irrelevant, incompetent and immaterial.

The Chairman: Objection sustained.

Q. Has the corporation still got a franchise, Mr. Sherrill?

Mr. Green: I object to that upon the same ground.

The Chairman: Objection sustained.

Q. Will the witness please answer the last question?

The Chairman: The objection was sustained.

Mr. Dworetz: Now, if your Honor please, here are complaints made by the Guiana Realty Corporation, and we certainly are entitled to know, and so is the Board entitled to know, whether or not they are a lawful corporation; whether they have a right to use the name of the Guiana Realty Corporation, and whether or not there is such a thing as the Guiana Realty Corporation. It is very material.

The Chairman: Well, in what way is it material.

Mr. Green: If there is any question about it, it is a matter of defense. It is certainly not material on the complaint. The complaint is here. Just a complaint against a teacher for conduct unbecoming a teacher.

The Chairman: Objection sustained.

Mr. Dworetz: We certainly have a right to know who the complainant is, whether or not they are in good standing or not. Certainly, that is very material.

Mr. Green: It is not material at all.

The Chairman: I don't think so.

Mr. Dworetz: I would like to get my position clear in this matter, and that is this: When I get a ruling from the Chairman, whether or not that ruling goes for the entire Board, and I would like to get the record straight on that.

The Chairman: Presumably it does. They don't seem to object to it on their parts.

Commissioner O'Dea: Then we may be voting forever. I don't see why the Chair hasn't got the power to rule on any issue of that nature. I don't know how the other members feel about it, but I don't feel like sitting here and voting on every issue that comes up. I don't think there is any member here who questions the competency of the Chair. If there is I think they should have an opportunity of voicing their desires. If not, I think the same procedure should be carried out.

What are you going to vote on? Whether the Chair——

The Chairman: We are going to vote whether the witness has to answer that question or not, whether the Guiana Realty Corporation is now in good standing or not—whether it is material to this issue or not.

Mr. Green: Whether you want that question answered or not.

The Chairman: Yes.

Commissioner O'Dea: What is the question?

Mr. Green: You are voting on whether the Guiana Realty Corporation is a corporation in good standing at this time.

Commissioner O'Dea: What was the previous ruling?

The Chairman: That it was immaterial and incompetent and a question not necessary to be answered by the witness.

The Secretary (calling the roll): Donohue?

Commissioner Donohue: No.

The Secretary: Flitcroft?

Commissioner Flitcroft: No.

The Secretary: Grobart—cannot vote.

Commissioner Grobart: Why?

The Secretary: Because you weren't here.

Commissioner O'Dea: How about that?

Mr. Dworetz: Let it be noted on the record that we will consent to it, if that will satisfy Counsel. We won't question five or ten minutes.

The Secretary: Grobart?

Commissioner Grobart: No.

The Secretary: O'Dea?

Commissioner O'Dea: No.

The Secretary: Patmos?

Commissioner Patmos: No.

The Secretary: Torrey?

Commissioner Torrey: No.

The Secretary: Walker?

Commissioner Walker: No.

The Secretary: Finn?

Commissioner Finn: No.

Mr. Dworetz: I ask an exception to the Board's ruling.

The Chairman: Exception is allowed.

Q. Mr. Sherrill, you as president of the Guiana Realty Corporation, can you tell us when the last annual report was submitted to the Secretary of State of the State of New York?

Mr. Green: I object to that on the same grounds.

The Chairman: Objection sustained.

Mr. Dworetz: I will now ask for a ruling of the Board on the question.

The Secretary: Commissioners Donohue?

Commissioner Donohue: No.

The Secretary: Flitcroft?

Commissioner Flitcroft: No.

The Secretary: Grobart?

Commissioner Grobart: No.

The Secretary: O'Dea?

Commissioner O'Dea: No.

The Secretary: Patmos?

Commissioner Patmos: No.

The Secretary: Torrey?

Commissioner Torrey: No.

The Secretary: Walker?

Commissioner Walker: No.

The Secretary: Finn?

Commissioner Finn: No.

The Secretary: 8 noes. Ayes, none.

Commissioner O'Dea: I would like to move at this time that in all matters of this nature, that the decision be made by the Chair. Is that in order?

Mr. Green: I don't think so.

Commissioner O'Dea: Then I withdraw the objection, but this thing will go on forever, going on at this rate.

Mr. Dworetz: At this time I take an exception to the Board's ruling.

The Chairman: Exception allowed.

Q. What business is the Guiana Realty Corporation in? A. Real estate, Mister—own property.

Q. Does the Guiana Realty Corporation lend money? A. Sometimes.

Q. Is the Guiana Realty Corporation licensed by the Banking Department of the State of New York?

Mr. Green: I object to the question.

The Chairman: Objection on what ground?

Mr. Green: Same ground.

The Chairman: Objection sustained.

Mr. Dworetz: I ask for a ruling by the Board.

The Secretary: Commissioners Donohue?

Commissioner Donohue: No.

The Secretary: Flitcroft?

Commissioner Flitcroft: No.

The Secretary: Grobart?

Commissioner Grobart: No.

The Secretary: O'Dea?

Commissioner O'Dea: No.

The Secretary: Patmos?

Commissioner Patmos: No.

The Secretary: Torrey?

Commissioner Torrey: No.

The Secretary: Walker?
Commissioner Walker: No.
The Secretary: Finn?
Commissioner Finn: No.
The Secretary: Noes 8, ayes, none.

Q. Mr. Sherrill? A. Yes sir.

Q. Isn't it a fact that most of your business is that of lending money? A. Well, I wish it was—I mean I had the money. When you say that most of my—why, I would be tickled to death.

Mr. Dworetz: At this time I ask that the statement made by the witness be stricken out as not responsive.

Q. (Repeated by stenographer) Isn't it a fact that most of your business is that of lending money? A. No.

Q. But you do lend money, the Guiana Realty Corporation? A. Sometimes.

Q. How many loans have the Guiana Realty Corporation made within the past year?

Mr. Green: I object to the question on the same grounds.
The Chairman: Objection sustained.
Mr. Dworetz: I ask for a ruling of the Board.
The Secretary: Commissioners Donohue?
Commissioner Donohue: No.
The Secretary: Flitcroft?
Commissioner Flitcroft: No.
The Secretary: Grobart?
Commissioner Grobart: No.
The Secretary: O'Dea?
Commissioner O'Dea: No.

The Secretary: Patmos?
Commissioner Patmos: No.
The Secretary: Torrey?
Commissioner Torrey: No.
The Secretary: Walker?
Commissioner Walker: No.
The Secretary: Finn?
Commissioner Finn: No.
The Secretary: Noes 8, ayes none.

Q. How much money has the Guiana Realty Corporation loaned in 1932?

Mr. Green: Object to the question on the same grounds.
The Chairman: Objection sustained.
Mr. Dworetz: May I have a ruling of the Board on the question?
The Chairman: Well, if you want. It looks as if you are wasting a lot of time.
The Secretary: Commissioners Donohue?
Commissioner Donohue: No.
The Secretary: Flitcroft?
Commissioner Flitcroft: No.
The Secretary: Grobart?
Commissioner Grobart: No.
The Secretary: O'Dea?
Commissioner O'Dea: No.
The Secretary: Patmos?
Commissioner Patmos: No.
The Secretary: Torrey?
Commissioner Torrey: No.
The Secretary: Walker?
Commissioner Walker: No.
The Secretary: Finn?
Commissioner Finn: No.
The Secretary: Nays 8, ayes none.

Q. Can you tell us, Mr. Sherrill, as president of the Guiana Realty Corporation, how much money they loaned in September, 1932, at the time the loan was made to Miss Smith, during that month?

Mr. Green: I object to that question for the same reasons.

The Chairman: Objection sustained.

Mr. Dworetz: I ask for a ruling of the Board.

The Secretary: Commissioners Donohue?

Commissioner Donohue: No.

The Secretary: Flitcroft?

Commissioner Flitcroft: No.

The Secretary: Grobart?

Commissioner Grobart: No.

The Secretary: O'Dea?

Commissioner O'Dea: No.

The Secretary: Patmos?

Commissioner Patmos: No.

The Secretary: Torrey?

Commissioner Torrey: No.

The Secretary: Walker?

Commissioner Walker: No.

The Secretary: Finn?

Commissioner Finn: No.

The Secretary: Nays 8, ayes none.

Q. How many loans did the Guiana Realty Corporation make on the fifteenth of September, 1932? A. I don't know.

Q. Mr. Sherrill, when was the first time Miss Clara Smith came to you in reference to a loan? A. Just as I testified before.

Q. Just answer the question. When did Miss Smith come to you for the first time to make a

loan? A. It was either the thirteenth or fourteenth of September, 1932. Yes, either the thirteenth or fourteenth.

Q. (Showing witness) I show you Exhibit P-4, and ask you when you allege to have received that from Miss Smith? A. Miss Smith had this letter——

Q. When did you receive it? A. Miss Smith showed me——

Q. When did you receive it? A. The very first time she came to me.

Q. When was that? A. Either the thirteenth or fourteenth of September, 1932, Miss Smith had a letter.

Q. What was said on the thirteenth or fourteenth of September? A. About what? About that letter?

Q. About the loan? A. Miss Smith came to me and she says: "Mr. Sherrill, I am from Mr. John W. Walker." I said: "What John W. Walker, 168 West 158th Street?" Miss Smith said yes. She said: "Well, I am here to seek a loan from you." I said: "Well, I am surprised Mr. Walker sending you to me to get a loan of that amount, five hundred dollars." Miss Smith said she needed the loan, checks were coming back, she had to meet an obligation; had some trouble with the School Board and her job was at stake; she was not to be called in again. She said they were wealthy people that owned property in Jersey, and father is justice of the peace, gets salary, makes big money; her sister is in school; her brother-in-law, she told me, owned something in Long Island, and she said on top of that, "I have good collateral." So I read the paper. I said: "Well, you come back tomorrow. I would like to

get some advice on this letter." That was all, Counsel. You can ask me that all night and you will get the same.

Q. Mr. Sherrill, she did tell you she needed the money to pay obligations, isn't that right? A. Sure, sure.

Q. No question about that? A. Sure.

Q. She needed the money to pay obligations? A. Oh, yes, she told me that, yes.

Q. When did you receive the application filled out from Miss Smith? A. The next day, after we went over to the bank.

Q. The application was filled out before you went over to the bank? A. No. The application was filled out after I got Mr. Thien's opinion about that letter.

Q. Mr. Sherrill, before you went over to the bank, was the application or was it not filled out? A. It wasn't filled out because I had to get some advice on that letter there about all the money in the pension fund. I sought the advice. Usually do. I always go get advice.

Q. And that advice that you wanted was secured by Miss Smith from the pension authorities, nominating the Guiana Realty Corporation as beneficiary, is that right? A. No, that wasn't the advice. The letter had a lot of big words. I am not a walking dictionary. The bank got a dictionary and understands lots of things. I am not a college graduate. I came to this country—I didn't even finish school in the country where I came from.

Q. Miss Smith made the Guiana Realty Corporation beneficiary, right? A. Yes, I understand so.

Q. As collateral for a loan that she got from the Guiana Realty Corporation, right? A. Well, that was so, a part of it, but that court over——

Q. Just a minute. Didn't Miss Smith give you, rather, name the Guiana Realty Corporation as beneficiary in her pension fund? A. Oh, it was done. It was done.

Q. That's all. Is that right? A. Yes, it was done.

Q. How much security did she give you? A. What Miss Smith told me she had——

Q. How much security were you getting in exchange? If you will just answer the question? A. What security? That letter was given to me.

Q. She named the Guiana Realty Corporation as beneficiary. How much was that worth? A. Oh, I don't know. I don't know.

Q. Didn't you write to the Pension Fund? A. Yes, no, no. No, no. All I did was to send this thing to their—send a copy of this thing. I think Mr. Green got one.

By the Chairman:

Q. You sent that to Trenton, did you? A. Yes, sir, green paper, and I got an answer.

Q. It has been offered here in evidence, I guess. A. Yes. Making beneficiary, that's all.

By Mr. Dworetz:

Q. Mr. Sherrill, you knew that the amount named in the blank nominating the Guiana Realty Corporation as beneficiary was somewhere in the sum of eight or nine hundred dollars? A. No, I didn't know nothing at the time I took it to Thien and showed it. What does the letter say—fourteen or sixteen hundred dollars.

Q. You got the information from the Pension Commissioner? A. No, no. Here is the letter from the pension man. He didn't tell me nothing.

"Dear Sir:

"Receipt is acknowledged of your letter of September 15th, enclosing a nomination of beneficiary signed by Miss Clara L. Smith. Number of this fund 11557. This form appoints the Guiana Realty Corporation as sole beneficiary in case of Miss Smith's death. Signed, John A. Wood."

Q. What is the date of the letter? A. October 3, 1932.

Mr. Dworetz: Any objection to the letter going in evidence?

Mr. Green: No.

(Letter marked Exhibit D-1.)

Q. Mr. Sherrill, how much money did you give to Miss Clara Smith? A. Check for five hundred dollars.

Q. When was that check given? A. Seems to me the check was—whatever the date is there. You got the check there. I gave her a check, whatever date it is, that's all. I can't remember everything.

Q. Mr. Sherrill, where was this check given? Was it given at your office? A. Yes, sure, 260 West 135th Street.

Q. Where was the check cashed? A. I don't know, Mister. I have got an account in this bank.

Q. You don't know where this check was cashed? A. No, sir. I presume it was cashed at the bank. I gave her the check like I give anybody a check.

Q. After you gave Miss Smith this check marked Exhibit C-3— A. Yes, sir.

Q. What happened after that? A. I don't know.

Q. Did you go to the bank with Miss Smith? A. No, no. I went with Miss Smith before to get advice on that letter before, don't you understand what I tell you? I am begging you to understand.

Q. Mr. Sherrill? A. Yes, sir.

Q. Is it not a fact that you went with Miss Smith to the Dunbar National Bank and cashed this check, because Miss Smith had no account in the Dunbar National Bank? A. No. I took Miss Smith to get some advice from Mr. Thien on the letter before——

Mr. Dworetz: I ask that that be stricken out. It is not responsive to my question.

Q. (Repeated by stenographer) Is it not a fact that you went with Miss Smith to the Dunbar National Bank and cashed this check, because Miss Smith had no account in the Dunbar National Bank? A. No.

Q. You knew that Miss Smith had no account in the Dunbar National Bank? A. He is speaking about Mr. Trien——

By Mr. Green:

Q. Answer yes or no. The question was: You knew that Miss Smith had no account in the Dunbar National Bank? A. I don't know.

By Mr. Dworetz:

Q. The Dunbar National Bank is your bank, isn't that so, where you deposit your money? A. Yes.

Q. And isn't it true, as a matter of fact, that you went with Miss Smith to the Dunbar National Bank and cashed this check because Miss Smith had no account? A. No.

Q. And she could not cash it because she was not a depositor in the bank? A. No.

Q. How much money did you receive out of this five hundred dollars? A. Miss Smith paid the interest, six per cent.

Q. How much money did you receive, Mr. Sherrill, out of the five hundred dollars? A. The corporation received?

Q. Will you please answer my question, Mr. Sherrill? How much money did you receive out of the five hundred dollars? A. I, personally?

Q. Yes? A. Nothing.

Q. Are you sure about that? A. Yes, sure, sure.

Q. How much money did the corporation receive out of this five hundred dollars?

The Chairman: Do you mean payment on account of the note?

Mr. Dworetz: At the time this transaction took place. The witness knows.

A. Six per cent interest on the loan of $500.00.

Q. Have you got your books here? A. No, but I can tell you.

Q. Will you please bring your books with you the next time? A. What next time? Who told you there was going to be next time? I will satisfy you. I will satisfy you, because I am doing this to help the Board.

Mr. Dworetz: I ask that all these remarks be stricken out as not responsive, what he is doing for the Board.

The Chairman: All right. Strike it out.

A (Continuing). I don't know whether you understand this, but this book is kept according to directions from my accountant. This is cash book, our rent money payment, interest and everything.

Q. I am just interested in Miss Smith? A. Yes.

Mr. Dworetz: I am not interested in the rent that he pays. I don't think the Board is either.

A (Continuing after looking at book). On September 15, 1932, Clara L. Smith, as interest, $5.00. That's what she paid my secretary.

Q. Have you got the journal, Mr. Sherrill? A. What journal, Mister? This is cash book. This book shows all the money the corporation collects and it goes to the bank.

Q. Mr. Sherrill, I asked you have you got the journal, not the cash book? A. What journal?

Q. You don't keep the books? A. No.

Q. Do you know as president of the Guiana Realty Corporation if the corporation keeps a journal? A. I don't know.

Q. Will you please keep the book here. We may have to use it again. Will you please turn to the Smith account? A. What do you want to see? Tell me——

Q. You said you received six per cent, is that right? A. Yes.

Q. Six per sent of what? A. Six per cent of five hundred dollars.

Q. You received six per cent of five hundred dollars? A. Not me—the corporation, yes.

Q. For how long a time? A. For three months, I guess—I mean for two months. Whatever was the length of the—whatever was the period of the loan.

Q. You say that you received six per cent, right —and in the cash book it is stated that the corporation received five dollars, is that right? A. Yes.

Q. Mr. Sherrill, what happened to the other twenty-five dollars? A. What twenty-five dollars?

Q. You said six per cent of five hundred dollars? A. Yes, but six per cent for two months. What are you trying to do?

Q. Mr. Sherrill, after you left the Dunbar National Bank with Miss Smith where did you go after that, on September 15th? A. Well, I don't know, Mister.

Q. Did you go back to your office? A. After we spoke with Mr. Thien of the bank about getting his opinion about that letter I went back to my office. I told you that, and Miss Smith filled out that application there.

Q. Did you go back with Miss Smith to the office? A. Certainly I go back with her.

Q. Did you go by machine or your automobile? A. I don't know.

Q. Do you know, Mr. Sherrill? A. No, I can't remember, because I believe Miss Smith came over with her own automobile, as far as I remember.

Q. Do you remember driving her over to the bank, Mr. Sherrill? A. I don't know. I said I went with Miss Smith to the bank.

Q. Isn't it true, as a matter of fact, that you cashed that check for five hundred dollars? A. Who, me? I cash no check.

Q. And isn't it also true, Mr. Sherrill, that you received fifty per cent out of that loan? A. Not from Miss Smith.

Q. Did you get that from anybody else? A. No, no.

Q. Where did you keep your car, Mr. Sherrill? Where did you keep it in 1932?

Mr. Green: Objected to as immaterial.

The Chairman: Objection sustained.

Q. Mr. Sherrill, isn't it true that after you went to the bank with Miss Smith to cash that five hundred dollar check, that you asked for fifty dollars personally, and five dollars for the corporation? A. No, sir. No, sir. No, sir.

Q. Mr. Sherrill, have you even been convicted of a crime? A. Yes.

Q. How many times? A. I don't know.

Q. Three times? A. Maybe three, maybe six, maybe twelve times.

Q. How much time did you spend in jail, Mr. Sherrill?

Mr. Green: I object to the question as incompetent, irrelevant and immaterial.

Q. Mr. Sherrill, what crimes have you been convicted of? I will withdraw the question. Were you ever convicted of forgery? A. No, no, no, sir.

Q. Mr. Sherrill, what crimes were you convicted of? A. I was never convicted of a crime. I had trouble with a license bureau, an inspector, some years ago while I was a labor agent for the Pennsylvania Railroad, and I told him I wouldn't pay any graft——

Mr. Dworetz: I ask that that be stricken out.

The Chairman: What was the question?

A. (Continuing) I had to state right and have to state right, because this inspector came around and said he would make trouble for me, and I said I would die in jail, and so I did. I mean I——

Q. How much time did you serve in jail? A. I don't know. I paid before the twenty-five dollars.

Q. Isn't it true that you spent thirty days in jail? A. Suppose I did? I would spend five years for the principle.

Q. Didn't you serve thirty days? A. Yes, sir, I did. I didn't serve for forgery or stealing, though.

Q. Mr. Sherrill, were you ever convicted of running an unlawful labor agency? A. That's the same thing I done.

Mr. Green: Objected to as incompetent, irrelevant and immaterial.

Mr. Dworetz: May I have a ruling of the Board on that?

The Chairman: Let him answer, if he knows.

Mr. Green: Withdraw the objection.

The Chairman: He says all he has ever been convicted of is some licensing agency——

The Witness: Employment agent license.

By the Chairman:

Q. No high misdemeanor? A. No.

Q. Never murdered anybody? A. No.

By Mr. Dworetz:

Q. Mr. Sherrill, you preferred charges against Miss Smith before, have you not? A. No, sir, just the same charge.

The Chairman: Just the one, he says.

The Witness: Yes.

Q. Where?

The Chairman: Was it Paterson or New York?

A. I am going to answer this like I always do.

Q. Please answer the question? A. I wrote a letter here to the School Board.

By the Chairman:

Q. It will be enough if you say in Paterson or Buffalo? A. In Paterson.

By Mr. Dworetz:

Q. Did you ever make a complaint against Miss Smith anywhere else? A. Yes.

Q. Where? A. To the Grand Jury.

Q. Where? A. In New York.

Q. Did you ever complain to the Grand Jury in Passaic County? A. No, no.

Q. Did you ever make a complaint in the First District Criminal Court in Paterson? A. Against this Miss Smith, no. I called here to see a gentleman in reference to the check that Florence Smith gave me.

Q. Who was the gentleman that you called to see? A. I don't know, some gentleman over here, some gentleman, but I hear the gentleman is now not in that court any more—that same gentleman he is not there.

Q. What happened to the charges over in New York before the Grand Jury? A. I don't know. I have did to Miss Smith just the same as I do to any school teacher or any policeman.

By Mr. Green:

The question was what happened to the charges against Miss Smith over in New York? A. Oh, one indictment was dismissed, as far as I know—one indictment. There are two indictments against her. One was dismissed. The other is pending.

By Mr. Dworetz:

Q. Are you sure about that? A. As far as I understand. They haven't notified me.

Q. There was a criminal trial over in New York in which you were the complaining witness, isn't that so? A. Yes.

Q. Do you know what happened? A. I told you the one indictment was dismissed.

Q. Isn't it true, as a matter of fact, Mr. Sherrill, she was acquitted? A. Well, she was acquitted, yes.

Q. Isn't it true that you also made a complaint at that time? A. What?

Mr. Green: Complaint at that time what?

Q. Go ahead and answer the question?

Mr. Green: Complaint against whom?

Q. (Continuing) Miss Smith, Clara Smith? A. After she was acquitted?

Q. Yes? A. No.

Q. Did you make a complaint against the United States District Attorney who tried the case?

Mr. Green: I object to the question as incompetent, irrelevant and immaterial.

The Chairman: Objection sustained.

Q. Mr. Sherrill, when did you make the charges in reference to the case tonight? A. I don't know. The papers speak for themselves. I can't remember.

Q. You seem to remember very minutely what happened on September 15th, 1932, and you cannot tell us what happened within the past two weeks? A. Well, this five hundred dollar check,

and anybody would remember five hundred dollars.

Q. Mr. Sherrill, how much did you receive in payment of the five hundred dollar check? A. How much I received?

The Chairman: Yes, what payment was made on account?

A. I read it out before.

Q. How much? Will you please refer to your book? A. There is thirty-three dollars.

Q. What was that, Mr. Sherrill? A. Thirty-three dollars, forty-six dollars and seventy-five dollars.

By the Chairman:

Q. That is all you have received on account of the five hundred dollar note? A. Yes, sir.

By Mr. Green:

Q. When was the last payment, Mr. Sherrill? A. One June 30th, as far as our book is——

Q. What year? A. I guess in 1933—1933.

By Mr. Dworetz:

Q. Will you please show us when the last payment was made, please? A. Where, in here?

Q. Yes? A. These are the money orders Mr. Bragg gave me. Mr. Bragg gave me those money orders—gave us the money orders.

Q. You have approximately three hundred and fifty dollars coming out of this loan, is that right, Mr. Sherrill? A. No. I mean as far as I am concerned, Miss Smith owes me today, including expenses, six hundred and thirty-nine dollars and twenty cents.

Q. How do you arrive at that? A. Item for item.

Q. Will you please read it? A. Well, there is plenty to read here.

Q. Read it? A. Five hundred dollars was the loan. First expense was two dollars and fifty-two cents protest fee, and then I sent here to Paterson a registered letter complaining, twenty cents. I sent another one to the Pension and Annuity Fund, that is twenty-one cents, registered letter, and I sent back another letter, to Trenton I mean, that's twenty-four cents. Attorney fee in this matter I paid him fifty dollars.

Q. Paid whom? A. Mr. Bragg. I made photostatic copy of the note, one dollar and twenty-five cents, and filing judgment one dollar; a certified copy—yes—certified copy of the judgment, twenty-five cents, and when I came over here, you know—when I came over here to Paterson I gave seventy-five cents, five gallons of gas I bought. I paid a bridge toll, one dollar, so on, all that.

Q. Read it, continue? A. Well, read it. Here is the paper.

Q. I am not the witness, Mr. Sherrill? A. That paper is not in my handwriting. It is my secretary's.

Q. Will you please finish it, Mr. Sherrill? A. There is plenty of things here.

Q. I wanted to know how you arrived at the six hundred and thirty-nine dollars, and you started to read? A. Yes.

Q. Will you please finish it?

Mr. Green: Go ahead, Mr. Sherrill, make it fast.

A. Photostatic copy—photostatic copy of letter from the Board of Education—oh yes—another time—I mean the first time when I came over I brought a court stenographer to take the minutes. Of course I came in his car. I had to pay gas two dollars and fifty cents, and I came over again in Paterson and that gentleman in criminal court building, that's one dollar and sixty cents, and I paid a chauffeur three dollars. Registered letter to Paterson, twenty-one cents, and registered letter again, another twenty-one cents; a registered letter to the Commissioner of Education there in Trenton that's twenty-one cents; registered letter again to his secretary because his secretary answered, that's twenty-one cents, and two phone calls to Mr. Kelley, one dollar and twenty-four cents, and a stenographer that came over to take the minutes. He had fifteen on account, two days, fifteen dollars, and he had one dollar and fifteen cents, and there is two dollars and thirteen dollars, and he charged me twelve dollars extra. He based his time—I think he said they got a schedule he must get, you know, number of folios, and so on, for attendance, and when he wrote the minutes, twenty dollars and forty cents. Gave him a check for the minutes when he came over here. That's six ninety-one less this check, make five hundred and thirty-one dollars and ten cents.

Q. These charges, telephone calls, you add on to the account of the five hundred dollars? A. Certainly.

Q. And the charge of one dollar and sixty cents up on the Criminal District Court, that is charged up, too? A. Yes.

Q. What happened to those charges? A. Well, the——

William Sherrill, for Complainant—Cross.

Q. Those charges up in the Criminal District Court, what happened to the charges? Were they thrown out? Were they dismissed? A. Over here?

Q. Criminal District Court? A. Yes.

Q. Yes? A. He told me I should take the check over to New York because the check was presented there.

Q. But the charge was dismissed? A. Yes, he told me I should go to the New York District Attorney and complain.

Q. Mr. Sherrill, the Guiana Realty Corporation does a lot of business with the colored school teachers? A. Not colored—white people.

Q. Different employes of New York—firemen, policemen, school teachers and civil service employes, is that right?

Mr. Green: I object to the question as incompetent, irrelevant and immaterial.

By the Chairman:

Q. Yes or no, Mr. Sherrill. Do you loan to firemen and policemen? A. Sometimes.

By Mr. Dworetz:

Q. After the fifteenth of September, when was the first time you saw Miss Smith? A. I have answered that already, Counsel. You have asked me——

By Mr. Green:

Q. Answer the question. A. I have answered that already. I have answered that already. I have answered that already.

By Mr. Dworetz:

Q. Will the witness answer the question? A. (No answer.)

By the Chairman:

Q. It would be quicker if you go on and say whether it was a week or next day or what. It would be better that way.

By Mr. Dworetz:

Q. Just answer the question and we will get along very nicely? A. I don't remember.

Q. The whole transaction with Miss Smith was of a business nature, isn't that right, Mr. Sherrill? A. Well, she came to borrow five hundred dollars.

Q. (Showing witness) Mr. Sherrill, I show you paper dated September 19th, 1932, and ask you whether or not that is your signature? A. This is not my signature.

Q. Just answer the question, that's all (Showing witness.) I show you a letter dated October 6th, 1932, and ask you whether or not that is your signature? A. Yes, this is my signature.

Q. Is it true, Mr. Sherrill, on direct examination you testified that the first time you saw Miss Smith after the transaction of the note regarding the five hundred dollar loan on Setpember 15th 1932, was on October 15th, 1932? A. I don't remember.

Q. You don't remember that? A. No, I don't remember.

Q. You don't remember that?

Mr. Green: He didn't testify to that. He didn't say October 15th at all.

Mr. Dworetz: Well, it is in the record.

The Witness: What record?

The Chairman: The stenographer's record, he means.

Q. (Showing witness) Mr. Sherrill, is this the secretary of the Guiana Realty Corporation—showing witness letted dater September 14th, 1934? A. Yes, that's a letter written by one of my secretaries at my direction.

Mr. Dworetz: At this time I want to mark for identification letter of October 6th, 1932, signed by Mr. Sherrill.

(Letter marked D-1 for identification.)

I also mark this letter for identification, September 19, 1932.

(Letter marked D-2 for identification.)

Q. Mr. Sherrill, isn't it also true that you were interested in Miss Smith from a social standpoint?

Mr. Green: I object to that as incompetent, irrelevant and immaterial.

The Chairman: He can answer it and get through with it, yes or no?

A. No, sir.

Q. Do you remember, Mr. Sherrill, at the time of the loan on September 14th, 1932, going down to your safe deposit box with Miss Smith? A. I may have. I sell diamonds to a lot of school teachers and policemen.

Q. Do you remember, Mr. Sherrill, going down? A. I may have gone with Miss Smith like I go with any teacher or policeman.

Q. Do you remember, Mr. Sherrill, on September 15th, 1932, at the Dunbar National Bank, showing

Miss Smith a number of diamonds? A. A number of diamonds?

Q. And didn't you say to her that if she were good to you she could have any one of those she wanted? A. I wouldn't give Miss Smith nothing outside of a glass of water. That's the only thing I would give her.

Q. At that time on September 15th, 1932, did you offer Miss Smith any of those diamonds that you showed her at the safe deposit box if she was good to you? A. Nothing that Miss Smith got which she would get a diamond ring from me.

Q. You had no social— A. We got pretty girls in New York.

Q. Isn't it true, Mr. Sherrill, that you visited Miss Smith's home in Paterson? A. I visited Miss Smith's home on account of certain information that came from certain John. I wish this board could go to Western Union Telegraph Office and see letter, letter from Mr. John.

Mr. Dworetz: I ask that the rest of that answer be stricken out as not responsive.

The Chairman: Strike it out. It isn't responsive. The Board is entitled to a little information on it.

Q. Mr. Sherrill, what day did you come over here after the fifteenth of September, 1932? A. I came over to this school board. I can't remember.

Q. No, to Miss Smith? A. I don't know. It was some time after.

Q. How many times? A. Once.

Q. That all? A. Once I came to Miss Smith to find out is this money going to be paid.

Q. Mr. Sherrill, how many times did you call her up? A. I don't know. She called me up. She

called the office up. She called my secretary up. She write us letters, you know. She sent me a card in the hospital, and that's all I got for five hundred dollars. And that's all I got for five hundred dollars. Pretty card. Convalescent card. I never got a convalescent card off anybody else.

Q. You also had the Guiana Realty Corporation nominated as beneficiary in her pension fund? A. That's what she executed, yes.

Mr. Dworetz: At this time I want to read a letter from William Sherrill addressed to Clara L. Smith. I offer it in evidence first.

(Letter marked D-2 for identification marked Exhibit D-2.)

October 6, 1932.

"Dear Clara:

"Yours received and noted. Sorry to learn that more friends called to see you Sunday which probably caused you to stay up late Sunday night, thus depriving you of your full amount of rest. What is Florence suffering from so that she cannot be left alone. She looked all right to us then.

"You must come over Saturday or Sunday, if you prefer, but, let me know when you are coming. Bring Florence along with you if possible. Trusting that nothing worse has developed against you about the matter you told me of (the crazy woman) of course I know and feel that the reverend gentleman, would not attempt to do you any harm in the future, judging from what you said, he has exhausted all possible efforts during the past. Some nice Sun-

day when you are over in New York, I will be glad to go to Jamaica with you.

"Well, you will be surprised to know that my pretty lady friend is still insisting, but, so far we have done no business with her, though she feels that I am the picked and selected one that she should do some business with (ha! ha.', use your own judgment). Trust that you and Florence will decide to have your car fixed, or turn it in for another so that you will not be handicapped much longer in getting around.

Well, really enjoyed talking to your father though it was so short, and trust that he will eventually recover from his present ailment, which he insists that he is not complaining. You forgot to show us through the home, but trust the next time you will remember to do so, especially since I am interested to see and know just where Florence, yourself and your folks turn in to rest.

"Before I close I will remind you that if you have not spent the whole thirty-five thousand dollars, as your lady friend feels you have, bring some over for investment when you come in. Kindest regards to your family, trusting to see you soon I am

"Sincerely yours,

WILLIAM SHERRILL."

Q. So it is true that you had social relations with Miss Smith in addition to business transactions? A. No social relations.

Q. The letter is offered in evidence? A. well, that's all right. No social—

Q. Mr. Sherrill, did anybody speak to you about this case recently? A. No.

Q. Mr. Sherrill, did you read the testimony that you gave in this case, or rather, the testimony that you gave in the last case? A. Have I read the testimony?

Q. Did you go into the last case, the case that was tried here in May, 1933, I believe? Do you remember the testimony? A. No, I wouldn't say I read the testimony, because it is too—well, there was two books, two stenographers.

Q. Have you looked at it recently? A. I may have looked at it sometime.

Q. When were these charges signed, Mr. Sherrill? A. What charges?

Q. (Showing witness) Is this your signature? A. Yes.

Q. (Referring to Exhibit P-1) Do you remember seeing this paper before? A. Yes.

Q. Where did you see that? A. Well, I don't remember.

Q. Do you remember when you signed that? A. You asked me if I signed it, yes.

Q. Do you remember where you signed it? A. No, no. I don't remember where I signed it.

By Mr. Green:

Q. Tell him where you signed it?

Mr. Dworetz: Just a minute. Let the witness testify.

By Mr. Dworetz:

Q. Where did you sign it? A. I may have signed it in New York.

Q. Do you know where you signed it? A. I may have signed it in my place of business.

Q. When did you sign it? A. Whatever the date is.

Q. October 9, 1934?

Mr. Green: Wait a minute, now. That is not part of the charges.

Q. When did you sign these charges? A. That is my signature.

Q. When did you sign it? A. I don't remember.

Q. You say you may have signed it in New York? A. I may have signed it.

Q. Don't you remember where? A. No, I don't remember everything.

Q. Don't you know where you signed it?

The Chairman: He said no, he don't remember.

.Q Who asked you to sign these charges?

Mr. Green: I object. The charges have been in evidence.

Mr. Dworetz: Can I have a ruling on that, please?

The Chairman: He is entitled to an answer.

A. I don't know.

Q. Who drew the papers up? A. I don't know.

Q. You don't know who asked you to sign the papers? A. All I know, I have been asking Mr. Green, I have been telephoning him asking if he, he is going to keep this girl to educate—I have been calling up Mr. Green and asking him if the school board is going to keep such a girl as that to educate.

Q. When did you call up? A. I don't know. I may have called up two weeks ago, three weeks ago, and have wrote Mr. Green a letter, Mr. Kelley a letter.

Q. Who asked you to sign these charges? A. Yours truly. I signed them myself.

Q. Did you draw them up? A. Well, I don't—I don't know. I don't know whether I drew them up. I signed them. That is my signature, Mister.

Q. Who asked you to draw up— A. I don't know. I felt that she ought to be fired.

Q. Did you sign them last week, Mr. Sherrill? A. I told that that's my signature, Mister.

Mr. Dworetz: I ask that that be stricken out. This man has a very minute recollection as to what happened in September, 1932, and if I ask the witness what happened two weeks ago or a week ago his mind is absolutely blank.

The Chairman: He gives the best answer. We can't make him say anything.

Q. When did you sign it? A. I don't remember.

Q. Who asked you to sign it? A. Nobody asked me to sign it.

The Chairman: Nobody asked you to sign it. All right.

Q. Did you sign it this week? A. I don't remember.

Q. Did you sign it last week? A. I don't know.

The Chairman: He don't know, is his answer. All right.

Q. Anybody speak to you about this case? A. No, sir. I have been doing a lot of talking myself.

Q. Was this signed at your office? A. I don't remember. It may have been.

Q. (Showing witness) I show you the charges marked Exhibit P-1, and ask you whether or not this is the date on which the charges were signed by you? Will you please look at it?

Mr. Green: Where is that?

Mr. Dworetz: (Indicating) Right here.

Q. Will you please look at me? I am not so hard to look at? A. Wait until I get my glasses. This is my signature.

By the Chairman:

Q. Do you know whether it was signed that day? A. I don't know.

By Mr. Dworetz:

Q. Did you read the charges when you signed it? A. Yes.

Q. Do you know what you signed? A. Yes.

Q. You don't remember what date when you signed it? A. No, I don't remember the date, but I remember the facts.

Q. Did you make any corrections or alterations on these charges, referring to Exhibit P-1? A. I read everything that I sign.

Q. Will you please answer my question? Did you make any alteration on Exhibit P-1? A. I don't know what you mean.

Q. Any changes? A. I don't know what you mean?

Q. Did you strike out anything? A. Read it.

Mr. Green: Why don't you show it to him.

Mr. Dworetz: I would like to conduct the examination in my own way. This witness is evidently pleading loss of memory.

Q. (Showing witness) I show you Exhibit P-1, particularly page four, and ask you whether or not you struck out paragraph twelve? A. Yes, sir.

Q. Who asked you to strike it out? A. Nobody asked me.

Q. Who asked you to strike it out? A. Yours truly, me.

Q. You didn't draw these charges up? A. No, I didn't say that. I struck that out because I know I received from Mr. Bragg part of that five hundred dollars, so I struck it out. Is anything wrong with that?

Q. You didn't draw this up, did you?

The Chairman: No, no—a dozen times. Let's get on. We will be here a week.

Mr. Dworetz: Well, this is very important to the issue in this case.

Q. You don't know who drew the charges up?

The Chairman: He said that a dozen times. He doesn't know.

Q. Did you know what you signed?

The Chairman: He said yes.

A. I read it.

Q. Mr. Sherrill, referring again to the application marked Exhibit P-1, I ask you to look on the back of the application and let us know, if you can, what was stricken out above your name? A. This same thing that you talked about twenty-five times before.

Q. Do you know how it read, Mr. Sherrill? A. No.

The Chairman: That answers that. He don't know.

Q. When you affixed your name on the back of application, P-5, was this interlineation there—was it struck out? A. I don't remember.

Q. It may be possible that that was stricken out after? A. I suppose——

Q. This is the second complaint that you have made before the Board of Education, is that right? A. Yes.

Mr. Green: He said that before.

Q. Now, Mr. Sherrill, are there any more expenses in addition to what you have stated regarding this five hundred dollar loan? A. No, I—I mean—of course, I haven't put down tonight yet. You see I haven't put down paid the bridge toll, paid for gas, yet.

Q. Mr. Sherrill, will you please write the name of Lewis A. Bennert on that paper?

Mr. Green: I object to it. I have no objection to the man writing his own name if counsel wants him, but I certainly object to his writing any other name.

The Chairman: Objection sustained.

Mr. Dworetz: Well, Mr. Commissioner, let me have a ruling on that.

The Secretary: Commissioners Donohue?

Commissioner Donohue: No.

The Secretary: Flitcroft?

Commissioner Flitcroft: No.

The Secretary: Grobart?
Commissioner Grobart: No.
The Secretary: O'Dea?
Commissioner O'Dea: No.
The Secretary: Patmos?
Commissioner Patmos: No.
The Secretary: Torrey?
Commissioner Torrey: No.
The Secretary: Walker?
Commissioner Walker: No.
The Secretary: Finn?
Commissioner Finn: No.
The Secretary: Nays 8. Ayes none.
Mr. Dworetz: Allow an exception?
The Chairman: Yes. Exception noted.

Q. Mr. Sherrill, do you recall speaking to anybody prior to the date of these charges, October 9, 1934? Do you recall speaking to anybody in Paterson regarding these charges? A. I don't know anybody in Paterson—I mean, except Miss Smith and Mr. Kelley and that gentleman, Mr. Green, that's all. I don't know anybody.

Q. Do you know a Mr. Riley? A. No, no. I met a man that day when I was called in the police station to identify her.

Q. You met a man today? A. No, no, that day when I came over, when the District Attorney told me to go over to Paterson to police station to identify her when she was indicted.

Q. Mr. Riley a friend of yours? A. I never met Mr. Riley before. I don't know anybody. Miss Smith told me—she told me a Sunday in the presence of Mr. Sparks and me, there goes a minister, which she was a member of the church, and tried to do something wrong against her name, and she got him fired, which Miss Smith told me that herself.

Mr. Dworetz: I ask that that be stricken out. Not responsive to the question.

By the Chairman:

Q. Do you know Mr. Riley, yes or no? A. No.

By Mr. Dworetz:

Q. I thought you said you met him down in the police station? A. I said I met a man down in the police station that day and he asked me if my name was Sherrill, and I said: "Who are you," and I think he said: "My name is Riley." That was all. If I seen him now I guess I wouldn't remember him.

Q. Now, Mr. Sherrill, the loan was made on September 15, 1932, right? A. See the check. See the paper.

Q. Yes, that's the date of the check? A. All right.

Q. When did you get this—I refer to Exhibit P-4, known as the Bennert letter. How soon before the money was turned over to Miss Smith did you receive that letter? A. Before the money was turned over.

Q. In other words, when did you receive this letter? A. I have said Miss Smith brought that letter the evening—it was at night—one night, it either was the thirteenth or fourteenth. I looked at this letter and I looked at this blue form and I listened to Miss Smith, and I said: "Come back tomorrow. Bring these papers and I will get some advice." That's all. You can ask me a hundred times and I will tell you the same thing.

Q. Did you investigate it? A. I told her I would ask Mr. Thien's advice, like I ask him lots of other things, lots of other things.

Q. You have testified against Miss Smith in criminal proceedings in New York, is that right? A. Yes, I was a witness there.

Q. She was acquitted in that trial? A. Yes.

Q. Charges arising out of the— A. This ain't going to be the end of it. I understand from the Bar Association they are going to take some action in that now.

Q. Against the District Attorney who tried that case? A. Yes, sir.

Q. Was she acquitted of the charges? A. Yes, yes.

Q. I hope you don't make any charges against Mr. Green? A. I have been successful in getting a couple of attorneys disbarred, though.

Q. You are a chronic trouble-maker, aren't you, Mr. Sherrill? A. I am honest, and I want everybody to be honest, see?

Q. You have even gone so far as to make charges against every lawyer that represented you? A. No, no. Not unless they stole off me.

Q. Do you know Mr. Macdougal? A. He is going to get his in a month or so. Decision reserved, Appellate Division. His is coming, and he ought to be disbarred.

Mr. Green: I would like to reserve the right to ask Mr. Sherrill a couple of questions on a later date.

Mr. Dworetz: We would like to have him here, too.

ARTHUR THIEN, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Thien, you are a vice president of the Dunbar National Bank in New York? A. Yes, sir.

Q. And you are located at 135th Street and 7th Avenue? A. That's right.

Q. And how long have you been connected with that bank? A. Since its organization, September, 1928.

Q. And you are acquainted with Mr. Sherrill? A. Yes, sir.

Q. And do you know that he is president of the Guiana Realty Corporation? A. Yes, sir.

Q. And the Guiana Realty Corporation and Mr. Sherrill are depositors in your bank? A. Yes, sir.

Q. And have you done business both with the corporation and with Mr. Sherrill in connection with your institution? A. Yes, sir.

Q. Do you recall Mr. Sherrill coming to your bank in September, 1932, with Miss Clara Smith? A. Very clearly, sir.

Q. Do you know what the occasion for that visit was? A. Mr. Sherrill brought this young lady to my desk stating that she had applied to him for a loan and she had some papers that he wanted me to look at and get an opinion as to what I thought of them. It appeared to be a letter of some kind from someone in Paterson representing the school board, stating that there were certain funds to the credit of both Florence Smith and Clara Smith in Trenton, I believe. The amounts were in the neighborhood of fourteen

hundred dollars, and that these amounts were available to these teachers in the event of their death and in the event of their retirement from the school system as I interpreted the letter, which by the way, impressed me as being rather crudely drawn. As a result of this conversation, which lasted about an hour, I advised Mr. Sherrill that even though the letter appeared to be crudely drawn if he would verify the facts by Trenton I couldn't see he was taking much of a risk if the girl was a school teacher and apparently in good standing.

Q. That conversation took place in the presence of Miss Smith, you say? A. Yes, sir.

Q. (Showing witness) I show you Exhibit P-4, and ask you if that is the letter that was produced at that time? A. I would be willing to swear this is the same letter.

Q. Did you discuss the contents of this letter with Miss Smith? A. I didn't discuss the contents of the letter with Miss Smith because I felt they spoke for themselves, but I asked Miss Smith how it was that she came to New York to borrow money, why she didn't go to Jersey, and she said that she was sent to Mr. Sherrill by Mr. Walker, and I know Mr. Walker very well also.

Q. Did Miss Smith have that letter when she came into your bank? A. They both had the letter. It went from hand to hand between both. It was passed around in a general conversation at my desk, that letter and another blank, and also, as I recall, a letter from a Mr. Thomas, introducing Miss Smith to Mr. Sherrill. Mr. Thomas, Mr. Walker and Mr. Sherrill were all customers at the bank, and personally known.

Q. Were you at the criminal trial in New York? A. I was, sir.

Q. Were you there when Miss Smith testified? A. Yes, sir.

Q. Did you hear Miss Smith testify over there that she had never seen you before? A. I did.

Q. That was not true, was it? A. Absolutely not. The minutes of the first meeting in Paterson which were shown to me in Paterson would refute that. She admitted discussing the fact that we both lived in Jersey.

Q. Was there any discussion in your presence about any debt that Miss Smith owed with reference to Sherrill making this loan to her? A. No, sir.

Cross examination by Mr. Dworetz:

Q. Mr. Sherrill, individually, and also as president of the Guiana Realty Corporation, is a depositor of the Dunbar National Bank? A. That's right.

Q. Of which you are vice president? A. That's right.

Q. How long has Mr. Sherrill, individually and as president of the Guiana Realty Corporation been a depositor in your bank? A. Mr. Sherrill became a personal depositor I would say the latter part of 1930, his corporation, I would say, from approximately 1931.

Q. Have you any interest in the Guiana Realty Corporation? A. Not five cents.

Q. Is the Guiana Realty Corporation a creditor of the Dunbar National Bank? A. Not to the extent of five cents. We have loaned them as high as four thousand dollars without security, however, based upon the character of Mr. Sherrill.

Q. Do you know whether or not Mr. Sherrill has been convicted of any crime? A. I am fa-

miliar with the circumstances. I wouldn't look at it——

Q. I just asked you? A. Well, I said we loaned him four thousand dollars without security.

Q. Is there any obligation owing to the Guiana Realty Corporation which was pledged to the Dunbar National Bank? A. No, sir.

Q. Do you have any assignments of accounts from the Guiana Realty Corporation? A. No, sir.

Q. How long have you known Mr. Sherrill? A. I would say five years.

Q. Mr. Thien, when was this four thousand dollar loan made that you talk about? A. About the early part of 1933.

Q. Do you know whether or not the loan has been paid? A. It was liquidated as agreed, one hundred per month.

Q. Has it been paid off, do you know? A. All in full. Never missed a note. Wish they were all like him.

Q. He has a very good account with the Dunbar National Bank? A. I wouldn't say so, no.

Q. You wouldn't say it was the best? A. No, no. I have recently declined to extend, based upon the character of the account.

Q. Just one minute— A. Good account means something in banking. It means something that perhaps attorneys——

Mr. Dworetz: I ask that that be stricken out. It is irrelevant in this case.

A. (Continuing) I asked him to close his account several months ago. That is no bar to this case.

Mr. Dworetz: I ask that that be stricken out.

The Secretary: All right. Strike it out.

Q. You testified, did you not, at the criminal trial against Clara L. Smith in which she was acquitted? A. Yes, sir.

Q. Did you testify before the Board when the first charges were made up in Paterson? A. I did not, no, sir.

Q. Did you know about it? A. I don't recall that I did, until after it was over.

Q. What's that? A. Until after it was over I knew about it.

Q. Were you subpoenaed here tonight? A. No, sir.

Q. Who asked you to come over? A. Mr. Sherrill.

Q. Did you speak to anybody else about this case? A. I spoke to Mr. Green to get the definite date, because I come quite a distance.

Q. Where do you come from? A. I come from Brooklyn now.

Q. How long have you been living in Brooklyn? A. Since August first.

Q. Where did you live prior to that time? A. Jersey City.

Q. Ever spoken to Mr. Green other than the occasion you just spoke of? A. This evening. I spoke to him this evening.

Q. Guiana Realty Corporation a depositor in your bank today? A. I don't think it is.

Q. Do you know? A. Well, we had nine thousand account, but I don't think that is in account today.

Q. Do you know whether or not—A. I am testifying under oath, you see.

Q. Do you know whether or not Sherrill or any other officers of the Guiana Realty Corporation are depositors in the Dunbar National Bank?

A. Ada Howell is a depositor in the Dunbar National Bank.

Q. Do you know what her office is in the corporation? A. I understand she is secretary. She is not here tonight.

Q. Is there anybody else connected with the Guiana Realty Corporation that has an account in the Dunbar National Bank? A Not to my knowledge.

Q. Now, coming back to September 15, 1932, Mr. Thien, when did Miss Smith and Mr. Sherrill come to the bank, do you recall? A. I would say just after noon.

Q. Do you know what time? A. I would say somewhere around one o'clock—between one and two o'clock.

Q. What took place there between one and two o'clock, as you say? A. We all sat there at my desk on the officers' platform and held a general conversation concerning the request for accommodation that this young lady made.

Q. Who was present? A. Mr. Sherrill, Miss Smith and myself.

Q. Could you tell where in the bank this conversation took place? A. I don't quite understand the question.

Q. Could you tell where in the bank this conversation between Miss Smith and Mr. Sherrill and yourself took place? A. On the officers' platform. What do you mean—first, second or third floor? I don't quite follow you.

Q. I am asking you where they had the conversation? A. At my desk.

Q. Is that on the ground floor where the bank business is conducted? A. On the ground floor, that's right.

Q. How long did the conversation last? A. I would say from three-quarters of an hour to an hour.

A. What was discussed during three-quarters of an hour to an hour? A. In the first place, it was discussed why she came to New York City to borrow money.

Q. Who asked the question? A. I asked her the question.

Q. Just what did she say to you? A. She said that she had come to Mr. Sherrill through a man her father knew somewhere.

Q. You asked Miss Smith why she came to New York to get a loan when she came in with a depositor of the bank? A. Yes.

Q. What else was said? A. You are asking a general question. Mr. Sherrill isn't an easy man to quote through a conversation.

Mr. Dworetz: I ask that that be stricken out.

Q. What else was said after you asked her that? A. She said her father sent her over to someone in New York.

Q. Yes? A. And through that somebody she was referred to Mr. Sherrill.

Q. Her father is the one sent her over to Mr. Sherrill? A. No, not to Mr. Sherrill.

Q. Who, then? A. To some other man, whether it was Mr. Walker or Mr. Thomas, that I am not quite sure.

Q. Was it Mr. Sherrill? A. I don't think so, no.

Q. You are not certain about that, are you, Mr. Thien? A. No, I am not absolutely certain about it, no, sir.

Q. What else took place? A. There was some question of collateral.

Q. Yes? A. From speaking to this young lady it seemed to me—he was asking my opinion as a credit man—I couldn't see any merit in the loan. He said: "But there is collateral," and they produced this particular paper that came up, and I believe Miss Smith produced this letter you showed me a minute ago.

Q. (Showing witness) Did you see this letter? A. If that isn't the letter, it is a pretty good copy of it. This is the letter.

Q. When did that conversation take place as you say? A. Between one and two, September 15, 1932.

Q. Did you read the letter carefully? A. Very carefully.

Q. Very carefully? A. Very carefully.

Q. And this conversation took place about between the hours of one and two in the afternoon of September 15, 1932? A. Yes.

Q. And you say you examined the letter very carefully? A. That's right.

Q. Did you notice the date on that letter? A. Yes, that was another one of the things. Where had it been all this time.

Q. What date is there on that letter? A. June 10, 1932. That was another one of the things.

Q. What do you mean by "another one of the things?" A. I said: "The letter appears crude there in certain irregularities and that is why it should be confirmed." I said: "Well, if you get it confirmed by these facts from Trenton, and the facts are as stated, plus Mr. Thomas' endorsement, it would be perfectly safe."

Q. Did he say he would investigate those facts? A. Did he say he would? I told him he should.

Q. Did he investigate the facts? A. Yes.

Q. So he didn't rely on this letter of June 10th, 1932, marked Exhibit P- ? A. Yes, he did, because he made his investigation after he made the loan.

Q. Why, he investigated after? You say he saw this letter of June 10, 1932, and investigated after? A. He made the loan on September 15th and made his investigation later on in the month of September. It was contrary to my advice all the way. To make that clear, I suggested to Mr. Sherrill——

Q. Just one minute. What else took place at that conversation between one and two on the afternoon of September 15, 1932? A. That's about all, to my knowledge.

Q. Did you see the five hundred dollar check? A. At that time?

Q. Yes? A. No, sir.

Q. Did you see it any other time? A. I did.

Q. When? A. About three o'clock that afternoon.

Q. How did you come to see it three o'clock that afternoon? A. Miss Smith came in to the bank alone. The teller refused to cash the check, he didn't know her, and I identified her to the teller as the woman who came in about an hour previous and stood at my desk.

Q. Mr. Thien, who was the teller that cashed that check on September 15, 1932? A. May I see the check? Cyril Wilson.

Q. What was the name? A. Cyril Wilson. He has not been employed by our bank for two years.

Q. Do you know where he lives? A. I do not.

Q. Do you know his last address? A. From memory? I do not.

Q. Could you furnish us with it, Mr. Thien? A. Yes.

Q. Do you know whether he is in the banking business or is connected with any bank? A. I don't know.

Q. Are you still with the Dunbar National Bank? A. Yes, sir.

Q. Vice president? A. Yes, sir.

Q. What time do you say that the check was cashed, Mr. Thien? A. I should say it was about three o'clock, just as we were about to close the door.

Q. Do you remember testifying in the criminal court over in New York? A. Yes.

Q. Do you remember testifying that the check was cashed about fifteen minutes past three? A. I said about three o'clock.

Q. Didn't you testify at the criminal charges against Clara L. Smith in New York, on forgery, in the forgery case, that the check was cashed at fifteen minutes past three? A. No, sir.

Q. Are you sure about that? A. Sure. I said shortly after three o'clock.

Q. The check was cashed after banking hours, wasn't it? A. That's right.

Q. And Sherrill was there? A. Sherrill was not there.

Q. Isn't it true as a matter of fact that Sherrill was there at the time Miss Smith cashed the check because she had no account in the bank? A. No, he was——

Q. Answer the question? A. He was not there.

Q. Isn't it true that the check was not cashed because she had no account there, so she could not be identified, and that Sherrill was present and

received fifty dollars? A. That is absolutely not true.

Q. How do you know? A. Because I saw Miss Clara Smith cash that check about ten minutes after three. I introduced her to the teller. Had it been so, Mr. Sherrill's endorsement would have been on the check. It is absolutely not only necessary but imperative for someone we don't know.

Q. Then, what happened in this case, the check was not cashed because Miss Smith was not a depositor in the bank and that she could not be identified, and that Sherrill was there when the check was cashed, is that right? A. That is not right, no, sir.

Q. Have you ever visited the safe deposit box of Mr. Sherrill? A. No, sir.

Q. Did you see Miss Smith go down with Mr. Sherrill that afternoon of September 15, 1932? A. I think they did go downstairs after they left my desk. Yes, I think they did.

Q. What time was it, Mr. Thien? A. I would say it was one or two o'clock in the afternoon. I had no occasion to communicate with them then after they left my desk.

Q. Please don't characterize the testimony. That was between one and two? A. I would say so, yes.

Q. It was before this check was cashed? A. Oh, yes, yes.

Q. Did Sherrill tell you that he had spoken to Miss Smith prior to the fifteenth of September, 1932? A. No, he didn't. No, he didn't. I assumed that they had come from Mr. Sherrill's office to the bank.

Q. Had Sherrill spoken to you prior to that time? A. No. That's the first time I ever saw either Sherrill or Miss Smith in my life.

Q. Are you positive that you saw Miss Smith? A. Positive, absolutely.

Q. Is that the first time that you saw Sherrill that day? A. That is the first time that I saw Sherrill.

Q. How many times did you see him after that? A. That is rather a big question.

Q. How many times did you see him before?

Mr. Green: On that day?

A. Could you make your question a little more explicit?

Q. How many times did you see him prior to the fifteenth of September, 1932? Two or three times before that? Any times? A. I don't remember.

Q. You don't remember?

Q. And still you remember on the fifteenth of September, 1932, that there was a conversation between one and two o'clock in the afternoon, don't you, Mr. Thien? A. Absolutely, because that conversation—you remember the date you graduated from law school, don't you? A. I do not. A. Well, there is something wrong with you then.

Q. I do not. A. This was an unusual transaction. Something was impressed in my mind.

Q. How many transactions do you handle in the bank every day? A. I cannot answer a question like that.

Q. How many transactions have you handled since? A. Impossible to answer a question like that.

Q. Hundreds? A. I would say hundreds.

Q. Do you recall the transactions with such particularity as you do with the Smith transaction, with reference to the others? A. Only the very

unusual transactions. They are quite clear in my mind.

Q. Five hundred dollars an unusual loan? A. With the circumstances surrounding this loan, where a young lady comes from another town and has a letter with her and she sits at the desk for an hour, and then when the note comes due Mr. Sherrill says: "This young lady never paid this note". Don't you see the recurring incidents to impress it——

Mr. Dworetz: I ask that that be stricken out. Not responsive.

The Chairman: Strike it out.

Q. Mr. Thien, were there any loans made by you as vice-president of the bank to people that were not residents of the City or State of New York? A. Oh, yes.

Q. How many? A. Impossible to answer how many.

Q. Hundreds, thousands? A. No, no. Just, rather, a few, unusual. We are a small bank. It is natural our customers would be local.

Q. Mr. Thien, how long have you been in the banking business? A. I might say twelve years.

Q. Ever been connected with any other bank? A. Yes, yes.

Q. What bank? A. American Exporting, Irving Trust Company. Credit manager.

Q. Mr. Thien, you testified that Miss Smith and Mr. Sherrill came in to the bank on that afternoon with a letter. Who showed you the letter first—Bennert letter? A. That I couldn't say. That is, I am not sure. It seems to me that when the question of collateral came up, Miss Smith withdrew this letter from her purse or some package or some

other thing that she was carrying, and that was passed around from one to the other, but just as to the procedure, I am not clear on it.

Q. Mr. Thien, do you handle Mr. Sherrill's accounts in the bank?

The Chairman: Well, the Chair does not know what he means by handling Mr. Sherrill's accounts.

Q. Any loan, regarding the Guiana Realty Corporation? A. I am the loan officer and must pass on all loans.

Q. How many loans were passed in the Guiana Realty Corporation by you, Mr. Thien? A. Let me say a number, quite a few.

Q. Could you tell us approximately how much money, Mr. Thien? A. That the Guiana Realty Corporation has borrowed altogether from our bank?

Q. Yes? A. Perhaps twenty, twenty-five thousand dollars.

Q. Over how long a period of time? A. Over four years.

Q. Did you approve all the loans? A. I didn't approve all of them.

Q. How many did you recommend? A. I would say ninety percent of them. I would be away on vacation sometimes when he would borrow.

(At this point a recess is taken for five minutes, reconvening at 11:50 P. M.)

Roll call as follows:

The Secretary: Commissioner Donohue?

Commissioner Donohue: Present.

The Secretary: Flitcroft?

Commissioner Flitcroft: Present.

The Secretary: Grobart?

Commissioner Grobart: Here.
The Secretary: O'Dea?
Commissioner O'Dea: Here.
The Secretary: Patmos?
Commissioner Patmos: Here.
The Secretary: Torrey?
Commissioner Torrey: Here.
The Secretary: Walker?
Commissioner Walker: Here.
The Secretary: Finn?
Commissioner Finn: Here.
The Secretary: 8 present.

BENJAMIN THOMAS, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Thomas, what business are you in? A. Automobile business.

Q. Conduct an automobile school? A. Handling, selling.

Q. Where is your place of business? A. 2303 8th Avenue.

Q. Are you acquainted with Clara Smith? A. I am.

Q. And were you acquainted with her prior to September 15, 1932? A. Yes, sir.

Q. Do you recall Clara Smith coming to see you sometime prior, just prior to the fifteenth of September, 1932? A. I do.

Q. What was the purpose of her visit? A. She was seeking a loan of money.

Q. From you? A. Not particularly from me. She made a reference, but not particularly from me.

Q. And did you lend her any money? A. I did not.

Q. Did you send her to anybody? A. I did.

Q. Where did you send her? A. To Mr. J. W. Walker.

Q. And he was in the business of lending money? A. Mr. Walker was in that line. That's his line.

Q. (Showing witness) I show you Exhibit P-5, application of the Guiana Realty Corporation, and on the back of which as a joint co-maker, insurer and guarantor of a note that appears on the back of it, signed by Florence A. Smith and signed by Benjamin Thomas, and ask you if that is your signature? A. That is not my signature, no, sir.

Q. What is your address, Mr. Thomas? A. My business or home?

Q. Business? A. 2303 8th Avenue, but not now.

Q. At that time? A. At that time it was 217 West 123rd Street.

Q. At that time it was 217 West 123rd Street? A. Yes, sir.

Q. When did you first learn that this purported signature was on the back of a note of Clar Smith? A. Oh, sometime—I don't know just. I can't recall the date, but quite a little—well, I should say sometime in '32 when Mr. Sherrill wrote me a letter claiming that I had defaulted, and that it was up to me to pay five hundred dollars that I had signed, had endorsed.

Q. Did you know Mr. Sherrill? A. Very slightly at that time.

Q. You didn't send Miss Smith to Mr. Sherrill, did you? A. I did not.

Q. You are quite certain that this is not your signature? A. Oh, I am positive of that.

Q. When you sent Miss Smith to Mr. Walker, did you give her a letter to Mr. Walker? A. I did.

Q. What was the nature of the letter? A. Just a letter of introduction.

Q. Did you sign the letter? A. I did.

Q. Yourself? A. Yes, sir.

Q. How did you sign it? A. Like I usually sign my name, "Benjamin F. Thomas".

Cross examination by Mr. Dworetz:

Q. What business are you in, Mr. Thomas? A. Automobile. Auto school and sales and repair.

Q. Are you in the real estate business, Mr. Thomas? A. I am, also, yes.

Q. Do you know Mr. Sherrill? A. I do.

Q. How long have you known him? A. I had known Mr. Sherrill very slightly prior to this transaction.

Q. Since this transaction are you friendly with him? A. Not particular friends. Business men together in New York, that's all.

Q. Did you ever make any loans for Mr. Sherrill? A. I did not.

Q. For the Guiana Realty Corporation? A. No, sir.

Q. Mr. Thomas, when was the first time you saw this application marked Exhibit P-5? A. When Mr. Sherrill—I demanded to see what I had signed, and he brought it over to my office, Mr. Sherrill, himself.

Q. Do you know when that was, Mr. Thomas? A. It was quite a little time. I can't recall the time, but some time after he wrote me, and I think we had a conversation on the phone with reference to it. I demanded to see what I had signed.

Q. (Showing witness) I show you application marked Exhibit P-5, Mr. Thomas, and ask you whether or not that was the document that was shown to you? A. I should say it is.

Q. Is that document in the same condition now that it was then? A. Except a little bit worn.

Q. And how about these delineations? A. I didn't notice anything on there, just my name.

Q. Did you notice these delineations? A. I could not say that I did.

Q. (Indicating) Mr. Thomas, did you notice Mr. Sherrill's name here? A. Well, I didn't take any particular notice of that, no, sir.

JOHN W. WALKER, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Walker, where do you live? A. 137 West 142nd Street.

Q. New York City? A. New York City.

Q. And what is your business? A. Real estate broker.

Q. And do you sometimes loan money, too? A. I do.

Q. Are you acquainted with Miss Clara Smith? A. Yes. I met her the night that she came to the office.

Q. She came to your office? A. She did.

Q. Is that the first time that you knew her? A. That's the first time.

Q. And how did she happen to come to your office, do you know? A. She said she was sent by Mr. Benjamin Thomas in reference to a loan for five hundred dollars.

Q. Did you accommodate her with a loan? A. Well, I questioned her a little bit, and she told me she was out of town, in Paterson, and I—when she mentioned the denomination of money that she wanted, I told her I couldn't lend that much. I said: "I can refer you to a man who is incorporated and makes loans of that amount or more", and I said: "I am only an individual, only make very short loans", and I gave her Mr. Sherrill's address on my card.

Q. After you gave her Mr. Sherrill's address on your card, did you have any transaction with her with reference to security or anything of that kind? A. Well, I don't know whether I asked her, but she volunteered and told me that she was a teacher and had some refund in the school here supposed to be security, and she explained all that, and I said that I thought Mr. Sherrill wouldn't loan her so much on that security.

Q. Did she show you any documents? A. Well, I am not sure about that. It has been a long time. I think she exhibited some, but it is not very clear in mind just now. I know she told me about the securities, about the refund she had saved up.

Q. Pension fund? A. Pension fund.

Q. So you sent her to Mr. Sherrill, is that right? A. I did.

Q. And did you see Miss Smith after that? A. Yes, she came back after awhile, I guess. That is, two or three months after that.

Q. Did you have a conversation with her at that time? A. I did.

Q. What did she come there for at that time? A. Well, she said she wanted to borrow a thousand dollars.

Q. And what did you say? A. Well, I asked her had she paid Mr. Sherrill, and she said she

had. "Well", I said, "why don't you still do business with the same person?" I said: "You paid him all right. Why don't you get it from him again." "Well", she said, "he don't loan that amount, a thousand dollars", and I told her then, I didn't make loans for a thousand dollars, and that's about the end of the conversation.

Cross examination by Mr. Dworetz:

Q. Mr. Walker? A. That's right.

Q. How long have you known Mr. Sherill? A. Well, I guess I have been knowing him about eight or nine years.

Q. Are you very friendly with Mr. Sherrill? A. I am. We have been friends.

Q. When was the first time you saw Miss Smith, Mr. Walker? A. I think it was about the thirteenth or fourteenth of September, 1932. That is the same evening that I sent her over to Mr. Sherrill. I think it was the thirteenth or fourteenth.

Q. When did she come to visit you again, Mr. Walker? A. I don't know whether it was two months or three months after. It was after the time the loan was supposed to have expired, according to my belief.

Q. Were you subpoenaed in this case, Mr. Walker? A. I was not.

Q. Who asked you to come over? A. Mr. Sherrill.

Q. Did you speak to anybody else about coming over here, Mr. Walker? A. No.

Q. Did you testify over in New York in the criminal proceedings against Miss Smith? A. I did not.

Q. Did Mr. Sherrill ask you to testify? A. No.

Q. Did you speak to anybody else other than Mr. Sherrill regarding the testimony you were to give tonight? A. No, I did not.

Q. Anyone at all? A. No, sir.

Q. You didn't lend Miss Smith any money, did you, Mr. Walker? A. No, sir.

MISS DAISY HAWKINS, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Miss Hawkins, where did you work in September, 1932? A. Mr. Sherrill's.

Q. Where? A. At Mr. Sherrill's, 260 West 135th Street.

Q. Will you try to talk a little louder, Miss Hawkins, so that these gentlemen down at this end of the table can hear you. In what capacity were you employed there? A. As a clerk in his office.

Q. Do you know Miss Clara Smith? A. I met her when she came around with her mother.

Q. When was that? A. In the evening of the thirteenth or fourteenth of September.

Q. And were you present when she talked to Mr. Sherrill? A. Yes.

Q. (Showing witness) I show you Exhibit P-4, the letter of June 10, 1932, purporting to be signed by Lewis A. Bennert, and ask you if you ever saw that before? A. Yes, I saw it the evening that she came over with her mother the thirteenth or fourteenth.

Q. Who produced it at the time? A. Miss Smith. I saw her take it from her bag.

Q. And to whom did she give it? A. To Mr. Sherrill.

Q. Do you know why she was there? A. She was there for the purpose of making a loan.

Q. When did you see her after that? A. Well, I don't remember the date, but I was there when she came there.

Q. The next day, the day after? A. The next day when she came.

Q. Did she have a conversation with Mr. Sherrill again? A. Yes, she did.

Q. Did they stay there all the time? A. No, they did not.

Q. Where did they go, do you know? A. I don't know.

Q. They went out? A. They went out.

Q. How long were they gone? A. Well, I don't know. I am not in the office all the time.

Q. Were you there when they returned? A. No.

Q. Did you take care of the books at that time? A. I did not.

Cross examination by Mr. Dworetz:

Q. Are you employed by the Guiana Realty Corporation at the present time? A. No, I am not.

Q. What is your occupation now, Miss Hawkins? A. I am a clerk in the Harlem Clothes Cleaning Company.

Q. How long did you work for the Guiana Realty Corporation? A. Three years—three and a half years.

Q. Referring to Exhibit P-4, Miss Hawkins, when did you say you saw that letter? A. The evening she came over with her mother. It was the thirteenth or fourteenth.

Q. What time was it, do you recall? A. Well, it was around between ten and ten-thirty.

Q. Ten or ten-thirty in the evening? A. Yes—night.

Q. Did you see this letter? A. Yes.

Q. How did you come to see this letter? A. Because I was in the office with Miss Smith and Miss Smith's mother and Mr. Sherrill.

Q. Did you read the letter? A. Yes, I did.

Q. How did you get possession of the letter, Miss Hawkins? A. Because I was in the office with Miss Smith, Mrs. Smith and Mr. Sherrill.

Q. Who handed you the letter? A. Mr. Sherrill, after he finished with it.

Q. Did you see where Mr. Sherrill got it from? A. From Miss Smith. Miss Smith took it from her bag, and gave it to him.

Q. You read the letter? A. I did, yes.

Q. What was your position with the Guiana Realty Corporation? A. I was the clerk. I used to take telephone messages, and I would help the young lady when she was busy.

Q. And you were in the office at ten-thirty that night? A. Yes.

Q. What hours did you work, Miss Hawkins? A. You see I live there in the same building.

Q. You live there in the same building? A. Yes, I live in the same building.

Q. Are you a tenant of Mr. Sherrill's? A. Yes.

Q. And you were working there that evening at ten, ten-thirty? A. I wasn't working.

Q. How did you happen to be there? A. I came in from the movies.

Q. And you saw Mr. Sherrill there and Miss Smith and Mrs. Smith? A. Yes.

Q. Those weren't your working hours, were they, Miss Hawkins? A. No.

Q. How did you happen to be there? A. Because I live there.

Q. Is this a store? Does the Guiana Realty Corporation have a store in this building, or an office, or what? A. An office.

Q. Where is the office? A. In the front.

Q. On the ground floor? A. No, one flight up.

Q. What floor do you live on? A. One flight up. The office is in the front.

Q. You live in back of the store? A. Not the store, the office.

Q. You live in back of the office? A. Yes.

Q. In other words, you live back of the office of the Guiana Realty Corporation? A. Yes.

Q. How long did you live there, Miss Hawkins? A. Three years.

Q. Did you ever have any business dealings with Mr. Sherrill, Miss Hawkins? A. Nothing, but work for him.

Q. Are you married, Miss Hawkins? A. No, I am not.

Q. Were you married? A. No.

Q. How old are you? A. Twenty-five.

Q. How many girls did Mr. Sherrill have working for him? A. Two.

Q. September, 1932? A. Yes.

Q. Did that other girl live in back of the store, too? A. No.

Q. Were you subpoenaed to come here, Miss Hawkins? A. No.

Q. Who asked you to come? A. Mr. Sherrill.

Q. You are still a tenant of Mr. Sherrill's? A. Yes, I am.

Q. Are you working now? A. Yes, I am.

Q. How much rent do you pay? A. I pay three dollars a week.

Q. Now, Miss Hawkins, referring to Exhibit P-5, did you ever see this application? A. I did

not see the application because I did not make out the application.

Q. Did you examine the application? A. I did not, no.

Q. How is it you came into possession of this letter marked P-4? A. Because I was in the office. We all went upstairs together, and I went into the room, and Miss Smith and Mrs. Smith and Mr. Sherrill. We all met on the stairs together and we went on upstairs, and as he finished the letter he gave it to me.

Q. Did you testify in the previous trial in this case? A. I did not.

Q. Did you testify in the criminal proceedings in New York? A. I did not.

Q. Did you speak to anybody else about this case besides Mr. Sherrill? A. I did not.

Q. When was the last time you spoke to Mr. Sherrill about this case? A. I don't know. Not for a long time.

Q. How did you come over tonight, Miss Hawkins? A. How did I come over?

Q. Yes? A. In an automobile.

Q. Did you come over with Mr. Sherrill? A. Yes, I did.

EMANUEL SPARKS, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Where did you work in September, 1932? A. I worked for Gray, 264 West 135th Street.

Q. What kind of a place is that? A. A butcher shop.

Q. Do you remember seeing Miss Smith in September, 1932? A. I remember seeing her, yes. I

couldn't say exactly to the minute, but I remember seeing her some time ago.

Q. Where did you see her? A. In the store where I worked there.

Q. Who was she with? A. Mr. Sherrill brought her in and introduced me to her.

Q. Introduced you to her? A. Yes.

Q. And did they ask you to sign anything? A. Yes, he wanted me to witness a paper. He had a paper and a letter.

Q. What kind of a paper was it that they wanted you to witness? A. I just can't recall the exact reading, but I remember it was relative to a sum of money because they explained. She told me she was making a security loan, and it was for the purpose—my signature was to witness this sum of money that was collateral for the note.

Q. Was that the paper that was sent to Trenton? A. I could not tell you.

Q. (Showing witness) I show you Exhibit P-4, the letter purporting to be signed by Lewis A. Bennert, and ask you if you ever saw that before? A. Yes.

Q. Where? A. When she came in the store she had this letter and another paper which I signed. She had two of them together.

Q. Were they attached together? A. I just can't recall whether they were attached or not.

Q. And after they spoke about your signing as witness the nomination for the beneficiary, is that right? A. Exactly.

Q. And that letter was there at the time? A. Yes.

Q. And Clara Smith was there at that time? A. Yes.

Q. And Mr. Sherrill was there? A. Mr. Sherrill was there.

Cross examination by Mr. Dworetz:

Q. Was anybody else present, Mr. Sparks? A. No, no one that had anything to do with the discussion was present.

Q. What did you have to do with it? A. Well, I did it as a favor, as witness, because from what he said it was necessary to have a witness, and it was a kind of favor.

Q. And do you work for Mr. Sherrill? A. No, sir.

Q. Did you ever work for Mr. Sherrill? A. No, sir.

Q. Did you work for Mr. Sherrill in September, 1932? A. No, sir.

Q. Did you ever borrow any money from Mr. Sherrill? A. No, sir.

Q. Are you married? A. Yes, sir.

Q. Do you drive a car? A. Yes, sir.

Q. Did you ever do any work for Mr. Sherrill? A. No, sir.

Q. Did you ever drive Mr. Sherrill around? A. Not steady. Not for any pay—not steady.

Q. Did you ever drive him to Paterson? A. Yes.

Q. When was that? A. I don't remember. I remember driving him once. I could not tell you the date.

Q. You have done favors for Mr. Sherrill? A. No more than with reference to his car.

Q. And Mr. Sherrill has done favors for you? A. He has never done favors for me.

Q. You have done favors for Mr. Sherrill? A. No more than I work next door to the office where he is.

Q. You have done favors for Mr. Sherrill? A. In reference to what I have just stated, driving the car.

Q. He has done favors for you? A. I couldn't say he has done favors, no.

Q. Did you testify at the first trial? A. No, sir.

Q. Did you testify at the criminal proceedings in New York? A. No, sir.

Q. Who asked you to testify tonight? A. I came over with Mr. Sherrill. Owing to the fact that I was witness on the paper, it was necessary for me to come over.

Q. Did you discuss the matter with Mr. Sherrill before? A. No, I didn't see Mr. Sherrill until late this evening, because I didn't get off from work.

Q. Did you talk it over with him during the week? A. No. I was not interested.

Q. What was that? A. No.

Q. Did you talk it over with him last week? A. No, I didn't know anything about it.

Q. When did you find out about it, Mr. Sparks? A. I couldn't exactly say. I remember—what's today—Thursday—when he left word at my house, my wife, for me to come over these this evening. He wanted me to come down and see him, see.

Q. And did you come down with Mr. Sherrill? A. I drove Mr. Sherrill over this evening.

Q. Mr. Sherrill, Mr. Walker and Miss Hawkins? A. Yes.

Q. Mr. Thomas come over with you? A. I don't know the other gentleman. I never met him before.

Mr. Green: I would suggest that we adjourn until some night next week.

Mr. Dworetz: Before we adjourn, I would like to ask Mr. Sherrill just one question.

William Sherrill, for Complainant—Cross.

WILLIAM SHERRILL, a witness already sworn, recalled, and further testifies as follows:

Cross examination by Mr. Dworetz:

Q. Mr. Sherrill, is it not a fact that if the moneys due to the Guiana Realty Corporation were paid, you would not be interested in prosecuting these charges? A. No, I wouldn't say so—because the principle involved.

Q. What is the principle, five hundred dollars? A. Well, even if it was five thousand dollars. The principle—anybody that would leave Paterson and come over to me, you know, with a forged document, you know, that's what the principle is. That principle, you know.

Commissioner Finn: I move that we adjourn until Wednesday night.

The Chairman: Regularly moved and seconded that the Board stand adjourned until Wednesday, October 24th, 1934, at 8 P. M.

BOARD OF EDUCATION OF THE CITY OF PATERSON, IN THE COUNTY OF PASSAIC.

GUIANA REALTY CORPORATION,
Complainant,
vs.
CLARA L. SMITH,
Defendant.

CONTINUATION of the taking of testimony in the above entitled matter, before the members of the Board of Education of the City of Paterson, New Jersey, at the Board Rooms in the City Hall, Paterson, on the twenty-fourth day of October, 1934, at 8 P. M.

PRESENT:

Commissioners MARGARET I. FINN, President of the Board, MRS. NAN DONOHUE, WILLIAM FLITCROFT, RICHARD K. O'DEA, ADRIAN PATMOS, JAMES E. TORREY, BARTON H. WALKER, and SAMUEL GROBART.

Commissioner FEDERICI, also present, but not voting.

Appearances as heretofore.

Roll call by SECRETARY THOMAS F. KELLEY.

PRESENT:

Commissioners DONOHUE, FLITCROFT, FEDERICI (not voting), O'DEA, PATMOS, TORREY, WALKER and FINN.

ABSENT:

Commissioner GROBART.

Secretary Kelley read the following:

"October 20, 1934.

"Mr. Thomas F. Kelley,
Secretary, Board of Education,
Paterson, N. J.

My dear Mr. Kelley:

"Please call an adjourned meeting of the Board of Education, at Room No. 23, City Hall, on Wednesday Evening, October 24, 1934, at eight o'clock for the purpose of continuing the charges against Clara L. Smith, for conduct unbecoming a teacher.

Very truly yours,

Margaret I. Finn.
President."

The President: Mr. Walker, will you please take the chair?

(Mr. Walker takes the chair.)

Commissioner Torrey: Can we re-open or re-call the roll? Mr. Grobart is here.

The Chairman: Make a notation on the minutes that Mr. Grobart appears—rather, we will call the roll again.

Roll call by Secretary Thomas F. Kelley.

Present:

Commissioners Donohue, Federici (not voting), Flitcroft, Grobart, O'Dea, Patmos, Torrey, Walker and Finn.

Eight present. Mr. Federici is here, but cannot vote.

The Chairman: Quorum present.

Mr. Green: Mr. Chairman, and members of the Board:

There was some confusion in the early part of the hearing that was held last week. Counsel for Miss Smith made some motions and there were some votes taken or attempted to be taken, but the record is not clear, and for the purpose of clarifying the record I am going to repeat the motions that were made by counsel for Miss Smith, and request that the members of the Board vote on the same.

The first motion made by Mr. Dworetz was:

"At this time, if it please the honorable members of the Board of Education, before entering a plea, or plead to these charges, the respondent, the defendant, Clara L. Smith, contests the jurisdiction and authority of the Board of Education in this matter for the following reasons:

"In the first place, the complainant, Guiana Realty Corporation, a corporation, is not a citizen of either the City of Paterson, County of Passaic or State of New Jersey; that it is not authorized to do business in the State of New Jersey; that the matters about which the said Guiana Realty Corporation complain pertain to a purely private matter; that the charges preferred by the complainant in no way, shape, form or manner connect the defendant, Clara L. Smith, with conduct unbecoming a teacher in the Public School system of the City of Paterson; that the matters set forth in the charges are cognizable, if at all, in a court of civil jurisdiction; that these proceedings, namely, the present complaint, is in open defiance to a ruling of the State Commissioner, Dr. Charles Elliott; that under a ruling and decision of Dr. Charles H. Elliott, Commissioner of the State of New Jersey, on the twenty-fifth day of September, 1934, ordered that the defendant in this case Clara L. Smith, be reinstated and that the Board

of Education of the City of Paterson is directed to pay her salary from February 6th, 1934, and to immediately reinstate her as a teacher in its school system. There is absolutely no reference made in that decision by the State Commissioner of Education for a new trial or trial de novo; that these charges are identical with the charges against the respondent as in the previous case, and that these charges are merely a subterfuge, and for these reasons, ladies and gentlemen, the defendant contests the jurisdiction or right of this Board to try the defendant again."

Now, I would suggest that either a motion be made to deny the request of counsel or to consent to it.

Mr. Dworetz: I object to the proceedings at this time because the record speaks for itself.

The Chairman: We will hear the motion. What is your motion, Commissioner?

Commissioner O'Dea: I move that the request be denied.

The Chairman: Regularly moved and seconded that the motion of counsel be denied. All in favor signify the same by saying aye, contrary no. The Secretary will call the roll:

The Secretary (calling roll):

Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?
Commissioner Torrey: Aye.
The Secretary: Walker?
Commissioner Walker: Aye.
The Secretary: Finn?
Commissioner Finn: Aye.
The Secretary: Eight in the affirmative, none in the negative.
Mr. Dworetz: The Chairman will allow me an exception?
The Chairman: Yes. Exception is allowed.
Mr. Green: The second motion made by Mr. Dworetz, counsel for Miss Smith, was:
"Now I am asking for a dismissal of the charges that have been preferred by the Guiana Realty Corporation. In the first place, the charges entered by the said complainant are in no wise or in no manner related to any of the causes that might be set forth under the school law. Further, that the charges in this matter are dated October 9th, 1934. This date is prior to the date the respondent was reinstated.
"I also move for a dismissal of these charges on the grounds that the complaint has not been sworn to. It is merely a statement. They have not been verified. On those grounds I ask for a dismissal."
Commissioner Torrey: I move that it be denied.
Commissioner O'Dea: Second the motion.
Mr. Dworetz: I object to the motion for the reasons previously stated, and the record speaks for itself.
The Chairman: Your objection will be overruled and the motion denied. Regularly moved and seconded that the motion of counsel be denied. All in favor will signify the same by saying aye, contrary no. The secretary will call the roll.

The Secretary (calling roll): Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative, none in the negative.

Mr. Green: The third motion made by counsel is as follows:

"At this time, ladies and gentlemen of the Board of Education, I move for a stay of these proceedings until such time as the Board shall fairly order an inspection and examination of the books of the Guiana Realty Corporation and until such time as the respondent has had a reasonable opportunity to examine and inspect the same. We realize that the Board may have difficulty in this respect, since these books are in the State of New York. However, we request that the Board make it a condition upon the prosecution of this complaint, that the complainant submit its books and records so that the same may be inspected and examined by the respondent and her accountants. We respectfully ask that this matter be stayed."

Commissioner O'Dea: I move that the request be denied.

Mr. Dworetz: I object, Mr. Chairman, on the ground that the record speaks for itself.

Commissioner O'Dea: Press the motion.

The Chairman: Regularly moved and seconded that the motion of counsel be denied. All in favor will signify the same by saying aye, contrary no. The secretary will call the roll.

The Secretary (calling roll): Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative, none in the negative.

The Chairman: Carried.

LEWIS A. BENNERT, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Bennert, what position did you occupy in the school system of the City of Paterson in June, 1932? A. General Supervisor of Schools.

Q. And in that position were you in charge of the various schools in the city? A. Yes, sir.

Q. Was School number 18 one of those schools that came under your jurisdiction? A. Yes, sir.

Q. You are acquainted with Clara Walker? A. Yes.

Q. And know that she was teaching at school number 18 in June, 1932? A. Yes, she was.

Q. (Showing witness) I show you Exhibit P-4, purporting to be a letter to whom it may concern, and signed by Lewis A. Bennert, and ask you if that is your signature?

Mr. Dworetz: We will admit that it isn't Mr. Bennert's signature.

Mr. Green: Well, let's keep the record straight.

The Chairman: For the purpose of the record, that the signature on Exhibit P-4 is not the signature of Mr. Bennert is admitted by the defendant.

Q. Did you dictate the contents of that letter to anyone? A. I did not.

Q. In your capacity as General Supervisor was it necessary for you to send communications to the various schools from time to time? A. Oh, I did, yes, many.

Q. And were they sent over your signature?

At some times, but more often—yes, they were sent over my signature, but I didn't sign the communications that went forth. Many times the material that went out to the schools was in mimeograph form prepared in the office here by Miss Sweetman, and when she did not type my name in she would sign my name, and indicate it by putting an H, which was Miss Sweetman's given name, Harriet—initial.

Q. And were these circulars circulated throughout the schools? A. Yes.

Q. That was the purpose of them? A. That was the purpose of them.

(No cross examination.)

HARRY G. BRAGG, sworn as a witness on behalf of the complainant, testifies as follows:

Direct examination by Mr. Green:

Q. Mr. Bragg, you are an attorney at law of the State of New York? A. I am.

Mr. Dworetz: We will admit that.

Q. And you represented the Guiana Realty Company in a matter in connection with Miss Clara Smith? A. Yes, I did.

Q. And you are the Harry Bragg who is referred to in these letters and telegrams which have been introduced in evidence here? A. I am.

Q. (Showing witness) I show you a check dated December 5, 1932, drawn on the Franklin Trust Company of Paterson, New Jersey, to the order of Harry Bragg, in the sum of five hundred and

seventy-five dollars and signed by Florence A. Smith, and ask you if you received that check? A. I did.

Q. From whom? A. I received this check through the mail from Miss Smith, Clara Smith.

Q. And what was it for? A. She sent me a letter stating that this check was in payment of indebtedness to the Guiana Realty Company, and it was to be deposited, I believe, in a couple of days of the time it was dated. I think I received it prior to the date which it bears.

Q. Did you deposit it for collection? A. I did.

Q. And what happened? A. Why, I think I paid a protest fee of a couple of dollars, and I re-deposited it once or twice.

Q. And what happened after you re-deposited it? A. It always came back.

Mr. Green: I offer the check in evidence. (Check marked Exhibit P-10.)

Q. Under Exhibit P-9 there is a telegram signed "Clara Smith" addressed to yourself, dated March 2, 1933: "Will meet you Tuesday evening at seven without fail", signed, "Clara Smith". Did you receive that? A. I received that telegram.

Mr. Dworetz: We admitted that in evidence.

Q. Did Miss Smith meet you? A. No, she did not.

Q. Did Miss Smith keep any of the promises that she made with you relative to the payment of this account, in accordance with the telegrams that are here marked in evidence? A. I don't just recall the telegrams marked in evidence, but on one or two occasions she did send some money

she said she was going to send. I think it amounted in all to one hundred and thirty dollars. The big majority of them, though, weren't kept.

Q. (Showing witness) I show you a letter dated November 8, 1932, signed "Clara L. Smith", and ask you if you received that from her? A. Yes, I remember this letter. I received it.

Mr. Green: I will offer the letter in evidence.

Mr. Dworetz: Let me look at it, please.

The Chairman: Letter admitted in evidence.

(Letter marked Exhibit P-11.)

"39 12th Ave., Paterson, N. J.
November 8, 1932.

Mr. Harry G. Bragg,
Counsellor at Law,
N. Y. C.

My dear Sir:

"Thank you for the consideration shown me in your communication of November 7th. Since we are not in school today I had planned a visit to the office of the Guiana Realty Corporation to explain. However, after the receipt of your letter I thought it best to spend my time adjusting matters here.

"Please believe me when I say that I am truly sorry about the incident, and especially because I know that its president, Mr. William Sherrill, is convalescing now. Also I wanted my credit reference there to be above reproach.

"I have been ill with tonsilitis and a heavy cold, and was confined to the house

at the time the deposit should have been made to cover the check for the Guiana Corporation and two others. Since my father was going down town I asked him to make the deposit for us. He claims that he misunderstood, and placed the money in the Building and Loan, which could have waited.

"My father has a dent in his skull due to a recent accident (about three years ago) and, because of this act, our family doctor thinks this may be affecting him. However, I regret to say this because his health has been quite poor for quite some time.

"I imagine that Mr. Sherrill is thoroughly disgusted with me, and cannot blame him for the same, however, if you will pursuade him to give me until between the fifteenth and the seventeenth of this month I will settle up. This is what I was going to the Company's office for today. Also please say to them that I am willing to pay whatever expense may be involved because I fully realize the extent of the inconvenience that I am causing the corporation.

"Please say to Mr. Sherrill that I would have visited the office before this letter became necessary, but the continued unsettled weather was not good for me.

"Sincerely expecting a favorable reply, I am,

Very truly yours,

Clara L. Smith.

"P. S. If I can settle the matter before the dates mentioned, I will gladly do so."

Q. Now, this letter is dated November 8, 1932, and it speaks about a check that wasn't paid. Is that a check that was given you to collect? A. My recollection was that that concerned the first check for two hundred and fifty dollars and which she defaulted, if I am not mistaken.

Q. A check given by you to the Guiana Realty Company? A. Yes, that's right.

Q. (Showing witness) I show you Exhibit P-6 and ask you if that's the check that the letter referred to? A. Yes, that's the check that the letter referred to.

Q. (Showing witness) I show you a letter dated December 7, 1932, signed by Clara L. Smith, and ask you if you received that from her? A. Yes, I received this letter.

Mr. Green: Offer the letter.

The Chairman: Letter is admitted, if no objection.

(Letter marked Exhibit P-12):

"39 12th Ave., December 7, 1932.
Paterson, N. J.

"Mr. Harry Bragg,
Counsellor at Law,

Dear Sir:

"I am enclosing deposit slip and sincerely trust that everything will be all right this time. It was my intention to bring same to you in person, but I am confined to my home due to illness and unable to attend school. Please return the slip to me so that same may be entered on my sister's book. You have no idea just how much I have regretted the way the transaction has turned out. Seemingly everything went

wrong. There are only six colored teachers here and more than four hundred white girls waiting for positions, thus we do not want any trouble with the Bd. of Education.

"Trusting that this will complete the transaction, and thanking you for your extreme courtesy,

Yours very truly,

Clara L. Smith.

"P. S. Have some money due us in N. Y. C. and may have to ask you to help us collect same if you will."

Q. This letter is dated December 7, and refers to a deposit slip. Can you tell us what that reference means? A. Why, she sent me with that letter a deposit slip indicating that she had deposited in a bank in Paterson the sum of five hundred dollars, which was to show me, I take it, that the money was on deposit and was no fault of hers that we didn't collect it.

Q. And as a result of that——

Mr. Dworetz: I object to counsel leading the witness. The witness is intelligent, and there is no reason why counsel has to persistently lead the witness.

Q. What did you do as a result of receiving that letter? A. As the result of this letter and the result of receiving the deposit slip, I re-deposited the check on hand and the check was returned. Paid a protest.

Q. (Showing witness) I show you letter dated January 31, 1933, addressed to yourself, signed

by Clara L. Smith, and ask you if you received that letter? A. Yes, I received this letter.

Q. I offer the letter in evidence.

The Chairman: It will be received in evidence. No objection.

(Letter marked Exhibit P-13.)

Q. On the stationery of Fillmore Smith, Justice of the Peace and Notary Public, 39 12th Avenue, Paterson, New Jersey:

"January 31, 1933.

"Mr. Harry Bragg,
Attorney at Law,
N. Y. C.

My dear Mr. Bragg:

"I will phone in a day or two and see what appointment you will be able to give me in order to settle the balance. No doubt you have my papers.

"Sincerely regretting all the trouble I have caused you, I am,

Very truly yours,

Clara L. Smith."

Q. As the result of this letter did Clara L. Smith come to your office or make an appointment at your office for the purpose of settling this matter? A. She made an appointment, but she didn't come.

Q. (Showing witness) I show you a letter dated February 20th, 1933, addressed to yourself and signed by Clara L. Smith, and ask you if you received that letter? A. Yes, I received this letter.

Mr. Green: I offer the letter in evidence.

(Letter marked Exhibit P-14.)

"39 12th Avenue,
Paterson, N. J.
February 20, 1933.

"Mr. Bragg,
Attorney at Law,

My dear Mr. Bragg:

"All I can say is that I'm sorry. Everyone here has been ill and my father's condition is the same. I'll get busy now and finish up out here so I can finish up out there. The business is on my mind most of the time, and I really cannot stand the strain.

"After this business is completed there are some other matters that I would like to talk over with you. However, I realize that this must be cleared up first.

Very truly yours,

Clara L. Smith."

Q. Did she clear it up? A. She did not.

Q. (Showing witness) I show you letter dated March 31, 1933, addressed to yourself, signed by Clara L. Smith, and ask you if you received that letter? A. I received this letter.

Mr. Green: Offer the letter in evidence.
The Chairman: Letter is admitted.

(Letter marked Exhibit P-15.)

"39 12th Avenue,
Paterson, N. J.
March 31, 1933.

"Mr. Bragg,
Attorney at Law,
New York City.

My dear Sir:

"When we phoned you the last time it was because of a seemingly reliable newspaper article concerning the Clearing House Association here.

"The Hamilton Trust Company and its two branches, the Labor National Bank, the Security Trust Company, the Franklin Trust Company, the Broadway National Bank and Trust Company, the National Bank of America, are not doing normal business as yet, however, this is just a temporary condition.

"Business here is crippled for the present and our city payroll is tied up in these banks. If we are paid for March on Monday it will be in the form of tax anticipation notes. They are only of value to local property owners who have not paid their taxes.

"We have made arrangements that will enable us to send Mr. Sherrill a substantial sum on or before April 15th if the banking situation hasn't cleared up before then. However, I will try to rush matters and get it down there next week. We have a check but it really isn't any good because we can't get it cleared through.

"Sincerely thanking you for all past courtesies, I am,

Very truly yours,

Clara L. Smith."

Q. Did she bring a check to meet the balance before April fifteenth as stated in this letter? A. She did not.

Q. Did you have any conversation with Miss Smith with reference to the collection of these moneys? A. I had several conversations with somebody over the telephone who said she was Clara L. Smith. The conversation was to the effect that within a day or two——

Mr. Dworetz: Just a minute.

Q. Did you know whether or not it was Clara L. Smith? A. Well, I am sure because she knew all the facts about this transaction and I had every reason to believe it was she. I had never seen her.

The Chairman: Still object?
Mr. Dworetz: Sure.
The Chairman: Strike it out.

Cross examination by Mr. Dworetz:

Q. Mr. Bragg, when was the last time you received some money from Clara Smith? A. I am sure I will have to refresh my memory by those postal orders there. We got them at different times. Some of seventy-five——

Q. (Counsel hands witness papers.)

Mr. Green: I don't think that they are there.

A. Don't think they are here. I wouldn't be able to call them off-hand. Here they are. There is one of December 14th, apparently——

Q. What year? A. Well, the telegram doesn't indicate, but I assume it was in 1932, December.

Q. December 14th?

By Mr. Green:

Q. Or December 14, 1933? A. Yes, it must have been a year ago.

By Mr. Dworetz:

Q. Mr. Bragg, was that before or after the last hearing? A. It was—it must have been prior.

Q. What was that? A. It must have been prior.

Q. I mean when I say hearing I mean the first trial, the trial that took place in April, 1933? A. If that was Desember, 1933, it must have been before.

By the Chairman:

Q. You didn't receive any money after that trial, did you? A. No.

Q. Then it must have been December, 1932. The trial was in April, 1933? A. Yes, I see.

By Mr. Dworetz:

Q. You represented the Guiana Realty Corporation in the first trial, April, 1933? A. That's correct.

Q. Were you retained by the Board of Education or by Guiana Realty Company? A. I was retained by the Guiana Realty Company.

Q. How much was paid on this loan, Mr. Bragg, do you know? A. To the best of my recollection,

I think it was about one hundred and thirty some dollars, to my recollection.

Q. Mr. Bragg, isn't it true that some hundred and fifty dollars were paid? A. Well, I couldn't be exact as to the amount—somewhere around a hundred and fifty dollars. My recollection was that it was around a hundred and thirty some odd dollars. There was seventy, there was thirty-four——

Q. Mr. Bragg, how much was the payment in December, 1932? A. I could not say.

Q. (Showing witness) I show you Exhibit P-10, and ask you from whom did you receive that check? A. I received it from Miss Clara Smith.

Q. Did you receive it personally? A. I received it accompanied by a letter. The letter was signed by Miss Smith.

Q. Have you got that letter? A. I suppose it is probably in the—I don't know if it is evidence or not.

Q. December 5, 1932? A. That's the date of the check. The check was probably post dated. My recollection is it might have been the latter part of November.

Q. You are sure, Mr. Bragg, that Exhibit P-10 was a post-dated check? A. I am reasonably sure.

Q. Look through these letters, Mr. Bragg, check dated— A. I received it before. I had to hold it awhile before I put it in. I don't see any letter of corresponding date.

Q. Mr. Bragg, don't you know that this check marked Exhibit P-10 was not mailed to you? A. It wasn't mailed to me? Let me see the check. Well, to the best of my recollection it was mailed to me.

Q. Mr. Bragg, do you recall any checks being delivered to you in person? A. I don't recall any checks being delivered to me in person.

Q. Mr. Bragg, don't you remember check marked Exhibit P-10 being delivered to you in person by a Mr. Huggs of Paterson? A. Some one called at my office 111 John Street and brought a check on one occasion. Whether or not it was this one or not, I don't remember. I do remember, though, it came back always.

Q. You remember, though, Mr. Bragg, that the check was delivered at your office? A. Well, a check was delivered at my office. I wouldn't say when it was delivered. I didn't see the gentleman who brought it.

Mr. Green: We rest.

Mr. Rittenberg: Mr. President, Members of the Board: At this time, on behalf of the respondent, I move for a dismissal of the charges preferred against Clara Smith by the Guiana Realty Company for the following reasons:

We reiterate at this time that this Board has no jurisdiction to try these charges. We claim that the Board has no jurisdiction for the reasons stated before by Mr. Dworetz. We urge that the Board has nothing before it that constitutes conduct unbecoming a teacher in the formal charges made, and lastly, we say there is no credible evidence here at this time adduced to support any charge indicating that Clara L. Smith is guilty of conduct unbecoming a teacher.

Now, there are some peculiar circumstances in this case. The first is that the charge is made by a corporation of the City of New York and the State of New York not authorized to do business in this State, not a tax-payer in this town, and they are the complainant in this action. It is contrary to the school law. We realize that persons other than the Superintendent of Schools, the teachers or principals may make charges, but those charges cannot be made by any outsider. The fact that a bill was not paid to a citizen of the State of New York or a citizen of China makes no difference. This is far-reaching, and the significance may be unusual if this were followed out logically.

Now, I would like to discuss the evidence that has been adduced so far. The gravamen of the charges is that Clara L. Smith perpetrated a fraud upon the Guiana Realty Company. Now, what is the evidence? The evidence that has been offered here in the shape of a letter concerns an innuendo, and purely an innuendo, that the name of Lewis A. Bennert was forged by Clara L. Smith, but there is no proof of it. Mr. Bennert says that it is not his signature, but nobody comes forward to say that Clara L. Smith put it there. Then, there is another alleged forgery in this case of the name of Benjamin Thomas, and, incidentally, this document is very interesting—this is P-5 in evidence in this trial, which concerns the signature of Benjamin Thomas. Benjamin Thomas comes here and he says that is not

his signature. He doesn't say Clara Smith wrote it and nobody was brought forward to indicate that she did.

Now, there is something unusual in this application, P-4 or P-5, and that is an acknowledgment that has been crossed out, and on that acknowledgment, underneath it, rather, appears the name "William L. Sherrill, Notary Public of New York." The acknowledgment reads: "On the 15th day of September, 1932, before me personally came and appeared one Benjamin Thomas", then a midline statement and certificate of William Sherrill. Peculiarly, that disappears. It is blotted out. This document has not been in our control. It has been in the control of the Guiana Realty Company. Now, let's assume that these two documents were forged, or let's assume that everything in here is taken against Clara L. Smith. The first thing to consider is did this induce the loan by the Guiana Realty Company. The Guiana Realty Company didn't make any loan upon the basis of this letter nor upon the basis of this application.

Mr. Sherrill is smarter than that. They made the loan on the basis of an assignment of a pension fund. That was the inducement for this loan. All this is collateral matter. All of these things here are merely to draw a red herring across the real issue.

There was some eight hundred and ninety odd dollars that Clara Smith had in the pension fund which was assigned by virtue of the change of beneficiary to the Guiana Realty Company. Now, the name of that

beneficiary remained the same right on down through August, 1934. All through this prosecution in New York and in Paterson and through this previous trial before this Board the beneficiary was not changed. Now, if there was fraud in this case—if there was fraud in this case, I say, to be qualified fraud, to be such fraud that might disqualify a person from holding office under this Board—and, incidentally, that is very difficult to see, too, because this involved a private transaction—still the inducement—the evidence is uncontradicted—and the inducement in this case was the change in beneficiary, and that beneficiary was the Guiana Realty Company right down through August, 1934, and the sum to which the Guiana might have come into possession was more than twice the amount of the loan.

Now, there is another peculiar situation here. Mr. Sherrill testified last week that his sole reason for coming here—

Mr. Green: You are summing up or—

Mr. Dworetz: No. I am making a motion that there is no credible evidence that has supported these charges.

Now, Mr. Sherrill testified last week that his sole reason for making these charges was in behalf of rigid righteousness—in behalf of principle, I think he called it. Now, what is this principle? There has been one hundred and fifty-four dollars paid on account of this loan. The original loan is five hundred dollars. Suddenly the loan has mounted to a sum in excess of the original principal. Now, I ask you,

ladies and gentlemen, what is this principle? I tell you frankly that he is not interested in this Board disciplining any teacher. He is interested in getting his money. Had he been paid, there would have been no charge. Furthermore, he is using this Board—and I trust the Board does not permit itself to be used as such—as a collection agency for this corporation.

Now, what evidence is there that Clara Smith is guilty of conduct unbecoming a teacher? Mr. Bennert has testified he is a general supervisor of schools, or he was. He knows Clara Smith to be a teacher. The Superintendent is in the room. He was here at the last hearing. Mr. Ritchie is in the room and he was present at the last hearing. Did either of these gentlemen come forward and say that Clara L. Smith conducted herself in a manner that she is unfit to teach? Is there any evidence before this Board that Clara L. Smith is unfit as a teacher? Does any principal say she is unfit to teach? Have the parents of any student come forward of any of the classes that she has taught in to say that she is unfit as a teacher, that she is incapable, that she hasn't good moral qualities? No. A rank outsider has presumed to come before this Board for the purpose of collecting a debt and making charges. I say it is unfair. If this loan was induced by fraud, he might have a standing, but it wasn't. He got this money. He was amply secured. He was better secured than any bank was. He was secured

in the event of life and in the event of death, both.

Now, there is another witness brought forth here, and that is peculiar. This banker, a man who had dealt with Mr. Sherrill over a period of years, and with the Guiana Realty Company. The man testified about what had occurred on the fifteenth of September, yet he testified that he had handled loans, hundreds of loans. He was unable to testify as to what had occurred within the last few days. No question as to how he came before this Board. He was unable to give details of recent origin, and yet he testified particularly as to what had occurred on that date, and, incidentally, the only man that could shed real light on this transaction as to where and when the money was paid was not brought forth. He was a Mr. Wilson, connected with the bank. Mr. Thien said that he was no longer there, yet this Board and the Guiana Realty Company had access to him. They brought in other witnesses who were not here at the last trial and who did not testify at the criminal proceedings in New York. That's peculiar, too. Where were all these witnesses at the last hearing? Where were they at the criminal hearing?

And one question I would like to ask you members to decide in passing on this motion is this: How many times in this country must a person be put in jeopardy on the same complaint, on the same charges? This man here has made a complaint before

the grand jury of New York growing out of this case, as a result of which Clara L. Smith was acquitted. He made charges before the criminal courts here in Paterson and they were dismissed. He made charges before this Board. This Board sought to uphold him, but the Commissioner of Education reversed this Board, without any alternative. There is nothing in that reversal of the Commissioner that pertains to a new trial before this Board. The fact that he selected that reason to rest his decision is unimportant. He had the whole case under consideration. This makes the forth or fifth time that this woman has been tried on the same charges, and, I say, for the reason that there has been no credible evidence advanced, and for the reason that this Board has no jurisdiction in the matter, and for the reason that the complaint does not charge conduct unbecoming a teacher in the public school system of Paterson, we ask a dismissal of the charges.

Mr. Green: May it please, Mr. Chairman and members of the Board: I think Mr. Rittenberg summed up. I don't intend to.

Mr. Rittenberg: I have got a lot more to say, if you will let me.

Mr. Green: The only thing to which I want to call the attention of the members of the Board is with reference to the statement that counsel makes concerning the complaint, and that is to Chapter 243 of the Pamphlet Laws, 1899, of the State of New Jersey, which says:

"No principal or teacher shall be dismissed or subject to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the board of education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said board of education, upon reasonable notice to the person charged, he may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not."

Now, I think that completely answers the question with reference to counsel's statement about the charges being inadequate.

With reference to the evidence, I am not going into that at all. I think it is a question of fact for the members of the Board to determine under this section of the act, whether Clara Smith was guilty of conduct unbecoming a teacher or not. Evidence has been introduced on the part of the complainant. If the Board finds the evidence to disclose conduct unbecoming of a teacher, that is a fact for the Board to find.

I just want to point out one thing in the evidence, and that is with reference to the assertion of counsel regarding Mr. Thomas. Counsel says there was no

evidence or anyone produced to say that Clara L. Smith—that Mr. Thomas signed this signature.

Mr. Rittenberg: I didn't say that. I would like the record to read right. I didn't say that.

Mr. Green: Well, the members of the Board will probably recall what counsel said with reference to the signature of Benjamin F. Thomas.

Now, I merely wish to call their attention to this part of the evidence at this time before they vote on counsel's motion, and that is the testimony of Mr. Sherrill on page 34: "She sat down there and she filled it out, and then I asked her who she knew in New York she could get as endorser. So she said she had a very good friend, Mr. Thomas. So she went to Mr. Thomas and brought that paper back to me with Mr. Thomas' name and a letter of introduction."

With these statements, I would suggest that counsel's motion at this time be denied.

Commissioner O'Dea: I so move you, Mr. Chairman.

Commissioner Torrey: Second the motion.

Mr. Rittenberg: May I make a remark before the motion is taken? With respect to counsel's last observation I want to repeat about what I think I said about the signature of Benjamin Thomas. I said that no one was brought forward to indicate that Clara L. Smith had signed the name of Benjamin Thomas. I still stand by that.

Commissioner O'Dea: Press the motion.

The Chairman: Regularly moved and seconded that the motion be denied. All those in favor of denying the motion will say aye, contrary no. The secretary will call the roll:

The Secretary (Calling the roll) Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative, none in the negative.

Mr. Rittenberg: The Board will allow an exception?

The Chairman: Yes. Exception will be noted.

Mr. Dworetz: If it please you, the honorable members of the board, before proceeding with the continuation of this case I want to state for the record we do not waive or prejudice any of our rights in reference to any of the motions that were made, particularly the motion to dismiss on the

grounds of lack of jurisdiction at the outset of the trial and also after the complainant has put in his case.

The Chairman: Your remarks will be noted.

DEFENDANT'S CASE.

CLARA L. SMITH, the defendant, sworn as a witness on her own behalf, testifies as follows:

Direct examination by Mr. Dworetz:

Q. Miss Smith, you are a resident of the City of Paterson? A. I am.

Q. And you have been connected with the school system of the City of Paterson? A. Yes.

Q. How long were you connected as a school teacher in the school system of the City of Paterson? A. Since 1921.

Q. Miss Smith, coming down to September, 1932, relative to the loan with the Guiana Realty Corporation, how did it come that you went to see Mr. Sherrill? A. I went to see Mr. Sherrill at the suggestion of my father.

Q. What was the condition of your father financially? A. He had lost money through business failures, and his health was poor.

Q. What did you do in order to help the condition that existed in the house with references to finances? A. I did everything that he suggested.

Q. What was his suggestion?

Mr. Green: I object to that. I object to her father's suggestion.

Q. What did you do, Miss Smith? A. At what particular time?

Q. In September, 1932? A. In September, 1932?

Q. Yes? A. I went with my mother one evening to see Mr. Sherrill concerning a loan that my father was to negotiate.

Q. Did you see Mr. Sherrill? A. I did.

Q. Who was present? A. My mother was with me. There were some other people passing back and forth, but I could not say just who they were.

Q. What time of the day was this, Miss Smith? A. It was in the evening.

Q. Do you recall how soon prior to the fifteenth this was, in September, 1932? A. I don't know the exact date, but it was a few evenings previous.

Q. How much did you borrow from the Guiana Realty Corporation? A. Five hundred dollars.

Q. And did you fill out an application? A. I did.

Q. (Showing witness) I show you Exhibit P-5, and ask you whether this was the application that you signed? A. Yes.

Q. At the time you signed the application, Exhibit P-5, were there any lines across it? A. No, there were not.

Q. Did you see Mr. William Sherrill sign that acknowledgment? A. I did.

Q. Was Benjamin Thomas present at the time the acknowledgment was signed? A. He was not.

Q. Do you know how the acknowledgment was taken in reference to Benjamin Thomas? A. I don't know how it was taken, but Mr. Sherrill suggested a phone conversation.

Q. Do you know whether or not Mr. Sherrill called? A. I do not.

Q. Now, coming back to September 15th, Miss Smith, where did you receive the five hundred dollars? A. At the Dunbar Bank.

Q. Who was present at the Dunbar Bank when you received the five hundred dollars? A. Mr. Sherrill.

Q. Anyone else? A. There were people doing business at the bank, and I guess the regular bank staff. I don't know who else was there.

Q. Was there a check made out to you Miss Smith in the sum of five hundred dollars by the Guiana Realty Corporation? A. Yes, there was.

Q. (Showing witness) I show you Exhibit C-3 and ask you whether or not this check in the sum of five hundred dollars is the check that you received from Mr. Sherrill, the president of the Guiana Realty Corporation? A. Yes, that's the check.

Q. When did you receive that check? A. On the afternoon of the fifteenth.

Q. Of 1932? A. 1932.

Q. Where did you receive it? A. At the office of the Guiana Realty Corporation.

Q. What did you do after you received the check on September 15, 1932? A. Mr. Sherrill took me to the bank to have the check cashed.

Q. Yes? A. And when—shall I tell the whole thing over?

Q. Oh, yes. Let us know everything that went on. Let's have that whole story. A. Well, a young man by the name of Mr. Marine who was assisting my father drove me over, and as we came downstairs—it was a warm afternoon and Mr. Marine was nodding at the wheel, and Mr. Sherrill at that time kept his car just a few doors from his office, and he passed the remark, he said: "I wouldn't wake that boy up for anything," and he said: "My car is just up the street, and I will drive you to the bank and get the check cashed for you," and

the understanding was that Mr. Sherrill was to receive fifty dollars back from that check and five dollars for the office. That's why he was so interested. And he went to the garage and backed his car out and we drove to the Dunbar Bank, and Mr. Sherrill spoke to several people, seemed to be quite well known at the bank, and he told me to sign the check on the back, which I did, and then we went up to the cashier and he said: "Cash this check for this young lady," and I received five hundred dollars, and then Mr. Sherrill mentioned that he had a safe deposit box and he took me downstairs and he showed me the diamonds that he had in it, and he said they were taken as loan collateral, and if I remember the name correctly he said he had taken one from someone by the name of Mugsie Anderson, I believe it was. He was unable to contact him afterwards. At that time Mr. Sherrill told me that if I did the right thing by him I could have any of those diamonds, and then we went back and Mr. Sherrill drove his car back to the garage, and he made the remark to me that he didn't like the people in the office to see him get his part of the money, and asked me to give him the money there, which I did, and I went up to the office and I paid the young lady in the office five dollars, and I came downstairs to Mr. Marine's car and we went to see Mr. Thomas and I thanked him for his kindness to me, and I came home.

Q. When you went to the bank, the Dunbar National Bank, with Mr. Sherrill, was the application marked as Exhibit P-5 executed in entirety? A. The transaction was completed. I went to cash the check with Mr. Sherrill.

Q. Did Mr. Sherrill ask you, Miss Smith, whether or not—what your occupation was? A.

Yes. The first evening I went over with mother he asked me what my occupation was and I told him I was a school teacher, and then he passed the remark—first he asked me if my name was in some Red Book that he had there with a list of New York City employees, and I explained to him that I worked in Jersey. Mr. Sherrill said as long as I was a school teacher he didn't think the place would matter, but to have my father and sister as co-makers, and it would not be necessary for my father to make the trip, and he also knew of my father's poor health at the time.

Q. Was there any additional security that you gave Mr. Sherrill on behalf of the Guiana Realty Corporation? A. Yes. When we were discussing the loan Mr. Sherrill said: "Sometimes I have trouble collecting from the school teachers, firemen and policemen," and he said: "As long as nothing happens, no calamity or anything like that, I feel as though I will get my money back," but, he said: "In the event that something would happen to you, how would I get my money back?" and that's why I mentioned the pension fund, and for that information I had talked to Mr. Wood personally.

Q. Did you tell Mr. Sherrill the amount of money that you had in the pension fund? A. I didn't tell the exact amount. Afterwards I showed him later on just what he had. I gave him an idea what it was. I told him it was more than his five hundred dollars.

Q. And how much actually was it, Miss Smith? A. It was more than eight hundred dollars. I don't know the exact figure.

Q. And you named the Guiana Realty Corporation as beneficiary in the pension fund? A. I did, yes.

Q. Under your name? A. Yes.

Q. Miss Smith, the memorandum or the instrument naming the Guiana Realty Corporation beneficiary in your pension fund, was that executed prior to September 15, 1932? A. No, no. Shall I explain about the inspection of Mr. Sherrill?

Q. Yes. A. Mr. Sherrill had me give him some information and he said that if we didn't hear anything to the contrary that meant that he was satisfied with his inspection, and I had one application that was filled out and he wasn't satisfied with that, and he gave me another application blank and said to bring that in to him on the fifteenth and be ready for the check unless I heard from him to the contrary, and that I would have to have these Jersey signatures notarized out here, and I did. I had my signature and my sister's and my father's, they were all notarized by Mr. Rothstein, and Mr. Sherrill was given the blank on the fifteenth with the new application, and I don't know what day he mailed it, but he told me he was satisfied with the inspection.

Q. Was the application signed before the money was turned over? A. Oh, yes.

Q. Miss Smith, there has been offered in evidence here—I am not going into details about it—a series of letters which you addressed to Mr. Bragg, attorney for Mr. Sherrill, and also a number of telegrams or letters to Mr. Sherrill. Will you please explain the reason, or give us an explanation for them? A. Well, because of the tight fix that my father was in. He continually expected money and was often disappointed, more often than people liked it, and at that time we had heavy medical expenses, and every promise that was made was based on a promise that had been made my father. That's why I made the promises.

Q. Were there any moneys given to you, Miss Smith, by anyone after September 15, 1932? A. No, there was no money——

Q. I mean by that, any checks? A. Oh, yes, yes.

Mr. Green: Just a minute. I don't know what possible bearing that could have on the matter.

A. My father had very little to give to us, but he had——

Mr. Green: I object to her telling what her father did.

The Witness: My father is involved in this, Mr. Green.

Mr. Green: Not involved in this.

Q. Did you deposit any checks in your account, Miss Smith, after the fifteenth of September, 1932? A. I didn't have an account, Mr. Dworetz. It was in my sister's name, and I did deposit—there were checks deposited.

Q. How much? A. There was one check amounting to more than two hundred dollars. There was one for six hundred dollars that we expected to meet ours by. There was a check that caused the shortage.

Q. Do you know, Miss Smith, who the makers of those checks were? A. One was a gentleman by the name of Bauman, I recall. I didn't know him at all. The other was a gentleman by the name of Lester. One was a New York party.

Q. Now, Miss Smith, coming back to September 15, 1932, did you at any time give Mr. Sherrill the so-called Bennert letter that has been marked as Exhibit P-4? A. Absolutely not, Mr. Dworetz. I had a letter from Mr. Wood.

Q. From whom? A. Mr. Wood.

Q. Did you at any time exhibit the Bennert letter known as Exhibit P-4 to Daisy Hawkins? A. Absolutely not.

Q. Did you at any time exhibit the Bennert letter, known as Exhibit P-4, to Sparks, the butcher boy? A. I had no dealings with Mr. Sparks. Mr. Sherrill stepped in there on his way to the bank. He said he wanted to get him to witness the signature or something, but the business was completely transacted. We were on our way then for the check. The transaction was closed.

Q. You say the signature was necessary to witness something—what was it? A. Yes, on the pension fund blank there has been two witnesses to the signature.

Q. What time of the day did this take place Miss Smith? A. It was about two-thirty, I should judge.

Q. I have reference to pension fund application which was witnessed by Sparks? A. I don't know just what time that was. It was in the afternoon.

Q. Was it before you got the money or after? A. It was before.

Q. Miss Smith, did you have any relations with Mr. Sherrill other than business transactions? A. Yes, there was, Mr. Dworetz. Shortly after the loan was made, why, Mr. Sherrill tried to call me up, and he misunderstood the phone number, and of course he didn't get in touch with me that day. Then, I think it was the second Sunday after the loan was made, why, Mr. Sherrill came over to pay a social visit, and he extended me several invitations which I didn't keep. I did

want to keep a friendly feeling until the loan was paid, but I didn't like the idea of having been offered a diamond. Of course, when I felt it was impossible to keep a friendly feeling, then there was nothing further that I could do. And Mr. Sherrill wrote letters.

Q. Miss Smith, have you any recollection of receiving a letter from Mr. Sherrill to this effect —it was marked as an exhibit in the testimony that was given in the first trial in April, 1933:

"My dear Clara:

"I received both of your letters, and I am very sorry to learn that your sister is ill, but trust that she will recover soon. When I received your first letter I phoned you at the number given, and the lady told me that she would let you know that I called. At the time I phoned I didn't insist on her calling you since it was in the evening, and especially as the call was not very urgent or important.

"Although your sister is ill, you certainly must have been in New York since I saw you three Saturdays ago. If you have been here since you will not be forgiven by me for not dropping in to see us, especially inasmuch as a permanent invitation has been given to you for the occasion. In any event I shall look for you tomorrow, Saturday, in case you should come over to New York on any business matter. I may surprise the family with a visit some Saturday or week-day afternoon.

"We are having quite a bit of cool weather in New York, but trust that you are having pleasant weather in New Jersey. How is

the gentleman whose picture you preserve so well, and carry with you?

"Kindest regards to your mother and other members of the family.

Sincerely

WILLIAM SHERRILL."

Do you recall receiving such a letter? A. I certainly do.

Q. Miss Smith, what was said by Sherrill when you refused to have appointments with him?

Mr. Green: I object to that. It is absolutely irregular, and counsel knows it. Nobody testified that Sherrill tried to have appointments with her.

Mr. Dworetz: The testimony is——

Mr. Green: Well, I don't think it is necessary to make any remarks about it.

Mr. Dworetz: I think it is very pertinent to the issue.

Mr. Green: All right, ask it, but ask the proper question. Don't ask it like that.

Mr. Dworetz: I am conducting the examination. You conducted your examination.

Mr. Green: I will object to the question. I don't care to shut off any testimony. Ask the proper question, and you can have it all.

Q. (Repeated by stenographer.) Miss Smith, what was said by Sherrill when you refused to have appointments with him?

Mr. Green: I object to the question.

Mr. Dworetz: Upon what ground? That doesn't mean anything.

Mr. Green: On the ground that it is a leading question.

The Chairman: Let's have it out. Get through with it. Go ahead.

The Witness: I want a square deal around here.

The Chairman: Oh, now, Miss Smith.

Q. (Repeated by stenographer.) Miss Smith, what was said by Sherrill when you refused to have appointments with him? A. Mr. Sherrill became very angry with me, very angry. He went to the Roosevelt Hospital for an operation, and I didn't go there, and from then on he started persecuting me.

Q. You say he started persecuting you? A. Absolutely.

Q. What did he do? A. Mr. Sherrill started hearings in the court. He tried to have my sister convicted for a criminal action, which was dismissed. He appeared before the school board and I was suspended. After that he tries to hurt me through newspaper articles. Mr. Sherrill had me indicted before the New York grand jury. I was indicted on three different counts, and thank God I was acquitted on each one of them, and now he is here today with the same stuff.

Q. Miss Smith, do you know what happened to the indictment over in New York charging you with forgery in the third degree? A. I was acquitted on one indictment, the others were dismissed.

Mr. Dworetz: Is there any objection to certified copies of these indictments going into evidence?

Mr. Green: I don't see what we have to do with that. I will admit that she was

acquitted of one indictment. I don't know what happened to the other indictments.

The Witness: They were all dismissed.

The Chairman: Offer the one.

Mr. Dworetz: Court of General Sessions. I offer a certified copy of the case of the people of the State of New York against Clara L. Smith, on indictment for forgery in the third degree, in evidence.

(Certified copy marked Exhibit D-1 A.)

"Court of General Sessions of the County of New York, Clerk's Office, September 6th, 1934.

"The people of the State of New York against Clara L. Smith.

"On indictment, forgery, third degree.

"Filed January 22, 1934.

"No. 199253.

"I do certify that it appears from an examination of the records on file in this office, that on April 9, 1934, the above named defendant was duly tried on the above mentioned indictment, in Part 5, of this court, before the Honorable Charles C. Nott, Jr., and the jury rendered a verdict of not guilty.

EDWARD R. CARROLL,
Clerk of the Court."

Q. Miss Smith, were there any other indictments standing against you in New York? A. When do you mean?

Q. At the time of the trial? A. There were.

Q. Another indictment for forgery in the second degree, and grand larceny in the second degree? A. There were two pending and ordered dismissed.

Mr. Dworetz: I offer them in evidence.

Mr. Green: I object to them going in evidence. They are irrelevant, immaterial and incompetent.

Mr. Dworetz: You are not serious about that, are you, Mr. Green?

Mr. Green: I don't know what they are. If you will tell us what they are, maybe I will consent to them.

Mr. Dworetz: I offer in evidence an indictment for forgery in the second degree, 196678.

Mr. Green: I object to it being marked in evidence on the ground that it is incompetent and irrelevant, and clearly has nothing to do with the case. He says there is an indictment over there against Clara L. Smith. She might have been indicted ninety times over there.

The Chairman: I don't see myself what this has to do with the case.

Mr. Dworetz: It was testified to by Sherrill and it is uncontradicted that Miss Smith was acquitted on one charge, that is, namely, forgery in the third degree, and he says there were two other charges pending against her.

Mr. Green: Well, you didn't say that these were charges made by him. That's what I am getting at. If you will tell us that they are indictments or charges made by Sherrill, possibly I will admit them. I don't know what they are.

Mr. Dworetz: Do you think for one moment that I would bring in here papers not belonging to the case? That is absurd. Counsel knows what they are. Why quibble over something like these.

Q. Miss Smith? A. Yes, Mr. Dworetz.

Q. Who made this charge with reference to the indictment for forgery in the second degree? A. The president of the Guiana Realty Corporation, Mr. William Sherrill.

Mr. Dworetz: Is that satisfactory, Mr. Green? Have you any objection if it goes into evidence now?

Mr. Green: Read it.

Mr. Dworetz: Offer it in evidence.

Mr. Green: Let me see it.

(Counsel examines paper.)

No objection.

(Paper marked Exhibit D-2 A.)

"At a Court of General Sessions of the Peace of the State and County of New York, holden in and for the County of New York, at the building for criminal courts in the Borough of Manhattan of the said City, on Friday, the 17th day of August, in the year of our Lord, one thousand nine hundred and thirty-four.

Present:

The Honorable John J. Fresch, Judge of Court of General Sessions, Justice.

"The people of the State of New York against Clara L. Smith.

"On indictment for forgery in the second degree, #196678, filed June 1st, 1933. On motion of counsel on consent of the District Attorney, it is ordered by the court that this indictment against Clara L. Smith, the defendant, be and the same is hereby dismissed, a true extract from the minutes.

EDWARD R. CARROLL,
Clerk of the Court."

Q. Miss Smith, did William Sherrill, president of the Guiana Realty Corporation, make a complaint against you for grand larceny, second degree? A. Yes, he did.

Q. Were you indicted? A. I was indicted.

Mr. Dworetz: I offer it in evidence.

(Paper marked Exhibit D-3 A.)

"At a Court of General Sessions of the Peace of the State and County of New York, holden at the building for criminal courts in the Borough of Manhattan of the said city, on Monday the 27th day of August in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable John J. Fresch, Judge of the General Sessions, Justice.

"The people of the State of New York against Clara L. Smith.

"On indictment for grand larceny, second degree #199254, filed January 22, 1934. On motion of counsel on consent of the District Attorney, it is ordered the Court that this indictment against Clara L. Smith, the defendant, be and the same is hereby dismissed. A true extract of the minutes.

EDWARD R. CARROLL,
Clerk of the Court."

Q. Miss Smith, referring again to that now famous Bennert letter known as Exhibit P-4, did you at any time show that letter or give that letter to Thien, vice-president of the Dunbar National Bank? A. I certainly did not.

Q. Did you give or show that letter to anyone? A. I certainly did not. I have a letter from Mr. Wood.

Q. Miss Smith, is this the second trial against you on the complaint of the Guiana Realty Corporation? A. Mr. Dworetz——

Q. Just please answer the question? A. Yes, this is the identical charge.

Q. Were you tried at a previous time on the complaint of the Guiana Realty Corporation? A. I certainly was.

Q. Before this Board? A. Before this honorable Board.

Q. On April, 1933? A. Well, it was May 10th, 1933. I wasn't present at the first hearing.

Q. What was that date? A. May 10, 1933.

Q. When did your father pass away? A. My father passed away the night after this hearing.

Cross examination by Mr. Green:

Q. (Showing witness) Miss Smith, who signed that name, "Benjamin Thomas"? A. Why don't you ask him? Didn't you ask him the last time?

The Chairman: Answer yes or no. If you know, say so. If you don't, say so. Just answer the question. We will get along better.

The Chairman:

Q. The question is, who signed the name "Benjamin Thomas"? If you know, say so. If you don't, say so. A. I don't know.

The Chairman: All right. That answers it.

By Mr. Green:

Q. Didn't you take this application up to Mr. Thomas' Automobile School and have him sign that? A. (No answer.)

Q. Did you? A. Don't holler at me. I hear you distinctly. You can't frighten me, Mr. Green.

Q. (Question repeated by stenographer) Didn't you take this application up to Mr. Thomas's Automobile School and have him sign that? A. I took it up to him to have him sign it.

Q. Did he sign it? A. He was supposed to have signed it.

Q. Did he sign it for you? A. I don't know. I answered you before.

Q. Didn't you testify here at the last hearing that you took this application up to Mr. Thomas at his automobile school, and he signed it? A. I certainly did testify to that, but the counsellor cautioned me. He said: "Don't say people sign things unless you see them put it down."

Q. So you weren't telling the truth? A. I beg your pardon. It was not that I was not telling the truth. It was innocence.

Mr. Dworetz: I object to counsel's characterization——

The Chairman: It is cross examination. There is some latitude.

Mr. Dworetz: What page?

Mr. Green: Page 9 of the testimony of Clara Smith, taken on May 10, 1933.

Question: "Did Mr. Thomas put his signature on the application?" Answer: "On the application."

Question: "Were you present when he put his signature on the application?" An-

swer: "Yes, he gave me a letter at that time. He was very busy."

Mr. Dworetz: Read the rest of it.

Mr. Green: Question: "Do you know Mr. Thomas's signature?" Answer: "Well, I had a letter from Mr. Thomas to Mr. Sherrill—other than that, I don't know."

Q. Now, you took this application to Mr. Thomas, didn't you? A. I don't deny that.

Q. And you gave it to Mr. Thomas to sign? A. Absolutely.

Q. And Mr. Thomas signed? A. I am not going to swear to what people sign.

Q. Mr. Thomas gave it back to you? A. Absolutely.

Q. And what did you do with it? A. I took it to Mr. Sherrill.

Q. And when you took it back to Mr. Sherrill you said it had his signature on, didn't you? A. Why, we saw the signature.

Q. Where did this signature get put on? A. Don't ask me. Ask Mr. Thomas about it.

Q. I am asking you? A. He signed it in his automobile school.

Q. Did Mr. Thomas sign that signature at his automobile school? A. I didn't see Mr. Thomas sign that paper.

Q. You heard Mr. Thomas testify he didn't sign it? A. I certainly did.

Q. You told Mr. Sherrill Mr. Thomas had signed it? A. I told Mr. Sherrill nothing of the sort. There was to be a phone conversation. Mr. Sherrill must have been satisfied, because he notarized the signature.

Q. You knew that Mr. Sherrill wanted you to get an endorser in New York in order to get this loan, didn't you? A. I beg your pardon. Mr Sherrill didn't ask for a New York endorser. He asked for a Paterson co-maker. He said: "Who do you know in New York?" I told him. He said: "Take this down and have him put his name on it." Mr. Thomas did not fill in a co-maker's statement.

Q. What's that under Mr. Thomas's signature? A. It doesn't say under it there. It has been blocked in. It is hard to read.

Q. What does it say under Mr. Thomas's signature? A. Is there a co-maker's statement filled in?

Q. What does it say under Mr. Thomas's signature? A. You can't frighten me, Mr. Green.

Q. I am trying to get you to answer? A. That doesn't get anywhere with me. It says under there co-maker and guarantor.

Q. Then he did sign as co-maker and guarantor, didn't he?

Mr. Dworetz: I object to the question. There is no evidence here that he did sign as co-maker and guarantor.

Q. You took the paper up to Mr. Thomas's automobile school, didn't you? A. I took it down there.

Q. And when you came back from the automobile school it had this signature on, didn't it? A. Absolutely, yes.

Q. You also got a letter from Mr. Thomas, didn't you? A. That letter was in Mr. Sherrill's possession before the blank. I made several trips that day.

Q. Didn't you testify as I just read to you that when Mr.— A. I understood what you read.

Q. That when Mr. Thomas signed this you received a letter from Mr. Thomas also? A. I did have a letter from Mr. Thomas.

Q. When did you get the letter from Mr. Thomas? A. The same day. Mr. Sherrill had me make several trips.

Q. To Mr. Thomas? A. I went to Mr. Thomas.

Q. How many times did you go to Mr. Thomas? A. I guess I went to Mr. Thomas about three times.

Q. What for? A. In connection with this business.

Q. What for? A. In connection with this business.

Q. What for in connection with this business? A. In connection with the business.

Q. Will you answer the question? A. I did answer you the first time.

Q. What did you go there for the first time? A. I went there the first time because Mr. Sherrill wanted to know who knew me in New York.

Q. Yes? A. It is a big garage or auto business.

Q. What did you go down to Mr. Thomas for? A. Mr. Thomas didn't see why the loan hadn't been finished up. He said to go back and tell him he knew me and give him the letter, which I did, and the next thing I knew I came down there a third time.

Q. What did you go the second time for? A. With the application.

Q. What happened that time? A. I handed the application to Mr. Thomas and received it back.

Q. Yes, and what did you talk with him? A. Beg pardon?

Q. Where did Mr. Thomas go when you handed him the application? A. Well, may I explain to

you just how Mr. Thamas is situated, then you will get a better idea of it.

Q. Go ahead? A. All right. Mr. Thomas conducts an automobile school, and at that time his office was in the basement of one of his buildings at 217 West 123rd Street. At certain times of the day Mr. Thomas's automobiles would be going back and forth and he was out on the sidewalk because one of his cars was either coming in or out, and this was when I handed it to him.

Q. Uh, huh, and then what? A. He went inside with it.

Q. Uh, huh? A. And I remained in the car where I was, and he returned it to me.

Q. Then what did you do with it? A. I took it back to Mr. Sherrill.

Q. And when did you go back the third time to Mr. Thomas? A. After the check had been cashed I went down to tell Mr. Thomas I had made out all right, and when I handed it to Mr. Sherrill, Mr. Sherrill said: "Why didn't Mr. Thomas put his address down?" He said: "Do you know his address?" I said "Yes". He said: "I don't write well. Put it in."

Q. And you wrote this? A. I certainly did.

By Mr. Bittenberg:

Q. Wrote what? A. "217 West 123rd Street."

By Mr. Green:

Q. Did you ever go to Mr. Thomas before that? A. I had known Mr. Thomas more than fourteen years.

Q. You went to see Mr. Thomas relative to getting a loan? A. Not specially to get a loan.

Q. Did you go to Mr. Thomas before going to Mr. Sherrill? A. I went to Mr. Thomas quite a few times. I know it was quite a few times.

Q. Mr. Thomas, who you knew before, gave you a letter to get a loan? A. Well, you see I don't know just how that came in there. I stated that in my previous testimony. If you will read that again, Mr. Green, you will find the explanation there.

Q. I am asking you now? A. Well you repeat your question? Yes, Mr. Thomas gave me a letter.

Q. Who was the letter addressed to? A. I don't know whether the letter was addressed to Mr. Sherrill or not, but I took the letter to Mr. Sherrill. If I remember correctly, it was addressed to whom it may concern.

Q. Mr. Thomas gave you a letter to Mr. Walker? A. Not that I know of.

Q. Did you go to Mr. Walker? A. Not that I recall.

Q. Well, if you went to Mr. Walker you would recall it, wouldn't you? A. It seems like I would, but I certainly don't recall having gone to Mr. Walker.

Q. Mr. Walker sent you to Mr. Sherrill? A. No.

Q. It is not true that Mr. Thomas sent you to Mr. Walker and Mr. Walker sent you to Mr. Sherrill? A. I don't recall ever having been to Mr. Walker.

Q. What was there unusual, Miss Smith, in that letter that counsel read from the previous testimony that you received from Mr. Sherrill?

Mr. Rittenberg: I object to the question on the ground that the letter speaks for itself, and there is no evidence here that the letter is unusual.

Mr. Green: Withdraw the question.

Q. When did you get that letter? A. I don't remember the date. The date evidently is on the letter.

Q. Well, if I tell you there is no date on the letter, can you tell me now when you got the letter? A. Oh, I know it was after the transaction, because I didn't know Mr. Sherrill before.

Q. After the transaction? A. Yes.

Q. How long after, would you say?

Mr. Rittenberg: Just a moment. I would like to know to which letter are you now referring?

Mr. Green: The letter that counsel read.

Mr. Rittenberg: Just previously?

Mr. Green: Just previously.

Q. How long after? A. Mr. Green, I don't remember that. This is two years ago.

Q. I know, but you remember most of the other things?

Mr. Rittenberg: I object to the remarks of counsel and ask that they be stricken out.

The Chairman: Strike out.

Q. Was it a month after? A. I am quite sure it wasn't so long.

Q. Two weeks after? A. I don't remember. I remember I received one just after October——

The Chairman: What is this, the social letter?

The Witness: Yes.

Q. You wrote a couple of letters to Mr. Sherrill, yourself? A. Absolutely. As I explained before, I was trying to keep a kindly feeling until the business was completed.

Q. Well, if you wrote to him there was nothing unusual for him to write to you, was there? A. Well, if it pleases him to write social letters, it is hard to prevent.

Q. (Showing witness) I show you letter dated September 23, addressed to Mr. Sherrill, and ask you if you wrote that? A. Yes.

(Letter marked Exhibit P-16.)

Q. That was only a few days after the transaction was consummated? A. Yes.

"39 12th Ave., Paterson, N. J.
September 23, 1932.

"Dear Mr. Sherrill:

"Your kind letter received. We were all so sorry to have missed your visit Sunday because we were all at home.

"The telephone is Lambert 3-3811 M. It is at #43 12th Avenue under the name of Hinton. Please come over to see us at any time.

"We aren't in your city as much as we usually are because we haven't the use of our own car. Please give our regards to the folks there.

Sincerely,

CLARA L. SMITH."

Q. I show you letter dated September 28th, addressed to Sherrill, and ask you if you wrote that? A. Absolutely.

Mr. Green: Offer it in evidence.

(Letter marked Exhibit P-17.)

"39 12th Ave., Paterson, N. J.
September 28, 1932.

"Dear Mr. Sherrill:

"I am sending this note in case you didn't receive the first one. I gave it to a friend of mine to mail, and haven't seen her as yet to ask her if she mailed same. Sometimes she is quite careless.

"The correct number is Lambert 3-3811M. Florence is quite ill, or we would have been in N. Y. C. as usual.

"Again thanking you for your sincere kindness to us.

Yours truly,

CLARA L. SMITH."

Q. And you wrote those letters? A. I don't deny that, Mr. Green.

Q. And he wrote a couple of letters to you? A. He wrote to me first.

Q. And then you sent these two letters? A. Certainly. I told you I tried to keep a friendly feeling until the loan was repaid—until I found the type of man Mr. Sherrill was.

Q. Will you take that application, Miss Smith, and look at it? A. I am very familiar with it, Mr. Green.

Q. At the head of the application it gives your name, occupation school teacher, age, amount of loan requested five hundred dollars, purpose for which loan is required, what money will be used for: "Due unpaid checks." Will you explain that to us, please? A. Well, Mr. Green, I explained before that my father had suffered severe business losses and was ill, and there were checks that he

was unable to collect upon. I had one of these checks in my possession, and that was one of the main reasons the loan was negotiated.

Q. And what unpaid checks did you intend to pay with this loan? A. There were several that came back through the Franklin Trust Company that we paid off.

Q. By whom were they— A. I don't remember that, Mr. Green. That involves my father again. I tried to explain that I was merely acting for him.

Q. And you wanted this money— A. My father wanted it, I didn't want it.

Q. This money was to pay some bills? A. And unpaid checks, yes.

Q. And unpaid checks of your father's? A. Absolutely.

Q. Now, go down a little farther on the—"Do you own any of the following," do you see that? A. Yes.

Q. Who filled that part in, you? A. Yes.

Q. Underscore "real property"? A. Yes.

Q. Underscore "piano"? A. Yes.

Q. Did you own a piano at that time? A. I certainly did, and I still do.

Q. How many pianos did you have at that time? A. Well, now, it isn't customary to have more than one piano in a home.

Q. And that is yours? A. It is mine. It is in my own name.

Q. Quite positive of that, are you? A. Yes, I am. I am making the statement and I was sworn under oath.

Q. Would anybody have a right to give away or pledge that piano other than yourself? A. Beg pardon?

Q. Would any one have a right to give away or pledge that piano other than yourself? A. The

piano wasn't pledged. I was asked merely the question as to what I owned.

Q. The piano was never pledged? A. The piano was never pledged. Here, all this says, "What do you own?"

Q. (Showing witness) I show you what purports to be a note, and on the back of it appears the following: "As security on the note I promise to give— A. That's some more of our personal belongings that you have no business with around here.

Q. Do you know what piano this refers to? A. There is only one piano in our home. It said here, "What do you own? Real property? Piano?" My piano wasn't pledged, especially to Mr. Sherrill.

Q. But this piano that you had in your home was pledged by someone else in your home, wasn't it? A. Well, with my consent.

Q. With your consent? A. Absolutely.

Q. When was it pledged? A. I don't know.

Q. Was it pledged before or after this note was made? A. I don't know, Mr. Green.

Q. Was it pledged on April 30, 1932? A. I could not say, because I did not handle that.

Q. And at the time that this was filled out and you underscored "Piano," that piano had been pledged, hadn't it? A. Mr. Green, I didn't pledge my piano to Mr. Sherrill.

Q. I know you didn't. A. Well, I don't see what you are getting at. I don't want to say something——

Q. I am asking you if at the time that this was underscored, if it is not a fact that your piano had been pledged to someone else? A. You seem to know all about that, but I don't. I told you that I didn't pledge it to anyone.

Q. But you had permitted someone else to pledge it? A. That was quite all right.

Q. So the piano was not under your control at the time of this application? A. It says: "What do you own?" I am trying to explain what I know.

Q. Now, go down on the application to where it says: "Are you at the present time subject to any financial obligation that was not mentioned here," and what is the answer to that? A. How far down is that, Mr. Green?

Q. About four lines from the bottom, from the signature? A. Oh, yes, I see it.

Q. What is the answer to that? A. It says: "No."

Q. Then it says: "Describe them in detail," what is the answer to that? A. "Household expenses."

Q. Those statements true? A. Mr. Green, I told you that I acted for my father. For myself, yes, they are true.

Q. You owed nothing at that time? A. Not for myself, personally, no.

Q. Owe Kitay and Company a personal account at that time? A. What have you got to do with my personal business? How can I object to these things?

Q. Did you owe Kitay and Company any money about that time? A. Will you please let me see what you are talking about?

Q. You know what I am talking about? A. I beg your pardon——

Q. Did you owe Kitay Brothers a hundred and sixty dollars balance on a raccoon coat at the time you made that application? A. Just a moment, Mr. Green. That is being litigated now, and I don't see what it has to do with it. I had

a very bad deal with Mr. Kitay, and I returned the coat to him and I would not pay the bill. They sold me a coat that was not as represented, and it was returned, and then they tried to bluff a settlement out of me after that and I wouldn't pay it.

Q. The matter of fact is that on September 15, 1932, you owed Kitay Brothers one hundred and sixty dollars, didn't you? A. Kitay Brothers gave me a bad coat, and I gave it back to them.

Q. You owed them one hundred and sixty dollars, didn't you? A. I don't know whether I owed them for it or not. It is a case for the law to settle.

Q. If you owed them one hundred and sixty dollars at that time, then, that statement is not true, is it? A. I won't say that.

Mr. Rittenberg: I object to an assertion which is contrary to the fact.

A. (Continuing) Absolutely, I wouldn't say that.

Q. On May 4, 1932, you entered into a contract, together with some other people, to William Duetch and Myer Dworetz, didn't you? A. No.

Q. May 4, 1932? A. Will you explain that to me, Mr. Green, this Dworetz transaction? I don't understand about it. What was that?

By the Chairman:

Q. Do you owe either one of them money, Mr. Dworetz or Mr. Duetch? A. I believe that was a mortgage, but the contract, that's what I am trying to refresh myself.

Mr. Dworetz: When was that, Mr. Green?

Mr. Green: May 4, 1932.

A. (Continuing) I am not going to admit things that aren't fresh with me.

By Mr. Green:

Q. And in that agreement which you made with those persons there was a note dated May 4, 1932, payable June 30, 1932, and a note dated May 4, 1932, in the sum of fifty dollars, payable in September, 1932. Those notes weren't paid. I ask you if those transactions were made with you? A. Yes, Mr. Bragg, that was the mortgage. That was a mortgage.

Q. I don't care what it was. At the time that that agreement was made, you owed those people on those two notes that I have just read? A. That was a mortgage.

Q. You owed that money, didn't you? A. Well, I don't know just how to put it. That is something that I was standing for. It was transferred over to me. I had no use of that money.

Q. I didn't say you had, but you swore there, this is under oath, that you owed nobody? A. Just a moment, Mr. Green. I told Mr. Sherrill about this at the office, and he waved his hand like that, and he said: "You don't have to put all of that down."

Q. As a matter of fact you owed that at the time, didn't you? A. I didn't say that I didn't owe anything at the time. I said the money was for bills and expenses.

Q. On March 6th, 1931, did you enter into a contract together with other persons with the Heating & Plumbing Finance Corporation? A. I did.

Q. And in September, 1932, there was money due and owing on that contract, was there not? A. Absolutely.

Q. And at the time that you signed that agreement or application saying there was no debt, you

owed the Heating & Plumbing Finance Corporation, didn't you? A. I said here the money was to be used for bills and outstanding checks. I didn't say that I didn't owe any debts.

Q. You said before when I asked you that those bills up at the top there were bills of your father, and unpaid? A. These things were for my father, the heating and plumbing, this Deutch case. All of them were for my father. All of them.

Q. Do you know Bessie Jackson? A. I certainly do, and that's something else that you have nothing to do with.

Q. Did you make an agreement on the 13th day of September, 1930, together with your sister, Florence Smith, with Bessie Jackson, whereby you borrowed some money from her? A. I refuse absolutely to discuss that with you.

Q. (Showing witness) I show you this agreement, and ask you if that is your signature? A. I refuse to discuss that with you. That is the root of all of this, through a certain friend of hers. I knew sooner or later it would come out.

Q. Is that your signature? A. I tell you absolutely I refuse to discuss that with you. It is all personal business.

Q. On the 13th day of September, 1930, you and your sister borrowed one thousand dollars from Bessie Jackson, is that right? A. (No answer.)

Q. What is your answer? A. I told you I wasn't going to discuss that with you.

Q. And on September 15, 1932, you hadn't paid Bessie Jackson this thousand dollars back? A. I am not discussing that with you. It is in the hands of another attorney.

Q. As a matter of fact, when you signed that application and said that you didn't owe any

money, you owed Bessie Jackson the better part of a thousand dollars, didn't you? A. That is not true. Absolutely not true. I told you it was in the hands of another attorney, and it can be disproved.

Q. (Showing witness) I ask you again, is that your signature? A. I told you I wouldn't discuss that with you. It is not in your hands to be attended to. It is in the hands of another attorney.

Q. So that when you swore in this application before John J. Rothstein that the statements in this application were true, that wasn't correct, was it? A. I beg your pardon. It was correct.

Q. And you still say now that on September 15, 1932, when the question was asked: "Are you at the present time subject to any financial obligations that are not mentioned here," and when you answered that: "No," you say you were telling the truth? A. Absolutely, because these bills were for my father. I certainly say so.

Q. When did you first see Mr. Thien? A. Well, I first saw him at the criminal trial in New York.

Q. Never saw him before? A. No, not to know who he was.

Q. That's what you testified to in the criminal trial, too, isn't it? A. Absolutely.

Q. Do you remember testifying differently at the first trial here? A. No, I don't. I remember Mr. Sherrill pointing out someone, saying he was from Jersey, but as to having this long conversation, I don't remember. In fact, I didn't remember what the man looked like.

Q. Well, if you had spoken to the man in the bank, you would have remembered? A. Not nec-

essarily—September, 1932, no, but had I talked to him an hour I would have remembered him.

Q. So, to the best of your recollection, the first time you ever saw Mr. Thien was when he testified against you in the criminal court? A. I was told that I had talked one hour with Mr. Thien, and I knew that wasn't true because I didn't remember the man, but I do recall Mr. Sherrill having said that there was some man there from Jersey.

Q. Did you ever talk to Mr. Thien? A. No.

Q. Did you testify in the criminal trial that you never saw Mr. Thien before? A. I certainly did. I did not remember Mr. Thien. This is 1934—that's 1932.

Q. Yes, and the year after was 1933? A. Yes, and next year will be 1935.

Q. Referring to page 19 of the testimony of Clara Smith——

Mr. Rittenberg: We have no record of it. Where is it?

Q. At the hearing of May 10, 1933, before the Board of Education of the City of Paterson: Question: "You had no conversation whatsoever with him?" Answer: "I had conversation, but it was about the check as far as I can recall. I don't really remember what the conversation was. He asked me was I teaching in Jersey. He said he was a Jersey man. I remember about that, but the matter of the loan was supposed to be settled before we left Mr. Sherrill's office, and I really wasn't taken there to discuss the loan. I was taken there to cash the check." Do you remember that? A. If it is in there, I said it. That was 1933.

Q. So that when you testified in the criminal trial that you had never seen Mr. Thien, that

wasn't true? A. I don't remember the man. I do not remember the man.

Mr. Dworetz: Just a moment. Counsel picks out a question and answer in reference to some conversation about what she testified. Read the entire testimony and connect it up that way.

Mr. Green: She said a moment ago that she had testified at the criminal trial she had not seen Mr. Thien.

A. (Continuing) Mr. Green, may I say this: I don't know what the man's name was.

Q. You spoke to him at the desk that day, didn't you? A. I refuse to answer any more questions in the matter.

Q. Did you speak to him that day? You answer that question.

Mr. Dworetz: Miss Smith, you answer that question.

A. I don't remember that the man's name was Thien. I do remember that there was a reference to a man from Jersey. When I was asked about a man named Thien I didn't remember.

Q. You saw him at the criminal trial? A. I certainly did.

Q. You heard him testify before you went on the stand, didn't you? A. I certainly did.

Q. You knew the man who went on the stand? He was the same man that you spoke to in the bank, wasn't he? A. I still don't know that. I still couldn't swear to that.

Q. But you did testify to that at the first trial, at the first hearing here? A. Do you realize that was two years ago, Mr. Green?

Q. No? A. Well, it was 1932 when this was done.

Q. And in the first trial your recollection was better? A. Yes, because——

Q. Well, that is a fact? A. It certainly was, because there wasn't so great a distance—I mean, so great a time.

Q. When did you send a telegram to Mr. Wood inquiring the amount that you had due on your pension fund? A. I believe it was the eighth of June.

Q. What year? A. I am quite certain it was 1932.

Q. And what did you request that information for? A. Well, to be exact, Mr. Green—might I explain?

Q. Will you answer the question? A. Well, I would have to answer it in my own way.

Q. All right. Go ahead in your own way? A. I had talked with an attorney about getting some business straightened out. To be perfectly exact about that, we have a place in Virginia, it is my mother's homestead——

Q. Never mind about that? A. Well, I am trying to tell you. The question that you asked leads right up to it.

Q. All right, go ahead? A. If you want to understand. There are several heirs concerned in that and it is tied up legally, and my mother is the oldest child. Oh, if you are not interested, I won't go on.

Q. I am listening. I am not going to judge this case.

By Mr. Dworetz:

Q. Go ahead, Miss Smith? A. My mother is the oldest living child, and it takes a certain amount of

cash in order to have the other heirs sign off. An attorney here whose name I will not disclose, spoke about this money in Trenton, and said: "Don't you have any use of the money in Trenton," and I said: "No," and he said he didn't see why, since it was our money. He thought at the time he could do something for us, so I wired to Mr. Wood to get that information because he wanted it. Mr. Wood answered me back through the Board of Education and he also sent me a letter back, and that was the letter that I had, and then that didn't materialize, and later on someone else was interested in it, and Mr. Wood lives in Orange, and I wanted to get this straightened, because I didn't want to make the pension fund over as security if I didn't have the privilege to do so. I spoke to Mr. Kelley here about it and he told me I would have to see Mr. Wood, and I had a gentleman speak to Mr. Wood at his home and get me permission to go there, and then this attorney spoke to Mr. Wood, and then after all that there was nothing to it.

By Mr. Green:

Q. And that all transpired on the eighth of June? A. No, it was around the eighth of June.

Q. It was on the eighth of June that you sent the telegram? A. Yes, absolutely.

Q. And you got an answer? A. I got an answer and I got a letter also from Mr. Wood.

Q. When is the first time that you saw Exhibit P-4? A. May 10, 1933.

Q. Where? A. Right here in these rooms.

Q. Have you ever examined it? A. I certainly did.

Q. You know that it is dated June 10, 1932? A. I certanly do. I noted that.

Q. And you noted it is on the stationery of the Board of Education of Paterson, New Jersey, Public School Number 18? A. I know it was on the Board of Education stationery, and the 18 is typed in.

Q. And School number 18 is the school you were teaching in? A. Absolutely, yes.

Q. And do you know as a teacher at School number 18 that Mr. Bennert frequently sent circulars to the school that were posted on the bulletin board? A. Yes, and I also have a certificate signed by Mr. Bennert for special work done here, too.

Q. And this letter was first shown you, or the first time that you ever saw it, you say, was on May 10, 1933, is that right? A. Well, if that was the day I was suspended, yes.

Q. May 10, 1933, was the day— A. Yes, yes, that's right.

Q. (Continuing) that the trial was held? A. Yes.

Q. You heard Mr. Sherrill testify that you brought this letter to him, didn't you? A. I certainly did.

Q. That is not true? A. Absolutely not. May I say, Mr. Green, I went on trial on this count, and I was acquitted in New York——

Mr. Dworetz: Miss Smith, just answer.

Q. You heard Miss Hawkins testify that she was present at the time that you introduced this letter to Mr. Sherrill? A. I certainly did.

Q. That is not true, either? A. How can it be?

Q. And you heard Mr. Thien testify that you produced this letter, or the letter was produced in your presence, and it was discussed by the three of you? A. And that is not true.

Q. And that is not true. And you heard Mr. Sparks testify that the letter was attached to this copy or to a copy of the Teachers' Pension and Annuity Fund certificate? A. I discredit all of his witnesses that Mr. Sherrill brought in.

Q. That is not true, also? A. I discredit every one of them.

Q. But you did have some business with Mr. Sparks, didn't you? A. Why, I didn't have any business with Mr. Sparks.

Q. You remember assigning your pension fund or your rights to your pension fund? A. Yes.

Q. To Mr. Sherrill, don't you? A. I certainly do, yes.

Q. And in order to do that properly, your signature had been witnessed by a couple of witnesses, hadn't it? A. Yes, but I didn't request the witnesses, Mr. Sherrill asked the witnesses.

Q. And you went with Mr. Sherrill? A. I did not.

Q. Mr. Sparks didn't see you sign that? A. No, he didn't see me sign that. It was signed in Mr. Sherrill's office and Mr. Sparks worked further up, so I understood.

Q. What was the purpose in assigning this pension fund to the Guiana Realty Corporation? A. Well, Mr. Sherrill told me that sometimes he has trouble collecting from the school teachers and like that, and he said he didn't like to embarrass them. He said as long as I lived and everything went normally he felt as though he would get his money, but, he said in case anything happened to me how could he get his money, and that's how the pension fund came up.

Q. It wasn't assigned as security, was it? A. Why, no, the co-makers were the security.

Q. When you completed this loan or the negotiations for this loan with the application, that was done in Sherrill's office, is that right? A. Yes.

Q. And from Sherrill's office you went to the bank? A. Yes. Mr. Sherrill stopped and got his car from the garage, and he went in—if I am not mistaken, he said he was going to get a signature, and I am quite sure that he got Mr. Spark's signature.

Q. How far is the bank from Sherrill's office? A. If I am not mistaken, I think it is at 150th Street. Mr. Sherrill is at 135th.

(Mr. Green here asks Mr. Sherrill as to the location of the bank.)

Q. And you went in the car with Mr. Sherrill to the branch at 150th Street? A. Yes, I think it was the main bank.

Mr. Bragg: It was at that time.

Q. You never paid this loan, did you? A. Mr. Green, at the time the loan was made I gave Mr. Sherrill fifty dollars. I gave the office five dollars. Since then I have paid one hundred and fifty-four dollars. Mr. Sherrill also has a judgment.

Q. Did you pay the loan? A. How could I pay the loan. I have not been working.

Q. I show you Exhibit P-6, and ask you what that is supposed to represent? A. A check.

Q. To whom and for what? A. To the Guiana Realty Corporation for the obligation. I paid one hundred and fifty-four dollars after that was issued.

Mr. Rittenberg: That refers to what check?

The Chairman: This is the five hundred dollar check.

Mr. Dworetz: Is the exhibit on it?

Mr. Green: P-6.

The Chairman: Yes, P-6.

Q. When did you give that to Sherrill? A. On the 17th of October, 1932.

Q. What was that for? A. Well, it was to repay the loan. We had expected some money in about that time, and thought we would be able to take care of it, at least, my father did. I was going by what he told me, and Mr. Sherrill said he expected to go to the hospital and if we would leave a check it would facilitate matters for his office, which I did.

Q. The check wasn't paid, was it? A. No. Absolutely no.

Q. I show you this check marked Exhibit P-10, and ask you what that represents? A. That represents the same obligation, plus expenses.

Q. "December 5, 1933", and that check wasn't met, when it was put through for collection? A. No, it wasn't, for the same reason, but there was money paid on the principal shortly after, one hundred and fifty-four dollars paid a few days after that.

Q. A few days after you issued that, and you found out it had not been paid, then you wrote to Mr. Bragg and told him it had been made good and re-deposit it, didn't you? A. As we expected, yes.

Q. And he re-deposited it? A. And it came back again.

Q. And it was no good? A. No.

Q. You filled this application out, didn't you? A. Well, which part do you mean, Mr. Green? You mean my part?

Q. Yes? A. Yes, I filled my part out.

Q. Why did you put down here in answer to the question: "Have you tried to negotiate this loan through any reputable loan company or bank that makes personal loans where you could probably obtain a longer period of time with smaller installment payments to repay the loan?" The answer is: "No." "If you have not tried, why don't you?" Answer was: "Was sent to Mr. Sherrill by Mr. John Walker. I prefer to do business with this corporation." Will you explain that, please? A. I told you that I don't remember. It is in the previous minutes, Mr. Green.

Q. Well, that must have been true. At that time you remembered, didn't you? A. Whatever I put down there was right, but I am not going into things. I will explain how that was. I told you there were several conversations, and I went at the instigation of my father.

Q. So that when Mr. Thomas testified that he sent you to Mr. Walker and Mr. Walker testified that you came there and tried to borrow money and he wasn't able to help you out and that he sent you to Mr. Sherrill, that was true, wasn't it? A. It was not true.

Q. Well, you put it in here that it was? A. I told you, Mr. Green. You were kind enough to read the previous minutes on that. If you would read the previous minutes you will get the proper explanation.

Q. Why did you put it there? A. I told you about it.

Q. Why did you put in there that Mr. Walker sent you? A. At Mr. Sherrill's suggestion.

Q. Mr. Walker sent you where at Mr. Sherrill's suggestion? A. I said that was put in at Mr. Sher-

rill's suggestion. Evidently there was some conversation among the men. I told you I merely acted for my father, and I am only testifying what I know.

Q. You put in there that Mr. Walker sent you to Mr. Sherrill, didn't you? A. It is down there in my handwriting.

Q. Well, is that true? A. I am not going to say that it is true.

Q. You swore that it was true, didn't you? A. I told you Mr. Green that I acted for my father in the previous minutes. Just how it was done, I don't know, but I put it in at Mr. Sherrill's suggestion.

Q. Well, you wouldn't put anything in there at Mr. Sherrill's suggestion if it wasn't true, would you? A. There had been some conversation among the men. I told you I merely acted for my father.

Q. That doesn't say anything about your father. That is your own statement. It says that you were sent there by Mr. Walker? A. Mr. Green, at the previous hearing I said just who did the actual sending, that I didn't know.

Q. But at the time that you filled this out there was no lapse of time. Then you knew well what the exact conditions were, didn't you? A. I didn't know what the exact conditions were. I tried to explain that I was advised by my father, and I don't remember all of their conversations.

Q. Why did you put down there that you were sent by Mr. Walker? A. At Mr. Sherrill's suggestion. I explained before that there had been conversations among the men.

Q. What men? A. Didn't I tell you that I was advised by my father and went at his suggestion. Otherwise, I would never have made the loan.

Q. Do you say now that you didn't go to Mr. Walker, and that Mr. Walker didn't send you to Mr. Thomas? A. Mr. Green——

Q. To Mr. Sherrill? A. Mr. Green, I still say who did the actual sending, I don't know. I testified to that previously.

Q. But you swore to this, didn't you? A. I certainly did.

Q. And if you swore to it it must have been true at the time you swore to it, isn't that so? A. I told you that who did the actual sending I didn't know.

Q. I am not asking about the actual sending—— A. I refuse to answer any more.

Q. (Continuing) I am asking you if at the time you swore to the statement in this application, if that wasn't true? A. (No answer.)

Mr. Dworetz: Answer the question, Miss Smith.

A. That was true, as far as I knew, but I said all along that I acted for my father. I didn't know his mind.

The Chairman: They are your answers, not your father's.

The Witness: Yes.

By Mr. Green:

Q. Now, on May 10, 1933, page 14 of the testimony of Clara Smith:

"Q. Now, subsequent to the time that your note became due with Mr. Sherrill, did you visit Mr. John Walker in New York? A. No.

Q. Never went to his office? A. When.

Q. Did you go to Mr. Walker and request a loan of a thousand dollars? A. No.

Q. And did you tell Mr. Walker at any time that you had borrowed money from Mr. Sherrill and had repaid it? A. No.

Q. Do you know Mr. Walker? A. I don't know whether I know Mr. Walker or not. I went over that explanation with Mr. Spitz tonight.

Q. Well, you can give us the benefit of that explanation, whether you know the man or not? A. Mr. Spitz, will you explain?

Q. No, no, you? A. Well, I explained to Mr. Spitz that I had been so many different places since my father has been ill, that if I saw the man it would be a different proposition."

Q. You Saw Mr. Walker last week, didn't you? A. I certainly did.

Q. Did Mr. Walker send you to Mr. Sherrill or didn't he? A. I told you I acted at the instigation of my father. Just who is responsible for him getting me there, I don't know.

Q. Then tell me one more question. With reference to these judgments and these debts that you contracted as you say for your father in September, or that were owing by you in September, 1932, they were for your father weren't they? A. Absolutely.

Q. But you obligated yourself to pay them, didn't you? A. If you wish to put it that way.

Q. I don't wish to put it that way. Because it is that way, isn't it? A. Well, I don't understand law like you do.

Q. And you were in debt at that time, at the time that this application was made you were in debt to these various people that I referred to before? A. They were not judgments, Mr. Green.

Q. I don't care whether they were judgments. I didn't say that they were judgments? A. You did before.

Q. I said that Kitay Brothers have taken a judgment against you, and these other people have taken judgments against you since that time, but at that time they weren't judgments, they were debts, weren't they? A. Yes, they were debts. I stated on the application: "For debts and outstanding checks."

Q. When you answered the question: "Are you at the present time subject to any financial obligations that are not mentioned here", when you answered that question: "No", you weren't telling the truth, were you? A. I will not say that.

Q. All right, that's an answer.

By Mr. Dworetz:

Q. Miss Smith, are you willing to pay the loan? A. Why, I never refused to pay it, Mr. Dworetz.

Q. Miss Smith, these debts and obligations that Mr. Green has been talking about, these debts and obligations originally arose from transactions of your father? A. Absolutely.

Q. And you agreed to pay these debts? A. Yes, and I still agree to pay them.

Q. Miss Smith, is it not true that you borrowed five hundred dollars on September 15, 1932, from the Guiana Realty Corporation? A. Yes, it is true.

Q. Is it not true that the first payment was due on the fifteenth of October, 1932? A. Yes.

Q. Two hundred and fifty dollars. Is it not true that on the fifteenth of November there was another payment of two hundred and fifty dollars due? A. Yes.

Q. Referring to Exhibit P-6, dated October 24, 1932, to the Guiana Realty Corporation. That check was in payment of the full amount before the obligation was due? A. Yes, at Mr. Sherrill's suggestion.

Q. When did he receive it? A. On the seventeenth of October. He said he was going to the hospital, and would like to have things cleared up if he could.

Q. He asked for the money before the obligation was due? A. Absolutely.

Q. And you offered check marked an Exhibit P-6? A. Yes.

By Commissioner Patmos:

Q. Miss Smith, at any time did your father accompany you to New York in negotiating this loan? A. No, he was unable to.

Q. He wasn't among the men that you say were discussing the loan? A. Why, I don't know when he discussed it, Mr. Patmos.

Q. He wasn't over in New York discussing the loan among the men that were involved? A. No, he didn't come over. My mother went over with me.

Mr. Dworetz: At this time I would like to offer in evidence, if the Secretary will be kind, the minutes of the Board of Education calling for the reinstatement of Clara L. Smith; also I ask to offer in evidence the resolution suspending Clara L. Smith, and also I ask that it be introduced in evi-

dence the testimony, argument and finding of the Board; the resolution of the Board suspending and dismissing Clara L. Smith, and also the decision of the State Commissioner that was promulgated I believe on the twenty-fifth of September, 1934.

Mr. Green: I can't see any bearing it has so far as the minutes are concerned, but I will consent that they go into the record. That's all I can consent to.

Mr. Dworetz: I am sure that the Chairman realizes my request. After all, it is part of our defense, the *res judicata,* and I think these matters should be in evidence.

The Chairman: Well, I don't suppose you can introduce the whole book of it, the contents of it—make a big record of it.

Mr. Dworetz: Offer it as an exhibit. Don't have to type the whole testimony.

The Chairman: All right. It will be admitted.

Mr. Dworetz: Only thing is I ask that it be marked. Don't necessarily have to be marked up now.

The Chairman: All right.

THOMAS ARTHUR LESTER, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dworetz:

Q. Mr. Lester, where do you live? A. 12 Gray Street, Montclair.

Q. Did you have occasion to visit Mr. Sherrill on the nineteenth of April, 1933? A. I did.

Q. For what purpose? A. Went by request of Miss Smith to find out the balance due on a loan at that time.

Q. Did he tell you the amount due? A. He told me the amount due was approximately four hundred and thirty-eight dollars.

Q. Did you ask him about the one hundred and fifty-four dollars that was paid? A. Yes, I did. I asked him what about that, since there was a difference amounting to four hundred and thirty-eight. He said he got the four hundred and thirty-eight from additional expenses, communicating and coming over here.

Q. Did he say anything relative to Miss Smith's position as a teacher in the City of Paterson?

Mr. Green: That of course is leading.

Q. What did he say? A. He talked to me about the loan being made, generally.

Q. Yes? A. And he was very displeased at the time because the loan had not been paid, and he said that he would like to see Miss Smith lose her position, and he went on to say he didn't care anything about the money but it was the principle of the thing involved, and his attorney, Mr. Bragg, immediately asked him if he meant that he didn't care anything about the money. He said, no, no, if the money was paid he would drop the whole thing.

Q. Mr. Lester, do you recall giving Miss Smith a check in the sum of six hundred dollars drawn on the Montclair Trust Company, on or about December 7th, 1932? A. Yes.

Q. Do you recall that check marked as an exhibit in the previous trial that was held, I believe, in May, 1933? A. I do, yes.

Q. Was that check paid? A. It was not paid.

Q. Do you know, Mr. Lester, whether or not Miss Smith drew checks against the check that you gave her of her six hundred dollars?

Mr. Green: I object to that. How would he know that? It is entirely speculative.

Mr. Dworetz: He can answer the question yes or no.

Mr. Green: All right.

A. I couldn't answer that, Mr. Dworetz.

Q. How long have you known Miss Smith? A. As far as I can remember I have known her about seventeen years.

Cross examination by Mr. Green:

Q. You testified at the last hearing, didn't you, Mr. Lester? A. Yes, I did.

HENRY C. ALLEN, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dworetz:

Q. Mr. Allen, do you know Miss Clara Smith? A. I do.

Q. What position do you hold at the present time? A. I am postmaster.

Q. What is your occupation? A. I am a lawyer by profession. I am postmaster now.

Q. How long have you known Clara Smith? A. Oh, about twenty years, I guess.

Q. Mr. Allen, do you know Miss Smith's reputation in the community where she resides for morality and honesty? A. I think so, yes.

Q. Will you tell us what it is? A. I have never heard anything but good of her so far as her morality and honesty is concerned.

Q. Mr. Allen, would you say that she is a fit person to teach in the school system of the City of Paterson?

Mr. Green: I object to it. How can Mr. Allen testify as to her character?

Mr. Dworetz: Do you want to ask Mr. Allen any questions?

Mr. Green: No, but I am objecting to the question.

Mr. Dworetz: Withdraw the last question.

Cross examination by Mr. Green:

Q. Mr. Allen, you testified as a witness for Miss Smith at the previous hearing? A. Yes.

Q. And you testified as a character witness in the criminal proceedings? A. No.

Q. You did not? A. No.

Q. But you have appeared before the Board on other occasions on behalf of Miss Smith? A. I have.

Q. If there was proof to the effect that Miss Smith had forged the name of Mr. Bennert, General Supervisor of Schools to a letter, and to —to a letter, would that change your opinion of Miss Smith's character?

Mr. Dworetz: I object to the question. There is absolutely no evidence in this case that it was forged.

Mr. Green: I am not saying that there is. I am asking if there was.

Mr. Dworetz: I don't think it is a proper hypothetical question, and I object to it.

Mr. Green: Withdraw the question.

Rev. George Brabham, for Defendant—Direct.
Albert Pessau, for Defendant—Direct.

REV. GEORGE BRABHAM, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dworetz:

Q. Reverend Brabham, you are a minister of the Gospel? A. Yes.

Q. What Church? A. St. Augustine Presbyterian Church, Paterson.

Q. How long? A. Six years, little more than six years.

Q. How long have you known Miss Smith? A. Ever since I have been in Paterson, about six years.

Q. What is her reputation in the community where she resides for morality and honesty? A. Her reputation is very good in the community where she resides.

No cross examination:

ALBERT PESSAU, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dworetz:

Q. Mr. Pessau, where do you reside? A. Third Ward, 276 Fifth Avenue.

Q. What school is located in that district? A. 18.

Q. Do you know the reputation of Miss Smith in the neighborhood where she resides?

Mr. Green: I object to the question.

By Mr. Green:

Q. How long have you known Miss Smith? A. For the last two or three years.

Q. And do you come in contact with people that are intimately acquainted with Miss Smith? A. Well, I can't say that I do, no, but I did make it my business to go out and find out since I read the article that she——

Q. Just a minute. Since you read the article where? A. In the newspapers.

Q. When was that? A. I don't just remember the date. It had one of her trials here.

Q. Recently? A. Yes, recently.

Mr. Green: I object to the witness testifying to general reputation. He is not able to qualify. He went out with a set purpose after he read certain statements in the newspapers.

The Witness: No.

Mr. Green: I am talking to the Chair.

The Chairman: It doesn't seem to be very general knowledge.

By Mr. Dworetz:

Q. Did you know Miss Smith prior to the charges? A. Yes.

Q. In May, 1933? A. Yes.

Q. Do you know what her reputation was at the time——

Mr. Green: I object to the question. I just asked him if he came in contact with people that knew Miss Smith, personally—

The Witness: And I said "No". Not people that knew Miss Smith, no, but I did know her personally at the time.

Mr. Green: We are not talking to you personally, but if you knew her personally, that is not general reputation.

By Mr. Dworetz:

Q. Mr. Pessau, did you ever hear anything bad about Miss Smith? A. No, sir, that's why I went out.

Mr. Green: No questions. You are finished.

The Witness: That's why I went out to get petition and find out the girl's reputation.

(Witness leaves envelope with contents on table.)

Mr. Dworetz: Do you want it in evidence?

Mr. Green: It is up to the Chair.

The Chairman: No, we don't want it.

Mr. Dworetz: At this time I would like to make application to the Board to continue this matter for the express purpose of obtaining the testimony of—I believe his name was Cyril Wilson—one of the tellers in the Dunbar National Bank. I have been unable to locate him.

The Chairman: What do you want to prove by him? Maybe you can admit it

Mr. Green: What do you want to prove by him.

Mr. Dworetz: That Mr. Thien was not present at the time Miss Smith cashed the check.

Mr. Green: Well, counsel has had a week —he knew about it about a week, and he got the name and address.

The Chairman: I don't think we ought to put it off for that. I don't see any necessity for it.

Mr. Dworetz: After all, you have to realize that the witness comes from out of the State, and the first time his name was mentioned in this case, the first time I had opportunity to have to do anything about the witness was last Thursday. At least, we ought to have an opportunity to get him in. After all, he is not a resident of this State. That is one of the reasons I made request at the outset of the trial that the proceedings be stayed, to give us an opportunity to get all of the necessary witnesses.

Mr. Green: Miss Smith testified she spoke to Mr. Thien. She admitted that she saw him, and she admitted tonight——

Mr. Dworetz: Now, that's your testimony. The record speaks for itself.

Mr. Green: The testimony is in the record, and I remember well what it——

Mr. Dworetz: I address myself to the Chair, and I would like to have an opportunity to get the witness, Cyril Wilson.

The Chairman: I don't think it is material.

Mr. Dworetz: I think it is extremely material.

The Chairman: Well, the Chair doesn't. If you want a vote on it——

Mr. Dworetz: Yes, call the roll.

The Chairman: That the request be denied.

Mr. Green: The roll call is on whether the matter should be laid off.

Commissioner O'Dea: Mr. Chairman, I move that the request be denied.

Mr. Torrey: Second the motion.

The Chairman: Regularly moved and seconded that the request be denied. All those in favor say "aye," contrary, "no." The secretary will call the roll.

The Secretary: (Calling roll.) Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative, none in the negative.

The Chairman: Request is denied.

Mr. Dworetz: Mr. Chairman—Will you allow an exception?

The Chairman: Certainly.

Mr. Dworetz: At this time I move for a dismissal of the charges based on the argument that was set forth at the outset of this trial, also the arguments advanced after the complainant's case was put in, and on behalf of the testimony in the

evidence that you produced on behalf of the defendant.

The Chairman: Entertain a motion by all of the members?

Commissioner Torrey: I move that the request be denied.

Commissioner O'Dea: Second the motion.

The Chairman: Regularly moved and seconded that the request of counsel for the dismissal of the charges be denied. All those in favor say "aye," contrary "no." The secretary will call the roll.

The Secretary: (Calling roll.) Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart: Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative. None in the negative.

Mr. Dworetz: In reference to my application for offering into evidence the minutes of the Board of Education calling for the reinstatement of Clara L. Smith, the resolution suspending Clara L. Smith,

the entire record of previous hearing concerning the charges, testimony, argument of counsel and finding of the Board, the resolution of the Board suspending and dismissing Clara L. Smith, it is agreed between counsel that they be marked as one exhibit, and also the decision of the State Commissioner of Education.

The Chairman: Be so admitted.

(Marked Exhibit D-4.)

Page 389, Minutes of the Board of Education, April 26, 1933.

Page 409, May 10, 1933, adjourned meeting of the Board of Education.

Page 415 of the minutes of May 10, 1933:

"The President: The Board after a consideration of the evidence in the matter of the complaint of the Guiana Realty Company against Clara L. Smith, finds Clara L. Smith guilty of conduct unbecoming a teacher in the public school system of Paterson.

"The judgment of the Board is that Clara L. Smith be suspended from teaching in the public schools of Paterson until February 1, 1934, without pay, at which time her application for reinstatement will be given consideration.

"Regularly moved and seconded that the findings of the Board be approved. All in favor say aye, contrary no.

"(Roll call by the Secretary showed six members in the affirmative, none in the negative.)"

CLARA L. SMITH,
Appellant,

vs.

BOARD OF EDUCATION
OF THE CITY OF PATERSON,
Respondent.

Decision of Commissioner of Education.

Charges were presented to the Paterson Board of Education by the Guiana Realty Company, of the City of New York, setting forth that Miss Smith secured a loan from that corporation through misrepresentation which, in its opinion, made her irresponsible and morally unfit to teach school. Miss Smith, who was protected in her employment by the Tenure of Office Act, was served with a copy of the charges and on April 26 and March 10, 1933, the board heard the evidence presented by counsel at both hearings, at the conclusion of which the board, by a vote of six in the affirmative and none in the negative, adopted the following:

"The judgment of the board is that Clara L. Smith be suspended from teaching in the public schools of Paterson until February 1, 1934, without pay, at which time her application for reinstatement will be given consideration."

"Mr. O'Dea, a board member, who was not present at the first hearing, sat in the second and voted for the suspension, which became effective as of May 10, 1933. It is

admitted that appellant did not thereafter offer her services to the board until February 6, 1934, when she applied for reinstatement and that on May 3, 1934, the committee on education directed that the application of the appellant be denied, such action was ratified by the board on May 10, 1934.

It was not until June 8, 1934, that Miss Smith appealed to the Commissioner of Education protesting her suspension as of May 10, 1933, and the board's refusal of reinstatement on May 10, 1934.

Chapter 188 P. L. 1934, recites that no tenure teacher shall be dismissed except upon written charges and a formal hearing. There is no provision applicable to suspension. Under the conditions in this case, it is not necessary to determine the board's right to suspend the appellant since during the period thereof she neither offered her services to the board nor appealed its action to the Commissioner. Miss Smith cannot claim compensation for work she did not offer to perform. Even if appellant had offered her services, she could not come into court on June 8, 1934, to protest an action of the board taken on May 10, 1933. Decisions of State Board of Education:

Gleason vs. Bayonne Board of Education, May 6, 1933; Carpenter vs. Hackensack Board of Education, April 14, 1934; Aeschbach vs. Secaucus Board of Education, May 12, 1934.

Appellant appears to hold that her dismissal was of May 10, 1934, following the

board's refusal of her services on February 6, 1934, and in this view the Commissioner concurs.

It is the contention of appellant's counsel that Miss Smith was unfairly treated and illegally dismissed since a member of the board, without hearing all the testimony, voted for her conviction. In support of this contention he quotes the Supreme Court case of Kelly vs. Bishop et als., 119 Atl. 6, in which Justice Bergen, speaking for the Court said:

"The rule is fundamental that a person who has not heard the testimony in a given case occupies no legal status as arbiter or judge to adjudicate upon the cause. The participation of one of the commissioners in adjudicating the guilt of the prosecutor on testimony he has never heard is fatal to the conviction and without it the resolution of dismissal must fall."

A similar ruling Eisenberg vs. Cliffside Park, 92 N. J. L., 321, is cited in the above case. In accordance with this ruling of the Supreme Court, Miss Smith was illegally dismissed. The Board of Education of the City of Paterson is directed to pay her salary from February 6, 1934, and to immediately reinstate her as a teacher in its school system.

CHARLES H. ELLIOTT,
Commissioner of Education.

Dated December 25, 1934."

Mr. Dworetz: We will waive summation.

Mr. Green: I waive summation.

The Chairman: Then, I guess the members better retire.

Commissioner Patmos: I so move, Mr. Chairman.

Commissioner Finn: I second the motion.

The Chairman: Regularly moved and seconded that we retire to deliberate on this case. All those in favor say "aye," contrary "no." Secretary will call the roll.

The Secretary: Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?

Commissioner Flitcroft: Aye.

The Secretary: Grobart?

Commissioner Grobart? Aye.

The Secretary: O'Dea?

Commissioner O'Dea: Aye.

The Secretary: Patmos?

Commissioner Patmos: Aye.

The Secretary: Torrey?

Commissioner Torrey: Aye.

The Secretary: Walker?

Commissioner Walker: Aye.

The Secretary: Finn?

Commissioner Finn: Aye.

The Secretary: Eight in the affirmative. None in the negative.

(After an executive session, the Board reconvened at 11:40 P. M.)

The Chairman: The secretary will call the roll.

The Secretary: Commissioners Donohue?

Commissioner Donohue: Present.
The Secretary: Flitcroft?
Commissioner Flitcroft: Here.
The Secretary: Grobart?
Commissioner Grobart: Here.
The Secretary: O'Dea?
Commissioner O'Dea: Here.
The Secretary: Patmos?
Commissioner Patmos: Here.
The Secretary: Torrey?
Commissioner Torrey: Here.
The Secretary: Walker?
Commissioner Walker: Here.
The Secretary: Finn?
Commissioner Finn: Here.
The Secretary: Eight present.
The Chairman: Quorum present.

We have the finding of the Board here as follows:

The members of the Board of Education of the City of Paterson, in the County of Passaic, having heard all of the evidence offered in the matter of the Guiana Realty Corporation, complainant, vs. Clara L. Smith, defendant, that the said Clara L. Smith did fraudulently forge, or cause to be forged, a letter purporting to be signed by Lewis A. Bennert, General Supervisor of Schools of the City of Paterson, and further, that she did utter the aforesaid letter to various persons, and particularly to William Sherrill, president of the Guiana Realty Corporation for the purpose of inducing the said Guiana Realty Corporation to loan her the sum of five hundred dollars; and also that the said Clara L. Smith did forge or cause to be forged the name of Benjamin Thomas as a co-maker on a note given by the said Clara L. Smith to the

Guiana Realty Corporation for the further purpose of inducing the said Guiana Realty Corporation to loan her the sum of five hundred dollars.

In accordance with the evidence hereinbefore referred to and based upon this and the entire record taken in the proceedings on Thursday, October 18, 1934, and Wednesday, October 24, 1934, which entire record is made part of these findings, we find that it is true in fact that the said Clara L. Smith was guilty of misrepresentation and fraud in the making of the application for the borrowing of five hundred dollars from the Guiana Realty Corporation, and that by reason of her misrepresentation, fraud, forgery and the uttering by her of the forged letter and documents hereinbefore referred to, and her dishonesty therein, lack of integrity and fraudulent misrepresentation, that she is wholly irresponsible and unfit to teach or supervise children attending the schools of the public school system of the City of Paterson, New Jersey, and we find her guilty of conduct unbecoming a teacher, and it is the judgment of this board of education of the City of Paterson in the County of Passaic, that she be dismissed as a teacher in the public schools of Paterson, New Jersey.

Dated October 24, 1934.

Commissioner Torrey: I move that these findings be adopted.

Commissioner O'Dea: Second the motion.

The Chairman: Regularly moved and seconded that these findings be adopted. All in favor say "aye," contrary "no." The secretary will call the roll.

The Secretary: Commissioners Donohue?

Commissioner Donohue: Aye.

The Secretary: Flitcroft?
Commissioner Flitcroft: Aye.
The Secretary: Grobart?
Commissioner Grobart: Aye.
The Secretary: O'Dea?
Commissioner O'Dea: Aye.
The Secretary: Patmos?
Commissioner Patmos: Aye.
The Secretary: Torrey?
Commissioner Torrey: Aye.
The Secretary: Walker?
Commissioner Walker: Aye.
The Secretary: Finn?
Commissioner Finn: Aye.
The Secretary: Eight in the affirmative. None in the negative.
The Chairman: It is carried.
Any further business before the Chair?
Mr. Green: I have none.
Commissioner O'Dea: Move we adjourn.
Commissioner Finn: Second the motion.
The Chairman: Regularly moved and seconded that we adjourn. All in favor say "aye," contrary "no."
(Motion carried, eight in the affirmative, none in the negative.)

CERTIFICATE OF STENOGRAPHER.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcript of the shorthand notes of testimony taken by me in the above stated matter at the time and place hereinbefore set forth.

PETER O'BYRNE.

Exhibit P-1.

BOARD OF EDUCATION
OF THE CITY OF PATERSON
IN THE COUNTY OF PASSAIC.

GUIANA REALTY CORPORATION,
a corporation,
Complainant,
vs.
CLARA L. SMITH.

Charges.

TO THE MEMBERS OF THE BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC:

Ladies and Gentlemen:—

The Guiana Realty Corporation, a corporation, by William Sherrill, its President, does hereby Charge that Clara L. Smith, a teacher in the employ of the Board of Education of the City of Paterson in the County of Passaic, is guilty of conduct unbecoming a teacher.

FIRST COUNT:

1. That the Guiana Realty Corporation is a realty corporation, existing by virtue of and under the laws of the State of New York.

2. That on or about the 15th day of September 1932 Clara L. Smith, a teacher in the Public Schools of Paterson, New Jersey secured a loan of $500.00 (Five Hundred Dollars) from the Guiana Realty Corporation, evidenced by promissory note, the same to be paid in two installments to-wit October 15 and November 15, 1932 respectively.

Exhibit P-1.

3. That on a questionaire furnished for the benefit of the petitioner to the borrower one of the endorsers, Filimore Smith states that he is the owner of property valued at $9,000 and the other endorser, Florence Smith states that she is the owner of realty valued at $8,000.

4. That on the same questionaire Clara L. Smith stated that she was not obligated or indebted to anyone other than a Building Association.

5. That on the due dates to-wit October 15 and November 15, 1932 Clara L. Smith had tendered two worthless checks neither of which has as yet been honored though demand has been made for payment.

6. That subsequent to this time to-wit, November 15, 1932, Clara L. Smith, defaulted in the payment of the note in question.

7. That the Guiana Realty Corporation has numerous exhibits in the form of telegrams, letters, dishonored checks, deposit slips, etc., with extravagant promises to make payment which promises indicate the unreliability of Clara L. Smith.

8. That the Guiana Realty Corporation is informed and verily believes that Clara L. Smith was indebted and obligated to numerous persons and institutions in various sums of money and at the time that she stated on the questionaire that she was not indebted to anyone other than a certain Building Association, judgments had been obtained against her in the State of New Jersey for money due to others at the time that she obtained a loan from the Guiana Realty Corporation.

Exhibit P-1.

9. That while Clara L. Smith was indebted to the Guiana Realty Corporation she attempted to secure a loan from J. W. Walker of New York City for the sum of $1,000 (One Thousand Dollars) and informed Mr. Walker that she was not indebted to the Guiana Realty Corporation but that she had paid back to the Corporation the loan previously secured from it.

10. That in making the loan to Clara L. Smith the Guiana Realty Corporation had relied upon certain representations made by Clara L. Smith, relative to the availability of her New Jersey Pension and Annuity Fund money as security for the money borrowed from the Guiana Realty Corporation, and at the time Clara L. Smith secured the loan from the Guiana Realty Corporation, she exhibited to William Sherrill, its President, a statement from the Board of Education of Paterson, New Jersey which by its terms, states "Any teacher of our city who uses this fund as security in any transaction is really risking his or her position in case of default." Miss Clara L. Smith did use this fund as security. Miss Clara L. Smith has defaulted in payment.

11. That since November 15th, the day on which the note in question became due and payable, every effort has been made to collect the sum above mentioned, repeated demands have been made to Miss Clara L. Smith, the matter has been referred to the Board of Education of the City of Paterson, New Jersey, the Commissioner of Education at Trenton, New Jersey, the State Pension and Annuity Bureau and the Prosecutor of Passaic County and except for three Western Union Checks in the aggregate sum of $154.00 (One Hundred

Exhibit P-2.

Fifty-four Dollars) Clara L. Smith has neglected and failed to pay the amount due to the Guiana Realty Corporation of $500.00 (Five Hundred Dollars).

(Twelfth paragraph struck out.)

13. That the said Clara L. Smith was guilty of misrepresentation and fraud in the making of the application for the borrowing of the Five Hundred ($500.00) Dollars as hereinbefore set forth.

WHEREFORE your complainant requests that the said Clara L. Smith, by virtue of her dishonesty, lack of integrity, fraudulent misrepresentations and forgery, be removed from her position as a teacher in the Public Schools in the City of Paterson, New Jersey, as a person wholly irresponsible and morally unfit to teach, supervise, or give moral guidance to the children under her direction. Dated: October 9, 1934.

GUIANA REALTY CORPORATION.
By WILLIAM SHERRILL,
President.

Exhibit P-2.

(COPY)

TELEGRAM

TEACHERS PENSION AND ANNUITY FUND
STATE HOUSE TRENTON N. J.

PLEASE TELL US TOTAL AMOUNT EACH HAS STANDING TO HIS CREDIT INCLUDING INTEREST TO DATE OUR NUMBERS ARE 11557 AND 1096 MAIL EACH A BENEFICIARY TRANSFER BLANK TELEGRAPH INFORMATION C O D AT ONCE

CLARA L AND FLORENCE A SMITH

Exhibit P-3.

(COPY)

TEACHERS' PENSION AND ANNUITY FUND
State of New Jersey
1012 Trenton Trust Building
Trenton, N. J.

Phone 6410 P. O. Box 840

June 8, 1932

Miss Clara L. Smith,
c/o Thos. F. Kelly, Secretary
Board of Education,
Paterson, New Jersey.

Dear Madam:

Receipt is acknowledged of your telegram received this morning as follows:

> "Please tell us total amount each has standing to his credit including interest to date our numbers are 11557 and 1096 mail each a beneficiary transfer blank telegraph information C O D at once."

We sent you a telegram C. O. D. this afternoon as follows:

> "July 1932 withdrawal values assuming June contributions paid including 3½% interest approximately $891.54 and $1146.96. Letter follows care of Mr. Kelly."

Assuming that a contribution of $9.78 will be deducted from your June 1932 salary as heretofore you will have contributed to the fund a total of $754.70 and your sister, Florence A. Smith, will have contributed a total of $951.00. 3½% interest on these accounts to July 1, 1932 give the values quoted in our telegram and confirmed above.

In compliance with your request we enclose herewith forms on which each of you may nomi-

nate a beneficiary of his equity in the Annuity Savings Fund in case of death while a member before retirement.

If you contemplate leaving the service and withdrawing your money form of application for withdrawal may be secured from the Secretary of your employing board or from this office.

Miss Clara L. Smith #2

The interest items quoted in this letter are not to be taken as estimates or guaranties but as approximations furnished at your request.

Yours very truly,

(signed) JOHN A. WOOD 3d.

JAW/MES Secretary

Enc.

Copy for Florence A. Smith

Exhibit P-4.

BOARD OF EDUCATION
Paterson, N. J.

Public School No. 18

June 10, 1932.

To Whom It May Concern:

The Misses Smith, Florence A., and Clara L., have asked me to furnish the following information concerning the Teacher's Pension and Annuity Fund. Former has $1845.16; credited to Clara L. $1415.23.

The fund consists of accumulated deductions from the salary of the teacher plus interest and any possible dividends. All teachers employed in the city of Paterson are forced to accumulate this fund which increases each month. Dues are de-

ducted from each check before same is presented to the teacher. Thus, the teacher has no choice in defaulting membership.

Each teacher has the sole privilege of naming the beneficiary. This may only be done by signing the proper nomination sheet and forwarding same to our Trenton office. These blanks will not be furnished upon request if there are any claims or complaints against the teacher concerned. Thus, the presence of these blanks for proper signatures indicated that the teacher in question is permitted to transfer the fund.

The fund will only be paid to the beneficiary after he or she has established his or her identity as the proper party to receive same.

This fund is not an insurance. It is paid to the beneficiary in case of the death or resignation of the teacher in question.

Any teacher of our city system who uses this fund as security in any transaction is really risking his or her position in case of default. However, the Board of Education will not entertain any verbal complaint. WRITTEN PROOF OF THE COMPLAINT MUST BE SUBMITTED.

Any teacher who is employed by us for thirty-five or more years may retire, and, because of the strength of this fund, receive half pay as long as he or she may live. IN THIS CASE, THE BENEFICIARY HAS NO FURTHER CLAIM TO THE FUND.

I sincerely hope that this information will be of value and assistance to those concerned, and will go far enough to say that there are not, and never have been any claims listed by our Board of Education against either of the young ladies concerned.

Very truly yours,

LEWIS A. BENNERT,
General Supervisor.

LAB:BSS

Exhibit P-5.

(See Opposite.)



PEOPLE'S EXH

Exhibit P-5—Page 1.

PEOPLE'S EXH. FOR IDEN. 4 IN EVIDENCE

NEATLY FURNISHED ROOMS $3.50 Per Week and Up

APPLICATION

GUIANA REALTY CORPORATION

RENTING, COLLECTING, PROPERTY MANAGED

260 W. 135TH ST. AUD. 3-4419 NEW YORK CITY

UNFURNISHED ROOMS 5 ROOM APT. Latest Improvements $19.00 ½ month and up

L QUICK, O PERSONAL, A SMALL, N NEEDY, S

Date. Sept. 15, 1932.

I hereby make application for a Loan and make the following answers to the annexed questions in connection therewith.

APPLICANT'S NAME. Clara L. Smith ..... Occupation School Teacher .. Age. 30

Amount of loan required $ 500.00 ..... Purpose for which loan is required (and the money will be used for) Debts, Unpaid Checks

Business Address P.S. No. 18 Paterson N.J. Phone Sherwood 2-776 How long at this address? 11 Yrs

Single or Married? Widow Wife's Name ..... Sherwood 2-469 How long at this address? 15 Yrs

Husband's Name ..... Husband's Age ..... Any children? ..... How Many? .....

Ages ..... Any other dependents? .....

How long engaged in present occupation, Business, Profession or Employment? 11 Yrs.

Are you temporarily employed? No Are you permanently employed? Yes

Employer's Name Bd. of Education In what Department? Primary & Elementa

Name of your Supervisor Lewis Bennett Amount earned as Wages, Income or Salary monthly $ 250.-

From whom and in what manner do you receive your wages, salary or income? Bd. of Education from Chec

Have you any other source of income? Yes What is it? Stocks & Bonds

From what source will the loan be repaid? Salary from teaching Badge or check No.

How do you intend to repay this loan? Monthly $ 25.00 Semi-Monthly $ ..... Weekly $ ..... (60)-(90) days $ .....

DO YOU OWN ANY OF THE FOLLOWING:—

Real Property, Land, Household Furniture, Office Fixture; Automobile, Piano, Radio, Jewelry, Machinery; Fixtures; Stock in any Corporation, Stock in Trade, give particulars and indicate by underlining items you own.

We own our home

Florence, Clara & Vera Smith

Other personal property not listed or mentioned above: .....

Total net worth of all Property, real and personal, and the present market value over and above all liabilities, encumbrances or liens, owned outright and solely by applicant. $ 5,000.00 Do you agree and consent that this loan be considered and taken as a full lien against all your property above mentioned (real and personal) which you represent to be free of encumbrances? Yes ..Do you agree not to mortgage, pledge, sell, remove or cause any encumbrances or liens to be placed against any of the above named property or otherwise dispose of any of the same before this loan is repaid? Yes

If required at any time before this loan is repaid, do you agree to furnish a chattel mortgage and affidavit of title thereto? Yes ..... Have you a savings account? Yes .. How much? $ 2.-

in what Bank? Security Trust Co. Pass Book No. 101.7.7.

Have you a checking account? Yes In what Bank? .....

What is your daily average balance $ ..... Why don't you negotiate this loan with your bank, or withdraw the amount necessary? Bal. too small .... Have you any money deposited in the name of someone else, either in a saving or checking account, which is not in your name, but of which you are the sole or part owner? Yes

State particulars In sister's name Florence A. Smith - Checking Accou

Do you carry life insurance? Yes. With what companies? Metropolitan Amount of Insurance $ 3000

Is premium paid to date? Yes Date, month, year when policy will mature. Feb., 1941

Do you carry fire insurance on any of your personal property? Yes. What amount $ 2,500. Household Furnitu

Year when policy will expire? 1933

What articles or property are covered by insurance? House - $ 5,000

Has any of your applications for loans ever been denied by any loan Companies? No .. Give details .... No.

Do you owe any debts? Yes .. To whom? Building Loan Mortg. Age How much $ 2,500

Have you any unsatisfied judgment on record against you? No How much? No

Are your wages (salary) garnished? No. By whom and for what? No

Are you now employed and is serving during your probationary term? No

When would you complete your probationary term? I have completed it

Have you taken and passed any examination for the position you now hold? ..... When, where and what examination have you taken and passed. By appointment

Does the position or employment you now hold require that you be appointed to same, and that no Civil Service examination was necessary? Yes .. By whom were you appointed? City Supt. Address City Hall, Pater

Are there at present any legal actions pending against you? No. What are they? No

Are there any departmental charges pending against you? No

Have you been notified by your employers that you will be discharged, laid off or be asked to resign before this loan will have been repaid? No Are you a tenant or lodger at your home address? .....

What rent do you pay $ No Do you owe any back rent? ..... How much $ .....

Have you a lease to the apartment? No. Do you carry any health or accident insurance? Yes

What are the benefits $ 27.50 per wk. for illness

Have you borrowed any money on your Insurance Policies or on your personal property? No .. How much $ No

From whom No Address .....

Have you tried to negotiate this loan through any reputable loan companies, or bank, that make personal loans where you could probably obtain a longer period of time, with smaller installment payments to repay the loan? No

If you have not tried, why don't you? Was speaking to Mr. Sherwood by Mr. John Walker prefer to do business with

Are you at the present time a maker, co-maker, endorser or a guarantor of any outstanding notes or obligations? Yes

In what amounts? $ 200.- Who are the holders? Bank - Hamilton Apts 16

Are you at the present time subject to any financial obligations that are not mentioned here? .....

Describe them in detail Household effects

Do you intend leaving the community or Borough or changing your address before this loan is repaid? No

To what race do you belong? Negro Are you a citizen of the United States of America? Yes

City of New York / State of New York / County of New York } ss.: Paterson State of New Jersey

Clara L. Smith

Applicant

Clara L. Smith

Being duly sworn, says that she is the above named applicant and that each statement made herein is true to her own knowledge; that this application and affidavit are made for the purpose of obtaining the loan referred to in the foregoing application and are made with the full knowledge that the GUIANA REALTY CORPORATION relies upon the truth of the statements therein contained and would not make the loan if this affidavit were not made, and that the signatures of the co-makers, endorsers, (guarantors) are genuine and were written in my (our) presence.

Clara L. Smith

Applicant

Sworn to before me this 15th day September, 1932

John J. Rothstein Notary Public Passaic County

CO-MAKER, ENDORER AND GUARANTOR

NAME Florence A. Smith Occupation Teacher Age

Business Address P.S. No. 22 - Paterson N.J. Phone Sh 2-7761 How long at this Address 13 Yrs

Residence Address 39-12th Ave. Paterson N.J. Phone Sh 2-4692 How long at this Address 10 yrs

Single or Married? Single Wife's Name —

Wife's age — Husband's Name —

Husband's age — Any children? — How many? — Ages? —

Any other dependents? — How long engaged in present Occupation, Business, Profession or Employment? 13 Yrs. Are you now employed, and is serving during your probationary term? Yes

When would you complete your probationary term? Completed 10 years ago

Have you taken and passed any examination for the position you now hold? By appointment

When, where and what examination have you taken and passed? Board of Examiners

Does the position or employment you now hold require that you be appointed to same, and that no civil service examination was necessary? Yes By whom were you appointed? Superintendent of City Schools

Are you temporarily employed? No

Are you permanently employed? Yes Employer's Name Board of Education

In what department? Elementary Badge or Check Number —

Name of your Supervisor Lewis Bennett Address City Hall - Paterson N.J.

Amount earned as wages, income or salary monthly $ 280.00 Yearly $ 2800

From whom and in what manner do you receive your Wages, Salary or Income? City - Board of Education

Have you any other source of income? Yes What is it? Private Lessons after school

DO YOU OWN ANY OF THE FOLLOWING

				Present Market Value
Real Property	Yes	Location	39-12th Ave - Paterson N.J.	$ 8000
Land	Yes	" "	Lakewood N.J.	$ 100
Household Furniture	No	" "	—	$ —
Office Furniture	No	" "	—	$ —
Automobile	No	" "	—	$ —
Piano	No	" "	—	$ —
Radio	No	" "	—	$ —
Jewelry	No	" "	—	$ —
Machinery	No	" "	—	$ —
Stock in Corporation	No	" "	—	$ —
Stock in Trade	No	" "	—	$ —

Other Personal Property not listed or mentioned above $ — Give particulars —

Total net worth of all Property real and personal and the present market value over and above all liabilities, encumbrances or liens owned outright and solely by Guarantor, Endorser or Co-maker 1/3 of $10,000

How long have you known the Applicant? Life

Is the Applicant related to you? Yes Have you read the application for the loan? Yes

Are you a Maker, Co-maker, Endorser or a Guarantor of any outstanding obligations? No

Do you carry life insurance? Yes With what Companies? Metropolitan Life

How much? $ 2500.00 Is premium fully paid to date? Yes

Date, Month and Year when Policy will mature? October, 1944

Have you borrowed any money on your Insurance Policy or on your personal property? No

Have you a Savings account? No How much $ No In what Bank? — Pass Book No. —

Have you a checking account? Yes With what Bank? Franklin Trust Co.

What is your average balance $ 75 to 150

Have you any money, either in a savings or checking account, which is not in your name, but of which you are the sole or part owner? No

State Particulars —

Do you voluntarily endorse (guarantee) payment of the loan? Yes

Do you owe any debts? Yes To whom? Mansion Building & Loan Assn.

How much $ $2500 Building & Loan

Are there at present any unsatisfied judgments on record against you? No

Are your wages (salary) garnished? No Are there any charges pending against you by your Employers, Chief or Supervisor of your department? No

Are there at present any legal actions pending against you? No For what? —

Are you a citizen of the United States of America? Yes To what Race do you belong? Negro

I the undersigned do hereby declare that the foregoing answers to the annexed questions are true to the best of my knowledge.

Florence A. Smith
Co-maker, Endorser and Guarantor

CO-MAKER, ENDORSER AND GUARANTOR

NAME Fillmore Smith Occupation Realtor-Editor

Business Address 3.9.-12th. Ave, Paterson, Phone Sherwood 2-4649 How long at this Address 15 yrs

Residence Address " " Phone " " How long at this Address 16 yrs

Single or Married? Married Wife's Name Ella Lillian Smith

Wife's age 53 yrs Husband's Name

Husband's age Any children? Three How many Ages 32., 30., 23

Any other Dependents? no How long engaged in present Occupation, Business, Profession or Employment? 40 yrs Are you now employed and is serving during your probationary term? N.A.

When would you complete your probationary term?

Have you taken and passed an

When, where and what examination have you taken and passed?

Does the position or employment you now hold require that you be appointed to same, and that no civil service examination was necessary? By whom were you appointed?

Are you temporarily employed?

Are you permanently employed? Employer's Name

In what department? Badge or Check number

Name of your Supervisor Address

Amount earned as wages, income or salary monthly $ yearly $ $1,800 up

From whom and in what manner do you receive your Wages, Salary or Income? Commissions, Fees

Have you any other source of income? Yes What is it? Variable

Publish Industrial Watchman Quarterly

DO YOU OWN ANY OF THE FOLLOWING:—

			Present Market Value
Real Property	Yes	Location Parkway	$ 3,000
Land	Yes	" " Virginia	$ 8,000
Household Furniture	Yes	" "	$
Office Furniture		" "	$
Automobile	Yes	" " 1930 Essex Sedan	
Piano		" "	$
Radio		" "	$
Jewelry		" "	$
Machinery		" "	$
Stock in Corporation		" "	$
Stock in Trade		" "	$

Other Personal Property not listed or mentioned above $ Give particluars

Historical Prints

Total net worth of all Property real and personal and the present market value over and above all liabilities, encumbrances or liens owned outright and solely by Guarantor, Endorser or Co-maker $7,000

How long have you known the Applicant? Next to nothing

Is the Applicant related to you? Daughter Have you read the applicatin for the Loan? Yes

Are you a Maker, Co-maker, Endorser or a Guarantor of any outstanding obligations?

No

Do you cary life insurance? Yes With what Companies Metropolitan

How much? $4,000 Is premium fully paid to date? Yes

Date, Month and Year when Policy will mature? Straight Life

Have you borrowed any money on your Insurance Policy or on your personal property? Mortgage

Have you a Savings Account? Yes. How much? In what Bank? 2nd Natl. Pass Book No. 57130

Have you a checking account? With what Bank?

What is your daily average balance $

Have you any money, either in a savings or checking account, which is not in your name, but of which you are the sole or part owner? Yes

State Particulars Florence A. Smith - Franklin Trust Co

Do you voluntarily endorse (guarantee) payment of the loan? Yes

Do you owe any debts? Yes To whom? Building Loan

How much $4,600 (About)

Are there at present any unsatisfied judgments on record against you?

Are your wages (salary) garnished? Are there any charges pending against you by your Employers, Chief or Supervisor of your department?

Are there at present any legal actions pending against you? For what?

Are you a citizen of the United States of America? Yes To what Race do you belong? Negro

I the undersigned do hereby declare that the foregoing answers to the annexed questions are true to the best of my knowledge.

Fillmore Smith

Comaker, Endorser and Guarantor

$.500.00 New York, N. Y. Sept. 15, 1932

For value received, the undersigned promise to pay to the order of *GUIANA REALTY CORPORATION* At 260 West 135th Street, New York City, New York.

Five hundred ——————————————————————————————————DOLLARS

PAYABLE:

MONTH, DATE & YEAR PAYABLE	AMOUNT PAYABLE	MONTH, DATE & YEAR PAYABLE	AMOUNT PAYABLE
Oct. 15, 1932	$.250.00 After date	.....	$.....After date
Nov. 15, 1932	$.250.00 After date	.....	$.....After date
.....	$.....After date	.....	$.....After date
.....	$.....After date	.....	$.....After date
.....	$.....After date	.....	$.....After date
.....	$.....After date	.....	$.....After date

interest at the rate of six (6%) per cent per annum after date until paid. In the event of the non-payment of any of the above installments on the date of its maturity, the whole face amount of the note shall immediately become due and payable; at the option of the holder, or in the event of the death or insolvency of the undersigned, any property of the undersigned in possession of the legal holder of this note may be appropriated and applied hereon, as well before as after maturity hereof.

And in consideration of the premises, and to further secure the payment of said amount, the undersigned hereby authorizes, irrevocably, the legal holder of this note to appear in any court of record during term time or vacation at any time after due date and without service of process against me (us) the undersigned borrower or maker of this instrument, consent to and hereby confess judgment in favor of the said legal holder of this note for such amount as may appear to be unpaid thereon, together with interest and statuary costs and attorney's fee, not to exceed 10% of the amount due on the principal to be awarded the said holder of this note, by any such Court of Record. And I, (we) the said undersigned further agree to waive and release all errors which may intervene in such proceedings and consent to immediate execution upon said judgment, hereby ratifying and affirming all such proceedings by virtue hereof.

Clara L. Smith

Applicant, Borrower and Maker

ASSIGNMENT

Know All Men by These Present

THAT I, ...being over twenty-one (21) years of age and residing at ....., New York City, N. Y. for value received, do HEREBY sell assign, transfer, release and let unto said GUIANA REALTY CORPORATION, 260 West 135th Street, Borough of Manhattan, City of New York, all my right, title and interest in and to all money and other valuable considerations accrued or which may or shall hereafter become due and owing to me as commissions, wages, debts, earnings salary or other income from my present employer ..... or from any other person whose employ I shall hereafter enter or from whomsoever may be indebted to me during the life of this indebtedness up to the amount of.....Dollars, said sum representing cash money borrowed by me from the Assinee and contracted for by me prior to the execution of this assignment.

My said debtor is hereby requested, ordered and fully authorized to pay over said money and other valuable considerations which payment shall operate as a full release of all my claims and rights in and to the earnings, salary and other valuable considerations so delivered.

Clara L. Smith (L. S.)

FOR VALUE RECEIVED the undersigned do hereby jointly and severally guarantee payment of the within note at maturity, or at any time thereafter, with six (6%) per cent interest per annum from maturity until paid and agree to pay all costs, expenses and attorneys' fees paid or incurred in collecting the same from, or in prosecuting any suit against any one or more of the co-makers, endorsers or guarantors of said note. In the event of the non-payment of any of the above installments on the date of its maturity, we agree and consent that the whole face amount of the note shall immediately become due and payable at the option of the holder. And the undersigned hereby waive any and all demand, notice protest and notice of any extension of time by the holder and I, (we) hereby consent and confess judgment in favor of said legal hloder of this note for such amount as may appear to be unpaid thereon, together with interest, statutary costs and attorney's fee not to exceed (Ten) 10% per cent of the amount due on the principal to be awarded the said holder, of this note, by such Court of Record. And I, (we) the said undersigned further agree to waive and release all errors which may intervene in such proceedings and consent to immediate execution upon said judgment, thereby ratifying and affirming all such proceedings by virtue hereof.

(1) Florence A. Smith
Co-Maker, Endorser & Guarantor

(3) [illegible]
Co-Maker, Endorser & Guarantor
217 W 123rd St N.Y.C.

(2) Fillmore Smith
Co-Maker, Endorser & Guarantor

CITY OF ~~NEW YORK~~ Paterson
COUNTY OF ~~NEW YORK~~ } ss. Passaic
STATE OF ~~NEW YORK~~ New Jersey

On the 15th day of September in the year, one Thousand Nine Hundred and thirty two before me personally came and appeared Clara L. Smith, Florence A. Smith and Fillmore Smith all of 39-42 Van Paterson, N. J.

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and she acknowledged to me that she executed same

John J. Rothstein
NOTARY

William S. Frere
NOTARY PUBLIC New York County
N.Y. Co. Clk's No. 4-S-1033
Term Expires March 30, 1933

Exhibit P-6.

(See Opposite.)



GUIANA REALTY CORPORATION
260 W. 135TH ST.
RENTING - COLLECTING
PROPERTY MANAGEMENT

No. 78818

NEW YORK, Sept. 15, 1932

PAY TO THE ORDER OF Clara L. Smith $500.00/100

Five Hundred and no/100 DOLLARS

THE DUNBAR NATIONAL BANK 1-773/2
OF NEW YORK
2824 EIGHTH AVENUE AT 150TH STREET

STEWART WARREN & CO INC, N Y

PRESIDENT

Clara L. Smith

PEOPLE'S EXH. 3 IN EVIDENCE

C-3

Exhibit P-6.

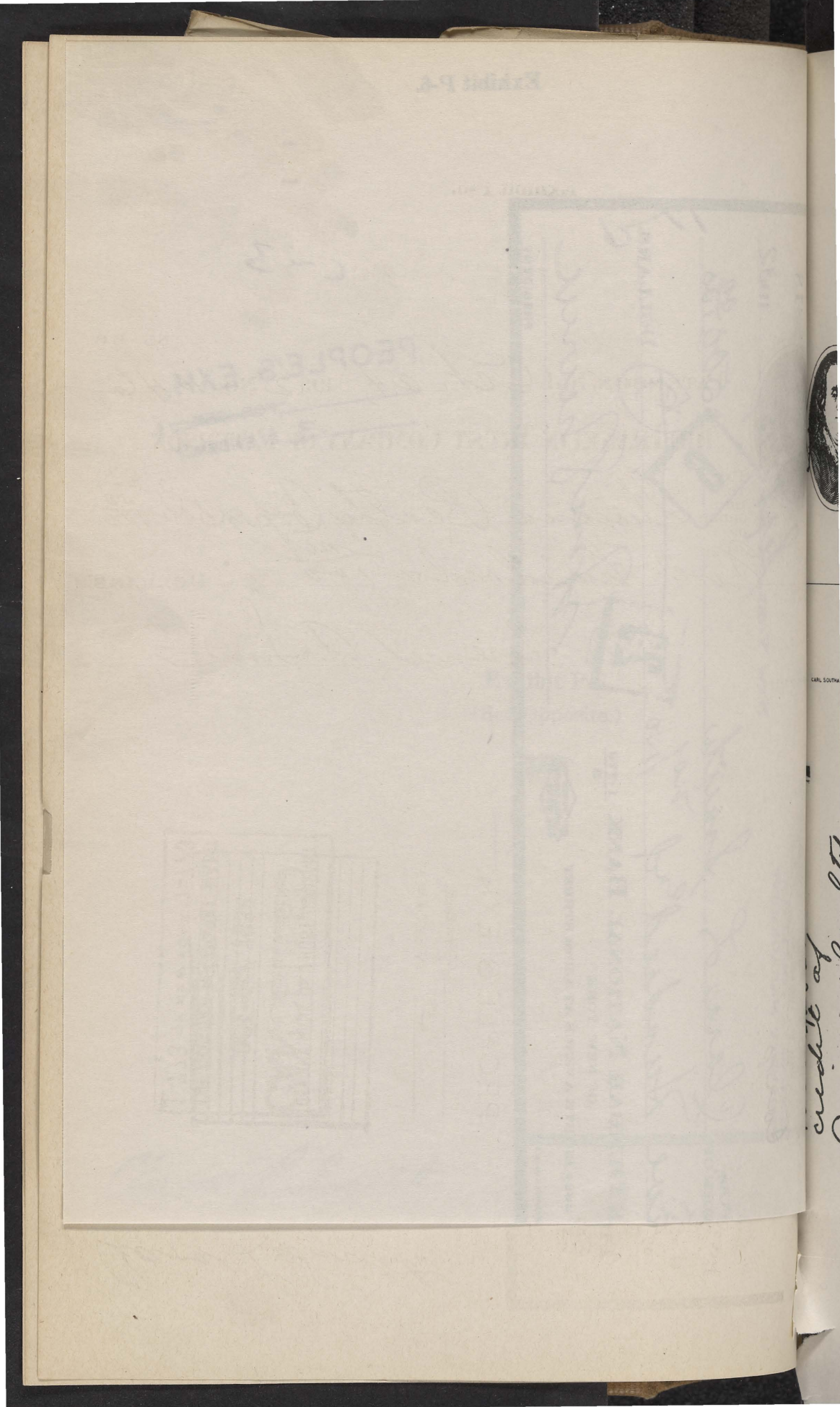


Exhibit P-6.

55-66



PATERSON, N.J. Oct. 24, 1932 No. 1046

THE FRANKLIN TRUST COMPANY OF PATERSON

PAY TO THE ORDER OF Guiana Realty Corp. $500 52/100

Five hundred & no/100 DOLLARS

Florence A. Smith

CARL SOUTHAL & CO., N.Y.

circle of Guiana Realty Corp.

PEOPLE'S EXH. ~~FOR IDEN.~~ 5 IN EVIDENCE

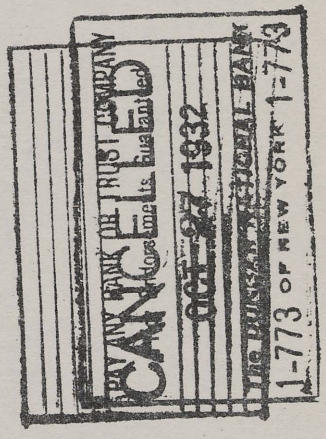


Exhibit P-7.

39-12th Ave.,
Paterson, N. J.,
Oct. 31, 1932.

Dear Miss Hawkins:

Thanks so much for your kindness. However, this mix up is all without cause. I'll phone & tell you just what evening I'll be over.

Please excuse the briefness of this note, but I was out a while to-day against the Dr.'s orders & am paying up for it with aches & pains.

Mr. Sherrill has our every good wish for his health.

Yours truly,
C. L. Smith.

P.S. We rec'd our notice from the bank in to-days mail, but they attempted to get us by 'phone before.

Exhibit P-8.

39-12th Ave.,
Paterson, N. J.,
Nov. 11, 1932.

Dear Mr. Sherrill:

We were all glad to learn that you are home again, and hope to see you sometime soon. My cousin, William McAllister died Wednesday, and services will be held at the Duncan Parlors to-morrow evening. It will be quite late when we get away from the family, so we will not plan to stop by your home. Also, if I am as nervous as I have been, I am not going to the funeral.

Exhibit P-9.

It wasn't necessary at all for that check to have been returned to you as it was & I really don't blame you for turning it over to a lawyer. After all, business is business, and should be kept separate from friendship. And since I mean nothing but right in my dealings, I never am afraid of lawyers. I guess Mr. Bragg told you of our communications. I would certainly have been to the office, but have been ill in bed with tonsilitis, and the continued unsettled weather makes me feel miserable.

Please give my sincere regards to Miss Hawkins.

Sincerely,

CLARA L. SMITH.

Exhibit P-9.

(Telegram.)

WESTERN UNION

Received at 195 Broadway, N. Y.

1933 Mar 2 AM 8 10

FH9 9-G4-Paterson NJ 2 806A
Attorney Harry Bragg
111 John St NewYork NY

WILL MEET YOU TUESDAY EVENING AT SEVEN WITHOUT FAIL

CLARA SMITH.

Exhibit P-9.

(Telegram.)

WESTERN UNION

Money Order Advice

WQ 100 William St. NY

Dec 14 192—

To Attorney Harry Bragg
111 John St

Herewith money order received for you with the following message.

BALANCE FOLLOWING TRYING TO KEEP MY WORD HAVE PAPERS TO PROVE OUR ACCOUNT WAS MADE SHORT DUE TO A CHECK GIVEN US

The name of the sender, place from and the date of the money order will be found on the enclosed money order.

The Western Union Telegraph Company

(Telegram.)

WESTERN UNION

Received at 210 West 135th St., New York

1932 Dec 10 PM 2 10

NZ 160 4 Paterson NJ 10 151P
Attorney Harry Bragg
580 St Nicholas Ave

COMMUNICATING WITH YOU MONDAY

CLARA SMITH.

Exhibit P-9.

(Telegram.)

WESTERN UNION

Received at 304 St. Nicholas Avenue, N. Y.

1932 Dec 12 AM 12 12

ND5 50 NL Paterson NJ 11
Attorney Harry Bragg
580 St Nicholas Ave Dlr 730A

REGRET MANY INCIDENTS CONNECTED WITH TRANSACTION IT SEEMS TO BE A JINX ADJUSTING SATISFACTORILY HERE CAN SEND CASH BEFORE WEDNESDAY THREE OCLOCK POSSIBLY MONDAY OR TUESDAY WANT TO ALLOW TIME FOR ADJUSTMENT WILL PAY YOU WELL FOR TROUBLE CAUSED PLEASE CONTROL SITUATION UNTIL THEN NOT ATTENDING SCHOOL DUE TO ILLNESS

CLARA SMITH.

(Telegram.)

POSTAL TELEGRAPH

Received at 2095 Seventh Ave., 125th Street
NA 28 21 DL TDNK Paterson NJ 714P Jan 15 1933
William Sherrill
260 West 135 St New York NY

I MEAN TO DO WHAT IS RIGHT BY YOU AND WILL PROVE SAME IF GIVEN OPPORTUNITY COMMUNICATING WITH MR BRAGG ALSO

CLARA SMITH.

Exhibit P-9.

(Telegram.)

POSTAL TELEGRAPH

Received at
2095 Seventh Ave., 125th Street
NA29 44 DL TDNK Paterson NJ 714 P Jan 15 1933
Attorney Harry Bragg
580 StNicholas Ave New York N Y

TRIED TO PHONE YOU TODAY REGRET THAT I HAVE BEEN SUCH A NUISANCE ADJUSTMENT CAN BE MADE THURSDAY EVENING AT YOUR CONVENIENCE DELAYS WERE UNAVOIDABLE YOU WILL UNDERSTAND EXPLANATIONS WILL PAY FOR ALL EXTRA TROUBLE ANSWER COLLECT VIA POSTAL TELEGRAPH COMMUNICATING WITH MR SHERRILL ALSO

CLARA SMITH
.732P

(Telegram.)

POSTAL TELEGRAPH

Received at
2095 Seventh Ave., 125th Street
N82 18 Paterson NJ 840P Jan 19 1933
Harry Bragg
580 StNicholas Ave

JUST RECEIVED SOME EXPECTING REST LATER WILL FORWARD MONEY ORDER TO OFFICE WILL BE OVER LATER FRIDAY MYSELF

CLARA SMITH.
909P

(Telegram.)

POSTAL TELEGRAPH

Received at
16 Cliff Street
NA11 9 Paterson NJ 840A Feb 6 1933
Attorney Harry Bragg
111 John St

PHONED YESTERDAY NO ANSWER WILL BE TO OFFICE FRIDAY

CLARA SMITH.
854A

(Telegram.)

POSTAL TELEGRAPH

Received at
2095 Seventh Ave., 125th Street
N54 27 Paterson NJ 530P Dec 17 1932
Attorney Harry Bragg P
580 StNicholas Ave

PLEASE HOLD OFF A FEW MORE DAYS ADJUSTMENT CERTAIN DELAYS UNAVOIDABLE COULDNT VISIT OFFICE DUE TO ILLNESS REGRET TROUBLE CAUSED MR SHERRILL WILL PAY FOR EXTRA TROUBLE

CLARA SMITH.
.601P

Exhibit P-10.

(See Opposite.)



Exhibit P-10.

55-66



PATERSON, N.J. Dec. 6, 1932 No. 1093

THE FRANKLIN TRUST COMPANY OF PATERSON

805955

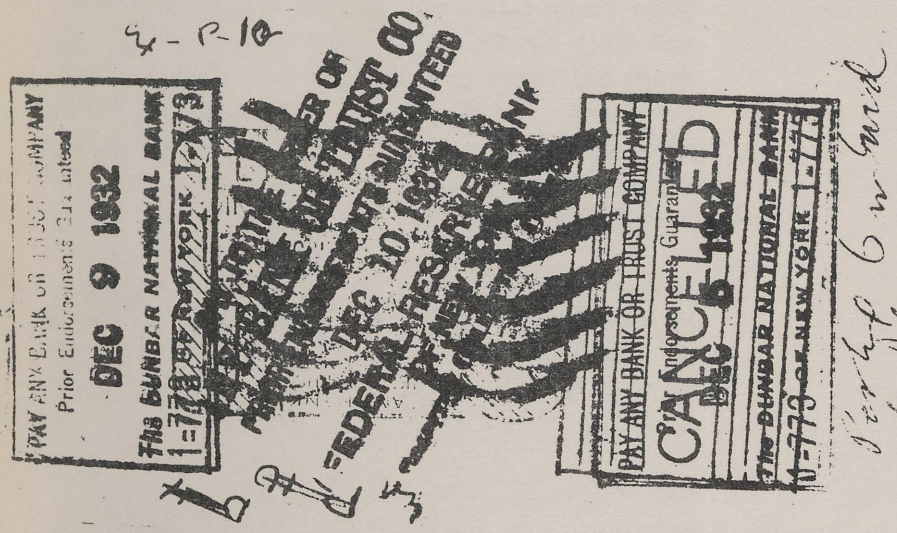
PAY TO THE ORDER OF Harry Bragg $57.00

Five hundred seventy-five 00/100 DOLLARS

Florence A. Smith

CARL SOUTHAL & CO., N.Y.

4-P-10



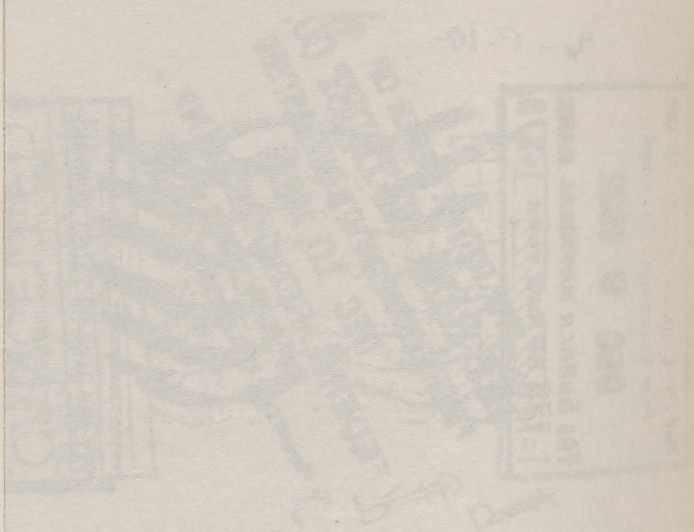


Exhibit P-11.

39-12th Ave.,
Paterson, N. J.,
Nov. 8 '32.

Mr. Harry G. Bragg,
Counsellor at Law,
N. Y. C.

My dear Sir:

Thank you for the consideration shown me in your communication of Nov. 7th. Since we are not in school to-day, I had planned to visit the office of the Guiana Realty Corp. and explain. However, after the receipt of your letter, I thought it best to spend my time adjusting matters here.

Please believe me when I say that I am truly sorry about the incident, and especially because I know that its president, Mr. Wm. Sherrill is convalescing now. Also, I wanted my credit reference there to be above reproach.

I have been ill with tonsilitis and a heavy cold, and was confined to the house at the time the deposit should have been made to cover the check for the Guiana Corp. and two others. Since my father was going downtown, I asked him to make the deposit for us. He claims that he misunderstood, and placed the money in the building & loan which could have waited.

My father has a dent in his skull due to a recent accident (about three yrs. ago) and, because of this act, our family doctor thinks this may be affecting him. However, I regret to say this because his health has been quite poor for quite some time.

I imagine that Mr. Sherrill is thoroughly disgusted with me, and cannot blame him for same. However, if you will persuade him to give me

Exhibit P-11.

until between the fifteenth and 17th of this month, I will settle up. This is what I was going to the company's office for to-day. Also, please say to them that I am willing to pay whatever expense may be involved because I fully realize the extent of the inconvenience that I am causing the corporation.

Please say to Mr. Sherrill that I would have visited the office before this letter became necessary, but the continued unsettled weather was not good for me.

Sincerely expecting a favorable reply, I am——

Very truly yours,

CLARA L. SMITH.

P. S. If I can settle the matter before dates mentioned, I will gladly do so.

Exhibit P-12.

39-12th Ave.
Dec. 7, 1932.
Paterson, N. J.

Mr. Harry G. Bragg,
Counsellor at Law,

Dear Sir:

I am inclosing deposit slip & sincerely trust that everything will be allright this time. It was my intention to bring same to you in person, but I am confined to my home due to illness and unable to attend school. Please return the slip to me so that same may be entered on my sister's book.

You have no idea just how much I have regretted the way this transaction has turned out. Seemingly, everything went wrong. There are only six colored teachers here & more than four hundred *white* girls waiting for positions. Thus, we certainly donot want any trouble with the Bd. of Education.

Trusting that this will complete the transaction, and thanking you for your extreme courtesy,

Yours truly,

Clara L. Smith.

P. S. We have some money due us in N. Y. C. and may have to ask you to help us collect same if you will.

Exhibit P-13.

Phone Sherwood 4692

FILLMORE SMITH

Justice of the Peace & Notary Public

Real Estate & Insurance
Property bought, sold and exchanged,
loans negotiated

39 Twelfth Avenue

Paterson, N. J. Jan. 31, 1933.

Mr. Harry Bragg,
Attorney at Law,
N. Y. C.

My dear Mr. Bragg:

I will 'phone in a day or two and see what appointment you will be able to give me in order to settle the balance. No doubt, you have my papers.

Sincerely regretting all the trouble I have caused you, I am

Very truly yours,

CLARA L. SMITH.

Exhibit P-14.

39-12th Avenue,
Paterson, N. J.,
Feb. 20, 1933.

Mr. Bragg,
Attorney at Law,

By dear Mr. Bragg:

All I can say is that I'm sorry. Everyone here has been ill & my father's condition is the same. I'll get busy now & finish up out here so I can finish up out there. The business is on my mind most of the time, and I really can't stand the strain.

After this business is completed, there are some other matters that I would like to talk over with you. However, I realize that this must be cleared up first.

Very truly yours,

CLARA L. SMITH.

Exhibit P-15.

39-12th Avenue,
Paterson, N. J.,
March 31, 1933.

Mr. Bragg,
Attorney at Law,
New York City.

My dear Sir:

When we 'phoned you the last time it was because of a seemingly reliable newspaper article concerning the Clearing House Association here.

The Hamilton Trust Co. and its two branches, the Labor National Bank, the Security Trust Co., the Franklin Trust Co., the Broadway National Bank and Trust Co., and the National Bank of America are not doing normal business as yet. However, this is just a temporary condition.

Business here is crippled for the present and our city payroll is tied up in these banks. If we are paid for March on Monday, it will be in the form of tax anticipation notes. They are only of value to local property owners who have not paid their taxes.

We have made an arrangement that will enable us to send Mr. Sherrill a substantial sum on or before April 15th if the banking situation hasn't cleared up before then. However, I will try to rush matters and get it down there next week. We have a check but it really isn't any good because we can't get it cleared thru.

Sincerely thanking you for all past courtesies, I am

Very truly yours,
Clara L. Smith.

Exhibit P-16.

39-12th Ave.,
Paterson, N. J.
Sept. 23, 1932.

Dear Mr. Sherrill:

Your kind letter received. We were all so sorry to have missed your visit Sunday because we were all at home. The phone is Lambert #3-3811 M. It is at No. 43-12th Ave. under the name of Hinton.

Please come over to see us at any time. We aren't in your city as much as we usually are because we haven't the use of our own car.

Please give our best regards to the folks there.

Sincerely,

CLARA L. SMITH.

Exhibit P-17.

39-12th Ave.,
Paterson, N. J.
Sept. 28, 1932.

Dear Mr. Sherrill:

I am sending this note in case you didn't receive the first one. I gave it to a friend of mine t omail, and haven't seen her as yet to ask her if she mailed same. Sometimes she is quite careless.

The correct number is Lambert 3-3811 M. Florence is quite ill, or we would have been in N. Y. C. as usual.

Again thanking you for your sincere kindness to us.

Yours truly,

CLARA L. SMITH.

Exhibit D-1.

William Sherrill, President A. Howell, Secretary

GUIANA REALTY CORPORATION

Renting, Collecting, Property Managed

260 West 135th Street
Phone Audubon 3-4419

Business and Personal Loans Negotiated

New York City,
September 19, 1932.

Miss Clara L. Smith
39 Twelfth Street
Paterson, N. J.

Dear Miss Smith:

I tried to reach you yesterday, Sunday, by the following telephone number, Lambert 3-8811M, which I understand was the number you gave me. The operator informed me that there was no such telephone number. I am sorry I could not reach you as I intended, after talking with you about taking a ride over to Paterson.

Very truly yours,

WILLIAM SHERRILL.
William Sherrill

WS/EH

Exhibit D-2.

WILLIAM SHERRILL
260 West 135 Street
New York City

October 6, 1932.

Dear Clara:

Yours received and noted. Sorry to learn that more friends called to see you after we left Sunday which probably caused you to stay up late Sunday night, thus depriving you of your full amount of rest. What is Florence suffering from, so that she cannot be left alone? She looked all right to us then.

You must come over Saturday or Sunday, if you prefer, but, let me know when you are coming. Bring Florence along with you if possible. Trusting that nothing worse has developed against you about the matter you told me of, (the crazy woman). Of course I know and feel that the Reverend, gentleman, would not attempt to do you any harm in the future, judging from what you said, he has exhausted all possible efforts during the past. Some nice Sunday when you are over in New York, I will be glad to go to Jamaica with you.

Well, you will be surprised to know that my pretty lady friend is still insisting, but, so far we have not done any business with her, though she feels that I am the picked and selected one that she should do some business with. (ha! ha!, use your own judgment). Trust that you and Florence will decide to have your car fixed, or turn it in for another, so that you will not be handicapped much longer in getting around.

Exhibit D-2.

We really enjoyed talking to your father though it was so short, and trust that he will eventually recover from his present ailment, which he insists that he is not complaining. You forgot to show us through the home, but trust the next time you will remember to do so, especially since I am interested to see and know just where Florence, yourself, and your folks turn in to rest.

Before I close I will remind you that if you have not spent the whole Thirty-five Thousand Dollars, as your lady friend feels you have, bring some over for investment when you come in. Kindest regards to the family. Trusting to see you soon, I am

Sincerely yours,

WM. SHERRILL.

Exhibit D-1A.

COURT OF GENERAL SESSIONS
OF THE COUNTY OF NEW YORK.

Clerk's Office, September 6th, 1934.

THE PEOPLE OF THE STATE OF NEW YORK, *against* CLARA L. SMITH,	On Indictment for Forgery, Third Degree. Filed January 22, 1934, No. 199253,

I DO CERTIFY that it appears from an examination of the Records on file in this office, that on April 9, 1934, the above named defendant was duly tried on the above mentioned indictment, in Part Five, of this court, before the Honorable Charles C. Nott, Jr., and the jury rendered a verdict of NOT GUILTY.

EDWARD R. CARROLL,
Clerk of Court.

JM
(SEAL)

Exhibit D-2A.

At a Court of General Sessions of the Peace of the City and County of New York, holden in and for the County of New York, at the Building for Criminal Courts in the Borough of Manhattan of the said City on Friday, the 17th day of August, in the year of our Lord one thousand nine hundred and thirty-four.

Present, The Honorable John J. Freschi,
Judge of the Court of General Sessions, Justice.

The People of the State of New York,

against

Clara L. Smith,

On indictment for Forgery in the Second Degree (#196678) filed June 1st, 1933. On motion of counsel on consent of the District Attorney, it is Ordered by the Court that this indictment against Clara L. Smith, the defendant, be and the same is hereby dismissed.

A true extract from the Minutes.

Edward R. Carroll,
Clerk of Court.

(seal)

Exhibit D-3A.

At a Court of General Sessions of the Peace of the City and County of New York, holden in and for the County of New York, at the Building for Criminal Courts in the Borough of Manhattan of the said City, on Monday, the 27th day of August, in the year of our Lord one thousand nine hundred and thirty-four.

Present, The Honorable John J. Freschi,
Judge of the Court of General Sessions, Justice.

The People of the State of New York

against

Clara L. Smith.

On indictment for Grand Larceny, Second Degree (#199254) filed January 22nd, 1934.

On motion of counsel on consent of the District Attorney, it is Ordered by the Court that this indictment against Clara L. Smith, the defendant, be and the same is hereby dismissed.

A true extract from the Minutes.

Edward R. Carroll,
Clerk of Court.

(seal)

Exhibit D-4.

MINUTES OF THE BOARD OF EDUCATION
Regular Meeting—October 11, 1934

"Secretary presented the following decision of the Commissioner of Education."

Decision of the Commissioner of Education

CLARA L. SMITH,
Appellant,

vs.

BOARD OF EDUCATION OF THE CITY OF PATERSON,
Respondent.

Decision of the Commissioner of Education

CLARA L. SMITH
Appellant,

vs.

BOARD OF EDUCATION OF THE CITY OF PATERSON,
Respondent.

Decision of the Commissioner of Education

Charges were presented to the Paterson Board of Education by the Guiana Realty Company, of the State of New York, setting forth that Miss Smith secured a loan from that corporation through misrepresentation which, in its opinion, made her irresponsible and morally unfit to teach school. Miss Smith, who was protected in her employment by the Tenure of Office Act, was served with a copy of the charges and on April 26 and May 10, 1933 the board heard evidence pre-

sented by the Realty Company. Miss Smith was represented by counsel at both hearings, at the conclusion of which the board, by a vote of six in the affirmative and none in the negative, adopted the following:

> "The judgment of the board is that Clara L. Smith be suspended from teaching in the public schools of Paterson until February 1, 1934, without pay, at which time her application for reinstatement will be given consideration."

Mr. O'Dea, a board member, who was not present at the first hearing, sat in the second and voted for the suspension, which became effective as of May 10, 1933. It is admitted that appellant did not thereafter offer her services to the board until February 6, 1934 when she applied for reinstatement and that on May 3, 1934 the committee on education directed that appellant's application be denied, which action was ratified by the board on May 10, 1934. It was not until June 8, 1934 that Miss Smith appealed to the Commissioner of Education protesting her suspension as of May 10, 1933, and the board's refusal of reinstatement on May 10, 1934.

Chapter 188, P. L. 1934, provides that no tenure teacher shall be dismissed except upon written charges and a formal hearing. There is no such provision applicable to suspensions. Under the conditions in this case, it is not necessary to determine the board's right to suspend the appellant since during the period thereof she neither offered her services to the board nor appealed its action to the Commissioner. Miss Smith cannot claim compensation for services she did not offer to perform.

Even if appellant had offered her services, she could not come into court on June 8, 1934 to protest an action of the board taken on May 10, 1933. Decisions of State Board of Education: Griff vs. Elizabeth Board of Education, April 1, 1933; Gleason vs. Bayonne Board of Education, May 6, 1933; Carpenter vs. Hackensack Board of Education, April 14, 1934; Aeschbach vs. Secaucus Board of Education, May 12, 1934.

Appellant appears to hold that her dismissal was as of May 10, 1934 following the board's refusal of her services on February 6, 1934, and in this view the Commissioner concurs.

It is the contention of appellant's counsel that Miss Smith was unfairly tried and illegally dismissed since a member of the board, without hearing all the testimony, voted for her conviction. In support of this contention he quotes the Supreme Court case of Kelly vs. Bishop, et als., 119 Atl. 6, in which Justice Bergen, speaking for the court said:

> "The rule is fundamental that a person who has not heard the testimony in a given case occupies no legal status as arbiter or judge to adjudicate upon the cause. The participation of one of the commissioners in adjudicating the guilt of the prosecutor on testimony he had never heard is fatal to the conviction and without it the resolution of dismissal must fall."

A similar ruling in Eisberg vs. Cliffside Park, 92 N. J. L. 321, is cited in the above case. In accordance with these rulings of the Supreme Court, Miss Smith was illegally dismissed. The Board of Education of the City of Paterson is directed to

Exhibit D-4.

pay her salary from February 6, 1934, and to immediately reinstate her as a teacher in its school system.

CHARLES H. ELLIOTT,
Commissioner of Education.

Sept. 25, 1934.

By Commissioner Donohue:

Be it resolved that the opinion of Commissioner Charles H. Elliott, State Commissioner of Education in the matter of the appeal of Clara L. Smith vs. Board of Education of the City of Paterson, be received and filed and the orders of the Commissioner complied with.

On motion seconded by Commissioner Walker the above resolution was adopted by vote of yeas (8), Commissioners Donohue, Flitcroft Grobart, O'Dea, Patmos, Torrey, Walker and Finn, (8).

The secretary presented the following charges against Clara L. Smith for conduct unbecoming a teacher.

To: CLARA L. SMITH

(L. S.)

YOU ARE HEREBY NOTIFIED that the Board of Education of the City of Paterson, in the County of Passaic, a corporation of the State of New Jersey, is in receipt of Charges against you, a copy of which Charges are hereto annexed. A hearing on the Charges will be held on October 18th, 1934, at 8 P. M., in the office of the Board of Education, in the City Hall, Paterson, New Jersey. Witnesses in support of the Charges will be heard, and you will be afforded an opportunity to defend the same.

Exhibit D-4.

Dated October 9, 1934, at the City of Paterson, County of Passaic and State of New Jersey.

THOMAS F. KELLEY,
Secretary.

HAROLD D. GREEN,
Attorney.

BOARD OF EDUCATION
OF THE CITY OF PATERSON
IN THE COUNTY OF PASSAIC

GUIANA REALTY CORPORATION,
a corporation,
Complainant,
vs.
CLARA L. SMITH.

Charges.

TO THE MEMBERS OF THE BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC:

Ladies and Gentlemen:—

The Guiana Realty Corporation, a corporation, by William Sherrill, its President, does hereby Charge that Clara L. Smith, a teacher in the employ of the Board of Education of the City of Paterson in the County of Passaic, is guilty of conduct unbecoming a teacher.

Exhibit D-4.

First Count:

1. That the Guiana Realty Corporation is a realty corporation, existing by virtue of and under the laws of the State of New York.

2. That on or about the 15th day of September 1932 Clara L. Smith, a teacher in the Public Schools of Paterson, New Jersey secured a loan of $500.00 (Five Hundred Dollars) from the Guiana Realty Corporation, evidenced by promissory note, the same to be paid in two installments to-wit October 15 and November 15, 1932 respectively.

3. That on a questionaire furnished for the benefit of the petitioner to the borrower one of the endorsers, Filimore Smith states that he is the owner of property valued at $9,000 and the other endorser, Florence Smith states that she is the owner of realty valued at $8,000.

4. That on the same questionaire Clara L. Smith stated that she was not obligated or indebted to anyone other than a Building Association.

5. That on the due dates to-wit October 15 and November 15, 1932, Clara L. Smith had tendered two worthless checks neither of which has as yet been honored though demand has been made for payment.

6. That subsequent to this time to-wit, November 15, 1932, Clara L. Smith, defaulted in the payment of the note in question.

7. That the Guiana Realty Corporation has numerous exhibits in the form of telegrams, letters, dishonored checks, deposit slips, etc., with extravagant promises to make payment which promises indicate the unreliability of Clara L. Smith.

Exhibit D-4.

8. That the Guiana Realty Corporation is informed and verily believes that Clara L. Smith was indebted and obligated to numerous persons and institutions in various sums of money and at the time that she stated on the questionaire that she was not indebted to anyone other than a certain Building Association, judgments had been obtained against her in the State of New Jersey for money due to others at the time that she obtained a loan from the Guiana Realty Corporation.

9. That while Clara L. Smith was indebted to the Guiana Realty Corporation she attempted to secure a loan from J. W. Walker of New York City for the sum of $1,000 (One Thousand Dollars) and informed Mr. Walker that she was not indebted to the Guiana Realty Corporation but that she had paid back to the Corporation the loan previously secured from it.

10. That in making the loan to Clara L. Smith the Guiana Realty Corporation had relied upon certain representations made by Clara L. Smith, relative to the availability of her New Jersey Pension and Annuity Fund money as security for the money borrowed from the Guiana Realty Corporation, and at the time Clara L. Smith secured the loan from the Guiana Realty Corporation, she exhibited to William Sherrill, its President, a statement from the Board of Education of Paterson, New Jersey which by its terms, states "Any teacher of our city who uses this fund as security in any transaction is really risking his or her position in case of default." Miss Clara L. Smith did use this fund as security. Miss Clara L. Smith has defaulted in payment.

Exhibit D-4.

11. That since November 15th, the day on which the note in question became due and payable, every effort has been made to collect the sum above mentioned, repeated demands have been made to Miss Clara L. Smith, the matter has been referred to the Board of Education of the City of Paterson, New Jersey, the Commissioner of Education at Trenton, New Jersey, the State Pension and Annuity Bureau and the Prosecutor of Passaic County and except for three Western Union Checks in the aggregate sum of $154.00 (One Hundred Fifty-four Dollars) Clara L. Smith has neglected and failed to pay the amount due to the Guiana Realty Corporation of $500.00 (Five Hundred Dollars).

(Twelfth paragraph struck out.)

13. That the said Clara L. Smith was guilty of misrepresentation and fraud in the making of the application for the borrowing of the Five Hundred ($500.00) Dollars as hereinbefore set forth.

WHEREFORE your complainant requests that the said Clara L. Smith, by virtue of her dishonesty, lack of integrity, fraudulent misrepresentations and forgery, be removed from her position as a teacher in the Public Schools in the City of Paterson, New Jersey, as a person wholly irresponsible and morally unfit to teach, supervise, or give moral guidance to the children under her direction.

Dated: October 9, 1934.

GUIANA REALTY CORPORATION.
By WILLIAM SHERRILL,
President.

Exhibit D-4.

It is moved by Commissioner Torrey that the charges of the Guiana Realty Corporation be received and a hearing on the charges be held on October 18, 1934 in the office of the Board of Education in the City Hall, Paterson, New Jersey at 8 P. M. by a vote of yeas (8) Commissioners, Donohue, Flitcroft, Grobart, O'Dea, Patmos, Torrey, Walker and Finn, (8). Nays none.

The above motion was seconded by Commissioner O'Dea.

By Commissioner Walker: "I hereby move that Clara L. Smith be suspended as a teacher in the public school system, City of Paterson, County of Passaic, pending the determination of charges of the Guiana Realty Corporation against her."

It is moved by Commissioner Walker, seconded by Commissioner O'Dea that the above resolution be adopted by a vote of yeas (8), Commissioners Donohue, Flitcroft, Grobart, O'Dea, Patmos, Torrey, Walker, and Finn, Nays none.

Complaint.

SCHOOL BOARD OF THE CITY OF PATERSON, N. J.

BARTON H. WALKER, President
THOMAS F. KELLEY, Secretary

IN THE MATTER OF THE COMPLAINT OF THE GUIANA REALTY CORPORATION,

against

CLARA L. SMITH, a teacher in the PUBLIC SCHOOLS OF PATERSON, NEW JERSEY.

That the Guiana Realty Corporation, by William Sherrill its President for its complaint against Clara L. Smith, alleges as follows:

1. That the Guiana Realty Corporation is a realty corporation existing by virtue of and under the laws of the State of New York.

2. That on or about the 15th of September, 1932, Clara L. Smith, a teacher in the Public Schools of Paterson, New Jersey, secured a loan of $500.00 (Five Hundred Dollars) from the Guiana Realty Corporation, evidenced by promissory note, the same to be paid in two installments to wit October 15, and November 15, 1932, respectively.

3. That on a questionaire furnished for the benefit of the petitioner to the borrower one of the endorsers, Fillmore Smith, states that he is the

owner of property valued at $9,000 and the other endorser, Florence Smith, states that she is the owner of realty valued at $8,000.

4. That on the same questionaire Clara L. Smith stated that she was not obligated or indebted to anyone other than a building association.

5. That on the due dates to wit October 15 and November 15, 1932, respectively, Clara L. Smith defaulted in the payment of the note in question.

6. That subsequent to this time, to wit, November 15, 1932, Clara L. Smith had tendered two worthless checks neither of which has as yet been honored though demand has been made for payment.

7. That the Guiana Realty Corporation has numerous exhibits in the form of telegrams, letters, dishonored checks, deposit slips, etc., with extravagant promises to make payment which promises indicate the unreliability of Clara L. Smith.

8. That the Guiana Realty Corporation is informed and verily believes that Clara L. Smith was indebted and obligated to numerous persons and institutions in various sums of money at the time that she stated on her questionaire that she was not indebted to anyone other than a certain Building Association, judgments had been obtained against her in the State of New Jersey for money due to others at the time that she obtained a loan from the Guiana Realty Corporation.

9. That while Clara L. Smith was indebted to the Guiana Realty Corporation she attempted to secure a loan from J. W. Walker of New York City

for the sum of $1,000 (One Thousand Dollars) and informed Mr. Walker that she was not indebted to the Guiana Realty Corporation but that she had paid back to the Corporation the loan previously secured from it.

10. That in making the loan to Clara L. Smith the Guiana Realty Corporation had relied upon certain representations made by Clara L. Smith, relative to the availability of her New Jersey Pension and Annuity Fund money as security for the money borrowed from the Guiana Realty Corporation, and at the time Clara L. Smith secured the loan from the Guiana Realty Corporation, she exhibited to William Sherrill, its President, a statement from the Board of Education of Paterson, New Jersey, which by its term, states, "Any teacher of our city who uses this fund as security in any transaction is really risking his or her position in case of default." Miss Clara L. Smith has defaulted in payment.

11. That since November 15, the day on which the note in question became due and payable, every effort has been made to collect the sum above mentioned, repeated demands have been made to Miss Clara L. Smith, the matter has been referred to the Board of Education of the City of Paterson, New Jersey, the Commissioner of Education at Trenton, New Jersey, the State Pension and Annuity Bureau and the Prosecutor of Passaic County and except for three Western Union Checks in the aggregate sum of $154.00 (One Hundred and Fifty-four Dollars) Clara L. Smith has neglected and failed to pay the amount due to the Guiana Realty Corporation of $500.00 (Five Hundred Dollars).

12. That three Western Union checks in the sum of $154.00 (One Hundred Fifty-four Dollars) are now in the possession of the attorney for the Guiana Realty Corporation, that the attorney of the Guiana Realty Corporation tendered the same to the petitioner who refused to accept such part payment and these checks unendorsed, are being held by the attorney for the Guiana Realty Corporation with the hope that the residue would be paid and the matter closed up.

WHEREFORE, the petitioner, the Guiana Realty Corporation, requests that Clara L. Smith, by virtue of her apparent dishonesty, lack of integrity, cunningness, inability to tell the truth, mischievousness, having obligation, be removed from her position as a teacher in the public schools of the City of Paterson, New Jersey, as a person wholly irresponsible and morally unfit to teach, supervise or give moral guidance to the children under her direction.

GUIANA REALTY CORPORATION,
By: WILLIAM SHERRILL,
260 West 135th Street,
New York City.

Dated: April 8, 1933.

Notice of Argument.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Notice of Argument.

To: HAROLD D. GREEN, Esq.,
121 Ellison Street, Paterson, New Jersey.

SIR:

PLEASE TAKE NOTICE that I will move the argument of the above-entitled cause before the New Jersey Supreme Court on the first Tuesday of May, next ensuing, at the State House Annex, Trenton, New Jersey, at 11 o'clock in the forenoon or as soon thereafter as the Court may attend to the same.

Respectfully,

LOUIS DWORETZ,
Attorney for Prosecutor.

Service of the copy of the within notice of argument is hereby acknowledged this 13th day of April, 1936.

HAROLD D. GREEN,
Attorney for Board of Education of the City of Paterson in the County of Passaic.

Notice to Amend Return.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Notice to Amend Return.

To: LOUIS DWORETZ, Esq.,
Attorney for Prosecutor,

SIR:

PLEASE TAKE NOTICE that I will move to supplement the return made to the Writ of Certiorari granted in this cause before the Honorable Harry Heher, a Justice of the Supreme Court, on Tuesday, April 28th, 1936, at the Passaic County Court House, Paterson, New Jersey, at ten o'clock in the forenoon or as soon thereafter as the Court may attend to the same to include in the said return and to be made a part thereof the following documents and circumstances, which occurred subsequent to the time of the decision of the State Board of Education and prior to the time of the granting of the Writ:

1. A letter dated November 25th, 1935, addressed to John A. Wood, 3rd, Secretary, Teach-

ers' Pension and Annuity Fund, sent by Louis Dworetz, Esq., Attorney for Prosecutor, stating that there is enclosed an application properly executed for withdrawal of Clara L. Smith, Prosecutor, from the Teachers' Pension and Annuity Fund.

2. Application for withdrawal dated on or about November 25th, 1935, from the Teachers' Pension and Annuity Fund of the State of New Jersey executed by the Prosecutrix, wherein she states that she has been dismissed from her position as a teacher, and that she is not now under contract for further service in the Public Schools of the State of New Jersey.

3. A letter dated on or about December 9th, 1935, from the Teachers' Pension and Annuity Fund of the State of New Jersey addressed to Louis Dworetz, Esq., Attorney for Prosecutor, advising that the said Teachers' Pension and Annuity Fund had acted favorably on the application for retirement by the said Prosecutor, and remitting to her the total accumulated savings of the Prosecutor in the aforementioned fund.

Respectfully,

HAROLD D. GREEN,
Attorney for and of Counsel
with Respondent.

Service acknowledged April 24, 1936, without prejudice.

LOUIS DWORETZ,
Attorney for Prosecutor.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH,
Prosecutor,
vs.
MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey,
Respondents.

On Certiorari.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

TO LOUIS DWORETZ, Esq., Attorney for Prosecutor:

SIR:

PLEASE TAKE NOTICE that I will move to quash the Writ of Certiorari granted in this cause and for a dismissal of the Allocatur, before the New Jersey Supreme Court on the first Tuesday of May next ensuing at the State House Annex, Trenton, New Jersey, at eleven o'clock in the forenoon or as soon thereafter as the court may attend to the same, upon the following grounds:

1. Prosecutor abandoned her position prior to her application for the Writ of Certiorari, by the withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

2. Prosecutor acquiesced in her dismissal by the withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund, and by her acquiescence is estopped from prosecuting this Writ of Certiorari.

3. Prosecutor resigned as a teacher in the Public School System of the City of Paterson, Passaic County, New Jersey, on November 25, 1935, when she resigned from the Teachers' Pension and Annuity Fund, and withdrew her total accumulated savings.

4. Prosecutor neglected to bring on the argument at the next term of the court after the return of the writ was completed as provided by the rules of the Supreme Court.

5. Prosecutor is guilty of laches.

PLEASE TAKE FURTHER NOTICE, that I shall base my application on the affidavits annexed thereto.

Respectfully,

HAROLD D. GREEN,
Attorney for and of Counsel
with Respondents.

State of New Jersey, }
County of Mercer, } ss.:

JOHN A. WOOD, 3RD, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am the Secretary of the Teachers' Pension and Annuity Fund, and was the Secretary of this fund on or about November 25th, 1935.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

2. I have examined the records in my office and they disclose that Clara L. Smith, formerly a teacher in the employ of the Board of Education of the City of Paterson in the County of Passaic, was a member of the Teachers' Pension and Annuity Fund from September, 1921, to April 30th, 1935.

3. On or about the twenty-sixth day of November, 1935, I received a letter from one Louis Dworetz, Esq., Attorney for Clara L. Smith of 129 Market Street, Paterson, New Jersey, a true copy of which is hereto annexed and made a part of this affidavit, enclosing an application for withdrawal from the Teachers' Pension and Annuity Fund, signed by Clara L. Smith, which application for withdrawal was properly executed by the said Clara L. Smith.

4. Attached hereto and made a part hereof, is a photostatic copy of the application for withdrawal from the Teachers' Pension and Annuity Fund of the State of New Jersey.

5. On November 27th, 1935, I acknowledged by letter to Louis Dworetz, Esq., attorney at law, the receipt of his letter of November 25th, enclosing the application for withdrawal for Miss Clara L. Smith, a true copy of which letter is hereto annexed and made a part of this affidavit.

6. In accordance with the request of Clara L. Smith for the withdrawal of her accumulated savings in the Teachers' Pension and Annuity Fund, dated November 25, 1935, I did, on December 10th, 1935, forward to Louis Dworetz, Esq., attorney for the said Clara L. Smith, a check in the sum of Ten

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

Hundred and Sixty-seven Dollars and Fifty-seven ($1067.57) Cents, being the total amount of her accumulated savings, together with interest, in the Teachers' Pension and Annuity Fund.

JOHN A. WOOD, 3RD,

Sworn and subscribed to
before me this 29th day
of April, 1936.

CHARLES J. ALFANO,
An Attorney at Law of New Jersey.

COPY

LOUIS DWORETZ
Attorney at Law
129 Market Street
Paterson, N. J.

—

Sherwood 1961

November 25th, 1935.

John A. Wood, 3rd,
Secretary Teachers' Pension & Annuity Fund,
1012 Trenton Trust Bldg.,
Trenton, N. J.

Dear Mr. Wood:

Pursuant to my conversation with you Friday afternoon I am herewith enclosing application, properly executed, for withdrawal of Clara L. Smith. Miss Smith was dismissed as a school teacher from the City of Paterson and her dis-

missal was upheld by the State Commissioner of Education and the State Board of Education of the State of New Jersey. There is now being prepared an application to have her case presented to the Supreme Court.

In accordance with my conversation with you Miss Smith's withdrawal from the Teachers' Pension and Annuity Fund will in nowise prejudice her case.

Please advise when my client may expect check.

Yours very truly,

(Signed) Louis Dworetz.

LD:AM
enc.

(Photostatic Copy of Withdrawal Application.)

(See Opposite.)

TEACHERS' PENSION AND ANNUITY FUND

Trenton, N. J. **STATE OF NEW JERSEY** P. O. Box 840

APPLICATION FOR WITHDRAWAL

I, Clara L. Smith (Name of member), Member No. 11,557, have been dismissed from my position as a teacher (Nature of employment) and am not now under contract for further service in the public schools of New Jersey.

RECEIVED NOV 26 1935 TEACHERS PENSION AND ANNUITY FUND

I hereby apply for the return of my total contributions accumulated at 3½% interest.

Following is a complete statement of my service in the public schools of New Jersey since September 1st, 1919:

School District	County	Date Service Began	Date Service Terminated
Paterson	Passaic	September, 1921	

Following is the address to which I wish my check mailed:

129 Market St., Paterson, N.J. - Louis Dworetz, Esq.

COMPLETE ONE FORM OF EXECUTION ONLY, NOT BOTH.

(Form of Execution No. 1)

If you are still employed or have not left the district where you were last employed, request the secretary or clerk to witness your signature, which should be affixed below in his presence, to sign the following certificate and to impress the seal of his board. The completed application should then be mailed to this office.

I hereby certify that I am the secretary/district clerk of the Board of Education of the ..... of ..... County of ..... New Jersey; that ..... (Name of member) has resigned his/her position as a ..... (Nature of employment) in this district, will be/was paid final salary for the month of ..... (Month) 19..... (Year), and is not now under contract for service after that date in this district.

And I further certify that the above named member has this day signed the within application for withdrawal in my presence.

Witness my signature and the official seal of the Board of Education this ..... day of ..... 19.....

..... (Withdrawing member sign)

Impress Seal

..... (Secretary or district clerk sign)

(Form of Execution No. 2)

PART A

If you have left the district where you were last employed, sign and acknowledge your application before a notary or other officer qualified by law to take oaths whose seal of office should be impressed, or whose signature should be authenticated by an attached certificate of authority.

State of New Jersey } ss.
County of Passaic }

On the 25th day of November 1935, personally appeared before me ..... Clara L. Smith (Name of member), who signed the within application for withdrawal in my presence and who acknowledged on oath that the statements herein contained are true to the best of his/her knowledge and belief.

Clara L. Smith (Withdrawing member sign)

Louis Dworetz (Notary public) An Attorney at Law of New Jersey

Impress Seal

PART B

This application must then be mailed to the secretary or clerk of the board by whom you were last employed, with the request that he execute the confirmatory certificate called for below and mail the completed application to this office.

I hereby certify that I am the secretary/district clerk of the Board of Education of the city of Paterson County of Passaic New Jersey; that Clara L. Smith (Name of member) has resigned been dismissed from his/her position as a teacher (Nature of employment) in this district, was paid final salary for the month of April (Month) 1935 (Year) and is not now under contract for further service in this district.

Witness my signature and the official seal of the Board of Education this 25th day of November 19 35

Thomas F Kelley (Secretary or district clerk sign)

Impress Seal

AF Form 3 15M-10/32. READ INSTRUCTIONS ON REVERSE SIDE

READ INSTRUCTIONS WHICH APPEAR IN RED

INSTRUCTIONS

STATUTORY AUTHORITY

Paragraph II, Section 251, of the Pension Fund Law, Chapter 80, P. L. 1919, reads as follows:

"A contributor who withdraws from service or ceases to be a teacher for any cause other than death or retirement, shall be paid on demand the accumulated deductions standing to the credit of his individual account in the annuity savings fund."

It is to be noted that application may not be made for the return of accumulated contributions until the member has resigned his position and is not under contract for service in the public schools of New Jersey.

FORMS OF EXECUTION

This application must be executed according to instructions before it can be honored.

If this application for withdrawal is made while you are still employed in the public schools of New Jersey or before you have left the district where you were last employed, you should sign in the presence of the secretary or district clerk who should also sign the certificate called for in Form No. 1, and impress the seal of his board.

If you are no longer employed in the public schools of New Jersey and have left the district where you were last employed, your application must be signed in the presence of a notary or other officer qualified by law to take oaths, whose seal of office should be impressed. (See Form 2, Part A.) The application must then be mailed to the secretary or clerk of the board by whom you were last employed requesting him to execute the confirmatory certificate called for in Form 2, Part B.

INACTIVE MEMBERSHIP

Members leaving the New Jersey public school service may allow their contributions to remain with the Pension Fund for a period of two years of inactive membership during which time their savings will increase by the operation of interest only. If there is any possibility of your returning to the New Jersey public schools within two years, it will be to your advantage not to apply at this time for the withdrawal of your accumulated salary deductions.

DEDUCTION FROM FINAL SALARY

No contributions can be returned until this office has received from your employer the payment and report of the deduction from your final salary.

Applications for withdrawal will not be honoredunless filed on this form, properly executed.

CHANGE OF ADDRESS

The pension fund office should be notified by letter of any change in your address prior to your receipt of the accumulated contributions herein applied for.

BOARD OF TRUSTEES.

JOHN A. WOOD, 3D.,

Secretary.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

COPY

TEACHERS' PENSION AND ANNUITY FUND
STATE OF NEW JERSEY
1012 Trenton Trust Building
Trenton, New Jersey

November 27, 1935.

Louis Dworetz, Esquire
Attorney at Law
129 Market Street
Paterson, New Jersey

Dear Sir:

Receipt is acknowledged of your letter of November 25th, enclosing application for withdrawal for Miss Clara L. Smith.

The second paragraph of your letter reads as follows:

> "In accordance with my conversation with you Miss Smith's withdrawal from the Teachers' Pension and Annuity Fund will in nowise prejudice her case."

Naturally I can give you and Miss Smith no assurance of what will or will not prejudice the Supreme Court in their decision on Miss Smith's appeal when it is before them. Our responsibility is limited to our interpretation of the Teachers' Pension and Annuity Fund law in honoring this application for withdrawal.

Miss Smith's present status is that she has not contributed for over two years and her inactive membership in our fund has ceased. As certi-

fied by Miss Smith and by the Secretary of the Paterson Board she is no longer employed but has been dismissed by the Paterson Board. We are therefore honoring her application for withdrawal.

Our next withdrawal checks will be released about December 10th.

Yours very truly,

(Signed) JOHN A. WOOD 3D.
Secretary.

JAW/MES

State of New Jersey, }
County of Passaic, } ss.:

THOMAS F. KELLEY, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am the Secretary of the Board of Education of the City of Paterson in the County of Passaic.

2. On November 25th, 1935, Clara L. Smith, formerly a teacher in the public school system of the City of Paterson, County of Passaic, and State of New Jersey, requested me to sign a certificate attached to an application for withdrawal from the Teachers' Pension and Annuity Fund, certifying that she had been dismissed from her position as a teacher and that she had been paid for her final salary for the month of April, 1933, and that she was no longer under contract for further service in this district.

Notice of Motion to Quash the Writ of Certiorari and Dismiss the Allocatur and Affidavits.

3. I have examined the photostatic copy of the application for withdrawal from the Teachers' Pension and Annuity Fund attached to the affidavit of John A. Wood, 3rd, and do depose and say that the same is a true copy of the application for withdrawal presented to me by the aforesaid Clara L. Smith, and upon which I signed the certificate as secretary.

THOMAS F. KELLEY.

Sworn to and subscribed before me
this 29th day of April, 1936.

SAUL R. ALEXANDER,
An Attorney at Law of New Jersey.

Affidavit of Louis Dworetz, in Opposition to Motion.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor*, *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Affidavit.

State of New Jersey, }
County of Passaic, } ss.:

LOUIS DWORETZ, of full age, being duly sworn according to law, upon his oath, deposes and says:

That I am an attorney at law of the State of New Jersey and have been the attorney of record for Clara L. Smith, the prosecutor herein the proceedings wherein she was dismissed as a teacher in the Public Schools of Paterson on October 24, 1934, that I also represented the said Clara L. Smith in her various appeals to the Commissioner of Education and State Board of Education when her dismissal was sustained.

That previously I represented the said Clara L. Smith when she was dismissed as a school teacher in May, 1934, which dismissal was subsequently set aside by the Commissioner of Education.

Affidavit of Louis Dworetz, in Opposition to Motion.

That on November 14, 1935, a letter addressed to the Prosecutor by the Teacher's Pension and Annuity Fund of the State of New Jersey was received, a copy of which is hereunto attached and made a part hereof.

That in the said letter the prosecutor was advised that her active membership in the Teacher's Pension and Annuity Fund ended April 30, 1933, and that since then the prosecutor has not taught school in this State.

The letter further advised that the membership of the prosecutor had expired in the Teacher's Pension and Annuity Fund as of May 1, 1935, and that application should be made by her for her accumulated contribution.

That the prosecutor was further advised that no further interest could be credited on account of her membership in the Fund beyond May 1, 1935.

That in response to the said letter of November 14, 1935, deponent on November 25, 1935, addressed a letter to John A. Wood, 3rd, Secretary of Teacher's Pension and Annuity Fund, a copy of which is annexed hereto and made a part hereof.

In said letter the Secretary of the Teacher's Pension and Annuity Fund was advised that the prosecutor was dismissed as a school teacher in the City of Paterson and that her dismissal was upheld by the Commissioner of Education and State Board of Education and that an application was being prepared to have her case submitted to the Supreme Court for review.

That prior to writing the letter of November 25, 1935, deponent personally interviewed John A. Wood, 3rd, Secretary of the Teacher's Pension

and Annuity Fund, at which time there was discussed the prosecutor's dismissal from the School System of Paterson and her various appeals.

The deponent advised the said Secretary that an application would be made to the Supreme Court for review of the prosecutor's case and there was also discussed the right of the prosecutor to be re-instated in the Teacher's Pension and Annuity Fund if the Supreme Court should reverse the findings of the other tribunals. With regard to this, Mr. Wood stated "that if the prosecutor's dismissal was reversed by the Supreme Court she would have the right to be reinstated in the Teacher's Pension and Annuity Fund" and that a present withdrawal from the Teacher's Pension and Annuity Fund could in no wise affect her status since her active membership in the fund ended April 30, 1933, when she was first suspended as a teacher in the School System of Paterson and since which time she has never been actually returned to the teaching service in this State.

The secretary at the said time also called my attention to Chapter 80, Laws of 1919, which govern the Annuity and Pension Fund and which provides as follows:

> "The membership of any person in the retirement system shall cease if he shall be continuously absent without pay for a period of more than two years."

Deponent was further advised that in filling out the application for withdrawal which is annexed to the respondent's motion to strike out the printed words "have resigned" and insert in place thereof "have been dismissed."

Affidavit of Louis Dworetz, in Opposition to Motion.

Deponent further states that at no time did the prosecutor resign her position as a school teacher in the Public School System of Paterson.

That deponent is unaware of any proceedings of the Board of Education of the City of Paterson in which the resignation of the prosecutor was ever considered or accepted.

Deponent also states that the order of dismissal by the Board of Education of the City of Paterson was never reconsidered and the resignation of the prosecutor was ever accepted in lieu thereof. That the prosecutor was first suspended in April, 1933, ever since which time she has continually ceased to actively teach in the schools of this City or State.

That the prosecutor ever since has consistently contested the right of the Board of Education of the City of Paterson to suspend and dismiss her from its service.

Deponent further states that the prosecutor since her suspension in April, 1933, has not been gainfully employed in any other business or profession.

That the sole reasons for her withdrawal of moneys from the Teacher's Pension and Annuity Fund was to pay obligations incurred since her suspension and dismissal from the School System of the City of Paterson and to permit her to prosecute her cause in this Court the actual cost of which the State of the Case and Briefs alone is approximately $325.00.

Deponent further states that the prosecutor never had any intention of abandoning this proceeding or any proceedings in which her ouster as a teacher was contested.

Affidavit of Louis Dworetz, in Opposition to Motion.

That the Secretary of the Board of Education of the City of Paterson, when he signed the certificate attached to the application for withdrawal of the prosecutor's pension fund also interlined the phrase, that the prosecutor had resigned and inserted in the place thereof that she had been dismissed from her position as a teacher, and that her final salary was paid in the month of April, 1933.

LOUIS DWORETZ.

Sworn and subscribed to
before me this 4th day
of May, 1936.

MAURICE BERNSTEIN,
A Master in Chancery of New Jersey.

TEACHER'S PENSION AND ANNUITY FUND
STATE OF NEW JERSEY
1012 Trenton Trust Building
Trenton, N. J.
Phone 2-2131 P. O. Box 550

November 14, 1935

Miss Clara L. Smith
345 Hamilton Avenue
Paterson, N. J.

Member #11,557

Dear Madam:

According to our records your active membership in this Fund ended April 30, 1933, and since then you have not returned to public school teaching service in this State.

Affidavit of Louis Dworetz, in Opposition to Motion.

Your membership has expired as of May 1, 1935, and in compliance with the law no further interest can be credited to your account beyond that date.

A blank is enclosed on which you should make application for the return of your accumulated contributions unless you are now under contract in which case we would be pleased to be informed where you are employed and when your service began.

Yours very truly,

ROBERT C. BELLEVILLE, 3RD.
Assistant Secretary.

LBK : Enc.

Affidavit of Louis Dworetz, in Opposition to Motion.

LOUIS DWORETZ
Attorney at Law
129 Market Street
Paterson, N. J.
Sherwood 2-1960

November 25, 1936.

John A. Wood, 3rd.,
Secretary Teacher's Pension & Annuity Fund,
1012 Trenton Trust Bldg.,
Trenton, New Jersey.

Dear Mr. Wood:

Pursuant to my conversation with you Friday afternoon, I am herewith enclosing application, properly executed for withdrawal of Clara L. Smith. Miss Smith was dismissed as a school teacher from the City of Paterson and her dismissal was upheld by the State Commissioner of Education and the State Board of Education of the State of New Jersey. There is now being prepared an application to have her case presented to the Supreme Court.

In accordance with my conversation with you Miss Smith's dismissal from the Teacher's Pension and Annuity Fund will in no wise prejudice her case.

Please advise when my client may expect check.

Very truly yours,

LOUIS DWORETZ.

LD:EL

Affidavit of Clara L. Smith, in Opposition to Motion.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor*, *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Affidavit.

State of New Jersey, } ss.:
County of Passaic, }

CLARA L. SMITH, of full age, being duly sworn according to law, upon her oath, deposes and says:

I am the prosecutor mentioned in the above-entitled cause and that since my original dismissal in April, 1933, I have not been employed in the Schools of the City of Paterson or State of New Jersey and that I have not been gainfully employed in any other business or profession.

I withdrew my accumulated contributions from the Teacher's Pension and Annuity Fund in November, 1935, in order to pay obligations incurred since my suspension and dismissal from the School System of the City of Paterson and to per-

Affidavit of Clara L. Smith, in Opposition to Motion.

mit me to prosecute my case in this court, the actual costs of the State of the Case and Briefs amount approximately to $325.00.

That since my dismissal as a school teacher I have not been employed and I have had no source of income and have received no salary from any source and that since my dismissal from school I have been forced to expend enormous and considerable sums in defending myself against criminal and civil proceedings at the behest of the Guiana Realty Corporation, in the State of New York and New Jersey and as a matter of fact have incurred obligations since the time I have been dismissed to support myself.

CLARA L. SMITH.

Sworn and subscribed to
before me this 4th day
of May, 1936.

LOUIS DWORETZ,
An Attorney at Law of New Jersey.

Affidavit of Service.

State of New Jersey, }
County of Passaic, } ss.:

Louis Dworetz, of full age, being duly sworn according to law upon his oath, deposes and says:

I served a copy of the within affidavits in opposition of respondents' motion to dismiss upon Harold D. Green, Attorney for Respondents, personally at the State House Annex, Trenton, New Jersey, on May 5th, 1936.

Louis Dworetz.

Sworn and subscribed to
before me this 15th day
of May, 1936.

Geo. K. Slingland,
A Master in Chancery of New Jersey.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAVE A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

IT IS HEREBY STIPULATED by and between the prosecutor and the respondents that the following is an agreed statement of facts upon which the respondents' motion to dismiss the allocatur and the writ of certiorari issued in this cause, and the prosecutor's opposition thereto, shall be considered:

1. That on May 10, 1933, the prosecutor who had commenced teaching in the Public School System of Paterson in 1921, was, after a hearing on charges presented and prosecuted by the Guiana Realty Corporation, a corporation of the State of New York, suspended for conduct unbecoming a teacher from teaching in the Public

Schools of Paterson until February 1, 1934, without pay, at which time her application for reinstatement would be given consideration.

2. On February 6, 1934, the prosecutor made application for reinstatement and on May 10, 1934 her said application for reinstatement was denied and she was dismissed as a teacher in the School System of Paterson, New Jersey, for conduct unbecoming a teacher.

3. Subsequent to her said dismissal, the prosecutor, on June 8, 1934, appealed to the Commissioner of Education protesting her suspension and dismissal aforesaid.

4. On September 25th, 1934, the said Commissioner of Education reversed the decision of the Board of Education of the City of Paterson, and found that the prosecutor was illegally dismissed in that a member of the Board of Education had participated in finding the prosecutor guilty although not having heard all the evidence at the hearings. The Board of Education of the City of Paterson was thereby directed by the Commissioner of Education to reinstate the prosecutor as a teacher in the school system and to pay her her salary from February 6th, 1934.

5. On October 11, 1934, after the Secretary of the Board of Education presented the said decision of the Commissioner of Education, it was resolved by the said Board of Education of the City of Paterson that the opinion of the Commissioner of Education in the matter of the appeal of Clara L. Smith against it be received and filed and the orders of the Commissioner complied with.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

6. At the same meeting of October 11, 1934, there were presented "charges" against the prosecutor for conduct unbecoming a teacher. These charges which were dated October 9, 1934, and which were presented by the Guiana Realty Corporation, were identical charges upon which the prosecutor's previous suspension and illegal dismissal were based.

7. After resolving that the "charges" dated October 9, 1934, be received, it was further resolved that a hearing be had thereon and in the meantime the prosecutor be suspended pending the determination of the said charges against her.

8. Following a trial upon the said charges on October 18, 1934 and on October 24, 1934, the prosecutor was on the latter date found guilty of conduct unbecoming a teacher and dismissed from the School System of the City of Paterson.

9. Prosecutor appealed her dismissal to the Commissioner of Education of the State of New Jersey, and on February 8, 1935, the said Commissioner of Education affirmed the prosecutor's dismissal.

10. Thereafter, the prosecutor appealed to the State Board of Education and on July 20, 1935, the State Board of Education affirmed the ruling of the Commissioner of Education.

11. Since April 30, 1933, the prosecutor had not made any contributions to the Teachers' Pension and Annuity Fund of the State of New Jersey. The prosecutor's active membership in the said Teachers' Pension and Annuity Fund ended April 30, 1933.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

12. Since May 10, 1933, the prosecutor had not taught in the School System of the City of Paterson, New Jersey, nor had she taught school anywhere in the State of New Jersey.

13. On November 14, 1935, a letter addressed to the prosecutor by the Teachers' Pension and Annuity Fund of the State of New Jersey was received by her, a copy of which is hereunto attached and made a part hereof, and marked Exhibit "A".

14. In the said letter the prosecutor was advised that her active membership in the Teachers' Pension and Annuity Fund ended April 30, 1933, and that since then the prosecutor had not taught school in this State. The letter further advised the prosecutor that her membership had expired in the "Fund" as of May 1, 1935, and that application should be made by her for her accumulated contributions. Prosecutor was also advised that no further interest could be credited on account of her membership in the "Fund" beyond May 1, 1935.

15. In response to the said letter of November 14, 1935 (Exhibit A), the prosecutor's attorney, Louis Dworetz, on November 25, 1935, addressed a letter to John A. Wood, 3rd, Secretary of the Teachers' Pension and Annuity Fund, a copy of which is annexed hereto and made a part hereof, and marked Exhibit "B".

16. In the said letter (Exhibit "B"), the Secretary of the Teachers' Pension and Annuity Fund was advised that the prosecutor was dismissed as a school teacher in the City of Paterson and that her dismissal was upheld by the Commissioner of Education and the State Board of Education and

that an application was being prepared to have her case submitted to the Supreme Court for review.

17. Prior to writing the letter of November 25, 1935 (Exhibit "B"), the prosecutor's attorney personally interviewed John A. Wood, 3rd, Secretary of the Teachers' Pension and Annuity Fund, at his office in Trenton, New Jersey, at which time there was discussed the prosecutor's dismissal from the School System of Paterson and her various appeals.

18. During the said interview the prosecutor's attorney advised the said secretary of the fund that an application would be made to the Supreme Court for review of the prosecutor's case. There was also discussed the right of the prosecutor to be reinstated in the Teachers' Pension and Annuity Fund if the Supreme Court should reverse the findings of the other tribunals. With regard to this, Mr. Wood stated, "That if the prosecutor's dismissal as a teacher in the School System of Paterson was reversed by the Supreme Court, she would have the right to be reinstated in the Teachers' Pension and Annuity Fund and that a present withdrawal from the fund could in nowise affect her status since her active membership therein ended April 30, 1933, and since which time she has never been actually returned to the teaching service in this State."

During the said interview, the secretary of the fund directed the attention of the prosecutor's attorney to the following section of Chapter 80, Laws of 1919 as amended, which governs the Teachers' Pension and Annuity Fund.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

Section 249, Subdivision 7.

> "The membership of any person in the retirement system shall cease if he shall be continually absent without pay for a period of more than two years * * * ."

The secretary further advised prosecutor's attorney that in filling out the application for withdrawal of her accumulated saving, which application is annexed hereto and made a part hereof and marked Exhibit "C" and which is also annexed to respondents' motion, to eliminate the printed words "have resigned" and insert in place thereof the words "have been dismissed". This instruction of the said secretary was followed.

19. On November 27th, 1935, prosecutor received an acknowledgment from John A. Wood, 3rd, Secretary of the Teachers' Pension and Annuity Fund, acknowledging receipt of prosecutor's application for withdrawal of her accumulated savings, a copy of which letter is annexed hereto and marked Exhibit "D".

20. That at no time did the Prosecutor resign her position as a School Teacher in the Public School System of Paterson, New Jersey.

21. That the Prosecutor is unaware of any proceedings of the Board of Education of the City of Paterson in which the resignation of the Prosecutor was ever considered or accepted.

22. The Board of Education of the City of Paterson never accepted or acted upon any alleged resignation of the Prosecutor as a teacher in the Public School System of Paterson, New Jersey.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

23. That the Prosecutor's dismissal by the Board of Education of the City of Paterson was never reconsidered and no alleged resignation of the said Prosecutor was ever accepted by the said Board of Education in lieu of such dismissal.

24. That the Prosecutor's last payment to the Teachers' Pension and Annuity Fund was on April 30, 1933; that her last day of active teaching in the Schools of Paterson, New Jersey, was May 10, 1933, ever since which time she has continuously ceased to actively teach in the Schools of Paterson or of the State of New Jersey.

25. That since May 10, 1933, the Prosecutor has consistently contested the right of the Board of Education of the City of Paterson to suspend and dismiss her from its service.

26. That the sole reasons for her withdrawal of her monies from the Teachers' Pension and Annuity Fund were to pay obligations incurred since her suspension and dismissal from the School System of Paterson, and to permit her to prosecute her cause in the Supreme Court. That the actual cost of printing the State of Case and Briefs in this Court alone was Three Hundred and Twenty-five ($325.00) Dollars.

27. That since her first suspension and dismissal as a teacher, the Prosecutor has not been employed, has had no source of income, and has received no salary from any source; that she did expend considerable sums in defending herself successfully against criminal complaints instituted by the Guiana Realty Corporation in the State of New York growing out of the identical charges

upon which she had been dismissed as a teacher; that she incurred obligations since her dismissal in order to support herself.

28. That the Prosecutor never had any intention of abandoning this proceeding or any proceedings in which her ouster as a teacher was contested.

29. That the Secretary of the Board of Education of the City of Paterson, when he signed the certificate attached to the application for withdrawal (Exhibit "C") of Prosecutor's pension fund, also interlined the phrase that the Prosecutor "had resigned" and inserted in place thereof that she "had been dismissed" from her position as a teacher and that her final salary was paid in the month of April, 1933.

30. Prosecutor's dismissal was affirmed by the State Board of Education on July 20th, 1935, and Prosecutor applied for withdrawal of her accumulated savings in the Teachers' Pension and Annuity Fund on November 25th, 1935. Her total accumulated savings amounting to $1,067.57 was paid to Prosecutor on December 10th, 1935, and the Allocatur to the Writ of Certiorari in this Cause was signed by Mr. Justice Heher on December 19th, 1935, and was made returnable on January 8th, 1936.

31. Prosecutor's Affidavits presented to Mr. Justice Heher on December 19th, 1935, made no mention of the fact that Prosecutor had withdrawn all her total accumulated savings in the Teachers' Pension and Annuity Fund on December 10th, 1935.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

32. That all the reasons upon which the Respondents' present motion to dismiss and to vacate the allocatur is based, were in existence at the time the writ was issued and at the time the same was made returnable.

33. That the Respondents made no motion to dismiss the writ or vacate the allocatur prior to the return of the writ.

34. That not until after the Reasons for Reversal were filed, the Prosecutor's State of Case and Briefs printed, did the Respondents make any move respecting the subject matter of their motion.

35. That on the Tuesday preceding the opening of the May Term of the Supreme Court, the Respondents made their first move respecting the subject matter of their present motion. On that day application was made to the Honorable Justice Heher, who had allowed the writ in this cause for leave to amend the State of Case by incorporating therein the subject matter above referred to. This motion was denied but without prejudice.

36. Prosecutor has never sought and does not now seek any advantage over any teacher or class of teachers who are members of the Pension Fund.

Respectfully submitted,

LOUIS DWORETZ,
Attorney for Prosecutor.

HAROLD D. GREEN,
Attorney for and of Counsel
with Respondents.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

EXHIBIT "A".

TEACHERS' PENSION AND ANNUITY FUND
STATE OF NEW JERSEY
1012 Trenton Trust Building
Trenton, N. J.
Phone 2-2131 P. O. Box 550

November 14, 1935.

Miss Clara L. Smith,
345 Hamilton Avenue,
Paterson, New Jersey.

Dear Madam: Member #11,557

According to our records your active membership in this Fund ended April 30, 1933, and since then you have not returned to public school teaching service in this State.

Your membership has expired as of May 1, 1935, and in compliance with the Law no further interest can be credited to your account beyond that date.

A blank is enclosed on which you should make application for the return of your accumulated contributions, unless you are now under contract, in which case we would be pleased to be informed where you are employed and when your service began.

Yours very truly,

ROBERT C. BELLEVILLE, 3rd.,
Ass't. Secretary.

LBK
Enc

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

EXHIBIT "B".

LOUIS DWORETZ
Attorney at Law
129 Market Street
Paterson, N. J.

—

Sherwood 2-1961

November 25, 1935.

John A. Wood, 3rd,
Secretary Teachers' Pension & Annuity Fund,
1012 Trenton Trust Bldg.,
Trenton, N. J.

Dear Mr. Wood:

Pursuant to my conversation with you Friday afternoon, I am herewith enclosing application, properly executed, for withdrawal of Clara L. Smith. Miss Smith was dismissed as a school teacher from the City of Paterson and her dismissal was upheld by the State Commissioner of Education and the State Board of Education of the State of New Jersey. There is now being prepared an application to have her case presented to the Supreme Court.

In accordance with my conversation with you, Miss Smith's withdrawal from the Teachers' Pension and Annuity Fund will in nowise prejudice her case.

Please advise when my client may expect check.

Yours very truly,

(Signed) Louis Dworetz.

LD:AM
Enc.

EXHIBIT "C".

(Photostatic Copy of Withdrawal Application.)

(See Opposite.)



EXHIBIT C

TEACHERS' PENSION AND ANNUITY FUND

Trenton, N. J. **STATE OF NEW JERSEY** P. O. Box 840

APPLICATION FOR WITHDRAWAL

I, Clara L. Smith (Name of member), Member No. 11,557, have ~~resigned~~ been dismissed from my position as a teacher (Nature of employment) and am not now under contract for further service in the public schools of New Jersey.

RECEIVED NOV 26 1935 TEACHERS' PENSION FUND

I hereby apply for the return of my total contributions accumulated at 3½% interest.

Following is a complete statement of my service in the public schools of New Jersey since September 1st, 1919:

School District	County	Date Service Began	Date Service Terminated
Paterson	Passaic	September, 1921	

Following is the address to which I wish my check mailed:

129 Market St., Paterson, N.J. - Louis Dworetz, Esq.

PLEASE FOLLOW INSTRUCTIONS WHICH APPEAR IN RED

COMPLETE ONE FORM OF EXECUTION ONLY, NOT BOTH.

(Form of Execution No. 1)

If you are still employed or have not left the district where you were last employed, request the secretary or clerk to witness your signature, which should be affixed below in his presence, to sign the following certificate and to impress the seal of his board. The completed application should then be mailed to this office.

I hereby certify that I am the secretary/district clerk of the Board of Education of the ..... of ..... County of ..... New Jersey; that ..... (Name of member) has resigned his/her position as a ..... (Nature of employment) in this district, will be/was paid final salary for the month of ..... (Month) 19..., (Year) and is not now under contract for service after that date in this district.

And I further certify that the above named member has this day signed the within application for withdrawal in my presence.

Witness my signature and the official seal of the Board of Education this ..... day of ..... 19...

Impress Seal

(Withdrawing member sign)

(Secretary or district clerk sign)

(Form of Execution No. 2)

PART A

If you have left the district where you were last employed, sign and acknowledge your application before a notary or other officer qualified by law to take oaths whose seal of office should be impressed, or whose signature should be authenticated by an attached certificate of authority.

State of New Jersey)
County of Passaic) ss.

On the 25th day of November 1935, personally appeared before me Clara L. Smith (Name of member), who signed the within application for withdrawal in my presence and who acknowledged on oath that the statements herein contained are true to the best of his her knowledge and belief.

Clara L. Smith
(Withdrawing member sign)

Louis Dworetz
An Attorney at Law of New Jersey
(Notary public or other officer)

Impress Seal

PART B

This application must then be mailed to the secretary or clerk of the board by whom you were last employed, with the request that he execute the confirmatory certificate called for below and mail the completed application to this office.

I hereby certify that I am the secretary district clerk of the Board of Education of the city of Paterson County of Passaic New Jersey; that Clara L. Smith (Name of member) has ~~resigned~~ been dismissed from his her position as a teacher (Nature of employment) in this district, was paid final salary for the month of April (Month) 1933 (Year) and is not now under contract for further service in this district.

Witness my signature and the official seal of the Board of Education this 25th day of November 1935

Thomas F Kelly
(Secretary or district clerk sign)

Impress Seal

TPAF Form 3 15M-10/32. READ INSTRUCTIONS ON REVERSE SIDE

EXHIBIT "D".

TEACHERS' PENSION AND ANNUITY FUND
STATE OF NEW JERSEY
1012 Trenton Trust Building
Trenton, N. J.
Phone 2-2131 P. O. Box 550,

November 27, 1935.

Louis Dworetz, Esquire,
Attorney at Law,
129 Market Street,
Paterson, New Jersey.

Dear Sir:

Receipt is acknowledged of your letter of November 25th, enclosing application for withdrawal for Miss Clara L. Smith.

The second paragraph of your letter reads as follows:

> "In accordance with my conversation with you, Miss Smith's withdrawal from the Teachers' Pension and Annuity Fund, will in nowise prejudice her case."

Naturally I can give you and Miss Smith no assurance of what will or will not prejudice the Supreme Court in their decision on Miss Smith's appeal when it is before them. Our responsibility is limited to our interpretation of the Teachers' Pension and Annuity Fund law in honoring this application for withdrawal.

Agreed Statement of Facts on Motion to Quash the Writ of Certiorari and Dismiss the Allocatur.

Miss Smith's present status is that she has not contributed for over two years and her inactive membership in our fund has ceased. As certified by Miss Smith and by the Secretary of the Paterson Board she is no longer employed but has been dismissed by the Paterson Board. We are therefore honoring her application for withdrawal.

Our next withdrawal checks will be released about December 10th.

Yours very truly,

(Signed) JOHN A. WOOD 3RD
Secretary.

JAW:MES

Opinion of Supreme Court.

(Filed Dec. 15, 1936.)

NEW JERSEY SUPREME COURT.

Nos. 222 and 240—May Term 1936.

Clara L. Smith,
Prosecutor,

vs.

May M. Carty, et als.,
Respondents.

Argued May 5, 1936. Decided 1936.

On Certiorari.

For Prosecutor: Louis Dworetz.

For Respondents: Harold D. Green.

Before Justices Lloyd and Donges.

Per Curiam:

The prosecutor, a former teacher in the schools of Paterson, was tried and convicted by the School Board on charges justifying her dismissal. Appeal being taken the case was reversed on the ground that a member of the School Board hearing the case was not present during the taking of all of the proofs, and the prosecutor was ordered reinstated in her position. This order was complied with by the Board. On the same day the charges were renewed in a new proceeding, a new trial had, a second dismissal and affirmance by the Commissioner of Education, and also by the State Board. To review this action the certiorari presented in No. 222 was allowed.

The respondents have moved to dismiss the writ for reasons subsequently appearing by affidavit and now before us on stipulation of facts. From this stipulation it appears that the prosecutor before the allowance of the present writ applied for and received the full proceeds of her portion available in the teachers' retirement fund, setting forth as a ground of the application for such fund that she was dismissed and that she was not under contract to teach.

Respondents for the motion presented in No. 240 of the present term urge that by so doing she accepted the action of the School Board in dismissing her and hence is not entitled to a review of the action taken.

The basis of this contention is that under the School Board Law, Sections 249 and 251, by withdrawing from the retirement fund she automatically ceased to be a teacher in the public schools or entitled to consideration as such.

Our reading of the sections relied upon leads us to the conclusion that the contention of the respondents is well founded. These sections are as follows:

> Section 249. "All persons who become teachers after the 1st day of September, 1919, and whose appointment is made subsequent to the passage of this act, shall become members of the Retirement System by virtue of their appointments as teachers."
>
> Section 251. "A contributor who withdraws from the service or ceases to be a teacher for any cause other than death or retirement, shall be paid on demand the accumulated deductions standing to the credit of his individual account in the annuity savings fund."

If the prosecutor were not a teacher she would not be entitled to participate in the fund. As one interested in the fund she was obliged to make regular systematic contributions which inured not only to her own benefit but to the benefit of all fellow teachers in the school system.

The result we reach is that by drawing her proportion of the fund and failing to contribute to it for the period intervening between her dismissal and the application for the writ of certiorari, she automatically ceased to be a teacher in the public schools of the city. That she consequently is without standing as a teacher by virtue of her own act, and this makes it unnecessary to consider the sufficiency of the action taken leading to her dismissal.

The motion to dismiss the writ is granted with costs.

Rule Dismissing Writ of Certiorari.

(Filed Oct. 13, 1937.)

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAV A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents.*	On Certiorari. Rule Dismissing Writ of Certiorari.

This matter having been argued before Part 2 of the New Jersey Supreme Court, May term 1936, and the Court having considered the arguments and briefs submitted by the respective parties, and

IT APPEARING that an application was made to dismiss the Writ of Certiorari heretofore allowed in this cause and the Court having considered the arguments and briefs submitted by the respective parties in reference to the same and the Court having filed a written opinion on December 15, 1936, in which the Court concluded that the Writ of Certiorari heretofore allowed in this cause, should be dismissed.

Rule Dismissing Writ of Certiorari.

It is on this 13th day of October, 1937, ordered that the Writ of Certiorari heretofore allowed in this cause, be and the same is hereby dismissed with costs to be taxed.

On motion of
Harold D. Green,
Attorney for Respondents.

I hereby consent to the filing of the within rule, but without prejudice to the right of the prosecutor to appeal from the said rule, and without prejudice to contest the validity of the said rule.

Louis Dworetz,
Attorney for Prosecutor.

Notice of Appeal.

(Filed Oct. 14, 1937.)

NEW JERSEY SUPREME COURT.

CLARA L. SMITH, *Prosecutor*, *vs.* MAY M. CARTY, et als., *Respondents.*	On Certiorari. Notice of Appeal.

To: HAROLD D. GREEN, Esq.,
Attorney for Respondents,
121 Ellison Street,
Paterson, New Jersey.

SIR:

PLEASE TAKE NOTICE that the prosecutor appeals from the whole of the judgment entered in the New Jersey Supreme Court in the above-entitled matter to the New Jersey Court of Errors and Appeals, the Court of Last Resort in All Causes, for the following reasons:

1. The New Jersey Supreme Court erred in rendering judgment for the respondents instead of the prosecutor for one or more of the reasons of reversal filed in the New Jersey Supreme Court.

2. The New Jersey Supreme Court erred in dismissing the Writ of Certiorari in the above cause whereas it should have rendered judgment for the prosecutor for one or more of the reasons assigned therefore in the New Jersey Supreme Court.

3. The New Jersey Supreme Court erred in granting the respondents' motion to dismiss the Writ of Certiorari in the above matter whereas it should have denied the same for one or more of the reasons urged for denying the same in the New Jersey Supreme Court.

Respectfully yours,

LOUIS DWORETZ,
Attorney for Prosecutor.

10 FEB.T.1938

New Jersey Court of Errors and Appeals

CLARA L. SMITH, *Prosecutor-Appellant,* *vs.* MAY M. CARTY, AGNES CROMWELL, MARIE HILSON KATZENBACH, DANIEL H. MOREAU, OSCAR W. JEFFERY, JOSEPH MOTT, D. STEWART CRAVEN, LYMAN F. MOREHOUSE, GUSTAV A. HUNZIKER, MAROU BROWN LITTLE, CHARLES H. ELLIOTT, Secretary, Commissioners of the State Board of Education of the State of New Jersey, *Respondents-Appellees.*	On Appeal from New Jersey Supreme Court.

BRIEF OF PROSECUTOR-APPELLANT.

Statement of Facts.

The appeal in this cause brings up for review in this Court a judgment of the New Jersey Supreme Court dismissing the Writ of Certiorari previously allowed by the Supreme Court and directed to the Commissioners of the State Board of Education of the State of New Jersey (pp. 343; 341, 342; 338-340).

The record of the case reveals that the Prosecutor-appellant, a school teacher in the public school system of Paterson, New Jersey, for up-

wards of 14 years, sought by virtue of the Writ of Certiorari allowed by the Honorable Harry Heher, Justice of the New Jersey Supreme Court, a redetermination of the law and facts contained in a ruling and decision of the State Board of Education made on July 20, 1935.

The records indicate that on May 10, 1933, the Prosecutor who had commenced teaching in the public school system of Paterson in 1921 (p. 193, l. 25) was, after a hearing on charges presented and prosecuted by the Guiana Realty Corporation, a corporation of the State of New York (p. 297) suspended from teaching in the public schools of Paterson until February 1, 1934, without pay, at which time her application for reinstatement would be given consideration (p. 289, ll. 10-17).

On May 10, 1934, her said application for reinstatement was denied and she was dismissed as a teacher in the school system of Paterson, New Jersey (p. 289, ll. 21-31; p. 290, ll. 14-17).

Subsequent to her said dismissal, the Prosecutor on June 8, 1934, appealed to the Commissioner of Education protesting her suspension and dismissal as aforesaid (p. 289, ll. 27-31) and on September 25, 1934, the said Commissioner of Education reversed the Board of Education of the City of Paterson and found that Miss Smith, the Prosecutor, was illegally dismissed.

The Board of Education of the City of Paterson was directed by the Commissioner of Education to pay the Prosecutor her salary from February 6, 1934, and to immediately reinstate her as a teacher in its school system (p. 290, ll. 37-40; p. 291, ll. 1-10).

On October 11, 1934, after the Secretary of the Board of Education presented the said decision of the Commissioner of Education (pp. 288, 289, 290, 291, ll. 1-10), it was resolved by the said Board

of Education of the City of Paterson that the opinion of the Commissioner of Education in the matter of the appeal of Clara L. Smith against it, be received and filed and the orders of the Commissioner contained therein be complied with (p. 291, ll. 10-20).

At the same meeting, there were presented "charges" against the Prosecutor for conduct unbecoming a teacher (p. 291, ll. 24-40; pp. 292, 293, 294, 295). These charges, dated October 9, 1934, and which were presented by the Guiana Realty Corporation, were the identical charges upon which the Prosecutor's previous illegal suspension and illegal dismissal were based (p. 297).

After resolving that the "charges" dated October 9, 1934, be received, it was further resolved that a hearing be had thereon and in the meantime the Prosecutor be suspended pending the determination of the said charges against her (p. 296).

These charges signed by William Sherrill, an officer of the Guiana Realty Corporation, and bearing date October 9, 1934, as well as the charges upon which the Prosecutor's previous illegal dismissal were based, alleged that the Guiana Realty Corporation was a realty corporation of the State of New York; that on September 15, 1932, the Prosecutor secured a loan evidenced by a promissory note from the said corporation in the amount of $500.00, payable in two installments, to wit: on October 15, 1932, and November 15, 1932, respectively; that the Prosecutor stated on a questionnaire (Exhibit P-5) that she was not obligated to anyone other than a Building and Loan Association; that Clara L. Smith had tendered worthless checks and made default in the payment of her obligation to the complainant; that she made unreliable promises to pay the said notes.

The charges further stated that Clara L. Smith was guilty of misrepresentation and fraud in making application for the said loan of $500.00; that she made certain representations regarding the availability of her Pension Fund as security for the said loan. That repeated attempts were made to collect the said moneys loaned but the sum of $154.00 was only paid thereon.

The complainant prayed that because of her unreliability, dishonesty, forgery, lack of integrity, as alleged, the Prosecutor be dismissed as a teacher of the schools of Paterson.

Nowhere in the record are these extravagant charges sustained.

The proofs adduced at the hearing on the charges (p. 293, Exhibit D-4; pp. 56, 57) indicated that the Guiana Realty Corporation was in the business of lending moneys to civil service employees in the City of New York (p. 119, ll. 20-30; p. 114, l. 33). That on or about September 15, 1932, the Prosecutor borrowed $500.00 from the Guiana Realty Corporation at which time the said corporation exacted a usurious bonus in the sum of $50.00 (p. 196, l. 2).

At the time the Prosecutor applied for the said loan, she informed William Sherrill, the president of the corporation that she needed the money to pay obligations (p. 104, l. 32; p. 105, ll. 8, 9).

The proof further revealed that she made application for the loan at the instigation of her father who had suffered severe business losses and was critically ill; that this loan was being sought to pay her father's obligations (p. 217, l. 40; p. 218, ll. 1-20).

That in order to secure the payment of the said loan Clara L. Smith nominated on September 15, 1932, the Guiana Realty Corporation as sole beneficiary in her Teachers' Pension and Annuity Fund

in which she had available for withdrawal at that time the sum of $891.54 (p. 68, l. 17).

The proof further showed that the charges aforementioned were the subject matter of three indictments in the Court of General Sessions of State of New York for third degree forgery, for second degree forgery, and grand larceny (p. 113, ll. 33-35; p. 114, ll. 38-42; p. 115, ll. 10-15). The Prosecutor was tried and acquitted of third degree forgery (p. 285) and the indictments for grand larceny and forgery in the second degree were dismissed by the Court on motion of counsel and on consent of the District Attorney (pp. 286, 287).

The proofs do not reveal that the Prosecutor was ever found guilty of passing worthless checks or that the Guiana Realty Corporation ever successfully reduced its alleged claim to a judgment at law against the said Clara L. Smith.

The proofs also indicate that the Guiana Realty Corporation demanded the full payment of the loan prior to the maturity thereof (p. 238, ll. 10-22).

This concern despite the payment of $154.00 in addition to the usurious bonus in the sum of $50.00 exacted from the Prosecutor on account of the loan still claims from her the sum of $639.20 (p. 116, ll. 39-42; p. 118), which said sum the Prosecutor disputes as being due and owing to the Guiana Realty Corporation.

Nowhere in the record was there any credible proof that the Prosecutor was guilty of conduct unbecoming a teacher in the public schools of Paterson.

On the contrary, proof was adduced to the effect that the Prosecutor enjoyed a good reputation for honesty and morality (pp. 241-243).

The Prosecutor, despite the proofs aforesaid, was on October 24, 1934, by resolution of the Board of Education of the City of Paterson dis-

missed as a teacher in its public schools (pp. 254-256).

Thereafter the Prosecutor appealed to the Commissioner of Education from the action of the Board of Education of the City of Paterson and on February 8, 1935, the said Commissioner of Education affirmed the said Board of Education of the City of Paterson (pp. 28-45).

That on March 1, 1935, the Prosecutor further appealed to the State Board of Education which on July 20, 1935, affirmed the ruling of the Commissioner of Education who had sustained the Board of Education of the City of Paterson in finding the Prosecutor guilty of conduct unbecoming a teacher and in dismissing her as a teacher in the Paterson schools (pp. 3-27).

Subsequent to the ruling of the State Board of Education, the Prosecutor applied for and obtained on December 19, 1935, a Writ of Certiorari from the Honorable Harry Heher, Justice of the New Jersey Supreme Court (pp. 1, 2).

After the return to the Writ was filed and reasons for reversal submitted and the case noticed for argument, the Respondents made application to Mr. Justice Heher to amend the return to the Writ by including therein certain documents and circumstances which occurred subsequent to the decision of the State Board of Education (pp. 301-303).

This application was denied without prejudice.

The record further indicates that upon the argument of the cause, the Respondents presented a motion to dismiss the Writ on the grounds that the Prosecutor abandoned her position prior to her application for the Writ of Certiorari by the withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund, and on the grounds that the Prosecutor acquiesced in her

dismissal by her withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund and on the further ground that she resigned as a school teacher when she resigned from the Teachers' Pension and Annuity Fund and withdrew her savings (pp. 304, 305).

This motion, supported by affidavits, was resisted by affidavits submitted in behalf of the Prosecutor, and at the argument, the Court suggested that the facts concerning the motion to dismiss the Writ be agreed upon (pp. 313-322).

An agreed statement of facts was then filed and both the motion and the merits of the case were argued orally before the Court (pp. 323-337; pp. 338-340).

After the argument of the said cause on the merits and the motion of the Respondents to dismiss the Writ, the Court ruled that the Prosecutor by drawing her proportion of the pension fund and failing to contribute to it for the period intervening between her dismissal and the issuance of the Writ of Certiorari she automatically ceased to be a teacher in the public schools of the City of Paterson.

The Court further found that the Prosecutor was without standing as a teacher by virtue of her own act and that it was unnecessary to consider the sufficiency of the action taken leading to her dismissal as a teacher (pp. 339, 340, 341, 342).

This ruling of the Supreme Court in dismissing the Writ was plainly erroneous and the Prosecutor will urge for the reasons hereinafter stated that the judgment of the Supreme Court be reversed and for nothing holden and that the Prosecutor be reinstated as a teacher in the public school system of Paterson, New Jersey.

POINT I.

The Supreme Court erred in dismissing the Writ of Certiorari.

A. The withdrawal by the Prosecutor of her accumulated savings in the Teachers' Pension and Annuity Fund on November 25, 1935, did not disqualify her from contesting the validity of her dismissal from the school system of Paterson, New Jersey, for alleged "conduct unbecoming a teacher".

The Prosecutor by her said withdrawal of her proportion of the pension and annuity fund did not acquiesce in her dismissal from the school system of the City of Paterson.

At the argument of the merits of this case before the Supreme Court, the Respondents moved to dismiss the Writ of Certiorari previously allowed to the Prosecutor for the purpose of reviewing the legality of her dismissal as a teacher in the public school system of Paterson, New Jersey (p. 301; pp. 304-340).

This motion which was listed as No. 240 for the May Term, 1936, was argued in conjunction with the merits of the case listed as No. 222, May Term, 1936 (pp. 338, 339).

The basis of the motion to dismiss the Writ of Certiorari was that the Prosecutor had abandoned her position as a teacher prior to her application for the Writ of Certiorari by the withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund; that the Prosecutor acquiesced in her dismissal by the withdrawal of her interest in the said fund and was therefore estopped from prosecuting the said Writ; that the Prosecutor resigned as a teacher by withdrawing

from the said fund on November 25, 1935 (pp. 304, 305).

The foregoing motion of the Respondents was resisted by the Prosecutor by affidavits filed on behalf of the Prosecutor and at the suggestion of the Court an Agreed State of Facts concerning the said motion was filed (pp. 313-323; pp. 323-327).

A reading of the Agreed State of Facts (pp. 323-337) readily indicates that the motion to dismiss the Writ of Certiorari for the reasons advanced therefor should have been denied.

But the Supreme Court, with all due respect, fell into error and reached the conclusion that the contention of the Respondents was well founded (p. 339, ll. 27-30).

In reaching this conclusion the Supreme Court, according to the opinion rendered by it (pp. 338-340), failed to consider all of the applicable sections of the Act creating the Teachers' Pension and Annuity Fund and providing for its management and control.

The Supreme Court also erroneously engrafted upon the Statute an interpretation which obviously is in conflict with its express provisions as well as all its reasonable implications. The Supreme Court in reaching its conclusions further ignored the undisputed facts contained in the Agreed State of Facts.

At the outset it must be remembered that the Prosecutor was first suspended as a teacher in the public schools in Paterson in May, 1933; that since May, 1933, she has neither taught school in Paterson nor in the State of New Jersey; and since April 30, 1933, she has not contributed to the Teachers' Pension and Annuity Fund (p. 325, ll. 35-40; p. 326, ll. 1-10, Agreed State of Facts).

Consequently, the Prosecutor by reason of the fact that she had not taught in the schools of

Paterson and State of New Jersey since her suspension and dismissal could not contribute to the Teachers' Pension and Annuity Fund.

The right to contribute to this fund depends upon active employment in the school system and the contributions to the fund must emanate from the salary earned by a teacher in her active employment.

Under Chapter 80 of the Laws of 1919, P. L. 1919, page 157, entitled "An Act to Amend an Act to establish a thorough and efficient system of free public schools and to provide for the maintenance, support and management thereof," Article XXVIII Teachers' Pension and Annuity Fund, Section 254, respecting the Collection of Contributions provides:

Subdivision (2):

> "* * * Upon the employment of any teacher to whom this article may apply, he shall be informed by his employer of his duties and obligations in connection with the Retirement System as a condition of his employment. Every teacher accepting employment shall be deemed to consent and agree *to any deductions from his compensation required herein and to all other provisions of this article* * * *."

Subdivision (4):

> "* * * Whenever a teacher is employed by a school district, the custodian of school monies and in other cases his employer shall notify the Board of Trustees within 10 days after the appointment of the teacher of such appointment and shall deduct *the proportion of salary* as certified by the Board of Trustees *from the salary of such teacher* as herein di-

rected and shall certify to the Treasurer of the State of New Jersey *on account of each and every payroll a statement as voucher for the amounts deducted for annuity purposes* at the rate certified by the Board of Trustees * * *."

The foregoing sections plainly indicate that a teacher's contribution to the Pension and Annuity Fund must arise from the *salary* earned by her in her employment.

Thus the Supreme Court when it observed that the Prosecutor in "failing to contribute to it (Pension and Annuity Fund) for the period intervening between her dismissal and the application for the Writ of Certiorari, she automatically ceased to be a teacher in the public schools of the City" (p. 340, ll. 12-18), obviously erred because the Prosecutor having not actually taught during this period and not having earned any salary for teaching could not have made "regular systematic contributions" to the fund.

That the Prosecutor was not teaching and thus not contributing to the Pension Fund was not due, as the Supreme Court erroneously observed, to any act of her own (p. 340, ll. 18-20), but rather to an act of the Board of Education of Paterson which had unlawfully dismissed the Prosecutor as a teacher in its school system.

This unlawful action will more readily appear upon the consideration of Points Two, Three, Four, Five, Six and Seven herein.

The next question is whether the Prosecutor by receiving the proceeds of her portion available in the Teachers' Retirement Fund barred her from prosecuting the Writ of Certiorari in this cause.

It has already been observed that the Prosecutor was suspended as a teacher in May, 1933, since

which time she has not taught school in this State; and that since April 30, 1933, she had not contributed to the Teachers' Pension and Annuity Fund.

In this posture of affairs, the Prosecutor's membership in the fund as distinguished from her right to teach in the public schools of Paterson, ceased.

She was thus eligible to withdraw her contributions without affecting in any manner her right to teach or without affecting in any manner any and all remedies necessary to enforce that right.

In this connection Section 249 Subdivision (7) of Chapter 80 of the Laws of 1919, page 164, which the Supreme Court failed to consider in its opinion, is controlling:

> (7) "* * * The *membership* of any person in the Retirement System *shall cease if he shall be continuously absent without pay for a period* of more than two years or if in any five-year period after he last became a member he shall render less than two years of school service, or upon the withdrawal by a contributor of his accumulated deductions as provided in this article or upon retirement on a pension or at death but not otherwise except as provided in this article * * *."

From the foregoing section, it will be readily seen that there is *no express provision* denying to a teacher the right to teach merely because her membership in the fund ceased for the reason that she has been continuously absent without pay for a period of more than two years.

In the case *sub judice* the Prosecutor in the language of the Statute was continuously absent without pay for a period of more than two years.

Consequently her membership in the fund ceased but not her right to teach school.

If the Respondents' contention as adopted by the Supreme Court be sound, a teacher, who had been granted a leave of absence for the purpose of additional study or in an effort to cure an illness and had thus continuously absented herself for a period of more than two years without pay, would lose her right to teach because her active membership in the Retirement Fund ceased.

This absurdity which necessarily follows from the argument of the Respondents as sustained by the Court below, was never intended by the Statute.

The Statute expressly states that the "*membership* of any person in the Retirement System *shall cease* if she be absent continuously without pay for a period of more than two years".

The right to teach in a school district or the teacher's status with a local Board of Education or School District is in no way affected by that act.

That the right to teach may be separate and distinct from one's active membership in the Pension Fund is further indicated in that portion of Section 249, Subdivision (7) which provides:

> "* * * The membership of any person in the Retirement System shall cease if in any five-year period after he last became a member he shall render less than two years of school service * * *."

There again a teacher's membership in the Retirement System may cease yet there is no express provision ousting him or her as a school teacher in the school district where the service is rendered.

While it is true that Section 249, subdivision (2) provides that:

> "* * * *All persons* who become teachers after the 1st day of September, 1919, and whose appointment is made subsequent to the passage of this Act, *shall become members of the Retirement System by virtue of their appointment as teacher* * * *."

the Legislature had also in mind certain situations which would render the management and supervision of the Retirement System unwieldy.

These situations were dealt with in subdivision (7) of Section 249, and provided that one's membership in the Retirement System shall cease if he shall be continuously absent without pay for a period of more than two years or if in any five-year period after he last became a member he shall render less than two years of school service.

These exceptional circumstances required different treatment and the legislature in its wisdom and after great study as indicated in the Preamble to the Statute excluded from the continued membership in the fund those persons who were continuously absent for more than two years without pay and those who had rendered less than two years of school service in any five-year period after they had last become members of the Retirement System.

The right to teach or the remedies necessary to enforce that right are in no wise restricted by the provisions of the Statute governing membership or the cessation thereof in the Retirement System.

This was decided by Mr. Justice Case in *Board of Education of Beach Haven* vs. *State Board of Education,* 115 N J. L. 264, 180 Atl. 430.

In that case a teacher who had become sixty-two years of age on August 28, 1931, and who was a member of the Teachers' Pension and Annuity Fund, had by reason of her years of service become entitled to be retired on pension. On July 28, 1933, she entered into a contract with Beach Haven Board of Education whereby she agreed to teach and the Board employed her so to do from September 11, 1933 to June, 1934, at a stated salary and both parties agreed that either of them could terminate the same by giving the other thirty days notice in writing of intention to terminate. There was no notice of intention to terminate given by either side, *but on December 28, 1933, the Borough Board passed a resolution wherein it determined to make application to the Trustees of the Teachers' Pension and Annuity Fund for Mrs. Sopers'* (the teacher) *retirement,* effective February 1, 1934. *The Board of Trustees of the Teachers' Pension and Annuity Fund on January 12, 1934, approved the retirement* effective February 1, 1934.

At page 366, the learned Justice stated:

> "* * * Retirement becomes optional—either at the instance of the teacher or of the employing board — at age sixty-two (School law article XVII, section 251, sub-division 1 (Cum. Supp. Comp Stat. 1925-1930, p. 1722 #251 (1), as amended by Chapter 57, Pamph. L. 1928) and mandatory at age seventy (Id. section 251, subdivision 2; Id. page 1723, #251 (2). During the intervening period, neither the teacher nor the Board having applied for retirement, the teaching services continue. *The action of the trustees* of the fund on an application coming in is usually, and was in this instance,

ministerial. Mrs. Soper's record was such that she was entitled to a pension either at her or the board's request. The statute was mandatory upon the trustees, and they took affirmative action. But Mrs. Soper's complaint was that the board had agreed not to terminate her teaching for the year without giving thirty days' notice in writing and that the action of the board in proceeding toward her retirement was a termination of her employment and therefore in the absence of the notice, a violation of the contract. A board of education has, under the school law, the right to make contracts with teachers. * * *"

And at pages 367, 368 continuing:

"* * * The teachers' Pension and Retirement Fund was set up by article XXV of the 1903 statute as subsequently amended and by article XXVIII passed as chapter 173, Pamph. L. 1920; 2 Cum. Supp. Comp. Stat. 1911-1925, (pp. 3296, 3298, #185-495). The whole structure is part of the school law under one title. We consider that the dispute between Mrs. Soper and the board of education as to the obligations of the latter under its contract was one that by the broad and ancient provisions of the statute was within the cognizance of the commissioner of education subject to appeal to the state board of education. Prosecutor rests in part upon the rule stated in Home Building and Loan Association v. Blaisdell 290 U. S. 398; 78 L. Ed. 413, and quoted in Hourigan v. North Bergen Township, 113 N. J. L. 143, that existing laws are read into contracts in order to fix obligations as between the parties and that the

reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order; *but we find no support for the prosecutor in the application of that rule to the instant case.* There is no public policy that a teacher shall be retired at age sixty-two and the law does not so require. Granting, for the purposes of the argument, that a yearly contract is not, under the circumstances, necessary, we think it is neither inconsistent with the school law nor subversive of the aims and principles thereof for a teacher and a board, during the mutually optional period between the ages of sixty-two and seventy, to agree annually upon employment for the school year and as an incident to agree that neither of them will terminate the year's employment without reasonable notice to the other. The disruption in school courses that might follow sudden retirement, in midyear and without notice to the board, of skillful and dependable teachers, from whom a full year's work was expected, is obvious. It is clear that the foreknowledge of the event by the board would be helpful. So, also, the other way around. That the notice should be in writing and that it should be thirty days in extent are reasonable provisions.

Prosecutor's second point is that the contract between the board of education and Mrs. Soper included as an implied provision, and is subject and subordinate to the provisions of, section 251 Pamph. L. 1919, ch. 80, as amended by p. 1723, #251 (2); and its third point is that the contract between the board and Mrs. Soper is a nullity and unen-

*forceable because the relationship was controlled and regulated by statute. For the reasons already given these points are decided adversely * * *."*

From the foregoing decision it is apparent that the statute governing a teacher's membership in the Retirement System does not control her status as a teacher or her right to teach.

In the cited case even though the Court observed that the provisions of the Statute governing the Teachers' Annuity and Pension Fund "was mandatory upon the trustees" of the fund, nevertheless, the contract made by the teacher with the school board was not subject and subordinate to the provisions of that Statute even though the teacher was entitled to a pension at the time the contract was made.

Furthermore, in the case at bar, the undisputed facts leading up to the withdrawal of her portion of the Pension Fund indicates beyond peradventure that the Prosecutor did not accept the action of the School Board in dismissing her nor did she by such withdrawal automatically cease to be a teacher so as to bar her from prosecuting the Writ of Certiorari.

The Agreed Statement of Facts indicates that the Prosecutor received a letter from the Teachers' Pension and Annuity Fund on November 14, 1935, which reads as follows (p. 327, ll. 10-15; p. 332):

TEACHERS' PENSION AND ANNUITY FUND
State of New Jersey
1012 Trenton Trust Building
Trenton, N. J.
Phone 2-2131 P. O. Box 550

November 14, 1935

Miss Clara L. Smith,
345 Hamilton Avenue
Paterson, New Jersey.

Dear Madam: Member #11,557

According to our records your active membership in this Fund ended April 30, 1933, and since then you have not returned to public school teaching service in this State.

Your membership has expired as of May 1, 1935, and in compliance with the Law no further interest can be credited to your account beyond that date.

A blank is enclosed on which you should make application for the return of your accumulated contributions, unless you are now under contract, in which case we would be pleased to be informed where you are employed and when your service began.

Yours very truly,

ROBERT C. BELLEVILLE, 3rd.,
Ass't Secretary.

LBK
Enc

From the foregoing letter, it is plain that the Prosecutor did not initiate the action by which her accumulated contributions were ultimately withdrawn. She was advised by the Teachers' Pension and Annuity Fund that her active membership in the fund ceased on April 30, 1933 and that no

further interest could be credited to her account.

In response to the said letter the Prosecutor's Attorney on November 25, 1935, addressed a letter to John A. Wood, 3rd, Secretary of the Teachers' Pension and Annuity Fund (pp. 333, 326, ll. 27-40, p. 327, ll. 1-3) in which the Secretary was advised that the Prosecutor was dismissed as a school teacher in the public schools of Paterson and that her dismissal was upheld by the Commissioner of Education and the State Board of Education and that an application was being prepared to have her case submitted to the Supreme Court for review.

Prior to writing letter of November 25, 1935, according to the Agreed Statement of Facts (p. 327) Prosecutor's Attorney personally interviewed the Secretary of the Teachers' Pension and Annuity Fund at his office at which time there was discussed the Prosecutor's dismissal from the school system of Paterson and her various appeals.

During the said interview the Prosecutor's Attorney advised the said Secretary that an application would be made to the Supreme Court for a review of Prosecutor's case. There was also discussed the right of the Prosecutor to be reinstated in the Teachers' Pension and Annuity Fund if the Supreme Court should reverse the findings of the other tribunal. With regard to this the Secretary stated, "That if the Prosecutor's dismissal was reversed she would have the right to be reinstated in the fund and that a present withdrawal of the fund could in no wise affect her status since her active membership ended April 30, 1933, and since which time she has never been actually returned to the teaching service of this State" (p. 327).

During the said interview the Secretary of the Fund directed the Prosecutor's Attorney to the

following section of Chapter 80, Laws 1919, as amended, which govern the Teachers' Pension and Annuity Fund.

Section 249, Subdivision 7:

> "* * * The membership of any person in the Retirement System shall cease if he shall be continually absent without pay for a period of more than two years * * *."

The Secretary further advised Prosecutor's Attorney that in filling out application for withdrawal of her contributions, which application is set forth on page 334, State of Case, and marked Exhibit C, to eliminate the printed words, "have resigned" and insert in place thereof the words "have been dismissed." This instruction of Secretary was followed, page 328, State of Case.

In the Agreed State of Facts the following stipulation is set forth (p. 330, l. 10, #28):

> "* * * That the Prosecutor never had any intention of abandoning this proceeding or any proceedings in which her ouster as a teacher was contested* * *."

It was further stipulated that at no time did the Prosecutor resign her position as a school teacher in the school system of Paterson, New Jersey (p. 328, ll. 30-33).

In the light of the foregoing facts, all of which are undisputed and have been agreed upon by the Respondents and the Prosecutor, there is no room to doubt that the Prosecutor by withdrawing her contributions after her membership in the Retirement System had ceased, did not waive any right to prosecute the Writ of Certiorari.

Furthermore, it conclusively appears from these admitted facts that the Prosecutor did not resign

her position as a school teacher in the public school system of the City of Paterson by withdrawing her portion of the pension fund.

In order to effectively withdraw or resign from an office or position the withdrawal or resignation must be presented to the proper authority and be accepted by it on notice to the person so withdrawing or resigning.

The rule was enunciated in the case of *Nicholson* vs. *Board of Education of Swedesboro,* 83 N. J. L. 36; *State-Reeves* vs. *Ferguson,* 31 N. J. L. 107; *Fryer* vs. *Norton,* 67 L. 537.

It is clear from the Agreed State of Facts that the Prosecutor tendered no resignation; that the Board of Education of the City of Paterson never accepted or acted upon any alleged resignation of the Prosecutor as a teacher in the public school system of Paterson, New Jersey (p. 328, ll. 36-40).

The Respondents have argued in the Court below that the Prosecutor if reinstated in the public school system of the City of Paterson would receive an advantage in the Retirement Fund over other teachers.

As indicated in the Agreed State of Facts, the Prosecutor has never sought and does not now seek any advantages over any teacher or class of teachers who are members of the Pension Fund (p. 331, ll. 30-34).

Doubtlessly the Respondents have overlooked Section 255, Laws of 1919, page 180, which provides for the manner in which the Pension and Annuity Fund shall be administered. The broad powers given to the Trustees of this Fund by the Statute is ample protection against any undue advantage which the Respondents unjustifiably fear may accrue to the Prosecutor.

Section 255, Subdivision (1) provides:

> "* * * The general administration and responsibility for proper operation of the Retirement System and for making the provisions of this article is hereby vested in a Board of Trustees which shall be organized immediately after the passage of this act. *The said board shall from time to time establish rules and regulations for the administration and transaction of its business and for the control of the funds created herein* and shall perform such other functions as are required for the execution of the provisions of the Retirement System * * *."

The Respondents' counsel also rely upon the case of *Good* vs. *Union Township Board of Education, County of Union, decided by the State Board of Education,* as establishing the doctrine that a withdrawal from the Pension Fund is equivalent to a voluntary withdrawal or resignation from one's employment as a teacher. The Respondents further argue that this case established the doctrine that a teacher who has been dismissed for cause acquiesces in her dismissal by withdrawing her accumulations in the Pension Fund.

This case besides being contrary to the decision of the Supreme Court in the case of *Board of Education of Beach Haven* vs. *State Board of Education, supra,* is also distinguishable on the facts from the case *sub judice.* In the case at bar the Prosecutor's membership in the Pension Fund ceased by reason of her continuous absence from active service as a teacher *for more than two years* and she was therefore according to the Statute eligible to withdraw her accumulations.

But in the case of *Good* vs. *Union Township Board of Education, County of Union,* relied upon by the respondents the teacher had withdrawn his pension money *"immediately after his dismissal"* by the Board of Education of Union Township for cause. *The Pension Fund of the teacher in the cited case was still active at the time of his withdrawal from the same while in the case at bar the Prosecutor's membership in the fund had ceased and she was permitted by Statute to withdraw her accumulation.*

The Respondents also cited the case of *Allen* vs. *Board of Education of the City of Passaic,* 81 N. J. L., 135, to support their view. This case involves the consideration of a different statute entirely. This case involved the construction of Teachers' Retirement Fund Act of 1896 as amended. No such provision as Section 249, subdivision 7 of Chapter 80, P. L. 1919 as amended by Chapter 57 of Laws of 1928; were involved for consideration.

The Respondents have also cited the case of *Plunkett* vs. *Board of Pension Commissioners,* 113 N. J. L. 230, and *Bennett* vs. *Lee,* 104, N. J. L., 453.

It is difficult to see how either of these cases aids respondents. In both cases the following quotation appears:

> " * * * The rule is that compulsory deductions from the salaries of governmental employees by the authority of the government for the support of a pension fund, create no contractual or vested right between such employees or those claiming under them have any right except such as are conferred by the statutes creating and governing the fund * * * ."

Similarly in the case at bar the respondents have no greater rights than those conferred by the statute creating and governing the Teachers' Pension and Annuity Fund.

The act respecting the Teachers' Pension and Annuity Fund does not confer any power which affects or limits one's right to teach and the remedies necessary to enforce that right merely because her membership in the fund has ceased due to continuous absence for a period of two years without pay during which no service was rendered.

The case of *Board of Education of Beach Haven* vs. *State Board of Education, supra,* has clearly pointed out that the right to teach as conferred upon the teacher by a local Board of Education or School District is not to be controlled or restricted by any of the provisions of the Statute governing the Teachers' Pension and Annuity Fund.

The Prosecutor is not unmindful of Section 251, sub-division 11, which provides as follows:

> " * * * A contributor who withdraws from the service or ceases to be a teacher for any cause other than death or retirement shall be paid on demand her accumulated deductions standing to the credit of his individual account in the Annuity Saving Fund * * * ."

The rights of the Prosecutor under the facts and case at bar are not subservient to the provisions of the foregoing section. The facts indicate that the Prosecutor was entitled to her contribution by virtue of Section 249, sub-division 7 of the Statute which provides that one's membership in the Retirement Fund shall cease upon the continuous absence of a teacher without pay for a period of more than two years.

The action initiated by the Trustees of the Teachers' Pension and Annuity Fund which culminated in the withdrawal of the Prosecutor's contributions, was according to the letter of November 14, 1935 (p. 332, State of Case) and according to Agreed State of Facts (pp. 327, 328, ll. 1-10) pursuant to Section 249, sub-division 7 of the Teachers' Pension and Annuity Fund and not Section 251, sub-division 11.

Concluding the argument on this point attention is directed to Section 247, Teachers' Pension and Annuity Fund, sub-division 7, which provides as follows:

> " * * * In all cases of doubt the Board of Trustees shall determine whether any person is a teacher as defined in this article * * *."

Under this section before the Court could consider whether or not the Prosecutor was a teacher within the meaning and intent of the provisions of the Statute governing the Pension and Annuity Fund all remedies should have been first exhausted before the Board of Trustees of the Pension and Annuity Fund.

> *Board of Education of Beach Haven* vs. *State Board of Education, supra,* and *Ridgeway* vs. *Upper Freehold Board of Education,* 88 N. J. L., 530.

The question concerning the withdrawal of the Prosecutor's contributions was raised for the first time by the Respondents' motion in the Supreme Court to dismiss the Writ of Certiorari. The issue had never been presented either to the Commissioner of Education, the State Board of Education, or to the Board of Trustees of the Pension and Annuity Fund, and consequently was not properly before the Supreme Court.

POINT II.

The merits of this cause are now properly before this court for consideration.

It has appeared under Point I that the merits of the case and the Respondents' motion to dismiss the Writ of Certiorari was argued together in the Supreme Court.

Despite the fact that the Writ was allowed by Justice Heher, the Supreme Court decided that the motion of the Respondents to dismiss the Writ should be granted.

In view of the fact that the Supreme Court erred, as indicated in Point I herein, in dismissing the Writ of Certiorari, the merits of the case are now properly subject to inquiry by the Court of Errors and Appeals.

This practice was established in the case of *State, Hoxsey* vs. *The City of Paterson,* 39 N. J. L. 489, and followed in the case of *City of Passaic* vs. *Gross,* 99 N. J. L., 409.

In the case of *State, Hoxsey* vs. *City of Paterson, supra,* Mr. Justice Dixon, speaking for the Court of Errors and Appeals, observed:

> "* * * On final hearing, the defendants moved to dismiss the Writ, on the ground that no conclusive act or adjudication of the city was brought up for review. This motion the Supreme Court granted, and accordingly judgment was entered, dismissing the Writ, with costs. That judgment is now, by Writ of Error, subjected to review in this Court * * *."

At page 495, the learned Justice continues:

> " * * * I am, therefore, of opinion that the Supreme Court rightly exercised its discretion

in the allowance of the Certiorari, and that its dismissal was, for that reason, erroneous, and should be reversed.

Upon this reversal, a question arises as to the *proper* practice in this Court, whether the record should be remitted to the Court below, that it may proceed to a judgment of affirmance or reversal of the corporate proceedings *upon the merits,* or this Court should itself render such final judgment. The case shows that the cause was ripe for final hearing below, and that the judgment of dismissal was given upon such hearing. Under these circumstances, this Court should not merely reverse the judgment below, but should also render the judgment which ought to have been there rendered."

In the case of *City of Passaic* vs. *Gross, supra,* it was held that:

"* * * Where a Writ of Certiorari is erroneously dismissed by the Supreme Court on final hearing, the Court of Errors and Appeals will not merely reverse the judgment, but will render such judgment of affirmance or reversal of the proceedings brought up by the Certiorari as the Supreme Court should have given upon the merits."

Thus, since the Supreme Court erred in dismissing the Writ of Certiorari, this Court, under the authorities above mentioned, may consider the entire cause on the merits and give such judgment as the Supreme Court should have given upon the merits of the case.

POINT III.

The Board of Education of the City of Paterson had no jurisdiction or authority to try the appellant on the complaint of the Guiana Realty Corporation, a corporation of the State of New York, made by it on October 9th, 1934.

A. The ruling of the Commissioner of Education, dated September 25th, 1934 (pp. 288-291), was a final disposition of the charges which were embodied in the complaint of October 9th, 1934 (pp. 257-260).

An examination of the record clearly shows that the "charges" dated October 9th, 1934, are identical with the "charges" dated April 8, 1933 (p. 297) upon which the Prosecutor was previously illegally suspended and dismissed by the Board of Education of the City of Paterson for conduct unbecoming a teacher.

This dismissal of the Prosecutor as a school teacher was subsequently reversed in clear and convincing language of the Commissioner of Education who on September 25th, 1934, stated:

> "* * * In accordance with these rulings of the Supreme Court, Miss Smith was illegally dismissed, The Board of Education of the City of Paterson is directed to pay her salary from February 6, 1934, and to immediately reinstate her in its School System" (p. 290, l. 38).

The foregoing ruling was the culmination of a hearing held in accordance with Section 10 of the School Law which provides as follows:

10. Settlement of Disputes by State Superintendent; Appeal to State Board—The state superintendent of public instruction shall decide, subject to appeal to the State Board of Education and without cost to the parties, all controversies and disputes that shall arise under the school laws, or under the rules and regulations of the State Board of Education. *The facts involved in any controversy or dispute shall, if he shall so require, be made known to him by written statement by the parties thereto, verified by oath or affirmation, and accompanied by certified copies of all documents necessary to a full understanding of the question in dispute, and his decision shall be binding until, upon appeal, a decision thereon shall be given by the State Board of Education.* (P. L. 1903, 2d Sp. Sess. P. 7.)

This section plainly placed the burden upon the State Superintendent now the Commissioner of Education to redetermine the entire controversy which had been presented previously to the local board of education. The proceeding contemplated is not a strict review on matters of law only. The Commissioner is empowered under this Statute to redetermine the facts involved in any cause that comes under his jurisdiction.

The decision of the Commissioner, once made, is according to Section 10 of the School Law binding on all parties "*until upon appeal a decision thereon shall be given by the State Board of Education*". Such decision of the Commissioner has the conclusive quality of a judgment pronounced in a legally created court of record.

The effect of decisions of the State Superintendent now replaced by the Commissioner of Education has been fully considered by our courts.

In the case of *Thompson* vs. *Board of Education*, 57 N. J. L. 628, Mr. Justice Garrison speaking for the Supreme Court stated at page 630:

> "For present purposes it is entirely unimportant whether the decision of the state superintendent was warranted by the facts before him or whether it was grossly erroneous, inasmuch as he had undubitable jurisdiction over the parties and the subject-matter. There is no distinction in point of conclusiveness between the decisions of a special tribunal such as this and the judgments of a court of record. The sole difference is in the presumption of jurisdiction that inheres in general courts alone. If the right of the special tribunal to pass on the matter in controversy between the parties be established, its determinations are conclusive upon the parties until reversed by some appellate court. As a general rule, whenever any person is given authority to hear and determine any question, such determination is, in effect, a judgment having all the properties of a judgment pronounced in a legally created court of limited jurisdiction acting within the bounds of its authority. In the present case, the legislature for the government of a particular branch of the public service has given authority to a special tribunal to hear and decide all controversies arising thereunder. The express provision that the decisions of these tribunals shall, until reversed on direct appeal, be binding on the parties is nothing more than a declaration of the legal effect of such decisions where jurisdiction to pronounce them is established."

To the same effect

Draper vs. *Commissioner of Public Instruction,* 66 N. J. L., p. 54;
Jefferson vs. *Board of Education,* 64 N. J. L., p. 59;
Buren vs. *Albertson,* 54 N. J. L., p. 72;
Stockton vs. *Board of Education,* 72 N. J. L., p. 80;
DuFour vs. *State Superintendent,* 72 N. J. L., p. 371.

From these citations, it is manifest that not only has the decisions of the Commissioner the effect of a judgment at law but it is also conclusive and binding on all parties "until upon appeal a decision thereon shall be given by the State Board of Education".

In the case *sub judice,* after the Commissioner had determined the appeal of Clara L. Smith and had ordered her reinstatement as a teacher and directed that she be paid her back salary, the Board of Education of the City of Paterson did not take any further appeal to the State Board of Education as prescribed by Section 10 of the School Law.

In this decision of the Commissioner (page 288) there was no reservation either expressly or impliedly authorizing or remanding the case back to the Board of Education of the City of Paterson for a new trial or further proceedings. Nothing could be plainer than the finding that the appellant was illegally dismissed; that her salary should be paid and that she be reinstated as a teacher.

In *15 Standard Encyclopedia Procedure* titled "Judgments," page 600, the text reads:

> "(C) WHERE JUDGMENT VACATED OR REVERSED—As a general rule when a judgment is vacated or set aside by the court in which

it was entered or reversed by an appellate tribunal *and remanded for further proceedings, it thereby loses its conclusive character as a bar to a subsequent action.* But where a reversal is upon the merits of the controversy, it bars any further action upon the same matter."

In the case at bar a remand for further proceedings is manifestly lacking in the judgment of the Commissioner. Furthermore, the unequivocal language of the Commissioner's judgment is upon the merits of the controversy. In the decision, the Commissioner reverses the judgment of the Board of Education, orders the appellant to be reinstated and directs her salary from the time of her dismissal to be paid (p. 290, ll. 38-41; p. 291, ll. 1-25). In view of the clarity of the language used in the Commissioner's decision, it cannot be contended seriously that his judgment was not on the merits. For the same obvious reason the attempt on the part of the Board of Education to read into the decision of the Commissioner a remand for further proceedings, falls by the mere suggestion of it.

Assuming (without conceding) that a remand could fairly be read into the decision of the Commissioner or that the decision of the Commissioner was without prejudice to further proceedings on the part of the Board, it is apparent that even this argument is unavailing. To begin with, *the Board made no attempt to retry the case on the original complaint. It assumed no further jurisdiction in the matter. It complied with the order of the Commissioner's by reinstating the appellant and by paying her salary. This action at once destroyed the subject matter of the complaint.*

Upon the rendition of the Commissioner's judgment, two courses were open to the Board. It had

the right to appeal the judgment of the Commissioner or, if it thought that the Commissioner had not decided the case on the merits, *it had the right to request a revision of the Commissioner's order striking from it the clause directing payment of salary and reinstatement to the appellant and further requesting that the proceedings be remanded to the Board for further action.*

The Board followed neither of these courses but destroyed the subject matter of the charges by paying the appellant and reinstating her in the school system of Paterson. This procedure on the part of the Board was a complete bar to the consideration of a new complaint made by the original complainant and covering the same charges as those embodied in the original complaint.

In presenting the appeal before the Commissioner, respecting the appellant's previous dismissal, not only questions of law, but also questions of fact were argued. The local Board also argued both questions of law and fact.

The reason which prompted the Commissioner to reverse the judgment of the Board is unimportant. It is the mould of the judgment that determines the rights of the parties to the action. This is particularly so when both the questions of law and fact involved in the controversy were argued by both sides. *It seems clear that if a new trial or further action on the part of the Board was contemplated by the Commissioner, he would have so decided.* But the finding of the Commissioner that the appellant was illegally dismissed was tantamount to a finding of fact. It was equivalent to a judgment of "not guilty". It cannot be disputed that the Commissioner had either the right to affirm or reverse the judgment of the Board or the right to award a new trial.

This is particularly so in view of the language of Section 10 of the school law which makes the decision of the Commissioner binding and conclusive until an appeal has been taken and decision thereon shall be given by the State Board of Education. Of these three alternatives the Commissioner reversed the judgment adjudicating the rights of the parties.

There have been many cases where a reversal by an appellate court after due consideration of the law and facts of the case, will bar the bringing and maintaining a new suit, *especially where there is no remanding order contained in the judgment of reversal.*

This rule was announced in the case of

Strottman vs. *St. Louis Iron Mountain and Southern Railway Company,* 228 Mo., 154, 128 Northwestern 185;
Platz vs. *Burton Cider and Vinegar Company,* 28 New York Supplement 385;
Larkins vs. *Terminal R. Asso.,* 122 Ill. Appeals 246, affirmed in 221 Ill. 428, 77 Northeastern 678.

The Respondents contend that the decision of the Commissioner rendered on September 25th, 1934, was not a bar to the bringing and prosecution of the new complaint of October 9, 1934. It argues that the Commissioner had decided the previous cause on a question of jurisdiction solely.

Assuming (without conceding) that the Commissioner did decide the jurisdictional question only, then, in that event, the course open to the Board was to request a revision of the Commissioner's judgment so as to permit a retrial. The failure of the Board to follow this course and the destruction of the subject matter of the charges

prevented any further or additional action with reference to the same.

An analogous situation to the case *sub judice* was presented in *Jayson* vs. *Pa. Railroad Co.*, 101 N. J. L. 159. In that case, Jayson filed a petition with the Workmen's Compensation Bureau for compensation. His right to compensation depended upon whether he was engaged at the time of his injuries in intrastate commerce.

At the hearing, the deputy commissioner held that Jayson was not engaged in intrastate commerce, but was in fact engaged in interstate commerce, and dismissed his petition for lack of jurisdiction. He then appealed to the Essex County Court of Common Pleas, which reversed the ruling of the Compensation Bureau on the question of jurisdiction and decided the case upon the record before the bureau on its merits, awarding Jayson temporary and permanent compensation.

The railroad company appealed to the Supreme Court which affirmed the judgment of the Court of Common Pleas, and the matter was appealed from the Supreme Court to the Court of Errors and Appeals.

The question at issue was what disposition should the Court of Common Pleas have made in view of the statute which provided that the trial of such appeal shall be based exclusively on the transcript of the record and testimony, and at the time fixed for hearing, argument may be presented by each side to the Judge, who shall in a summary manner, decide the merits of the controversy and the judgment of the Court of Common Pleas shall be conclusive and binding.

In 101 N. J. L., page 162, the late Mr. Justice Katzenbach said,

> "The proceeding, as conducted by the deputy commissioner of the Compensation Bureau, was one to determine whether or not it had jurisdiction. This is shown by what occurred at the hearing. The deputy commissioner said after the motion to dismiss was made: 'On that motion I will reserve decision on that point subject to proof. If there is not enough testimony here to conclude whether or not it is intrastate commerce, then Mr. Knight is absolutely right. After that point is decided we will go on with the additional testimony.' The deputy commissioner then decided that Jayson was engaged in interstate commerce. THIS WAS EQUIVALENT TO SUSTAINING A PLEA THAT THE COURT IN WHICH AN ACTION IS INSTITUTED HAS NO JURISDICTION TO ENTERTAIN IT. *WHEN SUCH A DECISION IS RENDERED AND THE PARTY AGGRIEVED TAKEN AN APPEAL, WHICH IS SUCCESSFUL IN REVERSING THE DECISION OF THE LOWER COURT, THE APPELLATE COURT REMANDS THE CASE TO THE LOWER TRIBUNAL TO BE HEARD. IF A JUDGMENT OF NONSUIT IS DIRECTED BY A TRIAL COURT TO BE ENTERED, AND THIS JUDGMENT IS REVERSED ON APPEAL, THE APPELLATE COURT REMANDS THE CASE TO THE LOWER COURT FOR RETRIAL.* In the present case there was no opportunity afforded the railroad company

before the Compensation Bureau to submit testimony upon the merits of the controversy. The Court of Common Pleas, after reversing the Compensation Bureau upon the question of jurisdiction, did not afford the railroad company an opportunity to submit testimony upon the merits of the controversy. *It is true that in section 19 of the Employers' Liability Act, as amended by chapter 229 of the laws of 1921 (Pamph. L., p. 731), it is provided 'that the trial of such appeal (the appeal to the Court of Common Pleas) shall be based exclusively on the transcript of the record and testimony, and, at the time fixed for the hearing, argument may be presented by each side, to the said judge, who shall in a summary manner decide the merits of the controversy, and the judgment of the Court of Common Pleas * * * shall be binding.'*

This section contains a proviso that nothing contained in the act shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law and fact by certiorari WHILE THE PROVISIONS OF THIS SECTION OF THE STATUTE GIVES A COURT OF COMMON PLEAS THE POWER TO DECIDE THE MERITS OF THE CONTROVERSY UPON THE TRANSCRIPT OF THE RECORD AND TESTIMONY YET THE ACT DOES NOT IN TERMS PROHIBIT THE COURT OF COMMON PLEAS FROM SENDING BACK THE CASE TO THE COMPENSATION BUREAU FOR HEARING. WE THINK THE PROPER CONSTRUCTION TO BE PLACED UPON THIS SECTION OF THE ACT IS THAT IT GIVES THE

COURT OF COMMON PLEAS AUTHORITY TO DETERMINE THE MERITS OF THE CONTROVERSY IN THOSE CASES WHERE THE COMPENSATION BUREAU HAS HEARD TESTIMONY UPON THE MERITS AND DECIDED THE CASE UPON THE MERITS. It would be a denial of justice, at least, if not of due process of law, to permit under the circumstances of the present case the foreclosure of the appellant from submitting testimony upon the merits of the controversy. The appellant has not been lacking in diligence at any stage of the litigation. The compensation bureau decided the case, as has been stated, upon the question of jurisdiction. It afforded the appellant no opportunity to submit evidence on the merits. The appellant urged before the Court of Common Pleas and the Supreme Court its claim to have the case sent back for a hearing upon the merits, if the question of jurisdiction should be decided adversely to its contention. The Supreme Court clearly had in its inherent power the right to remand the case to the compensation bureau for a hearing upon the merits. We are of the opinion that its failure to do so was error.

The judgment of the Supreme Court is accordingly reversed. The case will be remitted to the Workmen's Compensation Bureau to be heard upon its merits."

Undoubtedly, if the Commissioner had in mind a new trial, he would have been as specific as the Court of Errors was in the *Jayson* vs. *Pa. Railroad, supra,* or if the Board felt that the Commissioner had intended a new trial or a further proceeding, the right to find out the Commis-

sioner's intent was not barred to it. The failure of the Local Board to appeal from the decision of the Commissioner, or even to request a revision of it precluded it from trying the appellant at a later date on a new complaint involving the same charges. This is particularly so when the subject matter of the charges was destroyed by the Commissioner's order for reinstatement and his order for payment of salary, both of which orders were complied with by the Board (pp. 288-291).

In the case last cited, it should be noted that the Compensation Bureau had not heard the testimony on the merits and that when the matter was before the Court of Common Pleas, the merits of the controversy had not been presented.

In the case at bar, however, both the Board in the first proceedings, and the Commissioner had before them the entire case. Arguments on the law, and facts were presented and considered by the two tribunals, consequently, the action of the Board respecting the prosecution of a new complaint, the subject matter of which had been destroyed, and the trial of the appellant on the new complaint was without foundation.

Before concluding the argument under this point, attention is directed to the authorities established by the State Board of Education that remanding orders in reversals of judgment are not unusual. Reversals of judgments of Boards of Education and of the Commissioners of Education have included remanding orders in the following cases: *Wallace* vs. *Board of Education of the Township of Greenwich, Cumberland County; Cassidy* vs. *Board of Education, Jersey City; Cheesman* vs. *Board of Education of Gloucester City,* School Law Decisions, 1928, page 156.

These cases are a complete answer to the argument of the respondent's counsel that the Commissioner of Education when the matter was before him for the first time had no right or authority to remand the case to the Board of Education of the City of Paterson for a new trial.

POINT IV.

That the matters set forth in the complaint dated October 9, 1934, are cognizable if at all in a court of civil jurisdiction only.

The matter set forth in the charges preferred by the Guiana Realty Corporation concerns purely a private transaction between Clara L. Smith and the said corporation. The Department of Public Instruction of the City of Paterson had no interest therein.

There are no allegations in the charges and there was no proof adduced at the trial which connect any of the alleged indiscretions of the Prosecutor with the school system of the City of Paterson. There are no allegations and no proof was submitted whereby the school system of the City of Paterson or any person connected therewith or any pupil therein, was undermined by reason of the transaction between the Prosecutor and the Guiana Realty Corporation wherein the Prosecutor sought to and did borrow the sum of $500.00.

Peculiarly, in the proceeding in which the Prosecutor was previously found guilty of conduct unbecoming a teacher and for which she was illegally suspended and dismissed, the Board of Education of the City of Paterson was not even interested in pressing or prosecuting the same. Those charges were prosecuted by Harry G. Bragg, the

private counsel of the Guiana Realty Corporation (p. 181, l. 35). The counsel to the Board of Education, in that proceeding was not directed to appear or participate in the proceedings in its behalf. This lack of interest of the Board of Education at that time is corroboration of the fact that the Board apparently considered the matter a private one only.

At the trial of this cause, there were present, John R. Wilson, Superintendent of the Schools of Paterson, Louis A. Bennert, Supervisor of Public Instruction, and Ralph Ritchie, Principal of the school wherein the Prosecutor was a teacher. Neither of these gentlemen lifted an accusing finger against the Prosecutor respecting her capabilities or integrity as a school teacher during any period of her experience as a teacher in Paterson (p. 187, ll. 15-25).

It is quite apparent that the object of the complaint was merely to enforce a private obligation due and owing by the Prosecutor to the Guiana Realty Corporation (p. 240, ll. 23-35). *The complainant in this matter, on numerous occasions has attempted to place the badge of criminality on the alleged indiscretions of the appellant. The results of the complainant's persistence and persecution in the criminal field have been nil* (pp. 285, 286, 287).

The evidence is clear and convincing and is supported by documentary evidence of the Court of General Sessions of the State of New York, that the Prosecutor was cleared by a jury of forgery relating to the same subject matter contained in the charges, and which was the basis of her dismissal (p. 285; p. 113, ll. 30-40; pp. 114, 115).

Two other indictments, one charging grand larceny (p. 287) and the other charging forgery

in the second degree, were dismissed on motion of the District Attorney of the State of New York with the consent of the Court of General Sessions (p. 286). *With these apparently groundless charges of fraud and grand larceny, the complainant in this cause again attempts to haunt the Prosecutor.*

With the criminal angle of this case absolutely eliminated by the Courts of competent jurisdiction of the State of New York, the only redress left to the complainant was to pursue its remedy for the collection of moneys due it in the civil courts.

Knowing that its claim against the Prosecutor was tainted with usury, the Guiana Realty Corporation was reluctant to resort to the Courts of civil jurisdiction and instead attempted to enforce its obligations by means of preferring charges before the Board of Education. The utter lack of relationship between these charges and the ability or integrity of the Prosecutor in the discharge of her duties as a school teacher in Paterson is ample reason for the reversal of the action heretofore taken by the local and State Board of Education and the Commissioner of Education.

The mere injudicious handling of business affairs by one not experienced in the ways of commerce is not sufficient to disqualify one in the conduct of her profession.

POINT V.

The Board of Education of Paterson, New Jersey, erred in finding the Prosecutor guilty of conduct unbecoming a teacher and in dismissing her from the public school system of the City of Paterson.

At the conclusion of the respondent's case and at the conclusion of the trial the prosecutor moved for a dismissal of the charges on the ground that no credible evidence or testimony was presented indicating that she was guilty of conduct unbecoming a teacher. These motions were both denied (pp. 183-192; p. 247, ll. 35-40; p. 248, ll. 1-37).

The *gravamen* of these charges is that Clara L. Smith perpetrated a fraud upon the Guiana Realty Corporation and induced it to lend her $500.00.

It is claimed that she forged the name of Lewis A. Bennert to a certain letter (Exhibit P-4, pp. 263-264). Of this there is no positive proof, the board relied purely on innuendo. There is no evidence in the case that Clara L. Smith placed the signature of Lewis A. Bennert on that letter. No handwriting experts attempted to connect Clara L. Smith with that letter (p. 170).

The further innuendo in this case is that the prosecutor forged the name of Benjamin Thomas on Exhibit P-5, p. 264, and once again there is no proof that Clara L. Smith signed the name of Benjamin Thomas or was in anywise connected with the placing of his name on that document. *But there was cogent proof in the case that a forgery was committed by William Sherrill of the Guiana Realty Corporation* (pp. 92-93).

The proof further indicates that William Sherrill took the acknowledgment of Benjamin Thomas (page 4 of Exhibit P-5, p. 264). This acknowledgment of Benjamin Thomas was taken by William Sherrill as Notary Public of New York on September 15th, 1932. This acknowledgment has been blotted out and was in that condition at the time of trial.

Attention is directed to the original exhibit now on file with the return to the writ in this court. An examination of this original exhibit would indicate that this acknowledgment was removed by typewritten interlineations. This document according to the evidence in the case has always been in control of the Guiana Realty Corporation. It is this type of evidence which the respondent relied upon as grounds for dismissal of the prosecutor from the school system of Paterson.

This man Sherrill who was a most reluctant and reticent witness (pp. 93-94-95) had been convicted of crime (p. 113, l. 10). His testimony was incredible. At another stage of the proceedings he again exhibited his reluctance to respond to questions propounded by the prosecutor's counsel. He was asked to write the name of Lewis A. Bennert which he refused to do. This refusal was concurred in by the Board of Education of the City of Paterson (p. 130, ll. 27-40; p. 131, ll. 13-20).

With the issue of forgery paramount in the case and strong evidence of forgery on the part of Sherrill appearing in the case, the refusal by the Board to order Sherrill to write the name of Lewis A. Bennert was tantamount to the suppression of material evidence. All of which was most prejudicial to the prosecutor.

It is difficult to understand in what manner the Guiana Realty Corporation was defrauded.

The mere non-payment of the balance due to the corporation is certainly not fraud. At the time the loan was negotiated the Guiana Realty Corporation in addition to the prosecutor's note in the sum of $500.00 demanded and received two additional co-makers and endorsers (Exhibit P-5, pp. 2-3). Furthermore the corporation was named the sole beneficiary under the prosecutor's pension fund and continued to be the sole beneficiary down to August 19, 1934 (p. 198, ll. 1-9; p. 105, ll. 27-40; p. 106, ll. 1-11, ll. 29-45; p. 107, ll. 1-15). That prior to being nominated as sole beneficiary in the said Pension Fund the mother of the prosecutor had been the sole beneficiary.

Throughout the criminal prosecutions in the State of New York against the prosecutor and through the previous trial before the local board of education, the sole beneficiary under that pension fund was still the Guiana Realty Corporation.

The withdrawal value of this fund when the Guiana Realty Corporation was named beneficiary, which was at the time the loan was negotiated, was $891.20.

That the purpose in naming the Guiana Realty Corporation sole beneficiary of her pension fund was to further secure the repayment of the loan.

The loan involved in this case amounted to the sum of $500.00, tainted to be sure, with usury (p. 196, ll. 1, 2). If the Guiana Realty Corporation claims to have been defrauded by the alleged Bennert letter, Exhibit P-4, or by Exhibit P-5, it must be remembered that the corporation subsequently accepted at divers times and in divers amounts sums totaling $154.00, which it credited on account of the loan (p. 116, ll. 10-20; p. 231, ll. 25-40).

No attempt was ever made to rescind the loan. The complainant was content to receive payments on account thereof from the prosecutor and all its dealings with the prosecutor are consistent with a waiver of the alleged indiscretions of the prosecutor.

Payments totaling $154.00 were made by the prosecutor on account of the loan after the check (Exhibit P-6), was issued to the Guiana Realty Corporation (p. 231, ll. 25-40). Furthermore, it is now interesting to note that the complainant has pyramided the amount due it from the prosecutor to a sum in excess of the original debt. The evidence on this point is most enlightening. The Guiana Realty Corporation claims that the prosecutor is now indebted to it in the sum of $639.20 (p. 116, ll. 39-42; p. 118).

In the case at bar the Board of Education of the City of Paterson closed its eyes to the record of acquittal of the prosecutor before a judge and jury of the Court of General Sessions of the State of New York. It closed its eyes to the dismissal of two other indictments against the prosecutor. All these three judgments of the New York State Courts involved the same subject matter as does the charges upon which the prosecutor was tried and upon which her dismissal as a teacher was based (pp. 285-287). The respondent also contended that the prosecutor defrauded the Guiana Realty Corporation by stating in Exhibit P-5 that she was not indebted to anyone other than a building and loan association. The testimony of William Sherrill is dispositive of this charge. At page 105, lines 7-13, Sherrill testified as follows:

> "Q. Mr. Sherrill, she did tell you she needed the money to pay obligations? A. Sure, sure.

Q. No question about that? A. Sure.

Q. She needed the money to pay obligations? A. Oh, yes, she told me that, yes."

It is apparent from the foregoing testimony that Sherrill and the Guiana Realty Corporation were well aware of the fact that the Prosecutor was indebted and needed the moneys to pay obligations. In corroboration of Sherrill's testimony the Prosecutor stated that the object in borrowing the money was to pay obligations, particularly obligations of her father (p. 217, ll. 33-42; p. 218, ll. 1-23; p. 223, ll. 1-15).

It is true that the Prosecutor is still indebted to the complainant, the exact amount of which is clearly in dispute. It is further true that the Prosecutor was unable to honor certain post-dated checks. This, as the evidence indicates, was because certain obligations and certain negotiable paper in the form of checks had been issued to her and which were in amounts more than sufficient to take care of the demands of the complainant, even at their worst, were dishonored (p. 198, ll. 30-41; p. 199).

It should also be remembered that in addition to the inexperience of the Prosecutor in matters commercial and her reliance upon her father's debtors to make good their obligations and in addition to her father's critical illness there was also present from the time the loan was negotiated and for a considerable period thereafter perhaps the most distressing economic conditions in the history of the country.

It will be recalled that during this period financiers of great experience were unable to cope with the existing emergencies. It was during this period that great industrial empires collapsed.

Despite the stress of the times and her circumstances the Prosecutor conducted herself as best as her limited experience would permit. The judgment of the Board of Education of the City of Paterson was stretched far beyond the proof adduced in the case, especially when the charges made had no relationship to the Prosecutor's record of efficiency, ability, integrity and good conduct during her fourteen years as a teacher in the public school system of Paterson.

POINT VI.

The complainant, Guiana Realty Corporation, was guilty of laches.

The complaint in this cause bears date the 9th of October, 1934. The alleged indiscretions of the appellant all took place September 15th, 1932. More than two years have elapsed. It is manifestly unfair to try a school teacher on charges relating to matters that have occurred over two years ago. This is particularly true in the case at bar because certain testimony and proof which might have been available to the appellant has, due to the lapse of time, been difficult to obtain.

POINT VII.

The Board of Education erred in rejecting very material and pertinent evidence.

During the course of the trial, the Board of Education refused to permit the appellant to ask certain questions, all of which were relevant, competent, and material to the issue involved. The failure of the Board to permit the evidence which the appellant sought to adduce, was clearly prejudicial to her cause. The Board refused to permit answers to the following questions, propounded to William Sherrill:

> "When was the last time the Guiana Realty Corporation held a meeting?" (Page 95, ll. 35-41).
>
> "Has the corporation still got a franchise, Mr. Sherrill?" (Page 96, l. 11 to p. 99, ll. 1-10).
>
> "Mr. Sherrill, as president of the Guiana Realty Corporation, can you tell us when the last annual report was submitted to the Secretary of the State of New York?" (Page 99, ll. 1-10 to p. 100, ll. 1-11).
>
> "Is the Guiana Realty Corporation licensed by the Banking Department of the State of New York?" (Page 100, ll. 18-40; p. 101, ll. 1-10).

The Board's rulings relative to the foregoing questions were appropriately challenged.

All of the foregoing questions were directed to the competency of the Guiana Realty Corporation to make the complaint in this cause. The object of these questions concerned the present

existence of the Guiana Realty Corporation. If the Guiana Realty Corporation had no valid existence at the time the charges were preferred or at the time of the trial, of necessity a complaint by it would have no valid inception. Yet, the Board refused to permit the foregoing questions, the object of which was so vital to the Prosecutor's cause. Furthermore, these questions involved the credibility of the witness, William Sherrill.

The Board also refused to permit the witness, William Sherrill, to answer the following question:

> "Mr. Sherrill, will you please write the name of Louis A. Bennert on that paper?" (Page 130, ll. 27-40; p. 131, ll. 1-20.)

This ruling was also challenged in the appropriate manner. This question in view of the issue of fraud and forgery raised by the complainant, was very pertinent and material to the Prosecutor's cause. It involved the credibility of the witness, William Sherrill, and the failure of the Board to permit this question was tantamount to the suppression of evidence which would tend to prove the falsity of the complainant's charges and would expose the complainant and the witness, William Sherrill, in their true light.

The Board erred in refusing to grant counsel for the Prosecutor a continuation of the hearing, the purpose of which was to obtain testimony of one Cyril Wilson, teller in the Dunbar National Bank (p. 245, ll. 22-40; p. 247, ll. 1-35). This witness was most important; he was the only person who was in a position to know the truth as to what occurred at the Dunbar National Bank. His testimony would tend to disprove the charges made by the complainant. The failure of the Board to grant this request to the Prosecutor was highly prejudicial.

Before concluding, reference is hereby made to Section 11 of the Certiorari Act P. L. 1907, page 95; 1 C. S., pages 405, 406, which provides as follows:

> "In all cases of writs of certiorari now pending or hereafter brought to—review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county, or municipal from which he is removed only for cause and after trial, the Court *shall determine disputed questions of fact as well as of law. The Court may reverse or affirm in whole or in part, such—finding or determination, suspension, dismissal, retirement or reduction in rank reviewed.*"

In the light of the decision of *State, Hoxsey* vs. *Paterson, supra,* and *City of Passaic* vs. *Gross, supra,* to the effect that where a Writ of Certiorari was erroneously dismissed on final hearing, the Court of Errors will render such judgment as the Supreme Court should have given on the merits, the Court of Errors and Appeals would have the same rights as those possessed by the Supreme Court under Section 11 of the Certiorari Act, viz; "to determine disputed *questions of fact as well as of law* and to reverse or affirm in whole or in part such finding or determination, suspension, retirement or reduction in rank reviewed."

This right to review the law and the facts is not to be restrained by the results reached by the Commissioner of Education and by the State and Local Board of Education.

In the case of *Lazzio* vs. *Primo Silk Co.,* 114 N. J. L., 450 affirmed 115 N. J. L., 506 the following rule was enunciated:

"* * * We are unable to concur in the result reached by either the bureau or the Court of Common Pleas. And while we are not unmindful of the cases which hold that the result reached by two independent tribunals should not be lightly disturbed on appeal (Berlinger vs. Medal Silk Co., 113 N. J. L., 476), *nevertheless we do not regard that principle of law as a bar to our consideration of a given case particularly so if and when we conclude that the result reached merits and needs be disturbed. Section 11 of the Certiorari Act.* (1 Comp. Stat., 1910, p. 405, # 11)."

In reviewing the law and facts under Section 11 of the Certiorari Act in order to determine whether to "reverse or affirm in *whole* or in *part*" the finding and determination resulting in the dismissal of the Prosecutor as a teacher in the public schools of Paterson, this Court has the rights and should consider the penalty imposed upon the Prosecutor.

The right to consider the effect of the judgment imposed upon the Prosecutor and to reverse or affirm the same in whole or in part under the above statute may be likened unto the supervisory power which the Supreme Court exercises in proceedings to discipline a member of the bar.

A careful examination and consideration of the record in the case at bar and of the weight of evidence contained therein, in accordance with the foregoing statute, it is respectfully submitted, will not warrant this Court in sustaining the dismissal of the prosecutor as a teacher in the public school system of the City of Paterson.

Louis Dworetz,
Attorney for Prosecutor-Appellant.

Paul Rittenberg,
Of Counsel.

HUDSON DISPATCH PRINTERS, UNION CITY, N. J.

10 FEB.T.1938

New Jersey Court of Errors and Appeals

CLARA L. SMITH, Prosecutor-Appellant, vs. MAY M. CARTY, AGNES CROMWELL, Marie Hilson Katzenbach, Daniel H. Moreau, Oscar W. Jeffery, Joseph Mott, D. Stewart Craven, Lyman F. Morehouse, Gustav A. Hunziker, Marou Brown Little, Charles H. Elliott, Secretary, Commissioners of the State Board of Education of the State of New Jersey, Respondents-Appellees.	On Appeal from New Jersey Supreme Court.

BRIEF OF RESPONDENTS-APPELLEES.

NOTE: It is respectfully called to the attention of the Court that throughout this brief the Board of Education of the City of Paterson in the County of Passaic is referred to as the Respondent.

Statement of Facts.

This appeal brings up for review a judgment of the New Jersey Supreme Court dismissing the Writ of Certiorari, in a Per Curiam opinion filed December 15th, 1936.

Prosecutor-Appellant, a school teacher in the public school system in Paterson, was dismissed

by the Board of Education on May 10th, 1934, following a hearing on charges of conduct unbecoming a teacher in that she secured a loan from a financial corporation through misrepresentation and fraud which made her irresponsible and morally unfit to teach school. She appealed to the Commissioner of Education who held that her dismissal was illegal on the ground that one of the Board members, who participated in the decision of her case, was absent during part of the trial.

The Commissioner did not pass on or determine the other grounds urged relating to the merits of the case, and directed that she be reinstated but refrained from remanding the case for further proceedings, leaving it to the Board to determine its future course of action.

The teacher was promptly reinstated by the Board but on the day of her reinstatement, October 11th, 1934, a new charge embodying the same complaints, was received by the Board of Education, preferred by the same complainant. She was forthwith suspended, re-tried and again found guilty and dismissed by unanimous decision of the Board.

Prosecutor again appealed to the Commissioner of Education who on February 8th, 1935, affirmed the dismissal. Prosecutor then appealed the decision of the Commissioner to the State Board of Education, and on July 20th, 1935, the State Board affirmed the decision of the Commissioner and concluded its opinion in the following language:

> "The Appellant (prosecutor) having received a fair trial and it not appearing that the decision of the Board was contrary to the evidence, we find, in accordance with the rule several times announced by this Board

under similar circumstances that the Commissioner's decision was right, and recommend that it be affirmed."

Appellant, being still dissatisfied with the rulings of both these tribunals, applied for and secured on the 19th day of December 1935, a Writ of Certiorari from the Honorable HARRY HEHER, Justice of the New Jersey Supreme Court.

Subsequent to the decision of the State Board of Education, namely, on November 25th, 1935, Appellant made formal application on a special form specifically provided for that purpose to the New Jersey State Teachers' Pension and Annuity Fund for the withdrawal of her entire accumulated contributions in the Fund.

This application set forth that she had been dismissed from the service and that she was not under contract for further service as a teacher in the public school system in New Jersey.

On or about December 9th, 1935, the Pension Fund acted favorably on this application, acknowledged her representation that she was in fact no longer under contract for further service as a teacher, and remitted to her in full her accumulated savings in this Fund.

These acts were committed by the Appellant prior to her application for the Writ of Certiorari and were not disclosed to the Honorable Justice HARRY HEHER, who allowed the Writ in her petition or affidavits that accompanied her application.

The Respondent, upon learning of the withdrawal by the Appellant of her accumulated savings in the Teachers' Pension and Annuity Fund, applied to Mr. Justice HEHER to amend the return to the Writ by including these pertinent matters in order to afford Respondent an oppo-

tunity to move for the quashing of the Writ and a dismissal of the Allocatur.

This application was denied without prejudice. Respondent presented to the Supreme Court at the May Term 1936, a motion to dismiss the Writ on the grounds that the Prosecutor abandoned her position prior to her application for the Writ of Certiorari by the withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund, and on the grounds that the Prosecutor acquiesced in her dismissal by her withdrawal of her total accumulated savings in the Teachers' Pension and Annuity Fund, and on the further grounds that she resigned as a school teacher when she retired from the Teachers' Pension and Annuity Fund, withdrawing her savings therefrom.

This Motion, No. 240, of the May Term, 1936, of the New Jersey Supreme Court, was supported by affidavits, and was resisted by the Appellant by affidavit. Following the argument on the motion to dismiss the Writ, the Court sustained Respondent's contention and ruled that the Prosecutor-Appellant, by withdrawing her accumulated savings in the Pension Fund and failing to contribute to it for the period intervening between her dismissal and the issuance of the Writ of Certiorari, automatically ceased to be a teacher in the public schools of the City of Paterson.

The Court in part said (S. C., p. 340)

> "The result we reach is that by drawing her proportion of the Fund and failing to contribute to it for the period intervening between her dismissal and the application for the Writ of Certiorari, she automatically ceased to be a teacher in the public

> schools of the City, that she consequently is without standing as a teacher by failure of her own act, and this makes it unnecessary to consider the sufficiency of the action taken leading to her dismissal."

The Appellant, Clara L. Smith, is still dissatisfied with the ruling of all of these tribunals, and presents this appeal, repeating practically *verbatim* the arguments heretofore advanced to no avail regarding the merits of her dismissal, and repeating in practically all respects the arguments advanced before the Supreme Court in reply to Respondent's motion to quash the Writ of Certiorari and dismiss the Allocatur.

The Respondent respectfully urges that the arguments advanced by the Appellant are lacking in merit and the appeal should be dismissed for any or all of the following reasons:

POINT I.

The Supreme Court did not err in dismissing the Writ of Certiorari.

The Prosecutor-Appellant, by her failure to contribute to the Teachers' Pension and Annuity Fund between her dismissal and the application for the Writ of Certiorari, and by her withdrawal of her accumulated contributions in the Fund, acquiesced in her dismissal and abandoned her position, and ceased to be a teacher in the public schools of the City.

When the Appellant applied for the Writ of Certiorari, she must of necessity have assumed the position and contention that her conviction and the dismissal was illegal and unwarranted, and consequently, that she did not regard herself as being out of the school system of the City of Paterson, but that she was being unlawfully deprived of her position as a teacher.

That being so, she was required to consistently maintain this position and attitude and thus abide by all of the responsibilities and requirements imposed upon all other teachers in the system, and to which they were all subjected equally. In other words, the Appellant was subject to the same mandatory requirements as all other school teachers.

Section 249, *Paragraph* 2, *page* 161, *Chapter* 80, *of the Pamphlet Laws of* 1919, provides.

> "All persons who became teachers after the 1st day of September, 1919, and whose appointment is made subsequent to the passage of this Act, shall become members of

> the Retirement System by virtue of their appointments as teachers."

In this same Act, *Section* 251, *Paragraph* 11, *page* 170, it is provided that:

> "A contributor who withdraws from the service or ceases to be a teacher for any cause other than death or retirement, shall be paid on demand the accumulated deductions standing to the credit of his individual account in the annuity savings fund."

This paragraph of the statute is printed *verbatim* on the withdrawal application (S. C., p. 309) which prosecutor executed on November 25th, 1935, and on this same application following this quotation from the statute appears the following paragraph:

> "It is to be noted that application may not be made for the return of accumulated contributions until the member has resigned his position and is not under contract for services in the public schools of New Jersey."

Section 249, *Paragraph* 2, *of Chapter* 80, *of the Pamphlet Laws of* 1919, specifically compels all teachers under contract to be members in this Fund during the entire contractual period. A teacher cannot hold herself out to be a teacher in active service unless she is a member of the Fund, and it is in fact definitely stated that no withdrawal of the acccumulated contributions is permitted unless the member has resigned and is not under contract for services in the public schools of New Jersey. It further provides that withdrawal from the Fund automatically acts as a withdrawal or a rescission of her teaching contract. In fact, membership in the Pension Fund

is an integral part of the contract of employment with the school system. So much so, that a severance of one automatically acts as a severance of the other.

This proposition was definitely and unequivocally stated in the case of *Allen* v. *Board of Education of Passaic,* 81 N. J. L., page 135, affirmed by the Court of Errors and Appeals in 84 N. J. L. page 402. This was an action brought by a teacher under contract with the City of Passaic to resist deductions of contributions from her salary to the Teachers' Pension Fund made by the Board of Education of the City of Passaic. This action was predicated on a statute earlier than the Act of 1919 upon which the respondent now relies but the provisions with reference to membership are identical. In discussing the statute the Court said:

> "The Statute was in force when the contract between the plaintiff and the defendant was entered into and *it formed a part of such contract and was one of the terms of employment of the plaintiff*"
>
> " * * * It was a public scheme designated for the betterment of a branch of the service. It was offered to persons seeking and desirous of becoming teachers, who were at liberty at their option to accept such positions subject to the terms of the Statute, or to refuse them. If they did accept then the provisions of the Act became by such acceptance binding upon them."

It is today well settled that membership of governmental employees in so-called retirement pension funds is compulsory and not voluntary as the prosecutor must contend in order to justify her action in retiring from the Fund. In *Bennett* v. *Lee,* 104 N. J. L., 453, in ruling on a question involving membership in the Pension Fund for Po-

licemen and Firemen (which operates substantially similarly to the Teachers' Pension Fund insofar as this argument is concerned) the Court said, quoting from page 456:

> "But the contribution made by Bennett to the pension fund established pursuant to the Act of 1905 was not a voluntary contribution."

Further on the same page:

> "The assessment authorized by the Statute operated against all of the members of the department, whether they gave their assent or not."
>
> "It is seen, therefore, that Bennett's contribution to the Pension Fund was a compulsory contribution, and not one that he elected to make on a specified condition." Citing *Barnett* v. *Pension Commission,* 100 N. J. L., 473.

By retiring from the fund the prosecutor defeats the very purpose which motivated the Legislature in creating the fund. That motive is very clearly stated by Justice HEHER in *Plunkett* v. *Board of Pension Commissioners of the City of Hoboken,* 113 N. J. L. 230, wherein he uses the following language:

> "It is not incumbent upon a municipality, or other division of government, to establish a system of pensions. It is rather a question of public policy. The pensioning of civil servants, as well as those in private employment, is designed primarily to attain a high standard of service at a relatively low wage cost. A basic consideration is that a guaranty against want, when the years of productivity have ended, will heighten the morale of the workers and enhance the quality of the service rendered. And that being so, it goes without saying

> that one of its fundamental purposes is to secure good behavior and the maintenance of reasonable standards of discipline during service."

In the *Plunkett* case above mentioned Justice HEHER defines "retirement" as "connoting membership surrendered or lost at the instant it becomes effective". That being so the prosecutor by retiring from the fund surrendered membership at the time it became effective which in this case was December 9th, 1935, the date she received and accepted payment. And since membership in the fund is co-existent with membership in a school system it necessarily follows that the prosecutor simultaneously surrendered membership in the teaching system of Paterson.

The Appellant had the alternative of either refusing to acknowledge her conviction and dismissal by reason of her allegations of illegal conviction and in this posture of affairs to have continued to carry out all of the statutory requirements imposed upon her as a teacher, or to recognize her dismissal either openly or in some disguised form by either action or words. She elected the latter course by abrogating one of the integral parts of her teaching contract and thereby abandoned her position as a teacher.

An examination of the reported cases in our State fails to disclose whether this identical proposition was ever presented to this Court for determination. However, if this Court is disposed to be guided by the decision of an administrative body this very issue was passed upon by our State Board of Education as recently as December 7th, 1935, in the case of *George R. Good, appellant,* v. *Union Township Board of Education* (a written opinion is on file with the Secre-

tary of the State Board of Education). The ruling on this point in this case is as follows:

> *"It further appeared by the evidence offered before the Commissioner that on September 11th, almost immediately after his dismissal, appellant withdrew all moneys standing to his credit in the Teachers' Pension and Annuity Fund. Inasmuch as such money may only be withdrawn when the teacher is no longer in service, it would seem appellant acquiesced in his dismissal. In his application for withdrawal of the money he states he was dismissed from his position of principal and is not under contract for further service in the public schools of New Jersey, and that such service terminated in September, 1934. These facts are fatal to the appeal."*

It will be seen that the State Board met this problem decisively and unequivocally and respondent suggests that the logic here used should appeal to this Court.

Respondent further urges that before the prosecutor can obtain relief from this Court she must have complied with all the statutory requirements of her contract.

In the case of *State, Morris Sharp, prosecutor,* v. *George A. Apgar, Collector of Clinton,* 38 N. J. L., page 258, a Writ of Certiorari was dismissed because the prosecutor failed to comply with one of the provisions of the statute which requires an appellant in a tax assessment suit to submit to an examination under oath before Town Assessors. Not having done so the Court refused relief by certiorari and so in the instant case prosecutor's failure to comply with one of the provisions of the Statute requiring her membership in the Teachers' Pension and Annuity Fund is fatal to the successful prosecution of this ap-

peal. To this day, Prosecutor has failed to comply with this essential requirement.

It is true that the Statute provides that the teachers' contribution to the Fund is to be deducted from her salary, but *Appellant is estopped* from excusing her failure to make the contributions, because she was not receiving her salary. Her failure to receive her salary was caused by her own acts and she stood then and stands now as having been legally dismissed from her employment as a school teacher in the City of Paterson. To support her contention of an illegal dismissal she was required to follow the same procedure as is required of all teachers regularly employed in the system, to wit: to make periodic contributions to the Teachers' Pension and Annuity Fund for the period that intervened between her dismissal and the application for the Writ of Certiorari. *Having been responsible for the action which culminated in her present predicament, she is barred and estopped from setting up a defense that it was the Board of Education and not she, who was responsible for the discontinuance of her salary and the consequent failure to deduct from her salary for contributions to the Pension Fund.* The Supreme Court apparently invoked this doctrine because in its decision it states that,

> "She (the prosecutor) consequently is without standing as a teacher by virtue of her own act * * *". (S. C., p. 340, l. 16).

Appellant would have the Court determine that the Supreme Court erred when it found that she failed to contribute to the Pension Fund by reason of her own acts, and would have this Court rule that it was the acts of the Respondent that caused this failure, overlooking the controlling

fact that it was Appellant's own conduct which caused her dismissal in the first instance.

The Statute very definitely sets forth that all teachers must be members of the Retirement System, and if Appellant is to be permitted to withdraw her accumulated savings and is then subsequently reinstated, she would have achieved an end denied every other teacher in the State of New Jersey who conducts herself with propriety. The Appellant would secure the accumulation of her pension savings over a period of fourteen years and would then upon reinstatement be a teacher in the public school system of fourteen years' standing, with no accumulated savings in the Retirement System, a situation most inequitable to every contributor to the Fund. A teacher illegally dismissed would actually profit by a mistake of a Board of Education because such teacher involved in charges of unbecoming conduct and engaged in hearings thereon could obtain her entire accumulated savings in bulk, whereas the teacher who conducts herself with propriety and who is above suspicion would not be able so to do. The dead end to which this logic inevitably leads us, makes further comment unnecessary.

The Supreme Court based its decision in dismissing the Writ of Certiorari upon two main grounds irrespective of the merits of the case. First, the Prosecutor failed to continue to make contributions to the Fund and secondly, she withdrew her accumulated savings in the Fund. Respondent reiterates that both grounds are tenable and meritorious. *Even if this Court were to assume the false premise urged by the Prosecutor that the dismissal was illegal the ultimate verdict on this point would still be the same.* Prosecutor argues that the conviction being illegal, it follows that her dismissal was unwarranted, the with-

holding of her salary was illegal and consequently she cannot be penalized by reason of her failure to make contributions to a fund from a salary which is illegally withheld from her. However, this argument does not assail the other phase of the issue in that she affirmatively withdrew from the Fund by applying for and accepting the accumulated moneys. If she was not responsible for the illegal action of the Board of Education and if she contends that she had no control over this Board, she certainly cannot contend that she had no control over her subsequent conduct in affirmatively withdrawing from the Fund. It therefore follows that the second basis of the Supreme Court's decision would still be unassailable even if it were assumed that there was error in the first portion of the decision.

Appellant beclouds the issue, analogous to the present case, by referring to teachers on leaves of absence for a period of more than two years, for further study or illness. It is well settled and not open to argument that a granted leave of absence suspends contributions to the Pension Fund during that period and naturally, a two-year leave of absence and consequent failure to contribute to the Fund would not result in a cessation of membership in the Fund and a consequent resignation by operation of law from the school system. However, Respondent reasserts that a teacher, on a regularly granted leave of absence, who withdraws her accumulated savings in the Teachers' Pension and Annuity Fund during such leave of absence, would by such withdrawal have severed her connection with the school system, which would be tantamount to a resignation from the system.

Appellant discourses at great length and places strong reliance upon the decision in the case of

The Board of Education of Beach Haven v. *The State Board of Education,* 115 N. J. L. 364, to bolster her contention that there is no connection between membership in the Pension Fund and service in the school system. Respondent's answer is that this case has no relevancy to the issue involved and if anything, it serves to support its contention that membership in one is *ipso facto* membership in the other, and conversely, that retirement in the fund implies retirement from the school system. A short resume of the facts in the *Beach Haven* case is pertinent.

In the case cited, a teacher who had reached the age of 62 and who had not as yet acquired the age of 70, entered into a contract with the School Board of Beach Haven for the continuance of her employment for a period of one year, which contract contained a clause requiring either party to give to the other thirty days notice in writing before its termination. Under the provisions of the school law as amended by Chapter 87 of the Laws of 1929, retirement of a teacher becomes optional at the age of 62 at the instance of the teacher or of the employing Board, and compulsory at the age of 70. Before the termination of the contract and in complete disregard of the thirty day clause, the Beach Haven Board of Education, without concurrence by the teacher, made application to the Teachers' Pension Fund for retirement of the teacher from the Fund which application was granted. The teacher thereupon appealed to the Commissioner of Education and contended that "*the action of the Board in proceeding toward her retirement was a termination of her employment*". This argument is exactly the argument propounded by the Respondent in the instant case to which the Supreme Court subscribed and gave approval in dismissing the Writ

of Certiorari. In other words, the teacher in the *Beach Haven* case contended, as we contend, that when the trustees of the Pension Fund acted favorably upon the application of retirement from the Fund, her position as a teacher ceased simultaneously with her membership in the Fund.

This action by the Beach Haven Board of Education was sustained by the Commissioner but reversed by the State Board of Education and the State Board was further sustained by the Supreme Court, but merely because there was a violation of the thirty-day clause in the special contract of employment. Prosecutor in this case misconceives the effect of this decision and attempts to convey the thought that a reversal by the State Board of Education and the Supreme Court negatived the teacher's contention as herein set forth, which interpretation has no basis in fact or logic.

Prosecutor contends that her correspondence with the Teachers' Pension and Annuity Fund does not spell out an acceptance or acquiescence in the action of the School Board in dismissing her. The implication is that she was in some form or fashion induced to accept the accumulated moneys and that she had no alternative but to withdraw from the Fund. However, this is clearly contradictory to the entire tenor of this communication, because the letter clearly leaves her an alternative which required affirmative action on her part in order to correct the records of the Fund insofar as her status was concerned if she felt aggrieved or believed the record to be prejudicial to her. We quote verbatim the last paragraph from the communication, dated November 14, 1935.

> "A blank is enclosed on which you should make application for the return of your accumulated contributions, unless you are now under contract, in which case we would be

> pleased to be informed where you are employed and when your service began."

There can be no honest difference of opinion as to either the meaning of this paragraph or what was reasonably expected from the Prosecutor if she intended to deny that her "active membership in this Fund ended April 30th, 1933". Despite her protestations and explanations the fact remains that she did authorize the withdrawal of her accumulated funds and accepted them and in doing so she brought about an automatic resignation from her position.

The Appellant further refers in Point I of her brief, to an alleged conversation between her attorney and the Secretary of the Teachers' Pension and Annuity Fund, wherein the Secretary of the Fund advised Appellant's attorney "that a present withdrawal of the fund could in no wise affect her status since her active membership ended April 30th, 1933".

But Appellant fails to call the Court's attention to the following letter received by Appellant's attorney from the Secretary of the Teachers' Pension and Annuity Fund (S. C., page 310) under date of November 27th, 1935.

> "Receipt is acknowledged of your letter of November 25th, enclosing application for withdrawal for Miss Clara L. Smith.
>
> The second paragraph of your letter reads as follows: "In accordance with my conversation with you, Miss Smith's withdrawal from the Teachers' Pension and Annuity Fund will in no wise prejudice her case."
>
> Naturally I can give you and Miss Smith no assurance of what will or will not prejudice the Supreme Court in their decision on Miss Smith's appeal when it is before them. Our responsibility is limited to our interpretation of the Teachers' Pension and

> Annuity Fund Law in honoring this application for withdrawal."

This letter very definitely discloses that the Secretary of the Teachers' Pension and Annuity Fund did not assure Appellant or her counsel "that a present withdrawal of the Fund would in no wise affect her status since her active membership ended April 30th, 1933".

Appellant refers to paragraph 20, of the agreed state of facts and alleges that the Prosecutor at no time offered her resignation nor did the Respondent ever accept it. Prosecutor now attempts to twist this stipulation into a meaning never contemplated nor intended. Obviously this paragraph refers to a formal and customary resignation and the usual procedure in accepting the same.

The Respondent contends, and the Supreme Court affirmed the contention, that the Prosecutor had in effect resigned, not in the usual manner, but by *operation of law,* when she failed to continue to make contributions to the Pension Fund, and more particularly when she made application for and accepted the withdrawal of her accumulated contributions in the Fund, and therefore the cases referred to by counsel enunciating the principles involved in resignations, are not pertinent, the resignation in the instant case becoming effective by operation of law.

Appellant, in concluding her argument under Point I of her brief, directs the Court's attention to *Section 247 of the Teachers' Pension and Annuity Fund, sub-division 7,* and quotes as follows:

> "* * * In all cases of doubt the Board of Trustees shall determine whether any person is a teacher as defined in this article."

Appellant plucks this sentence from a section of the Act and attempts to use it in her support.

The Court will readily see in perusing this section of the Act that this statement cannot be construed in the manner suggested, but merely defines a "teacher" within the purview of the Teachers' Pension and Annuity Fund Act. This section is herewith quoted verbatim:

> "Teacher," which means any regular teacher, special teacher, helping teacher, teacher clerk, principal, vice principal, supervisor, supervising principal, director, superintendent, city superintendent, assistant city superintendent, county superintendent, state commissioner or assistant commissioner of education, and other member of the teaching or professional staff of any class, public school, high school, normal school, model school, training school, vocational school, truant reformatory school or parental school, and of any and all classes or schools within the State of New Jersey conducted under their order and superintendence, and wholly or partly at the expense of the State Board of Education, of a duly elected or appointed Board of Education, Board of school directors, or Board of Trustees of the State or of any school district or normal school district thereof, and any such person under contract or engagement to perform one or more of these functions; provided that no person shall be termed a teacher within the meaning of this article who is a substitute teacher or is a teacher not regularly engaged in performing one or more of these functions as a full time occupation outside of vacation periods. *In all cases of doubt the Board of Trustees shall determine whether any person is a teacher as defined in this article.*"

FOR THE REASONS HEREIN URGED, RESPONDENT RESPECTFULLY SUBMITS THAT THE JUDGMENT OF THE SUPREME COURT IN DISMISSING THE WRIT OF CERTIORARI, BE AFFIRMED.

POINT II.

The Board of Education had both jurisdiction and authority and was not estopped from renewing the charges by reason of the ruling of the Commissioner on the first appeal.

Prosecutor contends under Point III of her brief that the ruling of the Commissioner on the first appeal was a final disposition of the charges, and that, therefore, the Board of Education was precluded from re-trying her on a new complaint; in other words, that the Board of Education was estopped to renew the charges under the legal principle of *res adjudicata.* Despite the fact that this argument was advanced and argued at great length before the Commissioner at the retrial and also before the State Board of Education, which argument was rejected by both tribunals, and further sustained by the Supreme Court, it is again urged before this Court.

It is clear that this principle does not apply and cannot be invoked in this case. A mere reading of the decisions of the Commissioner (S. C., p. 288 & S. C., p. 40) and that of the State Board (S. C., p. 3) is dispositive of serious argument on this point repeatedly urged on behalf of the prosecutor of this writ.

To sustain the principle of *res adjudicata* three essential elements must be present; first, the action must be between the same parties; second, the action must cover the same subject-matter, and *third, there must have been a final decision of the action on the merits.* Respondent contends that the third essential is lacking in the case *sub judice.*

As pointed out in the Statement of Facts, the Commissioner in his decision at the first trial did

not undertake or attempt to pass on the merits of the case, namely, whether the prosecutor was guilty of conduct unbecoming a teacher. In fact, he specifically refrained from so doing, it not being necessary because he ruled favorably to the teacher on a technical question of procedure, namely, that the Board was guilty of violating a fundamental rule, "That a person who has not heard all the testimony in a given case occupies no legal status as arbiter or judge to adjudicate the cause." (S. C., p. 290, 26, *et seq.*)

A concurrence by the Commissioner in the contention of the prosecutor that this error was fatal to the verdict made a decision on the merits wholly unnecessary and in fact no such decision or determination was made by him. (Decision of First Trial, S. C., p. 288).

If there was any question concerning this feature of the decision in the first trial, it was entirely obliterated by the subsequent decision of the Commissioner, (S. C., p. 40) wherein he uses the following language:

> "Since in the former case *the Commissioner did not render a decision based upon its merits,* the legality of a re-trial is supported by the following: (quoting numerous authorities—S. C., p. 42, 16, *et seq.*)

Also in the same decision (S. C., p. 40, 38-*et seq.* and p. 41, 1-*et seq.*)

> "Miss Smith appealed for reinstatement to the Commissioner of Education, who, *without considering the merits of the case,* decided that her dismissal was illegal for the reason that she did not have a fair trial because one of the board members, who was absent on certain evenings during the trial, participated in adjudicating her case. In support thereof, the Commissioner cited

> Kelly v. Bishop, *et al.,* 119 Atlantic 6, and Eisberg v. Cliffside Park, 92 N. J. L. 321."

Thereafter, the State Board in its decision again ruled on this contention in the following language: (S. C., p. 3, 20-*et seq.*):

> "She appealed to the Commissioner who held that her dismissal was illegal because she did not have a fair trial, on the ground that one of the board members, who participated in the decision of her case, was absent during part of the trial. The Commissioner directed that she be reinstated, but did not remand the case for further proceedings, leaving it to the board to determine its future course of action."

Also at page 4, S. C., 23-30:

> "*It is fundamental that this principle applies only to judgments on the merits* and that decrees based on such technical reasons as that upon which the Commissioner's former decision was based do not stand in the way of prosecution of a new suit or proceeding on the same cause of action. The Commissioner so held and, in our opinion, correctly."

Prosecutor at length sets forth Section 10 of the School Law and recites the cases of *Thompson* v. *Board of Education,* 57 N. J. L. 628, *Draper* v. *Commissioner of Public Instruction,* 66 N. J. L., page 54, together with various other cases, for the purpose of substantiating her contention on the question of the Commissioner's right to decide cases such as the instant one upon the merits of the controversy.

Respondent does not now, nor has respondent ever disagreed or contended that it was without the province of the Commissioner to pass upon the

merits of the case. Respondent does not question the jurisdiction of the departmental tribunals and in fact acquiesced in the decision of the Commissioner of September 25, 1934 (S. C., p. 288). Having acquiesced and complied with the order, it neither sought nor was it compelled to seek a reversal of the decision of the Commissioner, nor to apply for a revision of the Commissioner's order.

Prosecutor in her brief recites:

> "The proceedings contemplated is not a strict review of matters of law only. The Commissioner is empowered under this Statute to re-determine the facts involved in any case that comes under his jurisdiction."

Prosecutor, however, maintains the position that inasmuch as the Commissioner is empowered to decide controversies on the merits, he is barred from deciding controversies on any technical grounds of procedure or errors in law, and once having decided, even though that decision is predicated on a technical or procedural question, that, *ipso facto,* he has also disposed of the fact issue, and the merits of the controversy.

When the Commissioner by his first decision (S. C., p. 288) *reversed the dismissal of the prosecutor, he particularly disclosed in the decision that no question upon the merits of the controversy had been adjudicated, and furthermore after prosecutor's re-trial when the second case was again presented to the same Commissioner, who had passed upon it originally, he particularly stated in his second decision* (S. C., p. 40) *that he did not pass upon the merits of the controversy in the first instance, and who is in a better position to know and to advise this court whether the first decision was*

based upon the merits of the controversy or not, than the very court which created the decision.

The prosecutor quotes from Vol. 15, Standard Encyclopedia of Procedure, and refers in addition thereto to the case of *Jayson* v. *Pennsylvania Railroad Co.,* 101 N. J. L. 159, but the law as set forth in these citations is in your respondent's belief not analogous to the present case because throughout the situations explained therein it is predicated on the question of a decision on the merits, which was wholly lacking in that case and which was never had in the case *sub judice.*

Prosecutor argues that it was respondent's legal duty to appeal the first decision of the Commissioner, or that it was obligatory to secure a remand or remolding of the decision, but respondent contends that an appeal or a remold would only have been necessary had respondent disagreed or taken issue with the decision of the Commissioner.

Respondent, however, was satisfied that the Commissioner's decision was a correct interpretation of the law applicable to the case in its posture, as of that time, and that the Board of Education of the City of Paterson had erred in law when they permitted a member of the Board to participate in the decision who had not heard all of the evidence, and therefore acquiesced in and accepted the Commissioner's ruling and carried out the orders embraced therein.

Respondent submits that in the case of *Jayson* v. *The Pennsylvania Railroad Company,* supra, set forth in the prosecutor's brief, that the judgment of the Court would have been to the same effect if the court had merely said "The judgment of the Supreme Court is accordingly reversed" and omitted the sentence immediately following, to wit: "The case will be remitted to the

Workmen's Compensation Bureau to be heard upon its merits." Respondent submits that this latter sentence is directory in its character and it became mandatory with the Compensation Bureau, for it to proceed to take additional testimony so that a decision on the merits would be possible. But, in the absence of this concluding sentence in the opinion, the decision still made it permissible for the Compensation Court, if it deemed it necessary or advisable, to either take additional testimony or to retry the case *de novo*. In other words, the Bureau retained the authority to retry, without a specific remand order in the decision. This parallel can be superimposed on the instant case, and the main bulwark of the prosecutor's contention tends to clarify the argument of the respondent.

In further support of respondent's contention on this point, it refers to the case of *Smith and Bennett, plaintiff-in-error, and State of New Jersey, defendant-in-error,* 41 N. J. L., page 370. This was on an appeal to the Court of Errors and Appeals from a conviction for murder. For errors found in the charge of the trial judge the case was reversed and the judgment of reversal rendered by Chief Justice Beasley. Justice Dalrymple and Justice Van Syckel filed separate opinions concurring in the reversal but on other grounds. All three of these opinions recite that the Justices "vote to reverse the judgment contained in this record." Nowhere in these opinions does there appear a remand or an order for a *venire de novo*.

The entry made in the minutes of the court, however, was to the effect that the judgment was reversed and a *venire de novo* directed to be issued. The plaintiffs-in-error applied to the Court of Errors and Appeals (41 N. J. L., p. 598) on a motion to amend the entry, requesting that an or-

der be entered to vacate the directing of the *venire de novo* because no reference was made to it in the opinion handed down in the cause, and that the order for the new jury process was through inadvertence improperly embraced in the minutes.

Chief Justice Beasley delivered a lengthy and comprehensive decision on the question and traced the propositions of law therein involved. The court said at page 615:

> "*No one can believe that it was the statutory design that if the prisoner after conviction could show that the judge involuntarily fell into error in any part of the trial, the consequences was to be that he was to be entirely absolved of his crime insofar as human justice was concerned.* It has already been said and endeavored to be shown that the rule forbidding in criminal cases a repetition of the prisoner's jeopardy was intended to be his shield against the persecution or molestation of the government and *to apply, therefore a rule having such a purpose to an instance where the prisoner has suffered from an unintentional mistake of the judge presiding at his trial, would be altogether irrational.* The government does not warrant to him the infallibility of its judges any more than it insures his own health or the health of the jurors to whom he is given in charge, and therefore he cannot complain that his trial has proved abortive by reason of the accident of the former falling into error or the accident of the latter falling into illness."
>
> "* * * A second trial is not interdicted when the first trial has proved abortive by reason of the mistake or misconduct of the judge or jury or from accident, but only in the one case where the trial has resulted in an acquittal."

Corpus Juris, Vol. 34, Paragraph 1210, page 793, reads in part as follows:

> *"A judgment dismissing a suit on account of any technical defect, irregularity or informality is not on the merits and is therefore no bar to subsequent action."*

Corpus Juris, Vol. 34, paragraph 1501, at page 1063, reads:

> *"Since a former judgment between the same parties does not bar a second suit upon the same cause of action unless it was rendered on the merits,* a plea of former adjudication must distinctly show that such former judgment was on the merits."

At page 899, Paragraph 1309:

> *"A judgment of reversal which does not purport to be final or to pass upon the merits of the controversy, does not operate as res adjudicata."*

Prosecutor contends that Commissioner's failure to include a remanding order will bar the bringing of a new suit, and in support of this contention appellant cites cases from Missouri, New York, and Illinois, which skirt the border, but are nevertheless distant from the issue, and totally disregards the decisions of our State, which should be particularly applied and which fully support respondent's position in this case.

One of the leading cases in the State of New Jersey relative to the question of *res adjudicata,* and particularly setting forth therein the failure of the Appellate Tribunal to include a "A remand" or "without prejudice" or words to this effect in the opinion (which cites with approval several New Jersey cases and citations from the leading text books on this point) is *Henninger, et*

al. v. *Heald, et al.,* 51 N. J. Eq., page 74, in which Vice Chancellor BIRD said:

> "Among the various causes assigned for demurrer to the appeal of the complaint in this cause, one is that the former appeal involving the same issues had been filed and had been dismissed without adding the saving clause 'without prejudice' * * * *'In order that the judgment may constitute a bar to another suit it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases and must be determined on these merits. If the first suit was dismissed for defect of pleadings or parties or a misconception of the form of proceedings or the want of jurisdiction, or so disposed of on any ground which did not go into the merits of the action, the judgment rendered will prove no bar to another suit'* * *
>
> "When an appeal is dismissed and the court intends to protect the complainant against an estoppel, it usually adds to its decree that it shall be without prejudice. *But I cannot conceive for a moment that the absence of these words is a bar to all future consideration of the equitable rights of the parties.*"

Also to this effect *Hughes* v. *United States,* 4 Wall. 232; *Bigelow* v. *Windsor,* 1 Gray, 301; *Wells res adjudicata,* paragraph 455.

In the case of *George Freudenreich, prosecutor-respondent* v. *Mayor and Council of the Borough of Fairview, defendant-appellant,* 114 N. J. L. 290, which case was decided as recently as January, 1935, Chief Justice BROGAN rendering the opinion of the Court of Errors and Appeals, at page 292, said,

> "*Since there is nothing in the record to*

indicate that the reversal of the dismissal was based on a fact determination by the Supreme Court, we must perforce consider the legal reasons that were filed in support of the prosecutor's position. They resolve themselves into two questions. The first was to the effect that the charges for unbecoming conduct could not lawfully be prosecuted against the officer since he has been acquitted in the bastardy proceedings, and therefore the matter was *res judicata.* Obviously it was not. *The doctrine of res judicata is plain and intelligible and amounts simply to this, that a cause of action once finally determined without appeal between the parties on the merits, by a competent tribunal, cannot afterwards be litigated by a new proceeding either before the same or any other tribunal.''*

It is thus contended by resepondent that the reversal by the Commissioner was not a final determination on the merits, but was a reversal on a technical question of procedure, which did not go to the merits and thereby placed appellant and respondent back in *status quo,* and furthermore the judgment of the Board of Education of the City of Paterson of May 10th, 1934 was not a judgment in fact; it was rendered by a tribunal, improperly constituted, and prosecutor's position remained the same as though no trial had been held.

POINT III.

The matters set forth in the complaint dated October 9th, 1934 constitute conduct unbecoming a teacher and is cognizable before the departmental tribunal.

Prosecutor in Point IV of her brief submits that the matter involved between the complainant and the prosecutor was a civil matter *and can only be adjudicated in a civil court,* but respondent contends that appellant was guilty of misrepresentation, fraud, forgery, and the uttering of forged instruments, and respondent concluded from the evidence adduced before the Board of Education of the City of Paterson that *the charges complained of were true in fact,* and that *appellant was guilty of conduct unbecoming a teacher. Conduct unbecoming a teacher is not cognizable in a court of civil jurisdiction.*

Prosecutor alludes to the failure of the Superintendent of Schools of Paterson, the Supervisor of Public Instruction, and to the Principal of the school, to testify against the prosecutor, and also to the fact that an independent counsel appeared before the Board. Respondent in reply calls to the court's attention the fact that the Board of Education of the City of Paterson sat as a board of inquiry to determine if the acts complained of by the complainant constituted conduct unbecoming a teacher. The Superintendent and other members of the department were not personally acquainted with the acts of the prosecutor in the transaction complained of, *nor was the Board of Education of the City of Paterson the complainant against the prosecutor,* and were in fact totally disinterested in the subject matter of the com-

plaint other than to determine if prosecutor by her actions was guilty of unbecoming conduct, and not until the inquiry was completed was this question a matter of concern to the local Board.

The courts of our State have on numerous occasions disposed of the question concerning a trial for unbecoming conduct of civil officers and municipal employees, wherein the same officers were previously acquitted on indictments embracing the same subject matter in our criminal courts.

In the case of *John Beggans, Director of Public Safety of the City of Jersey City, et al., prosecutors* v. *Civil Service Commissioners, defendant,* 10 N. J. Misc. page 1142, one Thomas Hurley, a police officer of the City of Jersey City, was indicted and brought to trial for rape, and upon which charge he was acquitted. He was also tried before the Police Commissioner on charges of conduct unbecoming an officer, based on the same complaint, upon which the indictment was found. He was found guilty and dismissed from the police force. He filed an appeal to the Civil Service Commission and an order was made directing his reinstatement based upon the fact that his acquittal in the criminal courts prevented his dismissal on charges of conduct unbecoming an officer arising out of the same transaction. This action was brought before the Court on a certiorari, wherein the court said at page 1144,

> "*Nor do we think that the acquittal disposed of the charges so that they may not be used as grounds for dismissal.* We think the proceedings were entirely independent. The charge was conduct unbecoming an officer touching an assault upon Mrs. M. There might have been an assault which would amount to conduct unbecoming an officer, but which does not constitute rape. *The evi-*

> *dence might have been insufficient to convince a jury beyond a reasonable doubt of the guilt of the accused of the crime of rape, but still have clearly indicated the officer's guilt of unbecoming conduct justifying dismissal. We think the acquittal was not a bar to the dismissal proceedings.''*

This case except for the difference involved in the criminal charges is identical with the situation in the instant case. *Prosecutor's acquittal in New York on a criminal charge, was not dispositive of the charges presented to the Board of Education of the City of Paterson for conduct unbecoming a teacher, and the local Board was in nowise precluded from hearing the charges and deciding them.*

In the case of *George Freudenreich, prosecutor-respondent* v. *Mayor and Council of the Borough of Fairview, defendant-appellant,* supra, the respondent, a police officer, was charged with conduct unbecoming an officer, in that he carried on an illicit relationship with one J. L., an unmarried woman, as a result of which an illegitimate child was born. Some months prior to being tried on these charges before the governing body, he had been prosecuted and acquitted in the criminal court of Bergen County in a bastardy proceeding that arose out of the same alleged illicit relationship. On the charges prosecuted before the governing body he was found guilty and dismissed from the police department. The court said:

> ''They resolve themselves into two questions. *The first was to the effect that the charges for unbecoming conduct could not lawfully be prosecuted against the officer since he had been acquitted in the bastardy proceedings and therefore the matter was res judicata.* Obviously it was not. The

doctrine of *res judicata* is plain and intelligible and amounts simply to this, that a cause of action once finally determined without appeal between the parties on the merits by a competent tribunal, cannot afterwards be litigated by a new proceeding either before the same or any other tribunal.

"Where the matter is *res judicata* there must be a concurrence of four conditions: (1) identity in the thing sued for; (2) identity to the cause of action; (3) identity of persons and all parties to the action, and (4) identity to the quality in the persons for or against whom the claim is made. (Mershon v. Williams, 63 N. J. L. 398; Hoffmayer & Sons v. Trost, 93 N. J. L. 358; Smith v. Fischer Baking Company, 105 N. J. L. 567. Bouv. Dict. (3rd Rev.) 2910. *Here there was a dissimilarity of issues, different parties, the objects to be obtained equally diverse and proceedings entirely independent of each other. Clearly the doctrine of res judicata is not applicable.*"

Vol. 16 of Corpus Juris, Paragraph 484, page 283, says:

"The fact that a legislative body acquits a member of bribery after hearing the charges, will not prevent the member's conviction for bribery in a court of law."

In the case of *People* v. *Stillwell,* 81 Misc. 456, 1042 N. Y. S. 628, the court said:

"Complaint seems to be made that the conviction of the defendant is an encroachment by one independent department of the government upon the prerogatives of another. But there is no such encroachment. The defendant's counsel may be right in his claim that the determination of the senate is conclusive upon the question of the defendant's qualifications to sit in that body.

> That determination the courts have not sought to reverse or in anywise effect. But, in like manner, that determination in nowise touches the right and duty of the courts to proceed in the customary way to exercise their power by impeachment and conviction and imprisonment, if that is the suitable punishment, and if such imprisonment prevents the attendance of the senator at the sessions of the legislative body of which he has been found a fit member, that consequence is only an incident of the performance by one governmental department of its constitutional functions and is not an invasion of the powers of another department."

This case is identical with the situation presented in this case, except that the converse here applies, to wit, the acquittal by the court of law and conviction before the administrative body.

POINT IV.

The evidence was conclusive that appellant was guilty of conduct unbecoming a teacher and that the charges were true in fact.

Prosecutor argues that there was insufficient evidence to justify her dismissal, and that the conviction was against the clear weight of the evidence. An examination of the evidence leads clearly to the conclusion that the judgment, pronounced by the Board of Education and affirmed by both the Commissioner and the State Board of Education against the prosecutor, is fully supported by the preponderance of the creditable testimony in the case. And our decisions are uniform in holding that this is the scale of measurement to be applied in this sort of case.

The entire record before the court concerning the hearing upon the charges against the prosecutor, held October 18th and October 24th, 1934, discloses that overwhelming evidence was submitted to prove that the charges against the prosecutor were true in fact, and that the appellant was guilty of conduct unbecoming a teacher.

In support of the charges there appeared many disinterested witnesses. Particularly respondent refers to the testimony of Arthur Thien, Esq. (S. C., p. 134, *et seq.*) Mr. Thien, a vice president of the Dunbar National Bank of New York City, testified (S. C., p. 135, 10, *et seq.*) that prosecutor spent an hour with Mr. Sherrill and himself, and definitely stated that the so-called Bennert letter (Ex. P-4, S. C., p. 262), an admitted forgery, was handed from hand to hand and shown to him and his opinion requested regarding the advisability of lending prosecutor money on the strength of the recommendations and statements set forth in the letter. Mr. Thien further testified (S. C., p. 136, 1, *et seq.*) that he was present at the trial of the prosecutor in the criminal courts of New York and heard her testify to the effect that she had never seen him before, although she had spent an hour's time at the bank in his company, and also that she had testified in the first hearing before the Board of Education of the City of Paterson to a conversation with him.

Also in support of the charges there appeared Benjamin Thomas, Esq. (S. C., p. 148-151), a substantial business man of New York City, an admitted friend of the prosecutor, who testified that Exhibit P-5 (page 264, S. C.) was a forgery with respect to his signature appearing thereon as joint maker, endorser, and guarantor, and that although prosecutor was originally introduced by him to the complainant he had signed no papers, obliga-

tions or notes for the prosecutor except a letter of introduction (S. C., p. 150, 8, *et seq.*)

Also in support of the charges were John Walker (S. C., pp. 151-154), Miss Daisy Hawkins (S. C. pp. 154-158), Emanuel Sparks (S. C., pp. 158-162), all interested persons corroborating the allegations set forth in the complaint, and whose statements remained firm and convincing and were unshaken in any degree upon cross-examination.

Lewis A. Bennert, general supervisor of schools of the City of Paterson, testified (S. C., p. 170, 19, *et seq.*) that Exhibit P-4, page 262, written on the stationery of Public School No. 18, the school at which prosecutor was employed, was a forgery in signature, and that the contents of Exhibit P-4 had never been dictated by him.

Henry G. Bragg, an attorney of the City of New York, counsel for the complainant, testified (S. C., pp. 171-183) concerning a check marked Exhibit P-10 (S. C., p. 274) received from the prosecutor for the payment of prosecutor's obligation to the Guiana Realty Corporation.

In S. C., p. 172, lines 16-22, Bragg testified as follows:

> "Q. Did you deposit it for collection? A. I did.
>
> Q. And what happened? A. Why I think I paid a protest fee of a couple of dollars and I redeposited it once or twice.
>
> Q. And what happened after you redeposited it? A. It always came back."

The testimony of the appellant in her defense (S. C., pp. 193-239) was a tissue of lies and evasive replies, and her conduct and demeanor was such that no reasonable person could give any credence to her testimony. By her cross-examination (S. C., pp. 208-239) it was proven conclusive-

ly that the statements made by her in her application for the loan (Exhibit P-5, S. C., p. 264) were false in many respects, having concealed the fact that she was indebted to many individuals and business concerns, all with the intent to conceal these facts and thereby induce the Guiana Realty Corporation to lend her the sum of $500.00. No witnesses appeared to corroborate the prosecutor's story.

It is not the duty of an appellate tribunal to substitute its judgment for that of the tribunal that heard the evidence, but merely to weigh the testimony so that no one may be wrongfully convicted by reason of passion or prejudice, and even if the evidence were such that this court were to take a different view from that taken by the statutory tribunal, it is no ground for reversal.

This principle is firmly established. Our reports are replete with decisions which clearly state and restate the law applicable in such cases. The following are a few of the many typical cases.

In *Pearson* v. *Armstrong Cork Company,* 6 N. J. Misc. 976, the Supreme Court held at page 978,

> "Where two independent and distinct tribunals such as this have examined the facts and heard the testimony, we do not think that conclusion so urged should be lightly disturbed by this court upon a mere inspection of the written word, whether there is ample support in the testimony for the conclusions so urged, and we therefore are of the opinion that such conclusion should stand undisturbed."

In *Mountain Ice Co.* v. *Durkin,* 6 N. J. Misc. 1111, affirmed 105 N. J. L. 636, the Supreme Court cited wtih approval the aforementioned ruling in the *Pearson* case This principle was again re-

iterated in *Berman* v. *Levenstein,* 9 N. J. Misc. 379-380, and in *Phillips* v. *Federated Metal Corporation,* 12 N. J. Misc. 160.

In *Hoar* v. *Preiskel,* 3 N. J. Misc. 494, the court said:

> *"Where judgment of the trial court is fairly supported by the record, its findings of fact will not be disturbed by the appellate court."*
>
> *"* * * Even if it were advisable to urge a different conclusion, they will not review the testimony upon which a municipal officer was dismissed."*

In the case of *Joseph S. Martin, prosecutor* v. *Theodore H. Smith, et al., Civil Service Commissioners, respondents,* 100 N. J. L., page 50, Justice MINTURN in rendering the opinion for the Supreme Court said at page 52:

> *"But the settled rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusions of guilt or innocence, this Court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment.* If the judgment of the trial court can be fairly supported by the record, the duty of this court is at an end insofar as further investigation is concerned."

As recently as September, 1934, our Court of Errors and Appeals invoked this principle in *Berlinger* v. *Medal Silk Co.,* 113 N. J. L. 476. This was a workmen's compensation case wherein an award was given a petitioner by a Deputy Commissioner of Labor, which finding was sustained by the Common Pleas Court. Thereafter a writ was issued by the Supreme Court, which writ was subsequently dismissed on certiorari proceedings, the court holding that the case on these issues was

one of fact and there was a plentitude of testimony sufficient to fully justify the Commissioner's finding in this respect.

In *Reilly* v. *Mayor and Board of Aldermen, of Jersey City,* 64 N. J. L. 508, Mr. Justice GUMMERE, speaking for this court at page 510, said:

> "In reviewing the action of a Board of Police Commissioners this court will not weigh the evidence taken before them for the purpose of urging an independent conclusion on the question of guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational balance for the judgment against him. If it does, then no matter whether the evidence be weak or strong this court will not interfere." (Dodd v. Camden, 56 N. J. L. 258).

Other cases to the same effect are *Devault* v. *Camden,* 48 Id. 433, *Ayers* v. *Newark,* 49 Id. 170, *Cavanaugh* v. *Police Commissioners,* 59 Id. 412, *Alcutt* v. *Police Commissioners,* 66 Id. 173.

Again in *Herbert* v. *City of Atlantic City,* 87 N. J. L. 98, the court held that in reviewing the action of the Board of Commissioners upon the trial of a police officer, this court will not weigh the evidence taken before the Board, but will only consider such evidence to see whether it affords a rational basis for the judgment rendered.

In *Scott* v. *Payne Bros.,* 85 N. J. L. 446, on page 448, the court used the following language:

> "We find no legal error in the conclusion of the trial judge as to the measure of damage. The medical evidence was conflicting and that for the defendant is quite persuasive, but the judge had the right to attribute greater weight to the evidence for the plain-

tiff. *We cannot reverse merely because we might take a different view.*"

This court should address itself exclusively to an examination of the errors in law that are alleged to have supervened in the course of these proceedings. When it shall have responded to the question whether this prosecutor has been tried according to the modes and rules established by the laws of this State, its whole duty will have been performed, for to do more than this would be an intrusion upon that authority with which, by our laws, another tribunal has been invested.

POINT V.

The doctrine of laches is not controlling in the instant case.

Point VI in prosecutor's brief alleges that the respondent is guilty of *laches* and argues that this is sufficient cause for reversing three successive tribunals. It is apparent that the prosecutor either misconceives the doctrine or is "clinging to straws" in presenting this argument at this time when the record discloses that there might be greater merit to a contention that the respondent Board of Education of the City of Paterson had proceeded with undue haste in conducting both its inquiry into the charges and in prosecuting and defending all subsequent proceedings.

In fact, it was the prosecutor who contended at one point of the proceedings that fatal error was committed by the Board of Education of the City of Paterson in its refusal to grant an adjournment or continuance at one stage of the hearings in order to afford the prosecutor more time to de-

fend the complaints. Her position today is indeed an anomaly.

Before discussing the merits of this contention, respondent desires to point out that the prosecutor failed to allege or argue *laches* at the time of both the first and second hearings before the local Board of Education; the Petition of Appeal filed with the Commissioner on her behalf made no mention of it and the very first allegation on this score was made in her reply to the answer filed by the Board of Education with the Commissioner.

It is obvious that even if the facts proved the respondent guilty of *laches* (which it does not), and even if the doctrine were applicable in this case (which it is not) the prosecutor waived it by failing to allege it at the proper time and place.

A perusal of the record clearly discloses the following sequence of events. On September 15, 1932 the prosecutor perpetrated the fraud. On April 8, 1933, the respondent Board of Education of the City of Paterson received its first knowledge of this fraud by the filing of charges by the defrauded corporation. A trial was conducted on April 26, 1933, and continued on May 10, 1933, and by the decision the prosecutor was suspended until February 1, 1934.

On February 6, 1934, prosecutor applied for reinstatement and on May 10, 1934, because of her contuminous and unprofessional conduct, she was dismissed. Her dismissal was reversed and her reinstatement ordered on September 25, 1934, and on October 11, 1934 she was reinstated. On that very day new charges were filed against her with which she was served on October 13, 1934, and trial thereon was held on October 18 and October 24, 1934, at which time she was found guilty and dismissed.

Certainly, this sequence falls far short of show-

ing "undue delay" or "neglect to do a thing at the proper time." The longest lapse of time is from September 15, 1932, the date the fraud was perpetrated and April 8, 1933, on which date the charges were first made and the date when the Paterson Board of Education first became cognizant of the situation. This delay was occasioned by the prosecutor herself by her numerous promises of payment of a long past due obligation to the Guiana Realty Corporation, which filed the charges, and its reliance thereon.

Even if the Guiana Realty Corporation were guilty of undue delay in asserting its rights, that delay cannot be attributed to the respondent Board of Education because the doctrine of *laches* is applied only from the time the acts complained of are first brought to light of day. Just as soon as the respondent Board became aware of the fact that a teacher in its school system was guilty of such conduct which it, the Board, believed to be unbecoming to a teacher in its system, it proceeded with alacrity and expeditiously delved into the charges and disposed of them according to the manner specified by law. The respondent Board of Education has not been lacking in diligence at any stage of the proceedings.

POINT VI.

No prejudicial error was committed, warranting reversal, by the exclusion of evidence.

The questions rejected and complained of by prosecutor in Point VII of her brief were entirely irrelevant, incompetent and immaterial. They had no bearing on any question involved in the hearing and particularly upon the question of prosecutor's guilt or innocence of conduct unbecoming a teacher. The questions were not asked for the purpose of testing the witness' credibility and were improper and properly objected to, and the objections were properly sustained by the Board of Education.

Respondent further submits that even were the questions admissible in evidence, the failure to so admit them had no prejudicial effect upon the appellant.

The mere application of the rule as laid down in *Kargman* v. *Carlo,* 85 N. J. L. 632, effectively disposes of the contention under this point. *In the Kargman case, supra, it was held that no judgment will be reversed on the ground of the improper exclusion of evidence, unless, after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party.*

This rule of law was cited with approval in *Spence, respondent,* v. *Hutchinson, appellant,* 102 N. J. L. 131 and numerous cases thereafter, and this principle is too well grounded in our jurisprudence to require lengthly argument.

It is manifest that this rule of law is even more

cogent and controlling when it is considered that the principle enunciated in *Crane* v. *Jersey City*, 90 N. J. L. 109, is applicable in the instant case. *In the Crane case it was held that the admission of illegal testimony, in cases tried by a special tribunal, like the one whose proceedings we are considering, will not have the effect to invalidate the finding of the tribunal, so long as it appears that there is competent testimony in the case to support such finding.*

In the case of *Ichabod Ayers, prosecutor* v. *Board of Police Commissioners of Newark*, 49 N. J. L. 170, Mr. Justice SCUDDER, in rendering the opinion of the court, said:

> "*A fair trial does not mean that all formalities shall be observed that are used in the trial of criminals for minor offenses in courts or by magistrates.* The policeman under charges is not regarded by this statute as a criminal, but a public servant or agent whose efficiency and fitness for the discharge of his duties may be questioned at any time in the interests of the public, and *no mere forms tending to chicanery or delay rather than substantial justice should be regarded. The purpose of the law is to secure the services of reliable men to preserve the public peace, not to keep inefficient and litigious men in office until all the forms in criminal cases are observed and other ingenious objection answered.*"

To the same effect in *Reichenstein, prosecutor* v. *Benjamin F. Turner, et al., defendant*, 6 N. J. Misc. 382, and *Zober, prosecutor* v. *Benjamin F. Turner, et al., respondent*, 7 N. J. Misc. 171.

In the case of *Charles Capone, prosecutor* v. *The Union County Park Commission, et al., defendants*, 9 N. J. Misc. page 1105, the court said,

"In the instant case after the presentation of the testimony everybody retired from the room except the secretary of the commission and the attorney. The secretary testified in the depositions taken in the writ, that neither he nor the attorney took part in the discussion of the Commissioners. They were not asked any questions nor did they say anything. Later the Chief of Police was called into the meeting. It appears that from the depositions he was asked whether prosecutor would resign if asked to do so. This had nothing to do with the merits of the case against Capone."

"In Ayers v. Newark, 49 N. J. L. 170, and other cases, it has been held that a fair trial in the sense of this act does not mean a trial conducted with regard to all the formalities of a trial upon an indictment. It means a trial which insures the doing of substantial justice in the interests of the public. Prosecutor was not injured in the slightest by having the attorney and the secretary in the meeting when they did not take part in the discussion, or by having the Chief of Police asked a question which had nothing to do with the charges against prosecutor, or forming the conclusion of the Commissioners."

In the case of *Charles F. Brown, prosecutor* v. *The Board of Fire & Police Commissioners of City of Paterson, consisting of Theodore S. Sloan, et al., respondent,* 11 N. J. Misc. 943, Justice HEHER, in the opinion dismissing the writ, said

"Prosecutor urges in support of the 3rd point that he was deprived of a fair trial because of the presence of the said attorney and respondent board's clerk at the executive session of the Board held to consider the evidence and determine the matter. *A fair trial in such case does not mean a trial conducted with regard to all the for-*

> *malities of a trial upon an indictment. It means a trial which insures the doing of substantial justice."* (Ayers v. Newark, 49 N. J. L. 170; Capone v. Union City Park Commission, 9 N. J. Misc. 1105).

The matter before the Board of Education of the City of Paterson did not concern the corporate identity of the complainant, Guiana Realty Corporation; whether it had a franchise, when it filed an annual report with the Secretary of State, or whether it was licensed by the Banking Department of the State of New York. All that concerned the Board was the question directly in issue in the proceedings, to wit: was prosecutor guilty of conduct unbecoming a teacher, and the questions referred to and rejected had no bearing whatever on these questions.

Respondent respectfully submits that prosecutor was in no way prejudiced by failure of respondent to grant a further adjournment. Prosecutor by her counsel (S. C., p. 245, 37-46 *et seq.*) stated that his purpose in requesting an adjournment to secure as a witness One Cyril Wilson, was to prove that Mr. Thien was not present at the time Miss Smith cashed the check.

Prosecutor herself upon cross-examination (S. C., p. 225, 15 *et seq.*) answered the following series of questions:

> "Q. Did you ever talk to Mr. Thien? A. No.
>
> Q. Did you testify in the criminal trial that you never saw Mr. Thien before? A. I certainly did. I don't remember Mr. Thien. This is 1934 and that's 1932.
>
> Q. Yes, and the year after was 1933. A. Yes and next year will be 1935.
>
> Q. Referring to page 19 of the testimony of Clara L. Smith—

Mr. Rittenberg: We have no record of it. Where is it?

Q. At the hearing on May 10, 1933 before the Board of Education of the City of Paterson: Question: 'You had no conversation whatsoever with him? A. I had conversation but it was about the check so far as I can recall. I don't really remember what the conversation was. He asked me was I teaching in Jersey. He said he was a 'Jersey' man. I remember about that but the matter of the loan was supposed to be settled before we left Mr. Sherrill's office, and I really wasn't taken there to discuss the loan. *I was taken there to cash the check.'*

Q. *Do you remember that?* A. *If its in there I said it. That was 1933.''*

Respondent further respectfully submits that prosecutor was in no wise damaged by the failure to grant the requested adjournment. Prosecutor was completely conversant with the charges, had heard all of the evidence introduced at the previous trial, heard the testimony of Mr. Thien at the hearing of October 18th, 1934, and had ample time to secure any and all witnesses necessary to her defense, and submits that the request of prosecutor was made solely for the purpose of delay and that she was in no wise prejudiced by the failure of the Board of Education of the City of Paterson to grant a further continuance.

Conclusion.

The gravity of the charges of which the Prosecutor was convicted, her flagrant violation of the ordinary rules of decency and morality which is expected of a layman and required of a school mistress, the conclusiveness of the testimony ad-

duced at the hearing which resulted in her conviction, and the finality with which three successive tribunals placed their stamp of approval upon all the proceedings, should beyond all peradventure control this Court in refraining from disturbing the dismissal of the Writ of Certiorari by the Supreme Court. Nothing has developed since the inception of the case, which justifies a departure by this Court from the long established rule laid down in the *Berlinger* case, *supra.*

For all of the reasons aforementioned, it is respectfully submitted that the decision of the Supreme Court in dismissing the Writ be affirmed, and that this appeal be dismissed with costs to be taxed against the Prosecutor-Appellant.

Respectfully submitted,

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