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Bill of Complaint.

In Chancery of New Jersey

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey: 10

The complainant, Beatrice I. Goll, trustee in bankruptcy of Francis Stefanski, bankrupt, respectfully shows that:

1. On or about the 16th day of February, 1918, Francis Stefanski, of the Town of Harrison, in the County of Hudson and State of New Jersey, having filed a petition therefor in the United States District Court for the District of New Jersey, was duly adjudged a bankrupt;

2. On or about the 7th day of March, 1918, your petitioner was duly appointed Trustee of the estate of the said Francis Stefanski, bankrupt; 20

3. On or about the 7th day of March, 1918, whilst a bankrupt and after the appointment and qualification of his trustee, Francis Stefanski, the above named bankrupt knowingly and fraudulently concealed the following assets belonging to his estate from his trustee, to wit:

All of premises being and lying in the Town of Harrison, in the County of Hudson and State of New Jersey, described as follows: 30

BEGINNING at a point on the Northerly line of Jersey Street distant Easterly Three Hundred feet from the Northeast corner of Jersey and Second streets, thence running Easterly along the Northerly line of Jersey Street Fifty feet to lot number 93, thence Northerly along the Westerly line of lot 93 and parallel with Second Street One Hundred feet, thence Westerly along the rear line of lots 65 and 66 and parallel with Jersey Street Fifty feet, and thence Southerly and along the Easterly line of lot 90 and parallel with the second course One Hundred feet to the point or place of BEGINNING. Being lots 91 and 92 on a map entitled "A map of the valuable property of Andrew Smith, Esq., in East Newark, N. J., filed Nov. 24, 1836." 40

Also another tract situate in the Town of Harrison, County of Hudson and State of New Jersey, described as follows:

BEGINNING in the Westerly line of Second Street at a point therein distant 100 feet Northerly from the intersection of said line of Second Street and the Northerly line of Budge Street (now Harrison Avenue), thence running Southerly 84 degrees 30 minutes West and parellel with Harrison Avenue 99 feet 8 inches, thence Northerly 5 degrees 30 minutes West 100 feet to the Southerly line of Cleveland Avenue, thence Northerly 54 degrees 30 minutes East and along said Southerly line of Cleveland Avenue 99 feet 4 inches to the Westerly line of Second Street, and thence along the same South 5 degrees 30 minues East 100 feet to the point or place of BEGINNING. Being lots 5, 6, 7 and 8 of the Solingen Property of East Newark.

4. On or about the 1st day of June, 1915, the said Francis Stefanski borrowed the sum of 2000 dollars from the said Dominika Ferdyn Michalewska, one of the creditors of the said Francis Stefanski, bankrupt, agreeing that title to the above first described property would be taken in the name of the said Dominika Ferdyn Michalewska, who should hold title to the same until said loan of 2000 dollars was repaid, at which time the said property was to be conveyed to the said Francis Stefanski. Said loan was to be repaid within 60 days thereafter, or at such time thereafter as she, the said Dominika Ferdyn Michalewska, may demand the same;

5. Said sum of 2000 dollars was borrowed and used for the purpose of purchasing the above first described property;

6. On or about the 3rd day of June, 1915, the said Francis Stefanski, for the purpose of hindering, delaying and defrauding his creditors, purchased, with the money borrowed as aforesaid, the above first described premises, causing, however, the title to be placed in the name of his sister, Mary K. Stefanska, by deed dated the 3rd day of June, 1915, and recorded in Book 1210 of Deeds for Hudson County on page 406, which deed was on the 23rd day of December, 1915, re-recorded in Book 1219 of Deeds for said County on page 336; and the said property at the time of the appointment and qualification of the trustee of the said Francis Stefanski, bankrupt, was being held on secret trust by the said Mary K. Stefanska for the bankrupt;

7. Said conveyance to the said Mary K. Stefanska was made without consideration of any sort so ever;

8. On or about the 19th day of April, 1911, the said Francis Stefanski conveyed the above second described premises to one Antoni Butkiewicz of Harrison, New Jersey, by deed dated the 19th day of April, 1911, and recorded in Book 1083 of Deeds for Hudson County on page 612;

9. Said conveyance was made without consideration of any sort so ever, and the said property at the time of the appointment and qualification of the trustee of the said Francis Stefanski, bankrupt, was being held on secret trust by the said Antoni Butkiewicz for the bankrupt; 10

10. Complainant charges and insists that the said Francis Stefanski is the true and lawful owner of the above described premises, and that the said Mary K. Stefanski and Antoni Butkiewicz have each always held and do now hold the above first described and second described premises, respectively, in trust for the said Francis Stefanski, and that said property is rightfully a part of the estate of the said Francis Stefanski, bankrupt; 20

Complainant is without adequate remedy in the courts of law, and therefore prays

1. That the said Francis Stefanski, Mary K. Stefanski, and Antoni Butkiewicz, who are the defendants to this suit, may answer this bill of complaint and each statement therein made;

2. That the defendant, Francis Stefanski, may be decreed to be the true and lawful owner of the above described premises; 30

3. That the defendant Mary K. Stefanski may be decreed, to be holding the above first described tract in trust for the said Francis Stefanski, and to convey the said premises to the said Francis Stefanski or to your complainant as trustee in bankruptcy for said Francis Stefanski, bankrupt;

4. That the defendant Antoni Butkiewicz may be decreed, to be holding the above second described tract in trust for the said Francis Stefanski, and to convey the said premises to the said Francis Stefanski or to your complainant as trustee in bankruptcy for said Francis Stefanski, bankrupt; 40

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

JOHN Q. FREY,
Solicitor of Complainant.

10 FRANCIS CHILD,
Of Counsel with Complainant.

Answer of Mary K. Stefanski.

The defendant, Mary K. Stefanski, by way of answer says:

1. She has no knowledge of paragraph one of the bill of complaint filed herein and leaves the complainant to the proof
20 thereof.

2. She has no knowledge of paragraph two of the bill of complaint filed herein and leaves the complainant to the proof thereof.

3. She denies the contents of paragraph three in so far as the same applies to this defendant.

4. She has no knowledge of paragraph four of the bill of complaint filed herein and leaves the complainant to the proof thereof.

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5. She has no knowledge of paragraph five of the bill of complaint filed herein and leaves the complainant to the proof thereof.

6. She denies the contents of paragraph six in so far as the same applies to this defendant.

7. She denies the contents of paragraph seven in so far as the same applies to this defendant.

8. She has no knowledge of paragraph eight of the bill of
40 complaint filed herein and leaves the complainant to the proof thereof.

9. She has no knowledge of paragraph nine of the bill of complaint filed herein and leaves the complainant to the proof thereof.

Order of Reference.

10. She denies the contents of paragraph ten of the bill of complaint.

The defendant prays that the bill may be dismissed as to this defendant, with costs.

Dated October 1st, 1918.

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HARRY T. DAVIMOS,
Attorney for Defendant, Mary K. Stefanski.

Order of Reference.

This matter being opened to the Court by John Q. Frey, solicitor for and of counsel with the complainant, and Harry T. Davimos, solicitor for and of counsel with the defendant, Mary K. Stefanski; and upon reading the consent hereto underwritten:

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It is thereupon, on this 21st day of Nov., 1918, Ordered, that the above stated cause be referred to Hon. John E. Foster, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making of the above order.

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JOHN Q. FREY,
Solicitor for and of Counsel with Complainant.

HARRY T. DAVIMOS,
Solicitor for and of Counsel with Defendant, Mary K. Stefanski.

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Opinion.

Submitted March 25, 1919.

Decided March 31, 1919.

Mr. John Q. Frey, solicitor of complainant. Mr. Francis Child, of counsel.

Mr. Harry T. Davimos for defendants Mary K. Stefanski and Anton Butkievicz.

Mr. Samuel Rusinow for defendant Francis Stefanski.

FOSTER, *V. C.*

At the conclusion of the hearing I announced that the proof was convincing that the defendant Francis Stefanski had conveyed the premises in question to his sister, the defendant, Mary K. Stefanski, in fraud of his creditors and particularly for the purpose of defrauding the young woman, Domenica Michalewska, of the money she had loaned him or that he had taken from her.

Stefanski is or was a priest of the Polish Catholic Church. He was the spiritual as well as the business adviser of this young girl. He borrowed or took from her a large part of the money that Father Ferdyn had given her, and he admits that he owes her over $3,000, and allowed her to obtain judgment against him by default. According to her story he borrowed $2,000 to purchase the premises in question and told her he would put the title in her name until he had repaid her this sum with interest. He attended to the entire transaction and took title in the name of his sister, and managed the property, collected rents, paid interest and taxes, and did not disclose the fact to Domenica Michalewska that title to the property was not in her name. He now claims he borrowed $700 from his sister and with $1,300 of his own money he paid the purchase price of the property. I am satisfied that he borrowed money from his sister, as he did from this young girl, who was under his protection, but I feel that he intended to protect his sister and to defraud this young girl of what he owed her.

In his effort to prevent Domenica Michalewska from obtaining the payment of any part of the money which he took from her he now attempts to blacken her reputation to show that she is a woman of immoral character and refuses to state if his rela-

tions with her have been improper or not. I do not believe his testimony on this or any other point in the case.

I feel inclined to believe the testimony of Mrs. Williams and of Miss Stefanski that the latter at the time the property was purchased loaned her brother $700, the payment of which was to be secured to her by this property. 10

There is this difference, however, between the position occupied by Domenica Michalewska and that of Miss Stefanski: it was optional with the latter whether she would loan the money to her brother or not, while Miss Michalewska, because of their relations, had no such choice. Apparently Stefanski took her money at such times, in such amounts and on such terms as he pleased.

The conveyances should be set aside in favor of the trustee, subject to the existing encumbrances thereon, after which they shall be subject first to a lien in favor of Domenica Michalewska 20 for $2,000 and interest from the date title was taken, and also to a second lien in favor of Miss Stefanski for $700, with interest from the same date, and as the proofs do not affect the title of the defendant Butkievicz to the property in his name, a decree to that effect will also be advised.

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IN CHANCERY OF NEW JERSEY.

Between

BEATRICE I. GOLL, Trustee,

Complainant,

10 *and*

FRANCIS STEFANSKI, *et als.,*

Defendants.

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on March 19, 1919, at 10 A. M.

20 Appearances:

Mr. John Q. Frey and Francis Child, of counsel, for complainant.

Mr. Harry T. Davimos for defendant Mary K. Stefanski.

Mr. Samuel Rusinow for defendant Francis Stefanski.

Mr. Child. I would state that Domenica Michalewska should be made a party complainant so as to bring her within the jurisdiction.

Court. She is in court now.

30 *Mr. Frey.* Yes; I represent her.

Court. You ask that she be credited with a lien prior to the claim of the trustee—any claim he may establish to the extent of the loan of $2,000 with interest from its date?

Mr. Child. Yes, on this particular property.

Mr. Davimos. Does Mr. Frey claim to represent both her and the estate?

Mr. Frey. Yes.

Court. He waives on behalf of the estate to the extent of

40 $2,000?

Mr. Child. I don't know the extent of his authority, whether he represents the estate sufficiently to waive the right of the trustee in bankruptcy.

Court. It is for him to say.

Mr. Davimos. I don't think he does.

Court. If he states he does, and assumes the responsibility, I will let him do so.

Mr. Frey. There are very small claims.

Court. The only question now is, do you want to take the responsibility of representing to the Court that you have the authority from the trustee to waive any claim against this particular tract of land, based upon any claim which you may establish on behalf of this estate, to the claim of this woman for $2,000 and interest? 10

Mr. Child. I think that Mr. Frey should consult the trustee in bankruptcy.

Court. I think counsel is correct on insisting on having the issue properly tried.

Mr. Frey. I can have the trustee in bankruptcy here very shortly. 20

DOMENICA FERDYN MICHALEWSKA, sworn for complainant.

Direct examination by Mr. Frey.

Q Where do you live? A 157 St. Paul's avenue, Jersey City.

Q How long have you lived there? A A few years.

Q You were in Chicago last year, were you? A Yes.

Q What were you doing in Chicago? A I was in Mrs. Nichol's to help her in a millinery shop, she has a business; I went for a visit to Mrs. Nichol. 30

Q Do you know Francis Stefanski? A Yes.

Q How long have you known him? A I know him about nine years.

Q How did you come to know Francis Stefanski?

Mr. Davimos. Is that important?

Q Did you have any business transactions with Francis Stefanski? A I was his housekeeper about a few months. 40

Q Did you loan Francis Stefanski any money? A Yes.

Court. When?

Q When did you first loan Francis Stefanski any money?

Mr. Davimos. Are we to review the Supreme action in which she claimed a series of loans, or are we to come down to the issue?

Court. Is she the one who has the judgment?

Mr. Frey. Yes.

10 *Court.* You don't dispute it?

Mr. Davimos. I dispute it in this court. I will have something to say on some of the items in there on which the fraud is based, but the record shows she has a judgment. If he wants it, he can have my copy of the certified copy of the judgment record.

Court. Offer it.

Q When did you first loan Francis Stefanski money? A It was 1914, July 16, the first time, $800.

20 Q Where was this? A It was 120 Sussex street, Jersey City.

Q Did you ever ask him for the money? A Yes.

Q When did you ask him for the money? A It was in December before Christmas, 1914.

Q How much did you loan him at that time? A $800.

Q And what did he say? A He said that $500 he will make holy mass for Father Ferdyn, and $300 left.

Q When did you next loan him money? A Next it was in 30 1915, in January, I give him $1,300 and he gave me a note.

Q Is this the note he gave you? A Yes.

Mr. Frey. I offer it in evidence.

(Marked Exhibit C. 1.)

"$1600 Harrison, N. J., January 29, 1915.

On demand after date I promise to pay to the order of Miss Dominicka Ferdyn Michalewska Sixteen Hundred Dollars at the Hudson County Trust Company, Harrison, New Jersey.

40 Value received. (Signed) Rev. F. Stefanski."

Q Did you see Francis Stefanski sign that note? A Yes.

Q That is the same man, Rev. F. Stefanski? A Yes.

Q Did he say anything to you about giving you any security for this money? A Yes, he told me he would would transfer

his lots on Second street and Cleveland avenue, on the corner, on my name, until he give me the money back.

Court. Is that the first or second tract?

Mr. Davimos. It don't concern the tract to which I made objection.

Mr. Frey. It is the second tract described in the bill. 10

Q Where did you live at this time? A 157 St. Paul's avenue, Jersey City.

Q Do you know where Francis Stefanski lived? A Yes.

Q Where did he live? A 217 Cleveland avenue, Harrison.

Q Do you know what his business or occupation or calling was; what did he do, Francis Stefanski? A He was a rector in the church.

Q Did you loan him any more money? A Yes.

Q When did you next loan him money? A The next money I loaned him around the first of May, 1916, I guess. 20

Q (*By the Court.*) Can you state the year when you loaned this additional money? A Yes.

Q (*By the Court.*) What year was it; you say around May first? A Around May first and around June first.

Q (*By the Court.*) Of what year? A It was 1915.

Q How much did you loan him at that time? A $1,000 for a deposit, and another thousand to pay for—he bought the house, I gave him $1,000 for the deposit, and another $1,000 he had when he bought this house the first of June.

Q What house are you referring to ? A On Jersey street, Harrison. 30

Mr. Frey. That is the first tract mentioned in the bill.

Q (*By the Court.*) Did he tell you what he wanted that money for? A Yes, sir.

Court. She said $1,000 for a deposit and $1,000 when he took title to the house.

Q Did he say anything about giving you security for the money? A Yes, he said he will sign this house on my name until he will give me the money back. 40

Q Did he ever give you the deed for this house? A No.

Q When did you first find out that the houses were not in your name? A I find this out after Christmas; it was 1916, about January or February—I don't remember very well—1916.

Q Did he give you a note or anything to represent this money? A No, nothing.

Q Who told you that these houses were not in your name? A Father Stefanski.

Q How did he come to tell you? A Because I asked him for the interest or rent, but he said, "I cannot give you, because these houses I didn't sign on your name, and they are in my sister's name."

Q Did he tell you at the time why he put them in his sister's name? A Yes.

Q Why? A He said, "She makes me so much trouble in the houses I signed on her name, I thought she is going to be good to me after this."

Q Did you ask him for the money at that time? A Yes.

Q What did he say about paying back the money? A He told me, "Don't worry, maybe before Easter I can get money and give it back."

Q Did he pay back any of that $3,600 that you loaned him? A Yes, he gave me only $400; I got of him only $400.

Q (*By the Court.*) When did he pay you that? A From 1915 to 1916 he gave me that $400.

Q Did he give it to you all at once or how? A No, sometime $100, sometimes less.

Q Did you keep a record of the sums of money he paid you? A Yes.

Q Did you go and demand the money of him at any time later? A Yes.

Q When was that? A It was in October, 1916; I went to his office on 217 Cleveland avenue and I asked him for my money, and he said, "Well, don't worry, everything is going to be all right," then instead he took my hand, he grabbed my hand and started to kiss me, and he spoil my veil on my face, and I told him I don't wish this, but he said everything is all right, I told him "I want to go to Jersey City now"; he said, "No, you cannot, I want to bring you with my automobile"; I say, "I thank you very much, I don't need it, I have twenty cents for the car," but he said, "No, you cannot do this," and he called his serving man, servant, to bring the car on the street, and the servant man did, and I and he went in the automobile.

Q He took you home? A Yes.

Q While you were in his house, in his office, asking him for this money at this time, did he say anything else about this property? A He told me "Come next week; I will call over my sister from New York and she will put the deed in my name."

Q You said a little while ago that he was a rector of a church? A Yes.

Q What kind of a church? A Polish church in Harrison. 10

Q When you say you went to his office, was he engaged in some business outside of the church? A I don't understand.

Q Did he have any other business beside the church? A Who?

Q Father Stefanski? A No, he had no other.

Q Where was his office, at the church? A Yes.

Q When he brought you home that evening, what happened? A On the way to Jersey City, he said, "You see that automobile on the road?" I say, "Yes"; "Somebody is making love in that automobile"; I said, "I don't care for this." He said, "Should I stop my automobile, too?" I say, "No." 20

Mr. Davimos. I don't think this is pertinent.

Court. I think the circumstance is of significance, to see which one is telling the truth; I will receive it.

A (Continuing.) And he told me, "Should I stop my automobile?" I say, "No, Father, please take me home," and he did take me home. Then when we came to Jersey City I say to him, "Thank you very much, and good night," and I went to my room, and after I thought that he went to his home, but he came to my room. 30

Q (*By the Court.*) That same evening? A That same evening he came to my room.

Q (*By the Court.*) What time did you get home? A About eight or nine o'clock, between eight and nine.

Q (*By the Court.*) How much later than that was it that he called at your home; what time did he call at the room? A About the same time, shortly after, very shortly.

Q (*By the Court.*) What was said, if anything? A Then he sat down on the chair and he grabbed my hand and made me sit down on his knee and start to kiss me; I say, "I don't wish, Father, like that," and he became mad at me; he said, "If you don't like what I do with you, you don't get nothing of me," 40

and he start—I don't know how to say it in English, he said something bad to me, and he told me "You don't get it nothing; you go to court, the Holy Father don't help you."

Q (*By the Court.*) If you didn't do what he asked you to do, you mean? A Yes.

10 *Court.* She says she cannot express it in English, but having made whatever he did in the way of a suggestion or request, then he told her if she didn't comply she wouldn't get anything, and that the Holy Father couldn't help her.

Witness. I don't speak English.

(At this point Ignacius L. Zawadski was sworn as interpreter.)

Further direct examination through interpreter.

20 Q (*By the Court.*) What else did he say to you when you were on his knee and you told him you didn't want conduct of that kind? A She says that Father Stefanski want to kiss her.

Q (*By the Court.*) What else did he say? A And he touch with his hand on the side of her leg.

Q (*By the Court.*) Did he put his hand under your clothing? A Yes.

Q What else did he do? A I told him I didn't like that.

Q What did he say or do? A He told her if she don't like to do what he wants she will never get from him nothing, that 30 "I don't get nothing of him, money or nothing."

Q (*By the Court.*) What did he want you to do; can you state that in English?

(At this point Witola Dombrowski is substituted and sworn as interpreter.)

Q What else did he say to you when he put his hand on or under your clothes? A He wants to have intercourse with her.

Q Then what did she say? A She don't say such a thing.

Q Then what happened; what was said? A He got angry.

Q And then what was said or done? A He began to curse 40 her; he said, "The lightning will hit you and cholera smite you, and you don't get nothing," if she won't give him what he wants, and "the holy Father don't help you in this case."

Q Did you ever talk with Mary K. Stefanski about these houses? A No.

Domenica Ferdyn Michalewska, cross.

Q When did you next see Father Stefanski? A It was in 1917, in October, a year after.

Q Where did you see him? A In his office on Jersey City.

Q (*By the Court.*) Why did you go there? A With my brother.

Q (*By the Court.*) Why did you go there? A Because I want to get my money, to ask him for my money. 10

Q (*By the Court.*) Did you meet him there? A Yes.

Q (*By the Court.*) Did you ask him for your money? A Yes.

Q (*By the Court.*) What did he say about it? A I told him, "Father, I want you give me back my money," and he say, "How much I owe you?" and I say, "You know," and he said, "Well, now it is $3,000 and $200, because $400 you got off me from 1915 to 1916." I say, "Yes," and then he said, "For your brother I owe $950," and my brother said, "Yes," and he jumped on the chair; "I don't like to see you; I don't wish to see you here at my office." She took him by the hand, she said, "Father, I want to get a settlement with you." He got angry; he said, "The poor people go out of my office, I don't want to have anything to do with you;" then she said, "Father, if you don't settle with me I will take this to the court;" then he turned around and tried to hit her. He said, "Whore, get out of my house;" he said, "The holy Father will not help you in this case." 20

Cross examination by Mr. Davimos.

Q How long have you been in this country? A About nine years. 30

Q With whom did you come to this country? A Father Ferdyn.

Q You adopted his name, did you? A The Father told her so, and she took his name on account of that her name was too long to pronounce.

Q How did you travel with Father Ferdyn; in what relation?

Mr. Child. I object.

Court. What difference does it make; the only question is, did she loan this money on the condition she states; the question is, did she have $3,600 to loan him? 40

Q When you came to this country with Father Ferdyn where did you go to live? A St. Joseph's Home, Immigration, New York.

Q (*By the Court.*) How old were you when you came to this country? A Nineteen years old, past nineteen.

Q From St. Joseph's Home where did you go to live? A Father Stefanski come to St. Joseph's Home.

Q (*By the Court.*) Where did you go from St. Joseph's
10 Home? A To Father Stefanski.

Q (*By the Court.*) Where was what? A 217 Cleveland street, Harrison.

Q With whom did you go? A With Father Ferdyn.

Q When you came to this country how much money did you have with you? A About $100.

Q And did you work between the time you came to this country until 1914? A The first time I worked was for Father Stefanski, when he took me.

Q When was that, in what year? A June 1, 1910.

20 Q Did you work until 1914? A Yes.

Q For Father Stefanski? A No, for him only a few months, and after, Father Ferdyn.

Q How much did you make working as a housekeeper? A He didn't pay her anything.

Q How much did you get per month when you worked for Father Ferdyn? A Father Ferdyn didn't pay; if she need clothes or money Father Ferdyn give it to her.

Q Where did you get the $800 which you said you loaned Father Stefanski in 1916? A When Father Ferdyn was sick
30 with consumption, and when he died, before he died he left me $800—more than $800.

Q How much more? A A few thousand.

Q How many thousand? A About $10,000, around $10,000.

Q Did he leave it to you by will? A Yes, he made one before his death.

Q He left you $20,000 in your hand? A No, what was his, everything he had he gave to me.

Q (*By the Court.*) Did he give it to you? A Yes.

Q (*By the Court.*) How did he give it to you? A Every-
40 thing what he give to her was wrapped up, and that is the bundle he handed to her.

Q You say $10,000 was wrapped up in a bundle? A Yes.

Q (*By the Court.*) What was it, in bills or money? A No, paper money and gold money.

Q (*By the Court.*) How much did it amount to altogether? A Around $10,000.

Q Don't you know exactly how much it was? A About $10,000.

Q What did you do with it after you got it; where did you keep it, in the bank? A She said she put it in her trunk, and she was going to go to Europe, and on account of the war she didn't go. 10

Q Did you ever put it in any bank or any part of it? A No; Father Stefanski got a box for her and said that is the safest place to put the money, and afterwards someone stole that money from her.

Q How much was stolen? A She really don't know; more than $4,000.

Q Was it stolen before or after you made these loans? A Before. 20

Court. Do you dispute that she had this money?

Mr. Davimos. No; I am coming to the point I want to make.

Q When you had this money in your possession, you left the parish house in which you were living with Father Ferdyn, after his death?

Court. After his death did you leave the house?

Witness. Yes. She was living for a while across the street; then after Father Stefanski told her to move up to the hill, on Magnolia avenue. 30

Q When did Father Ferdyn die? A July 16, 1914, at midnight.

Q Did you get the money from Father Ferdyn on that same day he died? A The day before he died.

Q You have testified that you loaned $1,600; you say you made the first loan the same day he died, to Father Stefanski? A Yes; $800.

Q How did that happen? A Father Stefanski asked, "Did Father Ferdyn leave you any money," and she said, "Yes." 40

Q (*By the Court.*) Then what did he say? A Father Stefanski said, "If Father Ferdyn left any money give it to me, because somebody can steal it from here." She said, "I am not afraid." He said, "Don't talk foolish; just give me the money

and it will be all right." At that time she took out $800 and give it to Father Stefanski.

Q When did you give him only $800 out of the $10,000? A There was separate $800; that was the bundle she gave him.

Q Just handed him a bundle? A Yes.

10 Q (*By the Court.*) Containing $800 separate from the rest? A Yes.

Q Did he know you had the balance of the money? A She said he suspected that she has more money.

Mr. Frey. She said, "He saw I had."

Interpreter. Yes, he knew that she had more money.

Q What did he say when you gave him only $800? A He was sitting with me and talking and said, "I will take care of you," he would be like a father.

20 Q In January, 1915, you gave him $1,300? A Yes.

Q Under what circumstances did you make this loan? Why did you make that loan in January, 1915? A He said, "You have so much money, you have more luck than brains; you can give me $1,000;" I say, "What for?" "Because you have more money than me." Then he said, "Loan me some money." I say, "Well, I don't know." He said, "Oh, loan me, don't be afraid; I will give you back; anyway, you have so much money; you can have nice interest off me and everything will be all right," and I did. He said, "Give me $1,300 and I will give you a note."

30 Q Is that the time she said he was putting up $500 for mass for Father Ferdyn? A Yes.

Q When had he put aside the $500 for mass for Father Ferdyn; was that before this $1,300 loan or after? A Yes, before.

Q Did he tell you about it before he asked you for the $1,300? A Yes, before; he took $500 for mass and $300 is left.

Q (*By the Court.*) You sued Father Stefanski? A Yes.

Q You got a judgment against him? A Yes.

Mr. Frey. Transcript of judgment will be offered.

40 Judgment entered January 25, 1918, for $3,676.18, in the New Jersey Supreme Court. It was not contested.

Court. Took judgment by default?

Mr. Frey. Yes.

(Transcript of judgment marked Exhibit C. 2.)

Domenica Ferdyn Michalewska, cross.

Q You say May 1, 1915, you loaned Father Stefanski some money; how much did you loan him May 1, 1915? A $1,000.

Q And he said he was taking that as a deposit on some houses on Jersey street? A Yes.

Q When did you loan him the other $1,000? A Around the first of June.

Q What year? A The same year. 10

Q What did he say to you then? A After he got money enough he want to have two houses for Holy Cross, for teachers of the school.

Q Did he tell you when he was going to take title to the houses? A She give $1,000, and then give another $1,000, and Father Stefanski is going to put the houses on her name.

Q (*By the Court.*) When was he going to deed or put the houses in her name? A He didn't tell me.

Q And she wasn't present at the time title was closed? A No. 20

Q In handling this $10,000 and making these loans to Father Stefanski, were you represented by counsel?

Court. Did you have any lawyer?

A No.

Q You handled this whole money yourself? A Yes.

Q You never made a deposit of any of this money in the bank? A Father Stefanski hired a safe deposit box and he put the money in the box.

Q Did you have a safe deposit box? A Yes.

Q What company? A West Hudson Trust Company, Harrison avenue, Harrison. 30

Q Father Stefanski was your adviser in this matter? A Yes, Father Stefanski was taking care of her and the money—adviser.

Q You say you didn't find out that these titles were in someone's name besides yourself until after Christmas of 1916? A Yes.

Q Did you know then in whose name they were? A Yes, Father Stefanski told her, on his sister.

Q You never talked to Mary Stefanski about these properties? A No, Father Stefanski never let her speak to her. 40

Q You know that Mary Stefanski was living in New York? A Yes, I knew that she lived in New York; Father Stefanski say that he will tell her she should come back to Harrison and sign those houses to her.

Q And she was satisfied with that? A Yes, I thought that would be all right.

Q In October, 1916, you say you went to his house for the money you loaned him? A Yes.

Q That is the night when this ride took place in the automobile? A Yes.

10

Q And by that time all your $10,000 had gone? A No, she didn't spend all the $10,000 at that time.

Q (*By the Court.*) Had the $4,000 been stolen from you at that time? A That was stolen in 1915.

Q You didn't have much money left in October, 1916? A Yes, I had some left, and I bought the house on Highland avenue and signed it to the brother.

Q You said in October, 1916, on the night of this ride, Father Stefanski said, "Come back next week and I will see that everything is all right?" A Yes.

20

Q You didn't go back next week, did you? A He started to argue with me; that is why I didn't go down to see him.

Q She didn't go back for another year, until 1917? A Yes.

Q And then you gave directions to your attorney to bring suit against Father Stefanski? A Yes.

Q Did you sign an affidavit upon which the judgment in that matter was entered? A Yes.

Q And in that affidavit you swore that on June 1 you loaned Father Stefanski $2,000, to be repaid in sixty days, or whenever you were to demand same; is that right? A She loaned him $2,000 on the first of June for sixty days; is that your question?

30

Q (*By the Court.*) Can you read English can you read this? On or about June first you loaned, &c. A She says she don't understand what it means; I don't understand the sixty days.

Q Do you remember signing a paper like that? A What kind of a paper is this?

Q Did you sign a paper like that, that had those words in it? A She don't know nothing about the paper; just what Mr. Frey asked her she did.

40

Q You say you kept a record of what you loaned him and the payments that were made on account of the debt that Stefanski owes you; is that true? A Yes.

Q Where is that record? A I haven't got it with me. I don't know where it is; I haven't got it now.

Domenica Ferdyn Michalewska, re-direct.

Q What kind of a record did you keep? A I was writing just on a piece of paper when I gave him; I shall remember.

Q (*By the Court.*) Did you have it in a book? A I had a book at the time I was writing it; I don't know where, I lost it.

Q When did you last have that record? A The last thousand she loaned Father Stefanski—

Q When did you last have that paper? A The last time when I give the last thousand, that was the last time I saw it.

Q That was when? A June, 1915.

Q The payments on account were not made until 1916 and 1917, were they?

Court. The $400.

A From 1915 to 1916 they were paying the money.

Q You were mistaken when you say you kept a record of the amount paid you? A In what way?

Q (*By the Court.*) Did you put down on the paper what he paid you? A Yes, I was marking it down on the paper.

Q You lost it in 1915, is that true? A June, 1916, was the last time I saw it.

Re-direct examination by Mr. Frey.

Q When did Father Ferdyn die?

Court. She has given that, July, 1914.

Q How soon after Father Ferdyn died did Father Stefanski come to you in Jersey City?

Court. She has answered that.

Q What time of the day or night was it? A Midnight.

Q Was anybody else with you when Father Stefanski came? A My brother.

Q Where did you have this money, did you have it in the West Hudson County Trust Company? A He hired the box for her.

Q Who had the key to that box? A Father Stefanski had a key, and when I went after it, he gave me the key.

Q When you gave him this thousand dollars around May first did Father Stefanski go to the bank with you? A Yes, Father Stefanski gave me the key, I went to the safe and brought $1,000.

Domenica Ferdyn Michalewska, re-cross.

Q (*By the Court.*) Was he with you when you went to the safe deposit box? A He was waiting at his office; I went myself.

Court. He allowed a judgment to be taken by default. The question in my mind is whether she ever loaned it, and she has attempted to establish it.

10

Re-cross examination by Mr. Davimos.

Q You say in 1917, the last time you saw Father Stefanski, or sometime about then, you bought a house in Kearny with some of the money remaining?

Court. She bought a house on Highland avenue and took the title in her brother.

A It was before.

20 Q When was it? A 1915, I think.

Court. I understood it was 1917.

Q Do you remember when it was?

Court. When did you take the title in your brother's name for this house on Highland avenue?

Witness. I don't remember whether 1915 or what year.

Q When you took title to this house, you gave the money to Father Stefanski again to make the deal for you? A Yes, I gave him the money he need to buy the house on Jersey street.

30 Q When you bought the house on Highland avenue, you gave Father Stefanski the money again to buy it for you? A Yes.

Q How much did you give him? A $1,000.

Q When the house was bought in Highland avenue in your brother's name, you were not present or your brother? A No, I was not.

Q And your brother wasn't present? A Yes, I think so.

Q You don't know? A No; he didn't want me that time.

Q (*By the Court.*) Who attended to the matter for you? A Father Stefanski took care of everything.

40

Q And that was sometime in October, 1917?

Court. She thinks 1915.

Q How long ago was that? A 1915, and I sold to my brother and signed to my brother in 1917.

Q You never wanted any property in your own name, did you? A Yes, Father Stefanski said that he will sign this house on Jersey street on my name.

CASIMER FERDYN MICHALEWSKA, sworn for complainant.

Direct examination by Mr. Frey. 10

Q Where do you live? A 157 St. Paul's avenue, Jersey City.

Q How long have you known Father Stefanski? A Five years in July this year.

Q When did you first see Father Stefanski? A I saw him 120 Sussex street the first time, 16th of July, 1914.

Q What time of the day was it? A About midnight or twelve o'clock.

Q What happened that day; was that the day that Father Ferdyn died? A Yes, the same day. 20

Q Who else was there? A My sister.

Q What did Father Stefanski say to your sister? A I cannot explain that.

Q (*By the Court.*) Tell it in your own way. A Father Stefanski call at midnight and my sister was in the office and he said, "Come on upstairs, don't worry, everything will be all right."

Q (*By the Court.*) He said to her, "Don't worry, everything will be all right"? A I cannot explain.

Q What else did he say? A Father Stefanski come and take my sister upstairs, and I go upstairs, too, and Father Stefanski say "Did Father Ferdyn leave some money," and she said "Yes"; my sister say "Yes." 30

Court. The loaning of the money is not disputed. Your object is to show that this property really belonged to him and he put it in someone else's name?

Mr. Davimos. We will admit that the money loaned may have been more or may have been less.

Q Were you there when your sister loaned the $1,300 to Father Stefanski? A The first $800. 40

Q Afterwards when your sister loaned him $1,300, were you there present?

Court. Did you see her loan him $1,300?

Q Did you see her loan him $2,000? A I saw that $2,000; Father Stefanski sent me to my sister to get the money to buy the house.

Q When did he send you? A About May 1, 1915.

Q What did he say to you—Father Stefanski; what did he tell you to tell your sister? A He asked me, "Have your sister come tomorrow morning to my office."

Q Did she go? A Yes, my sister tomorrow morning go with me.

Q Did you go, too? A Yes, I worked for Father Stefanski at that time.

Q What kind of work were you doing? A Carpenter work and mason work.

Q Did you hear the talk between your sister and Father Stefanski? A Yes.

Q What did he say about the $2,000 the next morning at the office? Anything said about money then?

(Continuation of examination through interpreter.)

Q What was said in the office that morning? A I heard they were talking, he wants to buy a house, because the sisters have no place to live, and therefore he wants to loan the money to buy the house.

Q (*By the Court.*) What else did he say to your sister about loaning the money? A My sister went and brought the money.

Q (*By the Court.*) How much did she give him? A $1,000.

Q (*By the Court.*) Did he say when he would pay it back to her? A No, he didn't say that.

Q (*By the Court.*) Did he say how he would secure her? A He said he was going to sign the house on her name.

Q (*By the Court.*) Did he say when he would do that? A No.

Q (*By the Court.*) What did he say about his own sister, Mary Stefanski, at that time, if anything? A He didn't say anything about the sister, Mary Stefanski.

Q Did you work for anybody else besides the church during this time? A For Anton Butkiewicz.

Q Did Butkiewicz ever say anything to you about the lots on Cleveland avenue and Second street? A Yes.

Casimer Ferdyn Michalewska, cross.

Q What did he tell you about those lots? A Butkiewicz said that these lots belonged on Butkiewicz's name; Father Stefanski signed these lots to Butkiewicz.

Q (*By the Court.*) Before that they belonged to Father Stefanski? A Before.

Q (*By the Court.*) Did Butkiewicz say why he signed them to him? A I don't know. 10

Q Did he say he had bought them from Father Stefanski? A No, he didn't say he bought it, just he has it on his name.

Q Why did he tell you that? A I was talking with Mr. Butkiewicz, and I said to Mr. Butkiewicz that those lots belonged to my sister, and Mr. Butkiewicz said, "They belong to me."

Q When did you have this conversation with him? A About a year ago.

Q Did Butkiewicz tell you why Stefanski transferred those lots to him? A No, he didn't say why. 20

Cross examination by Mr. Davimos.

Q You told us a conversation that took place when your sister gave the first $1,000 to Stefanski; were you present when the second $1,000 was given? A Yes.

Q (*By the Court.*) When was that? A June, 1915.

Q And what conversation took place when the second $1,000 was given; what was said when the second $1,000 was loaned by your sister; what was said by Father Stefanski? A Father Stefanski was going to make a contract and sent me for my sister. 30

Q Why was he going to send you for your sister? A Because Father Stefanski need money to pay on the house.

Q Was your sister present when the contract was drawn? A No.

Q Did you know at the time this second thousand dollars was given that the property was taken in the name of Mary Stefanski? A I didn't know it.

Q He did not know it? A No.

Q Did you know in whose name it was taken? A I did not know it. 40

Q Do you know in whose name the property was taken? A No.

Q Were you ever interested enough to find out? A No, I didn't have any interest until my sister find out.

Q How old are you? A Twenty-seven.

Q What is this church that Father Stefanski is connected with, a Polish Catholic church? A Yes.

Q You didn't know anything about this Highland avenue house being taken in your name? A Yes, I sign myself the deed.

Q When you took title to the property you signed the deed?

Court. Of course he didn't.

A Yes, I did; Father Stefanski was present when I signed the deed.

Q (*By the Court.*) Did you give a mortgage? A Yes, $3,000.

Q (*By the Court.*) Who was the attorney in that case, who was the lawyer; from whom was the $3,000 borrowed? To whom did you give the mortgage for $3,000? A From the Building and Loan.

Q You don't know who the lawyer was? A No.

Q You don't remember seeing me there? A It may be.

Q You think it was this gentleman (indicating)? A I don't remember.

Q You never made any payment or took care of these houses in Kearny, did you? A Father Stefanski took care of and was collecting the money and made the payments.

CHARLES LAZAROWICZ, sworn for complainant.

Direct examination by Mr. Frey (through interpreter).

Q Where do you live? A 530 Fifth street, Harrison, New Jersey.

Q How long have you lived in Harrison? A Ten years.

Q Do you know Father Stefanski? A Yes.

Q Do you know Mr. Butkiewicz? A Yes.

Q Did you ever have any conversation with Mr. Butkiewicz about the lots on Cleveland avenue and Second street? A I was organist at that time when Father Stefanski was telling that it would be a good place to put a barber shop on that corner lot.

Court. Strike that out.

Charles Lazarowicz, cross.

Q Did you talk with Butkiewicz and Stefanski about the lots on Cleveland avenue and Second street? A Yes.

Q When? A 1913.

Q What did Father Stefanski say? A Father Stefanski told me that would me a good, nice place to put a grocery, barber shop and business on these lots. I asked Father Stefanski to whom does it belong; Father Stefanski say, "To me." 10

Q (*By the Court.*) Was Butkiewicz present at the time? A No.

Q Did you talk to Father Stefanski about those lots when Butkiewicz was there, too? A No.

Q Did you ever talk to Butkiewicz about those lots? A No.

Cross examination by Mr. Davimos.

Q You used to work for Father Stefanski? A Yes, I did as organist. 20

Q You were the tenant of his of the church property at one time? A Yes.

Q You were dispossessed by Father Stefanski? A Yes.

Q And at the same time this other witness was dispossessed, the brother, Casimer Michalewska? A No, he didn't live there.

Q At the time you were dispossessed didn't you swear that you would get vengeance; together with this boy and girl, didn't you make a covenant to take vengeance upon Father Stefanski? A No.

Mr. Frey. I offer in evidence the deed for the property on Jersey street. 30

Mr. Davimos. I admit that the properties in question are the properties we are talking about.

(Marked Exhibit C. 3.)

Mr. Frey. I offer in evidence certified copy of the deed from the Church of the Holy Cross in Harrison, New Jersey, to Mary K. Stefanski, the sister of the defendant, Francis Stefanski, dated June 3, 1915, and the acknowledgment is dated the third day of June, 1915, and conveys the property on Jersey street, and which the witness Dominika Ferdyn Michalewska testified and claims she was to have as security for the $2,000 loan. This deed was recorded on June 15, 1915, originally, but the execution thereof in the acknowledgment was defective, and subsequently it was 40

re-acknowledged on December 3, 1916, and re-recorded on December 23, 1915.

Court. By whom are both deeds executed and acknowledged or proved?

Mr. Frey. The deed is signed, "The Church of the Holy Cross, Harrison, N. J., by John J. O'Connor, President Board of Trustees," corporate seal, and subscribing witness is George L. Fitzpatrick, secretary.

Court. Father Stefanski is not a party to the deed in any form?

Mr. Frey. No.

Court. Does it appear in the record that he was pastor of that church, or rector?

Mr. Frey. No; that is a different church.

Court. It is admitted that the purchase price of the property on Jersey avenue, to which this deed relates, was $5,200, that $3,200 was paid by purchase money mortgage given by Mary Stefanski to the church.

Mr. Frey. I desire to testify as to this mortgage to the West Hudson County Trust Company and to explain the re-acknowledgment.

Court. What difference does it make? You have no proof in the case regarding the lots in the name of Butkiewicz, except very vague—a general statement he is said to have made to this young man that those lots belonged to him; you have the testimony of the last witness, who says that Father Stefanski indicated or said, in fact, that it would make a good location for barber shop and stores. How does that give me the slightest enlightenment that the title to the property is not properly in the name of Butkiewicz? They further say that this loan of $2,000 was obtained under the representation and promise that if she would advance the money, that the title to the property would be taken in her name, as security, until the loan of $2,000 had been repaid to her. There was nothing said—there is not the slightest proof in the case bringing the sister of Father Stefanski into the case or into the title. It seems that within a few days from the time the last thousand dollars was said to have been paid or

loaned by this woman the title is taken in the name of the sister. $2,000—that is apparently the inference to be drawn—of the consideration of $5,200 was paid in cash, and $3,200 paid by mortgage. It seems to be the same transaction to which the testimony of this young woman relates. The impression made upon my mind is that he obtained the loan from her under the representation she states; that he failed to carry out his promise, but he bought the property and put title to it in the sister's name instead of his own or the young woman to whom he promised it; and on the other hand, I don't think there is the slightest evidence to disturb the title in Butkiewicz.

Mr. Davimos. I make a motion to dismiss as to the Butkiewicz case.

Court. That is granted.

COMPLAINANT RESTS.

FRANCIS STEFANSKI, sworn for defendants.

Direct examination by Mr. Davimos.

Q You are the rector of the Polish Catholic Church, of Harrison? A Yes.

Q You know this young lady who has testified here, Domenica Ferdyn Michalewska? A Yes.

Q She has testified that you borrowed money from her for the purpose of buying two pieces of property on Jersey street, Harrison? A No.

Q That is not true? A That is not true; I borrowed money, but not for that purpose.

Q When did you first borrow money from her? A I don't remember, but not on the day of the death of Father Ferdyn.

Q It was not that day? A No.

Q When was it? A It was perhaps August or September.

Q How much did you borrow the first time? A I didn't exactly borrow; I got some money to fix up her affairs, especially those affairs which Father Ferdyn left unfinished.

Q What were those affairs you have reference to? A There were masses which were not said, the obligations which were pledged to be satisfied, so I take the money and afterwards dis-

tributed between priests, especially Father of Bayonne, and distributed between the priests and satisfied the obligations.

Q When she came to your house with Father Ferdyn originally, who did she represent herself to be? A I invited Father Ferdyn to help me out with one feast; the very day Father Ferdyn brought her, representing her as his sister to my sister, and without my knowledge he persuaded my sister to keep her in the house, and she all the time stated that she was Father Ferdyn's sister; then they brought a little argument between me and my sister; my sister left me on account of that and I have nobody.

Q You got in an argument with your sister about it? A Yes, afterwards; then because she came between me and my sister and my sister left me, she stayed with me. She then all the time used to state that she was his sister, and in the meantime she tried, because she was without any position and without any money and without funds. I phoned Father Ferdyn, as I wanted help in a feast, and he brought that young lady to my sister, and they had a child to be born very soon.

Q When they came to the house she was with child from him? A She was already in pregnancy; so he was without funds. I have a position, so she tried to persuade me that I am the father of her child; I was not to make any scandal; I paid for her sustenance in New York, and I paid also expenses, because she got sick in St. Vincent's Hospital in New York, and so I paid all those expenses, because I didn't continue it, and the doctors said that was not my child.

Court. Strike out what they said.

Q The question is, Father Stefanski, when Father Ferdyn left your place where was he going? A To Father in Bayonne.

Q He went to Jersey City as an assistant? A Yes.

Q Did he take this young lady with him? A No, she stayed with me then.

Q Then how long did she stay with you? A She stayed from June to October.

Q What year? A 1910.

Q Where did she go from your place? A She went to stay in an apartment house in New York, and afterwards she went to Harrison.

Q Did she ever live with Father Ferdyn at the parish? A Father Ferdyn came as she was in my place, came there often to visit her.

Q Did she ever live with him after he went to Jersey City? A Yes, she lived with him there.

Q Did she live with him until he died? A Yes. 10

Q And then when he died he left how much money? A I don't know.

Q Who got the money? A She got the money.

Q Did she tell you about it? A She told me that she has some money, and she told other people, too, because she was very talkative.

Q Tell us the history of this loan you made from her; did you borrow any money from her? A Yes, I borrowed when I needed it, and I give her all the time a paper. 20

Q What do you mean? A A note.

Q Every time you borrowed some money you gave her some writing to show you had borrowed the money? A Yes.

Q Tell us how many times you borrowed money and in what amounts, and when, if possible. A Sometimes it was less and sometimes more; usually amounting to some hundred dollars.

Q And when did this borrowing begin? A It began about August, 1914.

Q How long did it continue? A It continued until July, 1916, I give it back. 30

Q (*By the Court.*) What was the largest amount you borrowed from her at any time? A $1,000.

Q When did you borrow that from her? A I don't remember.

Q When you borrowed this money from her, this thousand dollars, was there any conversation? A About what?

Q About returning it? A Surely, it was that I would return it; when I borrowed it, I intend to return it.

Q (*By the Court.*) If $1,000 was the largest you borrowed, why did you give a note for $1,600? A I was to fix up; we made an account—I don't remember, but when I made the account out —"I don't know what can happen to me, and therefore I will give you a note that after my death that everybody should know that I owe you." 40

Q (*By the Court.*) Did you own any property at the time, to pay her this? A No.

Q (*By the Court.*) What were you borrowing all this money from her for? A I needed it.

Q (*By the Court.*) For what purpose? A For my expenses.

Q (*By the Court.*) Weren't you paid at the church? A No; I bought an automobile and afterwards I had a chauffeur, and I thought I will be able to cover this expense.

10 Q (*By the Court.*) Weren't you being paid a regular salary at that church? A Yes, but I was—it was not sufficient, especially as she ask me also to spend on her some money.

Q (*By the Court.*) Then you borrowed money from her to spend on her? A Yes.

Q In the meantime were you borrowing any money from anyone else? A From my sister; she used to help me out all the time.

Q How much did she loan you? A Over $2,000, but I made it good with her; I borrowed the money the last time, $700, when

20 she bought property from the Holy Cross.

Q When did you first begin to borrow money from her? A As far back as I became pastor over in New York?

Q When was that? A That was in 1909.

Q And did you continue borrowing money from her all the time? A I give back a little and afterwards I got it again, and she loaned me again.

Q How long did that practice continue? A Until date.

Q You are still doing the same thing? A Yes.

Q Do you know how much you owed your sister in June,

30 1915? A I didn't know exactly how much; I owed her over $1,300.

Q What did you say to her at that time? A I said "You have to be patient, I will return to you everything, but notwithstanding I need now, and I must have some houses where the sisters have to live," and she accommodate me with that.

Q (*By the Court.*) With what did she accommodate you? A With a loan of $700 at that time.

Q (*By the Court.*) In June, 1915? A That may be in May.

40 Q May or June? A May or June.

Q She gave you $700? A Yes.

Q What did you say you would do with it? A I said to her, and I explained to the Bishop the same and everybody in the parish, but I explained that everybody should know, that this money is my sister's money, and to safeguard her that those

houses will not belong to the parish, but to my sister, in settlement of her claim against me.

Q How much did you pay for the houses? A I don't remember.

Q $5,200? A About that.

Q Where did you get the remainder of the money; you borrowed $700 from your sister, where did you get the balance from? A I had some money. 10

Q How much did you have? A I have had over $1,300.

Q Where did you have it, in the bank? A In the bank, and I have had also at home.

Q If you had this money, why were you borrowing money from this young woman and from your sister all the time, if you had money in the bank and at home? A It was not enough to buy those houses, so I borrowed money from my sister, and I would not pay very soon, that I wouldn't be left without a cent. 20

Q At that time did you tell your sister anything about owing this Domenica any money? A No, I was ashamed to tell my sister that I owed her money.

Q Do you know how much money you owed Domenica at the time you bought these houses? A About $2,000, perhaps over, but notwithstanding Miss Domenica empowered me to hire some one or to engage a detective agency, Robert Burns, to recover her stolen money, so I engaged the Robert Burns Agency, and I paid also—I don't know exactly how much.

Q (*By the Court.*) How much did you pay them? A I engaged also a lawyer. 30

Q How much did you pay the detective agency? A Over $200; $300, $400, perhaps the case cost me; I have receipts at my house.

Q You say you handled your sister and Domenica about the same way from the time you borrowed money, you borrowed from each one? A Yes.

Q Your sister was living with you at the time you bought the house? A Yes.

Q At your house? A At my house. 40

Q And she disapproved of your methods? A She was arguing sometimes with me.

Q Did she disapprove of your relations with this young woman? A Yes.

Q (*By the Court.*) And what were your relations with her that she disapproved of? A She thought this young woman does too much, that this young woman spoils me.

Q (*By the Court.*) Why didn't you get rid of the young woman then? A It is very easy to get acquainted, but to get rid is very difficult.

10 Q (*By the Court.*) You found it so, did you? A Yes.

Q Who made the contract for these properties in Jersey street? A Mrs. Davis, a lawyer.

Q Was your sister present at the time you bought the property? A Yes.

Q Did she turn over this $700 which you said you needed to make up the difference? A Yes.

Q And the property was bought in her name? A The property was bought in her name.

Q Has she collected the rents since the property was bought?
20 A She has as long as she was staying with me, but afterwards she left again to live in New York, so she empowered me to collect myself or to engage an agent.

Q (*By the Court.*) When did she move to New York? A In 1916.

Q How long after you put the title in her name? A Over one year.

Q When she collected the rents what did she do with them? A She would take for herself.

Q What did you do with them after you collected them? A
30 I paid everything, all expenses, I paid also improvements, and the balance I turned over to her.

Q How much balance did you turn over? A About $250 there was.

Q When did you do that? A It was twice—I don't remember the date, because we have arguments at that time.

Q How much was the rent per month? A The rent amounts to $42.

Q Did you pay taxes? A Taxes.

Q Building and Loan Association dues? A No, no Building
40 and Loan dues, a straight private mortgage.

Q You paid the interest and improvements; how much did the improvements cost you? A I don't remember exactly.

Q What rate of interest does that mortgage carry? A $160, 5%.

Q What taxes do you pay on it? A I don't remember, because the last time I left it to the agent.

Q What did they amount to, about? A About $80 or $90.

Q And what water or other charges did you pay? A $40 or $50.

Q What repairs or improvements; did you make much? A I put in new cellars, cemented, then there were also some other things. 10

Q How much did those improvements cost you? A Over $400.

Q Did you spend any other money on the property? A Yes, but I returned my sister over $200.

Q What do you say it rents for? A $42.

Court. I don't see where you got the money to turn over to your sister. He said he made two settlements. 20

Q Was the total amount $250? A It was twice; it once was $100, and the other time it was about $100.

Q Whom did you make that accounting with? A Mr. Majeski.

Q Why did you make an accounting with him? A Because my sister was staying with his mother; my sister asked that he may come over and make the account about the house.

Q Why didn't she come herself? A Because we have an argument at that time.

Q You were not friends? A We were not friends, but notwithstanding— 30

Q You turned over the money to him for her? A Yes.

Examination by the Court.

Q Why didn't you protect this girl when you took her money from her, and give her security; why didn't you buy the house in her name, if you took her money? A Because she didn't want to have any property; she was afraid to hold any property.

Q Why was she afraid to hold property? A Because she thought the church or somebody else could prosecute her for the money that she held from Father Ferdyn. 40

Q And wouldn't she take your word to the effect that the church would not; you were her spiritual adviser as well as her business adviser? A Yes.

Francis Stefanski, direct.

Q She was a young girl at this time? A She was not young, as she is now over twenty-six years.

Q She wasn't twenty-six years old then? A She may be now twenty-eight.

Q This was back in 1914, when you first began to borrow
10 money? A Yes.

Q Nearly five years? A Yes.

Q About twenty-four then? A Yes.

Q And how old are you? A I am forty now.

Q Did you think you had the right to take the money that had been given to this young girl and use it for your own purposes, in buying automobiles, and not secure her for the money? A I was to secure her, and therefore I persuaded her, as I couldn't return immediately the money.

20 Q You were to secure her? A Yes.

Q How? A I bought the house also on Highland avenue, Kearny, but she refused to be secured anyway, because she was afraid to be detected that she perhaps illegally received some money that she got from Father Ferdyn.

Further direct by Mr. Davimos.

Q Tell us about the Highland avenue houses, who gave you the money to buy those? A First I received money from the brother of Miss Michalewska on a building account, so he turned
30 over the money to me besides.

Q Is that the $950 that has been spoken of? A Yes.

Q You didn't pay him his wages and you invested in his Building and Loan stock? A Yes, that was over $400, and afterwards that was all reduced by his debts against me. That was over $700, so they took over everything.

Q Where did you get the money to buy these houses? A I had myself the money.

Q (*By the Court.*) Did you get any from this young woman?
40 A I may have got some.

Q (*By the Court.*) How much? A Some hundred, I don't exactly remember; I believed her everything what she told.

Q When you bought this Highland avenue property, you say you got $900 from his savings in the Building and Loan? A Yes.

Francis Stefanski, direct.

Q How much money did you get from her? A Not exactly $900, it was $500—$500, because there was another piece of property bought and the rest was mine.

Q How much of your own money did you put in the Highland avenue property?

Mr. Child. I object; there is no plea of any payment in the answer. 10

Court. It is not material, except it is a question of her credibility. I will permit an amendment if necessary.

By the Court.

Q How much did the Highland avenue properties cost you? A Over $3,700.

Q How much at that time did you owe this young woman and her brother, the two of them? A I owed her perhaps $2,600.

Q The two? A About $3,000. 20

Q The two of them? A The two of them.

By Mr. Davimos.

Q Tell us how much money you put in this property on Highland avenue? A I made immediately improvements.

Q How much money, including the improvements in the purchase price? A $5,200—it cost me altogether $5,300; of my own there was over $1,500.

Examination by the Court. 30

Q I don't see where you got all this money of your own, if you had to borrow from other people. A I had debts.

Q What was your income at this time of the year? A My income was and my fees and my gratuities, it was not very—it was over $3,000, but notwithstanding as I got acquainted with this woman again, she telephoned me that Father Ferdyn is dead—

Q I am trying to find out what your income was. A Over $3,000.

Q How much was your salary? A $1,000. 40

Q How was the other two thousand made up, marriages and christenings? A Christenings, &c.

Q You have your home free, you have the parish house free? A A residence, yes, but not the living.

Francis Stefanski, direct.

Q How much did your automobile cost you? A Almost $2,000.

Q What year did you buy it? A 1916; she persuaded me to have the automobile.

Q Did she know at the time, you bought the property in your sister's name, did she know that? A She knew that.

10

Q How did she know it? A Because everybody knew it.

Court. Strike it out.

By Mr. Davimos.

Q Can't you tell us how she knew it? A I told her myself.

Q What did you tell her? A I told her before and after.

Q What did you tell her? A That these houses which I will buy for the sisters, because I showed her the houses, that they will be on my sister's name, on account to protect my sister.

20

Q Why did you tell her that? A Because we were friendly and we talked over things very often with one another.

Q Was she living with you at that time? A No.

Q Where was she living then? A Jersey City.

Q Did she know that your sister had been loaning you money? A She may have known that, I don't know.

Q You don't know whether she knew that or not? A No.

Q After you took title did you have any conversation with her; did Domenica know that you had taken title in Mary's name? A Yes.

30

Q What did you say to her and when—what did you say to Domenica after you took title? A That it is the property of my sister.

Q (*By the Court.*) Why did you tell her again? A We talked very often.

Q She knew that you were going to make over the property to your sister; why did you have to tell her again? A When she asked, "Did you make the deed for your sister," I said "Yes."

40

Q You talked over your transaction? A Yes. I don't remember only maybe once or twice, but she knew when I intended to buy the property, that that was to be in my sister's name; she knew exactly, as it was all in my sister's name, that it was bought in my sister's name, understand.

Q (*By the Court.*) She knew from what you say you told her? A Yes; that was the property of my sister, as everybody knew.

Court. Strike out what everybody knew.

Q When did she first say to you that this property should have been in her name? A She never said that. 10

Q What was the first knowledge you had of it, or knew about it? A As she sued me, or made a conspiracy to prosecute me in court and make me public at a public affair.

Q (*By the Court.*) When did you and she have any trouble? A The first time we have trouble is 1916.

Q What was the cause of that? A Infidelity?

Q On whose part? A On her part.

Q What did the infidelity consist of? A She pretended to be staying friendly with me, and afterwards she was with everybody. 20

Q What do you mean by that, having intercourse, you mean? A Yes, with everybody.

Q By having intercourse with everybody, how was it unfair to you? A It was not exactly unfair to me; in some respect, understand.

Q (*By the Court.*) Do you mean you upbraided her for having intercourse with men? A Yes.

Q (*By the Court.*) Did she ever have intercourse with you?

Mr. Davimos. I object to that.

Court. He can refuse to answer if he wants to. 30

Mr. Davimos. You can refuse.

Witness. I refuse to answer.

Q You say the first time you knew this person claimed that the property should have been in her name was when she started suit? A Yes—no; she never claimed that this was in her name; she never claimed that.

Q She started suit; now she is claiming it today? A Today, perhaps, yes, but never before.

Q (*By the Court.*) When she sued you for $3,000? A She sued me only for the money, but not for the property. 40

Q (*By the Court.*) If you didn't owe her that much, why didn't you defend it? A I have had nothing; I don't possess anything.

Francis Stefanski, cross.

Q (*By the Court.*) You mean you had no property that she could satisfy the judgment out of? A No money, no funds.

Q (*By the Court.*) You are making $3,000 a year? A But I spend that much.

Q (*By the Court.*) What were you spending at this time; you didn't have to spend anything on her? A Incomes were not as great as they were before.

Q There has been a falling off of income? A Yes.

Q This suit in the Supreme Court in which you permitted a judgment to be entered against you; is that $1,500 which you paid for the Highland avenue property part of this fund which she claimed? A Yes.

Q Are there any other moneys which she claims here; does this $3,200 represent the amount you owe her? A She claims that much.

Q How much do you think you owe her?

Mr. Child. I object.

A Perhaps $2,000; not more than $2,000.

Court. I will let him state it, and by his action he has admitted the other $3,600, by allowing this judgment to be taken by default.

Q You have testified that she said that she would get square with you or seek vengeance against you; what was her language to you on that? A They said they will persecute me, because they go to a Free Mason as a lawyer, and they will persecute me, and the demon he will even help them, that I could get crazy, or should hang myself or drown myself.

Q Who told you that? A I was told by witnesses.

Q Did either one of these three tell you that? A No.

Court. Strike it out.

Q Did Mr. Frey ever tell you that? A Mr. Frey told me that he persecute me even to death.

Q Mr. Frey made that statement to you? A Yes, and even after death he will persecute me yet.

Q Where did he make that statement to you? A In my house.

Cross examination by Mr. Frey.

Q What was your income last year?

Mr. Davimos. I object.

The Court. He says it has fallen off.

Q You made a contract for these lots? A Yes.

Q You put steam heat in one house? A Yes.

Court. I don't want all that detail.

10

Q You said you spent money on Miss Michalewska? A Yes.

Q How many years have you been spending money on her? A First in 1910 I was spending money; it was almost $2,000, and afterwards, as I got all those facts about her relation to other things—

Q Did you spend more or less after you got this information? A Then I ceased to be acquainted with her until after 1914; in 1914, 1915 and 1916 I spent over $2,000 on her.

Q Where was she living at this time? A Jersey City.

20

Court. What has it to do with the case?

Q And she was living also in Wildwood? A No.

IGNACIUS L. ZAWADZKI, sworn for defendants.

Direct examination by Mr. Davimos.

Q What is your business? A Real estate and fire insurance.

Q Where do you have your office? A In Harrison.

Q Is that where the properties in question are located? A Yes.

30

Q Have you had any business in regard to either one of those properties? A Yes; I collected money from the property on Jersey street.

Q Who employed you? A Miss Stefanski.

Q Do you know her first name? A Mary.

Q When did she employ you? A 1916 or 1917; maybe December, 1916.

Q And did you collect the rents there? A Yes.

Q Collecting the rents there yet? A From only one house.

Q How many houses are there? A Two houses together.

40

Q Who collects from the other house? A I don't know, because the sisters of the parish live there.

Q What do you do with the rent you collect? A I return it to Miss Stefanski; then after that, when she live in New York, she told me the rent to pay to Francis Stefanski.

Adam Majeski, direct.

Q After she moved to New York she told you to pay the rent to him? A Yes, it was only $17, and this month $18.

Q Are you still collecting the rents? A Yes.

Q Whom do you pay it to now? A To Miss Stefanski.

Q Since when? A From the first to the first.

10 Q How many months back? A Now about five or six months.

Court. The bill was filed in June, 1918.

ADAM MAJESKI, sworn for defendants.

Direct examination by Mr. Davimos.

Q Are you related to the Stefanskis in any way? A No.

Q Where do you live? A 2031 Morris avenue, Bronx, New York.

Q Do you know Mary Stefanski? A I know her well.

20 Q How long have you known her? A I guess about thirty years.

Q Did she ever live with you? A On several occasions.

Q When was the last occasion upon which she lived with you? A In 1918.

Q How long had she been living with you; when did she live with you, in 1918? A If I am not mistaken, the whole year right through.

Q Did she live with you in 1917? A I don't recall if it was beginning with 1917 or 1918.

30 Q What did she do, board? A She only boarded.

Q She didn't work for you? A No.

Q Did you during that time ever visit Father Stefanski in Harrison at her request? A Yes, twice in 1918.

Q Do you know about what part of the year you visited him? A In the summer; I don't remember the dates, but I know it was in the summer.

Q Of what years? A 1918.

Q Both times? A Both times.

Q Who sent you there? A Mary Stefanski.

40 Q What did she send you for? A In fact to make some accounting—some property or something—with Mr. Stefanski; Mr. Stefanski paid some money to me and I took that over to her.

Court. When was the bill filed?

Mr. Davimos. June, 1918.

Cross examination by Mr. Frey.

Q Was it before or after June you were over here? A It was before June.

Q Have you anything to show that it was? A Not exactly, because I had been going to the Island, and I know we just opened a place there, and I remember it was, I think in the latter part of May. 10

Q It may have been in June for all you know? A Yes.

Q Did you come over again? A Yes, I went over, I think, shortly after that.

Q Why did not Mary Stefanski come over? A In fact at that time they were on the outs, because his sister didn't approve of the lady.

Court. Strike that out.

Q You understood they had a quarrel? A Yes. 20

Q And she sent you over? A Yes.

Q How much money did you get from Father Stefanski? A In fact altogether I think it was $250.

Q (*By the Court.*) How much did you get the first time? A Over $100, and then the balance was on the last trip I made.

Q (*By the Court.*) How much was that? A Altogether $250.

Q (*By the Court.*) What was the balance? A On the first occasion around about $120, and then afterwards $130, something like that, I know altogether. 30

Q (*By the Court.*) Are you guessing about this? A I am not guessing about the amount, but in fact it was, altogether, what I got from her.

Q (*By the Court.*) Was it in check? A No, cash.

Q (*By the Court.*) Did you ever meet Father Stefanski before? A Yes.

Q Any reason why he should send the money back with you, instead of check by mail to his sister? A The reason I cannot answer, because I was sent.

Q Do you know any reason why he couldn't send the check to his sister in settlement, instead of sending money back by you? A No. 40

JOSEPHINE WILLIAMS, sworn for defendants.

Direct examination by Mr. Davimos.

Q Where do you live? A Brooklyn.

Q Do you know Mary Stefanski? A Yes.

10 Q Did you ever have any business transaction with Mary Stefanski? A Yes.

Q What were they and when were they first? A I don't just exactly remember what.

Q (*By the Court.*) How many years ago? A Four or five years ago.

Q Do you remember the year and month? A No, because I owed her some money.

Q When was that? A That is what I say, a few years ago, but I don't know what year.

20 Q How much money did you owe her? A $1,500.

Q How did you come to owe her that? A Because I need it.

Q (*By the Court.*) How long did you owe it to her? A About five years.

Q How is it she came to loan you the money; are you a particular friend of hers? A Yes.

Q Related to her? A No.

Q Did she ever live with you? A No, but she is quite a friend with me; she always come and see me.

Q How long has she known you. A About since she come 30 to this country.

Q How long is that, do you know? A 1882.

Q And she loaned you $1,500? A Yes.

Q Did she ever demand that money back? A I give her back $700.

Q (*By the Court.*) When? A I don't remember the year; it was early in the spring, some year, but I don't remember.

Q (*By the Court.*) Take a receipt from her? A No.

Q (*By the Court.*) Give her a check? A No.

Q (*By the Court.*) Nothing to show that you gave her $700? 40 A No, nothing between us.

Q (*By the Court.*) Has she anything to show you owed her $1,500? A No, nothing at all, and I don't know that I owe it, because she give it to me if I need it.

Court. Strike it out.

Q Do you still owe her money? A Yes.

Q Did she tell you why she wanted that money? A Yes.

Mr. Child. I object.

Court. Objection sustained.

Q Do you think you can fix the time of the year when you gave her this money, the season of the year? A Maybe it was some part early in the spring, about May or June, something like that. 10

Examination by the Court.

Q Not what it may be; that doesn't give any information; was it the fall or autumn, or when was it? A It was in the spring.

Q How do you know it was? A It was warm.

Q It might have been warm in the summer time; how do you know it was in the spring? A It must be, because it was warm, it couldn't be any different. 20

Q Will you try to refresh your mind, if possible, and try to figure out what year it was? A I never did try to figure out what year it was.

Q To the best of your recollection, it is three or four years ago? A Something like that.

Q It might have been five or six? A I don't remember. No, I don't think it was so long.

Q Is it two or three? A I really don't know; I cannot tell exactly. 30

Q Do you pay out $700 very often, so you don't remember? A I give it to her.

Q Have you paid anybody else $700 in the last three, four or five years? A No.

Q Can't you remember an important transaction like $700; you haven't had any other as large as that in those years? A Well, no.

Q Why can't you remember a matter of $700? A I never think that come to court. 40

Q (*By Mr. Davimos.*) Where did you have this $700 that you gave to her? A I have it home; she come to me a couple of weeks before—

Mr. Child. I object.

Josephine Williams, direct.

A (Continuing)—about two months ago, and she said she needs a few hundred.

Mr. Child. Objected to.

Court. Sustained.

Mr. Child. They haven't fixed the time.

10 *Court.* I will not pay any attention to it until the time is fixed.

Q Where did you get this money from that you gave her?

Mr. Child. I object.

Court. I will permit it.

A I had it at home.

Q Did you have this $700 home? A Yes, just $700, she asked me for a few hundred.

20 Q Are you married? A Yes.

Q Is your husband living? A Yes.

Q Was he at home at the time you made the payment? A No.

Q Where did you get the money? A I saved it.

Q From what? A From wages of my husband.

Further direct by Mr. Davimos.

Q You kept that $700 in your own house? A Yes.

Q How long had you been saving it? A For a couple of years.

30 Q How much did your husband make a week? A $25.

Q And in two years you saved $700 out of it? A No, not quite in two years, it might have been three years.

Q To the best of your recollection, is it three or four years ago?

Mr. Child. I object.

Court. Objection sustained. She hasn't any recollection, as a matter of fact, any definite recollection as to how many years it was.

40 A It may be about four years.

Q When you say "maybe," what do you mean by that?

Mr. Child. Objected to.

Court. Objection sustained.

Q Did Mary Stefanski tell you what she wanted this money for?

Mr. Child. I object.

Court. She said she did.

MARY STEFANSKI, sworn for defendants. 10

Direct examination by Mr. Davimos.

Q You are the sister of Father Stefanski? A Yes, I am.

Q How long have you been in this country? A About thirty years.

Q And did you live with Father Stefanski at the parish house around 1914? A I don't think so, no.

Q That is the time when Father Ferdyn died? A Yes.

Q Who lived there besides you? A Myself and Father Stefanski. 20

Q Did you loan your brother any money? A Yes, I used to loan him since the time he first really come to this country, off and on.

Q When was that? A That is about twelve years or ten years ago—twelve years ago since he came to this country.

Q And off and on you used to loan him money during that time? A Yes.

Q How much did he owe you about June, 1915? A I think if he should recollect it, it is about more than $1,300, but it is more; it is an amount that my brother doesn't take it serious 30 with me, but he really owes me, but I don't worry about it, because I get it; I think I get it afterwards anyway.

Q Would you say about how much? A I think it would be probably $2,000 or more yet.

Q How do you reach those figures? A Because he used to take three or four hundred at a time from me.

Q Where did you get the money from? A I have been working as dressmaker, and I have been working all my life during the thirty years in this country.

Q These savings you had you gave to your brother? A Yes, 40 whenever he needed it, when he came to this country.

Q In June, 1915, did he have any conversation with you about that money? A Yes, he said that he needed the house for the sisters, and he was going to buy a lot on Jersey street, and I

give $700 he needed, and after I give that money, he will transfer that on my name, so I approve, and that would fix me up, it would put me safe with my other amounts.

Q So you agreed to that? A I agreed to that.

Q Did you have the $700 in your pocket? A No, I went to Mrs. Williams and I got it, because she owed me $1,500, and I told her, and she said that she will have it ready for me.

Q Did you hear any conversation between Father Stefanski and Domenica concerning this property? A No, because Miss Michalewska when she called at Father Stefanski it was always behind my back, or if I went out, her brother Mr. Michalewska went, and then they telephoned when I was out.

Court. How do you know what they did when you were out? Strike it out.

Q They would sneak around the place when you were not there? A Yes, and come in.

Court. How could she know?

Q Did you ever have any conversation— A I know they were there when I come.

Q Did you ever have any conversation with Domenica about these houses? A Never.

Q Did you ever know that your brother had promised to put these houses in her name? A No, I never even heard it mentioned; I didn't know that he owed her any money.

Q Who collected your rents after the houses were bought? A I did.

Q What did you do with them? A I used to use it; I was with my brother at that time and he needed some money, and I give it back when he needed it again, but I used it most for my own purpose.

Q And then gave it back to him when he needed it? A We always did that; it is like brothers and sisters, we always did between ourselves.

Q You left your brother when? A I left him in 1916.

Q You had an argument with him? A I had an argument with my brother.

Q On account of whom? A Because I didn't like Miss Michalewska and her brother being in our house.

Q You left the house? A Yes.

Q Where did you go to live? A 21 Morris avenue, Bronx.

Q With whom did you live? A Mrs. Majeski.

Q Who collected the rents? A Mr. Zawadzki.

Q Who collected them? A He did, and I turned it over to fix things, and send the balance. 10

Q Turned it over to whom? A To Father Stefanski.

Q During the time you were living in Brooklyn did you go to get the rents or an accounting from your brother? A No, because I was afraid of argument again, and I sent Mr. Majeski.

Q Did Mr. Majeski give you any money? A Yes, once $120 and the other time $130.

Q When did he do that? A It was sometime in the summer time, I think, sometime in the early summer, and then later on. 20

Q Did you know anything about your brother's financial condition in June, 1915? A No, I didn't.

Q Did you know that he couldn't pay the $1,300? A I didn't know it at the time, because he wouldn't gave it, but I know in the future I thought the parish was growing and that he would come in better circumstances and give it to me.

Q What form did you give the $700, money or check? A Money.

Q Where did you give it to him? A In the parish house. 30

Q I thought you didn't visit him? A When I give it to him I was living with him; I left later because these people used to come to the house, and I objected to that.

Q Did you go down to the lawyer's office when the title was fixed up? A No, Mr. Davis called at my house.

Q The attorney, Mr. Davis, closed the title at your house? A Yes.

Examination by the Court.

Q Did you have anything to do with fixing the price of the property? A No, my brother fixed it; he told me and I agreed to that. 40

Q Did you agree to give a mortgage back on the property? A Yes—no.

Q How much was the mortgage? A $3,200.

Mary Stefanski, cross.

Q At what rate of interest? A I think $160, or $80 every six months.

Q Did you ever pay the interest? A Yes, I buy it in my name.

Q Did you ever pay it yourself? A Yes, I did.

10 Q To whom? A To the West Hudson.

Q You have taken the money over yourself? A Yes.

Q When did you do that? A Only lately, a few weeks ago.

Q Is that the first time you ever did it? A I did it before, too.

Further direct examination by Mr. Davimos.

Q Did you do it during the year you had the property? A Yes. Only while I was working by the day, I couldn't spend the time, because I was working by day as a dressmaker.

20 Q How long after you got the property in your name did you receive that property? A About a year it was.

Q You say Miss Michalewska has never spoken to you about it? A No, she only came when I was out, and when I came in they always tried to fix that.

Q Their relationship was behind your back and over your objection? A Yes, behind my back and my objection.

Q Did you suggest to your brother that he had better pay you back the $1,300 instead of asking you for $700 more? A No, because I agreed to it; I wanted my brother to prosper, and the people said that if the sisters and school was there, the

30 parish would grow.

Q How long was your brother in this country? A I think eleven or twelve years.

Q Since that time you have always been loaning him money? A Yes, some I got back and some he still owes, but I don't have no recollection.

Court. I haven't any doubt she has loaned him money, and he hasn't paid it back either.

Q You say that Mrs. Williams gave you the $700? A Yes.

40 Q You were present at the time the title was closed? A Yes.

Cross examination by Mr. Frey.

Q Why did you send Mr. Majeski to your brother's for the money? A Because, as I said, I worked by day as dressmaker,

and I couldn't spend that time; otherwise, as I wasn't on good terms with him, it would make only an argument, and Mr. Majeski is a friend of mine, for about thirty years we know each other, and he is willing to go for that.

Q You live with your brother now? A Yes.

Q You are not dressmaking now? A No. 10

Q (*By the Court.*) When did you and your brother make up your quarrel? A This fall.

Q (*By the Court.*) About when? A I think September, beginning September this year.

Mr. Davimos. What was the occasion for your making up?

Witness. Because he has not been feeling well, and he was sick, and doctor wrote to me if I wouldn't go and see to him, because he hasn't been feeling well; he had 20 influenza.

Mr. Davimos. So on the doctor's advice, you came back?

Witness. Yes.

Q Do you know that you are being sued here? A No, I didn't know that; that is the first time I see it now; now I know that I am being sued.

Q This is the first time? A I know that I have been sued, because I was told that I have to prove my ownership to the houses, but then I was surprised; they know all along while I 30 bought them houses that they were mine and nobody else's.

Q Who told you you were being sued? A I got a summons.

Q Whom did you get it from? A From the Court House.

Q Where were you living when you got it? A In Harrison, with my brother.

Q At what time? A A few days ago.

Q You didn't get any notice from anybody before? A No.

Q How long do you know that this case is on? A Only since the court sent me the— 40

Q Is that a week? A About ten days, I think.

Q That was the first time you knew about it? A Yes.

Q You have been living with your brother— A Since September, beginning of September or end of August.

Q Your brother never told you that you were being sued here? A He never told me, because I never asked him.

Q And did you hire a lawyer and file answers in this case? A I asked Mr. Davimos.

Q When did you hire the lawyer? A Right away I went to him.

10

Q When? A When I got the subpoena, about ten days ago, and I went there.

Q An answer was filed several months ago? A My brother couldn't find me at that time.

Court. Strike it out.

Decree.

20

This cause coming on to be heard on bill and answers, in the presence of Francis Child, of counsel with, and John Q. Frey, solicitor of the complainants, Harry T. Davimos of counsel with the defendants, Mary K. Stefanski and Antoni Butkiewicz, and the defendant, Francis Stefanski, and the pleadings having been read, and the arguments of respective counsel having been heard, and the Court having duly considered the said pleadings and arguments, and the evidence offered on behalf of complainants and defendants; and it appearing to the Court that the defendant, Francis Stefanski, is a bankrupt and that Beatrice I. Goll was duly appointed trustee of the estate of the said Francis Stefanski, bankrupt, and that the deed of conveyance, mentioned and described in paragraph 6 of said bill, for the lands and premises in said deed set forth, was made and executed with the intent to defraud the complainant, Dominica Ferdyn Michalewski, as a creditor of the defendant, Francis Stefanski; and that the said complainants are entitled to the relief, with respect to said conveyance and premises therein described, prayed for in their said bill of complaint as amended; and that the defendant, Mary K. Stefanski, is entitled to a lien on said premises for the sum of $700.00 with lawful interest from date of said conveyance, subject to existing liens and the lien of the complainant, Dominica Ferdyn Michalewski; and that as to the defendant, Antoni Butkiewicz, the said bill should be dismissed;

30

40

It is thereupon, on this 28th day of April, 1918, on motion of

Decree.

John Q. Frey, of counsel with the complainants, ORDERED AND DECREED, and the Chancellor, by virtue of the power and authority of this Court, does hereby ORDER, ADJUDGE AND DECREE, that said deed of conveyance in paragraph 6 of said bill mentioned and described, for the tract of land therein set forth, that is to say, the deed of conveyance made by the Church of the Holy Cross, Harrison, New Jersey, a corporation of the State of New Jersey, to the defendant, Mary Stefanski, bearing date the third day of June, 1915, and recorded in Book 1219 of Deeds for Hudson County, page 336, be set aside, annulled and made void as against the complainant, Beatrice I. Goll, trustee of the estate of Francis Stefanski, bankrupt, and the title to said lands be and the same is hereby vested in said Beatrice I. Goll, trustee as aforesaid, subject to existing liens and encumbrances on said lands and the liens hereinafter set forth, said lands being more particularly described as follows:

All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Town of Harrison in the County of Hudson and State of New Jersey.

BEGINNING at a point on the northerly line of Jersey street distant easterly three hundred feet from the northeast corner of Jersey and Second streets, thence running easterly along the northerly line of Jersey street fifty feet to lot number ninety-three thence running northerly along the westerly line of lot number ninety-three and parallel with Second street one hundred feet thence running westerly along the rear line of lots number sixty-five and sixty-six and parallel with Jersey street, fifty feet and thence running southerly and along the easterly line of lot number ninety and parallel with Second street one hundred feet to the point or place of BEGINNING.

Being lots numbered ninety-one and ninety-two on a map entitled "A Map of the Valuable property of Andrew Smith, Esq., in East Newark, New Jersey." (Filed in the clerk's office of the County of Bergen the 24th day of November A. D. 1836, Samuel H. Berry, clerk.

BEING the same premises conveyed to the party of the first part by J. Jacob Schmidt (single) by deed dated September 25th, 1914, and recorded in the register office

of Hudson County September, 1914, in Liber 1189 of Deeds for said County on pages 424, etc.

And it is further ORDERED, ADJUDGED AND DECREED that the claim of the complainant, Dominica Ferdyn Michalewska, against the defendant, Francis Stefanski, for the sum of $2,000.00 and lawful interest thereon from June 3, 1915, be and remain a lien, until paid and satisfied, on the lands above described, subject to existing liens and encumbrances thereon;

And it is further ORDERED, ADJUDGED AND DECREED that the claim of the defendant, Mary K. Stefanski, against the defendant, Francis Stefanski, for the sum of $700.00 and lawful interest thereon from June 3, 1915, be and remain a lien, until paid and satisfied, on said lands subject to existing liens and encumbrances thereon, and the lien of the complainant, Dominica Ferdyn Michalewska as aforesaid;

And it is further ORDERED that as to the defendant, Antoni Butkiewicz, the bill of complaint herein be and the same is hereby dismissed.

Respectfully advised,

JOHN E. FOSTER,
Vice-Chancellor.

Notice of Appeal.

The defendant Mary K. Stefanski hereby appeals from so much of the final decree made in this Court in the above stated cause as orders, adjudges and decrees that the deed of conveyance as set forth in paragraph six (6) of the bill of complaint, and which conveyance was made by the Church of the Holy Cross of Harrison, a corporation to Mary K. Stefanski, dated June 3, 1915, and recorded in Book 1219 of Deeds, pages 336, be set aside, annulled and made void against the complainant, Beatrice I. Goll, trustee of the estate of Francis Stefanski, bankrupt, and that the title to the said lands be and the same are hereby vested in the said Beatrice I. Goll, trustee, subject to existing liens, and encumbrances on the said lands, and also subject next, to the lien of complainant, Domenica Ferdyn Michalewska for two thousands dollars ($2,000.) with lawful interest thereon from

June 3, 1915, and thereby giving preference to the said lien of the said Domenica Ferdyn Michalewska, for the said sum of two thousand dollars ($2,000.) and interest as aforesaid in preference to the lien of Mary K. Stefanski, and furthermore the said defendant Mary K. Stefanski appeals from so much of the final decree as adjudges, annuls and voids her lawful title to the said premises aforesaid mentioned for any purposes whatsoever or in any way disturbs her legal right in fee to said premises or in any way lessens her estate in the said premises or imposes any lien thereon; to the Court of Errors and Appeals in the last resort in all causes.

Dated April 28, 1919.

HARRY T. DAVIMOS,
Of Counsel with the Defendant, Mary K. Stefanski.

I concede there is due cause for appeal in the above stated cause.

HARRY T. DAVIMOS,
Of Counsel with the Defendant, Mary K. Stefanski.

Petition of Appeal.

The petition of Mary K. Stefanski, defendant-appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by final decree made in the Court of Chancery by his Honor, John R. Foster, Vice-Chancellor of the State of New Jersey, bearing date the 28th day of April, 1919, in the cause wherein Beatrice I. Goll, trustee, etc., and Domenica Ferdyn Michalewski were complainants, and your petitioner Mary K. Stefanski, *et als,* were defendants in this respect;

That the said decree, adjudges and decrees that the conveyance set forth in paragraph six of the bill of complaint wherein those certain premises were conveyed by the Church of the Holy Cross of Harrison, New Jersey, a corporation, to defendant, Mary K. Stefanski by deed bearing date June 3, 1915, and recorded in Book 1219 for Deeds, pages 336, in the register office of Hudson County, shall be set aside and the title to the same be vested in the said complainant, Beatrice I. Goll, trustee as aforesaid, subject to the existing liens and encumbrances on the

said lands, and then to the lien of complainant Domenica Ferdyn Michalewska, for the sum of two thousand dollars ($2,000.) together with interest from the 3rd day of June, 1915, and then lastly to the lien of the defendant, Mary K. Stefanski.

Your petitioner humbly appeals from that part of said decree of the Chancellor that thereby decreed that the title in fee of Mary K. Stefanski to be set aside and of nothing holden and to liens imposed thereon in priority to the equity of the defendant, Mary K. Stefanski, thereby imposing a preference on the said lands in favor of the complainant, Domenica Ferdyn Michalewska, ahead of and to take precedence over the estate of the defendant, Mary K. Stefanski, in said premises, and to so much of the decree as in any way disturbs or changes the lawful right in fee of said premises of the said Mary K. Stefanski, thereby limiting or in anywise changing or disturbing the lawful fee of the said Mary K. Stefanski in the said premises.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in particulars aforesaid reversed, set aside and of nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

HARRY T. DAVIMOS,
Of Counsel with Defendant, Mary K. Stefanski.

Answer to Petition of Appeal.

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents, not admitting any or all of the matters which in said petition of appeal are contained, to be true, but in answer thereto, nevertheless, say and admit, that decree was, on the 28th day of April, 1919, made and entered in the Court of Chancery, in the cause for that purpose mentioned in said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto, when the same shall be produced.

And these respondents are advised and believe that the said decree is agreeable to equity and pray that the same may be affirmed, with costs to be adjudged to these respondents.

JOHN Q. FREY,
Solicitor for and of Counsel with Respondents.

Exhibit C. 2.

EXHIBIT C. 2.

SUPREME COURT OF NEW JERSEY.
ESSEX COUNTY.

10

DOMINIKA FERDYN MICHALEWSKA, *Plaintiff,* *vs.* REV. FRANK STEFANSKI, 237 Jersey Street, HARRISON, N. J., *Defendant.*	*Complaint.*

Plaintiff residing at 157 St. Pauls Avenue, Jersey City, New
20 Jersey, says that:

1. She sues for the amount of a promissory note for $1600.00 made by the defendant, Rev. Frank Stefanski, to plaintiff, a copy of which is hereto annexed.

2. Plaintiff still owns said note. It has not been paid.

Plaintiff demands, as damages, $1600.00 with interest from January 29, 1915 and costs of suit.

Frey & Vanecek,
30 *Attorneys for Plaintiff.*

COPY OF NOTE.

$1600.00 Harrison, N. J., January 29th, 1915.
On demand after date I promise to pay to the order of Miss Dominika Ferdyn Michalewska—
Sixteen hundred & no/100 Dollars.....
at The West Hudson County Trust Company,....
Harrison, N. J.
Value received.
40 No. Due (signed) Rev. F. Stefanski.

Filed Nov. 1, 1917.

Wm. C. Gebhardt,
Clerk.

Exhibit C. 2.

SUPREME COURT OF NEW JERSEY.
ESSEX COUNTY.

DOMINIKA FERDYN MICHALEWSKA, *Plaintiff,* *vs.* REV. FRANK STEFANSKI, 237 Jersey Street, HARRISON, N. J., *Defendant.*	*Amended Complaint.*

10

Plaintiff residing at 157 St. Pauls Avenue, Jersey City, New Jersey, amending her complaint heretofore filed by her in this cause, says that:

20

FIRST COUNT:

1. She sues for the amount of a promissory note for $1600.00 made by the defendant, Rev. Frank Stefanski, to the plaintiff, a copy of which is hereto annexed.

2. Plaintiff still owns said note. It has not been paid.

SECOND COUNT:

1. Plaintiff, on or about June 1, 1915, lent to the defendant, Rev. Frank Stefanski, $2,000.00 to be repaid within 60 days thereafter, or when she, the said plaintiff, may demand the same.

30

2. On or about May 1, 1916, plaintiff received from the said defendant the sum of $100.00 on account of the money loaned to him as herein stated, and at three different times thereafter, within a period of one year from the time said money was loaned and before May 1, 1916, received an additional sum of $100.00 each time, making a total received by the plaintiff from the defendant, on account of said money loaned, of $400.00, leaving a balance due to the plaintiff of $1600.00.

3. On or about May 1, 1916, plaintiff demanded the said sum of $1600.00 so due to her from the said defendant.

40

4. Defendant has not paid said sum.

Plaintiff demands as damages the sum of $3,200.00 with lawful interest on the note aforesaid from January 29, 1915, and on

Exhibit C. 2.

the money loaned as mentioned in the second count of this complaint from May 2, 1916, and costs of suit.

Frey & Vanecek,
Attorneys for Plaintiff.

10 COPY OF NOTE.

$1600.00 Harrison, N. J., January 29th, 1915.

On demand after date I promise to pay to the order of Miss Dominika Ferdyn Michalewska,—Sixteen hundred & no/100 Dollars..... at The West Hudson County Trust Company, Harrison, N. J.

Value received.

No. Due (signed) Rev. F. Stefanski.

20 Filed Dec. 1, 1917.

Wm. C. Gebhardt,
Clerk.

30

40

Exhibit C. 2.

SUPREME COURT OF NEW JERSEY.
ESSEX COUNTY.

DOMINIKA FERDYN MICHALEWSKA, *Plaintiff,* *vs.* REV. FRANK STEFANSKI, *Defendant.*	*Affidavit.*

10

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } *ss.*

Dominika Ferdyn Michalewska of full age, being duly sworn according to law on her oath deposes and says: I am the plaintiff in the above entitled cause of action; there is due me from the defendant the sum of $3200.00 as follows: $1600.00 thereof is due me on account of a promissory note made by the defendant to me, dated January 29, 1915, payable on demand, and the payment of which demand was made on March 1, 1915, but no part of which note has been paid to me; the balance of $1600.00 is due me for cash moneys loaned by me to the defendant on or about June 1, 1915, at which time I loaned to the defendant the sum of $2000.00 and received from him on account thereof the sum of $400.00. prior to May 1, 1916; that said last mentioned loan was to be repaid to me within 60 days from the time of the making of said loan.

20

30

There is due me the total sum of $3200.00 together with interest upon the note aforesaid of $1600.00 from March 1, 1915 and interest upon the remaining $1600.00 from May 2, 1916.

That annexed hereto is an assessment of damages showing the actual principal and interest due me from the said defendant, and I have received no part or portion of said sum, but the whole amount is still due and owing to me.

Dominika Ferdyn Michalewska.

40

Sworn and subscribed to before me
this 24 day of January, 1918.

Fred W. Neumann,
Attorney at Law of New Jersey.

Exhibit C. 2.

ASSESSMENT OF DAMAGES.

The following is a copy of the note mentioned in the First Count of the Complaint filed by the plaintiff in this cause:

"$1600.00/100 Harrison, N. J., January 29th, 1915.

10 On demand after date I promise to pay to the order of Miss Dominika Ferdyn Michalewska—Sixteen hundred & no/100.....Dollars at The West Hudson County Trust Company, Harrison, N. J.

Value received.

No. Due (signed) Rev. F. Stefanski."

Demand for the payment of said note was made on March 1, 1915.

20 No part of said note has been paid.

Total amount due upon said note.....		$1600.00
Interest upon said note		
From Mar. 1, 1915 to Mar. 1, 1917, 2 years	$192.00	
From Mar. 1, 1917 to Jan. 1, 1918, 10 months	80.00	
From Jan. 1, 1918 to Jan. 14, 1918, 14 days	3.72	
Total interest		275.72
June 1, 1915 cash moneys loaned by the plaintiff to the defendant, to be repaid within 60 days thereafter	$2000.00	
30 To amounts received on account of said loan between Aug. 1, 1915 and May 1, 1916.....	400.00	
Total balance due on account of loan.....		1600.00
Interest upon said loan		
From May 2, 1916 to May 2, 1917, 1 year	$ 96.00	
From May 2, 1917 to Jan. 2, 1918, 8 months,	64.00	
From Jan. 2, 1918 to Jan. 14, 1918, 12 days,	3.20	
40 Total interest		163.20
Total amount due plaintiff from the defendant,		$3,638.92

Dominika Ferdyn Michalewska.

Exhibit C. 2.

STATE OF NEW JERSEY, *ss.*

I, WM. C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, hereby assess the damages of the plaintiff against the defendant in the above stated cause, at the sum of 3638 dollars and 92 cents besides the costs of suit, to be taxed.

Dated Jan'y 25, 1918. Wm. C. Gebhardt,
Clerk.

10

Original Note inspected
Jan'y 25, 1918..

Wm. C. Gebhardt,
Clerk.

Filed Jan. 25, 1918.

20

30

40

Exhibit C. 2.

NEW JERSEY SUPREME COURT.

DOMINIKA FERDYN MICHALEWSKA, *vs.* 10 REV. FRANK STEFANSKI.	*Action at Law.* *By Default.* *Frey & Vanecek,* *Attorneys.*

$3,638.92
37.26
———
$3,676.18

Judgment entered this twenty-fifth day of January, A. D. nineteen hundred and eighteen, for the sum of three thousand six hundred and thirty eight dollars and ninety two cents damages and thirty seven dollars and twenty six cents costs.

Wm. S. Gummere,
20 *C. J.*

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing are true copies of the Complaint, Amended Complaint, Affidavit and Assessment of Damages and Judgment in the above stated cause as the same remain on file in my office.

(SEAL) In testimony whereof I have set my hand and the seal of said Court at Trenton, this seventeenth
30 day of March, A. D. nineteen hundred and nineteen.

Enoch L. Johnson,
Clerk.

40

BRIEF

I.

This was a suit commenced in the Court of Chancery to have a conveyance to Mary K. Stefansky, one of the defendants set aside. Toeffect complete relief, the Vice Chancellor admitted Domenica Ferdyn Michaelewski as a party complainant. Mary was the sister af Francis Stefanski, a Polish Priest, another defendant. It appears that on the 3rd day of June, 1915, Francis, desiring to purchase a property to house the Sisters who were teaching in his Catholic School, procured the sale of two houses, one for the purpose just mentioned and another presumably because it could be bought from the same parties under favarable terms at the same time. (Described in the State of Case page 1 line 30).

It appears that Francis had been borrowing money from July 1914 from Domenica and from his sister, the appellant herein, since he had immigrated to this country about 1908. (State of Case, page 50 line 31.) It appears further that Domenica had come to live at the Parish House with Francis, under very shady circumstances; and upon the death of another priest in July, 1914, became possessed of the sum of Ten Thousand Dollars under still shadier circumstances.. His sister also living at the Parish House (and before Domenica came,) was aware that this Domenica was a deterent and evil influence upon her brother, and did what she could to remove this influence, finally despairing and leaving her brother's home entirely, because of the relationship that she thought existed between them.

For more than ten years, Mary had been lending her brother sums of money continuously until in 1915, at the time she bought the property, he owed her a sum in excess of Two thousand Dollars. (State of Case page 47 lines 20-40). It appears Mary had absolutely no knowledge that her brother was also borrowing from Domenica. She was hostile to Domenica at all times. She bought the property as a favor to her brother entirely with her own money. $700. she brought with her at the time of closing title, and $1300. at the same time her brother repaid her. It was then agreed that the sister should take the property in full payment of all debts between her

and her brother. (State of Case page 47 line 42, State af Case page 48 lines 1-5) There was no knowledge or information, either directly or indirectly, whereby Mary knew, or could be presumed to know that Francis had made a similar promise to square his account with Domenica. So the court found. (State of Case page 6 lines 35-40).

The Vice Chancellor set aside the conveyance to the sister in favor of Domenica solely on the ground set forth in his opinion
10 in the State of Case page 7 line 10, namely that Domenica Ferdyn occupied a different position from the sister.

The basis of the decree is a moral distinction which, in fact, did not exist. The sister is decreed to forfeit her own property for the debt that her brother owed a stranger. He never had the property in fee. He advised her to buy the property to help him out. She bought it absolutely with her own money, and never held it in trust for him. It was a satisfaction of the debt between the sister and the brother.

20

II.

The court erred as a matter of law in that it set aside the conveyance of Mary on the theory that the brother had no right to prefer his sister to a stranger in payment of the debt.

In the case of Roe vs Moore
35 Equity page 526

30 This case is worth reading in its entirety. Here a mother loaned her son mney, and the son in failing circumstances, and insolvent, desiring to prefer his mother to the disadvantage of other creditors, conveyed a piece of property to her, the equity of the property being about an equivalent of the amount which she had loaned to her son, and the Court held that the burden of proof is on the complainants, who avers fraud, and that it was the right of son to prefer his mother where the debt was honest, and she did not design to hinder, defraud or defeat creditors by any participation or cognizance or knowledge of such an intention when she
40 accepted the conveyance.

Brocks vs Hudson National Bank
48 Equity page 539

Husband owed his wife money, which she had advanced to him. The Hudson National Bank was also a creditor of his.He preferred the wife to the bank, and made a deed of his property to her. The court of Chancery set aside the conveyance to the wife..

Reed, J. "She was a creditor of her husband. So was the bank. Both stood upon an equal footing in thisrespect. Morally, the right of the wife to the payment of the debt was superior because the husband, when using hermoney had so promised, but legally and equitably, I do not perceive any legal defference in their attitude at the time the deed was made. Now he chooses too secure his wife by making a deed to her. He had a right to secure or pay her for her advances, she not being a party to any design, or to defraud others by form of the conveyance" and the court of errors entered a reversal.

Thompson vs Wililamson
67 Equity page 212 on page 224

There it was held by Emery, Vice Chancellor "The entire transaction of the voluntary conveyance to the judgement debtor's wife and the subsequent conveyance of a portion of it to Mrs. E. B. Williamson thus substantially amounted to a perference of one creditor over another, both debts existing at the same time. Such preference is not illegal or fraudulent."

In the case of

Livermore vs Mc Nair
34 Equity page 478 at page 481

Van Fleet

In my judgement, this transaction can only be defended on the ground that it is a legitimate exercise of the right which every debtor possesses, even when in solvent circumstances, of giving one or more of his creditors preference over the others. That the debtor possesses this right cannot be questioned. It flows necessarily from the complete dominion which the law gives every man over his own property.

In the caseof

Atlantic Refining Co. vs Stokes
77 Equity 119

The court reaffirmed the general doctrine on the right of the individual in failing circumstances or insolvent, to prefer one of his creditors, there being no combination between him and his grantee to delay, hinder, or defraud other creditors of the debtor. It must be shown that the grantee participated in the intention to defraud or
10 had knowledge of the object of the grantor. Affirmed by the Court of Errors and Appeals, 78 Equity page 30.
Appeals, 78 Equity page 30.

III.

The court errerd in setting aside conveyance because there was no evidence to show there was no adequate consideration and because it was not shown that Mary had any knowledge of any intention, either directly or indirectly of her brother to defraud
20 complainant, Domenica, (State of the Case page 14 line 44, page 19 lines 35-40 et sec, and page 24 lines 30-40, and page 48 lines 25.

In the case of

Muirheid vs Smith
35 Equity-303 Knapp-J

"To impeach a conveyance on the ground that it was designed to hinder, delay or defraud creditor, it is necessary, not only that the vendor acts from such notice, but it is essential that the vendee
30 shall concur in or have cognizance of the fraudulent purpose. When the acts of parties admit of a reasonable interpretation in favor of honesty, and fair dealing, they should receive it."

In the same case, Depue, J, filing an opinion to modify the lower court decree says

"I agree with the opinion of Judge Knapp that the evidence is not sufficient to sustain a decree seting aside conveyance entirely as a conveyance made in fraud of creditors. For to set aside and
40 completely annul a deed made to the grantee, who is a creditor, or

who has given a consideration for the conveyance which shall carry with it a forfeiture of all grantee's rights, it is necessary that it should appear that the grantee had knowledge of or partictpated in the fraudulent intent of the grantor."

So also is the case of

35 Equity-408 on page 412
New York Fire Insurance Co. vs Tooker
Vice Chancellor Van Fleet 10

IV.

The court erred as a matter of law in that it allowed Domenica a preference for Two Thousand Dollars, whereas the most she claimed from her own testimony and from the pleadings was $1600. It most be borne in mind that there was considerable confusion in the testimony by reason of mixing up another claim of ..1600. on the note, with the amount which was loaned to Francis by Domenica to purchase, as she claimed, the property in question. State of the 20 case page 2 line 17 sets fourth the basis of her claim, namely that she loaned $2000. on June 1st, 1915, and which was to be repaid within 60 days. It then appears from Domenica's own testimony (State of case page 12, line 12 et seq. that $400. was repaid to her. A repetation of this admission appears in State of the Case page 15, line 12, et seq., and page 21 line 10-15, and from the affidavit of Domenica in procuring her judgement in the Supreme Court of New Jersey, wherein she sets forth that she received on account of the $2000. cash money loaned, a payment of $400. so that in her Supreme Court action, she claimed $1600. on the note and $1600. 30 balance due on the cash money loaned on June 1, 1915 (State of the case page 59 line 28-40 and page 61 lines 25-35).

It therefore appears from the evidence in the case and from the admission of Domenica herself, that the greatest amount that she claimed was $1600. not $2000. as was allowed by the decree.

V.

The Court erred as a matter of law because Domenica has elected to proceed to judgement on her claim. It appears the claim 40

is based on money loaned in May and June, 1915 and that in December, 1915, (State of the case page 11, line 42-44) she became acquainted,by her admission,with the fact that the houses in question were bought by Mary K. Stefanski. Nevertheless in spite of this, in November, 1917, she sued upon her claim in the Supreme Court of the State of New Jersey, and proceeds to judgement thereon, Thus having elected her remedy, and her relief, 15 Cyc, 259 section 5.

10 B. "The prosecution of one's immediate right to judgement or decree, whether the judgement or decree is for or against the plaintiff is a decisive act which constitutes a conclusive election barring a subsequent prosecution of an inconsistent or remedial right."

VI.

The court erred as a matter of law upon its own couclusions from the testimony. A reading of the opinion shows that the whole
20 basis for setting aside the conveyance as above set forth was, namely, that a stranger has more right than a sister to have her debt paid, and that no other coniderations matters, that this alone is sufficient to warrant setting aside a conveyance that belongs to the sister, to satisfy the debt of the brother. State of the Case page 28 line 35, wherein the court says "this loan of $2000. was obtained under the representation and promise that if she Domenica would advance money the title to the property would be taken in her name as security until the loan of $2000. had been paid her. *There is not the slightest proof in the case bringing the sister of Father Stefanski*
30 *into the case or into the title.* It seems that within a few days from the time the last thousand dollars was said to have been paid or loaned by this woman the title is taken in the name of the sister."

Thus from the court's own conclusion after the plaintiff rested there should have been a dismissal of the bill. As the court admits, there was no testimony whatsoever bringing the sister, the appellant, into the case.

Again on page 50 State of case, line 36, the Court says "I have
40 no doubt she (Mary) loaned him the money, and hehas not paid

it back either", showing total belief of the court in the sister's testimony, that she bought the property for herself at the suggestion of her brother, with her own money, and with money she had previously loaned him.

Respectfully submitted,

HARRY T. DAVIMOS,

Of Counsel for Defendant-Appellant. 10

Mary K. Stefanski.

20

30

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New Jersey Court of Errors and Appeals

Between BEATRICE I. GOLL, trustee, *et als.*, *Complainants-Respondents,* *and* MARY K. STEFANSKI, *et als.*, *Defendants-Appellants.*	*On Bill, etc.* *On Appeal from Decree in Chancery.*

BRIEF FOR COMPLAINANT.

Facts.

This cause was heard before one of the Vice-Chancellors, on bill and answer. At the hearing these facts were brought out: The complainant, Dominika Ferdyn Michalewska, was employed as housekeeper by defendant, Francis Stefanski, a priest of the Polish Catholic Church, who advised her and controlled her on all matters, spiritual and business. During the time of such employment, at his demand, and upon his advice, complainant, Dominika Ferdyn Michalewska, on May 1, 1915, loaned defendant, Francis Stefanski, $1,000.00, and on June 1, 1915, loaned him a second $1,000.00. This $2,000 was loaned to defendant, Stefanski for the purpose of enabling him to purchase certain property—the premises first described in the bill, having two dwellings thereon, which he desired to use as a house for the sisters of the parish of which he was then and now is rector—and was loaned upon Stefanski's representations and promises to have the property conveyed to complainant as security for the loan. Defendant, Stefanski, received the money, the first loan of $1,000.00 being used to make a deposit upon the purchase of said property, and the second to make final payment thereon when the title passed; but had the title to the property conveyed to his sister, Mary K. Stefanski, another defendant, the deed being dated June 3, 1915. The defendant, Mary K. Stefanski, claims to have advanced $700 toward this purchase; however, she made numerous loans to her brother, Francis Stefanski, in varying amounts, being very indefinite as to the time at which such loans were made and the amounts thereof. Defendant, Francis Stefanski, is now bankrupt, and the trustee in bankruptcy claims

the property as part of the bankrupt's estate; and the complainant, Dominika Ferdyn Michalewska, claims a lien for $2,000 on said property prior to the claim of the trustee. The decree orders the conveyance to defendant, Mary F. Stefanski, set aside, as in fraud of creditors, as against the complainant, Beatrice I. Goll, Trustee of the Estate of Francis Stefanski, bankrupt, subject to existing liens and subject to a lien of $2,000 for the claim of the complainant, Dominika Ferdyn Michalewska, and then to a lien of $700 for the claim of the defendant, Mary K. Stefanski.

The defendant, Mary K. Stefanski, appeals from so much of the decree herein as sets aside the conveyance to her and avoids her title in fee to the premises described therein, and from so much of the decree as grants a lien to complainant, Dominika Ferdyn Michalewska, for $2,000 on said premises prior to the lien of $700 granted to said defendant.

ARGUMENT

I.

The conveyance to defendant, Mary K. Stefanski, should be set aside as against the complainant trustee, Beatrice I. Goll, on the ground that the property conveyed is part of the assets of the estate of defendant, Francis Stefanski, bankrupt.

It is alleged in the bill and not denied in the testimony, that on February 16, 1918, defendant, Francis Stefanski, filed a petition in bankruptcy in the United States District Court for the District of New Jersey, under which he was duly adjudged a bankrupt, and complainant, Beatrice I. Goll, was on March 7, 1918, duly appointed Trustee in Bankruptcy of his estate.

By deed dated June 3, 1915, said defendant, Francis Stefanski, purchased certain premises on Jersey street, Harrison, N. J. (the tract first described in the bill), paying therefor the sum of $5,200.00, of which $3,200.00 was by mortgage and $2,000.00 by cash, but took title thereto in the name of his sister, the defendant, Mary K. Stefanski. [Case, p. 32 (30) to p. 33 (20).]

> Q What rate of interest does that mortgage carry? A $160, 5% (Case, p. 34).

When property is purchased with his own funds by one who directs title to be taken in the name of another, the grantee will hold the title on a resulting trust for the one paying the consider-

ation. *Johnson* v. *Dougherty,* 18 Eq., 406-409 (III. C. E. Green); *Thomas* v. *Thomas,* 79 Eq., 461 (9 Buch.); *Pomeroy's Eq. Juris,* Sec. 1037.

It would seem that the evidence plainly raises a resulting trust as to this property in the defendant, Francis Stefanski, so making the property part of the assets of his estate and warranting setting aside the conveyance to defendant, Mary K. Stefanski, in favor of the trustee in bankruptcy.

II.

The complainant, Dominika Ferdyn Michalewska, is entitled to a lien of $2,000.00 upon the premises, in fulfillment of the agreement under which she advanced the money to defendant, Francis Stefanski.

The complainant, Dominika Ferdyn Michalewska, on May 1st and again on June 1st, 1915, loaned the defendant, Francis Stefanski, $1,000.00, the first $1,000.00 being used to make the deposit on the Jersey street property, and the second $1,000.00 being used to pay the balance of the purchase price at the time of passing title. The title passed June 3, 1915, the deed being made to defendant's sister, Mary K. Stefanski, the other defendant. These loans were made upon the representations by defendant, Francis Stefanski, that the title would be in complainant, Dominika Ferdyn Michalewska, as security for the loans. [Case, p. 11 (20) to p. 12 (20).] Defendant, Francis Stefanski, was and is rector of the Polish Catholic Church in Harrison, N. J., and Miss Michalewska was at that time his housekeeper, and in all matters, business as well as spiritual, was advised and controlled by him.

> Q You never made a deposit of any of this money in the bank? A Father Stefanski hired a safe deposit box and he put the money in the box—
>
> Q Father Stefanski was your adviser in this matter? A Yes, Father Stefanski was taking care of her and the money—adviser (Case, p. 19).

Because of this confidential relation existing between them, it was doubly incumbent upon Father Stefanski to observe full faith in all his dealings with Miss Michalewska. But he did not keep faith. He induced her to her injury to let him take her money and refused the security promised. What Miss Michal-

ewska asks is practically specific performance of Father Stefanski's contract to give security on this property. Specific performance will be granted in such cases, since mere pecuniary compensation as obtainable at law is not adequate. *Dean* v. *Anderson,* 34 Eq., 496 (7 Stew.); *Hermann* v. *Hodges,* L. R., 16 Eq., 18; *Hughes* v. *Mullaney,* 92 Minn., 485; 100 N. W., 217.

III.

The lien of complainant, Dominika Ferdyn Michalewska, is prior to any other lien granted in this cause.

Defendant, Mary K. Stefanski, testified that she loaned her brother $700 on account of this same purchase [Case, p. 47 (30) to p. 48 (19)], having just then received payment of part of a loan made by her to Mrs. Williams. But Mrs. Williams was absolutely unable to fix the time of this repayment. [Case, p. 44 (30) to bottom of page.]

Father Stefanski testified that he borrowed $700 from his sister, and put to it $1,300 of his own money to make up the $2,000 necessary to purchase this property, though admitting that he owed Miss Michalewska at that time over $2,000. (Case, p. 33.) He alleged that he placed the property in the name of his sister to protect her for the total of about $2,000 which he owed her [Case, p. 32 (30) to bottom of page]; and then attempts to discredit Miss Michalewska by blackening her character, while refusing to state his own relations with her. (Case, p. 39.)

But Miss Michalewska's testimony concerning Father Stefanski's excuse for refusing the security agreed upon is significant.

> Q Who told you that these houses were not in your name? A Father Stefanski.
>
> Q How did he come to tell you? A Because I asked him for the interest or rent, but he said, "I cannot give you, because these houses I didn't sign on your name, and they are in my sister's name."
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> Q Did he tell you at the time why he put them in his sister's name? A Yes.
>
> Q Why? A He said, "She makes me so much trouble in the houses I signed on her name. I thought she is going to be good to me after this." (Case, p. 12, top of page.)

Further, Miss Stefanski did not like Miss Michalewska (Case, p. 48, bottom of page), and desired to assist her brother.

> Q Did you suggest to your brother that he had better pay you back the $1,300 instead of asking you for $700 more? A No, because I agreed to it; I wanted my brother to prosper, and the people said that if the sisters and school was there, the parish would grow. (Case, p. 50.)

If Miss Stefanski, by taking title to this property, was party to any fraudulent intent on the part of Father Stefanski to defraud Miss Michalewska, it is not within her power now to allege that she has a claim on it prior to any lien granted to Miss Michalewska.

> "If the grantee, being also a creditor, participated in the fraudulent intent with which the transfer was made, his rights will be postponed to the rights of other creditors." 20 *Cyc.* 826.

Furthermore, it was optional with Miss Stefanski whether she would loan to her brother, while Miss Michalewska had no such choice, owing to the completeness of Father Stefanski's control over her property.

> Q Where did you have this money, did you have it in the West Hudson County Trust Company? A He hired the box for her.
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> Q Who had the key to that box? A Father Stefanski had a key, and when I went after it, he gave me the key. (Case, p. 21, bottom of page.)

It is respectfully submitted that the decree appealed from should be affirmed for the reasons given in the opinion of the Vice-Chancellor.

JOHN Q. FREY,
Solicitor for and of Counsel with
Complainants-Respondents.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

In Chancery of New Jersey

Between BEATRICE I. GOLL, *Complainant,* *and* FRANCIS STEFANSKI, *et als.,* *Defendants.*	*On Bill, etc.* *Order.*

This matter coming on to be heard on bill and answer in the presence of John Q. Frey, of counsel with the complainant, and Harry T. Davimos, of counsel with the defendants, Mary K. Stefanski and Antoni Butkiewicz, and the defendant, Francis Stefanski, and it appearing that Dominika Ferdyn Michalewska should be made a party complainant in the above entitled cause;

It is on this 28th day of April, 1919, on motion of John Q. Frey, ORDERED that the said Dominika Ferdyn Michalewska be and she is hereby made a party complainant;

And it is further ORDERED that the bill of complaint herein be and the same is hereby amended as follows:

First. By adding a paragraph after paragraph 10 of the stating part of the bill of complaint, same to be numbered 11 and read as follows:

> "11. Complainants charge that the complainant, Dominika Ferdyn Michalewska, by reason of the above stated facts, has a lien upon the above first described premises, for the sum of $2,000, which lien, with lawful interest on said sum of $2,000, from June 3, 1915, is prior to the equity of the said Francis Stefanski, bankrupt;"

Second. By adding a paragraph after paragraph 4 of the prayer of the bill of complaint, same to be numbered 4a and read as follows:

> "4a. That the complainant, Dominika Ferdyn Michalewska, be decreed to have a lien on the above first de-

scribed tract for the sum of $2,000.00, with lawful interest thereon from June 3, 1915, prior to the equity of the defendant, Francis Stefanski, bankrupt."

Respectfully advised,

JOHN E. FOSTER,
V. C.

Southern Road