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TESTIMONY FOR PLAINTIFF—IN REBUTTAL.

TESTIMONY FOR DEFENDANTS—IN REBUTTAL.

PLAINTIFF'S EXHIBITS.

DEFENDANTS' EXHIBITS.

Summons.

(Filed September 16, 1926.)

THE STATE OF NEW JERSEY TO WILLIAM G. MULLIGAN AND AGNES K. MULLIGAN, GREETING:

You are summoned to answer the annexed complaint of David Ehrlich in an action
(L. S.) at law in the New Jersey Supreme Court, Essex County Circuit, and TAKE NOTICE, that unless you file your answer with the Clerk of the New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, then the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the New Jersey Supreme Court, at Trenton, this 9th day of September, 1926.

EDWARD J. KELLEHER,
Clerk.

COHEN & KLEIN,
Attorneys.

Complaint.

(Filed September 16, 1926.)

9.8.26.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH, Plaintiff, *v.* WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, Defendants.	Action at law.

The plaintiff, David Ehrlich, residing in the City of Newark, County of Essex and State of New Jersey, says:

1. He sues for the amount of a promissory note for eight hundred forty dollars, made by the defendants to the order of Edward F. McDermott and Elizabeth F. McDermott, and by the said Elizabeth F. McDermott endorsed to the plaintiff, a copy of which note is annexed hereto and made part hereof, and which note was payable by the terms thereof on November 15, 1920.

2. The said Edward F. McDermott, departed this life before the commencement of this suit.

3. On the date the said note fell due it was presented for payment at the place where the same was payable, but was not paid. Notice of such non-payment was duly given to the defendants.

4. The said note is still in possession of the plaintiff and is still unpaid.

Complaint.

Judgment will be claimed by the plaintiff against the defendants in the sum of eight hundred forty dollars, besides interest from November 15, 1920, protest fees and costs of suit.

COHEN & KLEIN,
Attorneys of Plaintiff.

$840.00 New York, November 15th, 1914.

Six years after date, we, jointly and severally promise to pay to the order of Edward F. McDermott and Elizabeth F. McDermott
Eight Hundred and forty no/100.....Dollars
at the office of Wm. G. Mulligan, 461 East Tremont Ave., New York City.

WILLIAM G. MULLIGAN
AGNES K. MULLIGAN

Value Received

No. ..... Due .....

(Endorsement on Back)
Elizabeth F. McDermott

Answer of William G. Mulligan.

(Filed September 30, 1926.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH,
Plaintiff,

v.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN,
Defendants.

} Action at Law.

The defendant William G. Mulligan, residing in Palisade, County of Bergen, State of New Jersey, answering separately, says that:

FIRST DEFENSE:

1. On November 15, 1914, defendant executed to Edward F. McDermott, a lease, on a certain apartment consisting of five rooms and bath, on the third floor of a house situate and known as Number 332 East 176th Street, in the Borough of Bronx, City of New York, for a term of six years, at a yearly rental of $216.00, commencing on December 1, 1914, said rent to apply in payment of the note mentioned in Paragraph 1 of the complaint. The said Edward F. McDermott, and/or Elizabeth F. McDermott occupied said apartment mentioned in the above mentioned lease, from December 1, 1914, to the expiration of the term of said lease, without payment of rent therefor.

Answer of William G. Mulligan.

2. Defendant admits Paragraph 2 of the complaint.

3. Defendant denies Paragraph 3 of the complaint.

4. Defendant has no knowledge sufficient to form a belief as to the allegation contained in Paragraph 4 in the complaint.

SECOND DEFENSE:

1. On or about January 30, 1925, defendant filed in District Court of United States, for District of New Jersey, a petition, to be adjudicated, a bankrupt under the laws of United States.

2. The note set forth in the petition was included in the schedule of debts attached to the above mentioned petition.

3. On September 8, 1925, said court granted to this defendant a discharge in bankruptcy, a copy of which is hereto annexed.

4. The indebtedness alleged in the complaint accrued, before the filing of said petition.

OBJECTION IN POINT OF LAW UNDER RULE 26:

Defendant will object that the complaint discloses no cause of action. It fails to show that plaintiff is a holder in due course for value received.

SEUFERT & ELMORE,
Attorneys for Defendant
William G. Mulligan.

Answer of Agnes K. Mulligan.

(Filed September 30, 1926.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH, Plaintiff, *v.* WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, Defendants.	Action at Law.

The defendant Agnes K. Mulligan residing in Palisade, County of Bergen, State of New Jersey, answering separately, says that:

1. On November 15, 1914, defendant executed to Edward F. McDermott, a lease, on a certain apartment consisting of five rooms and bath, on the third floor of a house situate and known as Number 332 East 176th Street, in the Borough of Bronx, City of New York, for a term of six years, at a yearly rental of $216.00 commencing on December 1, 1914, said rent to apply in payment of the note mentioned in Paragraph 1 of the complaint. The said Edward F. McDermott, and/or Elizabeth F. McDermott occupied said apartment mentioned in the above mentioned lease, from December 1, 1914, to the expiration of the term of said lease without payment of rent therefor.

2. Defendant admits Paragraph 2 of the complaint.

Reply to Answer of William G. Mulligan.

3. Defendant denies Paragraph 3 of the complaint.

4. Defendant has no knowledge sufficient to form a belief as to the allegation contained in Paragraph 4 in the complaint.

OBJECTION IN POINT OF LAW UNDER RULE 26:

Defendant will object that the complaint discloses no cause of action. It fails to show that plaintiff is a holder in due course, for value received.

SEUFERT & ELMORE,
Attorneys for Defendant
Agnes K. Mulligan.

Reply to Answer of William G. Mulligan.

(Filed November 4, 1926.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH, Plaintiff, *v.* WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, Defendants.	Action at Law.

Plaintiff, replying to the answer of William G. Mulligan, one of the defendants herein, says that:

REPLY TO FIRST DEFENSE.

1. Plaintiff admits the execution of the lease

alleged in Paragraph 1 of the answer, but denies that the rent was to be applied in payment of the note mentioned in Paragraph 1 of the complaint.

2. Plaintiff joins issue with Paragraphs 3 and 4 of the defendant William G. Mulligan's first defense.

REPLY TO SECOND DEFENSE.

Plaintiff has no knowledge or information sufficient to form a belief as to the allegations contained in the second defense of the answer of the defendant William G. Mulligan.

COHEN & KLEIN,
Attorneys for Plaintiff.

11/3/26

Reply to Answer of Agnes K. Mulligan.

(Filed November 4, 1926.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH, Plaintiff, *v.* WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, Defendants.	Action at Law.

Plaintiff, replying to the answer of Agnes K. Mulligan, one of the defendants herein, says that:

1. Plaintiff admits the execution of the lease alleged in Paragraph 1 of the answer, but denies

that the rent was to be applied in payment of the note mentioned in Paragraph 1 of the complaint.

2. Plaintiff joins issue with Paragraphs 3 and 4 of the defendant Agnes K. Mulligan's answer.

COHEN & KLEIN,
Attorneys for Plaintiff.

11/3/26

Judgment.

(Entered June 28, 1927.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH, Plaintiff, *v.* WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, Defendants.	Action at Law.

This case was tried before Judge Worrall F. Mountain, with a jury, to whom the same was referred for trial, at the Essex Circuit, on June 24th, 1927.

The jury returned a general verdict against the defendants and in favor of the plaintiff for eleven hundred seventy-three dollars and six cents ($1173.06).

Whereupon it is adjudged that the plaintiff David Ehrlich do recover of the said defendants William

Judgment.

Damages	$1,173.06
Costs	61.22
	$1,234.28

G. Mulligan and Agnes K. Mulligan the sum of one thousand one hundred and seventy-three dollars and six cents damages together with his costs which have been taxed at the sum of sixty-one dollars and twenty-two cents making in the whole the sum of one thousand two hundred and thirty-four dollars and twenty-eight cents.

WM. S. GUMMERE,
C. J.

Notice of Appeal and Grounds of Appeal of William G. Mulligan.

(Filed July 8, 1927.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH,
Plaintiff,

v.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN,
Defendants.

To

COHEN & KLEIN, Esqs.,
Attorneys for Plaintiff.

TAKE NOTICE that the appellant William G. Mulligan appeals to the Court of Errors and Appeals in the last resort in all cases in New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. That the Trial Court refused to direct a judgment of nonsuit against the plaintiff and in favor of the defendants when thereunto moved by counsel for the defendants, whereas the said Court should have granted the motion and directed a judgment of nonsuit against the plaintiff and in favor of the defendants.

2. The Trial Court refused to admit a certified copy of the petition and schedules filed in the

Notice of Appeal and Grounds of Appeal of Agnes K. Mulligan.

United States District Court and decree of the United States District Court in the matter of William G. Mulligan, a bankrupt, whereas said Court should have admitted the said petition, schedules and decree of the said United States District Court in evidence.

SEUFERT & ELMORE,
Attorneys for the Defendant
William G. Mulligan.

Notice of Appeal and Grounds of Appeal of Agnes K. Mulligan.

(Filed July 8, 1927.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

DAVID EHRLICH,
Plaintiff,

v.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN,
Defendants.

To

COHEN & KLEIN, Esqs.,
Attorneys for Plaintiff.

TAKE NOTICE that the appellant Agnes K. Mulligan appeals to the Court of Errors and Appeals in the last resort in all cases in New Jersey from the whole of the judgment entered in this cause on the following ground:

That the Trial Court refused to direct a judgment of nonsuit against the plaintiff and in favor

Stipulation.

of the defendants when thereunto moved by counsel for the defendants, whereas the said Court should have granted the motion and directed a judgment of nonsuit against the plaintiff and in favor of the defendants.

SEUFERT & ELMORE,
Attorneys for the Defendant
Agnes K. Mulligan.

Stipulation.

NEW JERSEY SUPREME COURT.

DAVID EHRLICH,
Plaintiff,

v.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, his wife,
Defendants.

WHEREAS the defendant William G. Mulligan in the above cause has taken an appeal from the judgment of the Supreme Court in said cause, and

WHEREAS the defendant Agnes K. Mulligan has also taken an appeal from said judgment,

NOW, THEREFORE, it is stipulated and agreed by and between the respective attorneys of the parties hereto,

That the above mentioned appellants may join in printing and serving one state of the case covering both of said appeals.

Dated August 11th, 1927.

COHEN & KLEIN,
Attorneys for Plaintiff.

SEUFERT & ELMORE,
Attorneys for Defendants.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY CIRCUIT.

June 24, 1927.

Before—Hon. WORRALL F. MOUNTAIN, J., and a Jury.

DAVID EHRLICH,
Plaintiff,

v.

WILLIAM G. MULLIGAN and AGNES K. MURPHY MULLIGAN,
Defendants.

} Action at Law.

For the Plaintiff appear COHEN & KLEIN (by LOUIS J. COHEN).

For the Defendants appear SEUFERT & ELMORE (by RYLAND E. LIPPINCOTT).

(A jury is called and sworn.)

(Mr. Cohen opens for the plaintiff.)

(Mr. Lippincott opens for the defendants.)

ELIZABETH McDERMOTT, sworn in behalf of the plaintiff.

Direct examination by Mr. Cohen:

Q. Where do you live? A. 4826 Caroline Street, Woodside, Long Island.

Q. Do you know the defendants William G. Mulligan and Agnes K. M. Mulligan? A. Yes.

Q. Do you recall when the defendants William G. Mulligan and Agnes K. Mulligan made this note? A. Yes, sir.

Q. Did you see them sign this note? A. Yes, sir.

Q. Your husband Edward F. McDermott is now dead, isn't he? A. Yes.

Q. When did he die? A. The first of February.

Mr. Lippincott: I object on the ground that it is immaterial as to whether he is dead or alive; the note speaks for itself.

The Court: Objection overruled.

Q. (By the Court.) What day did he die? A. February 1, 1917.

Q. Your husband's name was Edward F. McDermott? A. Yes.

The Court: She is the person named as the payee?

Mr. Cohen: One of the two.

Mr. Lippincott: That is the reason I object to it at this time, because on the note, I think it is endorsed by one person, and there is no capacity by which the note is endorsed.

By Mr. Cohen:

Q. At the time of your husband's death, were you the owner of this note?

Mr. Lippincott: I object as the note speaks for itself. This is a note to two parties, and under the statute it provides that a note to two persons must be signed by both unless authority therefor is shown.

(Argument.)

The Court: I will entertain a motion later, but I think you are a little ahead of time.

Q. (Question read.) A. Yes.

Q. Did you transfer this note by your endorsement to the plaintiff David Ehrlich? A. Yes, sir.

Q. Prior to the transfer or assignment of this note to the plaintiff David Ehrlich was anything paid on this note? A. No, sir.

Q. There was still due, at the time of the transfer, the whole amount of the note and interest? A. Yes.

Mr. Cohen: I offer the note in evidence.
(The same is marked Exhibit P-1.)

Q. This note is dated November 15, 1914. Can you explain to the Court and jury why you did not bring suit before this time, or had suit brought for you before this time? A. Mrs. Mulligan made a lease out.

Q. Can you explain why? A. Because I could not find Mrs. Mulligan at the time it became due. I went to the Bronx where she had her office, and she was gone from the Bronx, and no one knew where she was, and finally I located her through a death notice of her daughter and went to her house in Englewood, New Jersey, I guess it was, and she would not listen to me, she would not have anything to say to me. She told me that if I did not get off her premises, she would have me arrested.

Q. Thereafter you had suit instituted? A. Yes.

Cross examination by Mr. Lippincott:

Q. Will you explain the consideration of this note?

Mr. Cohen: I object. That is a matter of defense.

Mr. Lippincott: Withdraw that question.

Q. You were the owner of the note at the time your husband died? A. Yes.

Q. Didn't your husband have an interest in the note at the time he died? A. My husband's money and I. My husband gave me that. It was my money paid for it.

Q. Are you still the owner of the note? A. Yes.

Redirect examination by Mr. Cohen:

Q. This suit, which is instituted in the name of Mr. Ehrlich—

Mr. Lippincott: I object.

Mr. Cohen: Will you wait, please, until I finish the question?

Q. This suit just brought by Mr. Ehrlich is brought for you, is it not? A. Yes, sir.

Q. Brought because you work and live on Long Island, New York.

Mr. Lippincott: I object.

The Court: Sustain the objection.

Mr. Lippincott: At this time I move for a nonsuit on the ground—

The Court: Wait a minute. The plaintiff hasn't rested his case. This is no time for a motion.

Q. (By the Court.) This note was payable to you and your husband and was made by William G. Mulligan and Agnes K. Mulligan? A. Yes, sir.

Q. You said that it was your money which was given to William G. Mulligan and Agnes K. Murphy Mulligan for this note. A. Not for the note, but for the payment on the lots. I gave my husband the money to finish up the payment on the lots which amounted to more than that note.

Q. There is $840 represented in this note. Was that your money? A. Yes, sir.

Q. When did your husband give you this note? A. When he first got it. Right soon after he got it. He said, "Here is this note. Take care of it. It is yours."

Q. Did your husband die and leave a will? A. No, sir.

Q. Was anybody appointed administrator or administratrix of his estate? A. No, sir.

The Court: Have you looked up the law as to the transfer of a note when one joint payee gives it to the other without endorsement?

Mr. Cohen: Yes.

The Court: The statute in this State provides that where joint payees both payees must endorse.

(Argument.)

Q. (By the Court.) Did you have any children? A. No, sir.

Recross examination by Mr. Lippincott:

Q. When did you pay this money for the lots you speak of? A. I didn't hear you.

Q. I say, when did you pay this money for the lots which you spoke of? A. When did I pay it?

Q. Yes. A. What year?

Q. Yes. A. I don't remember just exactly.

Q. When were the lots purchased? A. In 1906, 1907; I am not sure. 1906, I think.

Q. When were you married to Mr. McDermott? A. 1907.

Q. Are you sure it wasn't 1911? A. Yes.

Q. To whom was this money paid? A. Which money?

Q. The money you paid for Mr. McDermott, to whom was it paid? A. How long was it paid?

Q. To whom. A. Mr. and Mrs. Mulligan.

Q. In cash or by check? A. Cash.

DAVID EHRLICH, plaintiff, sworn.

Direct examination by Mr. Cohen:

Q. You are the plaintiff in this case? A. Yes, sir.

Q. You have brought this suit on this note delivered to you and endorsed by Mrs. McDermott? A. Yes, sir.

Q. Is this suit being brought in your name for the benefit of Mrs. McDermott? A. Yes, sir.

Q. Have you, since the note has been transferred to you, received anything on account of this note? A. No, sir.

Mr. Cohen: I will add, nothing was paid for the note but that he is bringing this suit for the benefit of Mrs. McDermott.

Cross examination by Mr. Lippincott:

Q. You did not pay anything for the note?

Mr. Cohen: We admit that.

PLAINTIFF RESTS.

Mr. Lippincott: I desire to move at this time for the direction of a verdict of no cause of action on the following grounds:

The first is that the plaintiff has practiced fraud upon the Court by bringing suit in which he has no interest.

Second, he is not entitled to bring suit, because the endorsement is not complete. Section 41 of the negotiable instrument law provides that where an instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse unless the one endorsee has the authority to endorse for the other.

(Argument.)

This suit was started by David Ehrlich and he comes before your Honor and says he paid no consideration for it, and comes before the Court to collect on it.

(Argument.)

The Court: Gentlemen of the Jury: I do not think you are interested in this, but it is of considerable importance to the plaintiff how I decide this and I will let you retire to the jury room.

(The jury retires.)

Mr. Lippincott: That is to make a motion for a nonsuit, your Honor, not for the direction of a verdict. I would like to amend that.

The Court: Yes. Your motion is for a nonsuit, it is not for the direction of a verdict?

Mr. Lippincott: Yes.

(The jury return into court.)

The Court: The note in question is dated November 15, 1914, and the amount is $840, and it recites that six years after that date the makers of it jointly and severally promise to pay to the order of Edward F. McDermott and Elizabeth F. McDermott, $840 at the office of William G. Mulligan, 461 East Tremont Avenue, New York City. The note

is endorsed by only one of the payees, that is one of the individuals to whom it is to be payable and that is Elizabeth F. McDermott. Objection is made that the note should be endorsed by both payees, or, as I understood the argument, by the executor or the administrator of Edward F. McDermott.

The negotiable instrument act of this State provides that where an instrument is payable to the order of two or more payees or endorsees, who are not partners, all must endorse, unless the one endorsing has the authority to endorse for the others so, on the face of it, it would appear that both of the payees would have to endorse this note, but that was not necessary in this case. If William F. McDermott had been alive when this note was transferred, that section of the negotiable instrument act would have applied. The right of the plaintiff to collect the money due on this note, as far as we have gone—we have not heard from the defendants, but the right to sue is clear. Whether she will be accountable for part of it to the representative of her deceased husband, or not is something else. On the death of one of several joint payees, the remedies of collection survive to the surviving payee, who may lawfully receive payment and may sue at law or equity without joining the representative of the deceased payee, and the best reference we have for that common law rule is found in Chitty's Pleadings, page 19.

I will deny the motion and hear the defense.

Defendants counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Lippincott: Will your Honor at this time rule on the propriety of the person bringing suit in a law court in New Jersey, when they have no interest in the case. Here is a resident of New Jersey who brings a suit and is not a resident of New York and the endorsement was made after the due date of the note and it is admitted there was no consideration paid for it. My adversary in his opening announced to the jury that where the holder of a note which is assigned to him subsequent to the due date under the note, any defense which the defendants may have can be used against them, against the payment of the note. Now, that being so, and there being no consideration for the assignment, surely this plaintiff has no right of action against our defendant, there is no consideration for the assignment, it is merely done because the true party in interest is a resident of New York and by placing this man as the plaintiff without showing he is suing in a representative capacity.

The Court: People have a right to sue for the benefit of others as assignee.

Mr. Lippincott: They have to show their representative capacity when they sue on a proposition like this.

The Court: It may be more convenient. I will not nonsuit the plaintiff because of that.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

AGNES K. MURPHY MULLIGAN, one of the defendants, sworn.

Direct examination by Mr. Lippincott:

Q. Are you one of the defendants in this suit? A. I am.

Q. Where do you reside? A. Palisades, New Jersey, 1000 Anderson Avenue.

Q. How long have you resided there? A. About seven years in that house.

Q. What is your occupation? A. Real estate, it has been for forty-six years past.

Q. As owner or broker? A. As broker.

Q. Prior to moving to Palisades, where did you live? A. Edgewater Heights for four years; we have lived here going on ten or eleven years, in New Jersey.

Q. Prior to living in New Jersey, where did you live? A. Fifty-two years behind one fence line in the Bronx, 1911 Arthur Avenue, Bronx.

Q. You were one of the signers of the note in question? A. I am.

Q. Recite to the Court and jury the entire transaction by which this note was given. A. Yes. In 1906, November 6, 1906, an auction sale was managed by me, owned by a syndicate. We had a next door neighbor to our home in the Bronx named Mrs. McDermott, a dear little old Irish woman I thought a great deal of—she has since died. It seemed that her boy, who was driving a wagon had some money saved up and said at the auction sale could he buy. I said, "Yes, and I can help him." He went to the auction sale and bought two lots for $725, I think, each.

Q. What was this boy's name? A. Edward F. McDermott, the husband of this lady, who was not

her husband then. They were not married for some years.

Mr. Cohen: I move that that be stricken out.

Mr. Lippincott: Consent.

A. (Continuing.) He had this $145 to purchase these lots for $1,450. I told him, "Never mind, Ed, Mr. Mulligan will help you," my husband, and he did, he took back a purchase money mortgage for one lot for $840, I think, and one for $435, making a total of about $1,450, less the charges and $145 that Edward F. McDermott had put in.

Q. Were you present when the note in question was signed? A. I was.

Q. Did you sign as subscribing witness and notary? A. I think as notary public.

Q. I show you an exemplified copy of a deed dated the 16th day of November, 1906, between John P. Wenninger and Carolina Wenninger (his wife), of the city, county and State of New York, parties of the first part, and Edward F. McDermott of the same place. The consideration named therein being $1,450 conveying all those certain lots, pieces or parcels of land, situate, lying and being the 24th Ward of the Borough of Bronx, City of New York and County and State of New York formerly in the Town and County of Westchester, known and distinguished on a certain map entitled, "Map of Pelham Park made by Garrett J. Byrne, engineer and surveyor, dated July 4, 1873." Signed by John P. Wenninger and Carolina Wenninger, in the presence of A. K. Mulligan, State of New York, City and County of New York, and acknowledged before A. K. Mulligan, Notary Public of New York County, at the request of William G.

Mulligan, November 22, 1906, at eleven o'clock and forty-two minutes A. M." Was that a copy of the deed executed to Mr. McDermott at that time? A. Yes, sir. It is signed by Wenninger and his wife to Edward F. McDermott, yes.

Mr. Lippincott: I offer this deed in evidence.

Mr. Cohen: No objection.

(The same is marked Exhibit D-1.)

Q. I show you a mortgage dated the 16th day of November, 1906, between Edward F. McDermott of the City, County and State of New York and William G. Mulligan, of the same place, party of the second part, "Whereas the said party of the first part is justly indebted to said party of the second part in the sum of $870, lawful money of the United States, to be paid by his certain bond or obligation bearing even date herewith, for the payment of said sum of $870 on the 16th day of November in the year of 1909, and the interest thereon to be computed from November 16, 1906, at the rate of five per cent. per annum, and to be paid semi-annually on each 16th day of May and November ensuing throughout said term, and until said principal sum shall be fully paid for all those certain lots, pieces or parcels of land, situate, lying and being in the 24th ward, Borough of the Bronx, City of New York, in the County and State of New York, formerly in the town and county of Westchester known and distinguished as Pelham Park, on the map made by Garrett J. Byrne, engineer and surveyer, dated July 4, 1873, and filed in the office of the Register of the County of Westchester, New York, September 20, 1873, as map number 599, and the blocks and lot numbers

as follows: parts of lots 21, 22, twenty-nine (29) and thirty (30), block number 33 on said map, which taken together are bounded and described as follows beginning—

Mr. Cohen: I will admit execution of both of those mortgages by Mr. and Mrs. William G. Mulligan for the amount mentioned.

A. They were purchase money mortgages and formed a part of the consideration of the deed.

The Court: What was the second mortgage?

Mr. Lippincott: $850 was the first and $435 was the second.

I offer this mortgage in evidence.

Mr. Cohen: No objection.

(The same is marked Exhibit D-2.)

Q. Subsequent to the time which you have testified about, continue to explain to the Court and jury the situation of the transaction up until the time this note was signed. A. Edward McDermott owned the lots until he married this lady and I think the final statistics show that was about 1907; I am not sure.

Mr. Cohen: I object to that, and ask that it be stricken out.

Q. Recite the story of this transaction.

Mr. Cohen: If the Court has no objection, may I suggest that questions and answers be put to this witness?

The Court: I think so.

Q. Subsequent to this transaction you just testified to, when did you see Mr. and Mrs. McDermott, or Mr. McDermott? A. McDermott lived next door to us. I saw him very often, I saw him until he married this lady, and then he moved away.

Q. Did you have any transaction, or Mr. Mulligan and Mr. McDermott, or both of them prior to November 15, 1914? A. Edward F. McDermott paid me a certain payment on account of these mortgages.

Q. Were those mortgages paid off? A. Yes, sir.

Q. Explain to the Court and jury in a precise manner the transaction of November 15, 1914. A. The mortgage was made for three years with the option of paying it off, as I understand it, at any time.

Q. Oh, the transaction when this note was made in 1914, explain that to the jury. A. Yes. Edward F. McDermott's lots were to be sold on a foreclosure sale for taxes or something of that sort, and his wife and he came to our house about it and I told them that they had to pay those taxes and the party who owned lots there that were better than Edward F. McDermott's lots was perfectly willing to take the two that were being foreclosed because they were next to the lots they owned and they agreed to take in exchange the lots that were being foreclosed for the two lots they then owned which were free from taxes the same as McDermott's lots, or in exchange, I believe, and the exchange was made.

Q. As the result of that exchange, was a deed made out? A. To Edward F. McDermott alone.

Mr. Lippincott: I offer in evidence deed dated November 15, 1914, between Edward F. McDermott and Elizabeth F. McDermott,

his wife, of the Borough of the Bronx, City of New York, parties of the first part and Martha Ferguson, residing at Waterbury, Connecticut, party of the second part, consideration $1 for valuable consideration conveying, "All those certain lots, pieces or parcels of land—

Mr. Cohen: It speaks for itself.

Mr. Lippincott: And signed by Edward F. McDermott and Elizabeth F. McDermott in the presence of A. K. Mulligan, and acknowledged before A. K. Mulligan, Notary Public, Bronx County, on the 15th day of November, 1914, covering a certain map entitled, "Map of Pelham Park," made by Garret J. Byrne, Engineer and Surveyor, dated July 4, 1873, and filed in the office of the register of the County of Westchester as map No. 599, the block and lot numbers as follows: "Lots Nos. eleven (11) and twelve (12) in block No. twenty-six (26) on said map."

Mr. Lippincott: I offer this mortgage in evidence.

Mr. Cohen: No objections.

(The same is marked Exhibit D-4.)

Q. I show you a deed dated May 12, 1914, between Mary A. Keenan of the Borough of the Bronx, City of New York, party of the first part, and Edward McDermott, residing at 1226 Intervale Avenue, Borough of the Bronx, consideration of $1 and other valuable considerations.

The Court: Who is the vendor?

Mr. Lippincott: Mary A. Keenan.

The Court: The lessee from Ferguson?

Mr. Lippincott: Yes.

The Court: In this deed McDermott is the vendee?

Mr. Lippincott: Yes.

The Court: In other words, they exchanged their lots and this is the deed to him then for the same lot which was put in before?

Mr. Lippincott: Yes. I overlooked this deed before. This is on May 12 when the transfers were made, and then that lot is lot 11-12.

The Court: These deeds are McDermott's deeds which he bought at this auction sale that you are reciting now?

The Witness: Let me explain it.

The Court: You said he wanted to convey his property to other people. Where is that deed?

Mr. Lippincott: That is the deed of November 15, 1914, to Mrs. Ferguson.

The Witness: No, the first deed was from Wenninger and wife to McDermott and the second is an exchange from Mary Keenan to Edward F. McDermott.

Q. He did not get but one deed to this property, did he? A. The first deed.

Mr. Lippincott: The deed of 1906 was for the same lot as I submitted in 1914, they were on lots 21, 22 and 23.

The Court: What are the numbers of Wenninger's lots?

The Witness: Number 21, 22, 29 and 30, in block number 33 on map of Pelham Park.

The Court: That is what he paid $1,450 for?

The Witness: Yes.

Q. (Question read.) "All those certain lots, pieces or parcels of land, situate, lying and being in the 24th Ward, Borough of the Bronx, City of New York, in the County of Bronx and State of New York formerly in the town and county of Westchester, known and distinguished on a certain map entitled, 'Map of Pelham Park' made by Garret J. Byrne, engineer and surveyor, dated July 4, 1873, and so forth, signed by Mary A. Keenan, in the presence of Agnes K. Mulligan and acknowledged before Agnes K. Mulligan, Notary Public."

Mr. Cohen: I object to that on the ground that it is not binding on the plaintiff at all, and the paper would show a deed from a third person to one of the plaintiff's assignors. I object to it on that ground.

Mr. Lippincott: Under your Honor's ruling, Mr. McDermott having died, Mrs. McDermott is entitled to sue. Now, if she is entitled to sue on the note, this part of this transaction, surely the defendant has a right to set forth the entire transaction, in other words, Mrs. McDermott is a party under this transaction to anything that transpired with Mr. McDermott in which the transaction was involved. Furthermore, Mrs. McDermott has signed this note as wife for the identical lots.

Q. (By the Court.) Mary A. Keenan in 1914, conveyed what lots to McDermott? A. Eleven and twelve of block twenty-six.

Q. On November 15, 1914, the date of the note, Mr. McDermott and Elizabeth, his wife, that is the present plaintiff or assignee of the plaintiff, conveyed lots eleven and twelve in block twenty-six to Martha Ferguson, residing in Waterbury, Connecticut, marked D-4 in evidence? A. Yes.

Q. Whatever happened to the old lots? A. There was a quit-claim deed signed by Mr. and Mrs. McDermott that I found among the papers yesterday.

Q. I show you a deed dated November 15, 1924, between Agnes K. Mulligan of the City of New York, party of the first part and Edward F. McDermott residing at 332 East 176th Street of New York City, party of the second part. A. That was used as a quit-claim to the title.

Q. At the time Mr. and Mrs. McDermott transferred the property lots 11 and 12 in block 26 to Mrs. Ferguson, explain to the Court and jury what happened at that time? A. I had formerly owned a block of flats on Tremont Avenue, and Mr. McDermott rented one of those apartments for $20, I think, a month. Mrs. Ferguson bought that property and became the owner of it and she was then the owner when they were the tenants. I collected the rent for Mrs. Ferguson only as agent. They had some talk with Mrs. Ferguson who told them—

Mr. Cohen: I object on the ground—

The Witness: May I tell the transaction?

Q. At the time of this transfer from Mr. and Mrs. McDermott to Mr. and Mrs. Ferguson, what was the consideration? A. The consideration was—

Mr. Cohen: Pardon me. I object on the ground the deed speaks for itself, and no tes-

timony can be adduced to add, vary or alter that valid instrument.

The Court: I will admit it.

A. The consideration was the deed to the lots which she put at the value of $1,450 the same as he had paid for the lots taken in exchange by assuming a certain amount of taxes and assessments which were on the lots unpaid. The balance of the consideration was that Mrs. Ferguson was to give Mr. McDermott and his wife the lease of the premises that they then occupied, owned by Mrs. Ferguson, of which I was the agent, for six years; they were not to pay any rent for six years. My recollection is a receipt was given to Mr. McDermott for the six years. They were not to have the privilege of sub-letting the flat, and Mr. McDermott took the two leases signed by Jennie Ferguson, who was the record title holder, Mrs. Ferguson was the real holder, but she held the record title in her daughter's name which was Jennie Ferguson, and Mrs. McDermott went—

The Court: Wait a minute. We will never get anywhere this way. Present your defense in a logical way. I do not know what your defense is.

Q. I show you a lease dated—

Mr. Lippincott: I offer in evidence a lease from Jennie Ferguson, party of the first part, to Edward F. McDermott, party of the second part on a certain apartment containing five rooms and bathroom on 176th Street, Borough of the Bronx, City of New York, for a term of six years from the first day of December, 1914, at a yearly rental of $216—

The Court: What are you doing?

Mr. Lippincott: Offering the lease in evidence. The plaintiff's counsel objects to the admission of it.

The Court: That is not the way to do it. You made him an offer of a lease for six years at $216 yearly. Tell me why you want to put it in evidence.

Mr. Lippincott: Because this lease was given to Mr. McDermott and he refused to take it without security, as I am going to bring out to your Honor and the jury.

The Court: McDermott was the lessee?

Mr. Lippincott: Yes.

(Argument.)

Mr. Lippincott: All these leases and the note are dated the same day. It is all one transaction.

The Court: McDermott demanded security? What security did he demand?

Mr. Lippincott: This note.

The Court: For the performance of the terms of the lease?

Mr. Lippincott: Yes.

Q. (By Mr. Lippincott.) I show you a lease signed by Jennie Ferguson, and I ask you if you were present when that was signed. Did you see it when it was signed? A. Yes, sir.

The Court: What has this to do with the note?

Mr. Lippincott: This was given to them and they refused it, so Mrs. Mulligan kept it and at their request this lease was executed and recorded for the same property

by Mrs. Mulligan to the McDermotts and I think exemplified.

The Court: What is this?

Mr. Lippincott: A lease with Mr. Mulligan and Mrs. McDermott for the same premises.

Q. (By the Court.) You took a lease for the premises from Jennie Ferguson? A. These leases were executed by Jennie Ferguson and handed to Mr. McDermott to execute and Mrs. McDermott handed these two leases back. She has on the back here a subscribing witness form. These were in this condition when she handed them back to me and said that her lawyer told her to get Mr. Mulligan or Mrs. Mulligan to give her a lease, get Mr. and Mrs. Mulligan to give her a note for that lease which was, I think, just beginning to run, for this lease that had not yet accrued. I kept this lease myself.

By the Court:

Q. What good were they to you, you did not own the property? A. It was signed by Jennie Ferguson, the owner of the record title to McDermott.

Q. So, you gave him a lease to property you did not own? A. I did, on condition that I would hold these two leases signed by the owner of the premises.

The Court: I am afraid that I am confused and unable to follow this.

Q. (By the Court.) This lease was dated November 15, 1914? A. Yes.

Q. The same day as the note? A. Yes.

Q. Now, tell us how that note came to be made.

A. Mrs. McDermott had been to see an attorney with these two leases, and that was signed by Mrs. Ferguson and the attorney wrote on there "R. and R." read and return, which apparently meant that Mrs. Mulligan who had been the previous owner of the premises should sign the paper because as you see there, she had a subscribing witness form that she or Agnes K. Murphy Mulligan should sign that and I did not sign that, so she signed that and said the lawyer told her that I gave these two leases against Mrs. Ferguson's premises which I did not own, and she wanted my promissory note for that term of the lease of six years and I said, "No, I wouldn't give you that," and McDermott came in and said, "Mrs. McDermott is very much excited about this thing and the lawyer told us we were going to have a loss of $1,246."

Q. You mean you gave a lease on November 15, 1914, on property you did not own to McDermott and his wife, and also gave him a note for $840? A. Yes.

Q. What did you get for that? A. Nothing, except I was the agent collecting the rent for those premises and I was supposed to see that they got that rent and on the question of the six years, Mr. Mulligan and I objected to that, but said we would give three years at least for the premises, and would give a note; that she hold this lease as security against all rent. The $840 represented three years of that $190 which was the six-year term of the lease, with the additional rent allowed that Mrs. Ferguson who had taxes accumulate on the premises. That was allowed them, and I do not remember what there was about that, but there was some taxes unpaid, so of the $140 we gave one-half of the $1,290 which is $648.

Q. Explain to me why you gave the note. A. The attorney that Mrs. McDermott had been to was of the opinion that we were residents, that is, we were representative people in the town and that our note and our lease would carry McDermott through a six-year term there. It was our opinion that Mrs. Ferguson was attempting and wanted to get my name on the real lease. I never signed it nor agreed to sign it, and she could not use that lease, and she brought it back.

Q. Did you think or believe the lease from Ferguson to Edward F. McDermott was any protection to you? A. I certainly did.

Q. Now, when he got this lease from you, why did you give him this note for $840? A. Because while they were our tenants there, I had agreed to let them have a lease.

Q. What do you mean "while they were your tenants?" A. McDermott was our tenant prior to the giving of this lease.

Q. Yes. A. And we had agreed to give him a three-year lease of the premises and he made an arrangement with Mrs. Ferguson to give her the rent and she would give him the rent for $2 less a month, that is, she would give it to him for $18 a month and she would not take it unless I would give, or rather Mr. Mulligan would give, a promissory note for those three years together with the accumulated taxes and assessments allowed to Mrs. Ferguson which was still unpaid, on his assurance that they would be paid, and I made that note for $840, a difference of the accruing taxes and assessments that were unpaid.

Q. When McDermott conveyed lots 11 and 12 to Martha Ferguson, they were encumbered with taxes? A. Some taxes and some assessments.

Q. Lots 11 and 12, not the premises. A. The original purchase, they were the ones that were taken in.

Q. Wait, you do not know what I am going to ask you. They were not the premises upon which the lease was supposed to have been made, they were on other property? A. No, sir, they were the consideration for that lease.

Q. (By Mr. Lippincott.) From the time this lease was executed, do you know of your own knowledge whether Mr. and Mrs. McDermott lived in that apartment covered by that lease? A. Yes, he died there, and she lived there long after he died.

Q. For the full period? A. Yes.

Q. Were you, or were you not the agent for Mrs. Ferguson?

Mr. Cohen: I object.

A. I was.

Q. Were you, or were you not the agent of Mrs. Ferguson for the leasing and collection of rents for this property? A. I was.

Q. As such agent did you ever receive any money from Mr. and Mrs. McDermott? A. I did not.

Q. As rent for the property? A. No, never for the note nor for the rent at any time.

Mr. Lippincott: I offer the exemplified copy of the lease in evidence.

Mr. Cohen: That lease is a certified copy or an exemplified copy, and I think the original lease should be offered.

The Court: I will admit it.

(Marked Exhibit D-5.)

Q. (By the Court.) What was the consideration

which the McDermotts gave? What did they give for the privilege of occupying this apartment for six years and receiving a note for $840? A. They gave a deed to Martha Ferguson.

Q. That was the consideration? A. Yes, the deed of lots 11 and 12.

Mr. Lippincott: Of block 26.

Q. (By Mr. Lippincott.) On November 15, 1914, McDermott and his wife conveyed lots 11 and 12 of block 26 to Martha Ferguson? A. Right.

Q. And as a consideration for that, no money passed, as I understand you? A. Unless there might have been some small amount, between $1,450 and $1,296, the amount of that lease.

Q. And in consideration for that, I understand the McDermotts obtained a six-year lease from Mrs. Ferguson. Did they object finally to taking it from her, although you did not own this apartment? A. I was collecting the rents.

Q. Then, you also gave them a note? A. To assure them that they would have that rent.

Q. A note for $840? A. Yes, for the lease that had only just begun to run.

Q. Did they occupy the premises for the six years? A. They did, and they never paid any rent.

Mr. Lippincott: I offer in evidence lease dated November 15, 1914, between Jennie Ferguson, party of the first part, and Edward McDermott, party of the second part, for all that certain part, consisting of five rooms and bathroom in the Borough of Bronx, City of New York, for six years, from the first day of December, 1914, at a yearly rental of $216.00, signed Jennie Ferguson.

Q. I ask you did you see that signature made? A. I did, yes, sir.

Mr. Lippincott: I offer the leases in evidence.

(Same are marked D-6 and D-7.)

Q. Have you seen Mrs. McDermott since the 15th of November, 1920? A. I did, yes.

Q. When? A. In answer to my call at her apartment.

Q. When, approximately? A. About 1920. It was 1920, I know, before the death of our daughter.

Q. Where did you see her? A. At my home in Edgewater Heights, New Jersey.

Q. Do you know why she came to see you? A. Yes.

Q. Why? A. I called at her place on two or three occasions to ask her to bring over that note inasmuch as she had lived there the six years and I wanted to see that that note was not endorsed to any innocent person, and it was not to be retained by her after the lease had accrued and she had the benefit of it, it was to be returned to me on our original agreement.

Q. What did she say to you at that time? A. She was not there. I did not see her.

Q. Did she come to your home? A. Yes, in answer to that, and I asked her if she had the note and she said she had. I asked her to let me see it. It did not bear any endorsement of any kind. I said, "I want you to turn that note over to me, it belongs to me," and she said, "I will not turn it over to you at all." I said, "I have a very good notion to call the police and ask for an of-

ficer to haul you to the Town Hall for that note. It does not belong to you, you derived all the benefit of that by living in that flat."

Q. Is that the last time you saw Mr. McDermott? A. Yes.

Cross examination by Mr. Cohen:

Q. Mrs. Mulligan, who was John T. Wenninger and Caroline Wenninger? A. Large property owners in the Bronx, in the business for over thirty years.

Q. Did you buy the property known and designated as lots numbers 21, 22, 29 and 30 in Baychester, from Mr. and Mrs. Wenninger? A. Never; no, sir.

Q. In what capacity did you act in that transaction? A. I was managing an auction sale. Mr. Wenninger had a real estate sale held by an auctioneer.

The Court: What has the sale of those four lots to do with this case?

The Witness: They are the origin of the entire gist of this whole thing. You have it in Mr. McDermott's affidavit, I think. I really yet do not see why they brought that in.

Mr. Cohen: Mr. and Mrs. McDermott bought certain property, so they did have it at one time.

Q. Can you at this time recall the terms of sale at the auction that you were managing or conducting for Mr. Wenninger?

Mr. Lippincott: I object. This deed is from Mr. and Mrs. Wenninger.

(Argument.)

Q. Do you recall the terms of the sale on that occasion of the sale at which Mr. McDermott was one of the purchasers? A. Yes, ten per cent. on the day of the sale, thirty per cent. on the day of closing title and sixty per cent. on a three-year mortgage, and the purchaser executing a purchase money mortgage for sixty per cent.

Q. To the owner of the property? A. Not necessarily. This man only had $145, you must not forget.

Q. Did you deviate any from the terms of the sale in the case of Mr. McDermott?

Mr. Lippincott: I object.

The Court: Objection overruled.

A. We did, yes, we took back as—Mr. Mulligan helped him to take back a first mortgage of $850 and a second mortgage of $435.

Q. These two mortgages, the exemplified copies of which are in evidence, are dated the same day, covering the same property, one in the sum of $870 and one in the sum of $435. Tell us why you took two mortgages on the same property. Why you divided them as you did.

Mr. Lippincott: I object. She did not take a mortgage.

Q. By Mr. William G. Mulligan?

Mr. Lippincott: I object.

The Court: These negotiations are just about as intricate as any I have had while I have been on the bench.

Q. You were present at the time the deed and two mortgages were executed, were you not?

At one o'clock P. M. the Court takes a recess for one hour.

AFTER RECESS.

AGNES K. MURPHY MULLIGAN, resumes the stand.

Cross examination (continued) by Mr. Cohen:

Q. (Question read.) A. I was.

Q. You were present? A. I was taking the acknowledgment.

Q. As Notary Public? A. I think so.

Q. As Notary Public? A. Yes.

Q. Will you explain to the Court and jury why it was that Mr. Mulligan, your husband, took back a purchase money mortgage for the amount of $870 and $435? A. Because Mr. Wenninger was unwilling to take back more than sixty per cent. and inasmuch as we were taking a second mortgage, we wanted to hold the first.

Q. Would the sum of $870 be a sixty per cent. purchase money mortgage? A. I think it was, yes. Sixty per cent. of $1,450.

Q. Were you the agent for Mr. Wenninger in the sale of this property? A. I was the manager of this auction sale. I was a member of the old exchange and Felix Ingram was a member with me, and I took the sale for him.

Q. What part did your husband play in this transaction on the day of the closing of title to the property, lots 21, 22, 29 and 30? A. My expectation or thoughts are now that he was the attorney for Mr. Wenninger.

Q. He was a lawyer? A. Yes.

Q. New York lawyer? A. Yes.

Q. Is he still a member of the New York Bar?

Mr. Lippincott: I object to that as not relevant.

Q. For whom was he acting as attorney, do you recall? A. He was purely acting in the taking of these mortgages because I had promised the old mother of this young man when she said he had money to invest that I would take care of him. My husband cared nothing about him, it was my solicitation of him to do it.

Q. These mortgages given by Mr. McDermott to your husband, they have been paid, have they not. You so testified on direct examination. A. My recollection is that in 1914 they were fully paid at that time.

Q. This was a vast tract of land, was it not, from which these two lots were taken and conveyed to Mr. and Mrs. McDermott? A. I wouldn't say very vast.

Q. How much was it? A. I think it probably consisted of about 250 lots.

Q. Do you recall now whether or not there were any encumbrances against these lots or any of them? A. There wasn't any when they were conveyed, as far as I know, to Edward F. McDermott.

Q. Was there a blanket mortgage covering these lots? A. If there was, it was released. It is twenty-one years ago. I know they were clear.

Q. You say if there was a mortgage, then the lots conveyed to Mr. McDermott were released from the lien of this blanket mortgage, and that is your impression? A. That is my recollection.

Q. Do you recall who held that blanket mortgage? A. No, I do not. They may have been held by several people.

Q. Several? A. May have been.

Q. Do you recall whether or not the blanket mortgage was held by the surety company, the Hamilton Surety Company? A. It was not.

Mr. Lippincott: I object. She already has said that she did not recollect anything about that feature of the case and besides for the further reason that there is nothing on the record to show that my clients were the future owners of this property.

A. There was no mortgage ever held by the Hamilton Trust Company.

Q. Your recollection is very clear that that company certainly did not hold the mortgage? A. I never heard tell of it in my life.

Q. Your memory is very clear on that? A. Excellent on that.

Q. Equally as excellent as to the other facts, too? A. I have a very good memory. When you tell the truth, there is only one way to remember it.

Q. Are you an attorney? A. I studied law, and took an L. L. D. at New York University. I was the first woman to take it, and I never applied for admission. I am the mother of seven children.

Q. Do you recall how it came about that Mr. McDermott was mentioned as the grantee to lots 11 and 12 in the deed from Mary A. Keenan. Do you recall how that came about? A. Not perfectly.

Q. Tell us how that came about. A. Mr. McDermott had not paid his taxes, I think one bill of assessments, and there was a tax lien, or some kind of a lien being foreclosed, and he looked to lose it and Mrs. Keenan held two lots adjoining his, and she had two other lots, 9, 10 and 11, they are really better lots, and therefore made an even exchange.

Q. Who did? A. Mary A. Keenan.

Q. With whom? A. Edward F. McDermott.

Q. Were you there at the time the exchange was made? A. I made it.

Q. In what capacity? A. As a broker.

Q. You received a commission from Mr. McDermott? A. I don't know. I did show it to a party for Edward F. McDermott, but I don't know whether I did this other party too.

Q. When were these two mortgages held by your husband paid off, do you recall? A. Old Mrs. McDermott—

Q. When? A. I don't know whether they paid them at different times, but old Mrs. McDermott paid part, and Edward paid the rest.

Q. Has this Mrs. McDermott paid? A. Never paid a dollar.

Q. Did Mr. and Mrs. McDermott ever come to your office, conducted by you as a real estate agent, and by your husband as a lawyer, ever come to you with papers in a foreclosure sale? A. They may have, I don't remember. All I know is there was something pending about a foreclosure.

Q. Do you recall what advice was given them with respect to these foreclosure proceedings? A. Yes, I advised that they make an exchange with Mrs. Keenan who had lots adjoining theirs, and who was anxious to get theirs too.

Q. As a graduate of law school, did you think that that would in any way affect the foreclosure proceedings then pending against the property held by Mr. and Mrs. McDermott? A. Mary A. Keenan was in a position to pay anything due on it, but Edward F. McDermott was not.

Q. Do you recall whether or not these proceedings were ever discontinued? A. I did not discontinue them for Mrs. Keenan, so I do not know.

Q. Can you tell us who Martha Ferguson is? A. She was—

Q. Was then. A. She was a lady who lived in Connecticut, Georgetown, Connecticut, lived there some thirty-five years, if I remember; just out of Georgetown.

Q. Did her daughter live with her? A. I think she did.

Q. So that the recital of this deed that Martha Ferguson resided in Waterbury is incorrect? A. I think it is correct. She lived in Connecticut, wherever she lived, and we had our place near Danbury.

Q. Can you tell us how all of these papers in which Mr. McDermott was mentioned as the grantee happened to be in your possession? A. I can.

Q. Tell us. A. Mrs. McDermott met me on Tremont Avenue one day as I was coming down from my home to my office and she had with her a young man named Rosenthal of the Register's office who I had known quite a few years and she said she had been advised to take these mortgages—I do not know whether Mr. Rosenthal was her advisor—but someone who wrote on there a subscribing witness form, and she asked me to sign that paper and I said I had absolutely nothing to do with that lease, and had nothing to do with it.

Q. You said mortgages. A. I mean lease. We were talking of mortgages.

Q. How did you get possession? A. She gave them back to me when I gave her the lease of the premises. I afterwards changed my mind at the insistence of Edward F. McDermott.

Q. These leases were never delivered, were they? A. They were delivered to Edward F. McDermott.

Q. I mean in a legal sense. A. Yes, by Mrs. Ferguson they were delivered to him.

Q. Do you know whether Mr. McDermott accepted those leases or not? A. Apparently he did not.

Q. Then, how did they come into your possession? A. He took over—

Q. Who is he? A. Edward F. McDermott is the only one we have known in this entire transaction.

Q. You were not in any sense obligated to Mr. McDermott in connection with the lease for these premises, were you? A. I wasn't in any sense obligated? What do you mean by that, when I signed it I was obligated.

Q. Was there any legal obligation due from you or your husband to Mr. McDermott? A. Not any except sympathy, the same as I loaned him $145 for his original purchase.

Q. I show you the original lease, Exhibit D-5. This is the lease made by you to Mr. McDermott. This is your signature, is it not? A. Certainly, it is.

Q. This is also your signature (indicating)? A. Yes.

Q. Here (indicating)? A. Yes.

Mr. Cohen: I offer in evidence the original lease from Mrs. Mulligan to Edward F. McDermott.

(The same is marked Exhibit P-2.)

(Exhibit P-2 read to the jury.)

Q. Now, will you explain to the Court and jury why it was you gave Mr. McDermott a receipt for

$1,296? A. Because I held the lease for six years from Mrs. Ferguson to me.

Q. So that you were paid, that is, the rent for the use and occupation was paid to you, was it not? A. Why, it was shown as paid by the note and by this (indicating).

Q. You were paid, were you not? A. Never was paid any money.

Q. What was it you received which demanded this receipt endorsed on the back of this lease? A. The deed to Martha Ferguson, that was the consideration for which that receipt was given.

Q. I still have not received an answer to my question which was this: Why was it you gave a receipt to Mr. McDermott for $1,296 indicating the full payment of the rent reserved in the lease? A. The equity in the deed he executed as it says there on that day to Martha Ferguson.

Q. Did you receive any consideration for that transaction for the giving of that receipt? A. I received that evidence that would show the note was part of that transaction.

Q. Is there any mention in that receipt about a note? A. I don't know, I haven't read it. It says, "Received, New York, November 15, 1914, the sum of $1,296 by deed," which shows it is by deed to certain lots, "made this day by Edward F. McDermott and wife to Mrs. Ferguson on property in Bay Chester, New York City, in full payment of rent for the term of the within lease."

Q. So that there is no mention in that receipt of any note, is there? A. Well, you have heard about the lawyer.

Q. I say, there is no mention in that receipt of any note? A. No.

Q. Yet, you are a graduate of New York University, a student of law, and actively engaged in the real estate business. A. Like many other women, perhaps, a fool. That speaks for itself on the receipt. I believe it now, after being a graduate thirty-five years of N. Y. U.

Q. Were you ever present at any time at which were present Edward F. McDermott, his wife, your husband, Mrs. Ferguson and her daughter and yourself. Were you ever present? A. Yes, when that deed was executed.

Q. Where was it executed, at your place? A. At my house or my office, I wouldn't be able to tell you for sure.

Q. Your husband was also present? A. I don't know whether he was present or not. No, I think he was not.

Q. Who was it that prepared that lease? A. I did.

Q. You did? A. Yes.

Q. Did you also draft the deed? A. I did.

Q. And also the mortgages? A. I did. This has been my work for forty odd years.

Q. You mean the drafting of legal papers and the practice of law? A. No, I withdrew from the practice of law and did not apply for admission to the bar; I do not believe in women practicing law.

Q. Were you ever present at a conference, at which conference were present Mr. and Mrs. McDermott, your husband, Miss or Mrs. Mary A. Keenan and yourself? Were you ever present at any such conference? A. I don't know that Mr. Mulligan was there, but I know I was there.

Q. Was Mr. and Mrs. McDermott present? A. I don't know if Mrs. McDermott was. I believe Mr.

McDermott came over to my office and met Mary A. Keenan.

Q. What relation is Mrs. Ferguson or her daughter to Mary A. Keenan? A. Not any, as far as I know, they both bought at Bay Chester.

Q. Why was it that Mrs. Ferguson or her daughter gave the lease for this apartment? A. Because they wanted the two lots that the McDermotts owned, and they were anxious to get a good tenant for their flat.

Q. What transaction took place between McDermott and Mrs. Keenan? A. That was the trade of the two lots, when she traded her two lots for Mr. McDermott's two lots. I will elucidate one thing. There are four numbers on those lots, but there are only actually two lots. The lots were each 25 by 100 and the rear of those lots lapped over into the other numbered lots to make them 100 feet in depth, but they were only two lots each, the McDermott, Keenan and Ferguson lots.

Q. Thus far we have gotten along quite well, but I cannot quite understand what the relationship was between Mr. and Mrs. McDermott, Mrs. Ferguson and Mrs. Mary A. Keenan. A. Why, Mrs. Keenan traded her two lots for the McDermott lots.

Q. Do you mean to say that Mrs. Keenan traded lots 11 and 12 for those four lots? A. Not four lots, there were two lots.

Q. Call them by lot numbers. A. Call them each two lots; you cannot make me say four lots when there are only two.

Q. I show you this deed from John P. Wenninger and Carolina Wenninger to Edward F. McDermott, and I ask you if four lots are not mentioned in that deed. A. No, I know positively there were only two lots.

Q. Is there an error in mentioning lots 21, 22, 29 and 30?

Mr. Lippincott: I object.

Q. We will call them parts of lots. A. They were lots numbered for an explanation, 1 and 2, and the rear lapped over on 21 and 22.

Q. As I understand you, we are to consider there were parts of our lots? A. Yes.

Q. I do not understand yet the relationship between those three parties, namely, Mrs. Ferguson, the McDermotts and Mrs. Keenan. A. Between Mary A. Keenan and Edward F. McDermott was an exchange of lots, one taking the others.

Q. Were you present at the exchange? A. I was, and put it through.

Q. What consideration passed? A. $1,450 was the consideration.

Q. You mean paid by the McDermotts to Mrs. Keenan or to the contrary. A. The equity was exchanged. There was a difference and that was made in cash, whatever it was.

Q. In other words, they both agreed that the price for each conveyance was $1,450? A. Right.

Q. Let us come down to Mrs. Ferguson, how did she get into the transaction with Mr. McDermott? A. When we sold the row of flats to Mrs. Ferguson, Mrs. McDermott and her husband were then tenants in those flats.

Q. As the owner? A. Oh, yes, I was the owner. Now, when they became the tenants, they got talking to Mrs. Ferguson when she went over there and told her about owning these two lots and told her that they wanted to sell them as the taxes began to accumulate again and it seemed, if I remember rightly, was about to be confirmed, and they called

that to Mrs. Ferguson's attention and she said, "Why don't you sell the lots to me?" and they negotiated that sale between themselves. Now, you asked me who paid the commission. There was no commission.

Q. What was the purchase price for the lots conveyed by the McDermotts to Mrs. Ferguson, do you recall? A. $1,450.

Q. Also $1,450? A. Yes, it was so expressed in the deed.

Q. Do you recall whether or not Mr. Mulligan cancelled these mortgages of record? A. What we usually do is sign a satisfaction.

Q. Were the mortgages ever cancelled of record? A. I couldn't tell you what we did after we gave them the satisfaction and delivered the bond and mortgages to Edward McDermott.

Q. You do not recall that? A. It was some time I would think about, after the May transaction. I would think that it was about that time, May, 1914. They had paid in different installments.

Q. Incidentally the lease was made by you to Mr. McDermott? A. Yes.

Q. Notwithstanding the fact that you were not the owner of the property? A. That is all very true.

Q. You know that the lease from you to Mr. McDermott was recorded, do you? A. I know it from Mrs. McDermott, she told me that she had it recorded.

Q. You never recorded any lease from Mrs. Ferguson to yourself, did you? A. This lease was to be recorded from Mrs. Ferguson to McDermott, and when the other one from me was recorded I certainly filed this away with the McDermott papers.

Q. Your only evidence of a possible right to make a lease might have been evidenced by a lease from Mrs. Ferguson to yourself, that is correct? A. No, I would have said the connection would have been between Mrs. Ferguson and the McDermotts.

Q. I am not talking of any connection, I am talking of your right to make a lease to the property in which you had no interest. I mean your only evidence of a right would have been by a lease from Mrs. Jennie Ferguson to yourself. A. I wanted no right. I believed in her and believed in him.

Q. In her? A. In the McDermotts.

Q. What had that to do with the lease from Mrs. Ferguson? A. Perhaps if I was as able a counsel as you, I would—

Q. I did not ask you that. Will you please answer the question. A. You are taking the time of the Court in making me answer something that I have answered a half a dozen times. I told you I may have been a fool, but it was my idea of my rights to hold the lease from Ferguson to the McDermotts.

Q. Did you ever obtain a lease from Mrs. Ferguson for this property? A. I never did; I never asked for one.

Q. Explain to the jury just how you arrived at the figure of $840 as evidenced by representing this note made by yourself and husband to Mr. and Mrs. McDermott. A. Yes. That was made out, I agreed that while Mrs. McDermott and her husband were my tenants to give them a three-year lease prior to the conveyance to Ferguson. They held me to that after I had promised to give them a three-year lease, so the only condition under which they would give their lots to Mrs. Ferguson

and get a six-year lease would be that I would be responsible for the six-year lease. That I agreed to do and the difference in the amount was that there were unpaid taxes and assessments which amounted to about $192 and they wanted to know that that would be paid.

Q. What did you say that assessment was against the property?

Mr. Lippincott: I object.

A. I was simply trying to do a good thing by Mr. McDermott who said he could not get along with his wife if that could not go through.

Q. Tell me how you figured that amount of $1,296. A. It was the rent for six years and in holding the lease from Ferguson I thought I was perfectly safe in collecting the rents myself with no power for McDermott to sub-let that lease to any person.

Q. You said that Mrs. McDermott occupied the apartment until the termination of the lease by its own terms? A. They did.

Q. You are positive of that. A. I know it positively.

Q. So that the lease, according to its own terms, would have terminated some time in 1920? A. That is when I went up there to get that note back.

Q. You did not live in New York then, did you? A. We maintained a domicile on Tremont Avenue. We simply represented that we were sojourning in New Jersey. We had a little child seventeen years of age who was dying and we maintained the domicile and Mr. Mulligan voted and had all rights of citizenship in New York City for four years after we came to New Jersey, and a letter sent by Mr. McDermott's attorney reached me at 461 Tremont Avenue in 1920.

Mr. Cohen: I ask for that letter.

The Witness: Here it is.

Q. This is a letter written by an attorney making a demand for the payment of the note. A. After I had been to Mrs. McDermott, after the six years were up and after she had been to my home.

Q. I take it that after the note was due, you went to the home of Mrs. McDermott for the purpose of securing this note. A. About the time it became due, or before it became due; it was in 1920, anyway.

Q. Was it before or after? A. I couldn't tell you that. I know it was right near it.

Q. You know you were not entitled to this note before the due date? A. I wanted to see that she had not endorsed that note to some innocent third person for value. I was anxious about the note.

Q. Was it just a month before the expiration of the due date of the note that you determined to find out whether or not this note had been negotiated to a holder for value? A. If you tell me the date of that letter of that attorney, it will refresh my recollection of the date. I am entitled to know.

Q. Did you go before the maturing of that note, or after? A. I would say it was before.

Q. How soon before, do you recall? A. I am telling you. You give me that letter and I will refresh my recollection. I am under oath.

Q. Do you recall having received this letter (indicating) dated November 5th? A. After Mrs. McDermott had been to our house, so it was prior to this date that I had been to her house.

Q. Did you ever respond to this letter? A. I did.

Q. Have you got that letter? A. I have no letter file in New Jersey.

Q. Now, Mrs. McDermott— A. My name is Mulligan.

Q. Isn't it a matter of fact, as you have testified on direct examination, that the sum of $1,450 was paid for these two lots? A. Just when?

Q. I have reference to the first transaction mentioned in the deed from Wenninger to Mr. McDermott. A. About the year of 1914, it apparently was.

Q. $1,450? A. Yes, sir.

Q. Isn't it a fact— A. And it was paid during all those times during that year.

Q. Will you wait until I finish the question? A. Yes.

Q. Isn't it a fact that the sum of $1,450 together with interest thereon at six per cent. from the date these lots were purchased to the date of the giving of the four lots you paid the sum of $2,136 claimed by Mr. and Mrs. McDermott and which was paid as evidenced by your receipt on that lease for $1,296, together with this note? A. No, sir.

Q. That is not the transaction? A. That is not true. There was no interest paid. There was no mention of interest paid to anybody. What are you talking about, anyway? If there was any interest paid, they may have lost it.

Q. Coming back again to the former part of your cross examination, you do not know whether those foreclosure proceedings were ever discontinued or not. A. I assume they were.

Q. You do not know of your own knowledge, do you? A. No.

Redirect examination by Mr. Lippincott:

Q. These foreclosure proceedings. Do you remember whether they were foreclosures of mortgages or foreclosures of tax sales. A. Foreclosures of tax sales, as I remember.

Q. Did you ever have any? A. No.

Q. Did you ever have any information as to whether any mortgage was foreclosed on property held by Mr. and Mrs. McDermott? A. No.

Q. Did you ever at any time own part of lots 21, 22 and 29 and 30?

Mr. Cohen: We admit she never owned them.

Q. Did you ever sign a deed for these lots? A. No, nor my husband never did.

WILLIAM G. MULLIGAN, one of the defendants, sworn.

Direct examination by Mr. Lippincott:

Q. Are you one of the defendants in this case? A. I am.

Q. Where do you reside? A. 1000 Anderson Avenue, Palisades, New Jersey.

Q. What is your occupation? A. I am in the real estate business.

Q. Are you the William G. Mulligan who on January 30, 1925, filed a petition in bankruptcy in the District Court of the United States for the District Court of New Jersey? A. I am.

Q. Are you the William G. Mulligan who received a decree in bankruptcy on September 8, 1925? A. I am.

Q. I show you a certified copy of the petition

in bankruptcy dated January 30, 1925, signed by William G. Mulligan, petitioner, which on schedule A-3 is disclosed the claim of Elizabeth F. McDermott, individually and as administratrix of Edward F. McDermott, deceased, 332 East 176th Street, New York City, New York, November 15, 1914; promissory note, Agnes K. Mulligan joint maker, $840, and I ask if that is a certified copy of the petition you filed.

Mr. Cohen: I object. How does he know that?

Mr. Lippincott: Because it is part of the record of the Court. I know it is an admitted copy because I prepared it.

(Argument.)

The Court: I will not admit that.

Mr. Lippincott: I respectfully pray an exception to the ruling of the Court.

I offer the certified copies (petition, schedules and discharge in bankruptcy) which contain the seal of the Court.

Mr. Cohen: I object on the ground that it is not proper evidence unless it may be established in this Court that that obligation was listed in the schedule and that a petition was filed and therefore the admission of that is improper.

The Court: Sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. I show you a petition signed by William G. Mulligan, and I ask you if that is your signature. A. It is.

Q. Is that a true copy of the petition?

Mr. Cohen: I object.

Q. Filed in the United States District Court? A. It is, certainly.

Mr. Cohen: I object.

The Court: Strike that out.

Cross Examination Waived.

(Argument.)

The Court: What can I do to help you out? We, by our legislature have made a distinction between "a true copy" and "certified copy" by defining the difference and marking one "a true copy" and the other "a certified copy."

Mr. Lippincott: Then, may I have these marked for identification and, if your Honor's ruling is the same, I will ask for an exception and proceed.

(Petition and schedules in bankruptcy of William G. Mulligan are marked D-6 for identification and discharge of bankrupt certificate is marked D-7 for identification.)

Defendants Rest.

ELIZABETH F. McDERMOTT, recalled in behalf of the plaintiff in rebuttal.

Direct examination by Mr. Cohen:

Q. Mrs. McDermott, do you recall when title was taken to this property as to those four lots? Do you recall the time? A. Yes, sir.

Q. Will you tell us what happened just prior to November 15, 1914, in connection with these first two lots you purchased? A. We went to Mrs. Mulligan and paid her $1,450 for two lots and were served with papers from the surety company that the lots had been foreclosed and we went to Mrs. Mulligan and told her—

Q. Did you also tell Mr. Mulligan? A. Yes, and she told us not to pay any attention to that at all, that it was not so, to bring our papers and leave our deed and everything with her and she would attend to everything and told us not to worry, it was all nonsense.

Q. Did you leave all of your papers with Mrs. Mulligan? A. Yes, sir.

Q. When did you next see Mr. and Mrs. Mulligan and talk with them? A. I cannot tell just the date, but it was a few months after we went up to find out if there was anything else and she told us, "No." We went up several times and could get no information whatever.

Q. Ultimately, what did you do? A. She had our deeds. I went to Mr. and Mrs. Mulligan and said, "I want the deeds," and she told me, "I cannot find the deeds," she said if I wanted the deeds I could go to the City Hall and get a copy, that she did not know where the deeds were. Then, she came to my house, Mr. and Mrs. Mulligan came to my house and asked my husband and I to go up to where this property was located, that she wanted to show us that the lots were very undesirable, that water all came in from Pelham Bay on them, that they would not be desirable for building, and wanted us to transfer those two lots to another part of Pelham, but we would have to pay $500 more.

Q. Then, what did you do? A. We said, "No," we did not want those lots, we had no more money, and she would not take no for an answer and gave us a certain time to consider and her husband Mr. Mulligan and his daughter came to the house one evening and my husband and I were both there, and he asked us what conclusion we had come to

and I told them we wanted nothing more to do with the lots, that what we wanted to do was to get our money back.

Q. What did they say in response to that request? A. They would not take no for an answer, that we could think it over.

Q. Yes? A. We went to Mrs. Mulligan again and asked to have our money returned and also asked her if she did not own property in the Bronx where she could let us have property or a flat in an apartment, where we could have an apartment for the money she owed us.

Q. Did you ultimately set down what the total figure was that was due you? A. Mr. Mulligan done the figuring.

Q. What was done? A. He figured up the amount of $1,400 and she says she owns this property and she would give me an apartment in the house at a rental of $18 a month for six years, and she would give me a lease for that apartment, and we could live there and that would be the $1,296 of the money she owed us. We figured it up and with interest from the time she owed the money, it amounted to $1,200 and some odd dollars. They made out a lease for $1,296 and the balance was $840, so she said, "What will we do with the remainder? We will give you a promissory note for that and that note will become due when the lease expires."

Q. Is this the note you received? A. Yes.

Q. When they refused to pay it back, did you suggest any action to them? A. No, we did not.

Q. Did you have a lawyer in this transaction? A. Mr. Mulligan was the lawyer.

Q. He was the lawyer? A. Yes.

Q. How about Mrs. Mulligan? A. I think she was a lawyer too.

Q. Did she hold herself out to you as a lawyer? A. Yes.

Q. When did you find out what property had been taken away by these proceedings? A. From the Hamilton Surety Company, you mean?

Q. Yes. A. I think that is around 1908 or so; I think it is around that date.

Q. You were informed, were you not, that your property had been taken away by foreclosure? A. Yes, Mrs. Mulligan told me to leave it all to her, and she would take care of it, because she was a lawyer.

Q. (By the Court.) Then, you say these mortgages on this original property lots 21, 22, 29, 30 were foreclosed? A. Yes.

Q. (By Mr. Cohen.) Did you pay the full amount of $1,450? A. Yes, sir.

Q. Did Mr. or Mrs. Mulligan ever give you back any cancellation of the two mortgages your husband signed? A. No, sir.

Q. Did you ever meet Miss Ferguson or Mrs. Ferguson? A. No, sir.

Q. Did you ever see Mrs. Ferguson or Jennie Ferguson, her daughter? A. No.

Q. Did you ever know Mary A. Keenan? A. No, sir.

Q. Have you ever seen her? A. No, sir.

Q. You were asked to sign this deed marked Exhibit D-4? A. Yes, sir.

Q. Now, tell me what conversation took place between you and Mrs. and Mr. Mulligan at the time of the signing of that deed, when you signed it. A. We said to her, what did we have to sign that deed for, we did not want the lots and did not want

any exchange of lots and she told us that we would have to sign in order to seal the agreement.

Q. Did you ever see any deed made by Mary A. Keenan to your husband for two lots? Did you ever see such a deed? A. No.

Q. Did Mr. or Mrs. Mulligan ever tell you that the deed for lots 11 and 12 were made? Did they ever tell you they made such a deed? A. No, sir.

Q. Did I understand you to say that Mrs. Mulligan told you she owned this apartment for which this lease was given? A. Yes, sir.

Q. Did she ever tell you the apartment was owned by Jennie Ferguson? A. No, sir, she told me she owned it.

Q. Did Mr. and Mrs. Mulligan compute at the time that this lease and note were given, the amount which they owed you?

Mr. Lippincott: I object on the ground the question is leading.

The Court: You may ask them what they did at that time. Do not lead the witness, because it is your witness.

Q. When were these two papers delivered to you before yesterday? A. November 15, 1914.

Q. Both at the same time? A. Yes, sir.

Q. Was there or was there not any talk about any security or about any connection with Mrs. Ferguson when this note was delivered to you? A. No, sir.

Q. Did you go to Mrs. Mulligan's house in response to any letter that she testified she mailed or sent? A. No, sir.

Q. When did you go? Tell the Court and jury why you went to Mrs. Mulligan's house in New

Jersey. A. The reason why I went to Mrs. Mulligan after this note was issued, and after the six-year lease was up was to try and find her, and I couldn't find her for a long time. I found a death notice in the paper of her daughter, and I went to her and she wouldn't listen to me, wouldn't tell me why, she simply told me that she did not do any business in her home, to go to her office. I said, "I have looked for you at your office but I cannot find it," and she said it was 1995 Boston Road, and she said she would meet me there at five o'clock the next day. I said, "I have come an awful distance—

Q. Did she keep that appointment with you the next day? A. No, Mr. Mulligan's brother was at the door and he said Mrs. Mulligan was not there.

Q. Has anything ever been paid on account of this note? A. No, sir.

Q. Did she ever demand the return of that note either in writing or otherwise? A. No, sir.

Cross examination by Mr. Lippincott:

Q. When were you married to Mr. McDermott? A. November 9, 1907.

Q. How do you know all about this transaction in 1906? A. Because I was keeping company with my future husband at the time.

Q. When did you discover that Mrs. Mulligan had left New York? A. When I went to look for her in the Bronx, when the note was due.

Q. When was that? A. Six or seven years ago.

Q. When did you discover that she resided in New Jersey? A. Sometime in the summer of that year.

Q. What year? A. I don't know just the date,

I know it was through the death notice in the paper.

Q. You say in your affidavit dated October 21, 1926, the reason that suit was not brought soon after the note became due was because the defendant had disappeared from the City of New York and you could not ascertain information as to her whereabouts. The note was due on November 15, 1920? A. Yes, sir.

Q. You located the residence of Mrs. Mulligan about January, 1921, didn't you? A. Yes, sir.

Q. That is the time their daughter died? A. Yes, sir.

Q. Then, you did know where they lived in January, 1921? A. Yes, sir.

Q. You did not bring suit at that time, did you? A. No.

Q. The note was overdue at that time, wasn't it? A. The note was overdue. The note became due at that time.

Q. You did not bring suit until September, 1926. That is right, isn't it? A. Yes, sir.

Q. Then, your affidavit is not true that the reason you did not bring suit before was because you did not know where they were. A. All the information she gave us was in Connecticut, and she could not be found.

Q. When was this? A. When I went to the house in New Jersey.

Q. Did you go to the house before the note was due? A. No.

Q. You never went back to her house and tried to find her, did you? A. No.

Q. The foreclosure proceeding, was it a foreclosure of a mortgage, or taxes, do you know?

A. No, sir, I do not know. A foreclosure of the lots, that is all I know.

Q. You do not know whether it was a foreclosure of the tax title? A. No.

Q. Then, when you in your affidavit stated it was the foreclosure of the mortgage, you did not know whether that was true or not. A. I did not say it was the foreclosure of the mortgage, I said the lots were foreclosed.

Q. You said on the stand today that there was a foreclosure of the mortgage given to Mr. McDermott.

Mr. Cohen: I object. She did not say that.

Q. What did you say in reference to the foreclosure? A. That there was a foreclosure of the mortgage.

Q. Didn't you say there was a foreclosure of the blanket mortgage? A. Yes.

Q. How did you know? A. Because they told me down at the surety company when I went there.

Q. Why did you just tell me that there was a foreclosure of a mortgage and tax sales, why did you say it was a blanket mortgage if you didn't know? A. They told me at the surety company.

Q. Why did you tell me just now it was a tax title? A. I didn't understand you.

Q. You are deaf, aren't you? A. Yes, sir.

Q. You said you did not start suit in 1920?

Mr. Cohen: I object.
The Court: Sustain the objection.

Q. How did Mr. and Mrs. Mulligan become indebted to you for the sum of $1,450; explain that to the Court, will you? A. My husband bought two

lots from Mr. and Mrs. Mulligan and it was the price on the lots.

Q. Did he receive a deed from Mr. and Mrs. Mulligan? A. Yes, sir.

Q. Have you the deed with you? A. No, Mrs. Mulligan had the deed.

Q. Mrs. Mulligan had the deed? A. Yes.

Q. You say you saw them sign in 1906 a deed from Mr. and Mrs. Mulligan to you? A. I didn't say I saw them sign in 1906; no, I wasn't there.

Q. How do you know they gave it? A. Because I saw it.

Q. Was it recorded? A. I couldn't tell you.

Q. Do you know? A. I couldn't tell you.

Q. You usually record these, don't you?

Mr. Cohen: I object.
The Court: Sustain the objection.

Q. That is your signature, isn't it? A. Yes, sir.

Q. Why did you sign this if you did not want to sell it? A. We did not have those lots. We told Mrs. Mulligan we did not want those lots, we made no trouble on the lots whatever.

Q. Why did you sign a deed for property which you did not own? A. Mrs. Mulligan told me to sign it, to make it right for us to leave it with her and she would see to it all and they were our lawyers, and we left everything to her.

Q. How do you explain the fact that the deed from you to Mrs. Ferguson and the note from Mr. and Mrs. Mulligan to you and the lease from Mrs. Mulligan to you or to Mr. McDermott, and the lease from Mrs. Ferguson to Mr. McDermott are all dated on the same day, and do not have any connection? Will you explain how it is, or why you signed the deed with your husband to Mrs. Fergu-

son on November 15, 1914, and you received, you and your husband received from Mrs. Mulligan a lease for the apartment for six years on November 15, 1914, and the lease from Jennie Ferguson to Mr. McDermott is dated November 15, 1914, and the note is dated the same day.

Mr. Cohen: I object. The leases are in evidence and the note is in evidence and speak for themselves.

A. I don't understand the question.

Q. (By the Court.) A number of these papers have the same date upon them and we are all interested in knowing why they are dated on the same day. A. Because they were all made out the same day.

Q. The deed and the note which you are suing upon and the lease to the apartment? A. They were all made out the same day. I came to her house to get the lease filled out. She took us that day to the apartment where she was going to give us the apartment and she kept us there for hours figuring out all this, and when she had this made out, she asked us to sign it, and I said to her, "What is the sense of signing them when we don't own these lots?"

By Mr. Lippincott:

Q. Let me go back and ask you about this property you had bought for $1,450, you said you were foreclosed out of that property? A. Yes.

Q. How did you find that out? A. By the Hamilton Surety Company, they came to us.

Q. Did you convey that information to Mrs. Mulligan? A. Yes, sir.

Q. What did she say to you about that? A. She said it wasn't so; she said there was no such thing.

Q. Then, you went back to her again? A. Yes, I went back to her again and then she took us to Pelham to make this exchange in lots, she wanted us to exchange the two lots we formerly had. She said they were very poor and in the water and all this, and she would transfer us to two lots on higher and dryer land, and she wanted $500 more.

Q. You told us about that before, that she would not take no for an answer. A. And about two weeks later—

Q. I want to get to the point where you say she foreclosed you out of your lots and you wanted the money back and you said she gave you something back for the lots, and among other things was this note. A. Yes.

Q. What happened at that time which apparently was November 15, 1914? A. Well, she counted up the money to $1,400 and tacked on all the interest and all, and then she gave us the lease and she said, "Now, in six years that will amount to $1,296," after making up the amount of interest and all, it amounted to $1,200 and some odd, and we said, "What do we do with the balance?" She said, "I will give you a promissory note for the balance, and you live in that apartment six years rent free."

Q. Your story is that these lots which you lost by foreclosure and for which you tell me that she was going to give you a six-year lease on this apartment and a note for $840? A. Yes.

Q. And that is the note you bring this action on? A. Yes.

Q. How did you arrive at the amount on which you included interest? A. It was from the deed, they figured it up, they figured up all the interest and we did not have anything to say. They went

into all of that. They showed us the figures and said that is what it amounted to, and they would give us the lease and the balance on the note and she then told me when she handed me the note, that there was no interest due on that note, it had already been deducted, and that was for the six years.

Q. You had the sum of $1,450, didn't you? A. Yes.

Q. How much?

Mr. Cohen: I object as immaterial.
The Court: She said she paid $1,450.

Q. When did you pay it? A. I couldn't tell you just the date.

Q. Can you tell us the year? A. In her house, in her own home?

Q. When? A. In the year of 1908.

Q. Then, she did not owe you interest from 1906, did she, if you did not pay that money until 1908, she did not owe you interest from 1906, did she? A. No, I didn't say she did.

Q. You say it is computed from 1906? A. She did all the figuring, I didn't do any figuring, she did all that herself. I left it all to her, she was the lawyer and sold the lots and everything, and we left it all to her thinking we might come out all right.

Q. In reference to the apartment, you also paid $1,296 for the apartment, didn't you? A. No, we had already paid that money, $1,450.

Q. Then, this receipt is not for cash, is it? A. This receipt is for—

Q. It covered the rent? A. Yes.

Q. (By the Court.) In whose handwriting is it? A. Mrs. Mulligan.

Q. (By Mr. Lippincott.) While you were in the apartment, the mortgage on the apartment was foreclosed, wasn't it? A. Yes, sir.

Q. By reason of your lease in this receipt, you were the only family that they did not put out, weren't you? A. Everybody stayed there.

Q. That is what kept you there? A. Yes.

Q. When the property was sold, was it sold subject to your lease? A. Yes, sir.

Q. You did live in the apartment the entire six years, didn't you? A. Yes.

Q. And your husband lived there until he died? A. I lived there until my husband died, and then I sub-let the premises.

Q. You sub-let them? A. Yes.

Q. Although you did not have authority to?

Mr. Cohen: I object.
The Court: The lease speaks for itself.

A. I was told to sub-let.

Q. You did not pay anything in cash during the time when you were living there, did you? A. No.

PLAINTIFF RESTS.

WALTER C. SEUFERT, sworn in behalf of the defendant, in rebuttal:

Direct examination by Mr. Lippincott:

Q. Where do you reside? A. Englewood, New Jersey.

Q. What is your occupation? A. Title examiner.

Q. Did you examine the records in the County Clerk's office of the Borough of the Bronx? A. Yes, sir.

Q. For what period? A. From 1900 down to date, grantee McDermott.

Q. Did you find any record of any deed from Mr. and Mrs. Mulligan to Mr. and Mrs. McDermott?

Mr. Cohen: I object, the best records are the records or exemplified records.

The Court: I will admit it.

Q. (Question read.) A. No, sir.

Q. (By the Court.) Are you a lawyer? A. No, sir.

The Court: I will not admit it. Strike it out.

Mr. Lippincott: Withdraw the witness.

Defendant Rests.

Plaintiff Rests.

Mr. Lippincott: Are my exceptions to the motions all in the record, your Honor?

The Court: You will have to arrange that with the stenographer.

(Mr. Lippincott sums up for the defendant.)

(Mr. Cohen sums up for the plaintiff.)

The Court charges the jury as follows:

MOUNTAIN, J.:

This case is complicated and if I recite any testimony which is not in accordance with the memory you have of what the witnesses said you must not regard what I say, but must take your own memory of what the witnesses said on the witness stand.

As I understand the plaintiff's story, she said her husband on November 15, 1924, received a note, and the note was made by William G. Mulligan, and Agnes K. Murphy Mulligan, the defendants in this action. The note was for $840 and payable six years after date; that is the note which is being sued upon. The defense is payment. The defense is to the effect that the note was paid at its expiration by virtue of an agreement between the parties.

According to the testimony, in 1906, in November, Edward F. McDermott bought two lots up in the Bronx when they were priced at $725 apiece, and this is the defendant's story, Mrs. Mulligan, of how these lots came into his possession. There were not two lots though I think they were referred to as two. They were in the deed Nos. 21, 22, 29 and 30, on block 33 of a certain map. That is where the trouble started. She said he purchased these lots with only $145 in cash and that two mortgages were given, not by the "boy" as she called him, to the seller, but as I understood the testimony, by the boy to William G. Mulligan, one of the defendants. Now, at this point, why were there two mortgages? Why was there not one mortgage? That is something you have to consider. The total purchase price was $1,450 and then this boy got married, and his wife testified that her money was used to pay off these mortgages so that when the mortgages were paid off, if that is true, the boy, or the man then, owned these lots having paid a consideration of $1,450. At this point the story became a little vague to me.

As I understood it, the McDermotts found out that they were going to lose this property, either because the taxes had not been paid, or because some mortgage other than the two mortgages which I have mentioned was going to be foreclosed and they went to the Mulligans and im-

parted this information to them. The defendant Mrs. Mulligan said that it was true, as I recall her testimony, that the lots were to be foreclosed as she expressed it, "for taxes or a mortgage," and it was decided to exchange these lots for other lots. I thought that these lots were conveyed, or I got the impression that they were conveyed, the original lots, to a Mary Keenan, who in turn deeded two lots to Mr. McDermott according to the defendant's story, so, then we find if that was true that the McDermotts owned instead of the original lots, two lots which they had exchanged with Mary Keenan which are known as lots 11 and 12, on block 26 of some map. Now, then, at that time you may find that it was again decided that Martha Ferguson should have these lots deeded to her, and of course, there must have been a consideration for that conveyance and so as I listened to the parties, Mrs. Ferguson wanted lots 11 and 12 and the deed was made out to her and this was the consideration in the deed: She was to get the title to these two lots, from the McDermotts. What was she to give for these two lots? She was to give a six-year lease of an apartment in a building owned by her, and then there was some extra cash that the McDermotts were to obtain and then a queer thing happened, queer to me, because I cannot understand it at all: we were told that the McDermotts refused to receive a lease from Mrs. Ferguson who owned this apartment, but were ready to take a lease from someone who did not have any title to it at all. This may not be so strange if you decide these people were ignorant or suspicious, and did not know exactly what they were doing, because that sometimes does happen, but at any rate, we were told by the defendant that instead of Mrs. Ferguson, who was going to get the two lots, giving a six-year lease on her apartment, and giving some money in addition, we were told, I say, that what happened was that Mrs. Mulligan gave a lease and gave a note, which is this note it is alleged, so that at that time we find the McDermotts had parted with all their real property, but instead of the real property owned this note, if that is the true story, and the six-year lease on the apartment. That is part of what the defendant says. What the defendant has got to prove according to the answer is as follows: "On November 15th, 1914, the defendant executed to Edward F. McDermott, lease on certain apartment consisting of five rooms and bath on the third floor of a house situated and known as 332 East 176th Street, Borough of the Bronx, City of New York, for a term of six years at a yearly rental of $216, commencing on November 1st, 1914. Said rent to apply on note mentioned in Paragraph 1 of complaint." Now, that is the story of the defendant, that is, that when the lease had expired the payments on the lease liquidated the amount due on this note.

Right here, I want to call your attention to one thing: We know the solemnity of a written agreement, it has more solemnity than an oral agreement; people have deliberated about it and then have put their agreement in writing. I have read this note and I find nothing on it except a promise to pay a certain amount of money. This is not a contingent promise. It is a direct promise made by two people, that in six years they will pay $840. Of course, it may occur to you, that if they had both the execution of a note and another agreement in mind that when this lease expired the note,

given as security, was to be liquidated—it may have occurred to you that they would have naturally put that in the lease, but that was not mentioned. That might or might not be a significant factor.

Mrs. McDermott, who has brought this suit said she paid for the lots and her husband gave her the note and gave this explanation. Mrs. McDermott is now a widow and it is for you to determine from her appearance on the stand as to how much business ability she has or has had. She said, as I understood her testimony that she and her husband had rumors of a foreclosure proceeding against the lots they owned and they went to the Mulligans and demanded that their money be returned. Whatever happened as the result of the conference she had with Mrs. Mulligan and Mr. Mulligan, she alleged that as a part payment to she and her husband by the Mulligans of the $1,450 or $1,450 with interest which had been originally paid for these lots, she and her husband were to get this lease which she said amounted, as it was calculated to $1,296, that there was some interest also figured and that there was in addition to that $840. That sum she said was the amount of this note and she alleged that they got the apartment and that she and her husband got this note and that at the expiration of six years when she attempted to collect the note it was not paid, in other words, she stated, as I understood her, that they got this note plus rent for six years for the land out of which she alleged she had been foreclosed. Whether it had been foreclosed or sold for taxes, I do not know, because the transaction was not very clearly described.

The burden of proof is upon the plaintiff to prove by the greater weight of the evidence that the defendants are liable on the note. If this note was extinguished or liquidated in six years as the defendants say it was and you regard it as having been paid, your judgment should be for the defendants. If, on the other hand, you find that it did not become due and payable until the expiration of six years and was not paid and you believe the story of the plaintiff, then your verdict should be for the plaintiff for $840 with interest from November 15, 1920, until today at six per cent.

(The jury retires.)

Exhibit P-1.

Endorsed on back: Elizabeth F. McDermott

$840.00/100 New York, November 15th, 1914.

Six years after date we jointly and severally promise to pay to the order of Edward F. McDermott and Elizabeth F. McDermott, Eight hundred and forty no/100 .....Dollars at the office of Wm. G. Mulligan, 461 East Tremont Ave. New York City.

WILLIAM G. MULLIGAN
AGNES K. MULLIGAN

Value received
No. ..... Due .....

Exhibit P-2.

THIS INDENTURE, made the 15th day of November one thousand nine hundred and fourteen BETWEEN Agnes K. Mulligan, of the City of New York, party of the first part, and Edward F. McDermott, Residing at 332 East 176 St New York City party of the second part, WITNESSETH, That

the said party of the first part hath letten, and by these presents doth grant, demise, and to farm let, unto the said party of the second part, all that certain apartment consisting of five rooms and bathroom, on the third or top floor in the house known as No. 332 East 176th Street in the Borough of the Bronx, City of New York, with the appurtenances, for the term of Six years from the first day of December, one thousand nine hundred and fourteen at the yearly rent or sum of Two hundred and sixteen ($216.00) Dollars, to be paid in equal monthly payments in advance on the first day of each and every month during the term aforesaid.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and the same to have again, repossess and enjoy. And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent as herein specified.

And also, to pay the regular annual rent or charge, which is or may be assessed or imposed according to law, upon the said premises, for the Croton Water, when due in each year, during the term, and if not so paid, the same shall be added to the month's rent then due. And the said party of the second part further covenant that he will not assign this Lease, nor let or underlet the whole or any part of the said premises, nor make any alterations therein without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that he will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed

extra hazardous on account of fire or otherwise, without the like consent under the like penalty. And the said party of the second part, further covenant that he will permit the said party of the first part, or her agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notices "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And it is further agreed between the parties to these presents, that in case the building or buildings erected on these premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possibly at the expense of the said part of the first part: that in case the damages shall be so extensive as to render the building untenantable, the rent shall cease until such time as the building shall be put in complete repair, but in case of the total destruction of the premises by fire or otherwise, the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end, provided, however, that such damage and destruction be not caused by the carelessness, negligence, or improper conduct of the party of the second part, his agents or servants.

And the said party of the second part further covenant and agree that he will comply with all the requirements of the Board of Health, Municipal Authorities and Police and Fire Departments of the City of New York, and that he will not create or permit any nuisance in the premises hereby rented to the annoyance of neighboring occupants,

and that he will keep the hallway adjoining the premises hereby rented and the stairway communicating with the floor beneath free from dirt and rubbish.

AND the said party of the second part further covenants and agrees to use said rented premises only for private residence for one family.

AND at the expiration of the said term the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

AND the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

AND IT IS FURTHER UNDERSTOOD AND AGREED, that the covenants and agreements contained in the within Lease are binding on the parties hereto and their legal representatives.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

AGNES K. MULLIGAN (Seal)
EDWARD F. MCDERMOTT (Seal)

Sealed and delivered in the presence of
ELIZABETH MCDERMOTT

(Endorsed):

C 3225 May 26 1915

AGNES K. MULLIGAN

TO

EDWARD F. MCDERMOTT.

LEASE

(Of Part of Building.)

Recorded in the Office of the Register of the County of Bronx, on the 26 day of May A. D. 1915 at 2 o'clock 30 Min. P. M. in block series (Conveyances) section 11 Lib. 158 page 139 and indexed under Block Number 2892 on the Land Map of the City of New York.

Witness my hand and Official Seal.

EDWARD POLAK

(Seal) Register, County of Bronx.

Sec 11 Blk 2892

Dated November 15th 1914

Term, 6 years.

Annual Rent, $216.00

Begins December 1st 1914.

Terminates December 1st 1920.

R & R to

ELIZABETH MCDERMOTT
332 E 176 St
Bronx

State of New York, }
Bronx County, } ss.:

On this 26 day of Jan. in the year 1915 before

me personally came ELIZABETH MCDERMOTT subscribing witness to the foregoing instrument with whom I am personally acquainted who being by me duly sworn did depose and say that she resided at the time of the execution of said instrument and still resides in 332 E. 176 St. Bronx Co. N. Y. that she is and then was acquainted with Agnes K. Mulligan & Edward F. McDermott and knew them to be the individuals described in and who executed the foregoing instrument and that she said subscribing witness was present and saw them execute the same and that she said witness thereupon at the same time subscribed her name as witness thereto.

S. M. ROSENTHAL
Notary Public
Bronx County No. 20
Bronx Register No. 601

Exhibit D-1.

This indenture, made the sixteenth day of November in the year one thousand nine hundred and six, between John P. Wenninger and Carolina Wenninger (his wife) of the City County and State of New York parties of the first part and Edward F. McDermott of the sme place of the second part Witnesseth, that the said parties of the first part in consideration of the sum of fourteen hundred and fifty (1450) dollars lawful money of the United States paid by the party of the second part, do hereby grant and release unto the said party of the second part his heirs and assigns forever. All those certain lots, pieces or parcels of land, situate, lying and being in the twenty fourth Ward of the Borough of Bronx, City of New York in the

County and State of New York, formerly in the Town and County of Westchester) known and distinguished on a certain map entitled, "Map of Pelham Park made by Garret J. Byrne Engineer and Surveyor dated July 4th, 1873 and filed in the office of the Register of the County of Westchester New York September 20th 1873 as map number 599 as the blocks and lots numbers as follows; Parts of lots twenty one (21) twenty two (22) twenty nine (29) and thirty (30) in block number thirty three on said map which taken together are bounded and described as follows: BEGINNING at a point on the westerly side of Baychester Avenue, (formerly Main Avenue) as legally opened, distant seventy five (75) feet southerly form the south-westerly corner of Ferris Avenue as laid down on said map and Baychester Avenue as legally opened and running thence westerly parallel with said Ferris Avenue ninety (90) feet thence southerly parallel with said Baychester Avenue fifty (50) feet thence easterly and again parallel with said Ferris Avenue ninety (90) feet to Baychester Avenue aforesaid and running thence northerly along said Baychester Avenue fifty (50) feet to the point and place of beginning..together with the appurtenances and all the estate and rights of the parties of the first part in and to said premises..to have and to hold the above granted premises unto the said party of the second part his heirs and assigns forever. and the said John P. Wenninger doth covenant with the said party of the second part as follows; First; that the said John P. Wenninger party of the first part is seized of the said premises in fee simple and hath good right to convey the same..Second; that the party of the sec-

ond part shall quietly enjoy the said premises; Third; that the said premises are free from incumbrances except a certain purchase money mortgage forming a part of the consideration of this deed bearing even date and to be recorded simultaneously herewith, made to G. Mulligan.. Fourth; that the party of the first part will execute or procure any further necessary assurance of the title to said premises. Fifth; that said John P. Wenninger will forever warrant the title to said premises. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written..John P. Wenninger (LS) Carolina Wenninger (LS) In the presence of A. K. Mulligan,..State of New York City & County of New York ss; On this 16th day of November in the year one thousand nine hundred and six before me personally came John P. Wenninger and Carolina Wenninger (his wife) to me known and known to me to be the individuals described in and who executed the foregoing instrument and they thereupon severally duly acknowledged to me that they executed the same. A. K. Mulligan Notary Public N. Y. County. Recorded preceding at request of Wm G. Mulligan, Nov. 22, 1906 at 11 oclock & 42 Mins. A. M.

FRANK GASS,
Register,

Prepared by M. U.
Examined by R. P.
Liber 60 A. D. page 344,
Order No. 132.

REGISTER'S OFFICE

County of Bronx, State of New York

I, LOUIS A. SCHOFFEL, Register of the said County, have compared the annexed copy with an instrument recorded in N Y Registers office and filed in this office, on the 22 day of Nov A. D. 1906 at 11 o'clock 42 min. A. M. in Liber 60 Conv Page 344 A D and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 3 day of March 1927

LOUIS A. SCHOFFEL,
(Seal) Register.

No. 149

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the County of Bronx (and also Clerk of the Supreme Court of said County, the same being a Court of Record, having by law a seal), DO HEREBY CERTIFY, that Louis A. Schoffel by whom the annexed instrument was subscribed was on the day of the date thereof a Register in and for the County of Bronx, dwelling in said County duly elected and sworn, and that full faith and credit are due to all his official acts as such Register. And further, that I am well acquainted with the handwriting of such Register and verily believe that the signature to the annexed instrument is his genuine official signature as appears by the records of this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, this 31 day of May, 1927.

ROBERT L. MORAN,
(Seal) Clerk.

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. THOMAS W. CHURCHILL a Justice of the Supreme Court for the County of Bronx, the thirty first day of May in the year of our Lord one thousand nine hundred and twenty seven, of our independence the one hundred and fifty-one

ROBERT L. MORAN
Clerk.

I, THOMAS W. CHURCHILL a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of Bronx, do hereby certify that ROBERT L. MORAN, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Bronx, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the Seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, May 31 1927

T. W. CHURCHILL
Justice of the Supreme Court
of the State of New York.

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the Supreme Court of said State in and for the County of Bronx, do hereby certify that Hon. THOMAS W. CHURCHILL whose name is subscribed to the preceding Certificate, is Presiding Justice at a Special Term of

the Supreme Court of said State in and for the County of Bronx, duly elected and sworn, and that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 31 day of May 1927.

ROBERT L. MORAN
(Seal) Clerk.

Exhibit D-2.

This Indenture made the sixteenth day of November in the year one thousand nine hundred and six between Edward F. Mc Dermott of the City County and State of New York, party of the first part, and William G. Mulligan of the same place, party of the second part Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of Eight hundred and seventy (870) dollars lawful money of the United States secured to be paid by his certain bond or obligation bearing even date herewith conditioned for the payment of the said sum of Eight hundred and seventy (870) dollars on the sixteenth day of November in the year nineteen hundred and nine, and the interest thereon to be computed from November sixteenth nineteen hundred and six at the rate of five per cent per annum and to be paid, semi annually on each sixteenth day of May and November ensuing throughout said term and until said principal sum shall be fully paid. It being thereby Expressly Agreed, that the whole of the said principal sum shall become due after default in the payment of the said sum of money mentioned in the condition of the said bond

or obligation, with interest thereon and also for and in consideration of one dollar paid by the said party of the second part the receipt whereof is hereby acknowledged doth hereby grant and release unto the said party of the second part, and to his heirs and assigns forever..All those certain lots, pieces or parcels of land, situate lying and being in the Twenty Fourth Ward Borough of the Bronx, City of New York, in the County and State of New York (formerly in the Town and County of Westchester) known and distinguished on a certain map entitled map of Pelham Park made by Garret J. Byrne engineer and surveyor dated July 4th 1873 and filed in the office of the Register of the County of Westchester New York, September 20th 1873 as map number 599 as the blocks and lots numbers as follows parts of lots twenty one (21) twenty two (22) twenty nine (29) and thirty (30) in block number thirty three on said map which taken together are bounded and described as follows beginning at a point in the westerly side of Baychester Avenue, (formerly Main Avenue) as legally opened distant seventy five (75) feet southerly from the southwesterly corner of Ferris Avenue as laid down on said map and Baychester Avenue as legally opened and running thence westerly parallel with said Ferris avenue, ninety (90) feet; thence southerly parallel with said Baychester avenue fifty (50) feet thence easterly and again parallel with said Ferris Avenue ninety (90) feet to Baychester avenue, aforesaid and running thence northerly along said Baychester Avenue, aforesaid and running thence northerly along said Baychester avenue fifty (50) feet to the point and place of beginning—this being a purchase money mortgage and forming a part of the purchase price and consideration of the

above described premises this day conveyed to the party of the first part herein by deed bearing even date and to be recorded simultaneously herewith. Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises. To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever..Provided always that if the said party of the first part his heirs, executors or administrators shall pay unto the said party of the second part his executors administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted shall cease determine and be void; And the said party of the first part covenants with the said party of the second part as follows; First That Edward F. Mc Dermott the party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any part thereof, the party of the second part shall have power to sell, the premises herein described, according to law...Second That Edward F. Mc Dermott the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee...Third and it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after notice and demand..Statement that the maximum amount of the principal indebtedness to

be secured by this mortgage is Eight Hundred and seventy (870) dollars and the amount advanced at the time of execution and now secured thereby is Eight hundred and seventy (870) dollars. In Witness Whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written Edward F. Mc Dermott (LS) In the presence of A. K. Mulligan. .State of New York City & County of New York ss On this 16th day of November in the year one thousand nine hundred and six before me personally came Edward F Mc Dermott to me known and known to me to be the individual described in and who execued the foregoing instrument and he thereupon duly acknowledged to me that he executed the same. .A. K. Mulligan Notary Public N. Y. County. . .Recording tax of $4.50 received this 22nd day of Nov. 1906 Serial No. B10764 Frank Gass Register of New York County. . .Recorded preceding at request of Wm. G. Mulligan Nov 22nd 1906 at 11 o'clock 42 min a. m.

FRANK GASS
Register. .

Prepared by: GL
Examined by: SU
Liber 71
Page 381
Order No. 133

REGISTER'S OFFICE

County of Bronx, State of New York

I, LOUIS A. SCHOFFEL, Register of the said County, have compared the annexed copy with an instrument recorded in N Y Register's office and filed in this office, on the 22 day of November A. D. 1906

at 11 o'clock 42 min. A. M. in Liber 71 Mtgs Sec A D Page 381 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereof subscribed my name and affixed my official seal, this 3 day of March 1927

LOUIS A SCHOFFEL
Register.

No. 152

State of New York, } ss.:
County of Bronx, }

I, ROBERT L. MORAN, Clerk of the County of Bronx (and also Clerk of the Supreme Court of said County, the same being a Court of Record, having by law a seal), DO HEREBY CERTIFY, that Louis A. Schoffel by whom the annexed instrument was subscribed was on the day of the date thereof a Register in and for the County of Bronx, dwelling in said County duly elected and sworn, and that full faith and credit are due to all his official acts as such Register. And further, that I am well acquainted with the handwriting of such Register and verily believe that the signature to the annexed instrument is his genuine official signature as appears by the records of this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, this 31 day of May, 1927.

ROBERT L. MORAN,
(Seal) Clerk.

All which we have caused by these presents

to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. THOMAS W. CHURCHILL a Justice of the Supreme Court for the County of Bronx, the thirty first day of May in the year of our Lord one thousand nine hundred and twenty seven, of our independence the one hundred and fifty-one.

ROBERT L. MORAN,
Clerk.

I, THOMAS W. CHURCHILL a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of Bronx, do hereby certify that ROBERT L. MORAN, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Bronx, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the Seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, May 31, 1927.

T. W. CHURCHILL,
Justice of the Supreme Court
of the State of New York.

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the Supreme Court of said State in and for the County of Bronx, do hereby certify that Hon. THOMAS W. CHURCHILL whose name is subscribed to the preceding Certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the

County of Bronx, duly elected and sworn, and that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 31 day of May 1927.

ROBERT L. MORAN
(Seal) Clerk.

Exhibit D-3.

THIS INDENTURE, made the sixteenth day of November in the year One thousand nine hundred and six BETWEEN Edward F. Mc Dermott of the City, County and State of New York, party of the first part and WILLIAM C. MULLIGAN of the same place, party of the second part WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of Four hundred and thirty five dollars lawful money of the United States secured to be paid by his certain bond or obligation bearing even date herewith conditioned for the payment of the said sum of Four hundred and thirty five dollars on the Sixteenth day of November in the year nineteen hundred and seven and the interest thereonto to be computed from November 16, 1906 at the rate of five per cent, per annum and to be paid semi-annually on each sixteenth day of May and November, ensuing throughout said term and until said principal sum shall be fully paid—IT BEING THEREBY EXPRESSLY AGREED That the whole of the said principal sum shall become due after default in the payment of interest taxes or assessments as hereinafter provided...NOW THIS INDENTURE WITNESS-

ETH that the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon and also for and in consideration of One Dollar paid by the said party of the second part the receipt whereof is hereby acknowledged does hereby grant and release unto the said party of the second part and to his heirs and assigns forever. ALL those certain lots, pieces or parcels of land situate, lying and being in the Twenty fourth Ward, Borough of the Bronx, City of New York in the County and State of New York, (formerly in the Town of Westchester) known and distinguished on a certain map entitled "Map of Pelham Park made by Garret J. Byrne Engineer and Surveyor and filed in the office of the register of the county of Westchester, New York, September 20th 1873, as Map number 599, as the block and lot numbers as follows... Parts of Lot Twenty one (21) twenty two (22) twenty nine (29) and thirty (30) in Block Number Thirty three on said map which taken together are bounded and described as follows. BEGINNING at a point in the Westerly side of Baychester Avenue, (formerly main Avenue) as legally opened, distant seventy five (75) southerly from the Southwesterly corner of Ferris Avenue as laid down on said map, and Baychester Avenue as legally opened and running thence Westerly parallel with said Ferris Avenue Ninety (90) feet thence Southerly parallel with said Baychester Avenue fifty (50) feet, thence easterly and again parallel with said Ferris Avenue ninety (90) feet to Baychester Avenue aforesaid; and running thence Northerly along said Baychester Avenue fifty (50) feet to the point and place of beginning....This being a purchase money mortgage and forming a part of the purchase price and consideration of the above described premises this day conveyed to the party of the first part herein by deed bearing even date and to be recorded simultaneously herewith..TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises..TO HAVE AND TO HOLD the above granted premises unto the said party of the second part his heirs and assigns forever..PROVIDED ALWAYS that if the said party of the first part his heirs, executors, or administrators, shall pay unto the said party, of the second part, executors, administrators or assigns, the said sum of money mentioned in the consideration of the said bond or obligation and the interest thereon at the time and in the manner mentioned in the said condition that then these presents and the estate hereby granted shall cease and determine and be void.. And the said party of the first part covenants with the said party of the second part as follows. First That Edward F. Mc Dermott the party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any part thereof the party of the second part shall shall have power to sell the premises herein described according to law; Second—That Edward F. Mc Dermott the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the Mortgagee. Third —And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after. notice and de-

mand. STATEMENT That the maximum amount. of the principal indebtedness to be secured by the mortgage is four hundred and thirty five dollars and the amount advanced at the time of the execution and now secured thereby is four hundred and thirty five dollars. IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written ..Edward F. Mc Dermott (LS) In the presence of—A. K. Mulligan. State of New York, City and County of New York,; ss On this 16th day of November, in the year One thousand nine hundred and six before me personally came Edward F. Mc Dermott to me known and known to me to be the individual described ib and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same..A. K. Mulligan Notary Public. N. Y. County Recording tax of $2. received this 26th day of November 1906 Serial No B 11045 Frank Gass Register of New York County. Recorded preceding at request of Wm. G. Mulligan, November 26th 1906, at 3 o'clock and 30 Mins P. M.

FRANK GASS
Register...

Examined..GL
Prepared by SU
Order No 134
Liber 72
Page 103

REGISTER'S OFFICE

County of Bronx, State of New York

I, LOUIS A. SCHOFFEL, Register of the said County, have compared the annexed copy with an instrument recorded in N Y County Register's office and filed in this office, on the 26 day of Nov A. D. 1906 at 3 o'clock 30 min. P M. in Liber 72 Mtgs Sec A D Page 103 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 3 day of March 1927

LOUIS A. SCHOFFEL
(Seal) Register.

No. 150

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the County of Bronx (and also Clerk of the Supreme Court of said County, the same being a Court of Record, having by law a seal), DO HEREBY CERTIFY, that Louis A. Schoffel by whom the annexed instrument was subscribed was on the day of the date thereof a Register in and for the County of Bronx, dwelling in said County duly elected and sworn, and that full faith and credit are due to all his official acts as such Register And further, that I am well acquainted with the handwriting of such Register and verily believe that the signature to the annexed instrument is his genuine official signature as appears by the records of this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, this 31 day of May, 1927.

ROBERT L. MORAN
(Seal) Clerk.

1519

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. THOMAS W. CHURCHILL a Justice of the Supreme Court for the County of Bronx, the thirty first day of May in the year of our Lord one thousand nine hundred and twenty seven, of our independence the one hundred and fifty-one

ROBERT L. MORAN
Clerk.

I, THOMAS W. CHURCHILL a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of Bronx, do hereby certify that ROBERT L. MORAN, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Bronx, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the Seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, May 31 1927

T. W. CHURCHILL
Justice of the Supreme Court
of the State of New York.

State of New York,
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the Supreme Court of said State in and for the County of Bronx, do hereby certify that Hon. THOMAS W. CHURCHILL

whose name is subscribed to the preceding Certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of Bronx, duly elected and sworn, and that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 31 day of May 1927

ROBERT L. MORAN
(Seal) Clerk.

Exhibit D-4.

THIS INDENTURE, made the Fifteenth day of November in the year nineteen hundred and fourteen,

BETWEEN Edward F. McDermott and Elizabeth F. McDermott, his wife, of the Borough of the Bronx, City and State of New York, parties of the first part,

and

Martha Ferguson, residing at Waterbury, Connecticut, of the second part,

WITNESSETH, That the said parties of the first part, in consideration of One ($1.00) dollar, lawful money of the United States, and other valuable considerations, paid by the party of the second part, do hereby grant, remise, release and convey unto the said party of the second part her heirs and assigns forever,

ALL those certain lots, pieces or parcels of land, situate, lying and being in the Twenty-fourth Ward, Borough of the Bronx, City of New York,

in the County of Bronx and State of New York, (formerly in the Town and County of Westchester), known and distinguished on a certain map entitled "Map of Pelham Park," made by Garret J. Byrne, Engineer and Surveyor, dated July 4th, 1873, and filed in the office of the Register of the County of Westchester, as map number 599, as the Block and Lot numbers as follows:

Lots numbered Eleven (11) and Twelve (12) in Block number Twenty six (26) on said map.

TOGETHER with the appurtenances and all the estate and rights of the parties of the first part in and to said premises.

TO HAVE AND TO HOLD the above mentioned and described premises unto the said party of the second part, her heirs and assigns for ever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWARD F. McDERMOTT (Seal)
ELIZABETH F McDERMOTT (Seal)

In Presence of
A. K. MULLIGAN

State of New York,
City of New York, } ss.:
County of Bronx,

On the 15th day of November, in the year nineteen hundred and fourteen, before me personally came Edward F. McDermott and Elizabeth F. McDermott, his wife, to me known and known to me to be the individual described in and who ex-

ecuted the foregoing instrument and they severally acknowledged that they executed the same.

A K. MULLIGAN
Notary Public
Bronx County

Bronx Registers No 629
" County No 46

Recorded in the Office of the Register of the County of Bronx, on the 28 day of Dec. A. D. 1914, at 10 o'clock ..... Min. A. M. in Liber 130, page 93 of Conveyances affecting Territory Annexed by Chapter 934 of the Laws of 1895.

Witness my hand and Official Seal.

EDWARD POLAK
(Seal) Register, County of Bronx.

C 8187 Dec 28 1914

EDWARD F. McDERMOTT, AND ELIZABETH F. McDERMOTT, his wife,

TO

MARTHA FERGUSON,

DEED

Dated, November 15th, 1914.

ANNEXED TERRITORY
R. & R. to
A. K. MULLIGAN
461 E. Tremont Ave
Annexed District

The land affected by the within instrument lies in Section ..... in Block ..... on the Land Map of the City of New York.

Exhibit D-5.

Office Serial No. C 3225 Fees paid $1.95 No. U. S. Rev. Stamp Paid

This indenture made the 15th day of November one thousand nine hundred and fourteen, Between Agnes K. Mulligan, of the City of New York party of the first part and Edward F. McDermott, residing at 332 East 176th St. of New York City party of the second part, Witnesseth that the said party of the first part hath letten and by these presents doth grant, demise and to farm let unto the said party of the second part all that certain apartment consisting of five rooms and bathroom on the third or top floor in the house known as No. 332 East 176th Street in the Borough of the Bronx, City of New York with the appurtenances for the term of Six years from the first day of December One thousand nine hundred and fourteen at the yearly rent or sum of Two hundred and sixteen ($216.00) dollars to be paid in equal monthly payments in advance on the first day of each and every month during the term aforesaid. And it is agreed that if any rent shall be due and unpaid or if default shall be made in any of the covenants herein contained then it shall be lawful for the said party of the first part to re-enter the said premises and the same to have again, repossess and enjoy. And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent as herein specified. And also to pay the regular annual rent or charge which is or may be assessed or imposed according to law, upon the said premises for the Croton Water, when due in each year, during the term and if not so paid the same shall be added to the month's rent then due.

And the said party of the second part further covenants that the will not assign this lease, nor let or underlet the whole or any part of the said premises nor make any alterations therein without the written consent of the said party of the first part under the penalty of forfeiture and damages and that he will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra hazardous on accout of fire or otherwise, without the like consent under the like penalty, And the said party of the second part further covenant that he will permit the said party of the first part or her agent to show the premises to persons wishing to hire or purchase and on and after the first day of February next preceding the expiration of the term will permit the usual notices "to let" or "for sale" to be placed upon the wall or doors of said premises and remain thereon without hindrance or molestation. And it is further agreed between the parties to these presents, that in case the building or buildings erected on these premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the said part of the first part: that in case the damages shall be so extensive as to render the building untenantable the rent shall cease until such time as the building shall be put in complete repair, but in case of the total destruction of the premises by fire or otherwise, the rents shall be paid up to the time of such destruction and then and from thenceforth, this lease shall cease and come to an end. provided, however, that such damage and destruction be not caused by the carelessness, negligence or improper conduct of the party of the second part his agents or servants. And the

said party of the second part further covenants and agree that he will comply with all the requirements of the Board of Health, Municipal Authorities and Police and Fire Departments of the City of New York, and that he will not create or permit any nuisance in the premises herein rented to the annoyance of neighboring occupants, and that he will keep the hallway adjoining the premises hereby rented and the stairway communicating with the floor beneath free from dirt and rubbish, And the said party of the second part further covenants and agrees to use said rented premises only for private residence for one family. And at the expiration of the said term the said paety of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit damages by the elements excepted. And the said party of the first part do—covenant that the said party of the second part on payin the said yearly rent and performing the covenants aforesaid, shall and may peaceably and quietly have hold and enoy the said demised premises for the term aforesaid. And it is further understood and agreed that the covenants and agreements contained in the within lease are binding on the parties hereto and their legal representatives. In Witness Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written. Agnes K. Mulligan (LS) Edward F. McDermott (LS) Sealed and delivered in the presence of Elizabeth McDermott, State of New York Bronx County, ss: On this 26th day of Jan in the year 1915 before me personally came Elizabeth McDermott subscribing witness to the foregoing instrument with whom I

am personally acquainted who being by me duly sworn did depose and say that she resides at the time of the execution of said instrument and still resides in 332 E. 176th St. Bronx Co. N. Y. that she is and then was acquainted with Agens K. Mulligan & Edward F. McDermott and knew them to be the individuals described in and who executed the foregoing instrument and that she said subscribing witness was present and saw them execute the same. and that she said witness thereupon at the same time subscribed her name as witness thereto. S, M. Rosenthal, Notary Public, Bronx County No. 20 Bronx Register No. 601 Certificate filed. Not subject to recording Tax A. C. C. Indorsed to be indexed against Block No. 2892 on the Land Map of the City of New York. Recorded preceding at request of Elizabeth McDermott May 26, 1915 at 2 o'clock and 30 mins. P. M.

EDWARD POLAK,
(Seal) Register.

Prepared by Frances Rieger
Examined by Augusta Rieger
Liber 158 of Con. Page 139 Sec. 11

REGISTER'S OFFICE

County of Bronx, State of New York

I. LOUIS A. SCHOFFEL, Register of the said County, have compared the annexed copy with an instrument Recorded in this office, on the 26 day of May A. D. 1915 at 2 o'clock 30 min. P. M. L 158 P 139 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto sub-

scribed my name and affixed my official seal, this 1 day of Oct 1926

LOUIS A. SCHOFFEL
Register.

(Seal)

No. 151

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the County of Bronx (and also Clerk of the Supreme Court of said County, the same being a Court of Record, having by law a seal), DO HEREBY CERTIFY, that Louis A. Schoffel by whom the annexed instrument was subscribed was on the day of the date thereof a Register in and for the County of Bronx, dwelling in said County duly elected and sworn, and that full faith and credit are due to all his official acts as such Register And further, that I am well acquainted with the handwriting of such Register and verily believe that the signature to the annexed instrument is his genuine official signature as appears by the records of this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, this 31 day of May, 1927

ROBERT L. MORAN
Clerk.

(Seal)
1518

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. THOMAS W. CHURCHILL a Justice of the Supreme Court for the County of Bronx, the thirty first day of May in the year of our Lord one

thousand nine hundred and twenty Seven, of our independence the one hundred and fifty-one

ROBERT L. MORAN
Clerk.

I, THOMAS W. CHURCHILL a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of Bronx, do hereby certify that ROBERT L. MORAN, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Bronx, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the Seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, May 31 1927

T. W. CHURCHILL
Justice of the Supreme Court
of the State of New York.

State of New York, }
County of Bronx, } ss.:

I, ROBERT L. MORAN, Clerk of the Supreme Court of said State in and for the County of Bronx, do hereby certify that Hon. THOMAS W. CHURCHILL whose name is subscribed to the preceding Certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of Bronx, duly elected and sworn, and that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 31 day of May 1927

ROBERT L MORAN
Clerk.

Exhibit D-6.

DEBTOR'S PETITION

To the Honorable.....
Judge of the District Court of the United States
For the.....District of New Jersey
.....Division

THE PETITION OF William G. Mulligan of Palisade, in the County of Bergen and District and State of New Jersey, Real Estate Broker

RESPECTFULLY REPRESENTS: That he has had his principal place of business and has resided for the greater portion of six months next immediately preceding the filing of this petition at No. 1000 Anderson Ave., Palisade, Bergen County, New Jersey within said judicial District; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A, [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

WHEREFORE YOUR PETITIONER PRAYS, That he may be adjudged by the Court to be a bankrupt within the purview of said acts.

WILLIAM G. MULLIGAN
Petitioner

J. LAURENS ELMORE,
Attorney for Petitioner,
No. 19 Dean St.,
Englewood, New Jersey.

United States of America,
.....District of New Jersey, } ss.:
County of Bergen,

I, William G. Mulligan, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

WILLIAM G. MULLIGAN,
Petitioner.

Subscribed and sworn to before me, this 30th day of January A. D. 1925.

SCHEDULE A—STATEMENT OF ALL DEBTS OF BANKRUPT.

Schedule A-1.
Statement of all Creditors who are to be Paid in Full, or to Whom Priority is Secured by Law.

Claims which have priority:

1. Taxes and debts due and owing to the United States.—None.

2. Taxes due and owing to the State of..... .....or to any county, district or municipality thereof.—None.

3. Wages due workmen, clerks, or servants, to an amount not exceeding $300 each earned within three months before filing the petition.—None.

4. Other debts having priority by law.—None.

WILLIAM G. MULLIGAN,
Petitioner.

Schedule A-2.

CREDITORS HOLDING SECURITIES.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Acts of Congress relating to bankruptcy and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

This schedule includes liens, pledges, mortgages, notes, etc.

None.

WILLIAM G. MULLIGAN,
Petitioner.

Schedule A-3.

CREDITORS WHOSE CLAIMS ARE UNSECURED.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Names of Creditors	Residences (if unknown, that fact must be stated)	When and Where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom	Amount
Monarch Mining Company	200 Culer Ave., Jersey City, N. J.	New York, Jan. 27, 1913	Contract for stone. Judgment	$179.92
Edward Thompson Company	Northport, L. I., N. Y.	New York, Mar. 15, 1913	Contract for Books. Judgment	198.79
Joseph T. Griffin	2042 E. 8th St., Brooklyn, N. Y.	New York, Dec. 3, 1914	Promissory note. Judgment	267.40
New York Telephone Company	15 Dey St., New York	New York, Dec. 12, 1914	Contract for telephone. Judgment	38.45
Borden's Condensed Milk Company	63 Vesey St., N. Y. City	New York,	Contract for milk. Judgment	89.99
J. Herbert Carpenter and William J. Quinlan, Jr., as executors and trustees of Sidney Mason, deceased	15 William St., N. Y. City	New York, June 29, 1914	Bond accompanying mortgage on real property, Agnes K. Mulligan joint debtor. Judgment for deficiency in foreclosure	1,721.06
United States Fidelity and Guaranty Company	Baltimore, Maryland	New York, Jan. 17, 1913	Collateral bond accompanying mortgage on real property. Deficiency judgment in favor of Northern Bank of New York, assigned to U. S. Fidelity & Guaranty Co. Debt contracted with Agnes K. Mulligan	1,280.71
Henry Beste and J. Herbert Carpenter, as executors and trustees of Thomas D. Mason, deceased	15 William St., N. Y. City	New York, Jan. 30, 1913	Bond accompanying mortgage on real property. Agnes K. Mulligan, joint contractor. Judgment for deficiency	343.78
J. Herbert Carpenter and William J. Quinlan, Jr., as executors and trustees of Sidney Mason, deceased	15 William St., N. Y. City	New York, June 29, 1914	Bond accompanying mortgage on real property. Agnes K. Mulligan, joint maker. Judgment for deficiency in foreclosure	568.45
Hugo Lehman	25 Union Sq., N. Y. City	New York, Jan. 30, 1913	Bond accompanying mortgage on real property. Agnes K. Mulligan, joint maker. Judgment for deficiency	541.36

Names of Creditors	Residences (if unknown, that fact must be stated)	When and Where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom	Amount
Hugo Lehman	25 Union Sq., N. Y. City	New York, Jan. 30, 1913	Bond accompanying mortgage on real property. Agnes K. Mulligan, joint obligor. Judgment for deficiency	272.08
Ditto	Ditto	New York, Apr. 16, 1913	Ditto	2,810.55
Ditto	Ditto	New York, June 12, 1913	Ditto	116.44
Ditto	Ditto	New York, May 20, 1914	Ditto	1,103.05
The Franklin Society for Nole Building and Savings	15 Park Row, N. Y. City	New York, Apr. 27, 1915	Bond accompanying mortgage on real property. Agnes K. Mulligan and John P. Weeninger, joint obligors. Judgment for deficiency	6,827.13
Edward Carroll, Jr.	120 Broadway, N. Y. City	New York, Oct. 19, 1914	Contract for stenographer's minutes. Judgment	98.65
Northern Bank of New York (George V. McLaughlin, Receiver)	51 Chambers St., N. Y. City	New York, Nov. 6, 1913	Costs on appeal	25.14
The Twenty Third Ward Bank of the City of New York	270 E. 137th St., N. Y. City	New York, June 7, 1916	Promissory note for loan. Agnes K. Mulligan, joint maker. Judgment	1,300.96
Mary Kenny	2042 Washington Ave., N. Y. City	New York, Jan. 20, 1918	Promissory note, Agnes K. Mulligan, joint maker. Judgment	950.00
Bazena T. D. Merriman	1071 Madison Ave., N. Y. City	New York, Dec. 12, 1917	Deficiency in foreclosure of mortgage. Judgment	2,801.03
Louis Ehrlich	1925 Washington Ave., N. Y. City	New York, Jan. 15, 1917	Contract for groceries. Judg't	175.00
Clinton D. Wolfe	In care of Geo. C. Felter, Hackensack, N. J.	Contracted Nov., 1912, in New York	Promissory note, Agnes K. Mulligan, joint maker. Judgt. in Bergen Co., N. J.	17,805.62
Bronx National Bank	369 E. 149th St., New York City	New York, July 10, 1916	Promissory notes, Agnes K. Mulligan, joint maker	2,225.00
Elizabeth F. McDermott, individually and as administratrix of Edward F. McDermott, deceased	332 E. 176th St., N. Y. City	New York, Nov. 15, 1914	Promissory note, Agnes K. Mulligan, joint maker	840.00
Emory P. Sanford	Redding, Connecticut	Connecticut, Nov. 1, 1917	Contract for groceries	90.00
John Brauneis	Ridgefield, Conn.	Conn., Nov. 1, 1917	Goods sold and delivered	100.00

Names of Creditors	Residences (if unknown, that fact must be stated)	When and Where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom	Amount
Fred H. Adams, individually and trading as Cliffside Garage	Cliffside, N. J.	New Jersey, Nov. 1, 1921	Goods sold and delivered	406.59
Julius Schmitzer	Cliffside, N. J.	New Jersey, Nov. 1, 1921	Goods sold and delivered	177.50
The Dunwoody Co.	Englewood, N. J.	New Jersey, Feb. 1, 1921	Goods sold and delivered	74.00
Anthony J. Griffin	364 Alexander Ave., N. Y. City	New York, Aug. 31, 1916	Contract for professional services	400.00
Matthews Laundry Co.	Hackensack, N. J.	New Jersey, Dec., 1922	Goods sold and delivered	39.80
John P. Wenninger	Silver St., Westchester, N. Y. City	New York, Nov., 1906	Contract affecting share in real property, Agnes K. Mulligan, joint obligor. Suit begun. No judgment	10,000.00
Kelley Advertising Agency	799 Broadway, N. Y. City	New York, Sept. 1, 1924	Goods sold and delivered	401.70
Rodger Cunningham and Bridget T. Cunningham	11908-97th Ave., Richmond Hill, Long Island, N. Y.	New York, Dec. 15, 1914	Claim for money had and received. Action tried Feb. 24, 1916, resulted in judgment for defendants, which was reversed by Appellate Division. Appeal to New York Court of Appeals now pending	12,000.00
			Total	$66,261.15

WILLIAM G. MULLIGAN,
Petitioner.

Schedule A-4.

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY DRAWERS, MAKERS, ACCEPTORS, OR INDORSERS.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

None.

WILLIAM G. MULLIGAN,
Petitioner.

Schedule A-5.

ACCOMMODATION PAPER.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

None.

WILLIAM G. MULLIGAN,
Petitioner.

OATH TO SCHEDULE A

In the District Court of the United States
For the.....District of New Jersey
.....Division

In the Matter of
William G. Mulligan } In Bankruptcy No.....

United States of America,
.....District of New Jersey, } ss.:
County of Bergen,

On this 30th day of January A. D., 1925, before me personally came
the person mentioned in and who subscribed to the foregoing Schedule [marked A 1, 2, 3, 4, 5], and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

WILLIAM G. MULLIGAN.

Subscribed and sworn to before me this 30th day of January, A. D. 1925.

HARRY D. SCHOLL,
Notary Public of New Jersey.
(Seal)

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

Schedule B-1.

Real Estate.

Location and Description of all real estate owned by Debtor, or held by him	Incumbrances thereon, if any, and dates thereof	Estimated Value
		$0.
An undivided one-third share in the following lots, situated in the Borough of the Bronx, City of New York, shown on the Tax Map of said Borough and City as follows: Map of Pelham, Block 25, Lots 16, 18, 30, 31, 32, and 33; Block 26, Lots 7, 8, 24, 25, 35, and 36; Block 27, Lots 8, 9, 12, 13 and 17; Block 33, Lots 3, 4, 8, 9, 10, 17 and 26 to 35, both inclusive, 38, 39, 40 and 41; Block 34, Lots 5 to 15, both inclusive, 18 to 24, both inclusive, 38, and 39.	Said Lots are incumbered by mortgages aggregating the principal sum of $22,600.00, dated November 6th, 1906, with interest due and unpaid since November 6th, 1909. Also unpaid taxes and assessments amounting to upwards of $20,000.00, besides interest. Sales of tax liens on all said lots, have been made.	

WILLIAM G. MULLIGAN,
Petitioner.

Schedule B-2.

PERSONAL PROPERTY.

A. Cash on hand.—None.	$0.0	
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).—None.	0.0	
C. Stock in trade in.....business of .....at.....of the value of.....—None.	0.0	
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person viz.:—None except such as are exempt by law from levy and sale under an execution.	0.0	
E. Books, prints and pictures, viz.:—None.	0.0	
F. Horses, cows, sheep and other animals, (with number of each) viz.:—None.	0.0	
G. Carriages and other vehicles, viz.:—None.	0.0	
H. Farming stock and implements of husbandry, viz.:—None.	0.0	
I. Shipping and shares in vessels, viz.:—None.	0.0	
K. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.:—None.	0.0	
L. Patents, copyrights and trade marks, viz.:—None	0.0	
M. Goods or personal property of any other description, with the place where each is situated, viz.:—None.	0.0	
Total	0.0	

WILLIAM G. MULLIGAN,
Petitioner.

Schedule B-3.

CHOSES IN ACTION.

A. Debts due petitioner on open account.—None.	$0.0
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.—None.	0.0
C. Policies of insurance.—None.	0.0
D. Unliquidated claims of every nature with their estimated value.—None	0.0
E. Deposits of money in banking institutions and elsewhere.—None.	0.0
Total	

WILLIAM G. MULLIGAN,
Petitioner.

Schedule B-4.

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY. INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.]

General Interest	Supposed Value of My Interest
Interest in land.—None.	$0.0
Persona property.—None.	0.0
Property in money, stocks, shares, bonds, annuities, etc.—None.	0.0
Rights and powers, legacies and bequests.—None.	0.0
Total	0.0

	Amount Realized from Proceeds of Property Conveyed
Property heretofore conveyed for benefit of creditors.—None.	$0.0
What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.—None.	0.0
What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this bankruptcy.—None.	0.0
Total	0.0

WILLIAM G. MULLIGAN,
Petitioner.

Schedule B-5.

A PARTICULAR STATEMENT of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property, and its valuation, and, if any portion of it is real estate, its location, description and present use.

	Valuation
Military uniform, arms and equipments.—None.	$0.0
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.—Wearing apparel and personal affects in actual use, of nominal value.	0.0
Total	

WILLIAM G. MULLIGAN,
Petitioner.

Schedule B-6.

BOOKS, PAPERS, DEEDS, AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth,

with the reasons for their custody of the same.

Books.—None.

Deeds.—Two deeds from May Wallas to William G. Mulligan, recorded in the office of the Register of the County of New York on July 17th, 1913, in Liber 117 at pages 130 and 132, respectively, of Conveyances affecting Territory Annexed by Chapter 934 of the Laws of 1895.

Papers.—None.

WILLIAM G. MULLIGAN,
Petitioner.

OATH TO SCHEDULE B

In the District Court of the United States
For the .....District of New Jersey
.....Division

In the matter of William G. Mulligan } In Bankruptcy No.....

United States of America, District of New Jersey, County of Bergen, } ss.:

On this 30th day of January, A. D. 1925, before me personally came
the person mentioned in and who subscribed to the foregoing Schedule [marked B 1, 2, 3, 4, 5, 6], and who, being by me first duly sworn, did declare the said Schedule to be a statement of all h... Estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

WILLIAM G. MULLIGAN.

Subscribed and sworn to before me this 30th day of January, A. D. 1925.

HARRY D. SCHOLL,
Notary Public of New Jersey.
Official Character
(Seal)

SUMMARY OF DEBTS AND ASSETS.

[From the Statement of the Bankrupt in Schedules A and B.]

Schedule A—

1 (1)	Taxes and Debts due United States...	0.0
1 (2)	Taxes due States, Counties, Districts and Municipalities	0.0
1 (3)	Wages	0.0
1 (4)	Other debts preferred by law	0.0
2	Secured Claims	0.0
3	Unsecured Claims	$66,261.15
4	Notes and Bills which ought to be paid by other parties thereto	0.0
5	Accommodation Paper	0.0
	Schedule A, Total	$66,261.15

Schedule B—

1	Real Estate	0.0
2-a	Cash on hand	0.0
2-b	Bills, Promissory Notes, and Securities	0.0
2-c	Stock in Trade	0.0
2-d	Household Goods, etc.	0.0
2-e	Books, Prints and Pictures	0.0
2-f	Horses, Cows and other Animals	0.0
2-g	Carriages and other Vehicles	0.0
2-h	Farming Stock and Implements	0.0
2-i	Shipping and Shares in Vessels	0.0
2-k	Machinery, Tools, etc.	0.0
2-l	Patents, Copyrights, and Trade-Marks	0.0
2-m	Other Personal Property	0.0
3-a	Debts due on Open Accounts	0.0
3-b	Stocks, Negotiable Bonds, etc.	0.0
3-c	Policies of Insurance	0.0
3-d	Unliquidated Claims	0.0
3-e	Deposits of Money in banks and elsewhere	0.0

4	Property in Reversion, Remainder, Trust, etc.	0.0
5	Property claimed to be exempted	$0.0
6	Books, Deeds and Papers	0.0
	Schedule B, Total	0.0

WILLIAM G. MULLIGAN,
Petitioner.

A true copy.

GEORGE T. CRANMER,
Clerk.

Per B. F. HAVENS,
Chief Deputy.

(Seal of the Court)

Exhibit D-7.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE.....DIVISION
.....DISTRICT OF N. J.

In the Matter
of
WILLIAM G. MULLIGAN,
Bankrupt.

No. .....
In Bankruptcy

WHEREAS, William G. Mulligan, of Palisade, in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf.

It is, therefore, ordered by the Court that said William G. Mulligan be discharged from all debts and claims which are made provable by said Acts against his estate, and which existed on the 30th

day of January, A. D. 1925, on which day the petition for adjudication was filed by him: excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable William N. Runyon, Judge of said District Court, and the seal thereof, this 8th day of September, A. D. 1925.

GEORGE T. CRANMER,
Clerk.

(Seal of the Court)

per S. R. BRETTELL,
Deputy.

A true copy.

GEORGE T. CRANMER,
Clerk.

(Seal of the Court)

Per S. R. BRETTELL,
Deputy.

(Endorsed):

No. 9442

UNITED STATES DISTRICT COURT
DISTRICT OF N. J.

In the Matter of
WILLIAM G. MULLIGAN
In Bankruptcy.

DISCHARGE OF BANKRUPT

Filed Sept. 8, 1925 at 11 o'clock A. M.

GEORGE T. CRANMER, Clerk
J. LAURENS ELMORE, Englewood
N. J.

New Jersey Court of Errors and Appeals

DAVID EHRLICH,
Plaintiff-Respondent,

v.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, his wife,
Defendants-Appellants.

On Appeal from Supreme Court.

BRIEF ON BEHALF OF THE DEFENDANT-APPELLANT AGNES K. MULLIGAN.

This case comes up on appeal from the action of the Trial Judge in refusing to grant defendant's motion for a nonsuit, to which exception was duly prayed and noted as grounds of appeal (State of Case, pp. 21 and 22).

Statement of Facts.

The judgment in this case was recovered on a promissory note, a copy of which is as follows:

$840.00 New York, November 15th, 1914.

Six years after date, we, jointly and severally promise to pay to the order of Edward F. McDermott and Elizabeth F. McDermott Eight Hundred and forty no/100.....Dollars at the office of Wm. G. Mulligan, 461 East Tremont Ave., New York City.

WILLIAM G. MULLIGAN
AGNES K. MULLIGAN

Value Received
No. ..... Due .....

(Endorsement on Back)
Elizabeth F. McDermott

At the trial of the case it was claimed that the note was given by the defendants to Elizabeth F. McDermott and Edward F. McDermott for money due to the said McDermotts from the defendants on account of a real estate transaction which occurred in 1906 (State of Case, pp. 60 and 61). This was denied by the defendants.

The defendants at the trial claimed that as a result of a real estate transaction in 1914, in which a lease for six years to a certain apartment was given to the McDermotts as part consideration of the transaction in which the defendants acted as brokers, that the defendants gave the note to the McDermotts as security for the payment of any rent of the apartment demanded of the McDermotts for three years of the six-year term of the lease (State of Case, p. 35). This was denied by Mrs. McDermott, who was a witness on behalf of the plaintiff (State of Case, p. 63). Mrs. McDermott, however, did admit that she lived in the apartment mentioned in the lease, from November 15, 1914, the date of the note and lease, to the expiration of the lease without paying any rent therefor (State of Case, pp. 70 and 71).

It was further testified at the trial that Edward F. McDermott died on or about February 1, 1917, and that at the time of her husband's death she was the owner of the note (State of Case, p. 15).

Some time, the exact date of which was not established at the trial, between November 15, 1920, the due date of the note, and September 8, 1926, the date of the service of process in this case, Elizabeth F. McDermott, the surviving payee of the note, endorsed the note in blank and delivered it to the plaintiff, David Ehrlich.

At the trial it was admitted that the plaintiff paid no consideration for the note and that he was bringing the suit for the benefit of Elizabeth F. McDermott (State of Case, p. 19).

Argument.

The appeal presents three issues for the decision of this Court.

1. Did the plaintiff have title to the note on which this suit was brought?

2. Was the plaintiff a holder of the note in due course as a matter of law?

3. Can the holder of a note who has only a portion of the title, bring suit in his own name without joining the other payee or the representative of the deceased payee?

POINT I.

The plaintiff did not have title to the note sued on.

Both at common law and under Section 41 of the Uniform Negotiable Instruments Act (C. S. 3740), the law of this State has been, that where a note is made payable to two payees, who are not partners, all must endorse unless the one endorsing has authority to endorse for the other.

In the early case of *Wood* v. *Wood,* 16 N. J. Law, page 428, decided by the Supreme Court of this State in 1838, this principle was upheld.

The note in that case was made payable to "Dudley L. Farnham and Shubael G. Rogers, or order."

The first endorsement was in these words: "For value received we assign all our interest to the within note to Thomas J. Yorke without recourse to us for collection. December 1834."

(Signed)
"Dudley L. Farnam
"Shubael G. Rogers, by his
"Attorney in fact, Dudley
"L. Farnam."

The note was then indorsed by Thomas J. Yorke to John S. Wood the plaintiff, but without recourse to the indorser.

On the trial of the cause the note was proved and also the signatures of Dudley L. Farnam and of Thomas J. Yorke, but no evidence whatever was given of any partnership in fact between Farnam and Rogers, nor of any authority on the part of Farnam to subscribe the name Rogers to the endorsement, as above stated.

In its opinion the Court said:

> "It seems to me, that the simple question in this case is, whether any one of the several payees of a promissory note, by the endorsement of his own name on the back of it, can transfer the title of the note, to a third person? I confess I cannot perceive why one of the several joint owners of a note or other security for money should be able by his own act to pass it away, any more than that one of the joint owners of a horse or other chattel should be able to sell and dispose of it, without the concurrence of his co-tenants. * * * The difference is supposed to lie in the fact, that a promissory note is a commercial instrument, and that the facilities and security of trade requires them to be dealt with upon other principles, than those which are applicable to joint securities or joint property of a different character. To carry out this idea, it is broadly maintained, that if two or more take a note or other mercantile instrument for the payment of money, payable to themselves or order, they thereby become, as to all the world, partners in that particular transaction, and that everybody has a right to deal with each of them, in relation to that instrument, as if they were partners. But for such a doctrine, there is no foundation in the reason of things, nor in the settled rules of law."

After discussing the case of *Carvick* v. *Vickery*, Dougl. R. 653, the Court continues:

> "It is not quite certain from the manner in which the case is reported, that such was the ground of the verdict. I rather understand Lord Mansfield as doubting of the law of the case, and admitting the evidence offered to shew what was the general understanding among Bankers and Merchants on the subject.
>
> "But this action is against the makers of the note and they have a right to resist payment to anybody, except to the true owner of the note. The plaintiff must then prove title by shewing a transfer from the former owners of the note, to him. This he has failed to do.
>
> "If a bill is drawn on two, and they make a joint acceptance, or if a joint note is made by two, although they are not partners in any legal sense of the word; still they are liable to the same extent as if they were partners: That is they are jointly liable, and each is responsible to the extent of his individual property. Hence the plaintiff's counsel seeks to fortify himself by calling this instrument in its present shape a bill of exchange. It is true a promissory note when regularly endorsed, assumes the nature of a bill of exchange; the payee, by indorsing a note, becomes in effect the drawer of a bill, the makers of the note stand in relation of acceptors, and the indorsee in that of the payee of the bill. Now if Farnam and Rogers the payees of the note, had both indorsed it, the likeness would have been complete; but what right had Farnam alone, to draw on the makers of the note? They were indebted to and had promised to pay Farnam and Rogers; but they cannot by Farnam's appointment, be converted into acceptors of his individual draft. This argument therefore entirely fails." * * *
>
> "But after all, be the law, as to joint promissors or joint drawers, what it may, the plaintiff has failed to produce any case, shewing that the joint payees of a promissory note, are partners in any legal sense of the term. It would be monstrous if any such doctrine should be established."

In *Crawford's Annotated Negotiable Instruments* Law (N. J. Ed), at page 84, it is stated: (Referring to Section 41 of the Uniform Negotiable Instruments Act.)

> "This section makes no change in the law. The settled rule of the law merchant was that co-payees, not partners, must each indorse, in order to negotiate the paper. Willis *v.* Green, 5 Hill 233; Foster *v.* Hill, 36 N. H. 526; Bennett *v.* McGaughy, 4 Miss. 192; Wood *v.* Wood, 16 N. J. Law 428; Smith *v.* Whiting, 9 Mass. 334; Ryhiner *v.* Feickert, 92 Ill. 305; Allen *v.* Corn Exchange Bank, 87 App. Div. (N. Y.) 335. For cases arising under the statute see First Nat. Bank *v.* Gridley, 112 App. Div. (N. Y.) 398; Martz *v.* State Nat. Bank, 147 App. Div. (N. Y.) 250."

In the case at bar immediately upon the plaintiff having rested, counsel for the defendant moved for a nonsuit, on the ground that the plaintiff did not have title to the note for the reason that the endorsement thereon did not comply with Section 41 of Uniform Negotiable Instruments Act (C. S. 3740).

In its decision on the motion, the Trial Court ruled (p. 21, State of Case):

> "The negotiable instruments act of this State provides that where an instrument is payable to the order of two or more payees or endorsees, who are not partners, all must endorse, unless the one endorsing has the authority to endorse for the others, so, on the face of it, it would appear that both of the payees would have to endorse this note, but that was not necessary in this case. If William F. McDermott had been alive when this note was transferred, that section of the negotiable instruments act would have applied. The right of the plaintiff to collect the money due on this note, as far as we have gone—

> we have not heard from the defendants, but the right to sue is clear. Whether she will be accountable for part of it to the representative of her deceased husband, or not is something else. On the death of one of several joint payees, the remedies of collection survive to the surviving payee who may lawfully receive payment and may sue at law or equity without joining the representative of the deceased payee, and the best reference we have for that common law rule is found in Chitty's Pleadings, page 19."

It is quite evident from the Trial Court's ruling that he was considering the motion as if the surviving payee were bringing the suit, especially where he said:

> "On the death of one of several payees, the remedies of collection survive to the surviving payee who may lawfully receive payment and may sue at law or equity without joining the representative of the deceased payee, and the best reference we have for that common law rule is found in Chitty's Pleadings, page 19."

Counsel duly prayed an exception which was noted as a ground of appeal (State of Case, p. 21).

It is respectfully submitted that the ruling is in error for the reason that the surviving payee Elizabeth F. McDermott was not the plaintiff. On the contrary the plaintiff was a holder of the note to which he had acquired a part interest by reason of the individual endorsement of the surviving payee. The question before the Court was not whether Elizabeth F. McDermott could collect or sue on the note, the question was whether Elizabeth F. McDermott could transfer a good title to the holder of the note by her individual endorsement. In other words the Trial Court erred in not making the distinction between the rights of the surviving payee as agent for the representative

of the estate of the deceased payee and her ability to transfer entire title to the note to the plaintiff by her individual endorsement.

This feature is clearly set forth by the Supreme Court of Michigan in the case of *Kaufman* v. *State Savings Bank,* 114 N. W. 863.

In that case a check and draft were made payable to Bernard S. Kaufman and Adelaide Kaufman and endorsed by Bernard Kaufman through several endorsements to the defendant bank.

In its opinion the Court said:

> "Defendant relied upon Harding *v.* Parshall, 56 Ill. Page 219, and other cases to establish the rule that a debt to two jointly may be paid to either, and this being so, it is urged that the owner of commercial paper is entitled to demand and receive payment even in the absence of any endorsement at all." * * *
>
> "In the same jurisdiction in which Harding *v.* Parshall was decided it was held by Chief Justice SCOFIELD in Ryhiner *v.* Feickert, 92 Ill. 305, following and citing with approval:
>
> "1 Daniels Negotiable Instruments 684, that if several persons not partners are payees or endorsees of a bill or note, it must be endorsed by all of them. Either one of the joint payees may authorize the other to endorse for him and an assignment of his interest in the paper from one to the other carries with it such authority; but there is no presumption of law that one may endorse for the other. This same rule is laid down in Wood *v.* Wood, 16 N. J. Law, page 428, and we have been unable to find any case which makes for the contrary rule. This is not the case of receiving payment from the maker by one of two payees. It is an attempt to transfer title in one case and create an agency in the other, and as we have seen, this cannot be done except by indorsement of all to whose order the instrument is made payable."

In the case of *Edgar* v. *Haines,* 141 N. E. 837, the facts were as follows:

A note made by Robert Haines and Ethel Haines to F. S. Edgar and John Wells were secured by mortgage. Edgar endorsed the note as follows:

> "I hereby transfer my one-half interest, $950.00, in this note to J. E. Mayor without recourse.
>
> 'F. S. EDGAR.'"

The note was subsequently endorsed to the Sixth Real Estate Company.

Wells subsequently foreclosed the mortgage and the makers of the note deposited the money with the Court.

In its opinion the Court said:

> "If the fraud had arisen out of the transaction between the maker and original payee, the law of Negotiable Instruments would apply and the Sixth Real Estate Security Company not being a holder in due course, the maker would have had a valid defense. In that event the maker would also have a valid defense against Edgar, so that neither party could recover; on the other hand, if the maker were insolvent, and the Sixth Real Estate Security Company were seeking personal judgment against Edgar as an endorser, Edgar would likewise have a valid defense on the ground that the Real Estate Company is not a holder in due course."

In 3 R. C. L., page 965, Section 173, the following doctrine is laid down:

> "The endorsement must be an indorsement of the entire instrument. An instrument which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. * * * But

> where a note or bill is payable to two it must be indorsed by both in order to transfer the entire interest in it to the indorsee, and an indorsement by one joint promisee of a negotiable bill for himself and his co-promisee, without special authority, transfers no title to the note."

Assuming for the sake of argument, but not admitting, that Elizabeth F. McDermott could receive payment of the note as survivor of the joint payees, she could not by her individual endorsement transfer the entire title to the plaintiff. The only method by which title to the note, which is the subject of this litigation, could be transferred to the plaintiff, would be by an endorsement thereof by Elizabeth F. McDermott, and the representatives of the estate of Edward F. McDermott; and if the said Elizabeth F. McDermott is the sole representative of the estate, then the only way in which she could transfer title to the note, would be by her endorsement, both individually and as a personal representative of the estate of Edward F. McDermott, and this representative capacity must be explicitly set forth in the endorsement.

This phase of the case has been decided by the Supreme Court of this State, in the case of *Gershman* v. *Adelman,* 135 Atl., page 688.

In that case a note was made payable to Gootman Adelman. The said Gootman Adelman died without issue and so far as the records show, leaving no unpaid debts. The widow endorsed the note as administratrix of her deceased husband's estate.

In its opinion the Court said:

> "The widow was entitled to whatever estate was left by him, including the note in question. She therefore had the legal power to transfer the title to the plaintiff. He had full

> legal title to the note, so that he could maintain an action thereon against the maker (3 R. C. L., page 991, Sects. 200 and 201)."

The Court's attention is respectfully called to the distinction between the endorsement in the case just mentioned and in the endorsement on the note in the case at bar. In the *Adelman* case the note was payable to Gootman Adelman, and when the widow endorsed it she, having full title thereto, specifically designated her authority, while in the case at bar, the note was made payable to Elizabeth F. McDermott and Edward F. McDermott, and the testimony shows (State of Case, p. 15) that Edward F. McDermott died February 1, 1917, leaving as his only heir at law and next of kin, his widow, Elizabeth F. McDermott, and she has endeavored to transfer entire title to the note by her individual endorsement.

As stated above the question before the Court is not whether she could have recovered or collected this money as survivor of joint payees, but whether the plaintiff had entire title to the note.

She by her individual endorsement could not convey entire title to the plaintiff in this case, therefore, he could not maintain an action on the note.

POINT II.

The plaintiff was not the holder in due course as a matter of law.

The requisites of a holder in due course as defined by the Negotiable Instruments Act (C. S. 1910, p. 3741), are as follows:

> "I. That it is complete and regular upon its face.
>
> "II. That he became the holder of it before it was overdue, and without notice that it had

been previously dishonored, if such was the fact.

"III. That he took it in good faith and for value.

"IV. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

A reading of the record will disclose that a portion of each of the above-mentioned requisites was missing.

As to requisite one, the note was not complete and regular on its face for the reason, that while it was made payable to two payees, but one of the payees endorsed it (State of Case, page 3).

As to requisite two, he admits that the note was not transferred to him until after it was overdue (State of Case, p. 19).

As to requisite three, the plaintiff also admits that he paid no consideration for the note (State of Case, p. 19); and

As to requisite four, the note itself was notice to him that there was an infirmity in the instrument, and that the endorsement did not purport to transfer the entire title to the note.

POINT III.

The holder of a note not endorsed by all the transferrers cannot sue in his own name.

At the trial the plaintiff testified as follows (State of Case, p. 19).

"Q. Is this suit being brought in your name for the benefit of Mrs. McDermott? A. Yes, sir."

And on cross examination the question was asked:

"Q. You did not pay anything for the note?"

To which counsel for the plaintiff stated:

"We admit that."

At the close of the plaintiff's case, counsel for the defendant urged as one of the grounds for the motion for a nonsuit, that this plaintiff not having title to the note, and not having any beneficial interest in the note, could not bring suit in his own name, and further that in order to bring such a suit he must designate the capacity in which such suit was brought.

It has been held in this State that:

"If a note be not payable to bearer nor endorsed by transferrer, the holder cannot sue in his own name, for, although he may possess the entire beneficial interest the legal title is still outstanding in his transferrer, and his name must be used in order to maintain the suit. 2 Daniel on Neg. Inst. (Ed. of 1876), p. 208, Sec. 1197." (Fine *v.* High Bridge M. E. Church, 44 N. J. Law, p. 148).

And, again, in *Nash* v. *Hogan,* 45 N. J. Equity, at page 108, where a bill was filed in equity by the holder of an unendorsed note made payable to the father of the complainant, the Court said:

"Thus holding the note without endorsement, it being made payable to the order of the payee, the complainant insists that her only remedy is in this court.

"The demurrant thinks that there is a safe remedy at law. I agree with the demurrant. Suit can be brought against the maker in the name of the original payee in such case, or if he be dead, in the name of his executors or administrators to the use of the real owner."

While the decisions just cited refer particularly to the cases of a suit being brought on a note

which was unendorsed by the sole payee, it is respectfully submitted, that the theory in each instance is, that the person or persons in whom the legal title exists must be made parties to the suit, and that being so, it is urged, that in this case, in order for the plaintiff to recover on the note, it is necessary that not only he, the plaintiff, but also the personal representative or representatives of Edward F. McDermott, the deceased payee, should have been made parties to the suit, and that the plaintiff, having brought the suit in his individual name without joining the representatives of the estate of the deceased payee, who had a part of the legal title to the note, the motion for the nonsuit should have been granted.

Conclusion.

The note on which this suit is brought having been made payable to Elizabeth F. McDermott and Edward F. McDermott, and having been endorsed by Elizabeth F. McDermott individually, it is respectfully submitted that the plaintiff, David Ehrlich, did not have entire title to the note, which is the subject of this litigation, and further that because the plaintiff did not join all parties or the representative of any deceased party who had the legal title to a portion of the note, that the defendant's motion for a nonsuit should have been granted, and that the judgment of the Supreme Court should be reversed.

Respectfully submitted,

SEUFERT & ELMORE,
Attorneys for Defendant-Appellant
Agnes K. Mulligan.

J. LAURENS ELMORE,
Of Counsel.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

DAVID EHRLICH,
Plaintiff-Respondent,

vs.

WILLIAM G. MULLIGAN and AGNES K. MULLIGAN, his wife,
Defendants-Appellants.

On Appeal from Supreme Court.

BRIEF ON BEHALF OF THE PLAINTIFF-RESPONDENT, DAVID EHRLICH.

This case is before the Court on an appeal from the Supreme Court, the defendants, William G. Mulligan and Agnes K. Mulligan, his wife, having filed two separate notices of appeal respectively, and having filed one state of case by virtue of stipulation between the attorneys for the respective parties to be found in the State of Case, page 13, and two separate briefs of the defendants-appellants, one filed on behalf of William G. Mulligan, and the other brief on behalf of the defendant, Agnes K. Mulligan. This brief, on behalf of the plaintiff-respondent, is in reply to both briefs filed by the defendants.

Statement of Facts.

The judgment in this case was recovered on a promissory note, a copy of which is as follows:

$840.00 New York, November 15th, 1914.
Six Years after date, we, jointly and severally promise to pay to the order of Edward F. McDermott and Elizabeth F. McDermott Eight Hundred and forty no/100.....Dollars at the

office of Wm. G. Mulligan, 461 East Tremont Ave., New York City.

VALUE RECEIVED William G. Mulligan.
No.....Due..... Agnes K. Mulligan.

(Endorsement on back)

Elizabeth F. McDermott

At the trial of the case, the plaintiff proved that the note was given by the defendants to Elizabeth F. McDermott and Edward F. McDermott for money due to the said McDermotts from the said defendants, on account of a real estate transaction which took place in 1906 (State of Case, pp. 59, 60 and 61). The plaintiff at the trial claimed that as a result of the real estate transaction, there was due Elizabeth F. McDermott and Edward F. McDermott, from the defendants the sum of $2,136.00, which was in the nature of an account stated between the defendants and the McDermotts. That an arrangement to pay said sum of money due to the McDermotts was made by the defendants. The defendants agreed to pay said sum to the McDermotts in the following manner: One of the defendants, Agnes K. Mulligan, entered into a lease with the McDermotts, whereby the said Agnes K. Mulligan leased to the McDermotts, for a term of six years, at the yearly rental of $216.00, making a total rental for the entire term of $1,296.00, a five-room apartment on the third floor of the house known as #332 East 176th street, in the Borough of Bronx, City of New York, and the defendants made, executed and delivered to the McDermotts the promissory note for $840.00, which was the subject of the action brought in the Supreme Court (State of Case, p. 61). That the defendants gave their receipt for the amount of the rental reserved for the said term of six years (State of Case, p. 48), and delivered the note in question to the McDermotts

(State of Case, p. 61). The testimony on the part of the plaintiff was that Mrs. McDermott was the sole owner of the note prior to and at the time of her husband's death; this was not contradicted (State of Case, p. 15 and p. 18). The testimony on the part of the plaintiff further shows that at the time of the death of Edward F. McDermott, plaintiff's assignor, Elizabeth F. McDermott, was the only surviving heir-at-law or next of kin of the said Edward F. McDermott, and that the said Edward F. McDermott, left no will (State of Case, p. 18).

Said note was endorsed by Elizabeth F. McDermott, the surviving payee of said note to the plaintiff herein, David Ehrlich, to whom it was delivered. At the trial, it was admitted that the plaintiff herein, David Ehrlich, was not a holder in due course of said note, but that the plaintiff herein brought the suit for the use and benefit of the said Elizabeth F. McDermott, the surviving payee and owner of said note (State of Case, pp. 18 and 19).

Defendants' contentions were that their obligation by virtue of said note was extinguished, and that there was nothing due on said note from the defendants, which contentions were denied by the testimony submitted on behalf of the plaintiff.

ARGUMENT.

The appeals present two issues, both of which are common to both defendants and one issue which is involved solely in the appeal of the defendant, William G. Mulligan.

The issues which are common to both appeals are:

1. Did the plaintiff's assignor, Elizabeth F. McDermott, have legal title to the note on which this suit was brought, at the time the same was transferred by her to the plaintiff herein, David Ehrlich?

2. Could the plaintiff herein, David Ehrlich, maintain this suit for the use and benefit of the said Elizabeth F. McDermott?

The further issue involved solely in the appeal of the defendant, William G. Mulligan, is:

3. Were the copies of the petition, schedules and discharge in bankruptcy, marked for identification "D. 6" and "D. 7" respectively, wrongfully excluded from evidence by the trial court?

POINT I.

Did the plaintiff's assignor, Elizabeth F. McDermott, have legal title to the note on which this suit was brought, at the time the same was transferred by her to the plaintiff herein, David Ehrlich?

Plaintiff's assignor, Elizabeth F. McDermott, had legal title to the note on which this suit was brought at the time the same was transferred by her to the plaintiff herein, David Ehrlich.

The testimony in the case was that the note was given to Edward F. McDermott and Elizabeth F. McDermott, who were husband and wife, by both defendants; that the husband, Edward F. McDermott, died on February 1, 1917 (State of Case, p. 15).

The law involved in this situation makes it absolutely incumbent upon the survivor to maintain his or her action to the exclusion of the personal representative of a deceased co-payee. In *Chitty's Pleadings* (Edition of 1859) on page 19, we find the following statement:

> "When one or more of several obligees, covenantees or others having a joint legal interest in the contract dies, the action must be brought in the name of the survivor, and the executor or administrator of the deceased must not be joined."

In *Norton On Bills & Notes* (Third Edition), page 199, it is stated:

> "As regards the joint payee or indorsee, the rule stated in the text is the statement of the contract rule of survivorship, perhaps the principal characteristic of the doctrine of joint right. By this is meant that the order in the bill or indorsement and the promise in the note are made to all the promisees, not as separate individuals, but as one legal entity. We may liken them, in their being but one party in ownership to a corporation, which may be composed of many individuals, yet acts as one, and which in case of the death of some of its members still exists and acts through the survivors. So with joint payees or indorsees, the right does not descend to representatives, but passes on or is transferred to the survivors, who have the title to it and are entitled to enforce it."

In *Daniels on Negotiable Instruments,* Sections 1182, 1183 and 1183A, we find the following statement:

> "The right to enforce payment of a promissory note made to joint payees or endorsees does not descend to representatives, but passes on or is transferred to the survivor who has title to it."

In 8 *Corpus Juris,* p. 341, it is stated:

> "If one of two joint payees dies, the papers should be transferred by the survivor."

Citing in foot-note #44, the following cases: *Draper* v. *Jackson,* 16 Mass. 480; *Allen* v. *Tate,* 58 Miss. 585, *Sanford* v. *Sanford,* 45 N. Y. 723.

In the case of *Draper* v. *Jackson,* 16 Mass. 480, the Court said:

> "The question is whether a note and a mortgage made to a man and his wife in case she survives him goes to his administrator or his widow; in considering this question we except the case of a voluntary gift from the husband to his wife as when he advances his own money or other property and takes for it a note or a bond to himself and wife. This like every other voluntary conveyance would without doubt be void as against the creditors of the husband; but when no such fact appears, and especially when as in the present case, the contrary appears, the law seems to require that the wife shall have the note or the bond if she survives."

In the case of *Sanford* v. *Sanford,* 45 N. Y. 723, the Court stated:

> "The note being payable to husband and wife jointly, belonged to the wife as survivor." The Court cited *Borst* v. *Spellman,* 4 N. Y. 288.

In the case of *Lippincott* v. *Stokes,* 6 N. J. Equity, p. 122, at page 153, the Chancellor stated:

> "Hannah Lippincott is surviving obligee of the securities taken to her and Hope Haines; and it is claimed that she is entitled to the possession of them. I think this is so * * *"

With regard to the case of *Wood* v. *Wood,* 16 N. J. Law, p. 428, it is respectfully submitted that this case is clearly distinguishable from the instant case. In the Wood case there was an endorsement to a third party, whereas in our case there is no endorsement to a third party (excepting, of course, the plaintiff herein, who is

the assignee of Elizabeth F. McDermott), but in the instant case there was an extinguishment of the interest of one joint payee in favor of the surviving payee, which occurred in either one of three ways or in all three ways, namely:

1. Edward F. McDermott's divesting himself of his interest in said note during his lifetime in favor of his co-payee and wife, Elizabeth F. McDermott (State of Case, p. 18), which divestment is respectfully submitted to the Court, even though he failed to endorse his name on said note, was in accordance with Section 49 of the Negotiable Instruments Act, which provides that where the holder of an instrument payable to his order transfers it for value without endorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires in addition, the right to have the endorsement of the transferer.

2. By the doctrine of survivorship, the note being payable to the husband and wife as joint payees, and the husband having died leaving his wife, Elizabeth F. McDermott, surviving, entitling her to the full possession of the entire proceeds of said note, the authority for this theory being found in the references above cited.

3. On the ground that the testimony of the entire case shows that the said Elizabeth F. McDermott, widow of the said Edward F. McDermott, was his sole surviving heir-at-law and next of kin, and therefore, was legally entitled to whatever estate the decedent, her husband, Edward F. McDermott, left, including the note in question. The authority for this statement is found in *Gershman* v. *Adelman,* 135 Atl. 688, cited by the appellants in their brief. This case did not decide that the widow of Adelman was obliged to designate her authority, the point

emphasized by the Court being that since the widow in that case was entitled to whatever estate is left by her husband, including the note in question, she therefore, had the legal power to transfer the title to the plaintiff. It is to be noted that the Court in that case says "She" referring to her only as a widow, and as an individual, not in a representative capacity. If our Supreme Court in this case would have determined that she as representative of her husband's estate was obliged to designate her authority in making the transfer of the note, it would undoubtedly have incorporated the statement that it was legally incumbent upon her in making a transfer to designate her representative capacity. It is true that in the Gershman-Adelman case, the widow of Adelman in transferring the note designated her representative capacity, but a proper reading of the Supreme Court's opinion in this case will lead to the undoubted conclusion that this designation by her was mere surplusage and legally meaningless, since as the Court says,

> "She, therefore, had the legal power to transfer the title to the plaintiff"

if entitled to whatever estate was left by her husband, including the note in question. The controlling factor of the Supreme Court's opinion seems to be not the designation by her of her representative capacity, but the fact that she, the widow, being the sole heir-at-law and next of kin of her deceased husband, and being entitled to whatever estate was left by him, including the note in question, therefore, had title to said note to the exclusion of the whole world.

In 30 *Corpus Juris,* page 575, it is stated:

> "Some Courts hold that estates in entirety may exist in personalty as well as in lands, and in choses in action as well as choses in possession," and cases are therein cited as follows:
>
> "Where a note is made payable to a husband and wife, they are owners by entireties. *In re Greenwood,* 201 Mo. A. 39, 208 S. W. 635. See *Ryan* v. *Ford,* 151 Mo. A. 689, 132 S. W. 610 (they are *prima facie* equal and joint owners, but proof may be offered to show who is the real owner and entitled to the proceeds). (2) There is undoubtedly an estate in entirety in a note where it is not only payable to husband and wife, which alone is sufficient, but also where it arises out of the sale of lands held by them in entirety. *Craig* v. *Bradley,* 153 Mo. A. 586, 134 S. W. 1081."

It is clear from the citations herein, that if the relationship of Edward F. McDermott and his wife, Elizabeth F. McDermott, with respect to the note in question, was that of joint owners or as tenants by the entirety, in either event, the doctrine of survivorship applies.

With respect to appellant's reference to Crawford's Annotated Negotiable Instruments Law (New Jersey Edition) at page 84, it is respectfully contended on behalf of plaintiff-respondent, that said citation does not apply to the facts in our case, since the law embodied in said citation involves living co-payees.

It is further submitted on behalf of the plaintiff-respondent, that the statement in appellants' brief to be found on page 7 of Agnes K. Mulligan's brief, and on page 12 of William G. Mulligan's brief, that

> "The trial court erred in not making a distinction between the rights of the surviving payee as agent for the representative of the estate of the deceased payee, and her ability to transfer entire title to the note to the plaintiff by her individual endorsement,"

is an inaccurate statement of what the trial court held, because no doctrine of agency was claimed on behalf of the deceased payee by the plaintiff, nor did the Court so understand the relationship of Elizabeth F. McDermott to the note in question; on the contrary, the Court based his ruling on the doctrine of survivorship (State of Case, p. 21).

Again in connection with this point, the case cited by the appellants on page 8 of Agnes K. Mulligan's brief, and on page 12 of William G. Mulligan's brief, of *Kaufman* v. *State Savings Bank,* 114 N. W. 863, does not apply to the facts in the instant case, for the reason that the cited case involves the question of endorsement by living co-payees, whereas the case at bar presents the question of the death of one of two co-payees, who were husband and wife.

Again the case cited by the appellants to be found on page 9 of Agnes K. Mulligan's brief, and on page 13 of William G. Mulligan's brief, of *Edgar* v. *Haines,* 141 N. E. 837, does not apply to the case at bar for the reason that in the cited case, an attempt was made to transfer a partial interest in a certain note, whereas in the instant case, the complete and full title having been vested in Elizabeth F. McDermott, either prior to the death of her husband, Edward F. McDermott, by a transfer of his interest to her, or by the doctrine of survivorship, they being either joint tenants or tenants by the entirety, or by reason of the fact that she being the sole heir-at-law and next of kin of her deceased husband, she became vested by operation of law with the full and complete title to the note in question, at the instant of his death. Therefore, no question of the division of interest in said note is presented in the case at bar.

Appellants' contention that the plaintiff, David Ehrlich, was not the holder in due course as a matter of law, to be found as Point II on page 11 of the brief of Agnes K. Mulligan, and Point III on page 16 of the brief of William G. Mulligan, is not an issue in this case. Nowhere in the record can be found any assertion by anyone in plaintiff's behalf, making claim that he was a holder in due course of said note; on the contrary, reference to the State of Case, page 19, plaintiff, David Ehrlich himself states that this note was endorsed to him by Elizabeth F. McDermott, for the purpose of bringing suit for the benefit of Elizabeth F. McDermott, and the plaintiff's own attorney states that the plaintiff paid no consideration for said note.

POINT II.

Could the plaintiff herein, David Ehrlich, maintain this suit for the use and benefit of the said Elizabeth F. McDermott?

In 8 *Corpus Juris,* page 822, we find the following statement:

> "The holder of the legal title may sue, although not the full owner, if the maker is not thereby prejudiced in his defense. Especially is this so, where such suit is at the request or with the consent of the owner, as well as for his benefit * * *. The holder of the legal title may sue, although he has no beneficial interest in the instrument, as where a third person is entitled to the proceeds or holds the equitable title. Defendant cannot question plaintiff's title, except on the ground of bad faith in the plaintiff or prejudice to defendant's rights."

It is submitted by the plaintiff-respondent, that the plaintiff herein, David Ehrlich, fulfills all the requisites of the law just enunciated, for the

reason that he was the holder of the legal title, although not the beneficial owner, and for the further reason that the defendants-appellants were in no way prejudiced in their defense, but were permitted by the trial court to put in whatever defenses they had, just as though plaintiff's assignor, Elizabeth F. McDermott, had been the plaintiff herself.

In the footnotes of 8 *Corpus Juris,* page 822, under footnote #92, we find the following statement:

> "It is no ground of defense that the plaintiff has no beneficial interest in the note sued on, and will be bound to account to the real owner for the proceeds of any judgment recovered on it. *National Pemberton Bank* v. *Porter,* 125 Mass. 333, 28 Am. R. 235."

In 8 *Corpus Juris,* page 823, under footnote #94, we find the following statement:

> "When the owner of a note, for reasons satisfactory to himself, assigns it to another, thereby vesting in him the full legal title, the assignee becomes, so far as the debtor is concerned, the real party in interest. The original owner is still the person to be finally benefited by the litigation, but his legal demand is no longer against the maker of the note, but against the person to whom he has assigned it. When the obligor is sued by such assignee (no claim as innocent purchaser being involved), he can make any defense he could have made against the assignor; he is fully protected against another action; and in no way is it a matter of the slightest concern to him what arrangement between the plaintiff and the original creditor occasioned the assignment. This being true, it would be a sacrifice of substance to form to permit the defendant to defeat the action by showing a failure of consideration for the transfer, or that the plaintiff was bound to account to his assignor for a part of all of the proceeds. We hold that the objection to the judgment urged on the ground that the plaintiff was not the real party in interest is untenable." *Manley* v. *Park,* 68 Kan. 400, 401, 75 P. 557, 66 L. R. A. 967, 1 Ann. Cas. 832.

In the case of *R. M. Owen & Co.* v. *Storms & Co. and James F. Kelly,* 78 N. J. Law, page 154, at page 156, our Court of Errors and Appeals, speaking through Mr. Justice Trenchard, stated:

> "We think that the plaintiff company was the holder of the note and was entitled to maintain suit upon it. This right is expressly given by statute (Pamph. L. 1902, p. 583) and was undoubted at common law in the absence of a statute. *Middleton* v. *Griffith, supra.* Section 51 of our Negotiable Instrument act (Pamph. L. 1902, p. 592) provides that 'the holder of a negotiable instrument may sue thereon in his own name,' and section 191 (at p. 614) of the same act defines a 'Holder' as 'the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.' The instruction that if the plaintiff was not the owner of the note there could be no recovery was therefore erroneous."

The cases cited by the appellants to be found on page 13 of Agnes K. Mulligan's brief and on page 17 of William G. Mulligan's brief, are not applicable to the case at bar, for the reason that the cases cited involve the failure of the payee or endorsee to endorse the notes in question to the holder, whereas in the instant case, it is an undisputed fact that Elizabeth F. McDermott actually endorsed the note to the plaintiff herein, David Ehrlich.

POINT III.

The petition and schedules in bankruptcy and the discharge in bankruptcy of the defendant, William G. Mulligan, were not wrongfully excluded from evidence by the Trial Court.

Reference to the State of Case, pages 57, 58 and 59, embodying the testimony given by William G. Mulligan, discloses that there were offered to the Court in behalf of said William G. Mulligan, certain alleged certified copies of a petition of the defendant, William G. Mulligan, in bankruptcy, and schedules, and that said petition and schedules, upon the offer in behalf of said defendant to the Trial Court for admission in evidence, were excluded by the Trial Court on the ground that the copies offered were merely stamped "a true copy" and were not "certified copies" (State of Case, p. 59), whereupon the attorney for said defendant, William G. Mulligan, requested the Court for permission to mark said alleged copies for identification, which was done, and said alleged petition and schedules of William G. Mulligan were marked "D. 6" for identification, and the alleged discharge in bankruptcy was marked "D. 7" for identification. It is respectfully called to the Court's attention that nowhere was the alleged discharge in bankruptcy ever properly offered in evidence. Since, therefore, no proper offer in evidence having been made on behalf of the defendant, William G. Mulligan, of said alleged discharge in bankruptcy, the Trial Court was not confronted with the question of ruling upon the admissibility or inadmissibility of said order of discharge, and said defendant cannot be heard to complain of his omisson during the course of the trial, or his failure properly to offer said alleged discharge in bankruptcy in evidence. Nowhere in the State of the Case can a

ruling be found on the part of the Trial Judge, with respect to the proper offer in evidence of the order of discharge in bankruptcy, nor should this Court be called upon to conjecture what the Trial Court's action would have been had such an offer been made to him. Point I, to be found at page 4 of the brief of the defendant, William G. Mulligan, does not present to this Court any issue which said defendant, William G. Mulligan, could raise in this Court, with respect to the admissibility in evidence of said order of discharge in bankruptcy. It is submitted by the plaintiff-respondent that said defendant, William G. Mulligan, now, for the first time, raises the question of admissibility of said discharge in bankruptcy in evidence, and it is fundamental in the law of this State, that questions not properly raised before the Trial Court cannot be made the subject matter of an appeal. The question before this Court is wherein has the Trial Court committed legal error, and with respect to defendant's alleged discharge in bankruptcy, we must respectfully contend that the Trial Court committed no error, since no ruling was even called for at the trial of the case and none was properly made, naturally, by the Trial Court as to the admissibility or inadmissibility of said order of discharge.

Now, with respect to the offer and rejection of said petition and schedules of the defendant, William G. Mulligan, it undoubtedly follows, as matter of logic, that even if the Trial Court's ruling, excluding them from evidence, was incorrect, said incorrect ruling would constitute harmless error, in view of the fact that the defendant failed to properly offer said discharge in bankruptcy in evidence. In other words, if upon the offer by the defendant of the petition and sched-

ules in bankruptcy of the said William G. Mulligan, they would have been permitted in evidence by the Trial Court, and if the said defendant failed to follow up this admission in evidence of said petition and schedules with a proper offer of the discharge in bankruptcy in the same proceeding instituted by said petition and schedules in bankruptcy, the defence of the said William G. Mulligan of a discharge in bankruptcy of the indebtedness forming the subject matter of the suit at bar would not have been substantiated, and would, therefore, have failed completely.

Under *Section 27 of the Evidence Act,* as amended (*1 Cumulative Supplement to Compiled Statutes,* 1911—1924, Sec. 27, p. 1198, it provides that a certified copy of a record of the United States District Court is admissible in evidence in the courts of this State. It is submitted on behalf of the plaintiff-respondent, the Trial Court properly drew a distinction between a "true copy" and a "certified copy." The section of the Evidence Act just referred to demands the offer not of a "true copy," but of a "certified copy." If the Legislature meant to permit in evidence a "true copy," it would have so stated clearly, and without question. The brief of the defendant, William G. Mulligan, admits that his offer of the documents relating to the bankruptcy proceeding of William G. Mulligan were "true copies," and not "certified copies." This defendent's brief further alleges that a "true copy" and a "certified copy" are synonymous and interchangeable terms. The brief cites cases allegedly in point, and statements from Corpus Juris, Wigmore on Evidence, United States Reports, Federal Reporter, and Massachusetts courts, but fails to cite a single New Jersey case. An examination of Exhibits

D. 6 and D. 7 for identification, so marked on behalf of the defendant, William G. Mulligan, merely contain the impression of a rubber stamp, marked "a true copy." Nowhere on said exhibits may be found a certificate by the Clerk of the Court. Even the cases cited by the defendant in his brief, of *Turnbull* v. *Payson,* 95 U. S. 418, and *National Accounting Society* v. *Spiro,* 94 Federal Reporter, page 750, and in the Supreme Court of Massachusetts, the case of *Commonwealth* v. *Phillips,* 11 Pick, p. 30, the courts all hold that in addition to the seal of the Court there should be a certificate by the Clerk of the Court. In the case of *Hunt* v. *Swayze,* 55 N. J. Law, page 33, at page 34, Mr. Justice Scudder says:

> "As evidence of the time of the entry of judgment, the court admitted a certified copy of the record of the judgment, under the seal of the Supreme Court, attested by the clerk, that it was a true copy of the judgment in the cause as the same remained of record in his office; * * *."

It is contended by the plaintiff-respondent, that the documents offered on behalf of the defendant, William G. Mulligan, were not attested by the Clerk, nor did the Clerk make any statement that said copies were true copies of whatever they purported to be in the cause, as the same remained of record in his office. The latter element is all important, namely, that the Clerk, in his certificate, should state that said alleged copies are not merely "true copies," but further, that they are true copies of the originals which remain of record in his office, or on file in his office.

Exhibit D. 6 is, on its face, defective for the same fails to show the date of filing in the court of which it purports to be a record.

A practice has sprung up in this State, to have copies marked "a true copy," and this practice may serve its full purpose so far as convenience to clerks of courts, or attorneys is concerned, but when it becomes a question of offering a document which purports to be a copy of an original on file in the office of a clerk of a court, in evidence, during the course of a trial in another court, something more than mere convenience to clerks or attorneys is involved. The offer of copies of court records in evidence during the course of a trial stands on a higher level, and should command greater care than the mere rubber stamp of a clerk. There are two elements that become highly important in connection with an offer in evidence of copies of court records, namely: the identity of subject matter contained in said copies purporting to be duplicates of originals on file with the clerk; and identity of the person in whose custody such records are kept, and who makes the certification that the same are true copies. By way of example, and to illustrate the point attempted to be made herein, a copy of a certificate, the form of which is employed by the Clerk of the United States District Court, for the District of New Jersey, follows:

UNITED STATES OF AMERICA

DISTRICT OF NEW JERSEY

I, George T. Cranmer, Clerk of the District Court of the United States for the District of New Jersey, do hereby certify that * * *, as the same remains of record, and on file in my office.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed the seal of the said Court, at Trenton, in said District, this * * * day of * * *, A. D. nineteen hundred and * * *.

(SEAL)

GEORGE T. CRANMER,
Clerk.

It is not sufficient merely to state that a certified paper is a "true copy"; the clerk must definitely state that he (George T. Cranmer, Clerk of the District Court of the United States for the District of New Jersey), does hereby certify that the annexed is a true copy of so and so, or so and so, as the same remains of record and on file in his office, and the clerk must subscribe his name and affix the seal of his said court to said certificate. Reference to the forms employed by the clerks of our own State courts disclose that the elements just set forth are embodied in their certificates.

In the case of *Francis* v. *Newark,* 58 N. J. Law, page 522, in an opinion by the then Mr. Justice Gummere, the Supreme Court said:

> "It seems to me that, with the condition annexed to it, this certificate could not be received in evidence in this case even if it was otherwise unobjectionable. But be that as it may, this paper amounts to nothing as evidence. It states as a fact that the prosecutor was discharged, but what that statement is based upon, whether upon the personal knowledge of the certifier, or upon an examination of the records in his office, does not appear. If upon his personal knowledge, his statement is not competent unless made under oath, and if, upon an inspection of the records in his office, a copy of those records duly authenticated should have been offered to prove the fact of discharge."

A "true copy" may mean merely an authenticated copy, but a "certified copy" of a record

is not only an authenticated copy, but requires, in addition, a certification by the clerk, certifying that he is the clerk of the court, and that the subject matter of the alleged copy is a true copy of an original forming part of the records of his office, and on file in his office, and further, containing an attestation clause, followed by the clerk's subscription, together with the seal of the court of which he is clerk. These elements, it is respectfully submitted, are the essential requisites of a certified copy, and plaintiff-repondent respectfully contends that the alleged copies of the proceedings in bankruptcy offered in behalf of the defendant, William G. Mulligan, failed to embody the requisite elements, as pointed out herein.

Conclusion.

For the reasons, therefore, that plaintiff's assignor, Elizabeth F. McDermott, had complete legal title to the note in question at the time that she endorsed the same to the plaintiff herein, and that the plaintiff herein, David Ehrlich, could legally maintain this action in his name for the benefit of the said Elizabeth F. McDermott, and that the alleged copies of the bankruptcy proceedings of the defendant, William G. Mulligan, failed to embody the requisite element entitling them to be admitted in evidence, and that the alleged discharge in bankruptcy of the said defendant, William G. Mulligan, was never, in fact, properly offered in evidence, it is respectfully contended, in behalf of the plaintiff-respondent, that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

COHEN & KLEIN,
Attorneys for Plaintiff-Respondent.

LOUIS J. COHEN,
Of Counsel.