INDEX.

	PAGE
Notice of Appeal	1
Petition of Appeal	2
Answer to Petition of Appeal	5
Bill of Complaint	6
Affidavit of Joseph P. Gavin	16
Order to Show Cause	23
ANSWERING AFFIDAVITS OF DEFENDANTS:	
Affidavit of Abbie E. Gavin	25
Affidavit of Georgie K. Hunter	42
Affidavit of Rita Evans	47
Affidavit of Gertrude Dorman	49
Affidavit of Ida W. Shoenthal	53
Affidavit of Thomas P. Collins	55
Affidavit of Hugh M. Clopton	57
Affidavit of John Damb	58
REPLY AFFIDAVITS OF COMPLAINANT:	
Affidavit of Charles S. Patterson	61
Affidavit of Edith L. Kent	64
Affidavit of Mrs. Ruth Kent Welch	67
Affidavit of H. Seeley Welch	70
Affidavit of Mrs. Hannah Fitzpatrick Millspaugh	72
Affidavit of Mrs. Elizabeth Rajotte	75
Affidavit of Willy Drohne	77
Affidavit of George C. Mackey	81
Affidavit of Joseph A. Brophy	83
Affidavit of Mary A. Brophy	85
Affidavit of Mrs. Laura Gavin Hanners	87

New Jersey State Library

PAGE

Affidavit of Marie Elizabeth Gavin..... 93
Affidavit of Irving C. Hanners..... 97
Affidavit of Joseph P. Gavin..... 103

SUPPLEMENTARY REPLY AFFIDAVITS OF COMPLAINANT:

Affidavit of Charles O. Morris..... 131
Affidavit of Ralph S. Oppenheimer..... 134
Affidavit of Carl Hirsch..... 137
Affidavit of William T. Murphy..... 139
Affidavit of George F. Mack..... 143
Affidavit of John Murdy..... 148

DEFENDANTS' AFFIDAVITS TO REPLY AFFIDAVITS:

Affidavit of Abbie E. Gavin..... 151
Affidavit of Jennie Donnelly..... 171
Affidavit of Benjamin Rosenstein..... 173
Affidavit of Erich Stroehmer..... 174

Memorandum Opinion of Vice-Chancellor Baches 175
Order With Preliminary Injunction..... 176
Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant..... 178
Affidavit of John Damb..... 203
Answer of Defendant Abbie E. Gavin..... 207
Answer of Defendant John Damb..... 210
Replication 214
Order of Reference 215
Testimony 216
Final Decree 217

Notice of Appeal.
(Filed June 28, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,

and

ABBIE E. GAVIN and JOHN DAMB,
Defendants.

} On Bill, &c.

Complainant, Joseph P. Gavin, hereby appeals from the final decree made by the Chancellor on the advice of Vice Chancellor Church in the above entitled cause on June 27, 1928, and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated: June 27, 1928.

HARRY NADELL,
Solicitor of Complainant.

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

ARTHUR T. VANDERBILT,
Of Counsel with Complainant.

Petition of Appeal.
(Filed July 18, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JOSEPH P. GAVIN, Complainant-Appellant, and ABBIE E. GAVIN and JOHN DAMB, Defendants-Respondents.	On Appeal from the Court of Chancery.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Joseph P. Gavin, the appellant in the above entitled cause, respectfully shows that:

Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Church, on the 27th day of June, 1928 in this respect, to wit, that said decree dismisses in its entirety the bill of complaint filed herein for an accounting between the complainant-appellant and defendants-respondents.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in the following respects:

A. The Court below erred in finding that the complainant-appellant is not entitled to an account-

ing for the various transactions, or any of them, set forth in the bill of complaint and affidavits.

B. The Court below erred in refusing to hear any testimony on the part of the complainant-appellant.

C. The Court below erred in finding that the complainant-appellant is not entitled to an accounting for the business known as the Park Lane Restaurant, 23 Harrison Street, East Orange, on the theory of exclusion from a joint enterprise or from a completed gift from defendant-respondent, Abbie E. Gavin, to complainant-appellant, Joseph P. Gavin.

D. The Court below erred in denying equitable relief for the enforcement of the agreement between the parties as husband and wife as to the return of the $2160, undisputably advanced by the husband on the wife's repeated promise of repayment.

E. The Court below erred in finding that the bill of complaint sought a receiver for all of said Abbie E. Gavin's property whereas it sought a receiver for, and an accounting concerning, their joint property only.

F. The Court below erred in granting costs and a counsel fee to counsel for the defendant, and in ordering execution to issue thereon.

G. The Court below erred in dissolving the restraining order of April 24th, 1928, which restrained the defendant, Abbie E. Gavin, from disposing of the joint property of the parties.

H. The Court below erred in not finding that laches and the statute of limitations have no appli-

cation to the case at bar in that (1) the suit was instituted promptly after the termination of the relationship of trust and confidence between the parties and (2) laches and the statute of limitations have no application between husband and wife.

I. The Court below erred in not finding that no acquiescence had been shown by the complainant-appellant in the acts of the defendant-respondent, Abbie E. Gavin, as to his exclusion from the joint business or her appropriation of joint profits to her own use.

J. The Court below erred in not granting an accounting on the ground that the complainant has been pauperized by acts of the defendant-respondent, committed by her for her sole benefit.

K. The Court below erred in denying all relief to the complainant-appellant because of the opinion that he was not entitled to as much relief as was sought.

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

HARRY NADELL,
Solicitor of Appellant.

ARTHUR T. VANDERBILT,
Of Counsel.

Answer to Petition of Appeal.

(Filed August 9, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JOSEPH P. GAVIN, Complainant-Appellant, and ABBIE E. GAVIN and JOHN DAMB, Defendants-Respondents.	On Appeal from the Court of Chancery.

The answer of Abbie E. Gavin and John Damb, the above named defendants-respondents to the Petition of Appeal of Joseph P. Gavin, the above named appellant.

These defendants-respondents, not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto nevertheless admit that a Decree was on the 27th day of June, 1928, made and entered in the Court of Chancery of New Jersey, in the above entitled cause but as to the substance and form of said Decree these defendants-respondents beg leave to refer thereto when the same shall be produced.

These defendants-respondents deny the grounds contained in the Petition of Appeal or that Appellant was harmed by said Decree.

These defendant-respondents believe that said Decree is agreeable to equity and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

DALRYMPLE & CAMPBELL,
Solicitors for and of Counsel
with Respondents.

CHARLES E. DALRYMPLE,
Of Counsel.

Bill of Complaint.

(Filed April 3, 1928.)

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The complainant, Joseph P. Gavin, of the City of Plainfield, in the County of Union and State of New Jersey, respectfully shows that:

1. The complainant, Joseph P. Gavin, who is sixty years of age, was married to the defendant, Abbie E. Gavin, who is forty-eight, in April, 1905. At the time of said marriage, the complainant was a widower with twin daughters of the age of three years. At the time of his marriage the complainant was and still continues to be totally deaf. The complainant was at the time of said marriage operating a milk business, which was the only source of income for him and his family. The defendant, Abbie E. Gavin had, at the time of her marriage to the complainant, the sum of about $200 which she continued to keep in her private account in the Plainfield Trust Company, Plainfield, New Jersey, after said marriage.

2. On account of several collisions between the complainant's wagon and the cars of the Public Service Transportation Company, due in large part to the complainant's deafness, the complainant gave up his said milk business and undertook with his wife, the defendant, Abbie E. Gavin, the management of the Broadway Hotel, Nyack, New York. The taking over of this hotel required about $1,000, which was paid from the proceeds of the sale of the complainant's milk business amounting to about this

amount. No part of the defendant's money was used to finance the taking over of said hotel, the defendant retaining in her private savings account in the Plainfield Trust Company, the money which she had had before she was married. In the operation of said hotel, the complainant did everything within his power including acting as hotel clerk, taking charge of the hotel registry, taking in and disbursing money received in the operation of said hotel as well as numerous other duties in connection with the operation of the hotel such as sweeping, making beds, washing dishes, going to and from the bank, running errands, and in general, carrying out to the best of his ability the numerous duties which fell to his share in the management of said hotel, while defendant, Abbie E. Gavin, in turn, aided in the operation of said hotel jointly with the complainant.

3. After a short time, the complainant, Joseph P. Gavin, and the defendant, Abbie E. Gavin, sold said hotel at a profit and went back to Oak Tree, New Jersey where they lived on the farm of the defendant's, Abbie E. Gavin's, father, a Mr. Knight, who was at that time a man of about the age of seventy years. The complainant, did all the work around the farm, raising large quantities of vegetables, and attending to the cows and at the same time joined with the defendant, Abbie E. Gavin, in the operation of a boarding house for summer boarders, washing dishes, sweeping, making beds, washing windows, running errands, going back and forth to town to purchase food and other necessary articles for running the boarding house, making deposits in the bank, putting in long hours every day to make the farm and boarding house a success. During this period, the defendant, Abbie E. Gavin, put all the

proceeds of the farm and boarding house in her own private bank account.

4. After operating said farm and boarding house for a period of about three years, until about the year 1909, the complainant, Joseph P. Gavin and the defendant Abbie E. Gavin, took over the management of the Tuxedo House, in Tuxedo, New York, and operated the same until about the year 1920, no money being required for this purpose. The complainant acted as hotel clerk, kept the books of account, made all purchases of food and other articles necessary to operate said hotel, took charge of cash coming into the hotel, went over all bills and paid the same, supervised the help, took care of furniture, painted over one hundred rooms in the hotel, deposited the money in the bank; opened the hotel in the morning and closed it at night, and, in general, performed with the defendant, Abbie E. Gavin, the numerous duties in connection with the operation of the hotel. The complainant's daughters worked as waitresses in the hotel, receiving board and clothes but no salary. This hotel was operated at a large profit, yielding some $21,000 clear during the period of ten or eleven years that said hotel was being run. A joint bank account was maintained at this time in the names of the complainant, Joseph P. Gavin and the defendant, Abbie E. Gavin but the complainant drew all the checks. From time to time the defendant took part of the proceeds derived from the operation of the hotel and put it in her own private bank account, saying that she wanted to protect herself in case anything happened to the complainant. At this time the defendant purchased jewelry of the value of $10,000 and upwards for her personal adornment, including diamond ear-

ings numerous diamond rings and a very valuable diamond brooch containing one hundred and fifty diamonds, using the joint funds of the complainant, Joseph P. Gavin and defendant Abbie E. Gavin to pay for the same. Complainant never parted with his joint title in said jewelry. With the permission of Charles Patterson, Superintendent of Tuxedo Park, the hotel was sold about the year 1920 for $3500 which money was placed in their joint bank account.

6. Subsequently, about 1921, the complainant and the defendant purchased the Bellidere Hotel in Newark and operated the same jointly as theretofore, for a period of about one year and nine months realizing a profit of about $3000, which money was placed in their joint bank account.

7. Subsequently the complainant, Joseph P. Gavin and the defendant, Abbie E. Gavin purchased the Halstead House in East Orange, and, after a period of a few months' joint operation sold the same at a profit of several hundred dollars.

8. Subsequently in the fall of 1923, the complainant, Joseph P. Gavin, and the defendant, Abbie E. Gavin, purchased the Hillside Hotel in Montclair operating the same jointly, as they had operated hotels previously, keeping a joint bank account for proceeds of the hotel, Mrs. Gavin withdrawing funds from time to time to place in her private account. The complainant, Joseph P. Gavin sometime prior to taking over the Hillside House in Montclair, had received certain moneys from his father's estate. The balance on hand in the joint account having run down, the defendant, Abbie E.

Gavin, requested the complainant to put in the joint account the amount he had received from his father's estate, which with interest amounted to $2160. This the complainant did.

9. Subsequently the complainant, Joseph P. Gavin, and the defendant, Abbie E. Gavin, purchased the Blossom Treat Hotel in Elizabeth. The defendant, Abbie E. Gavin, insisted in taking title to the same in her own name, saying that if anything happened to Mr. Gavin she wanted to be protected, as the daughters of Mr. Gavin might get married and the sons-in-law might make trouble if anything happened to Mr. Gavin. Nevertheless, although title was taken in the name of Mrs. Gavin, furnishings for the hotel were paid for from the joint bank account of Mr. and Mrs. Gavin, to the extent of $7,000 or $8000. The complainant, Joseph P. Gavin paid the taxes and all other bills out of the joint bank account, as theretofore. Part of the purchase money for said hotel had been taken by the defendant, Abbie E. Gavin from her private savings account, which had been swelled from time to time by money which she had placed therein from the operation of the various hotels. The complainant operated said Blossom Treat Hotel jointly with the defendant Abbie E. Gavin acting as hotel clerk and general supervisor, and in addition, personally raised all the vegetables necesary for the hotel. In the course of his duties, he paid all bills, took care of deposits in the banks, and did all other duties which fell to his share in the joint operation of said hotel. The defendant, Abbie E. Gavin, acted as spokesman in view of the complainant's deafness, but she consulted the complainant on all important business, as theretofore, including bank business, such as signing notes

and other matters of policy in connection with the business. On information and belief the Blossom Treat Hotel which had been purchased at a price of $29,000 was sold for the sum of $42,000 in the fall of 1926.

10. Subsequently, on April 22, 1927, the complainant, Joseph P. Gavin and the defendant, Abbie E. Gavin obtained a valuable lease of the second floor of 23 Harrison Street, East Orange, New Jersey from the H. M. A. Construction Company for a period of ten years from June 1, 1927, said lease being taken in the name of Joseph P. Gavin and Abbie E. Gavin and was recorded in Book B76 of Deeds for Essex County pages 551-553. A certificate of registry of trade name was duly recorded in the office of the Clerk of Essex County on May 6, 1927 showing that Abbie E. Gavin and Joseph P. Gavin had undertaken business under the firm name of the Park Lane Restaurant, 23 Harrison Street, East Orange. A certified check was signed by the complainant Joseph P. Gavin in the sum of $2100 for the first month's rent and as security on account of the last four months' rent, in accordance with the terms of said lease. The cash register was purchased from the National Cash Register Company in the name of Joseph P. Gavin for the sum of $325 as shown by conditioned bill of sale #26821, filed in the office of the Register of Essex County on May 12, 1927. A large quantity of kitchen utensils was on the 28th day of April, 1927, purchased on a conditional bill of sale from the A. T. Schlichting Kitchen Utensils Co., Inc., for $5600 and was duly filed in the office of the Register of Essex County on June 4, 1927, as conditional bill of sale #26506. Policies of insurance were taken in the name of Joseph P.

Gavin and Abbie E. Gavin trading as Park Lane Restaurant. An agreement with the Reid Ice Cream Corporation regarding refrigerated cabinet furnished by said corporation was signed by Joseph P. Gavin. Application for telephone service dated May 4, 1927 was signed by Joseph P. Gavin. A quantity of furniture was purchased in the name of Joseph P. Gavin for use in the restaurant. An illuminated sign was purchased by said Joseph P. Gavin for the sum of $199 and a permit for the erection of the same was issued by the proper municipal authorities of the City of East Orange to said Joseph P. Gavin. The complainant Joseph P. Gavin took over the management of cash, purchases, payment of bills, deposits in the bank and in general, jointly managed said Park Lane Restaurant with the defendant Abbie E. Gavin. Moneys from the operation of the Restaurant were deposited in the Savings Investment and Trust Company of East Orange and checks against the same were drawn by the complainant, Joseph P. Gavin.

11. The defendant, John Damb of 21 Webster Place, East Orange, was hired by the Defendant, Abbie E. Gavin on July 11, 1927 as steward for said Park Lane Restaurant. Shortly thereafter said Defendant, John Damb succeeded in having the complainant's daughters put out of the restaurant, after continually insulting them. Thereupon he induced the defendant, Abbie E. Gavin to collude with him against the complainant, Joseph P. Gavin, committed assault and battery against the complainant on several occasions and finally had the complainant forcibly ejected from the restaurant on January 10th, 1928. From that time the defendant John Damb has been operating said res-

taurant with the defendant, Abbie E. Gavin, taking charge of the cash coming into said restaurant and thus depriving the complainant of his rights. Before his departure, the complainant saw the defendant John Damb making love to the defendant, Abbie E. Gavin, kissing and hugging her, and on several occasions saw the defendant Abbie E. Gavin and defendant John Damb going into a private dining room of said Park Lane Restaurant with black shades drawn so that no one could look in, the room being in total darkness and said defendants remaining there alone for hours at a time.

12. A large quantity of blankets, bedding, dressers, chairs, and other hotel equipment taken from the Blossom Treat Hotel is stored in the basement of the Park Lane Restaurant. This equipment also is the joint property of the complainant and the defendant Abbie E. Gavin.

13. The complainant is without any means, having received no money from said Park Lane Restaurant, since November, 1927 and having never been repaid for his investment or fair share of the profits therein or in any of the other joint enterprises previously operated by the complainant and defendant.

14. The complainant has never received any money from said joint enterprises except what was necessary for the support of himself and his family. Complainant on January 11th, 1928, through his then solicitor, requested that the defendant Abbie E. Gavin account to the complainant but the defendant Abbie E. Gavin has altogether failed and refused to do so.

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

1. That the defendants, Abbie E. Gavin and John Damb may answer this bill of complaint without oath and each statement therein made.

2. That an account may be taken of all joint dealings between the complainant and defendant and of the moneys, jewelry and other effects received by the defendants in relation thereto and that the balance found due to the complainant be paid to him.

3. That the property of the Park Lane Restaurant be sold, the debts thereof paid, and the surplus, divided between the complainant and the defendant, Abbie E. Gavin according to their respective interest.

4. That said defendants be ordered to make discovery on oath, of the books, papers or other documents in their possession or control or which are being held by any person for them or either of them, relating to the matters in question in this cause.

5. In the meantime the defendants may be enjoined from collecting, receiving, removing or in any manner interfering or intermeddling with or disposing of said joint property of the defendant, Abbie E. Gavin and the complainant, Joseph P. Gavin.

6. That a receiver of said joint property, and particularly of said Park Lane Restaurant and all the contents thereof, including the hotel equipment

stored in the basement thereof, may be appointed with the usual powers and duties.

7. That such other further relief may be awarded as shall be deemed just.

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

HARRY NADELL,
Solicitor.

ABRAHAM I. FELTMAN,
Of Counsel.

Affidavit of Joseph P. Gavin.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } SS.:

JOSEPH P. GAVIN of full age, upon his oath deposes and says:

1. I am the complainant in the foregoing bill mentioned. I have read said bill and know the contents thereof and so far as they relate to my actions the allegations therein contained are true and so far as they relate to the actions of others, I believe them to be true.

2. I am sixty years of age and was married to the defendant, Abbie E. Gavin, who is forty-eight, in April, 1905. At the time of our marriage I was a widower with twin daughters of the age of three years. At that time I was and still continue to be totally deaf. My only source of income at the time of my marriage was derived from the operation of the milk business. My wife had about $200 at the time of our marriage which money she continued to keep in her own private account in the Plainfield Trust Company in Plainfield, New Jersey.

3. Because of collisions between my wagon and the cars of the Public Service Transportation Company, caused to a large extent by my deafness, I gave up my milk business in the summer of 1905 and undertook with my wife the management of the Broadway Hotel in Nyack, New York. The taking over of this hotel required about $1,000 which was paid from the proceeds of the sale of my milk business. My wife did not use any of her own money to finance the undertaking of this hotel, retaining her own money in her private savings ac-

count as before we were married. My duties in the operation of this hotel consisted of acting as hotel clerk, taking charge of the hotel register, taking in and paying out money received in the operation of the hotel, as well as numerous other duties, such as sweeping, making beds, washing dishes, going to and from the bank, running errands, and in fact, carrying out to the best of my ability the numerous duties which fell to my share in the management of this hotel. My wife and I aided one another in the operation of this hotel.

4. After a short time we sold the hotel at a profit and went back to Oak Tree, New Jersey, where we lived on the farm of my wife's father who was at that time an old man about the age of seventy. I did all the work around the farm, raising large quantities of vegetables, and tending to the cows and at the same time aided my wife in the operation of a boarding house for summer boarders, my duties consisting of washing dishes, sweeping, making beds, washing windows, running errands, going back and forth to town to purchase food and other necessary articles for running a boarding house, making deposits in the bank and in general assisting in every way within my power to make the farm and boarding house a success. During this period my wife put the proceeds of the farm and boarding house in her own private bank account.

5. After operating the farm and boarding house for about three years until the year 1909 we took over the management of the Tuxedo House, Tuxedo Park, New York and operated the same jointly until about the year 1920. We were not required to put up any money in order to take over the hotel

as it was owned by Tuxedo Park and we were simply operating the hotel for the Park. I acted as hotel clerk, kept books of account, made all purchases of food and other articles necessary for operating the hotel, took charge of cash coming into the hotel, went over all bills and paid the same, supervised the help, took care of furniture, painted over one hundred rooms in the hotel, deposited the money in the bank, opened the hotel in the morning and closed it at night, and in general performed jointly with my wife the numerous duties in connection with the hotel. My daughters acted as waitresses in the hotel receiving board and clothes but no salary. The hotel was operated at a large profit yielding about $21,000 clear during the period of about ten years that we operated it. We maintained a joint account into which the funds from the operation of the hotel were deposited, but I drew all the checks for operating the hotel. From time to time my wife put part of the proceeds derived from the operation of said hotel into her own private account saying that she wanted to protect herself in case anything happened to me. At this time my wife purchased jewelry of the value of $10,000 and upwards, diamond ear-rings, numerous diamond rings and a very valuable diamond brooch containing one hundred fifty diamonds, using our joint funds to pay for this jewelry. I never intended to part with my joint title in this jewelry. With the permission of Charles Patterson, Superintendent of the Tuxedo Park, we sold the furnishings in the hotel about the year 1920 for $3500 which money we placed in our joint bank account.

6. About 1921 we purchased the Belvidere Hotel in Newark and operated the same jointly as we had

operated the other hotels, for about one year and nine months realizing a profit of about $3000 which was also placed in our joint account.

7. Thereafter we purchased the Halstead House in East Orange, running the same for about three months and sold the same for a profit of a few hundred dollars.

8. In the fall of 1923 my wife and I purchased the Hillside House in Montclair and operated the same jointly as we had operated hotels previously, putting in the joint bank account the proceeds of the hotel, my wife withdrawing funds from time to time to place in her private account. Sometime prior to the taking over of the Hillside House I had received about $2000 from my father's estate. As the balance on hand in the joint account had run down, my wife asked me to put this money in the joint account. With interest it amounted to $2160. This I did.

9. We then purchased the Blossom Treat Hotel in Elizabeth. My wife insisted on taking title in her name saying that if anything happened to me she wanted to be protected as my daughters might get married and their husbands might cause trouble if anything happened to me. Although title was taken in my wife's name, furnishings for the hotel were paid for from our joint bank account to the extent of $7000 or $8000 by checks drawn by me. I paid the taxes and all other bills out of our joint account as I had done before. Part of the purchase price of the hotel had been taken by my wife from her private savings account which had been swelled from time to time by money which she had placed in it from the operation of the various

hotels. We operated the Blossom Treat Hotel jointly and I acted as hotel clerk and general supervisor and in addition, personally raised all the vegetables necessary for the hotel. In the course of my duties I paid all bills, took care of deposits in the bank and in general, performed all other duties which fell to my share in the joint operation of the hotel. My wife acted as spokesman in view of my deafness but consulted me on all important business as she had previously done, including bank business such as signing notes and other matters of policy in connection with the business. I believe the Blossom Treat Hotel was purchased for $29,000 and sold for $42,000 in the fall of 1926.

10. On April 22, 1927, my wife and I obtained a valuable lease of the second floor of 23 Harrison Street, East Orange from H. M. A. Construction Company for a period of ten years from June 1, 1927. This lease was taken in the name of my wife and myself and was recorded in Book B76 of Deeds for Essex County, pages 551-553. We registered a trade name in the office of the Clerk of Essex County on May 6, 1927 showing that we had undertaken business under the firm name of the Park Lane Restaurant, 23 Harrison Street, East Orange. I signed a certified check for $2100 covering the first month's rent and security on account of the last four months' rent as required by the lease. The cash register was bought from the National Cash Register Company in the name of myself for $325 as shown by conditional bill of sale #26821 filed in the office of the Register of Essex County on May 12, 1927. A large quantity of kitchen utensils was bought on April 28, 1927 on a conditional bill of sale from the A. T. Schlichting Kitchen Utensils Co., Inc., for $5600 and was

filed in the office of the Register of Essex County on June 4, 1927 as conditional bill of sale #26506. Policies of insurance were taken in my name and in the name of my wife, trading as Park Lane Restaurant. I signed an agreement with the Reid Ice Cream Corporation concerning a refrigerator cabinet installed by this corporation. I personally signed an application for telephone service on May 4, 1927. A quantity of furniture was bought in my name for use in the hotel. I signed a contract for an illuminated sign for the price of $199 and a permit for the erection of this sign was issued by the municipal authorities of East Orange in my name. In the operation of the restaurant I took over the management of cash, purchases, payment of bills, deposits in the bank, and in general managed the Park Lane Restaurant, jointly with my wife. The money from the operation of the Restaurant was deposited in the Savings Investment and Trust Company of East Orange and I drew all checks for the operation of the business until the fall of 1927.

11. On July 11, 1927 my wife, Abbie E. Gavin hired John Damb of 21 Webster Place as steward for the restaurant. In order to get my daughters out of the Restaurant he continually insulted them and urged my wife to have them put out and kept out. Up to that time we had been a very happy family, but from that time on there was nothing but discord and fighting. The steward also got my wife to side with him, assaulting me numerous times in order to get me out of the restaurant, blacking my eyes and on one occasion having one of the employees of the restaurant hold me while he beat me unmercifully. He is a much younger man than I am. Finally on January 10, 1928 he

had me forcibly put out of the restaurant. From that time on my wife has been operating the restaurant with the steward, Damb. Before I left, I saw Damb and my wife kissing and hugging one another. On several occasions before I left I saw them go into a private dining room of the Park Lane Restaurant, draw the dark shades so that no one could look in, close the door, the room being altogether dark and stay for hours at a time. I remonstrated with my wife but she refused to change her ways.

12. A large quantity of blankets, bedding, dressers, chairs, and other hotel equipment taken from the Blossom Treat Hotel is stored in the basement of the Park Lane Restaurant. This equipment also is the joint property of the complainant and the defendant, Abbie E. Gavin.

13. I am altogether without means having been entirely dependent upon what was earned from our joined business. I have received no money from the Park Lane Restaurant since November 1927 and have never received any money from the joint enterprises of my wife and myself except what was necessary for the support of myself and my family.

14. On January 11, 1928, through my then solicitor, I requested the defendant to account to me but she has failed and refused to do so.

JOSEPH B. GAVIN.

Subscribed and sworn to before me this 27th day of March, 1928.

ELMER A. GOODWIN,
A Notary of N. J.

Order to Show Cause.

(Filed April 3, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, &c.

This matter being opened to the Court by Harry Nadell, solicitor of the complainant, and the Court having read the bill of complaint in the above entitled cause and the affidavit thereunto annexed:

It is, on this 28th day of March One Thousand Nine Hundred and twenty-eight, ORDERED THAT the defendants, Abbie E. Gavin and John Damb, show cause before the Chancellor, at the Chancery Chambers, in the City of Newark, on the 3d day of April, One Thousand Nine Hundred and Twenty-eight, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an account should not be taken of all joint dealings between the complainant and defendants and the moneys, jewelry, and other effects received by the defendants in relation thereto and why the balance found due to him should not be paid, also why the property in the Park Lane Restaurant referred to in the bill of complaint should not be sold, the debts thereof paid and the surplus, if any divided between the complainant and the defendant, Abbie E. Gavin, according to their respective interest, also why a permanent receiver should not take charge of said restaurant, its contents and all

other joint effects of the complainant and the defendant, Abbie E. Gavin;

It is further ORDERED that in the meantime the defendants, Abbie E. Gavin and John Damb, their counsel, attorneys, solicitors and agents, and each and every one of them, until the further order of this Court in the premises, be and hereby are restrained and enjoined from collecting, receiving, removing, or in any manner interfering or intermeddling with or disposing of said joint property.

It is further ORDERED that said Abbie E. Gavin and John Damb make discoverey, under oath, on the return day of this order, concerning the books, papers or other documents in their possession or control or over which any other person is keeping control for them or either of them, relating to the matters in question in this cause;

It is further ORDERED that true copies of said bill of complaint and the affidavit thereunto annexed, and of this order, all certified by complainant's solicitor, be served on said Abbie E. Gavin and John Damb personally, within 2 days from the date hereof;

It is further ORDERED that copies of answering affidavits, if any are to be used by the defendants or their solicitors at the return of this order to show cause, be served upon Harry Nadell, solicitor for the complainant, not less than 2 days before the return day of this order.

E. R. WALKER,
C.

Respectfully advised,
ALONZO CHURCH,
V. C.

ANSWERING AFFIDAVITS OF DEFENDANTS.

Affidavit of Abbie E. Gavin.

(Filed April 10, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,
and
ABBIE E. GAVIN and JOHN DAMB,
Defendants.
} On Bill, Etc.

STATE OF NEW JERSEY,
COUNTY OF ESSEX,
} ss.:

ABBIE E. GAVIN of full age, being duly sworn upon her oath according to law deposes and says:

1. I am one of the defendants in the Bill of Complaint filed in the above entitled cause. I was married to the Complainant, Joseph P. Gavin in April 1905. At the time of the marriage the Complainant, Joseph P. Gavin was a widower with twin daughters of the age of three years.

2. The Complainant was at the time of the marriage and still is totally deaf. His occupation was that of the driver of a milk wagon and he operated a small milk route in Plainfield, N. J.

3. Due to his deafness he had a considerable number of accidents with the Public Service Railway Co. and was compelled to give up the milk

business on that account and he sold his milk business consisting of a horse and wagon, cans, etc. for the sum of $600.00. He was barely making a living from the sale of the milk.

4. At the time of the marriage of complainant to the defendant they went to live in a home furnished them by the father of the defendant, Abbie E. Gavin. The father of the defendant, Abbie E. Gavin owned the premises and also furnished the home throughout. The only articles of household furniture purchased by the complainant was a pair of curtain rods.

5. The defendant, Abbie E. Gavin further says that the only rental they paid for the premises was $16.00 per month, which were the taxes and water rents of the property and that they continued to live in the home of defendant's father for a period of about one year and at that time the Complainant sold his milk business.

6. The defendant, Abbie E. Gavin further says that at the time of her marriage she had in cash the sum of $200.00 and after the complainant sold his milk business she went to Nyack, New York, where she opened a Hotel known as the "Broadway Hotel" which was leased for a period of five years and in which she put the sum of $3000.00 part of which money she had obtained from her father, who was a man of some means and part of which she had saved while they lived on her fathers' farm from the raising of vegetables and from boarders.

7. Defendant, Abbie E. Gavin, also says that she took with her from the home in Plainfield, N.

J. a car load of furniture to furnish a major portion of the Hotel which furniture was given to her by her father and mother.

8. Defendant Abbie Gavin says that the complainant did not put any of his own money in this hotel project. Defendant, Abbie Gavin denies that the Complainant acted as Hotel Clerk of the Broadway Hotel, Nyack, N. Y. or took charge of the hotel registry, but says that the only duties that the complainant could be depended upon to perform was that of running of errands. The defendant says that it was impossible to use him in any other capacity as he was stone deaf and could not understand what anyone was saying to him.

9. The defendant, Abbie E. Gavin, further says that he never washed the dishes, made the beds, did the sweeping, because she employed at least six people to take care of these duties besides the work and management of the place which was her duties.

10. Defendant, Abbie E. Gavin, further says that she employed a chef, two kitchen men, two girls to make the beds and clean up the hallways, as well as waitresses in the dining room, and that the complainant was a gentleman of leisure and used to spend his time staying around the hotel lobby reading newspapers and periodicals and was not called upon to do any work other than running back and forth to the bank and like errands.

11. The defendant, Abbie E. Gavin further says that when she married the complainant she took his twin children with her, first to her father's farm and then to the Hotel in Nyack, New York

where she supported them and the complainant in a much better state than he himself could do and that the complainant would ask for any monies that he desired for spending money and she also permitted him to sign the checks of the general bank account, the account being in the name of "Abbie E. Gavin or Joseph P. Gavin."

12. The defendant, Abbie E. Gavin continued to operate this Hotel for ten months when the Hotel was sold to the people who supplied beer and the complainant and defendant and the two children returned to Plainfield, N. J. and stayed with the defendant's father and mother for two weeks. Then they went to live on the farm and defendant Abbie E. Gavin's father, and the defendant's father and mother came to live with them and paid board. No rental was charged for the use and occupation of the farm house or for the farm and the defendant says that the Complainant milked the cows and took care of the vegetable garden, picked fruit from the trees in order that the fruit and vegetables would not go to waste.

13. The defendant, Abbie E. Gavin, further says that in order to increase the income of the family, as her husband was unable to obtain any competent position because of his physical handicap, she took in boarders.

14. The defendant further says that the complainant was never called upon to wash the dishes, do sweeping or make the beds or wash the windows and that he acted in the same capacity as he did at the Broadway Hotel, N. Y., in running errands and taking care of the fruit trees and the vegetable garden.

15. The defendant further says that she had as assistants on her father's farm a woman and a boy to help out with the work.

16. Defendant further says that the success of the operation of her father's home as a boarding house was due to her own work as they had no rental to pay and her father and mother were steady boarders there and paid board during the entire time they lived with the Complainant and defendant.

17. Defendant, Abbie E. Gavin, says that while they were living on the farm in Plainfield, New Jersey, her father died and the defendant went to Tuxedo, New York, where some friends of her father secured the management of the Tuxedo House for her, which the defendant, Abbie E. Gavin, continued to operate about fifteen years; that the defendant placed a deposit of Three Hundred Dollars, ($300.00) at the time she took over this business and managed the same, supporting her husband all this period of time, and his two children.

18. Defendant, Abbie E. Gavin, says that there were about fifty rooms in this hotel, that she had as many as fifteen employees to take care of the rooms, cook, and do the general housework, and that the complainant did nothing more than run errands and probably locked the doors at night, and opened them in the morning.

19. Defendant, Abbie E. Gavin, says that the complainant at this period of time began to absent himself from the hotel for a period of three or four days at a time. She did not know where he had

gone, but he usually helped himself to some cash and would disappear. It was customary for the complainant to go away for three or four days at a time without leaving any word, and as suddenly as he would go, to return again.

20. Defendant, Abbie E. Gavin, says that the complainant is a heavy drinker and has been for some time, and was a heavy gambler, and that while she conducted the hotel in Tuxedo Park, New York State, he would gamble and play cards with the help and keep them from their work. Defendant denies that the complainant supervised the help, took care of the furniture, painted the rooms or performed the numerous duties stated in Paragraph 4, as complainant was totally deaf and was unable to perform any of the duties as herein set forth.

21. Defendant, Abbie E. Gavin, denies that complainant's daughters worked as waitresses in the hotel, and says that they were but young children at the time, and were unable to do any work whatsoever, and they were students in grammar school.

22. Defendant, Abbie E. Gavin, admits that the account was maintained in both the names of Joseph P. Gavin and Abbie E. Gavin, and that checks were drawn by her and the complainant, merely for convenience of defendant.

23. Defendant, Abbie E. Gavin, denies that she purchased jewelry, for the value of Ten Thousand Dollars ($10,000.00), and upwards, for her personal adornment, and that the complainant has any title to the said jewelry, but that the jewelry was purchased by her with her own money.

Affidavit of Abbie E. Gavin.

24. Defendant, Abbie E. Gavin, further says that she sold the hotel for about Thirty-two Hundred Dollars ($3200.00).

25. Defendant, Abbie E. Gavin, further says that she inherited about Thirty-Five Hundred Dollars ($3500.00) from her father's estate, which money was paid over to her in cash, and which money she used in supporting the complainant and his two daughters, as well as in operating the hotel in Tuxedo Park, New York.

26. Defendant, Abbie E. Gavin, further says that the complainant never invested any money whatsoever in the hotel in Tuxedo Park, but that the hotel was financed by her own funds, and it was through her efforts that it was a success, and that during all the period of time that they remained at the hotel at Tuxedo Park, the complainant was given spending money as he asked for it, for his own use, was provided with clothes and lodging, and his two daughters were also provided with clothes and lodging.

27. Defendant, Abbie E. Gavin, says that after the sale of the hotel for about Thirty-two Hundred Dollars ($3200.00) at Tuxedo Park, New York, she bought the business of the Belvidere Hotel, on Broad Street, Newark, New Jersey, and paid Three Thousand Dollars ($3,000.00) for it; that she remained in the Belvidere House for a period of about nine months, and sold it at a profit of about Two Thousand Dollars ($2,000.00) which money she placed in her bank account.

28. Defendant, Abbie E. Gavin, further says that after the sale of the Belvidere Hotel on Broad

Street, Newark, New Jersey, in the year 1921, the complainant herein, his two daughters, and the defendant, Abbie E. Gavin, traveled all over the United States without doing any work or having any employment, and that the expenses for said trip were defrayed by her money made by the operation of the hotel in New York State, as well as from the Hotel in Newark, New Jersey.

29. Defendant, Abbie E. Gavin, admits that she purchased the Halstead House, in East Orange, and after operating same for a period of a few months, she sold it at a Five Hundred Dollars ($500.00) profit, and that the property was purchased by her with her money, and that the family again took another rest for five months, and that during the period of five months they lived at the Belvidere House at Newark, New Jersey, as guests. The complainant did not work during all this period of time, and was supported by her money made from the sale of the business and from the defendant's own funds.

30. Defendant, Abbie E. Gavin, admits that about 1923, she purchased the Hillside House, in Montclair, New Jersey, that she permitted Mr. Gavin to sign checks as heretofore, and that she managed and operated the hotel herself, and that during this period of time, while they were operating the Hillside House in Montclair, the business was not profitable and complainant deposited in the general bank account, a sum of about Two Thousand Dollars ($2,000.00) which he had received from his father's estate, which was used to support complainant. The Hillside House was operated for about two years, when it was sold at a profit of

Fifteen Hundred Dollars ($1,500.00), and complainant and defendant, went to Asbury Park in June, as nearly as the defendant can determine, in the year 1925, and they stayed there all summer, boarding at one of the exclusive hotels, and returned to Newark, New Jersey, in September of that year.

31. Defendant, Abbie E. Gavin, says that the expenses at Asbury Park were met by monies obtained from her operation of the hotel in Montclair, and that part of the expenses were defrayed by her from her own personal account; that after their return to Newark in September, 1925, they went to live at the Belvidere Hotel where they boarded as guests until Christmas, 1925.

32. Defendant, Abbie E. Gavin, says that during all this period of time the complainant did no work and that he lived on her money made by her in the operation of these Hotels.

33. Defendant, Abbie E. Gavin denies that she appropriated any funds belonging to the complainant, and says that the money received by her, was money earned through her own efforts and business ability, and her investments.

34. Defendant, Abbie E. Gavin, admits that she purchased the Blossom Treat Hotel in Elizabeth; that it was purchased with her money, that title was taken in her name, and that the money was paid from her own account, and that the Hotel was later purchased for an apartment house and sold at a profit, and that after the sale of the Hotel in Elizabeth, the complainant and the defendant, Abbie

Gavin, went South and travelled over a year, during which period of time the complainant failed to do any work, and they lived on the money derived from her sale of the hotel.

35. Defendant, Abbie E. Gavin, admits that the money for the purchase of the hotel in Elizabeth, New Jersey, was taken from her own private bank account, and says that the complainant did no other work than sit around the hotel, and run errands, as his physical condition prohibited him from doing anything further.

36. Defendant, Abbie E. Gavin, admits that she acted not only as spokesman, but transacted all the business in the operation of these Hotels, and she signed notes because she was the owner of the business, and her husband was incapable of earning anything to support himself, or support his family.

37. Defendant, Abbie E. Gavin, further says that after the return of the complainant and the defendant, from their year of traveling, she opened up a restaurant in East Orange, New Jersey, which she has been operating ever since, and that the bank account was, as heretofore, opened in their joint names and that her husband attempted to act as cashier and perform other duties about the restaurant, but that during this period of time he again took to drinking, and that he would come to the restaurant at night, when banquets were being held, so badly intoxicated that he threw the glass-ware around and created such a disturbance that on three different occasions it was necessary to call the police and have him removed.

Affidavit of Abbie E. Gavin.

38. Defendant, Abbie E. Gavin, says that all the kitchen utensils were purchased by her from A. T. Schlichting Co. Inc. for Fifty-Six Hundred Dollars ($5,600.00), that the conditional sales contract was signed by her personally, and that the notes for the payment of the equipment were signed by her and not by Mr. Gavin.

39. Defendant, Abbie E. Gavin, further says that she paid for the refrigerator and all the furniture in the restaurant, and the money was drawn from her own savings account; that the license to the restaurant was issued in the name of Abbie E. Gavin, on June 6th, 1927, and she denies that the license was issued to Mr. Gavin.

40. Defendant, Abbie E. Gavin, further says that the complainant failed to do any work about the restaurant; that they had a dishwasher, a chef, three waiters and a steward, and that there was nothing for Mr. Gavin to do, and defendant further says that during a portion of the period of time the restaurant was operated, she had a cashier; that complainant attempted to act as cashier, but the cash register was short ten or fifteen dollars on several occasions, that Mr. Gavin was unable to answer customers' questions, on account of his deafness, and she had to hire a cashier in his place.

41. Defendant, Abbie E. Gavin, further says that while they were in Montclair, New Jersey, she bought a Two Thousand Dollar, ($2,000.00) car for the complainant and his two daughters, and they kept the car several years and sold the same for One Hundred and Fifty Dollars, ($150.00), Fifty

Dollars, ($50.00) of which was used to purchase the complainant a suit of clothes.

42. Defendant, Abbie E. Gavin, admits that she hired the defendant, John Damb as steward for the Park Lane Restaurant; that due to the fact that she has worked so hard all her life and has reached the age of forty-eight, her health has begun to fail, and the duties of managing the restaurant were more than she could stand, and the doctor instructed her that she would have to have help in managing the restaurant, as her physical condition and her heart were in very bad shape.

43. Defendant, Abbie E. Gavin, further says that the two children of the complainant are now about twenty-seven years of age, that one of the daughters is married, and the other of the daughters has a responsible position with an insurance company in Newark, New Jersey; that in her attempt to build up the business in East Orange, started in June, 1927, it was rather difficult at first to meet expenses, and it was necessary to curtail as much expense as possible, and that the daughters of the complaint were accustomed to taking their meals in the restaurant, for which they refused to pay, and also, they would bring in a part of three or four and treat them to dinner, on the house. Defendant remonstrated with the two daughters, regarding bringing friends to dinner, advising them that the restaurant was just about making expenses and that their meals would have to be paid for, as one of them was married, and the other one was earning sufficient money.

44. Defendant, Abbie E. Gavin, further says that their practice continued, and because of ill health

she placed the steward, John Damb, in charge of the restaurant, and they advised the daughters of the complainant that they could not eat there without paying for their meals, the same as any other guests.

45. Defendant, Abbie E. Gavin, further says that the daughters of the complainant became incensed because they could not get their meals free of charge, and left the restaurant; that they were never insulted by the steward nor were they put out of the restaurant.

46. Defendant, Abbie E. Gavin, further says that on account of her ill health and her heart condition which had developed, she placed the steward, John Damb, in charge of the restaurant, holding him responsible for all money, especially in view of the fact that there was a constant shortage every day in the cash register, and in view of complainant's actions in becoming intoxicated continually, and creating disturbances in the restaurant.

47. Defendant, Abbie E. Gavin, denies the allegations in Paragraph 11, that the steward, John Damb, ever made love to her, that he ever kissed or hugged her, or that they ever went into the private dining room and drew the shades. Defendant says that it was the custom of the steward and herself to make arrangements for the menus for the following day, balance the accounts, pay the bills and check up on the help, and that she has a private office in a portion of the private dining room, for this purpose and that the doors were never closed but the complainant would continually interrupt when he was under the influence of liquor and create a disturbance.

Affidavit of Abbie E. Gavin.

48. Defendant, Abbie E. Gavin, admits that she has a large quantity of furniture stored in the basement of the Park Lane Restaurant, and says that the complainant has no interest therein, and that the major portion of the furniture was given to her by her parents upon their death and the rest purchased with her own funds.

49. Defendant, Abbie E. Gavin, says that complainant has always had money, that he carried sometimes as much as Five Hundred Dollars, ($500.00) in his pocket, in cash, at a time, that he spent Two Hundred Dollars ($200.00) in entertaining some friends about four months ago, and that just prior to the opening of the restaurant in East Orange, he drew Two Hundred Dollars ($200.00) from the bank, within ten days time; that in November, 1927, he drew Sixty-five Dollars ($65.00) from the bank account in East Orange, and in December, 1927 he drew another twenty-five Dollars ($25.00) all of which was defendant's money.

50. Defendant, Abbie E. Gavin, further says that she has supported the complainant with money earned from the business conducted by her in several places as hereinbefore set forth; that the family travelled all over the United States with money made from the business; that complainant has been clothed, fed and lodged through her efforts, since 1905, and that the two daughters have been clothed and educated by her and through her efforts and successful conduct of these hotels; that the complainant has never worked nor been able to do any work because of his total deafness and defendant has never received any money from the complainant ex-

cept $600.00 which he used himself from the sale of his milk business and $2000.00 which he received from his father's estate and gave this defendant as a gift.

51. Defendant, Abbie E. Gavin, denies that the complainant has never received any money from the businesses conducted by her, but says that he has always been provided for and that she had been the head of the family since the time she married the complainant, and has supported him and his two daughters in comparative luxury, through her own efforts.

52. Defendant, Abbie E. Gavin, further says that she was never called upon to make any accounting to complainant, until he left the restaurant because of his continued intoxication and creation of disturbance in the restaurant, which was detrimental to the business being conducted therein.

53. Defendant, Abbie E. Gavin, says that she asked her husband to act as Cashier one night when the Cashier was away and the complainant was partly drunk and gave $9.00 in change for a $1.00 bill and when she spoke to him he said "It's your business, take care of it yourself".

54. Defendant, Abbie E. Gavin further says that the complainant Joseph E. Gavin left his abode in East Orange, N. J. left the Restaurant and has gone away without any excuse, but has demanded from the defendant money for his support and defendant told him to come home and behave himself and that she would not support him unless he returned to their home in East Orange.

55. Defendant, Abbie E. Gavin further says that she furnished the married daughter of complainant with two bed rooms suites and all other furniture for a home and that at Christmas Time 1923 she purchased for each of complainant's daughters a fur coat at the cost of $450.00 each.

10 56. Defendant, Abbie E. Gavin, further says that the building up of the business of the Park Lane Restaurant is due to personal contact with the customers and that the appointment of a Receiver would cause an irreparable loss and prove exceedingly disastrous to the Defendant.

57. Defendant, Abbie E. Gavin, further says that during the 23 years of married life the complainant has contributed but $2600.00 to his family for their
20 support that the original investment in the Broadway Hotel, Nyack, N. Y. was made by her with her own money given to her by her father. That she kept Boarders at her father's home in Plainfield, N. J. and it was through friends of her father that the Tuxedo Hotel was obtained and that the real estate of the Blossom Treat Hotel was in her name as well as the personal property, that her success was due to coming in actual contact with her guests
30 and that she was helped by friends because of having a husband that could not work.

58. That the Montclair House and the Halstead House in East Orange were all acquired, operated, financed and sold by the defendant, Abbie E. Gavin.

59. Defendant says that Joseph B. Gavin was made a party to the lease and registered as doing business as the Park Lane Restaurant purely and
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solely because in the event of the death of the defendant he might succeed to the business and that complainant did not have any interest in the Park Lane Restaurant nor did he invest any capital therein.

ABBIE E. GAVIN.

Sworn and subscribed to before me this 4th day of April, A. D. 1928.

A. WM. WANN,
Notary Public of N. J.
(Notary Seal)

Affidavit of Georgie K. Hunter.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

GEORGIE K. HUNTER, of full age, being duly sworn on her oath according to law, deposes and says:

1. I am the sister-in-law of the Complainant and the sister of the defendant, Abbie E. Gavin, in the Chancery suit of Gavin vs. Gavin. I reside in the City of Brooklyn, County of New York and State of New York.

2. I have been acquainted with the defendant, Abbie E. Gavin, all my life and have been acquainted with both the complainant and the defendant prior to their marriage in April, 1905.

3. At the time of the marriage of the Complainant and the defendant, Abbie E. Gavin, the complainant was stone deaf. I was residing at that time in Brooklyn, New York.

4. My father and mother were both living at the time and owned considerable property in the Town of Plainfield, New Jersey and was also the owner of considerable real estate in New York State.

5. When the complainant married the defendant, Abbie E. Gavin, he was the owner of a milk route in Plainfield, New Jersey and was a widower with twin daughters, approximately the age of three years.

6. After the marriage of the complainant and defendant, my father gave to the defendant, Abbie E. Gavin, a home completely furnished in Plainfield, New Jersey, in which the complainant and

defendant, Abbie E. Gavin, went to reside and for which no rental was asked and they paid the taxes and water rents on the property in which they resided which amounted to $16.00 per month, which money was turned over to the father for the purpose of paying the taxes and water rents as hereinbefore set forth.

7. The complainant and defendant, Abbie E. Gavin, resided in my father's house from April, 1905 until May, 1906, as nearly as this deponent can remember.

8. I also know that in the year 1906 the complainant and defendant, Abbie E. Gavin, went to Nyack, New York, where my sister, Mrs. Gavin, took over the management of the Broadway Hotel, Nyack, New York, and that my father gave her a car load of furniture to furnish the Hotel in Nyack, New York.

9. After the complainant and defendant moved to Nyack, New York, the defendant, to my knowledge, has never done any work or had any employment whatsoever, since that time.

10. I was the Executrix of the Estate of my father, William H. Knight of Plainfield, New Jersey, and I settled and disbursed the monies, according to the terms of the Will of William H. Knight. Mrs. Gavin was left under the terms of the Will approximately $3500.00 which money was received by Mrs. Gavin from the Estate before she went to Tuxedo Park, New York. Mrs. Gavin was also left a piece of property in Plainfield, New Jersey by her father consisting of a house and lot.

11. After the sale of the business of the Hotel in Nyack, New York, Mr. and Mrs. Gavin returned to Plainfield, N. J., where they went to live on the farm of my father in Plainfield, N. J., where there was a large house, barns, cattle and orchards and where complainant and defendant and my father and mother lived for a period of approximately three years, as near as your deponent can recollect.

12. During this period of time the complainant, to the best of my knowledge, had no employment whatsoever. He busied himself about the farm with such work as there was to do and they lived there without paying any rent and my father paid board to the defendant, Abbie E. Gavin during all the period of time that they resided with them and also paid for the feed of the horses. No rent was paid by complainant and defendant whatsoever.

13. I also know that the defendant, Mrs. Gavin, took in boarders while they lived at Plainfield, New Jersey at my father's farm and that she was very successful in taking in boarders during that period of time.

14. The two daughters of the complainant also resided on the farm and were taken care of and clothed by the defendant, Mrs. Gavin, as well as the complainant.

15. After the death of my father, the complainant and the defendant resided on the farm, rent free, and horse feed free during the settlement of the Estate, and the defendant, Abbie E. Gavin, continued to take in boarders in order that they would have some income.

16. I also know that Mr. Charles H. Paterson, who was a friend of my father's family for a good many years secured the management of the Tuxedo House in Tuxedo Park, New York for my sister, Mrs. Gavin, and that Mrs. Gavin, through the influence of father's friends, obtained the management of the Tuxedo Park House.

17. I know that Mr. Gavin had no money to put in this Hotel project in Tuxedo Park, New York, and also know that he was unable to occupy any competent position or to be employed anywhere because of the physical handicap of deafness.

18. I also know that the complainant and defendant, Abbie E. Gavin took a trip to Cuba, that they went South and remained a whole winter and also that they went to Asbury Park and remained there the entire Summer. That during this period of time, Mrs. Gavin had no employment, while they were travelling or visiting, and Mr. Gavin had no occupation whatever.

19. I have never, during the time the complainant and defendant, Abbie E. Gavin were married, known Mr. Gavin to have any employment or any occupation or position. That he has lived entirely to the best of my knowledge on monies and on the support of his wife, and so has his two daughters.

20. I have visited the complainant and defendant at Nyack, New York, Tuxedo House, New York, the Blossom Trest Hotel, in Elizabeth and the Halstead Street House, East Orange, and I have never in all my visits seen Mr. Gavin perform any duties or do any work. He remained about the Hotel

simply as a guest. I have seen him sit about the Lobby reading his papers and smoking his cigars.

21. I know that Mr. Gavin was addicted to the use of liquor and have seen him indulge in intoxicating liquors.

10 22. Deponent also says that Mrs. Gavin has supported the complainant and his two daughters during the entire period of their married life and has brought them up in comparative luxury and brought them up in such means as the complainant could not have done. The complainant always seemed to have plenty of money, was well clothed, as well as his two daughters, which were through the efforts of the defendant, Abbie E. Gavin.

20 GEORGIE K. HUNTER.

Sworn and subscribed to before me this 4th day of April, A. D. 1928.

A. WM. WANN,
Notary Public of N. J.
(Notary Seal)

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Affidavit of Rita Evans.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

RITA EVANS, of full age, being duly sworn according to law upon her oath deposes and says:

1. I reside at #360 Fifth Avenue, Astoria, Long Island, New York.

2. My maiden name was Rita Vroom, and I was employed by Mrs. Gavin, the defendant in this suit, at the Tuxedo Hotel in Tuxedo, New York State, about the year 1909. Mrs. Gavin inserted an ad, applying for help as house-keeper in the newspaper and I answered it. I went to see Mrs. Gavin at the Tuxedo Hotel, Tuxedo, New York, in person and I was engaged as house-keeper, having charge of the help, and assisting Mrs. Gavin in the management of the hotel.

3. I was employed by Mrs. Gavin for seven years at the Tuxedo Hotel, Tuxedo, New York, and during that period of time, while I was assisting Mrs. Gavin in the management of the hotel all the help were hired by Mrs. Gavin and discharged by Mrs. Gavin. All the monies collected by me for the rental of the rooms was turned over by me to Mrs. Gavin. Mrs. Gavin had full and complete charge of the hotel, disbursing of the money, the buying of accessories and supplies, and at no period of time during the seven years that I was employed there, did Mr. Gavin have any active part in any of the management of the hotel.

4. During the entire seven years I was employed, Mr. Gavin sat around the hotel lobby and use to visit the help and some of the roomers and would

spend a good portion of the night gambling. During all this period of time he was stone deaf and also addicted to drinking, and on more than one occasion I have seen him under the influence of intoxicating liquor.

4. Mrs. Gavin always supplied Mr. Gavin with pocket money and was very generous toward him, because of his affliction. I have read Paragraph 5 of the affidavit of Joseph P. Gavin, and state from actual knowledge that Joseph P. Gavin never acted as clerk of the hotel, kept the books of account, made all purchases of food and other articles, nor did he supervise and pay the help. This work was done by Mrs. Gavin, who was assisted by myself, and there were plenty of employees in the hotel to take care of the general work.

5. Mr. Gavin helped himself to cash, whenever he wanted some, and always seemed to be plentifully supplied with money. Mrs. Gavin was always very generous to him and his two daughters and they were supplied with all the luxuries of life, and the two daughters mentioned in Paragraph 5 of the affidavit of Joseph P. Gavin were very small children, they attended grammar school, and did not in any way, and could not assist in the work about the hotel.

6. Mrs. Gavin was always recognized as the owner of the business and she supervised, controlled and operated the same without any help or assistance from Mr. Gavin.

RITA EVANS.

Sworn and subscribed to before me,
this 30th day of March, A. D. 1928.

RUSSELL FLEMING,
A Master in Chancery of N. J.

Affidavit of Gertrude Dorman.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

GERTRUDE DORMAN, of full age, being duly sworn on her oath according to law deposes and says:

1. I reside at 1102 Washington Street, City of Hoboken, County of Hudson and State of New Jersey. I have been acquainted with the Complainant and Defendant, Abbie E. Gavin, in this cause, since 1914.

2. In 1914 in the month of October I was hired by the defendant, Abbie E. Gavin for general work in the Hotel operated by her known as the Tuxedo House in Tuxedo, New York State.

3. I was recommended to Mrs. Gavin by a friend of mine and I wrote to her asking her if she had any available positions in the Hotel. I also sent her a letter setting forth my qualifications and I received a letter from Mrs. Gavin requesting me to report to the Hotel immediately and she inclosed therein a ticket.

4. I was employed at the Hotel from October 1914 until October 1917. During the period of time that I was employed there I acted as a housekeeper, waitress, chamber maid and did all general work. There was employed at the Hotel besides myself, a Chef, a dishwasher, a laundress, a housekeeper, a man who worked about the place by the name of Knight and at least two waitresses.

5. I was constantly in contact with Mrs. Gavin and the operation of the Hotel during my three year period and all the help was hired and discharged

by Mrs. Gavin, the food was purchased by her, hotel rates were made by her, rent was paid by Mrs. Gavin and all other bills were paid by her.

6. Mr. Gavin lived at the Hotel together with his two daughters who were young girls and they were attending Grammar School while I was employed there. They did no work whatsoever.

7. Mr. Gavin did not have any duties in the Hotel and I never saw him during the three years that I acted as waitress in the Hotel do anything except sit about the lobby and smoke cigars. Mrs. Gavin would send him to the Bank on an errand or he would act as errand boy for something that was needed in emergency.

8. Mrs. Gavin always paid me my wages. Mrs. Gavin always gave me orders for the work of the day and I saw Mrs. Gavin every day that I was employed at the Hotel and she directed the other employees of the Hotel, bought the linens, the food and controlled and managed the same.

9. During the period of time that I was there, Mrs. Gavin was recognized as the owner of the Hotel and all business matters were submitted to her for her approval. No one was discharged or hired by Mr. Gavin, he did not conduct the business in any way as he was totally deaf and could not do any work at all.

10. Mr. Gavin was addicted to the use of intoxicating liquors and I have seen him on more than one occasion come to the hotel in an intoxicated condition. I have often seen Mr. Gavin go to the smoking room which was in the annex of the Hotel and

he would stay for hours at a time playing cards with the help and the boarders. I know for a positive fact that he lost as high as $150.00 and $200.00 an evening, which money Mr. Gavin obtained from the Hotel registry, and he would often help himself to any money he desired from the cash register.

11. During the period of time that I was at the hotel, Mrs. Gavin attempted to have Mr. Gavin cease his drinking and gambling but to no avail. Mr. Gavin continued in this practice.

12. The defendant, Abbie E. Gavin was a very hard worker. While I was at the hotel she worked with the rest of us in the kitchen, dining room or making beds or any other work and I have often assisted Mrs. Gavin in washing windows in the Hotel, while Mr. Gavin played the part of a gentleman and had no duties whatsoever.

13. It was very difficult to get along with Mr. Gavin because he was physically handicapped with deafness.

14. I also know that while I was at the Hotel, Mr. Gavin would disappear for two or three days. No one would know where he went and he would return as unexpectedly as he would go away.

15. I have read that portion of the Affidavit of Joseph P. Gavin regarding the management of the Hotel known as Tuxedo House, Tuxedo Park, New York. There is absolutely no truth in the statement of the Complainant, Joseph P. Gavin, that he acted as Hotel Clerk, kept books of account, made all purchases of food and other articles for the operation of the Hotel. It is also untrue that he supervised

the help, took care of the furniture or performed any duties in connection with the Hotel. It is also untrue that his two daughters acted as waitresses at the Hotel.

16. During the entire period of time I was at the Hotel I never saw Mr. Gavin perform any duties or labors whatsoever except that he would stand about the Hotel Lobby and the Cashier's Desk and sometimes he would sleep most of the day after returning in an intoxicating condition.

17. It was customary for me to act as waitress in the dining room and I used to wait on Mr. Gavin, serve him his breakfast, lunch and dinner and was about the Hotel constantly and am well aware of the conduct of the same.

GERTRUDE DORMAN.

Sworn and subscribed to before me this 5th day of April, 1928.

O. WM. WANN,
Notary Public of N. J.
(Seal)

Affidavit of Ida W. Shoenthal.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.:

IDA W. SHOENTHAL, of full age, being duly sworn on her oath, according to law, deposes and says:

1. I reside at 78 Prospect Street, City of East Orange, County of Essex and State of New Jersey.

2. I am acquainted with the complainant, Joseph P. Gavin, and the defendant, Abbie E. Gavin, in the Chancery suit, now pending and have been acquainted with the complainant and defendant for at least seven or eight years.

3. I resided at the Belvidere Hotel in the City of Newark, County of Essex and State of New Jersey, for a period of four or five months until the defendant, Abbie E. Gavin, sold the same, and as a guest of the hotel and through personal observation I know that Mrs. Gavin operated, supervised and managed the same. All rents and hotel bills were paid to Mrs. Gavin. Mrs. Gavin took care of the help and supervised the same, managed and operated the hotel.

4. Mr. Gavin to my personal knowledge was totally deaf and had no work or duties to perform in the hotel. I never saw him do any work, nor did he have any hand or management of the conduct of the hotel business.

5. I was residing at the Hotel Belvidere, Newark, N. J., when the defendant, Abbie E. Gavin, sold the same and went to reside with her at the Halstead Street House, East Orange, New Jersey, which business was a boarding and rooming house

and was purchased by Mrs. Gavin. Mr. Gavin also went to the Halstead House in East Orange and during the period of time that I was a guest of the Halstead Street House, East Orange, I never saw him perform or do any work whatsoever and the entire management of the house and the conduct of the business was done by the defendant, Abbie E. Gavin.

6. I roomed at the Halstead House, East Orange, until Mrs. Gavin sold the same.

IDA W. SHOENTHAL.

Sworn and subscribed to before me this 4th day of April, A. D. 1928.

A. WM. WANN,
Notary Public of N. J.

Affidavit of Thomas P. Collins.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

THOMAS P. COLLINS, of full age, being duly sworn on his oath according to law, deposes and says:

1. I am a member of the Police Force in the City of East Orange, County of Essex, and State of New Jersey.

2. On or about the latter part of November, A. D. 1927, I was sent by the Desk Lieutenant to the Park Lane Restaurant, located at 23 Harrison Street, City of East Orange, State of New Jersey, in response to a call regarding the disturbance in a restaurant. When I arrived there, I found Joseph P. Gavin, a man of about 60 years of age, under the influence of liquor, and his condition was such that he was creating a disturbance in the restaurant which was detrimental to the patrons and the business of same.

3. Mr. Gavin was stone deaf. I was unable to make him hear and had to write what I wanted to say to him. I heard him use very vile language, and threatened to kill the steward. He was in a badly intoxicated condition, and I endeavored to quiet him in the private dining room of the Park Lane Restaurant.

4. On or about the latter part of December, 1927, I was again called to the Park Lane Restaurant, 23 Harrison Street, East Orange, New Jersey, in response to a call that the complainant, Mr. Gavin, was creating a disturbance. I again found Mr. Gavin under the influence of liquor, and creating a disturbance in the restaurant. He was talking

in a loud and boisterous manner, and was unable to walk steadily, and otherwise creating disturbance. The defendant, Mrs. Gavin, did not desire to make a complaint against him, and I endeavored to straighten the matter out without an arrest. Mr. Gavin at this time threatened to kill the steward of the restaurant, and used violent language, shaking his fists, and otherwise making himself objectionable. It was impossible for me to talk to him, and he was badly intoxicated and deaf. I again quieted him without making an arrest.

THOMAS P. COLLINS.

Sworn and subscribed to before me this 5th day of April, A. D. 1928.

A. WM. WANN,
Notary Public of N. J.

Affidavit of Hugh M. Clopton.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

HUGH M. CLOPTON, of full age, being duly sworn on his oath according to law, deposes and says:

1. I am the President of the H. M. A. Construction Co., the owner of the premises, 23 Harrison Street, East Orange, New Jersey, and in the middle of July, 1927, I entered into a lease for the rental of the premises to Abbie E. Gavin and Joseph P. Gavin, which lease was signed by me as an officer of the company.

2. Prior to the time of the lease of the premises, the negotiations for the same were conducted by Abbie E. Gavin, the defendant in this Chancery suit, and Mr. Joseph Gavin's, the complainant herein, name was added to the lease in the event of the death of Abbie E. Gavin. The lease was for a period of ten years.

3. The rent has been paid by Mrs. Gavin.

4. I have an office on the ground floor of the same building and I know that Abbie E. Gavin personally conducts, manages and operates the said business.

5. All alterations and all negotiations for changes in the restaurant were ordered made by Abbie E. Gavin with me. I have never had any direct dealings with Mr. Gavin, have never consulted him in any way regarding alterations or negotiations of the restaurant.

6. To the best of my knowledge, Mrs. Gavin is the owner of the same and I looked to her each month for the rent.

HUGH M. CLOPTON.

Sworn and subscribed to before me }
this 5th day of April, A. D. 1928. }

A. WM. WANN,
Notary Public of N. J.

Affidavit of John Damb.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

1. JOHN DAMB, of full age, being duly sworn on his oath according to law, deposes and says:

2. On or about July 11, 1927, I was employed by the defendant, Abbie E. Gavin as a Steward in charge of the preparation of menus, waiters, help and the purchase of supplies and entered into a contract with the defendant, Abbie E. Gavin for my employment for the period of one year. I was to receive, under the terms of said contract, the sum of $40.00 per week as salary. I found out when I accepted the position in the restaurant, that the restaurant was being improperly managed, namely that the family of the complainant were trying to run the restaurant and help and the result was that there was constant discord and change of help in the restaurant.

3. The complainant, Mr. Gavin, attempted to act as cashier of the restaurant, but owing to his total deafness was unable to perform his proper duties and I found on checking up the cash register at night that it would be $10.00 and $15.00 short of the day's receipts.

4. The complainant, Joseph E. Gavin, also, since I have known him, was a heavy drinker and when we were having private banquets and dinners at the restaurant at night, he would come in badly intoxicated, throw the glassware around and created a considerable disturbance, and it was necessary to call the Police on at least four occasions and have him ejected from the premises.

5. The daughters of the complainant constantly came to the restaurant to obtain their meals and also brought friends for meals, all of which they refused to pay for. As the overhead of the Park Lane Restaurant is considerable, it was necessary that all this money be accounted for and I was informed by Mrs. Gavin that no more free meals were to be given anyone, and I gave this information to the daughters and the son-in-law of the complainant. They became incensed because I asked them for money for their meals and left the restaurant.

6. I never struck the defendant, Joseph E. Gavin, or gave him a black eye, but complainant, Joseph E. Gavin, was intoxicated almost continually for a period of weeks and would come into the restaurant in the kitchen and start a fight with the chef and it was necessary to have him ejected from the premises by the Police on these occasions.

7. I deny that I ever kissed the defendant, Abbie E. Gavin, or that I ever hugged her or that we ever went into the dining room and pulled down the shades. It was customary for the defendant, Abbie E. Gavin, and myself to arrange the menus every night for the following day, check over the bills for provisions and supplies, make out orders for new supplies of food and such other arrangements in the conduct of the business.

8. I have nothing to do with the financial management of the business, simply checking up on the cash register the amount of the receipts which I turned over to the defendant, Abbie E. Gavin, make up the payroll, which is taken care of by the defendant, Abbie E. Gavin, and I did not have the power to sign any checks, deposit any money or any

other financial matters pertaining to the restaurant. I have never had the money in my possession or had anything to do with the financial end of the business.

9. The defendant, John Damb, further says that on one occasion the complainant, Joseph P. Gavin, attempted to act as substitute cashier on the night that the cashier was unable to come and that he saw the complainant give $9.00 in change for a $1.00 bill and he was present when Mrs. Gavin spoke to the complainant about it. The complainant informed Mrs. Gavin that it was her business and to take care of it herself.

10. During the period of time that I have been employed at the restaurant it has been entirely managed and conducted and supervised by Mrs. Gavin and the only work done by Mr. Gavin is to call and get his meals and he has done no other work about the premises.

JOHN DAMB.

Sworn and subscribed to before me this 5th day of April, A. D. 1928.

A. WM. WANN,
Notary Public of N. J.

REPLY AFFIDAVITS OF COMPLAINANT.

Affidavit of Charles S. Patterson.

(Filed April 10, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, &c. Reply

STATE OF NEW YORK, }
COUNTY OF ORANGE, } ss.:

CHARLES S. PATTERSON, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am Superintendent of the Tuxedo Park Association, Tuxedo Park, New York, and have acted in that capacity for at least thirty-five years last past.

2. In that capacity I have known the complainant, Joseph P. Gavin, and the defendant Abbie E. Gavin, during the entire period of their stay in Tuxedo Park.

3. My attention has been called to the statements contained in paragraph 18 of the affidavit of the defendant Abbie E. Gavin to the effect that Mr. Gavin did nothing more than run errands at

Tuxedo and probably lock the doors at night and open them in the morning. Those statements are untrue to my personal knowledge. My duties as Superintendent of the Tuxedo Park Association, which owns 7000 acres of land known as Tuxedo Park, New York, including the land on which the hotels operated formerly by Mr. and Mrs. Gavin are located, required me to call at the hotels occasionally, sometimes once a month, sometimes not so often, and sometimes oftener, during the entire period that Mr. and Mrs. Gavin were here. My visits at the hotels usually involved matters of repairs to the hotels, putting in some particular boarder employed by the Association or some contractor working for the Association, but did not involve going into the kitchen or rooms of the hotel except the office, or occasionally the restaurant. I have seen the complainat, Joseph P. Gavin, meet guests who entered the hotel for the purpose of showing them to their rooms, meet guests of the restaurant for the purpose of showing them to their table, attend to the furnace, cut the lawn, and paint rooms in the hotels. Questions of repairs for the hotel, such as repairs to the roof, and the like, were taken up with me sometimes by the complainant, Joseph P. Gavin, and sometimes by the defendant, Abbie E. Gavin. I also remember seeing the complainant, Joseph P. Gavin, come to the office of the Tuxedo Park Association for the purpose of paying the rent, which he would pay sometimes and sometimes his wife would pay it; the same as to the payment for coal and ice,—sometimes he would pay and sometimes she would. In fact, from the time of their arrival to the time of their leaving Tuxedo Park I supposed and was led to believe by the actions of both Mr. and Mrs. Gavin that they were

operating the hotels of the Association as co-owners. They appeared to get along well all the time they were here; and I distinctly remember how well she could make him understand her, though he was deaf, and how well they seemed to work together for that reason.

4. My attention has also been called to the statement in paragraph 20 of Mrs. Gavin's affidavit that Mr. Gavin was a heavy drinker and gambler, and also to the statements in the affidavit of Rita Evans that the complainant was often drunk and was a heavy gambler. Though I have known the complainant all the time that he was in Tuxedo Park I have never seen or known him to be drunk or gamble.

C. S. PATTERSON.

Subscribed and sworn to before me this 7th day of April, 1928, at Tuxedo Park, N. Y.

SAMUEL STEINBERG,
A Solicitor in Chancery of New Jersey.

Affidavit of Edith L. Kent.

STATE OF NEW YORK, }
COUNTY OF ORANGE, } ss.:

EDITH L. KENT, of full age, being duly sworn upon upon her oath, deposes and says:

1. I have been Postmaster of Tuxedo Park, Orange County, New York for the past ten years, and for five years previous to that time I was a clerk in said post office.

2. I have known the complainant, Joseph P. Gavin, his daughters Marie and Laura and the defendant Abbie E. Gavin for the past fifteen years, ever since I came to Tuxedo Park in September, 1913. My friendship with the family arose out of my daughter Ruth's friendship with the two Gavin girls, who, because Mrs. Gavin was their stepmother, used to come to me with their girlish troubles and I considered them and treated them as if they were my own daughters.

3. My attention has been called to the statement contained in paragraph 18 of the affidavit of the defendant Abbie E. Gavin to the effect that Mr. Gavin did nothing more than run errands at Tuxedo and lock the doors at night and open them in the morning. This statement I know of my own knowledge to be untrue. Although I did not have occasion to go to the hotel more than ocassionally, I saw Mr. Gavin in charge of the office and saw him meet guests at the door for the purpose of conducting them to their rooms. I did, however, see him perform numerous duties outside the hotel, which I passed daily for five years, passing there four times a day, and later when I moved I used to pass there four or five times a week on the way to the store. I saw Mr. Gavin cut grass, sweep and clean the hotel porch, clean out the hedge, paint the hotel

sign, clean out the hotel yard, and plant, dig, and rake in the garden, and sprinkle the lawn. I also saw him filling in a big depression near the hotel and convert it into a garden by his own labor. Mr. Gavin seemed to take pride in the hotel and in seeing it kept up and having the place look as clean and trim as possible. I used to meet him in the store of the Tuxedo Stores Company three or four or five times a week, while he was buying beef, provisions, and other supplies for the hotel. In connection with my duties as Postmaster I came in contact with Mr. Gavin four or five times a day because he used to come in to get the mail for the hotel, and there was quite a good deal of it, including the mail for the guests, for the help, for the Gavin girls and for Mr. and Mrs. Gavin. There are 10 mail trains a day, and he used to come into the post office and meet about half of them. He also used to come in to buy stamps for the hotel. On account of his numerous visits to the post office, and also on account of the occasional visits of Mrs. Gavin to the post office I became acquainted with the handwritings of Mr. and Mrs. Gavin. I recall numerous business letters constantly sent out by Mr. Gavin in his own handwriting, many of them to employment agencies. I also recall his going to Paterson by train and hearing it said that he was going to Paterson to the bank, as we had no bank in Tuxedo Park at the time that the Gavins were here.

4. My attention has also been called to the statements in the affidavit of the defendant Abbie E. Gavin that the daughter of Mr. Gavin, Marie and Laura, did no work around the hotel. I have on numerous occasions seen them carrying linen from the large hotel to the hotel known as the "Annex".

I have also seen them make beds, sweep rooms and act as waitresses in the hotel over a period of many years.

5. Although I have known the complainant Joseph P. Gavin for fifteen years I never knew until today that he was completely deaf. I knew that he was hard of hearing but he could always seem to understand me and I did not know until today that he did this entirely by lip reading. Despite his handicap he performed his numerous duties about the hotel with great skill.

6. In my capacity as Postmaster of Tuxedo Park, which is a small town of about 3,000 population, I am acquainted with pretty nearly everyone in the town on account of my fifteen year residence in Tuxedo Park. During all this time I have never heard any one say anything bad about Mr. Gavin. If he had been dishonest I would certainly have heard about it. On the contrary I always found him, and everyone believed him to be, a man of the highest integrity and a man who always told the truth on all occasions. Everyone in Tuxedo Park liked him while he was here and continues to like him; and he was everyone's friend while he was here. Despite the statements of the defendant Abbie E. Gavin to the contrary I have always found him to be a man of the utmost sobriety. I have never seen him drunk or known him to be drunk; nor have I ever seen or known of him to gamble.

EDITH L. KENT.

Subscribed and sworn to before me this 7th day of April, 1928, at Tuxedo Park, N. Y.

SAMUEL STEINBERG,
A Solicitor in Chancery of New Jersey.

Affidavit of Mrs. Ruth Kent Welch.

STATE OF NEW YORK, }
COUNTY OF ORANGE, } SS.:

MRS. RUTH KENT WELCH, of full age, being duly sworn according to law, upon her oath, deposes and says:

1. I reside with my husband and mother in Tuxedo Park, New York. I have been employed as a teacher for the past five years, my school where I am now teaching being the South Main Street School, Spring Valley, Rockland County, New York.

2. I have known the complainant, Joseph P. Gavin, as well as his daughters Marie and Laura, and the defendant, ever since my mother and I came to Tuxedo Park, which was in September, 1913. I have known the entire family very intimately and was accustomed to go to the hotel where the Gavins lived practically every day. The Gavin twins and I went to school together in Tuxedo Park and I used to go over with them to the hotel practically every day to play with them and to visit with the family. I often took my meals there. I was like one of the family. In fact I was over there so often that Mrs. Gavin occasionally told me to go home and not bother the girls (meaning Laura and Marie Gavin) while they were doing their work about the hotel.

3. My attention has been called to the statements contained in paragraph 18 of the affidavit of Abbie E. Gavin to the effect that Mr. Gavin did nothing more than run errands at Tuxedo and lock the doors at night and open them in the morning. This state-

ment I know of my own personal knowledge to be untrue. I have seen Mr. Gavin scrub halls in the hotel, wash dishes, prepare vegetables for cooking (I often saw him with an apron on in the kitchen), cut grass, bring groceries and provisions, and I especially remember that he converted some very rough, wooded ground adjoining the hotel into a beautiful garden, this work taking Mr. Gavin at least two months steady work. I also remember how Mr. Gavin used to make beds, clean and sweep rooms in the hotel bed rooms. I also remember seeing Mr. Gavin very often wash windows and make general repairs around the hotel.

4. My attention has also been called to the statement in paragraph 21 of the affidavit of the defendant Abbie E. Gavin that the daughters of the complainant, Marie and Laura, never did any work whatsoever about the hotel. This statement is likewise untrue, to my own personal knowledge. During the early part of my acquaintanceship with the Gavin family, the girls were attending grammar school but I have seen them almost daily make beds, clean rooms and act as waitresses in the hotel restaurant; and I remember that they were taken out of school in the eighth grade and put to work in the hotel all day at the same work that they had previously done Saturdays, Sunday and after school week-days. I remember Mrs. Gavin saying on one occasion that Laura Gavin was capable of running the hotel herself.

5. I have never known Mr. Gavin to gamble or drink liquor, though I have had numerous opportunities to observe him over a period of years from 1913 until I entered Normal School in 1921.

6. It is also untrue that Mr. Gavin used to absent himself from the hotel for days at a time without explanation.

7. Mr. Gavin is very highly regarded in Tuxedo Park as a man of the highest integrity.

(Mrs.) Ruth Kent Welch.

Subscribed and sworn to before me this 7th day of April, 1928, at Tuxedo Park, N. Y.

Samuel Steinberg,
A Solicitor in Chancery of New Jersey.

Affidavit of H. Seeley Welch.

STATE OF NEW YORK, }
COUNTY OF ORANGE, } ss.:

H. SEELEY WELCH, of full age, being duly sworn upon his oath, deposes and says:

1. I am District Supervisor of the Ward Baking Company for eleven routes with its principal office in Tuxedo Park, N. Y., and formerly was Manager of the Tuxedo Park Stores Company, for several years while Joseph P. Gavin, complainant, together with the defendant, Abbie E. Gavin, were operating the hotels of the Tuxedo Park Association.

2. In my capacity as Manager of the Stores Company at Tuxedo Park I came into daily contact with Mr. Joseph P. Gavin. I sold him sides of beef, fowl, and all other items in the meat line, as well as vegetables of every variety needed for the operation of the Association Hotels in Tuxedo Park. Mr. Gavin always paid me in cash. Sometimes Mrs. Gavin would buy of me just as Mr. Gavin would. It always seemed to me that they were operating the hotels jointly—Mr. Garvin always carried a large roll of bills out of which he paid me; Mrs. Gavin also paid me in cash.

3. My attention has been called to the statements contained in paragraph 18 of the affidavit of the defendant Abbie E. Gavin to the effect that Mr. Gavin did nothing more than run errands at Tuxedo and probably lock the doors at night and open them in the morning. This statement I know of my own personal knowledge is untrue. I personally saw Mr. Gavin do numerous duties about the hotels, where I often visited and ate. I often saw

Affidavit of H. Seeley Welch.

Mr. Gavin fixing around the hotels, doing general housework, and acting as co-owner in every way with his wife the defendant, Abbie E. Gavin.

4. My attention has also been called to the statements in the affidavits of the defendant Abbie E. Gavin to the effect that the defendant knows him to be a heavy drinker and gambler. Though I have known him for a number of years, both during and after his stay at Tuxedo Park, I have never known him to be drunk or to gamble, except in a friendly game for small stakes.

H. SEELEY WELCH.

Subscribed and sworn to before me this 7th day of April, 1928, at Tuxedo Park, N. Y.

SAMUEL STEINBERG,
A Solicitor in Chancery of New Jersey.

Affidavit of Mrs. Hannah Fitzpatrick Millspaugh.

STATE OF NEW YORK, }
COUNTY OF ROCKLAND, } SS.:

MRS. HANNAH FITZPATRICK MILLSPAUGH, of full age, being duly sworn according to law, upon her oath, deposes and says:

1. I reside with my husband, Thomas Millspaugh, on Highmount Avenue, Upper Nyack, New York. I have been employed by the Erie Railroad as comptometer operator for the past nine years, my place of employment being the office of said railroad at 71 West 23d Street, New York City.

2. I have known the complainant, Joseph P. Gavin, the defendant Abbie E. Gavin, and the daughters of the complainant, Marie Gavin and Laura Gavin Hanners, for a period of over ten years. I have known the entire family intimately, and was accustomed to visit the Gavin girls at the hotel in Tuxedo which was being operated by Mr. and Mrs. Gavin, with the assistance of Marie and Laura Gavin, nearly every evening and Saturday afternoon and Sunday.

3. My attention has been called to the statements contained in paragraph 18 of the affidavit of the defendant Abbie E. Gavin to the effect that Mr. Gavin did nothing more than run errands at Tuxedo and lock the doors at night and open them in the morning. This statement I know of my own personal knowledge to be absolutely false. I personally saw Mr. Gavin do numerous duties about the hotel in Tuxedo which he and Mrs. Gavin were operating. I have seen Mr. Gavin make beds, clean hotel rooms, cut the grass and hedges around the

hotel, take care of the desk at the hotel, show guests to tables in the restaurant of the hotel, and, occasionally I saw him bring provisions and groceries for the hotel. In fact, over the period of four years that I used to visit the Gavins constantly at their hotel in Tuxedo, the complainant, Joseph P. Gavin,

4. My attention has also been called to the statement in paragraph 21 of the affidavit of the defendant Abbie E. Gavin that the daughters of the complainant, Marie and Laura, never did any work whatsoever about the hotel. This statement is likewise false, to my own personal knowledge. During the early part of my acquaintanceship with the Gavin family, the girls were attending grammar school but I have constantly seen them work very hard after school and on Saturdays and Sundays, making beds, cleaning rooms, and acting as waitresses in the hotel restaurant. Often I have seen them kept out of school all day when the hotel was particularly busy. Later they were, to my personal knowledge, taken out of school altogether and put to work all day at the duties specified, that is, making beds, cleaning rooms, and acting as waitresses in the hotel restaurant. I often used to go with them while they were attending to this work, because they were my particular friends, and I used to be with them whenever I had an opportunity, Saturdays, Sundays and weekday evenings.

5. It is hard for me to believe that Mrs. Gavin should make statements which have been called to my attention in her affidavit to the effect that Mr. Gavin's daughters did no work about the hotel and that Mr. Gavin did practically no work about the hotel because I saw her around very often when Mr. Gavin and the girls were working about the hotel.

In fact I remember that Mrs. Gavin used to go away occasionally and leave Mr. Gavin and the girls in entire charge of the hotel.

6. It is likewise untrue, as stated by Mrs. Gavin in her affidavit, that she supported Mr. Gavin. They operated the hotel jointly, each doing their particular share.

7. My attention has also been called to the statement in paragraph 20 of Mrs. Gavin's affidavit that Mr. Gavin was a heavy drinker and gambler. Although I have had numerous opportunities to see the complainant, Joseph P. Gavin, over a period of four years at Tuxedo, and later on visits to the Belvidere Hotel at Newark, the Blossom Treat Hotel at Elizabeth, and the Hillside House in Montclair, as well as at the Park Lane Restaurant in East Orange. I have never seen him drink liquor or gamble. He has not only acted like a gentleman on all occasions but he is known as a man of the utmost integrity and truth.

8. The statement that he used to absent himself from the hotel at Tuxedo for days at a time is also without an atom of truth in it, from my own personal knowledge.

(Mrs.) Hannah Fitzpatrick Millspaugh.

Subscribed and sworn to before me this 7th day of April, 1928, at Upper Nyack, N. Y.

Samuel Steinberg,
A Solicitor in Chancery of N. J.

Affidavit of Mrs. Elizabeth Rajotte.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } SS.:

MRS. ELIZABETH RAJOTTE of full age, being duly sworn according to law upon her oath deposes and says:

1. I am the sister of Joseph P. Gavin, the complainant in this suit.

2. I have read the Bill of Complaint and accompanying affidavit of my brother in this matter as well as the reply affidavit of my brother and know that all references to me therein are true and as to the other parts I believe them to be true.

3. Regarding the trouble with the steward my brother and his wife, I am giving below an incident in which I was personally concerned.

4. I have also read the affidavit of my sister-in-law, Abbie E. Gavin and know that a large part of the statements therein contained are false, especially those regarding her alleged operation of the business, in which she and my brother were concerned, which I know they carried on together and also with respect to the allegation that my brother is and always has been a heavy drinker or gambler. These statements are to me known to be false.

5. The incident referred to is as follows. Mrs. Gavin called at my home in Plainfield on Tuesday, November 8, 1927 before noon, and I was surprised her husband was not with her; I asked her why he didn't come and she said, Oh, I came away yesterday and I was supposed to stay with you last night, but I stopped with a friend. My steward told me I am a fool to stay home and he said I should go away any time I wanted to and it is none of my husband's business where I go or what I do. And then I said,

"Why Abbie you never talked like that before about Joe. You have never been bothered by him, have you?" And she said, "Oh, no. Joe has always been very good to me and allowed me to buy anything I wanted and go anywhere I wanted to, but my steward says I should look out for myself and that my husband should go and live with his daughters." And I said, "I am surprised you would allow a man working for you and your husband to dictate to you in your family affairs," and besides Joe had always been so fond of her and taken great interest in the business, and she said, "Yes, he had always been fine in helping with her with the business, and she said he had put two thousand dollars that he had received from his brother in Real Estate deal in the business and she said, "Of course, I will give that back to him any time he wants it and I feel that when a woman gets to my age, and has a business and plenty of money, she should go and live by herself and go and have a good time and do as she pleases and not be bothered with her husband to tell what she should and should not do, and that every woman should have another man besides her husband, and that every woman now is getting a divorce and she said her husband objected to the steward walking home with her nights, and that the steward had given her a beautiful pair of stockings. She had a hysterical spell about two weeks before she came to see me and when she came I asked her what was the cause and she said, "It was the 'change' working on her."

(Mrs.) M. Elizabeth Rajotte.

Subscribed and sworn to before me this 10th day of April, 1928.

Samuel Steinberg,
A Solicitor in Chancery of N. J.

Affidavit of Willy Drohne.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

WILLY DROHNE, of full age, being duly sworn upon his oath deposes and says:

1. I am employed as a cook in the Elks' Club, Newark, N. J. and was employed at the Park Lane Restaurant, operated by Mr. and Mrs. Gavin, as chef from October 16, 1927 to February 27, 1928.

2. I reside at 589 Valley Road, West Orange, N. J.

3. On January 10, 1928, in the morning, as I was working in the kitchen of the Park Lane Restaurant, I saw the steward enter the kitchen and pick up a chair which he held over the head of Mr. Gavin, who was also in the kitchen working, in order to hit him. I heard the steward call Mr. Gavin a dog and a drunken bum and order him out of the kitchen. Mr. Gavin had done nothing I could see to provoke him to hit Mr. Gavin. Mrs. Gavin pulled the steward off and in so doing tore his suit. She also struck Mr. Gavin, shook him hard, and pushed him towards the door. Later the steward told me that he had hit Mr. Gavin in the face. In attempting to hold the steward, Mrs. Gavin and the steward pushed over a table on which there was glassware. The steward called up the police. That even there was to be a trial in the police court but it was postponed for two weeks. On the afternoon of January 10 the steward, John Damb, a defendent in the chancery suit between Mr. and Mrs. Gavin, had told me that I should tell the Court that Mr. Gavin had hit him and had thrown a glass at him. I refused to do so and the steward said, "You know the courts in

America are different than in Germany. In Germany (from which I came about two years ago) the courts are strict. But in America the judges are only farmers—you can say anything to them." When I still refused the steward and I quarreled about this. The steward told me that if the trial had to be held, Mrs. Gavin had promised him to be a witness for him against Mr. Gavin. The steward also told me after the trial at the adjourned date, when Mr. Gavin was let go, that Mrs. Gavin had paid $50. to the lawyer to represent him (the steward).

4. My attention has been called to the statement of the defendant, John Damb, in his affidavit to the effect that Mr. Gavin was intoxicated almost continually for a period of weeks and would come into the kitchen and start fight with the Chef and it was necessary to have him ejected from the premises by the Police on these occasions. This is untrue. Mr. Gavin always treated me very courteously and we never had any words together. The steward was constantly fighting with Mr. Gavin in order to get him out of the restaurant. The steward gave me orders to give Mr. Gavin nothing to eat but stale rolls and coffee, and no napkin. I never saw Mr. Gavin drunk at any time.

5. The statement of the defendant Damb that he never kissed Mrs. Gavin has been called to my attention. I saw Mrs. Gavin kiss the steward on at least ten different occasions. I have seen her put her arms around him and I have even seen her put her hand inside his vest. But I have never seen the steward kiss her. The steward told me that Mrs. Gavin had promised him a half-interest in the business if he stayed with her for a year. The steward

constantly talked to me about "our money", meaning the money of Mrs. Gavin and himself. The steward told me that he could never marry Mrs. Gavin. The steward told me that he had advised Mrs. Gavin to withdraw all the money from the joint account and put it in a different bank in her own name.

6. My attention has been called to the statement of the defendant Damb that he never had the money of the Restaurant in his possession or had anything to do with the financial end of the business. I have seen the steward take the money of the Restaurant home in a leather bag and he has even showed me the bag so used by him for that purpose.

7. My attention has also been called to the statement of the defendant Damb that he and Mrs. Gavin used to arrange the menus and check over bills and make out orders for supplies. I know of my own personal knowledge that Mrs. Gavin seldom if ever did this as the steward used to make out the menus with me and find out what I needed, as Mrs. Gavin knew very little about this.

8. I have very frequently heard Mrs. Gavin call the defendant Damb "Honey". In fact that was the way in which she was accustomed to address him. I often saw them holding hands together.

9. My attention has also been called to the statement of the defendant Damb that Mr. Gavin did no other work except call for his meals. This is untrue. It is true that I heard Mrs. Gavin say: "I love a man who works like the steward." But in fact the steward did practically nothing except help make out the menu cards and orders for supplies

and talk to the waiters and other help. Sometimes he showed customers to a seat, but often he did not even do that. I have seen Mr. Gavin do considerable work around the Restaurant: I have seen him paint the kitchen and see that the lavatories were furnished with proper supplies, clean out the cellar, pick up papers in the yard, and in every way assist with the operation of the Restaurant. He used to look for work to do and tried to busy himself with everything that he could do about the Restaurant.

10. On February 9th at about seven or eight o'clock in the evening there was a party from the East Orange Police Station—men stationed there. About nine or ten o'clock, after the party, the defendant Damb told me to come up from the cellar and come out to the street to see old "chew-tobacco" (that was what he used to call Mr. Gavin). Mr. Gavin was standing on the opposite side of the street. The steward was afraid. That is why he called me. The steward in my presence called Mr. Gavin "crook, drunken bum" and the steward spat at Mr. Gavin and wiped his nose at him. The steward told me to swear at the police station that he had heard Mr. Gavin say he would kill the steward but I refused because I never heard any such thing. The steward and I quarrelled about this and on February 27th I was discharged.

WILLY DROHNE.

Sworn and subscribed to before me }
this 9th day of April, 1928. }

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of George C. Mackey.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

GEORGE C. MACKEY, of full age, being duly sworn upon his oath, deposes and says:

1. I am a retired pharmacist living at 1925 East Jersey Street, Elizabeth, N. J. I formerly operated a drug store at 98 Broad Street, Elizabeth, N. J. for twenty-five years.

2. I knew Joseph P. Gavin, the complainant in this suit, during parts of 1925 and 1926, covering about a year in all, while I lived at the Blossom Treat Hotel in Elizabeth.

3. My attention has been called to Paragraph 35 of the affidavit of the defendant, Abbie E. Gavin, to the effect that Mr. Gavin did not do any other work than sit around the hotel and run errands. This statement is untrue. I have seen Mr. Gavin painting rooms in the hotel, looking after guests in the hotel, and the like; and I particularly remember seeing Mr. Gavin taking care of an extensive flower and vegetable garden adjoining the hotel, spending considerable time there daily during the agricultural season. I have also seen him sweep the porch and wash the same with the hose; and I also believe that he took care of the furnace, cut the grass and did other work about the hotel, as there was a man there for a time who took care of the furnace, etc., and he left, on account of poor business, I supposed.

4. I always found Mr. Gavin to be a man of the highest integrity and truth; and I knew his reputation to be such. My attention has been called to the statement of the defendant Abbie E. Gavin that the

complainant is a heavy drinker and gambler. I have seen the complainant take a glass of beer but I have never seen him intoxicated nor would I consider him at all a heavy drinker. I have seen him engage in a friendly game of cards in the evening, but I would certainly not consider him a gambler. What cards he did play seemed to be only by way of pastime.

5. I understand that Mrs. Gavin has put out her husband and his two daughters. It is hard for me to understand this as she always seemed to treat her husband with respect and she seemed to be extremely fond of the two Gavin girls.

GEO. C. MACKEY.

Subscribed and sworn to before me this 9th day of April, 1928.

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Joseph A. Brophy.

STATE OF NEW JERSEY,
COUNTY OF UNION, } ss.:

JOSEPH A. BROPHY, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the President of the J. P. Brophy Coal Co., 223 Jefferson Avenue, Elizabeth, N. J. and have acted as such for the past two years, having been in the coal business for the past fifteen years at said address.

2. I became acquainted with Mr. Gavin when he first came to the Blossom Treat Hotel in Elizabeth and knew him intimately during his entire stay in Elizabeth.

3. My attention has been called to Paragraph 35 of the affidavit of the defendant, Abbie E. Gavin to the effect that Mr. Gavin did no other work than sit around the hotel and run errands. This statement in untrue. I had to pass the Blossom Treat Hotel, which is situated only two and a half blocks from my place of business, almost daily. I have seen Mr. Gavin doing numerous tasks about the hotel. He always seemed to be in charge of any repairs to the hotel, e.g., repair of the roof, and the like, when I saw Mr. Gavin present giving orders to the men. I also recall some extensive digging outside the hotel when they were apparently looking for some leak in the pipes or the like, the work lasting about two weeks, and I remember seeing Mr. Gavin supervising the work. I also remember seeing him often taking care of the grass and greenhouse and he always seemed to take pride in keeping the place looking well. I stopped at the hotel for about two days and remember Mr. Gavin escort-

ing guests to tables in the dining room and seeing that they were properly taken care of. I also recall seeing him often along Broad Street, Elizabeth buying provisions and groceries for the hotel.

4. In my business connection with Mr. Gavin I filled his orders for coal. So far as his physical handicap is concerned I never knew when I had dealings with him the first time that he was deaf. He was able to order, ask the price and understand fully the transactions he had with me. He always seemed to have the interest of the hotel at heart in his dealings with me. He was very exacting as to price and quality and always saw to it that the coal was delivered at a definite time and he was there to supervise the delivery of the same. I recall his paying bills for coal by check signed by himself, Joseph P. Gavin.

5. My attention has also been called to the statements in the affidavits of the defendant Abbie E. Gavin that Mr. Gavin was a heavy drinker and gambler. I have never seen Mr. Gavin drunk nor even smelled liquor on his breath; nor have I ever known him to be a drinking man. I have also never seen him to gamble nor known him to gamble. His reputation as a man was of the very highest. His credit was excellent and he was always known as a man who told the truth on all occasions and he demanded the respect of all who knew him.

(signed) JOSEPH A. BROPHY.

Subscribed and sworn to before me this 9th day of April, 1928. } ss.:

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Mary A. Brophy.

STATE OF NEW JERSEY,
COUNTY OF UNION, } ss.:

MARY A. BROPHY, of full age, being duly sworn upon his oath deposes and says:

1. I have been Secretary of the J. P. Brophy Coal Co., 223 Jefferson Avenue, Elizabeth, N. J. for the past two years and have been connected with the coal business carried on at that address for the past twenty years.

2. I knew Mr. Gavin, the complainant in this suit, all the time that he and his wife were operating the Blossom Treat Hotel in Elizabeth, our place of business being only about two and a half blocks from the Blossom Treat Hotel.

3. My attention has been called to Paragraph 35 of the affidavit of the defendant, Abbie E. Gavin to the effect that Mr. Gavin did no other work than sit around the hotel and run errands. This statement is untrue. I had occasion to pass the Blossom Treat twice daily all the time that the Gavins were operating it. Though I was not inside the hotel more than once I have seen Mr. Gavin attend to numerous duties outside the hotel. I have seen him clean the sidewalk, clean the porch, shovel snow, cut the grass, sprinkle the lawn, and I particularly remember his supervising some digging outside the hotel which lasted for about two weeks. In connection with the coal business he always struck me as particularly keen in understanding the business, despite his handicap of deafness. In fact I never knew he was deaf even after he had dealings with our firm until Mrs. Gavin told us that he was deaf.

He always seemed to take pride in the upkeep of the hotel, and in seeing it run at a profit. He was very exacting about the price and quality of coal he bought from us, buying from our firm during the two year period that he was in Elizabeth, and I always found him very prompt in payment. He had the highest reputation among those who knew him, for integrity and truth; and I have never seen him or known him to be a drinker or gambler as stated by Mrs. Gavin in her affidavit.

MARY A. BROPHY.

Subscribed and sworn to before me this 9th day of April, 1928.

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Mrs. Laura Gavin Hanners.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.:

MRS. LAURA GAVIN HANNERS, of full age, being duly sworn according to law, upon her oath, deposes and says:

1. I have read the affidavit of my step-mother, the defendant Abbie E. Gavin and make the following statements in reply to the same.

2. I am the daughter of the complainant, Joseph P. Gavin.

3. I can remember moving to Tuxedo, N. Y. when we were about nine years old. When I was about twelve we started to help waiting on table and making beds on Saturday and Sundays and after school at night. When we were seventeen and in the eighth grade mother took me out of school. I waited on table, made beds, ironed, scrubbed and kept generally busy around the house every day, also had to carry linen, towels, etc. to the other rooming house across the street.

4. I can remember all this time my father being busy sweeping, showing guests to their rooms, making beds, washing dishes, ironing, scrubbing the large front porch, tending to the lawn, making beautiful flower beds, caring the hedges and lawns, and filling in a large excavation in the rear of house No. 2, making several benches in the rear of the house for guests to sit on, all intended as a park, which was admired by many people passing. He also painted bed rooms from time to time and took care of the furnace, also took care of a great number of stoves in house #1 in the guests' rooms and making fires in the bed rooms.

I never saw my father intoxicated in my life and never saw him gamble, although I have seen him play an occasional friendly game of cards of an evening. He was away from home very seldom when he would go down to Plainfield to visit relatives. I often heard mother tell him to go away, to go out to Plainfield and any time he went she knew where he was.

5. I can remember a man named Allen coming to board at our house and made a lot of trouble and unhappiness between mother and father which continued for a number of years at different times. I can remember one night in particular that father was waiting in the hall at night for a long time and mother came out of Allen's room. I also remember that Allen and father got into a quarrel that night and that Allen tried to strike father with a chair. I remember many letters coming from him to her. I also remember seeing one letter in particular from him in which he said he told her how much he cared for her. Also he called her dear and said if she was his wife how happy they would be. Allen was married all this time.

6. We left Tuxedo in 1920 in the winter and spent several months with our aunt Mrs. Rajotte in Plainfield, N. J., and father and mother stayed there also.

7. In the early spring we went to live at the Belvidere in Newark, N. J., where we waited on table, made beds, ran errands. Father was always kept busy doing the same sort of work he had done before at the Tuxedo House. We moved to the Halstead House in East Orange; from there to Hillside House in Montclair. I also made beds, waited on table there too. At this time Mother decided

she wanted a car to enable her to get out in the afternoon and evening for a ride as she had a fellow by the name of Nelson who did general work around the house and had him learn to drive the car so he could take her out. She finally bought an automobile and mamma suggested that they put the car in my name because she thought somebody might meet with an accident and sue her if the car was in my name they couldn't sue her. During the time we had the car we were never allowed to drive it and never took it out unless mother wanted to ride; when we did go out some one else drove.

8. Father and mother sold the Hillside House and went to a small furnished room in Asbury Park for the summer. During the time mother was in Asbury we continued living at the Hillside House and paid our board ourselves every week as we each held a position.

9. About the year 1923 mother suggested that we buy fur coats and said if we bought a coat she and dad would pay half the cost as a Christmas present. I bought a fur coat for $150 for which mother and father agreed to pay half. Since that time I have had two fur coats which I purchased entirely out of my own earnings.

10. In the fall of 1924 they purchased the Blossom Treat Hotel and we went to Elizabeth to live. While we were in Elizabeth dad did much the same as he did in other places and was always busy around the place.

11. In the fall of 1926 mother suggested to dad that they would take a trip to Florida which they did in November 1926 until the following January and not for a year as mother claims.

12. Upon their return from Florida they came to live with me at my home. They paid no board but bought most of the food. In the following May they moved to East Orange and mother insisted that we move to East Orange to live near them. It was agreed then that they would pay $50 for a room for themselves and a room for my sister would be paid by them and were to bring the furniture which they had and store it in our house to save storage charges. We were to pay the balance of the rent, as well as gas, electricity, water and coal and pay for a servant to keep the large house going. In return for paying much the larger portion of the expenses of the house we were to eat at the restaurant. Our home went along happily on Webster Place, mother saying that the walk from Emerson Street, where we were living, was too much for her and she was afraid papa would be held up bring home the money. We sublet the house and moved to the apartment on Webster Place. We all lived happily at this place until she hired the present steward. I used to go over to the restaurant nearly every evening and finally I began to notice that the steward and mother began to get familiar. She would make all kinds of overtures about her deaf husband and about getting rid of her husband getting a man to take her around, she also said she would like to have a man just like her steward who would wait on her. This steward as he became more familiar began to insult my father in front of our friends, and the help, and finally he began to insult him in front of me. I brought the instances to mother's attention and she got angry with me and told me she thought the steward was fine man and no matter what he did he was going to stay there. Finally one day when the steward and mother were hold-

ing hands and laughing at father I told the steward I thought he was stepping out of his authority in insulting my father and if my mother wouldn't interfere with it I would. I was disgraced time after time in front of our guests as mother and the steward would carry on unclean conversations and insult my father. After I told the steward to mind his business and cease to upset our family, mother told me the steward told her to get rid of her daughter or he would leave, and she said as she thought the steward was more valuable to her than I was I couldn't come in the restaurant and also added that if your father didn't come in and eat and leave the place and refrain from doing any of the business she would have to put him out. She continually talked about being alone and threatened to move where she could be alone and not be bothered with a family and a deaf husband. Every night she would come home and get in her room with father and tell him how much she cared for the steward and sometimes stayed up until two or three o'clock fighting with dad. One night mother kept that up until one a.m. walking the streets waiting to see if a women came out of the steward's house. Mother suspected that a certain woman was staying with the steward. Mother used to get up in the morning and sit by the window to see "her steward", as she called him, come out. Every night when she came home she would go into our kitchen where she could see if the steward's light was lit in his room. Finally she told my father not to come over to the restaurant at all and finally forbade him to walk home with her at night. The steward, she said, wanted to do this. After the steward hit my father on the street when he came over for her he was afraid to come over any more. Then they would walk home

with the steward and stand under a light across the street so her husband could see her. We were again humiliated when we were told by a friend in the apartment that they had seen mother sitting in the dark hall of the apartment with some man late at night. When she came in at night she very seldom even said hello and never spoke to dad for weeks. Dad met with an auto accident and mother never even bothered to come over to see how he was. She told my husband the next day that it was too bad he wasn't killed. Mother came home one night and told us she had decided to have nothing further to do with dad and on the first of March she was going to move as she had already found a place and that we would have to look out for dad. She made preparations to move and asked dad what he intended to do. She told him he better find out as she was through with him. We moved about three days before the first of March as mother refused to have dad with her after we left and as she would not give him any money to live on or buy food he was obliged to go to his sister's house, and he spent some time with us. Mother always contended that dad was drunk over at the restaurant but he never was in this condition either in the restaurant or at home.

13. I do not hesitate to swear that up to the time the steward was hired and began to poison mother's mind that my mother and father never had any very serious trouble.

(Mrs.) Laura Gavin Hanners.

Subscribed and sworn to before me
this 10th day of April, 1928.

Samuel Steinberg,
A Solicitor in Chancery of N. J.

Affidavit of Marie Elizabeth Gavin.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

MARIE ELIZABETH GAVIN, of full age, being duly sworn upon her oath, deposes and says:

1. I have read the affidavit of my stepmother, the defendant Abbie E. Gavin, and make the following statements in reply to the same:

2. I am the daughter of the complainant, Joseph P. Gavin.

3. I can remember moving to Tuxedo, N. Y., at the age of about nine. When I was about twelve years old my sister and I started to help waiting on table and making beds on Saturdays and Sundays and after school at night. At seventeen, when I was in the eighth grade, Mother took me out of school, and I waited on table, made beds, ironed, scrubbed and kept generally busy around the house every day. I also carried linens across the street to the other rooming house.

4. I can remember all this time my father being busy sweeping, showing guests to their rooms, making beds, washing dishes, ironing, scrubbing the long front porch, attending to the lawn, making beautiful flower beds, cutting grass, planting hedges, filling in large excavations in the rear of House No. 2, making lovely benches in the rear of the house for our guests to use as a park. He was always busy. He also painted rooms year after year and took care of the furnace and a great number of stoves in House No. 1 in the guests' rooms.

5. I never saw my father intoxicated in my life and never saw him gamble, although I did see him

play at cards occasionally in the evening for pastime.

6. I can remember a man named Allen coming to our house at Tuxedo and making a lot of trouble and unhappiness between father and mother, which continued for a number of years, at different times. I can remember one night in particular that I saw Dad waiting out in the hall for a long time and mother came out of Allen's room. I also remember Allen and Dad got into a quarrel that night and that Allen tried to strike him with a chair. I know mother wrote several letters to Allen later.

7. We moved from Tuxedo in 1920 in the winter and spent several months with our Aunt, Mrs. Rajotte in Plainfield, N. J., and father and mother were there too.

8. In the early spring we went to live at the Belvidere Hotel in Newark. I waited on table and made beds occasionally. Father was always kept busy doing work similar to the work he did at the Tuxedo House. From the Belvidere we went to the Halstead House in East Orange for several weeks and from there to the Hillside House in Montclair, N. J., and I can remember waiting on table and made beds there too. At this time Mother suggested she wanted a car to enable her to get out in the afternoon and evenings for a ride. She had a fellow by the name of Nelson who did general work around the house and had him learn to drive the car so he could take her out. She finally bought an automobile and mother suggested that the car be put in the name of my sister Laura so that in case of an accident no one could sue mother. During the time we had the car we were never allowed to

drive the car and never took it out unless mother wanted a ride, when we did go and some one else drove.

9. Father and mother sold the Hillside House and went to a small furnished room in Asbury Park for three months. During the time they were in Asbury Park we continued living at the Hillside House and always paid our board ourselves as we both held positions, my sister and I. About 1923 mother suggested that we buy a fur coat for each of us and said if we bought the coats that father and she would pay half, as a Christmas gift. I bought a fur coat for $150, for which mother and Dad agreed to pay half as a Christmas present. Since that time I have had two fur coats which I purchased entirely by myself. In the fall of 1924 mother and Dad purchased the Blossom Treat and we went to Elizabeth to live. While in Elizabeth Dad did much the same sort of work as he did at other places and was always busy around the place.

10. In the fall of 1926 mother suggested to Dad to take a trip to Florida, which they did in November, 1926, staying only until the following January and not for a year as mother claims.

11. Upon their return from Florida they came to live with my sister. They paid no board but bought most of the food. In the following May they moved to East Orange and mother insisted that my sister and husband move to East Orange to be near her.

13. In May mother and Dad purchased the Park Lane Restaurant and upon mother's invitation I ate there as I always had the habit of doing at other

places. In fact mother insisted I eat there. Mother told me I could bring a girl friend to have dinner, which I did only on a few occasions.

14. Around October I began to notice that mother and the steward were becoming over-friendly and on many occasions when I was eating dinner (which was the only meal I ate there daily) I would hear the steward and mother making insulting remarks about father and I heard the steward say that father was nothing but a bum. Many times at night at home I heard mother say she was going to move into an apartment by herself and a friend and told father to keep away from the restaurant and go live with his daughters and let them support him. When she would come home at night she would not speak to father, only tell him to get out.

MARIE E. GAVIN.

Subscribed and sworn to before me this 10th day of April, 1928.

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Irving C. Hanners.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.:

IRVING C. HANNERS, of full age, being duly sworn upon his oath, deposes and says:

1. I have read the affidavit of the defendant Abbie E. Gavin and make the following statements in reply to the same:

2. I am the son-in-law of the complainant Joseph P. Gavin and am employed as Assistant News Stand Sales Manager of the Butterick Publishing Company, 223 Spring Street, New York City, which position I have held for the past three years.

3. I became acquainted with Mr. and Mrs. Gavin when they were the proprietors of the Hillside House in Montclair, about December, 1923. At that time I made my residence at the Hillside House until after they had sold this property. Mr. Gavin always took charge of the maintenance of the property and business, such as supervising the furnaces, cutting of grass, shoveling the sidewalks, painting, etc., as well as taking care of the financial end of the business, such as paying all the bills and doing the banking. To the best of my knowledge and recollection the time that I lived there, about seven or eight months, I never remember them having any difficulty, nor do I recall him being intoxicated. During the time I was at the Hillside House, Mrs. Gavin usually supervised the inside help and did the talking, probably due to the fact that Mr. Gavin being deaf was unable to communicate readily.

4. After they sold the Hillside Hotel, Mr. and Mrs. Gavin went to Asbury Park and rented a room

in a small house and lived there until fall, when they returned to Newark and purchased the Blossom Treat property. During the time Mr. and Mrs. Gavin were in Asbury Park I continued to live at the Hillside Hotel in Montclair except for a short time when I lived in Newark with them. After Mr. Gavin purchased the Blossom Treat property I moved to Elizabeth to be with them at their hotel and in Elizabeth Mr. Gavin did much the same work as he did at the Hillside House, doing the banking and supervising the general maintenance of the property. In the year and a half that they owned this property I know that Mr. Gavin took care of the banking and that Mrs. Gavin supervised the help, etc. At the Blossom Treat I personally made up their books, such as they were. During the time they were at the Blossom Treat I never remember Mr. Gavin being intoxicated. I know that they never had any trouble over financial matters or otherwise, but struck me as a very happy couple. I was married to Mrs. Gavin's daughted Laura while residing at the Blossom Treat and when they sold the property my wife and myself moved to our own home and Mr. and Mrs. Gavin went to Florida for the winter. After Mrs. Gavin sold the property she had a great deal of furniture on her hands and told us to take whatever furniture we wanted. We took a living room suite and bedroom suite and several small articles, and it was understood at that time that these were to be considered wedding gifts.

5. Mr. and Mrs. Gavin returned from Florida the last part of February and came to live with us at our home, while they were negotiating to buy another business. During the time that they were living with us they paid no board but bought most

of the food. During their stay we all had a very enjoyable time and they never had cause for trouble either between them or us. About May, 1927, Mr. and Mrs. Gavin opened the Park Lane business and requested us to move from Elizabeth to be near them in East Orange. After some deliberation we decided to do it and it was suggested that we get a house large enough to accommodate ourselves and as well, Mr. and Mrs. Gavin and their other daughter. Mrs. Gavin at that time agreed to use some of the furniture for herself which she had in storage in Newark. It was agreed between us that Mrs. Gavin was to pay fifty dollars a month for the room for herself and Mr. Gavin. Marie was to pay for her own room, and we were to pay the balance of the rent, pay for a hired girl to keep up this large establishment and give Marie her breakfast, pay for coal, light and water and in return we were to use the restaurant for our dinners at night if we cared to. As a matter of fact Mrs. Gavin rather insisted that we go there and at one time when we told her that she should not be burdened with us she told my wife that she would close the restaurant if we did not come over. Things went along perfectly all right, there was no trouble between Mr. and Mrs. Gavin and the restaurant was opened on June 8th. At the opening night I had several guests and I have the cancelled checks still in my possession covering the price of the dinners served to my guests. At the time this restaurant was opened Mr. and Mrs. Gavin had a steward, who, although not quite familiar with the work, seemed to be very willing and from all appearances did a good job.

6. After a few weeks, Mrs. Gavin claimed that our house was some distance from the restaurant

and made traveling very hard for her, especially at night, and as Mr. Gavin carried the receipts, they were afraid some night they might be held up. We then suggested that we move nearer to the restaurant and took an apartment on Webster Place, two blocks from the restaurant, at $130 a month rent and Mrs. Gavin was only to pay $50, the balance including light which was to be paid for by myself and in return we were to take our meals at the restaurant to balance her share of the rent.

7. During the time they were negotiating for purchasing articles for the restaurant Mrs. Gavin did the actual talking and Mr. Gavin paid for the furnishings with his own check, as well as signed contracts for various articles and also a joint lease.

8. Things prospered very well until August and business at the restaurant was very good until that time, which was about a month after Mrs. Gavin hired the present steward, the defendant John Damb. The steward began to carry lies about her husband to Mrs. Gavin, principally that he was spending all their money in a saloon, which I found to be a lie and told Mrs. Gavin so. Mr. Gavin was in full charge of the banking and did a great many odd jobs, such as washing dishes, etc. As Mrs. Gavin and the steward became more familiar with each other, he began to make slighting remarks about her husband in front of me and also guests of the restaurant, which I resented and in one particular case the steward told me that he was going to dress Mr. Galvin up like a clown and sit him on a table for the people to pay 50 cents a look. He made this remark in front of Mrs. Gavin, who only laughed, and I brought it to her attention and told

her that I did not think it was the place of kitchen help to make fun of her husband's deafness.

9. This steward Damb finally got so antagonizing that my wife was obliged to tell him that he would mind his own business and not make fun of her father and mortify him in front of everybody. Nights when Mrs. Gavin would come home we would speak to her about the matter in which she allowed her servants to make fun of her husband and on every single instance which we brought to her attention she would uphold her steward and one evening told us that although she was not in love with him, she cared for him a great deal and regardless of what happened she would still keep him as steward. Things went along, Mr. Gavin being insulted continually until my wife went to him one day and called him something, which, although not nice, seemed to fit him completely. Mrs. Gavin then told her that she would forbid her ever to come in her restaurant again and although she did not prevent me coming in, it was impossible for one of us to go and the other to stay. Mr. Gavin was continually antagonized by Mrs. Gavin walking along arm in arm and hand in hand with the steward and in front of people in the restaurant and Mrs. Gavin finally came home one night and told Mr. Gavin to go out to his sister's house and let her support him. Mr. Gavin answered that the steward had already got everything he had except his bed, to which Mrs. Gavin answered that the steward would very soon have that.

10. As the trouble about the steward continued I noticed a considerable falling off in business in the restaurant because people did not like to come when they heard about it.

11. Things went from worse to worse and as our apartment was cold we made the suggestion that we move out and she said we might as well because by the first of March she was going to move out and Mr. Gavin would have to find some place to live. We finally did move and as Mrs. Gavin absolutely refused to have anything further to do with Mr. Gavin, financially, or otherwise, he was obliged to go to his sister's home in Plainfield.

12. During the time we were at the restaurant we had several guests and I have in my possession a great many cancelled checks made to Park Lane for the meals of these guests.

13. A short while before we moved Mr. Gavin met with an automobile accident and Mrs. Gavin told me it was too bad he was not killed.

14. Summarizing the whole situation I do not hesitate to swear that up until the time when this present steward Damb was hired, Mr. and Mrs. Gavin never had a bit of trouble, to my knowledge, and it was only after this sneaking coward of a steward took advantage of Mr. Gavin's deafness and his good nature that any trouble arose.

15. There are a great many things which happened and were said which are too numerous to mention, but regardless of how minor Mr. Gavin's complaints were about the steward, Mrs. Gavin always upheld him.

IRVING C. HANNERS.

Subscribed and sworn to before me this 10th day of April, 1928.

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Joseph P. Gavin.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } SS.:

JOSEPH P. GAVIN, of full age, being duly sworn according to law upon his oath, deposes and says:

1. The defendant, Abbie E. Gavin states in paragraph 4 of her affidavit that at the time of the marriage we went to live in a home furnished throughout by her father and that the only article of household furniture purchased by me was a pair of curtain rods. This statement is untrue. The true circumstances are as follows. My wife and I went to live in the home of her parents at the request of her mother, who shortly before the marriage told me that she wanted her daughter and I to live with them as she was in poor health and she and her husband were going to board. No furniture was furnished by Mr. or Mrs. Knight for my wife or I. The furniture had been used for a great number of years previously by Mr. and Mrs. Knight. I had stored all the furniture of my former home, which included furnishings for a fairly large house, in my father's home on Columbia Avenue and Green Brook Road, North Plainfield, New Jersey. A short time after the second marriage my wife told me to bring all my furniture to our new home. This I did. The furnishings I brought included beds, bedding, curtains, rugs, pictures, chairs, tables, dressers and numerous other furnishings that had been contained in my former home, placing said furnishings in different parts of the house where the defendant and I lived, in the cellar and attic, and in the rooms and barn, until the defendant and I moved to Nyack, when we had them removed to our new home in Nyack.

2. In paragraph 6 of my wife's affidavit, she states that at the time of our marriage she had in cash the sum of $200 and after I sold my milk business she opened a hotel known as the Broadway Hotel, Nyack, New York which was leased for a period of five years and in which she put the sum of $3000, part of which money she had obtained from her father, who was a man of some means, and part of which she had saved while she lived on her father's farm from the raising of vegetables and from boarders. It is untrue that the defendant, Abbie E. Gavin put $3,000 or any amount of her own money into the Broadway Hotel in Nyack. The furnishings of said hotel cost about $1,000 all of which was furnished by me. I had received about $300 from the sale of my milk business, about $300 for my horse, about $300 from collection of old bills and in addition I had received $300 from my father, Edward P. Gavin of North Plainfield. My wife told me at the time of our marriage that all the money she had was $200 and this she retained in her private savings account using no part thereof or any other monies of her own which she might have had for the furnishings of the Nyack Hotel. I also state that no part of the $3000 of her money alleged by her to have been put into the furnishing of the Nyack hotel could have been received from the raising of vegetables or boarders on her father's farm because we did not move to her father's farm until after we had sold the Nyack hotel and this money could not have been earned by the defendant from boarders taken by her before her marriage to me because she had told me before our marriage that she had never taken boarders. To the best of my knowledge my wife never received any money from her father until after his death, which was

several years after we sold the Nyack hotel. No such sum of $3000 was used for the furnishing of said hotel in Nyack. About $1,000 was used and I recall that when the father of my wife visited us at Nyack he asked me how much I had put into the Nyack hotel and when I replied $1,000 my wife's father said "You're going to lose it because she (meaning defendant, Abbie E. Gavin) doesn't know anything about the hotel business. This would further indicate that the father of the defendant never gave any money to his daughter for the furnishing of said hotel. Moreover I recall that the defendant wished to put some more money into the furnishing of the hotel after we had been started there, that she went with me to the office of Mr. Harriman, whose initials I believe were J. W., and who was at one time the owner of the land now included in State Park, New York, for the purpose of obtaining a loan of $2000. The loan, however, was refused.

3. In paragraph 7 of her affidavit, my wife states that she took with her from Plainfield a carload of furniture which was given to her by her mother and father. The fact is that the carload of furniture included both the old furniture which had been formerly used by her parents and which was worth, I believe, about $200, as well as the furniture used in the former home of the complainant which was worth about $300.

4. With respect to the allegations in paragraph 8 of my wife's affidavit, to the effect that it was impossible to use me in the Broadway Hotel in Nyack except to run errands, the complainant states that he made a special trip to Nyack in order to attempt to locate some person who knew exactly what duties

he had performed at the hotel but due to the fact that said hotel was sold by the complainant and defendant over twenty-two years ago and due to the fact that said hotel has since been razed, from the land on which it formerly stood, he was unable to find anyone with such knowledge. The complainant, however states that the original lease to said hotel was taken in the joint names of Joseph P. Gavin and Abbie E. Gavin, that he acted as hotel clerk, took in and disbursed money and performed numerous other duties, such as washing dishes, making beds, sweeping, going to and from the bank, and in general, carrying out to the best of his ability the numerous duties which fell to his share in the management of said hotel.

5. In paragraph 9 of my wife's affidavit she states that she employed at least six people to take care of the hotel. This statement is untrue. My wife and I did nearly all the work ourselves in connection with the hotel, which had twenty-three rooms, only about thirteen of which were used for sleeping quarters of guests, and that there was employed only a chef on full time and a woman who came in two or three times a week to do scrubbing and roughwashing, while I acted as kitchen man, and also attended to the washing and ironing of all table linens, sheets and pillow cases. No maids or waitresses being employed as alleged in paragraph ten of my wife's affidavits.

6. I further state that my time was fully occupied about the hotel in my said duties and that the statement of my wife to the effect that I spent my time around the hotel lobby reading newspapers and periodicals and being used only for errands is false.

7. With respect to the statements of my wife to the effect that when we were married she took my twin children with her first to her father's farm and then to the hotel in Nyack where she supported them in a much better state than I could do and that she permitted him to sign the checks of the bank account, which she admits was in our joint names, in fact were as follows. When my wife and I were married, we went to live on Summit Avenue, North Plainfield but not at her father's farm as she states. Before our marriage she insisted that I let her take my children who were then nearly four years old and who had been taken care of by a Mrs. Winans of North Plainfield for three and one-half years, saying that if I did not bring them to her she would go to the home of the lady who was taking care of them and take them away from her. I told her before our marriage that I wanted her to be sure that she knew what she was doing, and she said she knew and that she loved the two babies and would be glad to have them and raise them and do everything in her power for them. I also recall that her mother said to me "Joe, you must give those babies to Abbie" and I want you to promise me you will give them to her and bring them here to this house and live here" and I said, "Alright, I promise you that Abbie can have them". Shortly after the marriage the babies came to the house and I recall my wife said to me, "This is the happiest day of my life". Shortly afterwards my wife told me that her sister, Mrs. George E. K. Hunter of Brooklyn, N. Y., who has also sworn to an affidavit on her behalf, was finding fault with her because she had married a man with two babies and I recall my wife saying, "The more fault my sister finds the more I will love you and the babies."

8. In paragraph 12 of my wife's affidavit she states that the hotel was operated ten months when it was sold and that she and I and the children then returned to her parent's home, that her parents paid board and that no rental was charged for the rent of the farm and that I milked the cows and took care of the vegetables, garden and picked fruit in order that the fruit and vegetables should not go to waste. The facts are as follows: The hotel was operated jointly by my wife and I for about six months. When it was sold for about $1,000. I recall that the $1000 paid by the purchaser of the hotel was paid by a check to the order of Joseph P. Gavin, that I spoke to my wife about taking this check and she suggested that I go to the bank across the street to find out whether it was good, which I did, that the check was then accepted as the purchase price and that I then cashed the check, took $600 thereof to a Brooklyn bank, which I believe is situated at the corner of 8th Street and Fifth Avenue, Brooklyn, and that I kept $400 in my pocket to cover current expenses. My wife and I did not go to live immediately with the parents of my wife but went first to live with my wife's sister, Mrs. George E. K. Hunter for about a month and then went to live with the parents of the complainant for about five months. As the mother of my wife was sick and had lost her voice and as my wife's father was too old and feeble to take care of the farm, they told my wife and I that if we would come to live on the farm and take care of them we could have everything we could raise from the farm. I further state that my wife's parents lived with us for about one year during which time they paid $2.00 a week each as board. I bought two Jersey cows for which I recall paying about $140 and that I paid a man $5 a

day to come with his team to do the plowing and cultivating. Mr. Knight, my wife's father, owned a very old horse which he used for his own purpose to drive around. I raised chickens and bought all the feed for the cows and chickens. I had a boy part of the time to help with the farm work and when my wife started to keep boarders a woman was employed to do work in the house. I was kept very busy with farm work. I planted and raised for about three years at least two hundred bushels of corn and two hundred bushels of potatoes none of which I sold to boarding houses and stores. I raised chickens for the boarding house and for market and in the fall of each year would put away six forty quart cans of eggs for winter use. I picked about two hundred quarts of cherries which were to use in the boarding house and made large quantities of butter caring for it myself. I cut and husked all corn and in addition did duties in the kitchen, washing dishes and helping with the work in connection with keeping boarders.

9. My wife says in paragraphs thirteen of her affidavit that in order to increase the income of the family, as her husband was not able to obtain any competent work because of his physical handicap, she took in boarders at Oak Tree. This is untrue. My wife was the one who suggested taking boarders because living on the farm all necessary fruits and vegetables for keeping boarders could be raised. My wife wanted me to stay at Oak Tree and work the farm which was a farm of thirty-six acres. I further state that although I have been deaf for thirty-two years, I have been skillful in lip reading almost from the beginning of my deafness and that I was able to work this farm alone with the occa-

sional help of a hired man and his team to do the plowing and cultivating and a boy, who also spent some time working at the boarding house. I have been able to understand people quite well and to carry on all conversations in connection with the operation of the farm and later in connection with the operations of the various hotels and restaurants.

10. Despite the statements of my wife's affidavit to the contrary in paragraph 14, I did do sweeping and washing dishes for the boarding house in addition to working early and late on the farm.

11. With respect to the statements of my wife in paragraph 16 of her affidavit, the success of the operation of the boarding house was due as much to my help and work as to that of my wife as I gave assistance in the actual work of operating the boarding house and in addition raised all the necessary produce to furnish the food for the same, and that the only board paid by my wife's parents, concerning which board she makes mention, was $2.00 each a week for about a year when the mother died and shortly thereafter the father died.

12. With respect to the statements of my wife in paragraph 19 of her affidavit to the effect that she paid a deposit of $300 for the taking over of the Tuxedo House and that she operated the same for about fifteen years supporting me all this time is untrue. The circumstances were as follows. My wife went to Tuxedo Park to look at the Tuxedo House, we having learned from Charles S. Patterson, Superintendent of Tuxedo Park Association that he wanted us to run the hotel there but she returned saying that it was too dirty and too large

to handle. At my urging we took the place, but no deposit was placed by my wife as none was required. The hotel was operated by Tuxedo Park Association to house some ninety men who worked for the Association and men working for contractors of the Association. The $300 to which Mrs. Gavin refers was my own personal money representing the sale of cows and chickens and which $300 was not placed as a deposit but was placed in the safe of the hotel for the purpose of beginning business. Upon our arrival at the hotel I immediately started to clean the same which was in a very dirty and run down condition. I painted about one hundred rooms, painted the walls and stairs, from time to time, I took care of about forty stoves in the hotel, there being a stove in nearly every room, made wood and coal fires in the stoves, deposited money in the bank, escorted guests to their rooms and to tables in the restaurant, attended to repairs about the hotel in which I was very skillful for a great number of years making practically all the repairs myself with the exception of repairs to the roof and putting on new porches. I painted every bed in the hotel numbering about one hundred and seventy-five in the three hotels, bought provisions and meats, attending to the hotel mail, paid all bills which were drawn on the joint account and made myself generally useful about the hotel, making beds, washing dishes, washing windows and cleaning rooms. The three hotels included House #1, which was taken over originally, House #2 which was taken later and the Annex.

13. My wife states in paragraph eighteen that she employed as many as fifteen people in the hotel but there were never more than five or six, including

a chef and four or five women, including maids and waitresses.

14. I did not absent myself from the hotel for several days at a time helping myself to cash. So far as the cash is concerned, I always had a large roll of bills amounting to sometimes $500 representing the proceeds of the hotel and which I used for the running of the hotel and the support of my family. I was occasionally away of a night to visit my relatives in Plainfield but always with Mrs. Gavin's knowledge. In fact, my leaving was often urged by my wife and I later found out that her desire to get me away was because she was in love with a Frank Allen, a boss painter, a married man at the time. The said Allen boarded at the hotel operated by us and I found out that my wife used to leave our room while I was sleeping and go to the room of said Allen. This happened on several occasions. I did everything in my power to get said Allen away from the hotel and finally succeeded. The reason I did not leave my wife when I found out what was going on was on account of the children who Mrs. Gavin was bringing up. She was a very good mother to them and they loved her and she loved them and I was unwilling to do anything to take the children away from her. This love affair with said Allen extends over a period of four years despite all my attempts to stop it and I found out that even when we were running the Hillside House in Montclair she was still corresponding with him.

15. My wife says that I am a heavy drinker and have been for some time and a heavy gambler, and that while she conducted the hotel at Tuxedo Park

I would gamble with the help. I do not claim to be a teetotaler but I do claim that I have never been drunk in my life and that I have taken a drink occasionally but never in excess. Neither do I claim that I have never played cards for money but whenever I did so it was in a friendly game for small stakes sometimes winning a dollar and sometimes losing a dollar. I never played with the help who were all women with the exception of a chef, who was usually colored and with whom, of course, I did not play. I played occasionally with the guests in the hotel in the card room, set aside for that purpose. So far as gambling is concerned, I recall one occasion when my wife played at dice, otherwise known as shooting crap, with a baker who served the hotel and whose first name was Tony, winning $28 from him at once time and used the same to buy a hat for herself.

16. Despite the denials of my wife, my daughters worked as waitresses and as maids in the hotel after school and on Saturday and Sunday and that Mrs. Gavin later insisted on taking them out of Grammar School before they had graduated to work all the time in the hotel.

17. The account was maintained in the joint names of both of us because we were engaged in a business for our joint interest and checks were drawn by me to pay bills because it was part of my duties.

18. The jewelry purchased by Mrs. Gavin was paid for out of funds in our joint account after she insisted upon having them, saying that it was better than investing in real estate. My wife always said the diamonds were worth $10,000.

19. Despite the statement of my wife that she received $3500 from her father's estate I know that she received only $2600 because she showed me the check which was placed in her private savings account in the Plainfield Trust Company and which was not used for about seventeen years until the Blossom Treat Hotel in Elizabeth was purchased when she withdrew it and put it in the purchase of the Blossom Treat Hotel.

20. I was never given spending money as claimed by my wife because I received money from the business and used the same for purpose of the hotel and the support of myself and my family.

21. Principally on account of the love affair between my wife and said Frank Allen, the hotel in Tuxedo Park operated by my wife and I had to be sold. Three thousand dollars was realized and placed in the joint account.

22. Respecting the purchase of the Belvidere Hotel referred to in paragraph 27 of my wife's affidavit, that hotel was purchased in our joint names just as rent had been paid in our joint names for the Tuxedo Hotels, and that the money representing the sale of the hotel was placed in our joint account as was our custom. The sale price was $6000, paid $3000 in cash and thirty notes of $100 each made payable to me and discounted by me at the bank and deposited in the joint account.

23. My wife, daughters and I did not travel all over the United States as claimed in the affidavit on paragraph twenty-eight. They boarded with a Mrs. Murphy of Clinton Street, Newark, New Jer-

sey for a few months. There was no traveling for the family, only my wife and I would go to different cities to look for a location for a hotel. The daughters were never taken along.

24. The Halstead House in East Orange referred to in paragraph 29 of the affidavit of my wife was leased to Joseph P. Gavin and Abbie E. Gavin for three years but after about six weeks (not three months as alleged by my wife) the business was sold to a Mr. Bush. After selling the business we went back to Newark to board. Concerning the support alleged to have been given to my daughters and me, by my wife, after selling the Halstead House we went back to Newark to board, using money from our joint account which had been earned in Tuxedo and the daughters boarded at the home of Mrs. Gavin's sister-in-law, Mrs. Cora Knight, and paid their own board as they were both holding positions. After a few months, we went to live at the Belvidere Hotel for a short time, eating outside in restaurants. I was never supported by my wife and I generally paid all board bills myself.

25. Concerning the allegations in paragraph 30 the Hillside House at Montclair was purchased in the names of Joseph P. Gavin and Abbie E. Gavin about 1923. Shortly after the purchase my wife insisted that I put into the joint account the $2000 representing money received from my father's estate, as the joint account had run down, my wife giving as her reason that she did not want to go to Plainfield to disturb her private savings account which was so large and she did not want to break the interest. She stated at the time that if I would put my money into the business she would give it

back to me any time I wanted it and she also made a similar statement to my sister, Mrs. M. Elizabeth Rajotte of Plainfield, New Jersey and my brother, Mr. Den E. Gavin, of Plainfield, New Jersey. Accordingly I withdrew the $2160 from the bank in Paterson where I had been keeping it and deposited the same in the joint account in the Bank of Montclair, Montclair, New Jersey. The business of the Montclair House at Montclair, New Jersey was sold to a Mr. Jones at a profit of $1000 the purchase price being $6000 paid $5000 in cash and $1000 in notes made payable to me. Concerning the statement of my wife to the effect that after selling the Hillside House we went to Asbury Park staying there all summer and staying at one of the exclusive hotels, we did go to Asbury Park for about three months, staying in a furnished room at $6 each per week, with cooking privileges at Mrs. Develin's cottage. The daughters during this period stayed in Montclair paying their own board as both were working. After returning from Asbury Park the defendant and I went to live at the Bellvidere Hotel in Newark for a few weeks, paying twelve dollars each per week and later lived in a furnished room at 13 Lincoln Park, Newark, New Jersey where my wife did the cooking for herself and me, the girls continuing to, live in Montclair and paying their own board. These statements are made in order to show the untruth of my wife's statements that she was constantly supporting my girls and me, our support being derived from the proceeds of the sale of the various hotels, the money of which was kept in the joint account, expenses being defrayed in practically every case by me.

26. With respect to the statements in paragraph thirty-three of my wife's affidavit that all money

received by my wife was earned by her own efforts and business ability and her investments, I say that whatever business she was in was owned by us jointly and that the profits were made through our joint efforts.

27. With respect to the purchase of the Blossom Treat Hotel, title to which was taken in the name of my wife, because she said she wanted to be protected in case anything happened to me and my daughters might get married and their husbands might cause trouble if anything happened to me. My wife's affidavits make no mention of the fact that I paid $8000 for the furnishings of the hotel out of the joint account. In the operation of the Blossom Treat Hotel I acted as clerk raised vegetables necessary for the hotel, paid all bills, including taxes on the house and interest on mortgage, took care of deposits in our joint account as I had done before, painted seventeen rooms on the third floor, painted two very large halls, painted two very large rooms on the second floor and on the third floor cut a doorway in between two rooms and made a connecting room, and washed all windows, as I had done before in other hotels, Mrs. Gavin being very particular about having the windows washed frequently. I also took care of lawns, and shrubbery adjoining the hotel.

28. With respect to my wife's money in her private account I may say that while at Tuxedo and other places, at Tuxedo especially, business was very good and at various times I would discover large sums of money which Mrs. Gavin had secreted in an old shoe or stocking and when it would disappear I would ask her what she did with it and she

became angry and said "Yes, I took it and put it in my private account. I have private accounts in nearly every bank in the United States." I was powerless to prevent her from taking this money as she was a woman of violent temper and very domineering disposition if not allowed to have her way. She weighs two hundred and fifty pounds and on numerous occasions choked me and struck me when she was displeased. This went on while the children were young and later and because she was such a good mother to the girls I continued to live with her in spite of her actions. I never raised a finger to her despite the way she treated me telling her, "Help yourself" and later she would sometimes tell me she was sorry.

29. The travelling done by us was at the suggestion of Mrs. Gavin for her health as was the reason for the trip to Asbury Park previously referred to. We left about November 6, 1926 and returned to Elizabeth, January 18, 1927, a period of about ten weeks (not one year as my wife claims) all expenses on this trip paid by me out of our joint account as was our custom.

30. The statements in paragraph thirty-six that my wife transacted all the business in the operation of the various hotels is untrue. We used to discuss together what should be done when an important matter came up, she calling on me because I was better acquainted with methods of business, such as banking matters, having always handled the bank business for the both of us.

31. With respect to the statements in paragraph thirty-seven as to the purchase and operation of the

Park Lane Restaurant, this was also conducted as a joint business as we had conducted other businesses. The lease was taken in our joint names, trade name was registered in our joint names, I signed a check for deposit on the lease and also signed other checks as I had done for twenty-three years up to October, 1927 when the trouble with the defendant, John Damb began. Policies of insurance were taken in our joint names I signed the agreement with respect to the Refrigerated cabinet installed by the Reid Ice Cream Corporation as well as contract for the illuminated sign. I took over the management of cash, paid all bills, as I had always done and acted as cashier. It is untrue that I threw glass ware. I remember on one occasion when the steward and I were fighting the glass ware was strewn around afterwards so that when they called the police they might be able to say that I had thrown it but this is untrue. I fought the steward because he was taking my wife away from me and had put my daughters out of the restaurant and was doing everything possible to put me out in which he finally succeeded. I acted as cashier until we employed a clerk to type the menu cards and act as cashier as I couldn't typewrite. I never came to the restaurant at night as my wife states for the reason that I was there from 8:30 in the morning when I opened the restaurant until closing time at night. I used to leave the restaurant in the morning in order to deposit money in our joint account in the East Orange Bank. We conducted the business as joint owners just as we had done before. At this time we employed sufficient help to run the restaurant as it was not necessary for either of us to work as hard as in years past. Concerning the trouble with the steward, my daughter on one occa-

sion hearing him say to my wife in the presence of my daughter, "We will go and dress old man Gavin up tonight like a clown and put him on a table and charge $.50 admission." My daughter told me what was said and I ordered the steward to leave. The steward laughed and my wife said, "The steward is not going to leave." About this time I began to see my wife kiss the steward at night when she was about to leave the restaurant. About this time my wife asked me to put dark shades in a private room connected with the restaurant, in which there was a daybed. I asked her why she wanted dark shades in a room that was already too dark. She replied that she wanted them on, that was all. I was suspicious and the same day in the afternoon my wife sent me to my daughters home and told me to take a rest as she wanted to lie down. I returned to the restaurant later and found the upper hall (which had previously been lighted during the day) in darkness. I knocked at the door of the private room containing the day bed and found the door locked. I knocked at the door and said "Open the door or I'll break it." After a short time my wife opened the door and said, "What do you want?" I said, "Is the steward in that room with you?" She said "Yes, what about it?" I said I want him to come out at once and get out of my place. After a few minutes my wife rushed into the hall and grabbed me by the throat and pushed me down along the hall about fifteen feet from the room. The steward came out of the room and I told him he was no man or he would not do this and try to break up my home and disgrace my wife. My wife said "I'll go into that room with the steward at any time I like and if you don't like it get out." I tried to push the steward out but my wife protected him. The steward

and I quarreled until 6:30 at dinner when my daughters came in. The steward insulted them by calling them "Poison" and told Mrs. Gavin she was a damn fool to be allowing them to come in and to eat (previous to this time, Mrs. Gavin had always told the girls she wanted them to eat there and they had always eaten there as one happy family). Mrs. Gavin had said before all the help that when the girls came in they were to eat just as guests and that if anyone in the house did not do this she would discharge him. On several occasions the waitresses did not give proper attention to the order for food by the girls and on this occasion after the girls had finished eating the steward made insulting remarks about me and my daughters told him if he knew anything he would leave the place. The following morning my daughter, Laura, heard the steward telling my wife what a fool she was to be feeding them and that if they spoke to him again he would put them out. The steward also said to my wife "What do you want a deaf man around here for? Let him live with his daughters and I will run the business for you." My daughter became hysterical and began to argue with the steward as she had great love for my wife and myself and couldn't bear to see this man breaking up the home. My wife and the steward pushed the daughter out into the hall and told her to get out and stay out and never come back. I met her on the street crying and she told me what had happened. I went to the restaurant and tried to put the steward out but the steward went to the telephone and called the police station. My wife told me at this time that if I did not keep my mouth shut she would have to get out. I went out again and over to my daughter's home to talk the matter over with her. My daughter told me the

steward had said I was nothing but a bum. I remained home with my daughter, who had become ill from the excitement. I went back to the Restaurant about 7 P. M. that day, went into the dining room and Mrs. Gavin and the steward went out into the hall near the telephone. I was sitting at the table just starting to eat dinner when my wife came over to the table and said "A man wants to see you in the private dining room." I thought it was someone who wanted to make up a party for a dinner, and as he stood up from the table my wife pushed me in front of her and told me to go on into the private dining room. I did so and found the steward and Police Officer Collins, who has made an affidavit on behalf of my wife. He showed me his badge. I asked him his business and the officer asked "Why are you annoying this steward?" I said, "Oh, officer, you have got that wrong, he is annoying me." The officer said to me, "If you do not stop annoying this steward I'll take you down and lock you up." I said, "Well you will have to take me down as this is my restaurant and I will not allow this man to break up my home and my business. The officer grabbed me by the shoulder, saying, "All right, come along." At this time my wife said something to the officer with her hand over her mouth and the officer wrote on a paper that "this woman said you have nothing to say about this business and she wants you to get out and stay out." The steward rushed at me and told me to get out, that my wife did not want me there. I left the place and returned in about one hour and found the policeman and steward and my wife seated at a table in the public dining room. I said to my wife that she ought to be ashamed to sit down with these two men after what I had done for her over twenty

years, and that she knew the business belonged to me as much as to her. The steward jumped up from the table and said to me "Get out, you are drunk, you stink," and he blew his nose at me and put his fingers to his ears to mock my deafness. I resented this insult and the policeman again told me that my wife wanted me to get out and stay out. This is the only time a policeman ever spoke to me or was seen by me in the Restaurant. As to my threatening to kill the steward and using vile language, the police officer does not tell what brought about the threat or the language, if it was used. He remained there to be entertained by Mrs. Gavin and the steward. On three different times after this trouble I found Mrs. Gavin and the steward J. Damb in the same bed room which was in total darkness with shades drawn and door closed for a period of from one, one and a half and two hours each time. I naturally found fault with Mrs. Gavin for going into the room with the steward and she told me to "go to hell" and would kiss the steward every night either on the stairs, or hall or in the dining room while I was waiting to accompany her home and she told me not to wait as she wanted the steward to take her home. I refused to allow this and my wife said to me, "you will be damn glad to walk with this man some day." On the last occasion when I found my wife and the steward in the bedroom in total darkness, the steward came out of the room and went into the kitchen and my wife rushed out into the kitchen and grabbed me, saying, "Come, we are going to settle this matter right now." She pushed me into the private dining room and went back to the kitchen and brought in the steward, J. Damb, and said to me, "I want you to shake hands with the steward" at the same time taking hold of

each of our hands, and pulling us together, and then suddenly threw her arms around the steward's neck and kissed him on both cheeks and said, "Oh, I am so happy," and then turning to me and pushing me against the wall with her hand against my nose, and said to me, "Now, God damn you, you son of a bitch, I will never sleep in your room another night. I am going to the house where the steward has his room." I waited for her at the restaurant from about 7.30 until 10 P. M. and took her home. When she was about to retire she said to me, "Oh I wish my steward had your bed instead of you." The trouble continued every day with insults to me from the steward and my wife as she turned totally against me.

On January 9th, 1928 I was again insulted by my wife and the steward and the waiter came to the table where I was sitting and as I arose, the waiter expressed his feelings as to how sorry he was to see this trouble and the way I was being constantly insulted by my wife and the steward. I walked back to the dining room and told my wife what he thought of her actions and the steward's actions and the steward jumped up and came at me. My wife got between us and a quarrel started again until closing time. Then I want outside to wait for my wife. When she came out she walked away with the steward and did not look at me. She and the steward walked about a block when I hurried up to the steward and told him he would not take my wife home. The steward grabbed me by the throat, tore my clothes and threw me out on the street. I got up and my wife held me to keep me from defending myself. When my wife and I arrived home she told me she was through with me for life and told me to keep away from her and the Restaurant and to live

with my daughters. I told her to discharge the steward and that would end the trouble. She refused and said, "No, my steward means more to me now than my husband. He is taking care of my money and I am going to let him take care of it."

The next morning I awoke about 7.45 a. m. and asked my daughter where her mother was and she said her mother had gone down the street with the steward. I went to the Restaurant and found my wife and the steward talking in the hall. When I appeared the steward went into the kitchen. My wife said to me, "You keep your damn mouth shut this morning or I will throw you out." She then stepped into the kitchen and I followed. As I stepped into the kitchen the steward ran toward me with a chair to strike me saying, "damn you, get out of this house or I will break your skull." My wife and the steward told the chef who was there at the time to hold my hands, which the chef did and the steward struck me a number of blows in the face, bruising and blackening one of my eyes which remained painful and discolored for two weeks. The steward telephoned the Police Station and returned to beat me again. I got away from the chef who had all the time been holding my hands and my wife turned over a table with glassware and grabbed the steward and tore his coat trying to protect him from being hit by me. She pushed me and told me to get out and shook her fist at me and told me never to come back and that she was through with me for life. I went to the Police Station to get a warrant against the steward J. Damb and the police officer Collins told the man at the desk not to give me one and at the same time Policeman Collins served a warrant on me to appear for a hearing for assaulting the steward. At the hearing I was found not

guilty and the steward was warned by Judge Stasse that he was taking advantage of my deafness and he was told he had no business to walk with my wife and to mind his own business. I stopped going to the restaurant as I feared getting hurt.

My wife lived together for several weeks afterward at the home of my daughter and every night she told me she was going to move into an apartment with a friend and live by herself and entertain her own friends and do as she pleased. She told my son-in-law she was going to move and said she had rented rooms and would leave on February 29th. My son-in-law moved on February 28th and I asked her if she would let me remain overnight with her as she would be alone and she said, "No, my steward will look after me—you go and live with your daughter and son-in-law and let them support you." Before my daughter and son-in-law moved on the 28th, my wife said good bye to them. She said, "I owe your father two thousand dollars and I will pay him soon, as I know he will need it." I went out to a store and said I would be back in ten minutes. When I returned my wife had left and had told my daughter she did not want to see me again. I have had no money from her or the business since November 1, 1927. My wife drew all the money from the joint account and put it in her private account.

32. Concerning the statements in Paragraph 38 of my wife's affidavit, the kitchen utensils were signed for by her just as I had signed for numerous things myself, but part payment for the same was made by check for $2800 drawn by me on our joint account. Notes for the balance due were signed by my wife but checks each month in payment of same

were made out by me from our joint account for a total of $2800 and interest.

33. My wife sent me to the City Hall to obtain a license. This was the first license I was ever required to get for all our places. The license was put in the name of my wife but I could have had my name on it. In fact when license for erecting sign was given, that was taken in my name, whichever name being suggested at the time being used.

34. Regarding the statements in paragraph 40 of the affidavit of my wife, we employed help enough to do the dishwashing and cooking and waiting. A cashier was hired because it was necessary to type the menus and this I could not do. I took charge of the cash register after 8 P. M. I never was told by anybody that there was a shortage. I have at all times been able to answer customers by lip reading and having them write out their questions.

34. The furniture stored in the basement was bought around Newark for the Blossom Treat and was taken from the Blossom Treat and stored in Odell's Storage House and thence to a house on Emerson St., East Orange and thence to the Restaurant. Not one item belonged to Mrs. Gavin's father as his furniture was all old and cheap and was left at Nyack and Tuxedo.

35. The money carried by me was money taken in from the Restaurant with the consent of Mrs. Gavin. I did not spend $200 in giving a party about four months ago or any other such amount. I never gave parties. I never drew money without her consent.

36. Mrs. Gavin never supported me or my daughters. She always depended on me for advice, having very little education herself and anything she did for the daughters was done willingly.

37. I was never drunk. The incident about the mistake of nine dollars in change for a one dollar bill was this. A customer laid a ten dollar bill on the counter in payment for a dinner of one dollar. I took nine dollars from the register and then noticed that the customer had picked up the ten dollar bill and placed a one dollar bill down instead. Just then my wife, who was nearby, asked me what I was doing and I told her what the customer had done and that closed the incident and nothing more was said. I never replied with the remark my wife charges in Paragraph 53.

38. I never left my wife as she claims. She left me and said she never wanted to see me again. I never asked for money for support. She has never asked me to come home and has done all in her power to break up my daughter's home. My sister-in-law, Mrs. Georgie K. Hunter told me just a few months ago that she was shocked at my wife's talk and that she had never been right in the head since fourteen.

JOSEPH P. GAVIN.

Subscribed and sworn to before me }
this 10th day of April, 1928. }

SAMUEL STEINBERG,
A Solicitor in Chancery of N. J.

Affidavit of Joseph P. Gavin.

City East Orange, County Essex, State New Jersey, THE NATIONAL CASH REGISTER COMPANY, Dayton, Ohio; Dated May 12th, 1927: Please manufacture and ship freight prepaid to 23 Harrison Street, City, County, State, or to the nearest railroad station (Residence Address 132 Layre St., Eliz., N. J.) one of your No.1842 registers, mahogany finish, denomination of keys for use on counter restaurant business, for which undersigned agrees to pay you Three Hundred & Twenty-five Dollars ($325.00) as follows:

$15.00 cash;

A True Copy

$ cash on arrival of register, and the following amount to be evidenced by note: $30.44 in 20 monthly payments of $15.00 and one of $10.00 to be delivered 5/25/27.

Five per cent discount allowed for cash settlement on arrival of register, but no discount allowed on credit for exchange registers or on autographic registers. The purchase price, less any payment thereon, shall at your option, immediately become due and payable, upon refusal of undersigned to accept the register when tendered, or to make any cash payment, or to execute and deliver the note or make any payment provided for therein; or you, or any person authorized by you, if you elect, may immediately repossess the register and retain as rental for the use of said register while in the possession of undersigned, all payments theretofore made. Should the register be lost or stolen, destroyed, injured or damaged by fire or otherwise, before the price has been fully paid, undersigned agrees to complete payment, notwithstanding such loss, de-

struction, injury or damage. Should the register get out of order from ordinary use within one year from shipment, you will, without charge, repair it, provided undersigned pays the transportation charges on it to and from the factory, or nearest agency able to make the repairs, or traveling expenses of repairman. Undersigned to pay for any repairs made without your authorization, and to pay all taxes on the register, and, in event of default, to reimburse the Company to full extent of taxes paid by it.

The register shall remain your property until the price, or any judgment for the same, is paid in full.

This contract covers all agreements between the parties and shall not be countermanded.

(Sign here) Joseph P. Gavin
by
(Post Office) Del May 25/27

(When signing for firm or corporation party signing should place his name and title opposite word ("By")

(Print purchaser's name plainly on this line

Received in the Office June 9th, A. D. 1927 at 9:31 A. M.

Filed June 9th, 1927 under file No. 26821.

SUPPLEMENTARY REPLY AFFIDAVITS OF COMPLAINANT.

Affidavit of Charles O. Morris.

(Filed April 10, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,
and
ABBIE E. GAVIN and JOHN DAMB,
Defendants.
} On Bill &c.

STATE OF NEW JERSEY, }
COUNTY OF UNION, } ss.:

CHARLES O. MORRIS, of full age, being duly sworn upon his oath deposes and says:

1. I am and have been a director in the Union County Trust Company, Elizabeth for the past twenty-four years and am the proprietor of a coal business which I have been operating at 214 Jefferson Avenue, Elizabeth, for the past thirty-four years. Previous to that time I was a broker in Wall Street, New York City for seventeen years. I have known the complainant, Joseph P. Gavin for the past three years. From about January 6th, 1925 to about May 30th, 1925 I lived at the Blossom Treat Hotel in Elizabeth, while it was being operated by Joseph P. Gavin and Abbie E. Gavin.

2. My attention has been called to the statement of the defendant Abbie E. Gavin in Paragraph 35

of her affidavit to the ffect that the complainant did no other work about the Blossom Treat Hotel in Elizabeth except sit around the hotel and run errands, as his physical condition prohibited from doing anything further. During my five months' stay at the Blossom Treat Hotel I used to see Mr. Gavin every morning and night and I often took my lunch there, besides taking my breakfast and dinner there every day while I stayed at the hotel. I spoke to Mr. Gavin every day practically often for long periods of time in the evening. He always understood very well by the motion of lips, and I had no trouble talking to him; and he did not seem to have any trouble talking to anyone else after a short acquaintance.

3. Regarding the statement that he did no work around the hotel, I may say that I saw Joseph P. Gavin constantly busy about the hotel. I have seen him paint rooms, paint the roof, take care of the furnace, cut the grass, attend to the garden practically every day, work in the office of the hotel, meet guests and escort them to their rooms, and assist in every way possible in the operation of the hotel. In fact I always regarded Joseph P. Gavin as coproprietor with his wife of the Blossom Treat Hotel. My checks for board were, to the best of my recollection, made out to Joseph P. Gavin. My books in the office also show that while I was selling coal for the use of the hotel, which was during the entire period that Mr. and Mrs. Gavin were operating the Blossom Treat, my account was always in the name of "J. P. Gavin," and checks in payment for coal were always made out by "J. P. Gavin." Dealings with respect to coal were conducted between me and Mr. Joseph P. Gavin. Mrs. Gavin

may have called up for some coal on the telephone, but Mr. Gavin used to call at the office to come himself to pay for the coal at my office. Mr. Gavin always seemed to take particular pride about keeping the hotel looking clean and trim. I always understood from the way the hotel was conducted that Mr. and Mrs. Cavin were co-owners of the hotel.

4. My attention has also been called to the statement in paragraph 20 of the defendant Abbie E. Gavin to the effect that the complainant "is a heavy drinker and has been for some time." Although I saw Mr. Joseph P. Gavin at least twice a day for a period of five months I never saw him drunk. In fact I never knew him to take but one drink while I was there and that when it was offered to him. I never saw anything but a gentleman in Mr. Gavin —always quiet, pleasant, agreeable and absolutely straight in all his dealings. Everybody liked him. I am also informed that Mrs. Gavin accuses Mr. Gavin of being a heavy gambler. During my entire stay at the hotel I never say him play cards although I have often seen him when he was talking to friends there. I always have had the highest opinion of Mr. Gavin and among all my acquaintances who also know him he has the same reputation as a gentleman of the highest integrity and truth.

CHARLES O. MORRIS.

Subscribed and sworn to before me this 14th day of April, 1928.

MILTON N. LIEBERMAN,
A Solicitor in Chancery of N. J.

Affidavit of Ralph S. Oppenheimer.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

RALPH S. OPPENHEIMER, of full age, being duly sworn, upon his oath, deposes and says:

1. I am one of the partners in the butcher and provision business doing business at 619 Bloomfield Avenue, Montclair, N. J. I have been in the butcher and provision business for the past twenty-five years and have been doing business with my brother Leon L. Oppenheimer, trading as the Oppenheimer New York Markets at the above address for the past six years. I have been acquainted with the complainant, Joseph P. Gavin, for the past five years and supplied meat, vegetables and fruit to Joseph P. Gavin and Abbie E. Gavin while they were operating the Hillside in Montclair for a period of about a year and a half.

2. In the course of my business dealings with Joseph P. Gavin while he was in Montclair he used to come in every Tuesday morning and pay the bill with a check made out by himself personally. In fact both while he was in Montclair and while we were doing business with the Park Lane Restaurant, which was from the opening of the restaurant in June, 1927, until December, 1927, all checks were signed by Mr. Joseph P. Gavin personally except for the order placed during the holidays in December, 1927, after I learned that trouble had arisen between Mr. and Mrs. Gavin respecting the steward, J. Damb, when the check was signed by Abbie Gavin. I always treated Mr. Gavin as co-owner of the hotel business conducted as the Hill-

side House in Montclair and later the restaurant known as the Park Lane Restaurant, East Orange. Mr. Gavin always took particular interest in seeing that the bills were properly added and that proper deductions were made. Mrs. Gavin never did anything about this, Mr. Gavin checking and paying all bills by his personal check. In fact our account has always been entered on our books as "J. P. Gavin".

3. My attention has been called to the fact that Mrs. Gavin claims to have operated the Hillside House and Park Lane Restaurant herself. This is untrue. I have seen Joseph P. Gavin on many occasions working in the garden at the Hillside House, peel potatoes in the kitchen, do clerical work at the hotel desk, make out checks, check up bills, and in general assist in every way he could in the operation of the hotel, and acting as co-owner with Mrs. Gavin. In fact, I believe it would have been impossible for one person alone to operate and manage an establishment like the Hillside House with 45 rooms; and Mr. Gavin, from observation made by me on numerous occasions when I went up to get and deliver orders over a period of a year and a half. While at the Park Lane Restaurant I saw Mr. Gavin acting as cashier, put slips on the file, and I even recall his showing me the receipts. In fact he appeared to be in charge of the desk on several occasions when I was there.

4. My attention has also been called to the statement that Mr. Gavin was a heavy drinker and gambler. Despite my opportunity for close observation of Mr. Gavin on numerous occasions I have

never seen or heard of him to be a heavy drinker or drunk—I have seen him take a drink on just one occasion when I visited him at the Blossom Treat Hotel in Elizabeth; but he has always enjoyed the reputation of being a man of sobriety and of the utmost integrity. Among other tradesmen in Montclair whom I know he has the reputation of being a straight dealer.

RALPH S. OPPENHEIMER.

Subscribed and sworn to before me this 13th day of April, 1928.

MILTON N. LIEBEMAN
A Solicitor in Chancery of N. J.

Affidavit of Carl Hirsch.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

CARL HIRSCH, of full age, being duly sworn, upon his oath, deposes and says:

1. I was one of the co-owners of the Hillside House, Montclair, New Jersey, at the time of its sale to Joseph P. Gavin and Abbie E. Gavin in June, 1922. Erich Stromher was a partner with me in the operation of said hotel prior to said sale. I have been in the hotel and restaurant business for the last forty years.

2. Mr. Stromher and I sold the Hillside House to Joseph P. Gavin and Abbie F. Gavin for $7000. My attention has been called to the fact that the defendant Abbie E. Gavin states in paragraph 30 of her affidavit that the Hillside House in Montclair was sold to her and that she permitted Mr. Gavin to sign checks as heretofore, and that she operated and managed the hotel herself. This is untrue. The hotel was sold to Mr. and Mrs. Gavin. Also Mr. Gavin assisted in every way possible in the operation. I lived at the hotel for two months after the sale to Mr. and Mrs. Gavin and saw him perform numerous duties about the hotel, including the keeping of the hotel books (Mrs. Gavin used to refer to him in my presence as "her bookkeeper"), making out checks, and keeping generally busy about the hotel assisting in every way possible. I have seen him work for a period of about three weeks with another man cleaning out a large accumulation of ashes and rubbish from the cellar. I have also seen him help out in the kitchen with such things as helping out in a rush to dish out food or cut bread. I have also seen him work often

in the garden, cutting grass and trimming the bushes. I also know that he used to take care of the deposits of money in the bank. I also recall that when the hotel was sold to Mr. and Mrs. Gavin I took both of them around to the various tradespeople who supplied the hotel, including the butcher, grocer, company supplying the linen and dealer selling the dishes to the hotel and introduced both of them as the new proprietors of the Hillside House.

3. My attention has also been called to the statement in the affidavit of the defendant Abbie E. Gavin that the complainant has been a heavy drinker and gambler. Although I have known the complainant Joseph P. Gavin for the past six years I have never seen him drunk nor even seen him drink liquor, nor have I ever seen him gamble, nor have I ever heard of him drinking or gambling. On the contrary, his reputation has always been of the highest for both integrity and truth-telling.

4. On a visit with my wife to the Blossom Treat Hotel I have seen him working in the garden, contrary to the statement in the affidavit of his wife that Mr. Gavin never did anything there.

5. I reside at 101 William St., East Orange, N. J.

CARL HIRSH.

Subscribed and sworn to before me this 13th day of April, 1928.

MILTON N. LIEBEMAN
A Solicitor in Chancery of N. J.

Affidavit of William T. Murphy.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

WILLIAM T. MURPHY, of full age, being duly sworn upon his oath, deposes and says:

1. I have been a waiter for the past twenty-one years. I reside at 569 Central Av., East Orange. From July, 1927 to early in January, 1928 I was employed as a waiter by Joseph P. Gavin and Abbie E. Gavin in the Park Lane Restaurant, East Orange. I am at present employed as a waiter at the Robert Treat Hotel, Newark, N. J.

2. My attention has been called to the statement of the defendant Abbie E. Gavin in Paragraph 37 of her affidavit to the effect that she opened the Park Lane Restaurant, operated it herself and that Joseph P. Gavin attempted to act as cashier and perform other duties about the restaurant, but that during this period he would become badly intoxicated and throw glassware around and that on three occasions it was necessary to call the police. These are not the true facts. The facts are as follows: Although I was in constant attendance at the restaurant in the course of my duties as waiter I never saw Mr. Gavin drunk nor did I ever see him throw glassware, as alleged. I do recall that the steward, J. Damb, did everything in his power to have Joseph P. Gavin put out of the restaurant. When he came in he would refer to Mr. Gavin in my presence as a drunken bum, a God-damn bum, and other similar names. Mrs. Gavin would laugh when she heard this. She was very jealous of the steward. The steward, J. Damb, used to bring a fat woman to the restaurant, and Mrs. Gavin objected. Also Mrs. Gavin used to tell me that this woman was a married woman with a child, and what did I think of

the steward going around with her. Also Mrs. Gavin used to intercept telephone messages for the steward from this woman and hang up on her. She used to refer to the steward as "my steward" and most of the time called him "dear" and "honey." The steward gave me orders not to feed Mr. Gavin's daughters. All this caused trouble and it was on account of the constant fighting that I finally left. Mr. Gavin used to work very hard around the restaurant until he was interfered with by the steward. He used to act as cashier for quite a time and I never heard of any shortage, as alleged by Mrs. Gavin and the steward. I believe I would have heard of it had it existed as the steward used to come to me often and so did Mrs. Gavin with stories about Mr. Gavin. They were the only ones who ever said he was drunk. I never saw him so all the time I was in the restaurant. Also I never knew the police to be there more than once and that was when the steward was afraid that Mr. Gavin was going to beat him for his constant insults and attempts to put him out, when the steward sent for the police. The steward also used to "frame" Mr. Gavin with the help. He (the steward) used to tell the cook and the cashier that Mr. Gavin was complaining about them, when in fact Mr. Gavin was not doing this at all, in order to get the help "sore" at Mr. Gavin. Mr. Gavin worked very hard around the restaurant until interfered with. He used to fix shelves, carpenter about, at which he was very skilful, paint the kitchen walls and the pantry, also the doors. The steward would laugh at him and get him "Sore" till he stopped. Mr. Gavin would also pass out circulars about the restaurant several times a week—he used to give them to automobilists and used to meet the trains in order to give the

circulars to commuters. He was very careful about his register when he acted as cashier. Later when they got a regular cashier he used to check the cash with her and make her account for all shortages, even ten or fifteen cents. He also took charge of the books and the deposits and used to sell cigarettes and cigars and put supplies, like towels, etc., in the wash room.

3. My attention has also been called to the statement of the defendant Abbie E. Gavin that the duties of managing the restaurant were too hard for her and that she was in bad physical shape. I have seen Mrs. Gavin in constant attendance at the restaurant. I never saw her sick except on one occasion when the steward threatened to leave and then she became hysterical. I saw Mrs. Abbie E. Gavin and the steward wrestle together. She would grab him and push him against a wall and press him close so as to excite comment from one of the guests, at least. They would do this when almost everybody had gone. They would also go to the back room, but I did not watch them because it was not my business and the less I saw the better it would be for me. But I could not help hearing Mrs. Gavin say that the steward J. Damb ought to lie down in the bed room which they had fixed up in the back and I remember the steward saying that Mrs. Gavin ought to sleep in the bed room in the restaurant all night and she said it would be too cold and he said he would stay all night too and keep up the heat. I also remember the steward telling Mrs. Gavin to send Mr. Gavin out to deliver circulars, apparently so they could be alone together. I also remember Mrs. Gavin saying that she wouldn't know what to do without the steward. But he didn't use to do much work except show

guests to the table, help make out menu cards and orders for supplies with the chef (with the chef, and not with Mrs. Gavin, as she says). Most of the time the steward had nothing to do, except in the morning. It was disgusting the way Mrs. Gavin and the steward used to carry on—she seemed to be "crazy" about him. He didn't seem to care for her at all. It looked as if he was trying to avoid her. She offered him a thousand dollars, the steward told me, if he stayed there a certain length of time. The steward told me this was one of the things Mr. Gavin was raising a fuss about.

4. My attention has also been called to the statement of the steward that he never had the receipts of the restaurant in his possession, but I used to see him carry large amounts of the receipts around with him and I used to see him put the receipts in a leather bag at night apparently to take home.

5. My attention has also been called to the statement of Mrs. Abbie E. Gavin and the steward that the reason the girls were sent out was because they refused to pay and because they brought guests who ate for nothing. This is untrue. Mrs. Gavin often said in my presence that the girls should have all they wanted to eat, but the steward gave the waiters orders that the daughters were not to get anything to eat. Previous to this I have seen the girls bring in guests occasionally but they always paid. I used to hear the steward call the daughters "poison" and insult them in other ways.

WILLIAM T. MURPHY.

Subscribed and sworn to before me this 13th day of April, 1928.

MILTON N. LIEBERMAN,
A Solicitor in Chancery of N. J.

Affidavit of George F. Mack.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.:

GEORGE F. MACK, of full age, being duly sworn, upon his oath deposes and says:

1. I have been in the real estate and insurance business in the Brick Church section of East Orange for the past twenty-one years and for the past ten years have been president of Byrnes & Mack, Inc., with its office at #6 Washington Place, East Orange, N. J.

2. I have known the complainant, Joseph P. Gavin, for the past three years.

3. I negotiated the lease of the Park Lane Restaurant to Joseph P. Gavin and Abbie E. Gavin. Although I carried on negotiations for the lease with Mrs. Gavin because Mr. Gavin could not hear me, yet I noticed that Mrs. Gavin consulted Mr. Gavin concerning the various questions which came up, for example, in connection with the terms of the lease as to rent, period of the lease, what the landlord would do, such as agreeing to share with Mr. and Mrs. Gavin the cost of the dumbwaiter, while Mr. and Mrs. Gavin were to put in all their own kitchen equipment. My attention has been called to paragraph 2 of the affidavit of Hugh M. Clopton, on behalf of the defendant Abbie E. Gavin to the effect that the name of Joseph P. Gavin was added to the lease in the event of the death of Abbie E. Gavin. Although I was present during the entire period that negotiations were going forward for the making of the lease, including being present when the lease was actually signed, no such reason was heard by me for making the lease in both names. In

fact I believed that Mr. and Mrs. Gavin were co-owners of the restaurant and that this was the reason for taking the lease in both names. For the same reason the insurance I wrote for the restaurant was written in the names of Joseph P. Gavin and Abbie E. Gavin, trading as the Park Lane Restaurant. The insurance thus written in both names included fire insurance, workmen's compensation insurance, public liability insurance, and hold-up insurance.

4. My attention has also been called to the statement of the defendant John Damb to the effect that the only work done by Mr. Gavin was to call and get his meals and that he did no other work about the premises. This statement is untrue. I have seen Mr. Gavin act as cashier on occasions when I was in the restaurant. I have also heard Mrs. Gavin tell Mr. Gavin to go out for articles needed about the restaurant, such as brooms and electric bulbs. There was not much to do about the restaurant at lunch time when I was there.

5. My attention has also been called to the statements in the affidavits of the defendants Abbie E. Gavin and John Damb to the effect that the complainant Joseph P. Gavin was often drunk. In fact John Damb states in his affidavit that Mr. Gavin was continually drunk for a period of weeks. Although I ate lunch in the restaurant from the time it opened three or four times every week until March 20th, 1928, or thereabouts, I have never seen Mr. Gavin drunk nor have I ever known that he was drunk. The defendants in this case are, to the best of my knowledge, the only ones who ever said he was drunk.

6. When I saw the steward making trouble between Mr. and Mrs. Gavin I tried to bring them together. I went with Mrs. Gavin's brother, Mr. James Knight, with whom I had become acquainted by negotiating with him for the purchase of a house, to attempt to effect a reconciliation. The steward had told me that he wanted authority from Mrs. Gavin to put Mr. Gavin out of the restaurant; and I observed that he was a disturber. The steward, J. Damb, would say to me when I came in. "We'll do this," and "we're ready for him" (meaning ready for Mr. Gavin if Mr. Gavin started proceedings). I told him that if Mrs. Gavin said she would do something it was all right, but that until she told me that she didn't want things patched up I was going to use every effort to bring them together. The next day the steward wouldn't speak to me (this was in the last of December). I believe from constant visits at the restaurant that the steward, J. Dam, didn't want Mr. and Mrs. Gavin brought together because he was afraid that if they were brought together he would lose his influence. It seemed to me and I believe that the steward was doing everything in his power to oust Mr. Gavin in order to get an interest in the business himself. I have heard the defendant J. Damb say that Mr. Gavin could never go behind the desk and could never do anything else about the restaurant; and I believe this was brought about through J. Damb's instigation.

7. My attention has also been brought to the statements in the affidavits of the defendants Abbie E. Gavin and J. Damb that the daughters of the complainant were excluded from the restaurant be-

cause they refused to pay for meals. I heard Mrs. Gavin say that the girls were welcome to come for their meals. This was before the trouble arose with the steward. Also I have heard the steward call the married daughter of Mr. Gavin "poison", saying that she put Mr. Gavin up to things.

8. My attention has also been called to the statement of the defendant J. Damb that when he accepted the position of steward the restaurant was being improperly run with the result that there was constant change of help. From seven months' observation of the hotel and eating there over that period at least three times a week constantly I believe this statement to be untrue. Before the steward came one of the waiters I remember was there two months and another one month. Since the steward came I have seen waiters last from two days to two weeks. I also believe that business has considerably fallen off since the steward caused trouble at the restaurant. At least one customer told me that he would not go there on account of this; and I know that Mrs. Gavin told me that they used to have from seventy-five to one hundred guests in the evening during the summer months and early fall of last year, whereas when I went with Mrs. Gavin's brother to attempt to bring the Gavins together there were only two or three there. This was in the last part of December when the trouble had become acute. I believe that the steward's personality is largely responsible for the falling off in business. A restaurant like the Park Lane requires a steward who can greet people with a smile, whereas the steward J. Damb usually greets people with a scowl; and when he does attempt to be pleasant he fails.

9. My attention has also been called to the statement of the defendant Abbie E. Gavin that the complainant Joseph P. Gavin did no other work about the Blossom Treat Hotel in Elizabeth except sit around the hotel. Although I only visited the Gavings at the Blossom Treat once, I remember that Mr. Gavin was working in the garden at the time.

10. Mr. Gavin's reputation for honesty and telling the truth is of the very highest.

GEORGE F. MACK.

Sworn and subscribed to before me this 12th day of April, 1928.

MILTON N. LIEBERMAN,
A Solicitor in Chancery of N. J.

Affidavit of John Murdy.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

JOHN MURDY, of full age, being duly sworn upon his oath, deposes and says:

1. I have been a waiter for the past five years from about September to November, 1927, I was employed in the Park Lane Restaurant, East Orange. I reside at No. 915 South 18th St., Newark, New Jersey.

2. My attention has been called to the statement of the defendant Abbie E. Gavin in Paragraph 37 of her affidavit to the effect that she opened the Park Lane Restaurant, operated it herself and that her husband attempted to act as cashier and perform other duties about the restaurant, but during this period he would become badly intoxicated, and throw glassware around and that on three occasions it was necessary to call the police. During the period that I was at the restaurant I never saw Mr. Gavin under the influence of liquor nor did I ever see him throw glassware. I do remember that the steward, J. Damb, would refer to Mr. Gavin in my presence as a drunk and a bum. Mrs. Gavin acted as if she was very fond of the steward. She used to hold hands with him at the table very often, would refer to him as "my steward" and would generally call him "dear" and "honey". She acted as if she thought the steward was the greatest man in the world and she said the restaurant couldn't run without him. In fact both I and the rest of the help thought she was "crazy" about him, so foolishly she acted. She used to act like a playful kitten with him—push him around, push him up

against the wall. Also she and the steward used to go into the room where the day-bed was and stay there for a long time. On a good many occasions I have seen Mrs. Gavin and the steward go and stay in the bed-room for an hour or more. I did not know what they were doing in there, but I used to hear them laughing and talking in there for a long time and it looked very suspicious to me especially on account of the way they used to carry on when they were around the restaurant. They always closed the door so no one could look in. I also know that the steward didn't want Mr. Gavin around and said that he was a nuisance. It is untrue that Mr. Gavin didn't do anything about the restaurant. He used to take care of the cash for quite a while. I know that he used to be very particular about checking up the register tape with the receipts. It is untrue that there were constant shortages while Mr. Gavin was cashier. If there had been any shortages I would certainly have heard of it because Mrs. Gavin expresses herself in no uncertain terms and it is not necessary to be in the conversation in order to hear what is said when she is around. It is also untrue that the guests brought in by Mr. Gavin's daughters did not pay their checks. I know that they always paid their checks themselves or Mr. Gavin's son would pay for them. Even when there were other people about I have seen Mrs. Gavin hold hands with the steward, J. Damb, smile at him, put her arm around his shoulder and follow him wherever he went. They were always together about the restaurant both in business hours and out of business hours. Mrs. Gavin was never absent from the restaurant while I was there—she was there at least a part of every day. If she was sick it was only on one occasion, when I remember that

the steward threatened to leave and then she became hysterical. Mr. Gavin used to help in every way he could—besides taking charge of cash for quite a time he painted, went out to get provisions for the restaurant, supplied the necessaries for the washroom like towels, etc., and took care of the books of the restaurant and made deposits in the bank. I remember that Mrs. Gavin used to send Mr. Gavin out to deliver circulars and then Mrs. Gavin and the steward, J. Damb, would be alone together in the restaurant. It is also not true that Mrs. Gavin made out the menus and the order list with the steward for I have seen the steward and the chef take care of these things; and Mrs. Gavin didn't seem to know anything about these things at all. I have also seen Mrs. Gavin put Mr. Gavin's married daughter out of the restaurant—she pushed her right down the stairs and out into the street. I understand that this was because the daughter came to inquire why the steward, J. Damb, had insulted her husband the night before and Mrs. Gavin wouldn't even let her see the steward but told her to go home and take care of her child. I remember the steward calling the daughters poison.

JOHN MURDY.

Sworn and subscribed to before me this 14th day of April, 1928.

MILTON N. LIEBERMAN,
A Solicitor in Chancery of N. J.

DEFENDANTS' AFFIDAVITS TO REPLY AFFIDAVITS.

Affidavit of Abbie E. Gavin.

(Filed April 25, 1928)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,
and
ABBIE E. GAVIN and JOHN DAMB,
Defendants.
} On Bill, &c.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

ABBIE E. GAVIN, of full age being duly sworn, according to law upon her oath deposes and says:

1. I have read the sixty-five (65) pages of the reply affidavits of the complainant in the above-captioned case and answering Paragraph 2 of the affidavit of Charles F. Paterson. I admit that Mr. Paterson called at the hotels occasionally, sometimes once a month and sometimes less than once a month, and that his visits were mainly about repairs that I desired made to the hotel, and he was not acquainted with any of the business transactions, as the latter part of Paragraph 3 of his affidavit says, "I was led to believe and suppose, by the actions of both Mr. and Mrs. Gavin that they were operating the hotel of the association as co-owners".

2. I have read the affidavit of Edith L. Kent, in which she says in Paragraph 3 that she went to the hotel occasionally and that she saw Mr. Gavin cut the grass and sweep and clean the hotel porch. I admit that Mr. Gavin used to putter around on the lawn around the hotel, and in order to waste time would sprinkle the porch or do anything else he had a mind to do. I admit that Mr. Gavin used to visit the post office to collect the mail and buy the postage stamps. As I have said before in my affidavit, he would run errands.

3. In paragraph 5 of the affidavit of Edith L. Kent, she says that she never knew until today, referring to April 7th, 1928, that the complainant was stone deaf, and this bears out to a great extent, of the little knowledge she had of the operation of the hotel.

4. I have read the affidavit of Mrs. Ruth Kent Welch. At the time that we resided in Tuxedo Park, New York, Ruth Kent was a girl about the age of ten or fifteen years, and used to go to school with my step-daughters, Marie and Laura. She visited them at the hotel, and they used to play about, together, as children, and she knows very little because of her age, regarding the conducting of the hotel, or any of the business arrangements. As she says in Paragraph 4 of her affidavit, the girls were attending grammar school.

5. I have read the affidavit of H. Seeley Welch, and that portion of Paragraph 2 of the affidavit of Mr. Welch, which states that "It always seemed to me that they were operating the hotel jointly. Mr. Gavin always carried a large roll of bills, out of which he paid me. Mrs. Gavin always paid me in

cash." I admit that Mr. Gavin used to run the errands, and buy meats, etc., when it was necessary. I also have read Paragraph 4 of the affidavit of H. Seeley Welch, in which he states that Mr. Gavin used to gamble in a friendly game, for small stakes. Mr. Welch's wife complained to me several times that her husband was continually gambling with the complainant, and losing money, and this resulted in a family quarrel, and she requested me to keep my husband from playing cards with H. Seeley Welch.

6. I have read the affidavit of Mrs. Hannah Fitzpatrick Millspaugh. At the time I operated the hotel in Tuxedo Park, New York, Mrs. Millspaugh was a young girl between the ages of ten and fifteen years, and she used to play about the hotel with my step-daughters, Marie and Laura, and she cannot truthfully say from her own personal knowledge that Mr. Gavin did not absent himself from the hotel, as she was an immature child, and knew nothing about the relationship between the complainant and myself.

7. I have read the affidavit of Mrs. Elizabeth Rajotte, in which she states in Paragraph 2 that she has read the affidavits of the complainant, accompanying the bill of the complaint, and she believes them to be true. I admit that I visited the sister of the complainant, Mrs. Rajotte, at her home in Plainfield, on November 8th, 1927, and I informed her at that time that my husband was drinking heavily, and was causing me considerable trouble in the operation of the restaurant.

8. I have read the affidavit of Willy Drohne, who was formerly employed by me as a chef, and

I deny the contents of Paragraph 3, which are mostly hearsay or what someone told him. Mr. Drohne was discharged by me as chef, because of neglect of duties, and the chef informed me at the time of his discharge that he would be a witness against me in the litigation that my husband contemplated bringing at that time. I deny that portion of Paragraph 9 which says that Mr. Gavin painted the kitchen, as the kitchen is unpainted to this day. We do not rent any portion of the cellar of the premises in which present restaurant is located, as it is on the second floor. We have no yard at the premises, so that there was no call for Mr. Gavin to pick up papers in the front yard.

9. I have read the affidavit of George C. Mackey, regarding parts of the years 1925 and 1926, when I owned the Blossom Treat Hotel, in Elizabeth, New Jersey, and in Paragraph 3 of this affidavit he says, "I also believe the complainant took care of the furnace, cut the grass, and did other work about the hotel, but there was a man there for a time, who took care of the furnace, and he left on account of poor business, I suppose". During all the period of time that I operated the Blossom Treat Hotel, in Elizabeth, New Jersey, I had a gardener to take care of the grounds, and that was his entire occupation.

10. I have read the affidavit of Joseph A. Brophy, and I admit that Mr. Gavin stood around on the outside of the hotel, where there was some extensive digging going on. I hired a firm of plumbers, by the name of Rath, in Elizabeth, New Jersey, to do the digging outside of the hotel, because a pipe bursted in the cellar, and it was

necessary to have the entire pipe dug up, and a new pipe inserted. Mr. Gavin may have watched the men at their work, but he had nothing to do, whatsoever, with the fixing of this pipe. The affidavit of Mr. Brophy does not say that he visited the hotel more than two days, and the entire contents of the rest of his affidavit is based on his observations when he passed the hotel to and from business.

11. I have read the affidavit of Mary A. Brophy. She does not state that she visited the hotel, but her entire observations of any partnership that existed between the complainant and the defendant, Abbie E. Gavin, is from the fact that the complainant bought some coal from her brother, and because she used to see him in and about the hotel when she went to and from business.

12. I have read the affidavit of my step-daughter, Laura Gavin Hanners. I deny the allegations that my step-daughter waited on the table, made beds and kept busy around the house during the day. I deny the contents of Paragraph 5 of this affidavit, and state that if there had been any such love affair as set forth in Paragraph 5 of my step-daughter, Laura's affidavit, my husband and step-daughters would have left me long ago. I have read that portion of Paragraph 7 of the affidavit of my step-daughter, Laura, in which she admits that "she bought an automobile, but she put the automobile in my name, because she thought that if they had a serious accident, I would be sued". I also admit that they had no use of the car without my permission. I deny that I used to sit up until two or three o'clock in the morning, fighting with the complainant, or that I used to spend until

one o'clock, walking the streets to see if a woman came out of the steward's room. I deny that I used to sit by the window in the morning, to see the steward, or that I would go out in the kitchen to see if the steward's light was lighted in his room. I deny that I told the complainant not to come over to the restaurant at all, and that I forbade him to come home with me at night. I deny that I used to stand under a light, across the street, with the steward, so that the complainant could see me, or that I used to sit in the dark hall of the apartment with a man, late at night. I admit that on one or two occasions I did sit out in the dark hall of the apartment, because my husband was under the influence of liquor and I had extreme difficulty in getting him upstairs and into bed. This happened on two difference occasions, and I tried to quiet him by keeping him in the hall, as I lived with my step-daughter, Mrs. Hanners, and there was an eighteen months old baby in the house, and I knew that the complainant, being under the influence of liquor, was very boisterous, and would create a disturbance in our apartment, and I used to try to quiet him.

13. I know that the complainant had an auto accident, and I even went so far as to see the doctor, to find out what his condition was, and also attempted to settle it with the insurance adjuster, for him, but he said he would settle it himself, and requested me to leave the room when he made the settlement. I admit that my step-daughter, Mrs. Hanners, moved from the apartment, and took her sister with her, as well as the complainant, and left nothing but my bed and bed-room suite in the apartment, and when I returned at night I found

the apartment empty, except for some furniture that belonged to me, and the electric light had even been turned off. My step-daughter, Laura, knew that her father drank, and one night when he came home badly intoxicated, he attempted to kill me and my step-daughter, Laura, held him and my other step-daughter, Marie, went down and called for my son-in-law, Mr. Hanners.

14. I deny that I have ever had any trouble before with the complainant, as set forth in Paragraph 13 of the affidavit of Laura Hanners, and state, that when we were in Tuxedo Park, New York, I had considerable trouble with my husband regarding his gambling and drinking, which was well known to his two daughters.

15. I have read the affidavit of my step-daughter, Marie Elizabeth Gavin, and I deny Paragraph 5 of her affidavit, which states that she never saw the complainant intoxicated, or saw him play cards, as she was well aware of the trouble I had with her father in Tuxedo Park, New York and Elizabeth, as well as in East Orange, regarding the drinking and gambling. I deny the contents of Paragraph 6 of the affidavit of Marie Elizabeth Gavin.

16. I have read the affidavit of my son-in-law Irving C. Hanners. My son-in-law was a boarder at the Hillside House, Montclair, New Jersey. I deny that Mr. Gavin, took care of the furnace, cut the grass, shovelled the side-walks, or did the painting, or took care of the financial end of the business, as set forth in Paragraph 3 of his affidavit. It is true that he went to the bank and deposited the money, as he did this in all of the hotels that were

operated by me. I deny that my husband and I owned the property at Elizabeth, New Jersey, as set forth in Paragraph 4 of the affidavit of my son-in-law. Title to this property was taken in my name, and the property was purchased from my own funds drawn from my savings account in the Plainfield Trust Company, and the complainant does not deny this, as set forth in Paragraph 12 of the Reply Affidavits in which complainant says "part of the purchase price of the Blossom Treat Hotel, in Elizabeth, was taken from my wife's bank account," and later on, in Paragraph 19 of Reply Affidavits, complainant says, "that the defendant, Abbie E. Gavin, had a private savings account in the Plainfield bank which she used to purchase the Blossom Treat Hotel in Elizabeth. I admit, as set forth in Paragraph 5 of the affidavit of my son-in-law, that the steward was very willing, and a very good worker, and still has proved himself very willing, and a very good worker. I deny the allegations in Paragraph 10, that because of the trouble with the steward, there has been a considerable falling off in business in the restaurant. I deny the allegations in Paragraph 11, that I said I was going to move out of the apartment which I occupied with my son-in-law and two step-daughters, and my husband. I admit that they finally did move out, and left me alone in the apartment. I deny the allegations in Paragraph 14, that the trouble between the complainant and myself has arisen since the hiring of the steward. My son-in-law was married at the time I operated the Blossom Treat Hotel, in Elizabeth, and has had a home of his own since then.

16. I have read the lengthy affidavit of my husband, Joseph P. Garvin. My mother requested both

my husband and myself to come and live at her home in Plainfield, New Jersey, as set forth in my answering affidavit, as my husband had a very small income, of about Fifteen Dollars ($15.00) per week, and he was unable to maintain a home and support me and his two daughters on this salary. When we moved in my mother's home, in Plainfield, New Jersey, the house was entirely furnished, and the only furniture supplied by Mr. Garvin was a mirror, a side-board, and some curtain rods. We could not use the side-board, and stored it in the barn. The mirror was broken in transit, but we did manage to use the curtain rods. I admit, as set forth in Paragraph 1 of the reply affidavit of complainant, that I had Two Hundred Dollars ($200.000) at the time of my marriage, and unbeknown to my husband, my father gave me the sum of Three thousand Dollars, ($3,000.00) at the time we left to go to the Broadway Hotel, in Nyack, New York. My father was a man of some means, as set forth in my affidavit, and he feared for the success of the hotel, and did not want me to be in want. There were at least twenty-five rooms in the Broadway Hotel, at Nyack, New York, which it took more than a thousand dollars to furnish. The statement that no part of the Three Thousand Dollars, ($3,000.00) of the money placed by me in the Broadway Hotel, Nyack, New York, was used by me, is untrue. There were at least twenty-five rooms in the Broadway Hotel, Nyack, New York, and it was impossible to furnish these rooms with the furniture we had, and to operate this hotel with the sum of One Thousand Dollars ($1,000.00), as set forth in the affidavit of the complainant. I further state that I took over the Broadway Hotel, in Nyack, New York, as my own business, and this is corrob-

orated in Paragraph 2 of the Reply Affidavits of the complainant, who admits a conversation with my father, in which he said that he did not know anything about the hotel business. I also state that we were short of funds after furnishing the hotel, and had attempted to borrow Two Thousand Dollars ($2,000.00) from Mr. Harriman. I deny the allegations in Paragraph 3 of the complainant's Reply Affidavit, that my husband had any furniture to take to the hotel at Nyack, New York. He had no rugs, no bed linens, no pillows, and it was necessary to buy all these things in order to equip the hotel, and that is the reason why my father gave me the Three Thousand Dollars ($3,000.00), to purchase these articles. I deny the allegations in Paragraph 4 of the complainant's Reply Affidavit, that the lease to the hotel was taken in the joint names of Joseph P. Gavin and Abbie E. Gavin, but the lease was taken in my own name. I admit that my husband used to take money to the bank, and run errands at the Broadway Hotel, at Nyack, New York, but I deny that he washed dishes or made beds.

17. I admit the allegations in Paragraph 7 of the Reply Affidavit of complainant, in respect to the taking of the two children to my home after our marriage, as I felt sorry for them and thought that they should have care and also, my mother felt that the babies should be placed with me, and I was very happy to have the two children of my husband with me. I admit that I took the profits from taking in boarders on my father's farm, and also took the monies obtained from the sale of milk and from the sale of fruits and other produce of the farm, as my father and mother gave these to me, and permit-

ted us to live on the farm because of my husband's physical handicap. I admit also, as set out in Paragraph 8, that I employed help in, around the farm and the house.

18. I admit also, that I took in boarders at Oak Tree, which was my father's farm, because we had no income whatsoever, and my husband had no employment. I deny the allegations in Paragraph 10, that the complainant did the scraping and washing of dishes for the boarding house. He spent his entire time, puttering around on the farm. I deny the allegations that my father paid Two Dollars ($2.00) per week for his board while at the farm, as complainant knew he paid Thirty Dollars ($30.00) per month for his board, because he was permitting us to occupy this thirty-six acre farm, and the farm house, without rent, and in addition to the Thirty Dollars ($30.00) per month, he also paid for the laundry for the entire family.

19. I deny that Mr. Gavin put in the sum of Three Hundred Dollars ($300.00) for the operation of the Tuxedo Park Hotel. The money placed in the Hotel at Tuxedo Park, New York, was placed there by me. I deny that the complainant painted the rooms of the hotel, or that he painted the walls and stairs, or built the fires, or did any work, as set forth in Paragraph 12, because the hotel itself was owned by the Tuxedo Park Association, and all the repairs and painting was done by the association men, who took care of all the property of the Tuxedo Park Association.

20. I deny the allegations of Paragraph 14, that I was in love with Frank Allen, a boss painter, and

that I ever went to the room of Frank Allen. I deny that there was any love affair as set forth in Paragraph 14 of the Reply Affidavit of Complainant.

21. I deny the allegations in Paragraph 15, in which complainant says that he is not a heavy drinker and a heavy gambler. On many occasions, both in the Tuxedo Park Hotel, and the Blossom Treat Hotel, in Elizabeth, I have put him to bed, because he came home so intoxicated that he would annoy the guests. I also had considerable trouble with him, regarding his gambling, which that, and drinking, was one of his failings. I deny that I ever played crap with one of the bakers and won Twenty-eight Dollars ($28.00).

22. I deny the allegations in Paragraph 18, that I purchased jewelry with any money of Mr. Gavin's, and state that any purchase of jewelry that I made, was made with my own funds. I admit the allegations of Paragraph 19, that I had a large bank account in the Plainfield Trust Company, which I had not used for over seventeen years, and which money I used to purchase the Blossom Treat Hotel, in Elizabeth, New Jersey.

23. I deny the allegations of Paragraph 20, that the complainant was never given spending money, as I always saw that he had sufficient pocket money, and wanted him to have it, because of his physical defect. I gave him this money, in order that he would not worry about his physical handicap.

24. I deny the allegations in Paragraph 21 of the Reply Affidavit of the complainant. I deny the allegations in Paragraph 22. I deny the allega-

tions of Paragraph 24, that my husband supported me, as he has never done any work whatsoever, since he sold the milk route, aside from the errands, and other small duties that he performed when I operated the hotels.

25. I admit that in 1923, or thereabouts, I borrowed Two Thousand Dollars ($2,000.00) as set forth in Paragraph 25 of complainant's affidavit, from the complainant, and that he placed the money in the bank account which I maintained in Montclair, New Jersey.

26. I deny the allegations in Paragraph 26 of the complainant's Reply Affidavit. I deny the allegations in Paragraph 27, that title to the Blossom Treat Hotel was taken in my name, because I wanted to be protected in the event that anything happened to the complainant and his daughters. Title to the property was taken in my name because I purchased the property, as set forth in Paragraph 19 of the Reply Affidavit, with my own money, drawn from the Plainfield savings account. I deny that the taxes, and the interest on the mortgage were paid for by Mr. Gavin. They were paid from the funds derived from the operation of the hotel. I deny that Mr. Gavin took care of the shrubbery and the lawns adjoining the hotel, as during my ownership, I had a gardener for that purpose.

27. I deny the allegations in Paragraph 28, that I took any money belonging to the complaint, and placed it in my own private bank account. The money received by me for the operation of the hotel was my money.

28. I deny the allegations of paragraph 28, that I ever choked or struck the complainant, and state that the only time that I ever laid my hands on him was when he was intoxicated, and it was necessary to use force. On those occasions he was very ugly, loud and boisterous.

29. I admit, as set forth in Paragraph 29, that it was necessary for me to travel and rest, because of my health, and the expenses on all of these trips were paid for by me.

30. I deny the allegations of Paragraph 30, that my husband handled all of the bank business, or all the other business matters, as these matters and all negotiations were transacted by me. I deny that the Park Lane Restaurant was conducted as a joint business, or that any of the hotels conducted by me were joint. At the time that I took over the operation of the Park Lane Restaurant, my health was far from good. I had been away and resting for over a year, because of my physical condition, and because of a heart ailment. I took the lease in the joint names of myself, and my husband, so that in the event of my death, because of this heart condition, there would be something left to my husband, and I did this on the advice of my counsel. I purchased a refrigerating cabinet, which was installed in the Park Lane Restaurant, with my own money, and also, all the kitchen utensils.

31. I deny the allegations in Paragraph 31, that the steward was continually fighting with the complainant, because the complainant thought the steward was taking me away from him. The trouble in the Park Lane Restaurant arose because of the fact

that my daughters and my son-in-law attempted to operate the restaurant. There were too many bosses trying to direct the chef and the waiters and run things their own way, and in July, 1927, because of this condition, and because of my physical condition, I entered into a contract with the steward, which was in writing, for a period of one year, in which I agreed to pay him the sum of Forty Dollars ($40.00) per week to act as manager of the restaurant.

32. I admit that the complainant and myself had a joint bank account in an East Orange bank, which was a bank account from which either of us could draw, but I also had the sum of Ten Thousand Dollars, ($10,000.00) in the Savings Investment and Trust Company of East Orange, New Jersey, which was money of my own which I had saved and which was in my own name.

33. I deny the allegations that the steward insulted my step-daughters or made insulting remarks about my husband, or that I ever kissed the steward, or ever went into a dark room with him. It was impossible to transact business in the restaurant because of the constant interference of the complainant's family with the operation thereof, and it was necessary that the steward and myself go over the bills, arrange the menus, check up on the help, and make up the pay roll, which we did in the small office adjoining the restaurant room.

34. The complainant, since last November, 1927, had been indulging too freely in intoxicating liquors, which he obtained in a "speak-easy" not far from my place of business, and had caused me

considerable difficulty. I even went so far as to go to a place called "Mike's," where my husband used to obtain his liquor, and asked him not to sell him any, and I also had trouble with the two daughters of the complainant, who are now twenty-seven years of age, as they felt I should excuse the complainant for his constant intoxication, and permit him to go on spending money for liquor. The complainant, on one occasion even upbraided me, for stopping the owners of a "speak-easy" from selling him liquor.

35. I admit, as set forth in Paragraph 31 of the Reply Affidavit, which is about seven pages along, that I called the police on several occasions, because of my husband's intoxication. I deny that I ever kissed the steward on both cheeks, or swore or used the words as set forth in Paragraph 31, on page 60 of complainant's affidavit. There was considerable trouble between the steward and my husband, because of his constant intoxication. They had several fights in the restaurant and my husband was brought in the Police Court in the City of Orange, because of these quarrels.

36. I deny that I left my husband, or the apartment in which he lived with my step-daughters, but state that they advised me that they were going to move, and that I would have to find another place. My step-daughters said good-bye to me, and told me to give back the Two Thousand Dollars, ($2,000.00) which they claimed their father had loaned me. I deny the allegations that the complainant has not received any money since November, 1927. He admits, in Paragraph 33, that the license to the restaurant was taken in my name, because I owned it. I admit the allegations in Paragraph 35, that the

money carried by my husband was money taken from the restaurant, and with my consent, as he said. I also have checks in my possession in which he took about Two Hundred Dollars, ($200.00), within the space of about a week, from the bank account. I admit also, that I never permitted my husband to draw any money without my consent, because it was my business.

38. I deny the allegations in Paragraph 36, that I never supported the complainant or his two daughters, and I say that my husband had no education himself, has never had a job or a position of any kind, after he sold he milk business in Plainfield.

39. I deny the allegations in Paragraph 36, that my husband never left me, as he did leave me, and sent me a letter on the stationery of the Robert Treat Hotel, telling me that he was going to live there. He also requested me to pay him Ten Dollars, ($10.00) a week, for his support. I sent word to my husband to come home and remain with me, and stay in the apartment which I had for him.

40. I have been handed affidavits of Charles C. Morris, Ralph Oppenheimer, Carl Hirsch, William T. Murphy, and John Murdy, which affidavits were handed to my solicitor after a hearing in the Chancery Court this morning. I have read over these affidavits, particularly, have I read the affidavit of Ralph S. Oppenheimer, where I have discontinued the buying of meat. I deny the allegations of Paragraph 3, that Mr. Oppenheimer ever saw Mr. Gavin peel potatoes or do any other work about the hotel. We had no garden at the Hillside House, in Montclair, New Jersey.

Affidavit of Abbie E. Gavin.

41. I have read the affidavit of Carl Hirsch, in which he states that he sold the Hillside House, in Montclair, New Jersey, to Joseph P. Gavin, and Abbie Gavin, and that Mr. Stromher was a partner of Mr. Hirsch. I have an affidavit of Mr. Stromher, in which he says that he made the lease to the Hillside House, in Montclair, New Jersey, and that the lease was in my name, only. I admit, as set forth in Paragraph 2, that Mr. Gavin use to help keep the books and that he did act as book-keeper, and made out checks, and carried money to the bank.

42. I have read the affidavit of William T. Murphy, who was a waiter at the Park Lane Restaurant, from July, 1927, to January, 1928. I deny the allegations in Paragraph 2, in which Mr. Murphy says it was necessary to call the police. Some of the waiters used to come to work from ten to twelve, and not return until five or six in the afternoon, and some of them worked from six until ten. I know as a positive fact that Mr. Murphy was not present in the restaurant when we had some of the trouble with Mr. Gavin. It is true that he never saw Mr. Gavin throwing glass-ware, because he was no longer in my employ when this took place. I have never seen the steward bring a fat woman to the restaurant, nor did I talk to the help, and tell them that this woman was a married woman with a child, nor did I attempt to intercept telephone messages when the steward would call this woman up. It is true that the steward gave orders to Mr. Murphy as well as to the other waiters, not to feed the complainant's daughter, as the restaurant business was very slow for a while, and I just about made both ends meet. I admit that the waiters never heard of any alleged shortage in the cash register, as I

never talked over my business relationshps with the waiters or any of the rest of the help. I deny that Mr. Gavin ever worked hard around the restaurant as all the renovations and painting and everything else was new when we took possession.

43. I also deny the allegations in Paragraph 2, that Mr. Murphy has never seen Mr. Gavin drunk, because he saw him intoxicated while he was there, on more than one occasion, and Mr. Murphy has even told Mr. Gavin to stop his drinking, and he also told me that he did not know what I was going to do with him because of his constant indulgence in spiritous liquors. I also deny all the other allegations contained in the affidavit of Mr. Murphy.

43. I admit that the steward used to take the receipts for the restaurant home, because I was afraid to carry this sum of money at night, and I could not trust Mr. Gavin with the money because he would spend it for liquor. In the morning, the money would be deposited in the bank, because it was not safe to leave it in the restaurant all night.

44. I have read the affidavit of George F. Mackey, who was the real estate agent who negotiated the lease for the Park Lane Restaurant. It is true that he carried on negotiations for the lease with me. I deny that Mr. Mackey was present during the entire period that negotiations were going forward, for the negotiating of the lease, as set forth in his affidavit, as this matter was discussed by me with my attorney, and Mr. Mackey was not present at that time, before the lease was finally drawn up.

45. I admit the allegations in Paragraph 4, that I used to send Mr. Gavin for articles needed about

the restaurant, and also that there was not much to do about the restaurant. I have read Paragraph 5 of the affidavit of Mr. Mackey, and I admit that he never ate there at night, and was never there late at night, when Mr. Gavin used to come in intoxicated, and that Mr. Gavin has been absent from the restaurant, practically since sometime in November, 1927. I deny the allegations in Paragraph 6, most of which is based on information and belief, and is not from facts. I deny the allegations in Paragraph 8, and stater that Mr. Mackey had no information as to how the restaurant was being conducted, or regarding the help, or anything else about the restaurant, or that the business has fallen off since I hired the steward, as Mr. Mackey never consulted me about the business, nor did he get any information about it, from me.

46. I have read the affidavit of John Murdy, and I believe he was employed, as near as I recollect, for about three weeks in the Park Lane Restaurant, which was soon after its opening, so that he has no knowledge of what happened after November, 1927, and that all the allegations set forth in his affidavit are mere hearsay or what someone has told him.

47. I admit, that on one occasion I had to put my daughter, Laura, out of the restaurant, because she came in and tried to dictate to me how I should run it, and insulted me on more than one occasion.

ABBIE E. GAVIN.

Sworn and subscribed to before me,
this 17th day of April, A. D. 1928.

HYMEN M. GOLDSTEIN,
An Attorney at Law of New Jersey.

Affidavit of Jennie Donnelly.

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, etc. Affidavit to Reply Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

JENNIE DONNELLY, of full age, being duly sworn on her oath, according to law, deposes and says:

1. I reside at 75 Brunswick Street, City of Newark, County of Essex and State of New Jersey.

2. I know both the complainant and defendant, Abbie E. Gavin, in the above entitled cause.

3. I worked at the Belvidere Hotel, Newark, New Jersey, as chamber maid and waitress when Mrs. Gavin owned and operated the same. I was hired by Mrs. Gavin and paid by Mrs. Gavin.

4. I saw Mr. Gavin about the hotel, but I have never seen him do any work.

5. When Mrs. Gavin sold the Belvidere Hotel, I went with her to the Hillside House, Montclair, N. J., where I remained for two years, until the house was sold. I was hired by Mrs. Gavin and paid by Mrs. Gavin and I worked there also as chamber maid and waitress.

6. Mr. Gavin ran errands while I was at the Hillside House in Montclair and used to run errands to the Post Office and get food in emergency.

7. I also went with Mrs. Gavin to the Blossom Treat Hotel, Elizabeth, N. J., where my duties were the same as in the Belvidere Hotel and at the Hillside House.

8. There was a large garden on the grounds surrounding the Blossom Treat Hotel, and I have seen Mr. Garvin putter around the flowers and do odd jobs around the garden, but during all the time I stayed there, which was until the hotel was sold, there was a gardner who cut the grass and did all the laborious work.

9. While I was employed at the hotel, I came in contact with Mr. Garvin, but he was deaf and he could do nothing.

10. I have seen him play cards with the help and he even played cards with me. I have also seen him intoxicated on several occasions and I have seen Mrs. Gavin put him to bed when he came into the Blossom Treat Hotel intoxicated in order that he would not make a showing before the guests.

JENNIE DONNELLY.

Sworn and subscribed to before me this 16th day of April, A. D. 1928.

CHARLES SILBER,
An Attorney at Law of New Jersey.

Affidavit of Benjamin Rosenstein.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

BENJAMIN ROSENSTEIN, of full age, being duly sworn on his oath, according to law, deposes and says:

1. I reside at 150 Orchard Street, City of Newark, County of Essex and State of New Jersey.

2. I have known both the complainant and the defendant, Abbie E. Gavin, for a period of about twenty years.

3. I knew the defendant, Abbie E. Gavin, when she operated the Tuxedo House in Tuxedo Park, New York. At that time I was engaged in the butcher business in Paterson, New Jersey, and Mrs. Gavin used to order all the meats, for the hotel in Tuxedo Park, from me. She used to buy at the rate of $75.00 to $100.00 worth of meat per week from me.

4. Mrs. Gavin always paid the bills, all the ordering for the meats was done by her over the telephone and I never came in contact with Mr. Gavin in any of the business transactions.

BENJAMIN ROSENSTEIN.

Sworn and subscribed to before me }
this 12th day of April, A. D. 1928. }

A. WM. WANN,
Ntary Public of N. J.
(Seal)

Affidavit of Erich Stroehmer.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

ERICH STROEHMER, of full age, being duly sworn on his oath, according to law, deposes and says:

1. I am the proprietor of the Bernards Inn, Bernardsville, N. J., and was formerly the owner of the Hillside House, Town of Montclair, County of Essex and State of New Jersey, and I leased the Hillside House in Montclair, N. J., in 1923 to Abbie E. Gavin, the defendant in this suit, in her name alone.

2. All the negotiations for the lease of the house, all the business transactions, all arrangements of the transfer of the lease, all the repairs for the property during the period of time Mrs. Gavin occupied it, was made with Abbie E. Gavin. Mr. Gavin used to call and bring a check for the rent, but my entire dealings were with Mrs. Gavin and the deposits for the rental of the place were made by her.

ERICH STROEHMER.

Sworn and subscribed to before me }
this 14th day of April, A. D. 1928. }

J. E. WHITENACK.
(Seal)

Memorandum Opinion of Vice-Chancellor Backes.

(Filed, May 24, 1928)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,
and
ABBIE E. GAVIN and JOHN DAMB,
Defendants.

On Bill, &c.
Memorandum.

Whatever the relations were, in common, between this husband and wife before the present enterprise need not be considered on this application. Whether an accounting is forthcoming will be decided at the final hearing.

The complainant's claim that the restaurant in East Orange is a joint venture is not seriously disputed. The lease is in the joint names and the two have officially certified to the co-partnership and the fire insurance on the chattels is in the name of both.

Ordinarily a receiver would be appointed, as between strangers, under prevailing conditions, but in the circumstances the harm that would flow from that course to both would far outrun the benefit protection would afford the complainant.

An injunction will issue restraining the defendant from selling the business and that she keep strict accounts of the affairs, and retain the net proceeds until the final hearing. She must also presently file an inventory of the assets. Upon failure of obedience a receiver will be appointed.

In the meantime the complainant must stay away from the restaurant.

JOHN H. BACKES,
V. C.

Order With Preliminary Injunction.

(Filed, April 24, 1928)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, &c. Order.

This matter being opened to the Court by Harry Nadell, Solicitor of the Complainant, in the presence of Charles E. Dalrymple, of the firm of Dalrymple & Campbell, Solicitors of the Defendants, and the Court having considered the Bill of Complaint and Affidavits filed herein on the part of the complainant and defendants, and having heard and considered the arguments of Counsel, it is on this 24th day of April, 1928,

ORDERED that the application for a preliminary Receiver be denied, and it is further ORDERED that the defendants, Abbie E. Gavin and John Damb, their counsel, agents and servants and each and every one of them pending final hearing and until the further order of this Court in the premises, be and hereby are restrained and enjoined from selling, encumbering, or in any manner disposing of the business known as the Park Lane Restaurant, 23 Harrison Street, East Orange, New Jersey, or any chattels or other assets used in connection therewith, or stored in any part thereof, or any other joint property mentioned in the Bill of Com-

plaint, the determination of the question of whether an accounting should be ordered being held for the determination of the Court until final hearing.

And it is further ORDERED that the defendant, Abbie E. Gavin keep strict account of the affairs of said business, retaining the net proceeds until final hearing, and that she file within 20 days from the service of this order upon her solicitors, a detailed inventory of all said chattels and assets, promptly mailing a copy of said inventory to the solicitor of the complainant.

It is further ORDERED that said Abbie E. Gavin and John Damb make discovery, under oath, within 20 days from the service of this order upon their solicitors, concerning the books, papers, or other documents in their possession or control or over which any other person is keeping control for them or either of them, relating to the various joint enterprises alleged to have been carried on by the complainant, Joseph P. Gavin, and the defendant, Abbie E. Gavin, as set forth in the Bill of Complaint, to wit, in the Nyack, New York, Tuxedo Park, New York, Newark, N. J., East Orange, N. J., North Plainfield, N. J., and Montclair, N. J.

Respectfully advised,

E. R. WALKER,
C.

JOHN H. BACKES,
V. C.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

(Filed May 10, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Order, etc. Affidavit of Abbie E. Gavin, of all of the Inventory and Chattels of #23 Harrison Street.

ABBIE E. GAVIN, of full age, being sworn upon her oath, according to law, deposes and says:

I am one of the defendants in the above entitled cause, and that attached hereto and made a part hereof, is a detailed Inventory of all of the Chattels and assets of the Park Lane Restaurant.

GAS RANGE: 1 battery of Gas Ranges consisting of 1 #45-26 smooth top and 1 #44-26 open top Garland Gas Range, double section, with single deck high shelf.

BROILER: 1 #630 Garland Gas Broiler.

HOOD: 1 black iron Hood 10′ long, 4′-6″ deep, 2′ high.

COOK'S TABLE: 1 Cook's Table, 6′ long, 3′ wide with 3″ sectional maple top, supported on pipe legs with ball feet, and galvanized iron shelf underneath. Also to have drawer under top.

STEAM TABLE: 1 Steam Table having monel metal top with two monel metal meat pans with telescoping covers, 3-8½″; 3-6½″ enamel pots and covers.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

Underneath Steam Table is to be a galvanized iron plate warmer with ball-bearing sliding-doors.

POT RACK: 1-6′ triple bar wrought iron Pot Rack, supported on Cooks' Table.

MEAT BLOCK: 1 Meat Block 2′ x 2′.

BENCH: 1; Meat Bench 4′ x 2′ with 3″ sectional maple top, supported on pipe legs and galvanized iron shelf underneath with drawer.

REFRIGERATOR: 1 Refrigerator, Seeger #427, 86″ wide, 41″ deep, 77″ high.

POT SINK: 1 Pot Sink 2′-6″ x 2′ with one drain board 2′-6″ x 2′, made of #1 gauge galvanized iron.

UTILITY TABLE: 1 Utility Table 6′ x 2′, constructed as specified for above meat bench.

BREAD CABINET: Cabinet 5′ x 2′ x 34″ high, to have complement of drawers for bread and silver.

WATER COOLER: 1 Water Cooler.

COFFEE URNS: 1 set of Coffee Urns consisting of two 4 gallon Coffee Urns, and one 8 gallon water boiler, complete with all valves.

URN STAND: 1 Urn Stand and Cup Warmer 4′-6″, top of monel metal with nickel-plated drip cup.

DISH WASHING MACHINE: 1 Dish Washing Machine, Cresent model "AM".

DISH TABLES: 1 set of Soiled and Clean Dish Tables as per plan.

SINK: 1-4′ two compartment galvanized iron sink with two drain boards each 3′ long for basement.

TABLES: 9 Tables 28 x 28″, white wood tops, tapered square legs bolted to frame.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

17 Tables 34 x 34″ constructed as above.
4 Folding Banquet Tables 60 x 30″.

MIXER: 1 Reco Mixer with 21 qt. bowl, beater and whip.

CIGAR CASE: 1 Cigar Case and Cash Register stand.

REFRIGERATOR: 1 Refrigerator #500 Seegar, 48″ wide, 25″ deep, 69″ high.

ICE CHEST: 1 Ice Chest #67, two compartments 3′-7″ wide, 2′-2″ deep.

SERVING TABLES: 4 Serving Tables 28 x 19″ with shelf and drawer.

3—K636 Frying Pan.
1—K3172 Roast Pan.
2—K727-14 Roast Fryers.
1—Scraper.
1—K707 Waffle Iron.
1—T207 Measure.
1—T206 Measure.
1—K674 Sponge Kettle.
3—J1115 Garbage Cans.
1—K723 Sante Pan.
1—K607 6 Gal. Stock Pot.
6—K3303 20 qt. Sauce Pot.
12—K3334 Sauce Pans.
6—K3279 Sauce Pans.
2—K3078½ Steak Planks mounted.
1—K3078 Steak Planks mounted.
3—K3009 Spoons.
2—J1303 Mops.
1—J1078 Mop Stick.
1—J1293 Pail.
2—J1293 Brushes.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

2—J1004 Brushes.
2—J1328 Brushes.
2—J1151 Dust Pans.
2—2J1173 18" Floor Brushes.
2—Brooms.
12—J1133 Dish Cloths.
1—BO6000 Block Brush.
2 doz. T231 Pastry Pans.
5 doz. 22 9" Plates.
10 doz. 7" plates.
10 doz. 6" plates.
10 doz. 4⅞" plates.
5 doz. 6¼" Grape Fruits.
10 doz. Individual Creams.
5 doz. #2 creams.
10 doz. Cups.
10 doz. Saucers.
10 doz. Butter Chips.
2 doz. 11½" Dishes.
1 doz. 13½" Dishes.
½ doz. 15¼" Dishes.
½ doz. 949-12½" Rarebits.
1 doz. 10¼" Rarebits.
1 doz. 947½-6" Shirred Eggs.
1 doz. 22-9½" Dishes.
1 doz. 10½" Dishes.
8 doz. Compt. Plates.
1 doz. Mustards.
5 doz. A. D. Cups.
5 doz. A. D. Saucers.
½ doz. 420 Jugs.
½ doz. 480 Jugs.
1 doz. Eggs Cups.
3 doz. 5¼" Bakers.
10 doz. Bouillon Cups.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

5 doz. Saucers.
5 doz. 22-8½" Dishes.
2½ doz. Sugar Bowls.
½ doz. Individual Boats.
25 doz. 250 Tea Spoons.
25 doz. Dessert Forks.
10 doz. Bouillon Spoons.
3 doz. A. D. Spoons.
3 doz. Ice Tea Spoons.
10 doz. Med. Knives.
2 doz. Steak Knives C-388.
2 doz. 970-5 oz. Custards.
1½ doz. 981-6" Bakers.
2 doz. 1014 Tea Pots.
2 doz. 1013 Coffee Pots.
1 doz. 291 H. W. Jugs.
10 doz. 3014 Sherbets.
5 doz. S&P Shakers.
1 doz. 518 Cruets.
4 doz. 355 Finger Bowls.
3 doz. 265 Olive Dishes.
2 doz. 256 Celery Dishes.
1 Bbl. 18 doz. 139-8oz.
2½ doz. Match Stands.
½ doz. 668 Water Bottles.
4 doz. 394 12 oz. Individual Teas.
1 only 305-24 Disher.
1 only 305-16 Disher.
2 only K745 Parer.
1 only C452 Parer.
1 only Grape Fruit knife.
1 only # Bag.
1 only #3 Bag.
1 only #1 Bag.
1 only Egg Slices.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

1 only A1 #2281 Scoop.
6 only Tubes.
1 only C369 Slicer.
1 only 14" French Knife.
1 only C368 Slicer.
1 only C401 Saw.
3 only E922 Bain Maries.
12 only E924 Bain Maries.
2 only E826 Hotel Pans.
6 only E805 Pudding Pans.
1 only E568 Double Boiler.
6 only K736 Ladles.
2 only K3206 Ladles.
1 only K663 Skimmer.
1 only K3212 Ladle.
12 only K660-18" Spoons.
4 only K779 Pierce Spoons.
1 only K3120 Wood Bowl.
1 only K778-14 Gal. Stock Pot.
1 only K3091 Colander.
1 only K788 Whip.
1 only K3019-12" Whip.
3 only K638 Frying Pans.
6 only T279 Muffin Pans.
12 only TO344 Pie Tins.
1 only Elgin Butter Cutter.
4 only TO340 Cake Pans.
1 only "Baker Sheet 1".
1 Bain Marie Pan.
1 only Food Chopper.
1 only Waste Basket.
1 only E777 Pastry Board.

CHAIRS: 110 Imported Bent Wood Chairs.

HAT AND COAT RACK: 1 Hat and Coat Rack 4 bars with 72 Hooks.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

EXPENDITURES OF THE OPENING OF THE PARK LANE RESTAURANT.

	Schlicting	5600.00
	Porch Chairs	90.00
	Card Tables	8.00
	Shades	29.64
	Can	2.98
10	Tub	2.90
	Tub	11.60
	Duster	1.75
	Awning	12.00
	J. A. Winters—Misc.	1.70
	J. P. Weber—Connect Signs	15.00
	Fixtures and Lamps	174.00
	Plumbing	750.10
	HMA Construction Co.	405.88
20	J. W. Weber	95.00
	Sign	199.00
	Schlicting Misc.	55.56
	Cash Register	325.00
	H. Good—Flower Boxes	55.00
	Stewart & Co.	362.72
	Refrigerator	761.00
	Signs	25.00
	Schlicting Misc.	17.00
	(Equipment Cont'd)	
30	Screens	16.00
	Schlicting	9.25
	Shades	55.00
	Curtains for Doors	16.50
	4 Chairs	15.60
	Globes	2.07
	Sink	218.00
	Linens	511.98
	Sign	85.00
40	Sign	16.50
		$10137.45

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

PERSONAL EXPENDITURES

Light	$20.00
22 Chairs	35.00
Large Mirror in Ladies Room	30.00
Rugs (in hall)	100.00
Rug (dining room)	35.00
Hall Light	35.00
(1) Screen	35.00
	$290.00

MISCELLANEOUS EXPENDITURES

Insurance	20.00
Insurance 2	133.95
Insurance 2	33.46
License	20.00
Lawyer	25.00
Chamber of Commerce	25.00
Lease	1810.00
Cartage of Furniture	75.00
	$2137.41
One Month's Rent in Advance	300.00
	$2437.41
Grand Total	$12,864.86

Attached hereto and made a part hereof, is a list of all of the bills of the Park Lane Restaurant for the materials and supplies:

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

BRONZE ART FIXTURE COMPANY,
Newark, New Jersey.

Sold to: Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

May 31, 1927	To amount of fixtures and lamps as selected	$174.00
	Paid on account	74.00
	Balance	$100.00

Paid in Full.

STEWART & COMPANY, INC.,
East Orange, New Jersey.

Sold to Mrs. J. Gavin,
East Orange, N. J.

Aug. 1927	Line Cutting for Plumber	$32.34

Paid in Full.

FRANCIS LANG CO.,
East Orange, New Jersey.

Sold to Mrs. Gavin,
#23 Harrison St., E. O., N. J.

July 14, 1927	Double copper sink installed with waste, ventilation and supply pipes, as agreed	$168.00
" 13, 1927	Cleaning out ice-box drain Labor	3.15

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

Aug. 5, 1927	Two extra faucets and piping for sink, additional branch on waste		16.00
" 16, 1927	Making ice pan and waste to two Frigidaires &c:		
	Pipe Fitting	$3.50	
	Copper	.40	
	Solder & Fuel	.25	
	Labor	6.30	10.45
			197.60
" 5, 1927	Credit sink returned	$40.00	
	Less Expense	4.00	36.00
			$161.60
			157.60
	Balance due		4.00

Paid in Full.

FRANCIS LANG COMPANY,
East Orange, New Jersey.

Sold to Mrs. J. Gavin,
132 Sayre St., Elizabeth, N. J.

May 3, 1927	Plumbing as per estimate		$650.00
" 10, 1927	Bent stack put us, as per estimate		65.00
" 24, 1927	Floor protection: 6 sheets asbestos board	12.00	

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

3 sheets galv. sheet iron	9.00	
Nails	.30	
Labor	10.50	
Labor (helper)	3.30	35.10
		$750.10

Paid in Full.

PEEBLES LINEN COMPANY,
Newark, New Jersey.

Sold to Mr. J. Gavin,
Hamilton St., East Orange, N. J.

Sept. 30, 1927	5 only Tbfs. 30x36	.75	$3.75
	3 only Tbfs. 4745	1.00	3.00
	1 only Tbfs. 6760	1.80	1.80
	12 only Cloths	2.50	30.00
	30 Doz. Napkins	2.50	75.00
			113.55
			2.27
			100.28

Paid in Full.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

PEEBLES LINEN COMPANY,
Newark, N. J.

Sold to: Mrs. J. P. Gavin,
Harrison St., E. Orange, N. J.

August 23, 1927	30 Doz Napkins	$112.50
	48 only Tops	45.60
	27 only Tops	36.45
	45 only Tops	133.75
		$318.30
		4.35
		$322.65
		6.45
		316.20

Paid in Full.

In Account With
SCHLICHTING CO. INC.

Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

July 5, 1927	$10.50
" 6, 1927	5.30
" 9, 1927	1.80
"13	11.45

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

"18		14.50
"18		1.00
"21		11.80
"21		5.30
		$61.65
	Les overpayment	25.10
		$36.55

Paid in Full.

A. T. SCHLICHTING CO., INC.

Sold to: Mrs. J. P. Gavin,
#23 Harrison St., East Orange, N. J.

May 8, 1927
1 only Double Sink $50.00

Paid in Full.

A. T. SCHLICHTING CO., INC.

Sold to: Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

February 9, 1927 2 dozen #924 5½"
Bakers $2.65 $5.30

Paid in Full.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING CO., INC.

Sold to: Mrs. J. P. Gavin,
23 Harrison St., E. Orange, N. J.

July 6, 1927 1 only K3171 Frying Pan $6.00

Paid in Full.

A. T. SCHLICHTING CO., INC.

Sold to: Mrs. J. P. Gavin,
23 Harrison St., E. Orange, N. J.

May 7, 1927 2 only J1115 Garbage cans
Witt #2 $5.25 $10.50

Paid in Full.

A. T. SCHLICHTING & COMPANY, INC.

Sold to Mrs. J. P. Gavin,
23 Harrison St., E. Orange, N. J.

May 7, 1927 2 only #12 Bags .15 $.30
4 " A1 181 Trays 5.00

$5.30

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
#23 Harrison St., E. Orange, N. J.

October 17, 1927 2 only K3434 Bake Sheets 1.85 $3.70

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., E. Orange, N. J.

July 21, 1927 2 dozen 924 5½" Bakers $2.65 $5.30

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison Street, E. Orange, N. J.

July 21, 1927 2 doz. #924 5½" Bakers $2.65 $5.30
1 only K3002 Silver Basket 6.50

11.80

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

To LAFAYETTE STORAGE COMPANY.

Mrs. J. P. Gavin,
23 Harrison St., East Orange, New Jersey.

October 25, 1927	Carpet Cleaning	$6.00
	Handling	20.00
	Storage from Oct. 26 to June 26	160.00
	Cartage to E. O.	20.—
	" Elizabeth to E. O.	30.00
	" to E. O.	25.00
		$261.00

Paid in Full

MACK & BURNS, INC.,
East Orange, N. J.

Mrs. Abbie E. Gavin,
#23 Harrison St., East Orange, N. J.

June 9, 1927	To premium on Aetna Policy #BH-53499 (hold up)	$20.00

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
#23 Harrison St., East Orange, N. J.

June 8, 1927	1 only E 515 4 qt Pitcher	1.80
	1 only E 517 2 qt Pitcher	1.40
		$3.20

Paid in Full

MACK & BURNS,
519 Mains St., East Orange, New Jersey.

Park Lane Restaurant,
23 Harrison St., East Orange, N. J.

May 23, 1927	To premium on Niagara Fire Insurance policy #22182	$64.10
	To premium on Aetna Workmen's Compensation policy #0991435	48.85
	To premium on Aetna Liability policy #0437095	25.00
		$133.95

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

1 only	K 3588 Beater	$1.40	
1 "	K 3368 Slaw Cutter	.75	
1 "	Plate Rack for Dishwasher	7.00	
			$9.15

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison Street, East Orange, N. J.

June 6, 1927 1 only K3172 Roast Pan $3.25

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

June 11, 1927	2 only	#59 Steak Planks	5.75	11.50
	1 "	#62 " "	7.50	7.50
				19.00

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

June 13, 1927 3 only K3303 Sauce Pots $2.37 $7.11

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

July 13, 1927 3 doz. #22 6¼" Plates $8.25
4 " 153 4 oz. Glasses 3.20

11.25

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

July 18, 1927 1 only Alum Plate for cleaning Silver $1.00

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

July 18, 1927	2 doz. #22 10½" Dishes	$14.50	10
	2 only 455 12 oz Glasses	no charge	
	3 " 153 3 oz "	" "	

Paid in Full

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

20

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

June 14, 1927	1 only Plate Rack for M M Crescent Machine	$6.50

Paid in Full

30

A. T. SCHLICHTING COMPANY, INC.,
Newark, N. J.

Sold to Mrs. J. P. Gavin,
23 Harrison St., East Orange, N. J.

July 9, 1927	3 dozen 454 12 oz. Glasses	.60	1.80

Paid in Full

40

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

To STEWART & CO., INC.

Mrs. Gavin.

June 1927	12 ft. 1x2½ oak fig. 3.00; 5 lbs. nails .35	3.35
	1 lb. putty .15; shellac .50	.65
	3 ft. plaster board .25; 1 door set 1.25	1.50
	4-1x2-16 ft. furring	1.00
	Time-Cutting for plumber etc.	138.42
	To Partition per estimate	125.00
June 1927	5 pr. shelf brackets 2.00; 1-1x8-16 1.60	3.60
	1-1x10-14 ft. price 1.75; 4 mirror hangers	1.99
	4 Doz. 1″ screws .24; 2 Doz. 2″ screws .16	.40
	Time on shelves, mirrors, floor, etc.	12.74
	4 ft. 1″ pine .72; 29 ft. ½ quar. round	1.30
	1 lb. Nails .17; 3 qt. paint 1.00; sheet rack	9.07
	Time on partition extra	22.54
	13 1-1x12-16 ft. spruce 1.60; 32 ft. 1″ pine	6.72
	14 4-12x14 hockels 1.20; 7-10x12 hockels 1.75	2.95
	1-8x10 hockels .20; 6 doz. 1″ screws .36	.56
	1 lb. nails .17; 8 ft. door stop .24	.31
	Time on shelf, etc.	18.62
		$350.72
		12.—
		362.72

Paid in Full

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

From: H. M. A. CONSTRUCTION COMPANY

To: Mrs. Gavin,
23 Harrison St., East Orange, N. H.

May 11—Three Doors		$30.00
" 13—Mason & Labor		124.62
" 20— "		117.88
" 26	Dumb Waiter Car	272.00
" 31	Concrete blocks	89.79
" 23	Skylight	140.00
" 27	Material & Labor	35.21
"	Cleaning up & Labor	2.25

2)$811.76($405.88

Paid in Full

Deponent, Abbie E. Gavin, further answering the Order of Discovery in the above captioned case says that she has no records in her possession, no bills, no bank books, no agreements, no leases, or papers of any kind, or nature regarding the operation of the Broadway Hotel, Nyack, New York.

Deponent further says that she has no letters, bank books, books of account of bills pertaining to the operation of her father's home by her as a boarding house in Plainfield, New Jersey.

Deponent further says she has no records, leases, agreements, bills, bank books, or any papers of any kind or nature pertaining to the operation of the Tuxedo Park Hotel at Tuxedo Park, New York.

Deponent further says that she has no records, check books, bank books, books of account or anything pertaining to the operation of the Belvidere Hotel by her in Newark, N. J.

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

Deponent further says that she has no records, books, papers or bank books, pertaining to the operation of the Halstead Street House, East Orange, N. J.

Deponent further says that she has in her possession a tax bill for the year 1926 Ward 12, page 78, line No. 20 and 21 made out in the name of Abbie E. Gavin to the City of Elizabeth for taxes on property 468-474 Jefferson Ave. Elizabeth, N. J., that the value of the land on said tax bill was $6200.00, the building $15,800.00 and the personal estate $500.00 or a total assessment of $22,500; that the taxes for the year as shown by said tax bill was $715.50.

Deponent further says she has in her possession a note dated at Elizabeth, N. J. April 29, 1927, payable to the Union County Trust Co. Elizabeth, N. J. for the sum of $5620.40 which note was signed by your deponent and was returned to your deponent paid.

Deponent further says that she has an endorsement for an Insurance Policy dated June 20, 1927 for property located at 6 Emerson St. East Orange, N. J. that she has not the policy in her possession and does not know what it is for, but deponent believes that it was a policy covering loss on fire insurance, payable to the order of Mrs. A. E. K. Gavin.

Deponent says that she has found among her possessions some checks for expenditures at the Hillside House, Montclair, N. J. which checks were for bills and expenses in the operation of the same.

Deponent further says she has filed a true inventory of all the assets of the Park Lane Restaurant, 23 Harrison Street, East Orange, and also a

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

statement of the amount expended as near as your deponent can ascertain for installing the necessary fixtures, plumbing work, carpenter work, etc.

Deponent further says she has in her possession checks drawn by Joseph P. Gavin on the Union County Trust Co. and the Savings and Investment & Trust Co. East Orange, N. J. copies of which checks are attached hereto and made a part hereof.

Deponent further says she has a bank book No. 36656 from the Union County Trust Co. Elibabeth, N. J. made out in the name of Mrs. Abbie E. Gavin, showing deposits of $17,620.40 and withdrawals of that amount.

Deponent further says that she has Bank Book No. 3128 of the Bank of Montclair, made out in the name of A. E. K. Gavin and Joseph P. Gavin, showing deposits from November 7, 1923 to June 2, 1925 which money was all withdrawn from the Bank on June 2, 1925.

Deponent further says that she has bank book No. 32313 from the Saving Investment & Trust Co. East Orange, in the name of Abbie E. Gavin showing that on June 10, 1927 she deposited $10,000 in this account and that the entire amount has been withdrawn mostly for payment of the rent of the Restaurant, East Orange, N. J.

Deponent further says that she is indebted to the Steward, John Damb, for wages from December 4, 1927, a total of 22 weeks at $40.00 per week.

Deponent further says that she has been forced to borrow in December 1927 the sum of $800.00 in cash and in January 1928 the sum of $600.00 in cash in order to meet the bills and obligations of the Restaurant, due to the newspaper notoriety which she has received as a result of the institution

Affidavit of Defendant Abbie E. Gavin as to Inventory of Park Lane Restaurant.

of this suit by her husband and the failure of business because of the unpleasant notoriety.

Deponent further says that she has been unable to pay the rent for the month of May, 1928 due to the falling off of business and that she has not made a part of the Orders of Discovery the books because they are ledgers and as it is almost impossible to make a copy of them for the purpose of this Affidavit.

Deponent further says that she has not any other books, records, papers or other documents relating to any of the businesses, set forth in the Bill of Complaint, conducted by her, in her custody or control nor is any person keep for said deponent any books, papers or documents pertaining to the operations of the different Hotels conducted by her in the last twenty-five years.

ABBIE E. GAVIN.

COUNTY OF ESSEX,
STATE OF N. J. } ss.:

Sworn and subscribed to before me
this 8th day of May, A. D. 1928.

PAUL IRVING YOUNG,
My commission expires June 8, 1932.

Affidavit of John Damb.

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,

and

ABBIE E. GAVIN and
JOHN DAMB,
Defendants.

} On Bill, etc.

STATE OF NEW JERSEY,
COUNTY OF ESSEX } ss.:

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

1. On or about July 11, 1927 I was employed by the defendant, Abbie E. Gavin, as a steward in charge of the preparation of the menus, waiters, help and the purchase of supplies in the Restaurant known as the Park Lane Restaurant, 23 Harrison Street, East Orange, N. J.

2. I was employed by Abbie E. Gavin, one of the defendants in the above captioned cause, at the salary of $40.00 per week.

3. I have no knowledge, information nor have I in my possession or under my control any books, papers or other documents relating to any business conducted by the defendant, Abbie E. Gavin, at the Broadway Hotel, Nyack, New York, at the home of Abbie E. Gavin's father, at No. Plainfield, N. J. at the Tuxedo Park Hotel, Tuxedo Park, New York

State, at the Belvidere Hotel, Newark, New Jersey, at the Halstead Street House, East Orange, N. J., at the Hillside House, Montclair, N. J. or at the Blossom Treat Hotel, Elizabeth, N. J. nor have I any books, papers or other documents in my possession or in my control nor is any person keeping for me any books, papers or documents pertaining to the Park Lane Restaurant at 23 Harrison Street, East Orange, N. J.

4. The Park Lane Restaurant has been entirely managed, conducted and supervised by Mrs. Gavin. Mrs. Gavin pays all the bills, takes care of the cash receipts, signs all the checks, and has sole charge of the financial matters pertaining to the Restaurant. I never had any books, papers or other documents pertaining thereto in my possesion or in my control nor do I have anything to do with the financial end of the business.

JOHN DAMB.

East Orange,
County of Essex, N. J.

Sworn and subscribed to before me
this 4th day of May, A. D. 1928.

PAUL IRVING YOUNG,
My commission expires June 8, 1932.

Affidavit of John Damb.

No. 531 Elizabeth, N. J. May 10th, 1927

UNION COUNTY TRUST COMPANY

Pay to the order of Cash $25.00
Twenty-five .....Dollars

JOSEPH P. GAVIN

No. 536 Elizabeth, N. J. May 13, 1927.

UNION COUNTY TRUST COMPANY

Pay to the order of J. P. Gavin $50.00
Fifty .....Dollars

JOSEPH P. GAVIN

No. 538 Elizabeth, N. J. May 19, 1927

UNION COUNTY TRUST COMPANY

Pay to the order of J. P. Gavin $50.00
Fifty .....Dollars

JOSEPH P. GAVIN

No. 541 Elizabeth, N. J. May 21, 1927

UNION COUNTY TRUST COMPANY

Pay to the order of Cash $25.00
Twenty-five .....Dollars

JOSEPH P. GAVIN

Affidavit of John Damb.

No. 543 Elizabeth, N. J. May 24th, 1927

UNION COUNTY TRUST COMPANY

Pay to the order of J. P. Gavin $50.00
Fifty .....Dollars

JOSEPH P. GAVIN

10

No. East Orange, N. J., July 25, 1927

SAVINGS INVESTMENT & TRUST COMPANY

Pay to the order of Irving C. Hanners $100.00
One Hundred .....Dollars

JOSEPH P. GAVIN

20

No. East Orange, N. J. Nov. 23, 1927

SAVINGS INVESTMENT & TRUST COMPANY

Pay to the order of Joseph P. Gavin $65.00
Sixty-five .....Dollars

JOSEPH P. GAVIN

30

No. East Orange, N. J. Dec. 31, 1927

SAVINGS INVESTMENT & TRUST COMPANY

Pay to the order of Myself Only And without any endorsement hereof.
Twenty-five ..... Dollars

JOSEPH P. GAVIN

40 Counter Check
Not Negotiable

Answer of Defendant Abbie E. Gavin.

(Filed May 19, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, &c. Answer of Defendant, Abbie E. Gavin.

The defendant, ABBIE E. GAVIN, residing in the City of East Orange, County of Essex and State of New Jersey says that:

1. She admits the allegations of paragraph 1 in the Bill of Complaint, except in so far as the same states that she had only $200.00 at the time of her marriage to the complainant.

2. She denies the allegations in paragraph 2 of said Bill of Complaint.

3. She denies the allegations in paragraph 3 in said Bill of Complaint.

4. She denies the allegations in paragraph 4 of said Bill of Complaint.

5. No paragraph appears in said Bill.

6. She denies the allegations contains in paragraph 6.

7. She denies the allegations in paragraph 7 of said Bill.

8. She denies the allegations contained in paragraph 8 of said Bill.

9. She denies the allegations contained in paragraph 9 of said Bill.

10. She admits that she and complainant obtained a lease on property on 23 Harrison Street, East Orange, New Jersey, but has insufficient information as to the other allegations, in said paragraph, and therefore, denies the same.

11. She denies the allegations in paragraph 11 of Bill.

12. She denies allegations in paragraph 12 of said Bill of Complaint.

13. She denies allegations in paragraph 13 of said Bill of Complaint.

14. She denies allegations in paragraph 14 of said Bill of Complaint.

15. She denies Complainant is entitled to relief claimed or any part thereof.

FIRST SEPARATE DEFENSE.

All of the business ventures mentioned in the Bill of Complaint, heretofore filed in the above entitled cause, were the business ventures of the defendant herself, and the complainant never had any interest as a partner or otherwise in any of said ventures.

SECOND SEPARATE DEFENSE.

Said business ventures mentioned in said Bill of Complaint heretofore filed, in the above entitled cause, cover a period of some twenty-three years, for which no records were ever kept, no books of ac-

count, or other data available whereby any account, with reasonable accuracy or correctness could be had, and substantial justice could not be done in the present proceeding.

THIRD SEPARATE DEFENSE.

The complainant is guilty of laches, and therefore, is not entitled to maintain the present action.

FOURTH SEPARATE DEFENSE.

The complainant alleges that he kept the records and accounts of the various business transactions mentioned in said Bill of Complaint, and is as able as defendant to make an account, and his remedy, if any, is at law to recover any sums wrongfully withheld from him.

FIFTH SEPARATE DEFENSE.

The complainant has been repaid any sums of money advanced or paid out to the defendant, in the conduct of any of the business ventures, mentioned in the said Bill of Complaint.

DALRYMPLE & CAMPBELL,
Solicitors of Defendant,
Abbie E. Gavin.

Answer of Defendant John Damb.

(Filed May 19, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill, &c. Answer of Defendant, John Damb.

The defendant, JOHN DAMB, residing in the City of East Orange, County of Essex and State of New Jersey, says that:

1. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 1 of the said Bill of Complaint, and therefore deny the same.

2. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 2 of the said Bill of Complaint, and therefore deny the same.

3. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 3 of the said Bill of Complaint, and therefore deny the same.

4. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 4 of the said Bill of Complaint, and therefore deny the same.

5. No paragraph 5 appears in said Bill of Complaint.

6. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 6 of said Bill of Complaint, and therefore deny the same.

7. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 7 of said Bill of Complaint, and therefore deny the same.

8. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 8 of the said Bill of Complaint, and therefore deny the same.

9. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 9 of the said Bill of Complaint, and therefore deny the same.

10. He has no knowledge or information sufficient to form a belief as to the allegations in paragraph 10 of the said Bill of Complaint, and therefore denies the same.

11. He admits that he was hired by the defendant, Abbie E. Gavin, as steward for said Park Lane Restaurant, but denies the other allegations in said Bill of Complaint.

12. He denies the allegations in paragraph 12 of the said Bill of Complaint.

13. He denies the allegations in paragraph 13 of the said Bill of Complaint.

14. He denies the allegations in paragraph 14 of the said Bill of Complaint.

15. He denies that the Complainant was entitled to the relief claimed or any part thereof.

FIRST SEPARATE DEFENSE.

The business ventures mentioned in the Bill of Complaint heretofore filed in the above entitled cause were business ventures of the defendant, Abbie E. Gavin herself, and the complainant had no interest in the same in compelling him to maintain the present action.

SECOND SEPARATE DEFENSE.

Said business ventures mentioned in said Bill of Complaint cover a period of twenty-three years, for which no records were ever kept, no books of account or other data available whereby any account with reasonable accuracy and correctness could be had, and substantial justice could not be done in the present proceeding.

THIRD SEPARATE DEFENSE.

The complainant is guilty of laches, and therefore is not entitled to maintain the present action.

FOURTH SEPARATE DEFENSE.

The complainant has all knowledge concerning said business ventures, mentioned in said Bill of Complaint, and is in a better position than this defendant is to render any statement or account.

Answer of Defendant John Damb.

FIFTH SEPARATE DEFENSE.

The complainant has been repaid any sum or sums of money advanced or paid out to the defendant, Abbie E. Gavin, and has no interest in the said business ventures.

SIXTH SEPARATE DEFENSE.

This defendant has no connection with, no interest in, and has nothing to do with the business ventures set up in the Bill of Complaint, or any of them, only as an employee as steward for the defendant, Abbie E. Gavin, and has no information or knowledge of any kind or character, on which to base any account as petitioned for by the Complainant.

DALRYMPLE & CAMPBELL,
Solicitors of Defendant,
John Damb.

Replication.
(Filed May 2, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
JOSEPH P. GAVIN,
Complainant,

and

ABBIE E. GAVIN and JOHN DAMB,
Defendants.

On Bill &c.

The complainant, Joseph P. Gavin joins issue on the answers of the defendants, Abbie E. Gavin and John Damb.

HARRY NADELL,
Solicitor of Complainant.

Order of Reference.

(Filed May 31, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill &c.

This matter being opened to the Court by Harry Nadell, Solicitor of the complainant, and it appearing that Dalrymple & Campbell, Solicitors of the defendants have consented thereto, it is on this 31st day of May, 1928, on motion of Harry Nadell, Solicitor of the complainant.

ORDERED, that the above entitled cause be referred to the Honorable Alonzo Church, one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report therein to him and to advise what order or decree shall be made therein.

E. R. WALKER,
C.

We hereby consent to the entry of the foregoing order.

DALRYMPLE & CAMPBELL,
Solicitors of Defendants.

A True Copy,

THOMAS BARBER,
Clerk.

Testimony.

IN CHANCERY OF NEW JERSEY.

June 25, 1928.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill &c.

Transcript of short hand notes of testimony taken in the above entitled cause before his honor, ALONZO CHURCH, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of HARRY NADELL, for complainant,; Messrs. DALRYMPLE & CAMPBELL, (by Mr. DALRYMPLE) for defendants.

(Mr. Nadell and Mr. Dalrymple opened to the Court.)

The Court: It seems to me that after a lapse of twenty-five years that it is practically impossible to have any proper or reasonable accounting, especially between a husband and wife who, as Mr. Dalrymple stated, lived together and spent their money together.

It may be true that this man put in so much twenty-five years ago, and she put in so much, but it would be perfectly impossible to compute how much each one put out and what the worth of each ones services was for this so-called joint venture.

I think that on the ground of the impossibility of proper accounting, also on the ground of laches —this man apparently acquiesced in all this arrangement for twenty-three years—and I think it is too late for him to come into this court and ask for an accounting, and I will deny it.

Mr. Nadell: May I note my objection to your honor's ruling.

Final Decree.
(Filed June 27, 1928.)

IN CHANCERY OF NEW JERSEY.

Between JOSEPH P. GAVIN, Complainant, and ABBIE E. GAVIN and JOHN DAMB, Defendants.	On Bill &c.

This matter being opened to the Court by Harry Nadell, Solicitor of Complainant and in the presence of Charles E. Dalrymple, of the firm of Dalrymple & Campbell, Solicitors of the Defendants, and it appearing from the Bill for an Accounting and Receiver, and the Answer made thereto, and the Affidavits of Complainant and Defendants that Complainant sought an accounting from his wife covering transactions of more than twenty-three years and for the appointment of a Receiver, of all of her real and personal property of every nature and description and upon examining the Bill of Complaint, the Answer and Affidavits in this cause, and hearing argument of Counsel in open Court from all of which it appeared to the Court that the Complainant was not entitled to relief prayed for and that said Bill of Complaint should be dismissed in its entirety.

It is thereupon on this 27th day of June, A. D. 1928 ORDERED, ADJUDGED and DECREED that the said Bill of Complaint heretofore filed in the above entitled matter be and the same is hereby dismissed in its entirety, and Complainant's prayer for relief be and the same is hereby denied, and

Final Decree.

It is further ORDERED, ADJUDGED and DECREED that the Restraining Order, heretofore made in the above entitled cause on the 24th day of April 1928, be and the same is hereby dismissed and discharged, and

It is further ORDERED, ADJUDGED and DECREED that the Complainant pay to Dalrymple & Campbell, Solicitors of the Defendant a Counsel fee of $100.00 which is hereby allowed, and costs of this suit to be taxed, and

It is further ORDERED that said Complainant within 15 days after service upon him or his solicitor of true but uncertified notice of this Decree and of said taxed costs, pay to the said Solicitors the amount due them as aforesaid for Counsel fee and taxed costs and in default of said payment, execution issue against the goods and chattels, lands, tenements, hereditaments and real estate of the said Complainant, Joseph P. Gavin, according to the practice of this Court.

Respectfully advised,

E. R. WALKER,
C.

ALONZO CHURCH,
V. C.

98 OCT.1.1928

New Jersey Court of Errors and Appeals

Between
JOSEPH P. GAVIN,
Complainant-Appellant,
and
ABBIE E. GAVIN and JOHN DAMB,
Defendants-Respondents.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF COMPLAINANT-APPELLANT.

Statement of Facts.

This is an appeal from a decree of the Court of Chancery advised by Vice-Chancellor Church, dismissing a bill for an accounting brought by a husband against his wife as to a number of joint ventures conducted by them in the hotel and restaurant business.

The proofs disclose that the complainant is a man of sixty, completely deaf since an accident thirty-two years ago, prior to the marriage; that the wife is forty-eight (S. C., p. 16, ll. 16-21); that shortly after the opening of their present business, the Park Lane Restaurant in East Orange, in June, 1927, the wife hired the defendant, John Damb, a man twenty years younger than her husband, as steward; that the wife fell in love with the steward, staying with him on numerous occasions in a closed, darkened bedroom, adjoining the restaurant; that when the husband ordered the steward from the place, the wife and steward set upon the husband and beat him (the wife is a powerful woman weighing two hundred fifty pounds);

and that after months of continual fighting, the wife and steward finally succeeded in excluding the husband entirely from the business, and the wife, at the steward's instigation, transferred all funds from the joint bank account up to that time continuously maintained by the husband and wife, to the wife's private account, leaving the husband, who, despite his deafness, had been very active in the business on account of his skill in lip reading, entirely penniless. Demand was made upon the wife for an accounting. The wife, through her solicitor, promised to settle; but no steps were taken to settle despite long waiting by the husband. Thereupon this suit was instituted (S. C., p. 21, l. 27 to p. 22, l. 32; pp. 77-80; p. 118, l. 39 to p. 128, l. 30; pp. 139 to 150).

On the return of the original order to show cause the matter was argued before Vice-Chancellor Backes on affidavits submitted by both sides. Vice-Chancellor Backes filed an opinion stating that on the application before him for a temporary receiver and an injunction against the disposition by the wife of the business in question (the Park Lane Restaurant), the relationship in common between this husband and wife before the present enterprise need not be considered; and the question of whether an accounting was to be forthcoming was left to be decided at the final hearing. Continuing, Vice-Chancellor Backes made this significant observation:

> "The complainant's claim that the restaurant in East Orange is a joint venture is not seriously disputed. The lease is in the joint names and the two have officially certified to the co-partnership and the fire insurance on the chattels is in the name of both.
>
> "Ordinarily a receiver would be appointed, as between strangers, under prevailing conditions but in the circumstances the harm that

would flow from that course to both would far outrun the benefit protection would afford the complainant.

"An injunction will issue restraining the defendant from selling the business and that she keep strict accounts of the affairs, and retain the net proceeds until the final hearing. She must also presently file an inventory of the assets. Upon failure of obedience a receiver will be appointed" (S. C., p. 175).

An injunction issued in accordance with the opinion (S. C., pp. 176-177).

At the final hearing, Vice-Chancellor Church, to whom the case had been referred by the Chancellor, refused to hear any testimony and summarily dismissed the bill of complaint (S. C., pp. 216-218).

The facts shown by the bill and supporting affidavits as to the various hotel and restaurant enterprises jointly conducted by the husband and wife may be chronologically considered as follows:

1. Family situation at the time of the marriage. In 1905, when Joseph P. Gavin and Abbie E. Knight were married, the husband had twin daughters about four years old by a former marriage. The wife was about twenty-five, the husband about thirty-seven. The wife was intensely fond of the daughters, and from all appearances, has continued to be so, if not down to the present time, at least until about a year ago when the trouble with the steward began. The husband, though deaf at the time of the marriage, made a living for his family by operating a milk route. On account of numerous accidents, due to his deafness, he gave up his milk business and with the proceeds, together with $300 from his father, a total of about $1,000, he and his wife opened the Broadway Hotel in Nyack, New York. The wife

had about $200 in her private savings account at the time of the marriage but she continued to keep it there for many years and the hotel in Nyack was furnished entirely with the husband's money (S. C., p. 16, ll. 16-35).

2. **Nyack Hotel.**—A lease to the hotel was taken in the joint names of husband and wife. The hotel was a small one, with about twenty-three rooms, only about thirteen of which were used for sleeping quarters for guests. Though previously inexperienced, both husband and wife worked hard with the help of only a chef and a woman for heavy cleaning and rough washing, the chef being the only steady help and the woman coming in two or three times a week. The husband acted as hotel clerk, took in and disbursed money, acted as kitchen man, washed dishes, made beds, washed and ironed all table linens and bed linens, swept the rooms, deposited and withdrew money from the bank as required, and, in general, operated the hotel jointly with his wife. After something less than a year they sold out for $1,000. The husband cashed the check so that they might have ready money on leaving town. They then went to Brooklyn for about a month, the husband depositing part of the money in a Brooklyn bank and keeping the balance in his pocket to cover the current expenses of his family. The parents of Mrs. Gavin being quite old, she and her husband were invited by the parents to take over the parents' farm in North Plainfield (S. C., p. 16, l. 35, to p. 17, l. 13; p. 103, l. 9, to p. 108, l. 25).

3. **Plainfield Farm and Boarding House.**—For about three years the complainant operated the farm alone with the occasional help of a hired man and team to do the ploughing and cultivating. The farm covered thirty-six acres. Since almost every-

thing for running a boarding house could be raised on the farm, the Gavins started a boarding house (for summer boarders). The complainant raised chickens, corn, potatoes, and other vegetables, raised fruit and made butter, using these products for the boarding house and sending some to market. In addition he assisted around the boarding house as he had done at the Nyack Hotel previously. The parents of Mrs. Gavin died not long after she and her husband took over the operation of the farm and boarding house. After about three years they received an offer that they take over the operation of a hotel in Tuxedo Park, N. Y. (S. C., p. 17, ll. 15-33; p. 108, l. 25, to p. 110, l. 26).

4. **Tuxedo Hotels.**—The Tuxedo Park Association owned a hotel entirely outfitted to house some ninety men working for contractors of the Association. This was the hotel which they took over. No deposit was required, as it was completely furnished and merely rented to the Gavins. The complainant sold the cows and chickens he had previously bought for the Plainfield farm with the proceeds of the sale of the Nyack Hotel, and put the money thus obtained in the safe of the Tuxedo Hotel in order to have funds to commence business. He immediately began to clean the hotel, which was in a dirty, run-down condition. He painted about one hundred rooms, painted the walls and stairs, took care of about forty stoves in the hotel, there being a stove in a great many of the rooms, made wood and coal fires in the stoves, deposited money in the bank, escorted guests to their rooms and to tables in the restaurant, attended to repairs about the hotel, in which he was very skilful, for a great number of years making practically all repairs with the exception of repairs to the roof and putting on new porches,

painted all the beds, numbering about one hundred and seventy-five in the three hotels (two additional hotels being started after the original one), bought provisions and meats, attended to the hotel mail, paid the rent, paid practically all bills by checks drawn by him on their joint bank account, and made himself generally useful, making beds, washing dishes, washing windows and cleaning rooms, obtaining and employing help from employment agencies, and in general operating the hotels jointly with his wife. The daughters worked as waitresses and as maids in the hotels, first after school hours and later, all day, when Mrs. Gavin insisted on taking them out of grammar school. The complainant always carried a large roll of bills representing the proceeds of the hotel, which money he used to pay all the expenses of the hotel which were not paid by check drawn by him on the joint account, and to support his family. The joint operation of the hotels by him and his wife proved very profitable. They kept a balance of several thousand dollars in their joint bank account. At various times he discovered large sums of money which his wife had secreted in an old shoe or stocking, and when it would disappear and he asked her what she did with it she became angry and told him that she had put it in her private account and that she had private accounts in nearly every bank in the United States. He was powerless to prevent her from taking this money as she was a woman of violent temper and very domineering disposition if not allowed to have her own way. She weighs two hundred and fifty pounds, and on numerous occasions choked him and struck him when she was displeased. The girls were young at this time, and because she was such a good mother to them he continued to live with her despite her actions. During the operation of

the Tuxedo Park Hotels, Mrs. Gavin bought diamonds and other jewelry which were paid for out of the joint account, Mrs. Gavin saying that this was a better way of saving money than investing in real estate (S. C., p. 17, l. 35 to p. 18, l. 38; p. 110, l. 29 to p. 114, l. 22; p. 61-74; p. 87, l. 5 to p. 88, l. 31; p. 93, l. 5 to p. 94, l. 20).

5. **Belvidere Hotel.**—About 1920, after the Tuxedo Hotels were given up, they purchased the Belvidere Hotel, in Newark, and after operating the same jointly, as before, for a period of about a year and nine months, sold it. On the question of whether this was a joint venture or whether it was the sole property of Mrs. Gavin, as she claims, the complainant was prepared to prove that the purchase money chattel mortgage given by the purchaser from the Gavins ran to "Joseph P. Gavin"; but all testimony was excluded by Vice-Chancellor Church. The only proper inference to be drawn from the fact that the mortgage ran to the complainant alone is that the hotel was certainly not the exclusive property of Mrs. Gavin, as she claims (S. C., p. 18, l. 40, to p. 19, l. 5; p. 114, l. 24, to p. 115, l. 6; p. 88, ll. 32-37; p. 94, ll. 23-25).

Undoubtedly the truth is that this husband and wife were, like the ordinary married couple having confidence in each other, indifferent whether what they owned was in the name of one or the other—they were partners in all that they had. Indeed, there is practically no dispute but that the only money which one or the other received individually, as distinguished from their joint earnings, was $1,000 which the husband had as the proceeds of his milk business and which was used to finance their first joint venture—the Nyack Hotel; $200 which Mrs. Gavin had when she was married; $2,600 which she received from her father's estate,

both of which sums she placed in her private savings account; and $2,160 representing the complainant's share in his father's estate and which, at his wife's request, he invested in a later joint venture, the Hillside House, Mrs. Gavin stating at the time that she did not wish to draw on her own private account in order not to break the interest, but that her husband could have this money back any time he wanted it. In various parts of her affidavits, Mrs. Gavin refers to this sum first as support for her husband; later she says it was a gift to herself; and finally she calls it a loan.

In paragraph 30 of her own affidavit, the defendant, Abbie E. Gavin, says:

> "The business [the Hillside House in Montclair] was not profitable and complainant deposited in the general bank account, a sum of about two thousand dollars ($2,000) which he had received from his father's estate, which was used to support complainant" (S. C., p. 32, ll. 33-39).

She changes her mind in paragraph 50 of her affidavit:

> "The complainant has never worked nor been able to do any work because of his total deafness [why deafness prevents work is difficult to understand] and defendant has never received any money from the complainant except $600.00 which he used himself from the sale of his milk business and $2,000.00 which he received from his father's estate and gave this defendant as a gift" (S. C., p. 38, l. 37, to p. 39, l. 4).

Finally, in paragraph 25 of her later affidavit, she admits this was a loan:

> "I admit that in 1923, or thereabouts, I borrowed two thousand dollars ($2,000.00) as set forth in Paragraph 25 of complainant's affi-

davit, from the complainant, and that he placed the money in the bank account which I maintained in Montclair, New Jersey'' (S. C., p. 163, ll. 9-14).

Following the sale of the Belvidere Hotel they bought the Halstead House, East Orange.

6. **Halstead House.**—The three-year lease to this hotel was taken in the joint names. After only six weeks of operation this hotel was sold (S. C., p. 19, ll. 7-10; p. 115, ll. 8-25).

7. **Hillside House.**—This was purchased by the complainant and his wife in 1923 and operated jointly by them until 1924 (S. C., p. 19, ll. 12-23; p. 115, l. 28 to p. 117, l. 5; pp. 137-138). It was shortly after the purchase of the Hillside House that the balance in the joint account, which was kept in the Bank of Montclair, ran low and Mrs. Gavin suggested that the complainant put in the $2,160 from his father's estate, saying that he could have it back whenever he wanted. On the question of joint ownership the complainant was prepared to prove that the printed form of check used under the ownership of this hotel bore the caption ''Hillside House'' and under it, ''Joseph P. Gavin''. This important evidence was excluded by reason of the refusal of Vice-Chancellor Church to hear any testimony whatsoever. Surely the caption of the check strongly negatives the contention of sole ownership made by Mrs. Gavin. Indeed, from the first venture, the Nyack Hotel, until the last, the Park Lane Restaurant, everything seems clearly to have been conducted in their joint interests.

8. **Blossom Treat Hotel, Elizabeth.**—This was the next joint venture. It was purchased about 1924. At this time the girls were about 23. One

of them, Laura, was soon to be married. This was the first real estate purchased. Mrs. Gavin said she wanted to take title in her name because she wanted to be protected in case anything happened to her husband, as the girls might get married and their husbands might cause trouble about the property in the event of the complainant's death. Title to the real estate was accordingly taken in Mrs. Gavin's name. The complainant, however, paid $8,000 for the furnishings of the hotel out of the joint account. In the operation of the Blossom Treat Hotel, he acted as clerk, raised vegetables for the hotel, paid practically all bills out of the joint account, including, significantly, taxes on the house and interest on the mortgage, took care of deposits and withdrawals, attended to considerable necessary painting, did repair work about the hotel, washed all windows, took care of lawns and shrubbery adjoining the hotel and, in general, assisted as before in the operation of the hotel jointly with his wife. About the fall of 1926 the Gavins had a chance to sell their hotel at a considerable profit (over $10,000) to some people who wished to erect an apartment house on the site. The hotel was accordingly sold, and the expensive furnishings were stored and remain stored, Mrs. Gavin having control of the same (S. C., p. 19, l. 26 to p. 20, l. 18; p. 117, l. 9 to l. 31; pp. 81-86; p. 89, ll. 31-35; p. 95, ll. 20-24; p. 98, ll. 8-33).

9. **Park Lane Restaurant.**—With part of the proceeds of the Blossom Treat Hotel, the Gavins furnished the Park Lane Restaurant, 23 Harrison Street, East Orange, at a cost of about $12,000. The lease was taken in their joint names. A certificate of doing business under a trade name was duly recorded in the office of the Clerk of Essex County, under the signatures and oaths of Mr. and Mrs. Gavin taken before the present solicitor

of Mrs. Gavin, Charles E. Dalrymple. Paragraph 4 of this sworn certificate, as complainant was prepared to prove but was prevented by Vice-Chancellor Church's exclusion of all testimony, reads as follows:

> "The full name or names and post office address or addresses of the person or persons connected with the said business as *owner or owners,* viz.: are Abbie E. Gavin, and Joseph P. Gavin, both residing at No. 132 Sayre Street, City of Elizabeth, County of Union, State of New Jersey."

Insurance of various kinds covering the restaurant was likewise taken in the joint names. A certified check for $2,100 deposit on the lease was signed by the complainant drawn on the joint account and given to the landlord. Some of the equipment was purchased in the name of Joseph P. Gavin for example, the cash register, illuminated sign, and certain furniture; other equipment was purchased in the name of Mrs. Gavin, *e. g.,* kitchen utensils. Throughout there was shown a plain desire that each should be able to act as principal for himself or herself and as agent for the other; in other words, as partners in a joint enterprise, in the full sense of the term. The complainant took over the management of cash, purchases, payment of bills, deposits in the bank, and took care of repairs and painting, distributing circulars, and in general jointly managed the Park Lane Restaurant with his wife. Moneys from the operation of the Restaurant were deposited in a joint account in the Savings Investment and Trust Company of East Orange and checks against the same were drawn by Joseph P. Gavin as co-owner.

The disgraceful usurping by the steward of the complainant's place and the exclusion by force of

himself and the daughters followed, as explained in detail in numerous corroborated affidavits filed on behalf of the complainant. After twenty-three years endeavor with his wife in various joint enterprises, the complainant was forcibly ejected from his own place of business and left penniless, the wife, at the steward's instigation, having withdrawn all funds from their joint account and placed them in her private account (S. C., p. 20, l. 19 to p. 22, l. 31; p. 118, l. 38 to p. 128, l. 30; pp. 77-80; pp. 90-92; p. 95, l. 38 to p. 96, l. 20; p. 98, l. 36 to p. 102, l. 33; pp. 134-136; pp. 139-150).

It would be difficult to find a more worthy case for the interposition of the aid of the court of chancery.

Nevertheless Vice-Chancellor Church refused any relief whatsoever, not only as to the earlier joint enterprises but also as to the present enterprise still conducted by the wife. As to this business, to quote Vice-Chancellor Backes's language, in granting the injunction:

> "The complainant's claim that the restaurant in East Orange is a joint venture is not seriously disputed. The lease is in the joint names and the two have officially certified to the co-partnership and the fire insurance on the chattels is in the name of both" (S. C., p. 175, ll. 19-24).

Vice-Chancellor Church also refused to consider the complainant's claim to the $2,160 indisputably advanced by him to his wife on her repeated promises of repayment. The last promise of repayment was made only a few months prior to the complainant's exclusion from the restaurant in East Orange. A contemporaneous admission to Mrs. Rajotte as to this indebtedness is in no wise denied by Mrs. Gavin (S. C., p. 75, l. 30 to p. 76, l. 34).

ARGUMENT.

POINT I.

The Court of Chancery erred in refusing to hear any testimony on the part of the complainant-appellant.

In *Carlisle* v. *Cooper,* 18 N. J. Eq. 241, Chancellor Zabriskie held that a bill will not be dismissed unless the complainant will not be entitled to relief on any evidence that he can offer.

It is, on the other hand, well settled that if the complainant's proofs defeat his cause of action, the bill will be dismissed.

> *Strauss* v. *Rabe,* 97 N. J. Eq. 208, affirmed in 98 N. J. Eq. 700;
> *Tansey* v. *Belleville Relief Association,* 99 N. J. Eq. 894, affirmed in 99 N. J. Eq. 896.

Unless, therefore, the affidavits offered on the complainant's behalf show that he has no cause of action, the dismissal of the bill of complaint; the dissolving of the injunction granted by Vice-Chancellor Backes on April 24th, 1928, restraining the defendant, Abbie E. Gavin, from disposing of the joint property of the parties; and the awarding of costs and a counsel fee to counsel for the defendant, without the hearing of any testimony, was erroneous.

It is the complainant's contention that the incidents of a partnership are clearly indicated in all the enterprises of himself and his wife, and that in view of the exclusion of the complainant from a joint enterprise, an accounting is his remedy.

It is fundamental that a partnership is the result of a contract. A contract may be express or implied. The entire course of transactions entered into by complainant and his wife clearly point to an implied contract to carry on their joint ventures as partners. Such is in accord with ordinary human experience. While contracts between husband and wife are not recognized at law they are recognized in equity as contracts *sub modo.*

Demarest v. *Terhune,* 62 N. J. Eq. 663 at p. 667.
Lister v. *Lister,* 86 N. J. Eq. 30, at p. 48.
Fike v. *Fike,* 3 N. J. Misc. Rep. 485, affirmed in 99 N. J. Eq. 424.

Consequently the partnership between complainant and his wife will be recognized in equity as a contract *sub modo.*

It is also well settled that a partnership is made out where there is joint ownership plus the right of each partner to act as principal for himself and as agent for the other. Joint ownership plus the right to act as principal for himself and as agent for Mrs. Gavin are clearly indicated in the various enterprises up to the present by a myriad of details: joint bank accounts; complainant's drawing of checks thereon at will both for the business and himself and his family; in the case of the Hillside House by the printed caption of the check "Hillside House, J. P. Gavin"; in the case of the Nyack Hotel by his putting in the original investment to purchase it and by his handling the proceeds of its sale to purchase stock for the Plainfield farm; in the case of the Tuxedo Hotels by his investment, out of the proceeds of sale of the cows and chickens on the Plainfield farm, of the initial amount required to commence business;

in all of these cases as well as in the case of the Belvidere, the Blossom Treat and the Halstead House assisting in every way possible in their operation, by washing, cleaning, painting, collecting money, paying bills, keeping books, and, in fact, doing everything that a joint owner naturally would do—hiring help, attending to finances, promoting the business in every way within his power. In particular instances, added indicia of joint ownership are as follows: chattel mortgage representing part of sale price of Belvidere by the Gavins running to "Joseph P. Gavin"; lease of the various places, including, in particular the Park Lane, running to both husband and wife; certificate of trade name containing affidavit that Joseph P. Gavin and Abbie E. Gavin are joint owners thereof; fire insurance and other insurance taken in both names; purchase of various articles of equipment, including cash register, signs and furniture in the name of Joseph P. Gavin. All of these elements point conclusively to a series of joint ventures. It is no answer for the defendant to urge that these indicia may simply point to a completed gift from wife to husband—the result is the same—a series of joint ventures.

It is an unfailing ground for equitable interposition in partnerships that one partner is excluded from the business. 5 Pomeroy, *Equity Jurisprudence,* Sec. 2358, lays down the principle as follows:

> "Where a fiduciary relation exists between the parties, and a duty rests upon the defendant to render an account to the plaintiff, equity will entertain jurisdiction of a suit for an accounting, although the account is neither mutual nor complicated. The most common of such cases are those involving trustees,

> guardians, executors and administrators, partners, agents and co-tenants."

An illuminating case similar in many respects to the case at bar is *Bardo* vs. *Bardo,* 92 N. J. Eq. 106, affirmed in 92 N. J. Eq. 230. In this case Vice-Chancellor Lewis ordered an accounting on behalf of a husband against his wife as to a store jointly operated by them.

In *Sanford* v. *Sanford,* 5 N. J. Adv. Rep. 1259, 138 Atl. 899, Vice-Chancellor Church ordered an accounting on behalf of a husband against a wife. He held that where a man is divested of all his estate, even if he had independent advice, which did not appear, a court of equity will not sustain so improvident and unreasonable a conveyance. In an exhaustive examination of the authorities, Vice-Chancellor Church quoted from 2 Story, *Eq. Jur.,* Sec. 1374, relied upon by the Court of Errors and Appeals in *Fretz* v. *Roth,* 70 N. J. Eq. 764, to the effect that (p. 1264 of the Vice-Chancellor's opinion):

> "If a husband should by deed grant all his estate or property to his wife the deed would be held inoperative in equity as it would be in law, for it could in no sense be deemed a reasonable provision for her which is all the courts of equity hold the wife entitled to, and in giving her the whole he would surrender his interests."

Vice-Chancellor Church further commented on the fact (p. 1261) that the principle enunciated by the Court of Errors and Appeals has been cited by our courts twelve times—ten times in the Court of Chancery, once in the Court of Errors and Appeals, and once in the Prerogative Court, in none of which cases is the principle stated either criticized, modified or set aside.

It is submitted that the case of *Sanford* v. *Sanford* is conclusive of the case at bar. In view of the course of uninterrupted joint dealings between the complainant and his wife as to numerous joint ventures, Mrs. Gavin must rest her claim to sole ownership of all the marital property on one of two grounds: (1) gift or (2) force. If a gift is argued the Sanford case applies perfectly; for there is no dispute but that the complainant was left penniless as a result of the dissension. If Mrs. Gavin contends that she became owner by forcible eviction of her husband, the reasoning of the Sanford case applies *a fortiori*.

Moreover, in the case at bar there is no evidence whatsoever of any gift from husband to wife. As pointed out by Mr. Justice Trenchard, speaking for the Court of Errors and Appeals in the case of *Farrow* v. *Farrow*, 72 N. J. Eq. 421, at p. 423:

> "A gift of personal property from husband to wife must be clearly proved. There must be clear and convincing evidence of a delivery of the property by the husband with the intention of divesting himself of all dominion and control of it and of vesting title in the wife. *Skillman* v. *Skillman*, 13 N. J. Eq. (2 Beas.) 403; *Dilts* v. *Stevenson*, 17 N. J. Eq. (2 C. E. Gr.) 407. See, also, 14 Am. & Eng. Encycl. L. (2d ed.) 1033, and cases there cited."

In that case the wife sought to recover possession of the value of one solitaire diamond ring, one turquoise ring with sixteen small diamonds around it, and one pair of diamond ear-rings, which were in the possession of the wife at the time her husband separated from her and which were then taken by him forcibly. Vice-Chancellor Grey awarded the wife the value of all the jewelry, but this was reversed by the Court of Errors and Appeals by a unanimous decision, on the ground that

an absolute gift had been shown only as to the solitaire diamond ring, which was an engagement ring, but as to the other jewelry the testimony was that the diamonds were bought to save money. So in the case at bar, the jewelry was bought as an investment.

In paragraph 18 of his affidavit, the complainant states:

> "The jewelry purchased by Mrs. Gavin was paid for out of funds in our joint account after she insisted upon having them, saying that it was better than investing in real estate. My wife always said the diamonds were worth $10,000" (S. C., p. 113, ll. 36-40).

Mrs. Gavin makes a lengthy, nine-page reply to her husband's affidavit (S. C., p. 158, l. 39 to p. 167, l. 27), but it is noteworthy that she carefully abstains from denying that the diamonds were bought for investment (S. C., p. 162, ll. 20-23).

Whether the jewelry was also intended for her personal adornment, as in the *Farrow* case, is not a necessary element in the present case; and in any event no gift, either as to the jewelry or as to any other marital property, from the complainant to his wife has been made out according to the criterion of the Court of Errors and Appeals "by clear and convincing evidence."

The *Farrow* case was cited with approval by Vice-Chancellor Lewis in the case of *Bardo* v. *Bardo*, 92 N. J. Eq. 106, affirmed in 92 N. J. Eq. 230. In the *Bardo* case it was held that where clear and convincing evidence of a gift is not produced, a husband may have an accounting from his wife as to a store jointly operated by them.

The case at bar merits special consideration on account of the element of coercion present. The evidence shows that the wife is twelve years younger and much larger and stronger than her

husband, and that while he rigorously abstained from touching her violently—and even she makes no such assertion—she used to choke and beat him into submission to her withdrawals of large sums to be placed in her private account.

In paragraph 28 of the complainant's affidavit we find this statement:

> "With respect to my wife's money in her private account I may say that while at Tuxedo and other places, at Tuxedo especially, business was very good and at various times I would discover large sums of money which Mrs. Gavin had secreted in an old shoe or stocking and when it would disappear I would ask her what she did with it and she became angry and said, 'Yes, I took it and put it in my private account. I have private accounts in nearly every bank in the United States.' I was powerless to prevent her from taking this money as she was a women of violent temper and very domineering disposition if not allowed to have her way. She weighs two hundred fifty pounds and on numerous occasions choked me and struck me when she was displeased" (S. C., p. 117, l. 33, to p. 118, l. 11).

The case of *Slack* v. *Rees,* 66 N. J. Eq. 447, is relevant. Chief Justice Gummere, speaking for the Court of Errors and Appeals in that case, said (at p. 448):

> "Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice independently of the other."

Even if a gift had been clearly and convincingly made out in the case at bar, which it has not, it would be of no effect. The complainant was cer-

tainly more or less dependent upon his wife by virtue of his deafness and she herself admits that she laid violent hands upon him, although she seeks to exculpate herself by saying he was drunk. On this point there are numerous affidavits by disinterested parties substantiating the complainant's affidavit that he was never drunk. There are affidavits from Charles S. Patterson, Superintendent for thirty-five years of Tuxedo Park (S. C., p. 63, ll. 15-18), and Edith L. Kent, postmaster of Tuxedo Park for ten years, both of whom knew Mr. Gavin intimately for over ten years (S. C., p. 66, ll. 29-33); Charles O. Morris, a director of the Union County Trust Company in Elizabeth for the past twenty-four years, who lived at the Blossom Treat Hotel while the Gavins owned it (S. C., p. 133, ll. 11-19); George F. Mack, who has been in the real estate business in East Orange for twenty-one years and who knew Mr. Gavin intimately during his entire stay in East Orange (S. C., p. 144, ll. 27-39).

On the point of coercion as a ground for holding an apparent gift void, the pronouncement of the Chancellor in *Monoghan* v. *Collins,* 71 Atl. (N. J. Chanc.) 617 (not officially reported), at page 619, is in point:

> "Collins was a man of some years and feeble in body, and his mind, though not dethroned, was undoubtedly susceptible of domination. His wife was the one upon whom he leaned, and he certainly submitted himself to her control, and while living in the house with her and their daughter, and without the advice of disinterested counsel, he is said to have made the gift which stripped him of all his worldly possessions, without the power of recall.
>
> "Where parties are in a position in which one is more or less dependent upon the other, courts of equity hold that the weaker party

must be protected, and they set aside his gifts if he had not proper advice independently of the other. *Haydock* v. *Haydock,* 34 N. J. Eq. 570, 575, 38 Am. Rep. 385. The case of *Slack* v. *Rees,* 66 N. J. Eq. 447, 59 Atl. 466, 69 L. R. A. 393, absolutely controls this case in this regard."

Consequently, whether Mrs. Gavin bases her claim of sole ownership as a bar to an accounting on the ground of gift, whether voluntary so as to pauperize her husband, or involuntary as based on her domineering control of her husband, her defense to this bill for an accounting should fail.

Having established that the bill of complaint and the affidavits in this case make out a valid *prima facie* cause of action, it becomes necessary to consider the reasons which prompted the dismissal of the bill by the learned Vice-Chancellor. In his oral opinion (S. C., p. 216), he stated that it seemed that after a lapse of twenty-five years it is practically impossible to have any proper or reasonable accounting. But it is respectfully submitted that the master to whom this Court could refer the matter would find no special difficulty in arriving at an account, at least so far as the joint property is concerned which was in possession of the defendant wife at the time the bill of complaint was filed.

Such property includes the assets in the Park Lane Restaurant, East Orange, ten thousand dollars' worth of diamonds, which, as shown, were bought for investment, and moneys held by the wife. All of this represents joint earnings with the exception of (a) the $200 which the wife had when she married and the $2,600 which she received from her father's estate, and (b) the $1,000 representing the proceeds of the original milk route of the husband and the $2,160 re-

ceived by him from his father's estate and lent by him to his wife. There is no dispute but that all money spent by the husband was used for the purposes of the various businesses or for the support of the family. Surely where, as here, the wife admits that she is in possession of ten thousand dollars' worth of diamonds and a valuable business, and openly boasts of deposits in her own name in numerous banks, she should not be permitted to fleece her now aged husband of all their joint earnings in order to enjoy life with a younger man.

The Vice-Chancellor's reason for dismissing the bill would entirely discourage all confidence and trust between husband and wife as to financial matters. If the wife is permitted to withdraw all the joint earnings and say to her husband: "You can't prove how much we each spent, and therefore I keep all because I have all", who would care to open a joint account with his wife or conduct a business jointly with her? All she has to do is to seize their joint property first and refuse to account. The easy and just rule to guide the master in fixing his account is to deduct from the value of the property of husband and wife at the time of filing the bill the $5,960 representing (a) the $200 she had before marriage and the $2,600 she received from her father's estate, and (b) the $1,000 he had from his milk route and the $2,160 he received from his father's estate, and divide the balance equally between husband and wife. Such a method would take cognizance of all the joint property of the parties, and it is only as to this that the bill of complaint seeks an accounting. The final decree (S. C., p. 217, ll. 24-26) recites that the bill of complaint sought an accounting as to the individual property of the de-

fendant as well, but this recital is apparently an inadvertence.

To all of this, the defendant makes a short answer—laches.

POINT II.

The Court of Chancery erred in deying relief on the ground of laches for the reason that this defense is not available as between husband and wife.

It is undisputed that the complainant filed his bill promptly after the relation of trust and confidence ceased to exist between himself and his wife.

A pertinent case on laches is *Theis* v. *Vonderheyden,* 94 N. J. Eq. 317, affirmed in 94 N. J. Eq. 807, where it was held by Vice-Chancellor Griffin that a bill by complainants to set aside a deed made to their stepfather shortly after their mother's death in 1919 was not barred by laches where the relation of trust and confidence continued to exist down to 1921. Vice-Chancellor Griffin quotes a significant portion of the decision in *Hall* v. *Otterson,* 52 N. J. Eq. 522, affirmed, 53 N. J. Eq. 695, which bears on the reason behind the decision in the *Theis* case. In the *Hall* case, Vice-Chancellor Green said at p. 528:

> "In all transactions between persons occupying relations, whether legal, natural or conventional, in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who had acquired an advantage, to show affirmatively not only that no deception was practiced thereon, no undue

> influence used, and that all was fair, open and voluntary, but that it was well understood."

The conclusive answer to the defense of laches in the case at bar is, however, that the complainant and defendant are husband and wife. Laches is applied in equity on the analogy of the statute of limitations in law. In *Collins* v. *Babbitt,* 67 N. J. Eq. 165, Vice-Chancellor Pitney held that the statute of limitations did not operate as between husband and wife, citing *Gray* v. *Gray's Administrator,* 39 N. J. Eq. (12 Stew.) 512, in the Court of Errors and Appeals; *Yeoman* v. *Yeoman's Administrator,* 40 N. J. Eq. (13 Stew.) 495; *Rusling* v. *Rusling's Executors,* 42 N. J. Eq. (15 Stew.) 594, and *Alpaugh* v. *Wilson,* 52 N. J. Eq. (7 Dick.) 424, affirmed in 52 N. J. Eq. 589.

In the case of *Metlar* v. *Williams,* 86 N. J. Eq. 330, Vice-Chancellor Backes collects the authorities and tersely states the reason why the statute of limitations and laches do not apply between husband and wife. In that case a husband and wife made a mortgage to the wife's father in 1878 payable in one year. This mortgage was subsequently assigned to the wife. The husband died in 1912 and subsequently the wife died. Foreclosure of this mortgage was sought in 1916, thirty-seven years after the due date. The statute of limitations was invoked as a defense and Vice-Chancellor Backes said in reply at page 331:

> "The statute of limitations is not applicable as a bar to the recovery of the debt out of the mortgaged premises. Metlar and his wife, the maker and owner respectively of the bond and mortgage, lived in matrimonial relation during her ownership and down to his death, and it has been repeatedly held, based upon the general policy of preventing litigation between husband and wife, that the statute does

> not run on the claim of one spouse against the other during the continuance of the marital state. *Gray* v. *Gray,* 39 N. J. Eq. 511; *Yeomans* v. *Petty,* 40 N. J. Eq. 495; *Alpaugh* v. *Wilson,* 52 N. J. Eq. 424; affirmed, 42 N. J. Eq. 589; *Condit* v. *Bigalow,* 64 N. J. Eq. 504; *Collins* v. *Babbitt,* 67 N. J. Eq. 165; *Bennett* v. *Finnegan,* 72 N. J. Eq. 155."

On the question of laches in equity Vice-Chancellor Backes has this to say at page 336:

> "The same policy that places a ban upon the statute of limitations prevents the introduction of this equitable defense. *Prima facie,* and in the absence of special equitable circumstances, it is not evidence of laches that either the husband or wife fails to prosecute the other in a court of equity pending the continuance of marital relations. *Bennett* v. *Finnegan, supra.*"

In the last cited case of *Bennett* v. *Finnegan,* 72 N. J. Eq. 155, Vice-Chancellor Emery held that neither the statute of limitations nor laches is applicable in a suit by a husband against his wife. On page 156 he states his conclusion as follows:

> "The basis of the rule is the general policy of preventing litigation between husband and wife. See *Yeomans* v. *Petty,* 40 N. J. Eq. (13 Stew.) 498. This reason is operative as well in favor of the husband as the wife. As to the application of the general doctrine of laches, independent of the statute, this is to be governed, as it seems to me, by a principle analogous to that of the application of the statute. *Prima facie,* and in absence of special equitable circumstances, it is not evidence of laches that either the husband or wife fails to prosecute the other in a court of equity pending the continuance of marital relation. No circumstances appear on this bill which debar the complainant, merely on the ground

> of lapse of time, from proving, if he can, by competent evidence, that the debt paid by complainant was the wife's debt. And on the contrary, the allegation in the bill of joint possession of complainant and his wife during their lives, and his sole possession since her death, while such possession was no obstacle to the prosecution of a suit in equity, if the husband chose, would seem *prima facie* to be an explanation of the delay. But without deciding as to the effect of this allegation, I overrule the objection of laches, which is made simply on the face of the bill, and I do this upon the ground that no special circumstances appear on the bill which deprive the husband of the benefit of the general rule that the law will not impute laches merely from the failure to prosecute suits pending the continuance of the marital relation."

Special equitable circumstances permit the statute of limitations and laches to apply as between husband and wife as, for example, where the marital relationship has been interrupted. In *Givernaud* v. *Givernaud,* 81 N. J. Eq. 66, the wife got a limited divorce against her husband in France. He came to America, got an absolute divorce, married again, and grew wealthy. He had relatives of his first wife in the vicinity where she lived so that she knew or could have ascertained his address easily. Finally after forty years, during which she had nothing to do with him, and after death had sealed his lips, she sued him on a judgment obtained forty years before. Vice-Chancellor Stevenson held that here were special circumstances: that the reason for the rule that laches does not apply between husband and wife in the ordinary case is that that the rule fosters the finest, most potent relationship perhaps known to the law, to discourage litigation between husband and wife, whereas in the case cited there

was no such relationship of love and confidence to be fostered in view of the separation.

A similar case is *Dunham* v. *Adams,* 82 N. J. Eq. 265, in which Vice-Chancellor Griffin held that the reason which moves equity to suspend the bar of the statute of limitations while the parties are living together as husband and wife does not exist in favor of the defending party after a desertion.

The case at bar clearly raises no such special circumstances to take it out of the rule that laches does not apply between husband and wife. The Gavins lived together uninterruptedly until the recent expulsion of the husband from the Park Lane Restaurant. To have forced a suit prior to the expulsion would have been to destroy the relationship of trust and confidence between husband and wife which equity seeks so jealously to foster. To say, as did the Vice-Chancellor in this case (S. C., p. 216), that the husband has acquiesced in the wife's acts is to deny the well settled rule laid down in *Metlar* v. *Williams,* 86 N. J. Eq. 330, *supra,* and the long line of cases in support thereof.

There is no dispute but that suit was promptly brought by the complainant after the termination of the confidential relationship.

POINT III.

The Court of Chancery erred in denying all relief because it felt that the complainant was not entitled to as much relief as was sought.

The bill of complaint contains a prayer for general relief. Even without this, under Chancery Rule 60, the Court may give relief other than that prayed for in the bill of complaint.

Re Public Service Railway Company, 95 N. J. Eq. 31 (The Chancellor).
Martin v. *Morales,* 6 N. J. Adv. Rep. 816 (Court of Errors and Appeals).

This point was illustrated in *Fike* v. *Fike,* 3 N. J. Misc. 485, decided by Vice-Chancellor Buchanan and affirmed in 99 N. J. Eq. 424. In this case it was held that where a bill asked for specific performance of an agreement between husband and wife to pay consideration to the wife for the release of her right of dower, specific performance should be denied because specific performance as to personal property requires special circumstances which did not here exist. However, damages for breach of the contract were awarded under the prayer for general relief.

In the case at bar even if the complainant is not entitled to an accounting for all the joint enterprises set forth in his bill of complaint he is clearly entitled to an accounting as to the Park Lane Restaurant, which is undeniably a joint enterprise, and still being operated by his wife, and he is also clearly entitled to an accounting as to the ten thousand dollars worth of jewelry purchased as an investment and as to the $2,160 admittedly advanced by him as a loan to her on her repeated promises of repayment.

On the question of the steward as a party defendant, this observation may be made. Wide latitude is permitted on the question of who may be made a party to an accounting suit. It has been said that "a person interested in the result of an accounting, as surety or otherwise, is a proper party for the purpose of being present at an accounting." *Borough of Rutherford* v. *Alyea,* 53 N. J. Eq. 580 (reversed on other grounds in 54 N. J. Eq. 411), citing *United Security &c., Co.* v. *Vandegrift's Admr.,* 51 N. J. Eq. 400.

On the admission of Mrs. Gavin herself, the steward, John Damb, handled all the money of the Park Lane Restaurant and took the receipts of the restaurant home with him (S. C., p. 37, ll. 15-20; p. 169, ll. 19-20). An accounting against Mrs. Gavin should include an accounting against John Damb, not only on this ground but on the further ground that Mrs. Gavin promised Damb a half-interest in the business if he would stay (S. C., p. 78, ll. 38-40; p. 142, l. 11).

For the reasons urged in this brief, it is respectfully submitted that the decree of the Court of Chancery dismissing the bill of complaint should be set aside, with costs to the appellant, and with a direction to the Court of Chancery to order a reference to a master to state an account between the parties.

Respectfully submitted,

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

JOSEPH P. GAVIN,
Complainant-Appellant,

and

ABBIE E. GAVIN and JOHN DAMB,
Defendants-Respondents.

On Appeal from the Court of Chancery.

BRIEF OF DEFENDANTS-RESPONDENTS.

Statement of Facts.

This is an appeal from a decree of the Court of Chancery advised by Vice-Chancellor Church, dismissing a bill for an accounting brought by a husband against his wife as to a number of alleged joint ventures conducted by them in the hotel and restaurant business, and against John Damb, an employee of its Park Lane Restaurant who, it is alleged, has come into possession of some of the assets of the alleged joint venture.

On the 28th day of March, 1928, the complainant secured an order signed by Vice-Chancellor Backes directing the defendants, Abbie E. Gavin and John Damb, to show cause on April 3, 1928, why a receiver should not be appointed to take charge of the Park Lane Restaurant. The order to show cause contained an order restraining the defendants and their attorneys from disposing of the Park Lane Restaurant business (S. C., p. 24).

On the return day of the rule to show cause, Vice-Chancellor Backes in a memorandum opin-

ion (S. C., p. 175) refused to appoint a receiver but enjoined the defendants from selling the business (S. C., p. 176).

On final hearing of the bill Vice-Chancellor Church, to whom the cause had been referred, dismissed the bill in its entirety (S. C., p. 217).

The facts germane to a consideration of this cause on appeal show that in the year 1905 the complainant, Joseph P. Gavin, was married to the defendant, Abbie E. Gavin. At the time of the marriage the complainant was a widower with twin daughters of the age of three years. At this time he was engaged in the operation of a small retail milk business, but due to his deafness, which was responsible for many accidents with the Public Service Railway Company, he was compelled to give up his business. He sold his milk business in its entirety for $600 (S. C., pp. 25-26).

At the time of the marriage of the complainant and the defendant, Abbie E. Gavin, the couple went to live on a farm in Plainfield, New Jersey, owned by Mrs. Gavin's father. Here they lived for a period of about one year paying a rental of $16.00 per month (S. C., p. 26).

The alleged joint ventures of Mr. and Mrs. Gavin are listed below in chronological order.

Nyack Hotel: At the time of the marriage Abbie E. Gavin had in cash the sum of $200 and after complainant sold his milk business she opened a hotel in Nyack, New York, known as the "Broadway Hotel," which she leased for a period of five years and in which she put the sum of $3,000, part of which money she had obtained from her father and part of which she had saved while they lived on her father's farm from

the raising of vegetables and from boarders. The defendant also took with her from her home in Plainfield, N. J., a carload of furniture with which she furnished the hotel. The complainant invested none of his money in this venture. Neither did he join in the conduct of this hotel except to run errands, as he was stone deaf (S. C., pp. 26-27). He had no other occupation and he and his daughters were supported out of the profits of this enterprise. After operating this hotel for a period of about 10 months the defendant sold the hotel and with her husband and his children removed to Plainfield, N. J., where she conducted a boarding house (S. C., p. 28).

Plainfield Boarding House: No rent was charged for the use and occupation of this farm and house. Because of the complainant's inability to secure employment, the defendant took in boarders. For about three years while she operated this boarding house, the defendant supported her husband and his children. Her husband during this entire time did not work, except perform odd jobs about the farm. In addition to her own service, the defendant employed a woman and a boy to help her.

Tuxedo Hotel: While defendant and her husband and his children were living on her father's farm in Plainfield her parents died and she went to Tuxedo, New York, where she secured the management of the Tuxedo House upon a deposit of $300 of her own money. The defendant managed and operated this hotel for about fifteen years, during all of which time she supported her husband and his two children (S. C., pp. 29-30). During the time the defendant was operating the Tuxedo Hotel she inherited $3,500 from her father which she used in supporting her husband

and his children (S. C., p. 31, par. 25). Complainant never invested any of his money in this hotel (S. C., p. 31, par. 26).

Belvidere Hotel: After the sale of the Tuxedo Hotel for about $3,200, Abbie E. Gavin bought the business of the Belvidere Hotel, in Newark, New Jersey, paying $3,000 for it. She operated this hotel for a period of about nine months and then sold it at a profit of about $2,000 (S. C., p. 31, par. 27).

Halstead House: After the sale of the Belvidere Hotel, in Newark, the complainant, his two daughters and the defendant, traveled all over the United States without doing any work; that the expense for these trips was borne entirely by the defendant (S. C., pp. 31-32, par. 28). After these trips she purchased the Halstead House in East Orange, N. J., with her own funds and after operating it for a few months she sold it at a profit of $500. After the sale of this hotel another rest of 5 months' duration was taken, which time the Gavins lived as guests of the Belvidere House in Newark on the money the defendant Abbie E. Gavin received from the sale of the business (S. C., p. 32, par. 29).

Hillside House: In 1923 the defendant Abbie E. Gavin purchased the Hillside House in Montclair. This hotel she managed and operated herself, as all the hotels she purchased heretofore. The business was not profitable and the complainant deposited in the joint bank account $2,000 which he had received from his father's estate. This hotel was operated for about two years when it was sold at a profit of $1,500. In June, 1925, the Gavins went to Asbury Park, where they stayed at one of the exclusive hotels until September of the same year. Upon their

return from the shore they lived at the Belvidere Hotel until Christmas without any of them doing any work; all living at the expense of Mrs. Gavin (S. C., pp. 30-31, pars. 30, 31, 32).

Blossom Treat Hotel: The next hotel which Mrs. Gavin purchased was the Blossom Treat in Elizabeth, New Jersey. This hotel was purchased with her own funds and title taken in her own name. This hotel was later sold at a profit, after which sale the complainant and the defendant Abbie E. Gavin went south for a year or more, during which period the complainant failed to do any work and lived on the moneys derived from the sale of the hotel (S. C., pp. 33-34, par. 33).

Park Lane Restaurant: After the return of the complainant and the defendant, Abbie E. Gavin, from a year of traveling, she opened the Park Lane Restaurant in East Orange (S. C., p. 34, par. 37). The license for this restaurant was issued in the name of Abbie E. Gavin (S. C., p. 35, par. 39); all the kitchen utensils were purchased under a conditional sales contract signed by Abbie E. Gavin (S. C., p. 35, par. 38). Because of ill health and doctor's instructions she was forced to employ the defendant, John Damb, as a steward (S. C., p. 36, par. 42). Complainant took to drinking and his conduct was such that on three different occasions it was necessary to call the police and have him removed from the restaurant (S. C., p. 34, par. 37). After causing considerable trouble and materially affecting the business of the restaurant he left defendant and started this suit.

ARGUMENT.

POINT I.

The complainant-appellant is not entitled to an accounting because there was no joint venture nor fiduciary relationship.

It is an elementary rule of law that equity will not decree an accounting unless it be shown that the party demanding the accounting was engaged in a joint venture, occupied a fiduciary relation, or some other ground for equitable intervention existed.

In this case the facts show that after the marriage of the parties, the complainant-appellant sold his milk business, which was his only source of income and for which he received the sum of $600.00; that from this time on the defendant-respondent because of the complainant-appellant's inability to support her and his twin daughters, was forced to take in boarders at her father's Plainfield, New Jersey farm in order to provide the necessities of life for the family; that from this time on she became the head of the family and earned all the money, through her hotel ventures for the support of the family; that for a period of 25 years the complainant-appellant did no work, except to act as errand boy and do odd jobs about the different hotels operated by his wife and came to rely upon her for his support and that of his children; that during their entire married life the husband contributed but $2,600; that for long periods of time during their married life the family traveled extensively throughout the United States and also lived for long intervals as guests at various hotels without doing any work whatsoever on the moneys which the wife earned in her hotel ventures.

From the facts above stated, by no stretch of the imagination can it be said that there was a joint venture.

There is no fiduciary relationship. "When equity jurisdiction (in actions for an accounting) is invoked on the ground of fiduciary relation between the parties, that relation must be shown by specific allegations."

Vol. 1 Corpus Juris, page 634.

It is elementary that the relation of man and wife standing alone does not give rise to a fiduciary relationship.

No other ground for equitable jurisdiction has been shown.

POINT II.

The complainant-appellant is not entitled to an accounting because of the impossibility of accounting.

In *Morgan* v. *Morgan,* 48 N. J. Eq. 399, the Court held

> "where the statement of an account shows upon the face of it such great uncertainty that the court finds it impossible to come to a fair just conclusion as to the liability of the different parties, an account will not be ordered."

This case was reversed by the Court of Errors and Appeals in 50 N. J. Eq. 473, although not for the refusal of the lower court to decree an accounting but for other reasons. On page 476 Mr. Justice Reed, speaking for the Court of Errors and Appeals said:

> "The Vice-Chancellor who heard the cause below refused the prayer of the complainant asking for an accounting concerning the administration of the estate. In this conclusion

I think he was clearly right, and for the reasons which he gives."

It is respectfully submitted that in the case *sub judice* the Chancellor was right in refusing an accounting on the ground that it was impossible to come to a fair, just conclusion as to the liabilities of the different parties. Here the complainant-appellant and the defendant-respondent, Abbie E. Gavin, lived together as man and wife for a period of 25 years or more, drawing from the profits of the hotel ventures money which they needed for the necessities of life. On various occasions they gave up the hotel business and traveled extensively throughout the United States, again using the profits from the hotel business. On other occasions they lived as guests at various hotels for long periods of time. During all this period of time the parties put in and took out money from the hotel ventures without regard to how much they took or were entitled to. From this condition of affairs it is practically impossible to compute how much each put in and took out; and what the worth of each one's services was for this so-called joint venture.

A Court of Equity will not as a general rule undertake to adjust the rights of parties without satisfactory means of ascertaining what their rights are, and may refuse to decree an account where the account cannot be safely stated and the true balance between the parties ascertained. Corpus Juris, Vol. 1 page, 628. *Whorley* v. *Tennessee Continental Exportation Co.*, 62 S. W. 346; *Slater* v. *Arnett*, 81 Va. 432.

In this case it is impossible to safely state the account and find the true balance. The complainant-appellant and the defendant-respondent, Abbie E. Gavin, lived together as man and wife

spending and enjoying the fruits of this labor over a period of twenty-five years without regard to how much they were spending or whose money they were spending. No vouchers were ever kept showing the income or expenditures or how much each one drew from the various ventures. In this state of affairs it would be impossible to equitably adjust the rights of the respective parties. See also *Davidson* v. *Wilson*, 3 Del. Ch. 307.

POINT III.

The complainant-appellant is not entitled to an accounting because he is guilty of laches and does not show a probability that the balance will be in his favor.

A Court of Equity will refuse to compel an executrix to account for her testator's transactions, where the party asking for the account has been guilty of great laches in failing to obtain an accounting during the lifetime of the testator and does not show a probability that the balance will be in his favor. *Osborne* v. *O'Reilly,* (Errors and Appeals) 43 N. J. Eq. 647.

The complainant-appellant after twenty-five years of family life, during all of which time he acquiesced in the alleged joint ventures and drew money for his support and that of his twin daughters without keeping any account of the moneys so drawn, now comes into court and asks for an accounting. This is clearly laches on his part.

In *Stout* v. *Seabrook's Executors*, reported in 30 N. J. Eq. 187, Vice-Chancellor Van Fleet on page 190 of the opinion said:

> "More than a hundred years ago Lord Camden said: 'A court of equity will always refuse its aid to a stale demand when the

party has slept upon his rights, or acquiesced for a great length of time. Nothing will call forth the activity of a court of equity but conscience, good faith and reasonable diligence.' ''

Speaking further in this same case he said:

''A court of equity will not permit accounts to be overhauled in favor of a party who has slept upon his rights, without just cause for a great number of years'' * * * ''The court is always unwilling to decree an account when the transactions have become obscure and entangled by delay. Raynor *v.* Pearsall, 3 Johns Ch. 578, 585. The justice of this doctrine is obvious. He who delays asserting his rights until the proof in vindication of them is so indeterminate that it is very difficult to decide whether what seems to be justice to him is not injustice to his adversary ought to lose all right to the aid of a court of conscience, for, by his laches, the path to justice has become so obscure that it cannot be traced with certainty. The law assists those who are vigilant, not those who sleep upon their rights.''

Further than this there is no evidence nor can it be inferred that there is any probability that the balance will be in his favor. The facts show that ever since the marriage the complainant-appellant and his twin daughters were supported by the industry of his wife.

POINT IV.

Complainant-appellant is not entitled to an accounting because he has not shown that an accounting is available nor that there is anything in the hands of the defendant-respondent due to complainant-appellant.

Generally, when one party calls upon another for an accounting, it must be made to appear

that the accounting will be available to complainant, as there is something in the hands of defendant due to complainant; in other words there must be something to be accounted for before a reference will be ordered.

Corpus Juris, Vol. 1, p. 629.

See also *Hargrove* v. *Conroy*, 19 N. J. Eq. 281.

In the case under consideration it is respectfully submitted that the facts show that an accounting is not available because over a period of twenty-five years no record of receipts or expenditures were kept; money was deposited in a joint bank account from which both parties drew at will. It is further urged that an accounting is not available because it is impossible to determine just how much each party is entitled to for his or her services in the alleged joint venture. From this state of affairs it is hardly just to say that there is anything in the hands of the defendant-respondent due complainant-appellant.

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INDEX

	Page
[illegible]	1
[illegible] to Writ	2
[illegible]ony	4
[illegible]ion	103
[illegible]ns	108
[illegible]e and Grounds of Appeal	113

[illegible]oner's Witnesses.

[illegible]hn P. Murphy,	
direct examination	7
cross "	8
re-direct "	11
[illegible] Cadwell B. Keeney,	
direct examination	20
cross "	24
re-direct "	27
[illegible] William John Davis,	
direct examination	27
[illegible]iam Kelly,	
direct examination	53
cross "	52
re-direct "	53, 55, 61
re-cross "	54, 61
[illegible]m Kelly (Recalled),	
direct examination	99
cross "	100
[illegible]m Kentz,	
direct examination	66
cross "	69
re-direct "	70
re-cross "	71

[illegible]sses.

[illegible] G. Bensley,	
[illegible] examination	73
[illegible] "	77