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Bill of Complaint.

(Filed March 15, 1916.)

10

In Chancery of New Jersey.

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

The complainant, Augusta M. Ahrens, of Jersey City, New Jersey, respectfully shows that:

1. On March 7th, 1913, Partick J. Kane and Mary Kelly being indebted to William G. Ahrens, in the sum of \$10,000, executed to him a bond of that date to secure that sum, payable on March 7th, 1914, with interest at the rate of six per centum per annum, payable half yearly from the date of the bond.

20

2. To secure the payment of the bond, said Patrick J. Kane and Esther M. Kane, his wife, executed to said William G. Ahrens, a mortgage of even date with the bond; and thereby conveyed to him, in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon was recorded in the Register's Office of Hudson County, in Book 794 of Mortgages for said County, page 188, etc.

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3. The mortgaged premises are described as follows:

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Bill of Complaint.

10 ALL those two certain lots, pieces or parcels of land and premises, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey which upon a certain map entitled "Map No. 1, showing partition of property in Jersey City, Hudson Co., N. J., belonging to the Estate of Stephen B. Vreeland, deceased, made by Frank H. Earle, Lucien D. Fowler and James C. Clarke, Commissioners appointed by the Court of Chancery of New Jersey" surveyed by Earle and Harrison, Civil Engineers and Surveyors, are known and designated as Lots One (1) and Two (2), lettered "C" in Block Thirteen Hundred and Six (1306) and more particularly bounded and described as follows:

20 BEGINNING at the corner formed by the intersection of the southerly line of Bostwick Avenue with the easterly line of Bergen Avenue; thence running (1) easterly along the southerly line of Bostwick Avenue one hundred and three and twelve one-hundredths (103.12) feet; thence (2) southerly at right angles to Bostwick Avenue forty-nine and forty-eight one-hundredths (49.48) feet to the southerly line of said Lot Number Two (2); thence (3) westerly parallel with Bostwick Avenue and along the southerly line of said Lot Number Two (2), ninety-five and nine tenths (95.9) feet to the easterly line of Bergen Avenue; thence (4) northerly along the easterly line of Bergen Avenue fifty (50) feet to the point or place of beginning.

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4. Both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for thirty days after the same should fall due, then the whole principal

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Bill of Complaint.

sum, with all unpaid interest, should, at the option of the mortgagee, his representatives or assigns become immediately due.

5. The mortgage also contained an agreement that the mortgagor, their heirs and assigns, would keep the buildings on the mortgaged premises insured against loss or damage by fire, in a sum not less than the principal of the mortgage debt, and would assign the policy of insurance to the mortgagee, his representatives or assigns; and in default of so doing, that the mortgagee, his representatives or assigns, should be entitled to effect such insurance, and the premiums paid for the same by the mortgagee, or his assigns, with interest at six per centum per annum, should be a lien on said land added to the amount of the mortgage debt and secured by the mortgage.

6. On May 21, 1913, Patrick J. Kane and Esther, his wife, conveyed said land, by deed of that date, to Mary Kelly, widow, in fee; which deed was on July 16th 1913, recorded in the Register's Office of Hudson County, in Book 1162 of Deeds, page 121.

Any interest which said Kelly has in said land is subject to the lien of complainant's mortgage.

7. On June 4th, 1913, George Grossman, as claimant, filed in the Hudson County Circuit Court, against Patrick J. Kane as builder and the premises above described, a mechanic's lien for \$995 which said lien was recorded in Liber 11 of Mechanics' Liens for Hudson County, page 292.

Any interest which said Grossman may have in said lands, by reason of said mechanics'

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Bill of Complaint.

lien, is subject to the lien of complainant's mortgage.

10 8. On April 7th, 1914, the sum of \$2,000 was paid on account of the principal sum of said mortgage.

9. By written assignment dated September 14th, 1914, said William G. Ahrens assigned said bond and mortgage to Rita B. Smith, which assignment was recorded in the Register's Office of Hudson County in Book 118 of Assignments of Mortgages, page 240.

20 10. On September 14, 1914, the said Rita B. Smith, by agreement in writing, between herself and the said Mary Kelly, extended the term of said mortgage for one year from the date of said agreement, that is, until September 14th, 1915. That since the aforesaid assignment to her, the said Rita B. Smith has assigned said bond and mortgage to this complainant of which defendants had notice; which assignment is in complainant's possession.

30 11. On September 14th, 1915, the whole of the balance of said principal sum of \$8,000 fell due, and the same remains unpaid, together with interest thereon from March 7th, 1916.

12. The said Patrick J. Kane and Mary Kelly, or one of them, has always been in possession of the mortgaged premises.

40 13. The whole amount of the balance of said principal sum, amounting to \$8,000 with interest thereon from March 7th, 1916, is due upon complainant's bond and mortgage.

Bill of Complaint.

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

1. That Patrick J. Kane, Esther Kane, his wife, Mary Kelly and George Grossman, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made; 10

2. That an account may be taken of the amount due on complainant's mortgage;

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interests and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or 20

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on her mortgage, with interest and costs;

5. That a writ of subpœna may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 30

RUNYON & AUTENRIETH,
Solicitors and Counsel with Complainant.

Answer and Counterclaim.

(Filed April 14, 1916.)

IN CHANCERY OF NEW JERSEY.

10 The answer of the defendants, Patrick J. Kane, and Mary Kelly, and the counterclaim of Mary Kelly, and Patrick J. Kane, against the complainant, Augusta N. Ahrens.

These defendants, Patrick J. Kane and Mary Kelly, answering the bill of complaint, say that:

1. They admit that on March 7th, 1913, they executed the bond described in Paragraph 1 of the bill, but they deny that on said defendant, these defendants or either of them were indebted to said William G. Ahrens in the sum of \$10,000.

20 2. They admit the execution of the mortgage described in Paragraph 2 of the bill, but they deny that there was, at that time, or at any time, the sum of \$10,000 due on said mortgage.

3. They admit Paragraphs 3, 4 and 5.

4. They admit the conveyance to Mary Kelly described in Paragraph 6, but deny that such conveyance was subject to the lien of complainant's mortgage.

30 5. The defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraph 7.

6. They admit that on April 7th, 1914, the sum of \$2,000 was paid on the principal of said mortgage, but they assert that the principal of said mortgage was \$8,000 and not \$10,000.

40 7. They admit the assignment described in Paragraph 9, and say that said assignment was

Answer and Counterclaim.

made by William G. Ahrens to Rita B. Smith merely as his dummy for the purpose of demanding from these defendants the sum of \$500 for an extension of said mortgage, and they allege said assignment was held by her for William G. Ahrens.

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8. They admit the allegations in Paragraph 10 with reference to the extension of the time of said bond and mortgage for one year, and assert that said Rita B. Smith demanded and received from this defendant, Mary Kelly, the sum of \$500 for said extension; they admit the assignment to complainant but allege said assignment was held by her for William G. Ahrens.

9. They deny that on September 14, 1915, the whole of the balance of said principal of \$8,000 fell due.

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10. They admit that Patrick Kane and Mary Kelly have been in possession of the mortgaged premises.

By way of counterclaim against the complainant, Augusta M. Ahrens, William C. Ahrens and Rita B. Smith.

1. That on the 7th of March, 1913, William G. Ahrens agreed to lend to the defendant, Patrick J. Kane, the sum of \$8,000 on a mortgage to encumber the premises described in Paragraph 3 of the bill.

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2. That he demanded and received from the said Patrick J. Kane, and Esther Kane, his wife, a mortgage for the sum of \$10,000, although the only amount advanced or loaned by the said Ahrens was \$8,000.

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Answer and Counterclaim.

3. That said mortgage was and is usurious.

10 4. That on or about the 14th of September, 1914, the said William G. Ahrens assigned said mortgage to Rita B. Smith as his dummy or trustee and demanded and received from these defendants the sum of \$500 for an extension for one year.

5. That said \$500 was paid on a usurious mortgage between these defendants and the said Ahrens and Smith and should be credited on the principal of said bond and mortgage.

20 6. That in the month of September, 1915, the whole amount of said mortgage fell due and a second time said Ahrens demanded from these defendants a further sum of \$500 for an extension of six months, which these defendants refused to pay.

These defendants, therefore, pray:

1. That said Augusta M. Ahrens, William G. Ahrens and Rita B. Smith may answer this counterclaim without oath and each statement herein made.

30 2. That it may be decreed that the said mortgage was usurious, and that there may be credited to these defendants the said sum of \$2,500 with all interest paid by them on said usurious mortgage.

RANDOLPH PERKINS,
Solicitor for Defendants.

Replication.

(Filed April 22, 1916.)

The complainant joins issue on the answer of the defendants.

As to the counterclaim contained in said answer complainant says:

1. She denies Paragraph 1, and says the amount agreed to be lent and that was actually loaned, was \$10,000.

2. She denies Paragraph 2, and says the amount loaned was the amount stated in said mortgage, to wit, \$10,000.

3. She denies Paragraph 3.

4. She denies Paragraph 4.

5. She denies Paragraph 5.

6. She admits that in September, 1915, complainant's mortgage became due, but denies that any demands of any kind were made on defendants for \$500, or any other sum for an extension thereof.

Complainant prays that the counterclaim may be dismissed and a decree entered in her favor for the full balance due on complainant's mortgage, as shown by the bill of complaint.

RUNYON & AUTENRIETH,

Solicitor for Complainant,

Augusta M. Ahrens.

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**Decree Pro Confesso Against Certain De-
fendants.**

IN CHANCERY OF NEW JERSEY.

Between

AUGUSTA M. AHRENS,
Complainant,

and

MARY KELLY, *et al.*,
Defendants.

On Bill, &c.

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This cause being opened to the court by Run-
yon & Autenrieth, of counsel with the complain-
ant, and it appearing that process of subpœna for
the defendants to answer the complainant's bill
has been duly issued and returned served upon
the defendants, Esther Kane and George Gross-
man, and that the said defendants, Esther Kane
and George Grossman, have not appeared and
pleaded, answered or demurred to the said bill
within the time limited by law or at any other
time, but that they have wholly failed and neg-
lected so to do;

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It is, thereupon, on this 3rd day of January,
1918, on motion of Runyon & Autenrieth, solici-
tors of complainant, ordered and decreed, that
the complainant's bill be and the same is hereby
taken as confessed against the said defendants,
Esther Kane and George Grossman, to the end

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Opinion.

that such decree may be made against them
as the Chancellor shall think equitable and just.

E. R. WALKER,
C.

I consent to the entry of above decree.

RANDOLPH PERKINS, 10
Solicitor for Esther Kane, Defendant.
GROSS & GROSS,
Solicitors of Defendant George Grossman.

A true copy.

ROBERT H. McADAMS,
Clerk.

Opinion.

(Filed July 31, 1917.) 20

IN CHANCERY OF NEW JERSEY.

Between

AUGUSTA M. AHRENS,
Complainant,

and

MARY KELLY, *et al.*,
Defendants.

On Bill, &c.

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ROE, RUNYON & AUTENRIETH, by HENRY
W. RUNYON, Esq., for the Complainant.
RANDOLPH PERKINS, Esq., for the Defend-
ants.

LEWIS, V. C.:

The bill in this case is filed to foreclose a mort-
gage made by the defendants Patrick J. Kane and
Esther Kane, his wife, to William G. Ahrens. 40

Opinion.

The instrument bears date the 7th day of March, 1913, and covers property at the corner of Bergen and Bostwick Avenues, Jersey City. The mortgage was for the sum of \$10,000, and was second to one held by the New Jersey Title
10 Guarantee & Trust Company for \$23,000. Kane used the money (*i. e.*, the \$8,000 of the \$10,000 paid on the mortgage) in erecting an apartment house, and also secured other sums from his mother, Mary Kelly, who executed the bond accompanying the mortgage. On May 21st, 1913, he conveyed the property to his mother and they both testify that at the time of this conveyance there was an agreement between them that the
20 mother would turn back the property to her son upon being reimbursed.

An answer and counterclaim were filed, alleging that the transaction was usurious, but it was urged by the complainant that even if this were the case, under the rule laid down in *Lee v. Stiger*, 30 N. J. Eq., 610, *Scull v. Idler*, 79 N. J. Eq., 466, and other cases, Mary Kelly, the defendant, could not be allowed to set up usury against such mortgage. I am not inclined to this
30 view of the matter under consideration. This is not the case of affording to a "mere adventurer who may happen to slip into the seat of the borrower, a right to speculate on a violation of law which has done him no harm," as was said in *Lee v. Stiger*. That Mrs. Kelly took the conveyance expressly subject to the mortgage, is a mere technical defense. Mrs. Kelly signed the bond and is liable for deficiency judgment thereon. She really took the deed as security for her
40 loan, and under the view expressed in *Truesdell v. Bowden*, 47 N. J. Eq., 396, is entitled to de-

Opinion.

fend. Kane, the son and mortgagor is also a party to this suit, and he certainly has, under *Andrews v. Stelle*, 22 N. J. Eq., 478, this right.

It was further contended that in case the transaction was tainted with usury, Albanesius, who negotiated the loan, was the agent of Kane and not of Ahrens, the complainant, and that he [Ahrens] knew nothing about the arrangement between Kane and Albanesius, and that if the former had any remedy it was by suit against the latter for illegal brokerage. The facts developed at the hearing satisfied me that the complainant Ahrens knew all about the Kane transaction with Albanesius, and that he must be held accountable within the rule laid down by Vice-Chancellor Van Fleet in *Borcherling v. Trefz*, 40 N. J. Eq., 502, "that to taint a contract with usury it is not necessary that the illegal interest or bonus shall have been taken by the lender himself, but if it be shown that the illegal consideration was paid to some other person than the lender, pursuant to the terms of the contract of loan, with the knowledge of the lender, the contract must be declared usurious." This view has been numerously followed. Kane says that Ahrens was present at the time of the first payment; that he saw the two checks that were left lying on the desk and the one check that was taken. Ahrens denies this. The testimony relative to his exaction of a bonus from the owner for an extension of the mortgage and his demand for another that he did not get, gives us some idea as to his disposition regarding transactions of this kind. Moreover, it does not seem probable that he would have loaned this considerable sum of money on a second mortgage to

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Opinion.

a person of Kane's financial standing, merely to secure interest, without a thorough understanding. He is too shrewd a business man to do this.

10 The division of the first payment of \$4,000 into three parts,—\$2,000, \$1,500 and \$500,—and the giving of the three checks is suggestive. Kane's story is that Ahrens produced the three checks. He says that Ahrens had already told him he would have to pay a bonus of \$2,000 to get the \$10,000. His story is that the checks were laid upon the table in Albanesius's office; that he endorsed them there and left the \$1,500 check and the \$500 check lying on the desk in the presence of Albanesius and Ahrens. The \$2,000 check
20 he took and deposited in the New Jersey Title Guarantee & Trust Company, as is shown by his pass-book. This story appears to me to be a truthful narration of events at the outset of the transaction. Can it be doubted that Ahrens saw the endorsement of Albanesius on the two checks, one for \$500 and the other for \$1,500? Albanesius denies Kane's story. But, as I said before, Ahrens did not do this. Albanesius says that the arrangements with Kane were all made
30 before Ahrens was brought in. Albanesius says that he had many financial transactions with Kane; that Kane gave him a note of \$1,500 which he held at the time of the first payment on the Ahrens mortgage; that the check of \$1,500 was taken by him in payment of this note, and that the \$500 check was for securing the loan for Kane, which, of course, is \$350 beyond what the law allows for brokerage. Albanesius also says that Kane's indebtedness arose by cash money
40 loan transactions. He was subpoenaed to produce

Opinion.

all his books, papers and checks of every description pertaining to the transaction, but he did not produce any. Subsequently, while on the witness stand, upon his attention being directed to the matter, Albanesius produced a note of \$1,500 signed by Kane, which he says he has held since the time of the first payment, although he alleges it was paid by Kane with the \$1,500 check he received on the first payment. Kane says that at the time of the first payment Albanesius asked him to sign the \$1,500 note so as to cover up the transaction, and that he owed no money whatever to him; that he never borrowed a cent from him and never had any dealings with respect to money. From the evidence before me, it is quite apparent that it would be hard for Albanesius to prove the consideration of this note for \$1,500.

It is difficult for me to disconnect Albanesius and Ahrens in this transaction. They were neighbors and friends, and had been for years; and the testimony is that they called each other "Dick" and "Bill," and that they had several financial transactions together, and at the time of the hearing Ahrens was renting and living in a house belonging to Albanesius, and Ahrens has a mortgage on Albanesius's property for an amount in the neighborhood of \$40,000. It is inconceivable that he did not discuss with his friend the nature of the transaction that he had on hand with Kane. It is also observable from the testimony of Ahrens, Rita Smith and the complainant, that Ahrens had every intention of exacting from Mrs. Kelly all he could get in the way of bonuses for extensions. He admits that he got \$400 of the \$500 check which was paid

Opinion.

for the renewal of the mortgage, and there is no denial that when the mortgage fell due another bonus of \$500 was demanded. We have a similar situation throughout the entire life of the mortgage. Miss Smith was a mere dummy in the transaction. On September 8, 1914, when a half year's interest was paid, Ahrens told Mrs. Kelly that he wanted the principal. She urged him to let the mortgage stand, and he said that he had a friend who might take it, providing the bonus of \$500 was paid. On September 14th, Mrs. Kelly paid the bonus. As before stated, Ahrens admits that he got \$400 of it. On that day Ahrens executed an assignment of the mortgage to Rita B. Smith, which was recorded. Rita B. Smith immediately executed an assignment to Ahrens's sister, Augusta M. Ahrens, although this assignment has never been recorded. Ahrens's testimony is that his sister had \$2,000 interest in the mortgage from its inception. Mrs. Kelly paid interest on March 7th, 1915, and September 7th, 1915, to Miss Smith. When the last interest was paid, the mortgage became due, and Mrs. Kelly asked Miss Smith to grant her a further extension, but Miss Smith refused. On October 30th, 1915, she sent the following letter to Mrs. Kelly:

Dear Madam:

I had to have some money and have sold the mortgage I held on your Bergen Avenue and Bostwick Avenue property to Miss A. N. Ahrens.

Respectfully,

RITA B. SMITH.

Opinion.

Miss Smith's evidence and her attitude while on the witness stand, satisfactorily shows that she had absolutely no interest whatever in the mortgage, but was merely acting for Ahrens. She was in ignorance of the entire matter and did what she was told to do.

10

On the brief it is urged by the complainant that the answer is defective. The counterclaim charges usury, and the particulars of the transaction are set out in the answer. My recollection is that the solicitor of the defendants made application to amend the answer, so that it might conform with the proofs and meet the views expressed by Vice-Chancellor Emery in *Kase v. Bennett*, 54 N. J. Eq., 77, and that leave to do this was granted.

20

In this case the usury charged appears by the facts as well as by the conclusions of law from the facts. (*Durant v. Banta*, 27 N. J. L., 624.) The usury is proven, not left to conjecture. (*New Jersey Patent Tanning Company v. Turner*, 14 N. J. Eq., 326.) I cannot fairly and reasonably infer that this was not a usurious transaction (*Gillette v. Ballard*, 25 N. J. Eq., 491, affirmed 27 N. J. Eq.).

The complainant in this case is entitled to a decree for the amount of the principal of this mortgage less the usurious charges at the time of its inception. The bonuses paid on the renewal September 14th, 1914, must be applied on the principal.

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Decree.

(Filed Dec. 15, 1917.)

10 This cause coming on to be heard in the presence of Runyon & Autenrieth, of counsel with the complainant, and Randolph Perkins, of counsel with the defendants, Mary Kelly and Patrick J. Kane, and the court, after considering the pleadings, proofs and arguments of counsel, having found that the sum of \$500 paid by the defendant, Mary Kelly, on September 14, 1914, should be applied as a payment on account of the principal sum of said mortgage, and the court having further found that there was a usurious charge exacted at the inception of said mortgage of \$2,000 which should also be deducted from the principal of said mortgage and that
20 the amount now due on the principal of said mortgage is the sum of \$5,500 together with interest thereon amounting to \$455.84,

It is, on this 10th day of December, 1917, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the amount due complainant on her said mortgage on the day of the date hereof, for principal and interest, is the sum of \$5,955.84, and that the complainant is entitled to have the
30 said sum of \$5,955.84, together with lawful interest thereon from the date hereof, raised and paid out of the mortgaged premises;

And it is accordingly further ordered, adjudged and decreed that the said mortgaged premises be sold to raise and satisfy the said debt, interest, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson, commanding

Decree.

him to make sale according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay to the complainant, or her solicitor, said debt, interest, and in case more money should be raised by the sale than shall be sufficient to answer such payment, that such surplus be brought into this court, and deposited with the Clerk, to abide the further order of this court, unless otherwise previously disposed of by order of the court; and that the said Sheriff is to make return to this court of his proceedings by virtue of the said writ. 10

And it is further ordered, adjudged and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree. 20

Respectfully advised,

E. R. WALKER,

C.

VIVIAN M. LEWIS,

V. C.

A true copy.

ROBERT H. McADAMS,

Clerk. 30

Notice of Appeal.

(Filed Dec. 27, 1917.)

IN CHANCERY OF NEW JERSEY.

Between

10

AUGUSTA M. AHRENS,
Complainant,

and

MARY KELLY, *et al.*,
Defendants.

On Bill etc.

20

The complainant hereby appeals from the decree made in the above entitled cause on December 10, 1917, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated December 15, 1917.

RUNYON & AUTENRIETH,

Solicitors and of Counsel with Complainant.

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

HENRY W. RUNYON,

Of Counsel with Complainant.

30

Service of a true copy of within notice acknowledged December 24, 1917, by Randolph Perkins, solicitor for defendants.

40

Petition of Appeal.

(Filed Jan. 3, 1918.)

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

Between

AUGUSTA M. AHRENS,
Complainant-Appellant,

and

MARY KELLY, *et al.*,
Defendants-Respondents.

10

On Appeal.

To the Honorable the Court of Errors and Ap-
peals in the Last Resort in All Causes:

20

The petition of Augusta M. Ahrens, the appel-
lant in the above stated cause, respectfully shows
that your petitioner finds herself aggrieved by a
final decree made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor
of New Jersey, bearing date the 10th day of De-
cember, 1917, wherein the said Augusta M.
Ahrens was complainant, and Mary Kelly, Patrick
J. Kane, Esther Kane and George Grossman, were
defendants, in this respect, to wit: that the said
decree adjudges that the sum of \$500, paid by
defendant, Mary Kelly, on September 14, 1914,
should be applied as a payment on the mortgage
and further adjudging that there was a usurious
charge exacted at the inception of said mortgage
of \$2,000, and your petitioner humbly appeals
from the whole and every part of said final de-
cree of the Chancellor, upon the ground that the

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Answer to Petition of Appeal.

10 same is erroneous, for that, the Chancellor should not have credited the said sum of \$500 as a payment on the mortgage and should have found that there was no usurious charge of \$2,000 exacted at the time said mortgage was made, but should have adjudged and decreed that there was due to complainant on her mortgage the full sum shown by her bill of complaint with interest and costs of suit.

20 Your petitioner therefore prays, that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden and that it be decreed that complainant is entitled to the full amount due on her mortgage as shown by her bill of complaint, together with interest and costs of suit. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

RUNYON & AUTENRIETH,
Solicitors of Appellant.
HENRY W. RUNYON,
Of Counsel with Appellant.

Answer to Petition of Appeal.

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(Filed Jan. 11, 1918.)

The answer of Mary Kelly and Patrick J. Kane, above named respondents, to the petition of appeal of the above named Augusta M. Ahrens, appellant. This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit:

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Answer to Petition of Appeal.

That a final decree was made by the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the tenth day of December, 1917, wherein the said Augusta M. Ahrens was complainant and the said Mary Kelly and the said Patrick J. Kane were defendants in the cause for that purpose mentioned in said petition as therein stated, but as to substance and form thereof this respondent prays to refer thereto when the same shall be produced. 10

And this respondent is advised and believes that the said decree was agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

RANDOLPH PERKINS, 20
Solicitor for Defendant-Respondent.

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Testimony.

IN CHANCERY OF NEW JERSEY.

10	Between AUGUSTA M. AHRENS, Complainant, and MARY KELLY, <i>et al.</i> , Defendants.	}	On Bill to Foreclose.
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20 Transcript of testimony taken in the above entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the thirteenth day of December, nineteen hundred and sixteen, before Hon. VIVIAN M. LEWIS, Vice-Chancellor.

APPEARANCES:

RUNYON & AUTENRIETH, Esqs., for the Complainant.

RANDOLPH PERKINS, Esq., for the Defendants.

30 Mr. Runyon: This is a suit to foreclose a mortgage; there is \$8,000 due, together with interest. The defence sets up usury. We desire to make a motion to amend the bill of complaint by adding on the third line of Paragraph 6, page 3, the following words: "Said conveyance being expressly subject to complainant's mortgage, and the defendant, Mary Kelly, assuming the payment thereof."

I took up the question of this amendment with Mr. Perkins.

Mr. Perkins: I have no objection to the

William G. Ahrens, direct.

amendment, or any amendment they desire to make. I suppose that might necessitate our amending our answer.

Mr. Runyon: No, it does not.

Mr. Perkins: I think it requires amendment. Amend Paragraph 4 of the answer by inserting after the word "mortgage" in the third line thereof the following: "Said conveyance to Mary Kelly was made as security for moneys loaned by her to said Patrick J. Kane."

10

Mr. Runyon: We desire to make the following amendment to our reply to defendants' reply—to join issue on that allegation—the amended allegation.

Mr. Perkins: All you do is to file a replication, and you have done that.

20

WILLIAM G. AHRENS, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Runyon:

Q. You are the William G. Ahrens mentioned in the mortgage made by Patrick J. Kane and Esther M. Kane, his wife, to William G. Ahrens, dated March 7, 1913, and recorded in Book 794 of Mortgages for Hudson County, pages 188, etc.?

30

A. Yes, sir.

Mr. Runyon: I offer in evidence that mortgage and the bond accompanying the same.

Mr. Perkins: There will be no objection to the offer. I suppose the bond will be marked "Exhibit C1" and the mortgage "Exhibit C2."

Marked "Exhibits C1" and "C2."

40

William G. Ahrens, direct.

10 Mr. Runyon: This mortgage, as alleged in the bill and admitted in the answer, was thereafter assigned by Mr. Ahrens, the present witness, to Rita B. Smith; and thereafter by Rita B. Smith was assigned to the present complainant, Augusta M. Ahrens. The original assignment from William G. Ahrens, the present witness, to Rita B. Smith has been mislaid, but it is formally recorded, and I will produce the original book if required.

20 Mr. Perkins: I will admit or stipulate, that a certain assignment of mortgage, dated September 14, 1914, executed by William G. Ahrens, of Jersey City, to Rita B. Smith, was recorded in the Hudson County Register's office on the 16th of September, 1914, in Liber 118 of Assignments of Mortgages, page 240, which assignment purports to assign the mortgage offered in evidence and marked "Exhibit C2."

Mr. Runyon: And I offer in evidence the original assignment of mortgage from Rita B. Smith to Augusta M. Ahrens.

30 Mr. Perkins: No objection.
Marked "Exhibit C3."

Q. Mr. Ahrens, since the making of this mortgage have you been the agent for the collection of interest?

Mr. Perkins: I object; that is not the way to prove an agency. However, I will withdraw the objection.

A. Yes, sir.

40 Q. Has any part of the principal of this mort-

William G. Ahrens, direct.

gage been paid off since the making thereof; if so, how much and what is due now on the mortgage? A. April 7, 1914, Mrs. Mary Kelly paid \$2,000, which is on the bond, leaving the balance due \$8,000.

Q. Now, has any further payment of principal been made on the mortgage? A. No, sir. 10

Q. Now, up until what date has the interest on the mortgage been paid? A. The interest has been paid up to March 7, 1916.

Q. That is to say, interest on what sum? A. \$8,000.

Q. \$8,000 since what date? A. \$8,000 since the date of—interest has all been paid up to March 7, 1916, so there is no back interest, except from March 7, 1916, to date. 20

Q. Up to the time of the payment of the \$2,000 on principal, had the interest all been paid on account of a \$10,000 mortgage? A. Yes, sir.

Q. How much money was actually loaned by you in the first instance to the original mortgagee? A. \$10,000.

Q. Now, then, has that mortgage, to your knowledge, ever been extended, so far as time of payment is concerned— A. It was extended at the time of the assignment from me to Rita Smith on September 14th, I think that date is—the 12th or 14th, 1914. 30

By the Court:

Q. By written extension, or just by an understanding between the parties? A. By written extension.

Q. Have you got that here?

Mr. Runyon: Yes.

40

William G. Ahrens, cross.

Mr. Perkins: That is no extension to us—

Cross examination by Mr. Perkins:

10 Q. Mr. Ahrens, you say that the amount loaned was \$10,000? A. I do, sir.

Q. Do you produce the checks? A. I can.

Q. Have you them with you? A. Yes, sir.

Q. Will you produce them?

Mr. Runyon: Here they are.

Mr. Perkins examines them.

20 Q. Were you present when the three checks bearing date March 8, 1913, were delivered to Patrick J. Kane? A. I gave them to Mr. Kane myself.

Q. Where were they given to him? A. At my house.

Q. Who were present? A. I think my sister was present.

Q. And who else? A. I think Mr. Kane and my sister and myself were the three present.

Q. Were they delivered in the house of Otto H. Albanesius? A. No, sir.

30 Q. You got \$500.00 for an extension of this mortgage, didn't you? A. No, sir.

Q. Did you ever see a check which was drawn to your order for \$500.00? A. Yes, sir, but I did not get that; part of that went to the lawyer for some fees.

Q. How much did you get? A. \$400.00.

Q. Then you admit that you did get \$400.00 for an extension of this mortgage? A. I admit I got \$400.00 for to put the mortgage—to get it extended—

40 Q. I show you a check on the Federal Trust

William G. Ahrens, cross.

Company, dated Newark, September 14, 1914, for \$500.00 to the order of Roe, Runyon and Autenrieth, attorneys for William G. Ahrens, signed "Mary Kelly"; that is the \$500.00 you refer to?

A. I did not get \$500.00.

Q. Well, you got \$400.00 of that \$500.00? A. 10
Yes, sir.

Mr. Perkins: I offer that for identification.

Marked "Exhibit D1 for identification."

The Court: Bundle of checks aggregating \$10,000 is marked "Exhibit D5 for identification," being checks of Augusta N. Ahrens and William G. Ahrens.

Q. You at all times collected the interest on this mortgage? A. Not all—no, sir—there was 20
some of it paid to Roe and Runyon.

Q. For you? A. No, sir, some was paid to Roe and Runyon for Miss Smith.

Q. I understood on the direct examination that you said that you were the agent for the collection of this interest? A. Well, I did not understand the question in that way, because there has been some of this paid to Miss Smith and some has been paid to Augusta N. Ahrens. 30

Q. What relation, if any, is Miss Smith to you? A. No relation except an acquaintance, and a friend.

Q. On the 14th of September, 1914, you executed an assignment of this mortgage to Miss Smith, didn't you? What did you get for that assignment? A. I was to get that \$400.00 for my trouble, and to get the mortgage extended.

Q. What did you get from Miss Smith? A. 40
Nothing.

William G. Ahrens, cross.

Q. Well, she was acting merely as a dummy for you, wasn't she? A. It went simply through her name.

Q. (Question read.) A. Well.

10 Q. Miss Smith had never any real interest in this mortgage? A. No, sir.

Q. So the money that was paid to her as interest, was really your money? A. My sister took the assignment of the mortgage.

Q. But that is a long time later? A. No, sir.

By the Court:

Q. I will ask you this; while the assignment remained in Miss Smith's hands she collected some interest on it? A. Yes, sir.

20 Q. That interest that she collected while the assignment was in her name was for you? A. Paid over to my sister.

Further cross:

Q. Mr. Ahrens, the original money that went into this mortgage was partly your sister's? A. Yes, sir.

Q. At the very beginning? A. No, sir.

30 Q. Of the money that is represented in this \$10,000 of checks, part belonged to Augusta N. Ahrens, didn't it? A. Part of it, yes, sir.

Q. So that at all times the mortgage partly belonged to your sister although it was in your name at first? A. Well, I took the mortgage.

Q. But part of the money which was advanced on it belonged to your sister? A. Yes, sir.

Q. How much? A. \$2,000—from the beginning.

40 Q. Do you mean to say that the check or the payment of \$240 to Rita Smith for interest, made

William G. Ahrens, cross.

on September 7, 1915, was all paid over to your sister? A. Yes, sir.

Q. How long did Miss Smith hold the mortgage? A. Well, I think she only held the mortgage a few days.

Q. She never had possession of it, did she—she never had physical possession of it, did she? A. No, sir. 10

Q. Not physical possession of the bond? A. No, sir.

Q. Now physical possession of the assignment from William G. Ahrens to Rita B. Smith? A. Well, that was left in the lawyer's office and put on record.

Q. But she never had physical possession of any of those papers? A. No, sir. 20

Q. You have had possession of them all during all of this time, haven't you, up to today? A. My sister and I.

Q. You keep your papers together? A. Sometimes—most generally separate.

Q. You kept these papers together, didn't you? A. No, sir; I don't think I did.

Q. I call your attention to the fact that the assignment executed by Rita B. Smith to Augusta N. Ahrens, dated September 14, 1914, was never recorded; now, has not that been in your possession since September 14, 1914? A. It has been in my sister's possession. 30

Q. Hasn't it been mingled with your papers? A. I don't think it has.

Q. You are not sure? A. No, sir.

Q. You may have had possession of it? A. I don't think so; I think she had it.

Q. I show you four checks, all on the Federal 40

William G. Ahrens, cross.

Trust Company, dated September 15, 1913—
March 13, 1914—April 5, 1914, and September 6,
1914, all signed by Mary Kelly, and I ask you if
you did not receive the money on those checks?

10 A. That check I received on September 15th—
that was the first interest due.

Q. Referring to the check dated September 15,
1913? A. Yes, sir; there is a check received
March 13, 1914; that was the second interest due
—that mortgage was then due. Then on April
5th, 1914. Mrs. Kelly reduced the mortgage
\$2,000 by paying \$2,000; that reduced the mort-
gage to \$8,000; then on September 8, 1914, she
paid \$240; she did not pay me \$250; the check
is for \$250; she did not pay that; I gave her back
20 \$10 in cash, because I only figured that there was
\$8,000 at 3%; there was \$240 due me, but there
was really \$250 due me.

Q. Did you receive this money shown on these
checks I ask you? A. Yes, sir.

Mr. Perkins: I offer them for identifi-
cation.

The Witness: That was for interest due
on the principal.

30 Bundle of checks marked "Exhibit D2,
for identification."

Q. Then, on September 14, 1914, you received
the \$400 shown in this check marked for identi-
fication "D1"? A. Yes, sir.

Q. And that same day you executed an assign-
ment of the mortgage to Rita B. Smith? A. Yes,
sir.

40 Q. Had you used the name of Rita B. Smith
in any of these transactions before—mortgage
transactions? A. No, sir.

William G. Ahrens, cross.

Q. Where do you keep your safe deposit box?

A. Down here at the Commercial Trust Company.

Q. Where does your sister keep hers? A. We have a safe at home; some she keeps at home.

Q. Were the papers which have been marked in evidence, the bond, mortgage and assignment, kept in the safe in your house? A. In her box, yes, sir, she has a separate box from mine. 10

Q. So that they were kept in that safe that is in your house? A. Yes, sir.

Q. You have absolute confidence in your sister? A. Yes, sir.

Q. It is your safe? A. Well, it is a safe that is between us.

Q. Well, it is your property? A. No, sir, I cannot say that, because it originally belonged to my mother, and it was left by mother in the household goods for us. 20

Q. You have the combination of the safe? A. We both have it.

Q. And access to the safe? A. Yes, sir.

Q. And every part of the safe? A. If I want to, yes, sir.

Q. When did your sister pay to you the \$2,000 which you say went into the mortgage at its inception? A. You have one check there for identification, of \$1,000. 30

By the Court:

Q. Do you know when she paid it? A. \$1,000 she paid on March 8, and \$1,000 on March 14.

Q. Two checks, were they? A. Yes, sir. You have another check there, that is it. This was paid by me.

Q. And from that time down to the present 40

William G. Ahrens, cross.

your sister has retained some interest in this mortgage? A. She has got all the interest just now.

10 Q. From the 8th of March, 1913, down to the present time, your sister has always had some interest in this mortgage? A. Well, she had some interest in it up to September 14, 1914, and since that, since the assignment, she has had all the interest in it. (Witness produces an additional check dated March 8, 1913, from Augusta N. Ahrens to William G. Ahrens for \$1,000).

20 Q. You knew the money which was being borrowed on this mortgage was for the purpose of completing the construction of a house on the corner of Bidwell Avenue and Bergen, didn't you? A. Yes, sir.

Q. Who introduced Mr. Kane to you? A. Dr. Albanesius.

Q. On what date did he introduce him to you? A. I cannot say as to the date, but it was a week, about ten days or two weeks previous to taking this mortgage.

Q. Where did he introduce him to you? A. At my house; he brought Mr. Kane to my house.

30 Q. When did you meet with Kane at Albanesius's house? A. I don't think I met Mr. Kane at Albanesius's at any time.

Q. This is a second mortgage, isn't it? A. Yes, sir.

Q. Did you pay any attention to the question of whether the money derived from the mortgage was going into the construction of the building?

The Court: Is there any contest on that point?

William G. Ahrens, cross.

Mr. Perkins: No, sir, but there is a feature about it.

Q. How long had you know Dr. Albanesi-
 A. I should say ten or twelve years, if not longer.

Q. And made loans through him before? A. Yes, sir. 10

Q. Many of them? A. That I cannot say, for I have loaned him money and sold him property and taken mortgages from him.

Q. Well you have had a great many transactions with the doctor? A. Yes, sir.

Q. By way of mortgage—loans—extensions of mortgage—selling of property—haven't you? A. I don't think I have extended any mortgages through him. 20

Q. Or to him? A. Or to him.

Q. Well, you are not prepared to say how many transactions you have had with the doctor during the past ten years? A. No, sir.

Q. You have had a great many? A. Yes, sir.

Q. And he has introduced a great many borrowers to you? A. A few, not many.

Q. You knew that the money represented, or the two checks, 152 and 153, did not go into the construction of the building that Kane was building? A. I do not. 30

Q. You did not follow that? A. No, sir—

Mr. Runyon: I object to further examination; it is not cross examination.

Q. Have you a clear mental picture of the occasion when you delivered to Mr. Kane the three checks dated March 8, 1913? A. On March 8, 1913, Mr. Kane came to my house— 40

William G. Ahrens, redirect.

Mr. Runyon: Objected to on the ground that it is not proper cross examination.

The Court: Objection overruled.

A. (Continued): I have a clear recollection of delivering them.

10

Q. Where were the checks drawn? A. 115 Fairview Avenue.

Q. Why did you make three checks instead of one check? A. At Mr. Kane's request.

Q. He is the man who asked you to divide the money up in this fashion? A. He asked me for three checks and asked me for those amounts.

20

Q. Why did you number one check 152 1/2? A. I had to take two checks—I won't say whether it was one or two—out of the back part of my book, and it was all in one payment, and I made that a half so as to have them together in checking my check book up.

Redirect examination by Mr. Runyon:

Q. Mr. Ahrens, now this safe that you have mentioned here, had your sister access to that safe? A. Yes, sir.

Q. To each and every part of it? A. Yes, sir.

30

Q. Now, you have mentioned the payment of \$500.00, which sum is represented by check of Mary J. Kelly to Roe, Runyon and Autenrieth, dated September 14; now, was that paid to you under any written agreement, or under a verbal agreement? A. Written agreement.

Q. I show you a letter dated September 12, 1914, signed "Mrs. Mary Kelly," and ask you what that is? A. This is a letter from Mrs. Kelly to me—William G. Ahrens, Esq.

40

Q. Now, you have stated in answer to Mr.

William G. Ahrens, redirect.

Perkins's leading questions, that you received that \$400.00 out of that \$500.00 for extending a mortgage; did you have any other agreements with Miss Ahrens at the time other than the written document which you are reading? A. No, sir.

Q. What did you receive the \$400.00 for? A. 10
For extending the mortgage for her so that Mrs. Kelly would not be under any expense for the foreclosure of brokerage—this letter explains.

Q. Your understanding of what extending the mortgage means is the provisions embodied in this letter? A. Yes, sir.

Mr. Runyon: I offer the letter for identification.

Marked "Exhibit C6 for identification." 20

Q. Do you know Mrs. Mary Kelly's signature? A. Only from her checks.

Q. Were you present when she signed this letter? A. No, sir, that was mailed to me.

Q. Now, then, I call your attention to check dated March 8, 1913, from Augusta M. Ahrens to yourself for \$1,000, which was not included in the package offered; and a check dated March 14, 1913, to yourself from Augusta N. Ahrens for \$1,000, which was included in the packet offered 30
in evidence, and I ask you under what arrangement Miss Ahrens, your sister, gave you those checks? A. This \$1,000 I put to my account so as to have enough money to pay the mortgage with.

Q. Was it a loan, or was it money she paid for her interest in the mortgage?

Mr. Perkins: I object to that.

Mr. Runyon: I want to show the real 40

William G. Ahrens, redirect.

transaction; I want the witness to state what the true transaction was between himself and his sister when he got these two checks.

10 A. This I mailed to the bank on the day before the 8th.

Q. I don't care what you did with either of them—under what arrangement did you get that \$2,000 in all from your sister—what arrangement did you make with her at the time she made you that? A. I had to borrow this from her to use it; she had to give it to me—

Q. You borrowed it from her? A. Yes, sir; both checks are made to my order.

20 Q. How much in all did you borrow from your sister? A. \$2,000.

Q. And did you have any understanding with your sister as to whether or not she had any interest in the mortgage at that time?

Mr. Perkins: Objected to, that is a legal conclusion; what was said might be evidence.

The Court: I think you are right, Mr. Perkins. I will sustain the objection.

30 Q. As to whether or not the question was— A. Not at that time she did not have that understanding.

By the Court:

Q. What did you say to her when you got the \$2,000 from her? A. I said, "Let me have \$2,000"; sometimes I would borrow for a few days and sometimes for a few months.

40 Q. Did you say anything about securing her?

William G. Ahrens, recross.

A. Well, we borrow and loan each other sometimes without security.

Further redirect:

Q. Is your sister a woman of means? A. Yes, sir.

10

Q. As well as yourself? A. Yes, sir.

Q. What is your custom together with respect to your respective loans and transactions with one another? A. To loan each other and to help each other; in fact, I manage her affairs pretty well; I have got some property that I am agent for, for her.

Q. You and your sister live in the same house and always have lived together? A. Yes, sir.

Recross examination by Mr. Perkins:

20

Q. Your transactions with your sister are very numerous with respect to borrowing and lending, are they not? A. Yes, sir.

Q. And you are her agent? A. For her property, yes, sir.

Q. In fact, you managed all of her affairs? A. No, sir, not all.

Q. You manage practically all of her financial affairs? A. Some of them.

30

Q. You said you had done pretty well managing them, didn't you? A. I don't recall that.

Q. You said that you managed her affairs pretty well, didn't you? A. I cannot recall that I said that.

The Court: Yes, you did say it.

Q. You do manage her affairs, don't you? A. Not all, no sir.

40

William G. Ahrens, recross.

Q. Practically all? A. No, sir.

Q. You have had hundreds of transactions with your sister, borrowing and lending back and forth? A. Yes, sir.

10 Q. Is it possible for you to distinguish your money from your sister's? A. Yes, sir.

Q. Do you know how much she owes you now? A. Not without looking it up.

Q. How long would it take you to find out how much she owes you? A. Maybe an hour.

Q. It is a large sum of money, isn't it? A. Well, no, but it is a little complicated.

Q. It would take an accounting to work it out, wouldn't it? A. No, sir.

20 Q. You are very careful about figures, are you not? A. Sometimes, and sometimes I am careless.

Q. Do you know whether your sister owes you money or whether you owe her money? A. She owes me money.

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

Q. How long has she owed you money? A. Well, quite a while.

Q. How long? A. I cannot say.

30 Q. Five years? A. No, sir.

Q. Three years? A. Maybe that, yes, sir.

Q. She has been constantly in your debt for three years? A. No, sir, it has been both ways.

Q. What is the greatest sum of money your sister owed you? A. Well, that I cannot say.

Q. Well, give it to us pretty near. A. Five to eight thousand dollars.

Q. What is the greatest sum you have owed to her? A. I think about the same amount.

40 Q. Never any security given between you? A.

William G. Ahrens, recross.

Sometimes.

Q. Did you ever exact security from your sister?

A. Yes, sir.

Q. You have? A. Yes, sir.

Q. And she has exacted it from you? A. Yes, sir.

10

Q. That is to say, you have handed it over when it was convenient? A. No, sir.

Q. You transfer mortgages back and forth to your sister whenever it is convenient to you? A. I don't think I have transferred three mortgages to her direct.

Q. You always use a dummy, don't you? A. No, sir.

Q. You used a dummy in this instance? A. I used Miss Smith, yes, sir.

20

Q. Why did you use Miss Smith? A. Well, I cannot exactly say just now—because we wanted it to go through a second party.

Q. You wanted to make this transaction of \$500.00 appear to be legal? A. I think it is legal—

Q. It was to make the transaction whereby you got \$400.00, appear to be a legal transaction? A. Yes, sir.

Q. Did Rita B. Smith know that she had the assignment of this mortgage? A. Yes, sir.

30

Q. At that time? A. She signed the paper.

Q. At the same time that the assignment was executed to Rita B. Smith, she executed an assignment to your sister, didn't she? A. Yes, sir.

Q. And you did not put on record the assignment to your sister, did you? A. No, sir.

Q. And you permitted Rita B. Smith to collect the interest for over a year? A. No, sir, she only collected it twice.

40

William G. Ahrens, recross.

Q. That is six months each, interest each time?

A. That is not over a year though, is it?

Q. It is a full year, is that right? A. A full year, yes, sir.

10 Q. Now, on one occasion the interest was sent to you, a check drawn to William G. Ahrens, and you sent it back and asked to have it made to Rita B. Smith, didn't you? A. I don't think so; I don't remember it.

Q. Do you remember sending a check back that was drawn to your order, and saying you could not use it? A. Yes, sir, and I think that was the last check that was sent.

Q. Does Rita B. Smith owe you money? A. No, sir.

20 Q. Do you owe her any? A. No, sir.

Q. Does she owe your sister money? A. Not now, but she did.

Q. You mean when these checks were collected? A. No, sir, my sister loaned her some money on a mortgage.

Q. On security? A. Yes, sir, but I might ask, have you got that last check that Mrs. Kelly sent to me; I would like to have the Court see it, to see if it was right or not.

30 Q. I am not on cross-examination. For how many years have your financial affairs with your sister been commingled as you have described? A. I think for ten or twelve years.

Q. And you own a great deal of property in common, don't you? A. No, sir.

Q. You own your household property in common; it was left to both of you by your mother? A. Yes, sir.

40 Q. You own it together then? A. Yes, sir.

Q. Have you any mortgages in common? A.

William G. Ahrens, recross.

Yes, sir, I think we have two mortgages in common.

Q. And sometimes you have a mortgage in your name in which she has an interest, and vice versa? A. No, sir, none at all just now, and I don't think we ever have had. 10

Q. I show you this check of your sister's dated March 14, 1913, to your order, and indorsed by you and then indorsed "Patrick J. Kane"; now that check was part of this transaction, this mortgage, wasn't it? A. Well, it was from me to Kane, wasn't it—

Q. Yes. A. Yes, sir.

Q. It is part of this mortgage transaction? A. From me to Kane.

Q. Answer the question. (Question read.) A. Yes. 20

By Mr. Runyon:

Q. Is that the check which was not offered in evidence? A. That was the check that was in among the \$10,000.

Further re-cross:

Q. Do you know Rita B. Smith's signature? A. I think so. 30

Q. Is she in the court room to-day? A. Yes, sir.

Q. I ask you if that is her signature? A. It is, yes, sir.

Mr. Perkins: I ask that that be marked for identification.

Marked "Exhibit D 3½ for identification."

Mary A. Kelly, direct.

MRS. MARY A. KELLY, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Runyon:

10 Q. I show you a signature at the bottom of a letter dated September 12, 1914, and ask you if that is your signature written "Mrs. Mary Kelly"? A. Yes, sir, that is my signature.

Q. And I also show you another signature purporting to be "Mary Kelly" at the end of a paper dated September 14, 1914, and I ask you if that is your signature? A. Yes, sir, that is my signature.

Mr. Perkins: Do you offer the paper?

20 Mr. Runyon: No.

Cross examination by Mr. Perkins:

Q. Where have you signed this letter which is dated—

Mr. Runyon: Objected to as not proper cross examination.

The Court: I think the objection is well taken, Mr. Perkins, that it is not cross examination.

30 Mr. Perkins: I move to strike the evidence out as being incompetent, irrelevant and immaterial.

The Court: I will consider that; I will let it stand at present and consider it in the final disposition as to whether it is proper evidence or not.

Mr. Perkins: If you don't offer the paper in evidence then it is not proper evidence.

The Court: I will allow the evidence to stand with the motion to strike it out on

40

Mary A. Kelly, direct.

the ground that it is incompetent, irrelevant and immaterial, in its present situation—

Q. Who were present when it was signed?

Mr. Runyon: Same objection, on the ground that it is not proper cross examination. 10

The Court: Objection overruled.

Q. Who were present when you put that signature down? A. I don't know who did this, but I know it is my signature.

Mr. Runyon: I ask that the answer be stricken out as not responsive.

The Court: That is up to the counsel who proposed the question. 20

Q. Do you remember where you were or who were present or when it was signed?

Mr. Runyon: Same objection.

The Court: Objection overruled.

A. I don't know which place it was.

Q. Do you remember where you were or when it was that you signed, that you put down this signature—that you said was your signature? 30

A. I was sent for twice, and I was in Mr. Enright's; he made me sign my name a few times—

Q. The lawyer? A. No, sir, it was in the Title Company, upstairs.

Q. Referring to this signature, do you know whether anything was on that paper when you signed the signature or not?

Mr. Runyon: Same objection.

The Court: I think that is sustainable; I won't allow her to look at the paper— 40

Edmund S. Johnson, direct.

A. I signed papers in Mr. Enright's office; I think that is where it was signed.

Q. Do you ever remember seeing that paper before—except your signature? A. No, sir, I don't remember anything about it.

10

Mr. Runyon: I offer the paper shown to the witness, already marked "C-6 for identification" in evidence.

Mr. Perkins: Objected to; this woman has testified that is her signature, but there is no proof of that paper whatever.

(After argument.)

You would not let your adversary prove the contents of the paper.

20

The Court: I think I will let it go in subject to your objection, Mr. Perkins.

Marked "Exhibit C-6."

Mr. Runyon: I desire to mark for identification an agreement to extend mortgage dated September 14, 1914, which has been already mentioned, being the last paper shown to the witness. I am only offering this for identification.

The Court: I will mark it for identification.

30

Marked "Exhibit C-7 for identification."

EDMUND S. JOHNSON, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Runyon:

Q. I call your attention to a paper marked "Agreement to extend mortgage, dated September 14, 1914," being marked "Exhibit C-7 for identification"; I call your attention to the signature

40

Edmund S. Johnson, cross.

of the subscribing witnesses at the foot of said paper, the name "Edmund S. Johnson," is that your name? A. Yes, sir.

Q. And in your handwriting? A. Yes, sir.

Q. You were present at the execution of that paper by both parties? A. I was. 10

Q. And do you know whether or not the Mary Kelly mentioned therein is the defendant in this suit? A. It is the same Mary Kelly.

Mr. Runyon: I offer the paper in evidence.

Marked "Exhibit C-8."

Cross examination by Mr. Perkins:

Q. Mr. Johnson, after you signed your name as subscribing witness to "Exhibit C-8," being the paper just offered in evidence, what became of the paper? A. As I recall, I had Miss Smith sign it. 20

Q. Did she sign it after you signed your name? A. No, sir, I had her sign first.

Q. The question is, that after you had signed your name as subscribing witness to "Exhibit C-8," what became of the paper?

Mr. Runyon: I object to that. 30

The Court: I will allow the question. I think this is cross examination as to what he did with the paper after he had subscribed his name to it as attesting witness; I will allow it and I will note your objection to it.

Q. (Question read). A. I don't just recall exactly; we represented both Miss Smith and Miss Ahrens, and we keep papers in our office for them. 40

Patrick J. Kane, direct.

Q. Did you deliver the paper to anyone or did you retain possession of it? A. Well, I took it to Miss Smith's house; I don't just recall exactly what became of it afterwards.

10 Q. Do you know whether you left it with Miss Smith? A. I don't just recall.

Q. You are not able to give us any light on the question of where the paper was between the 14th of September, 1914, and the date it is produced here? A. I cannot state exactly; it may have been at the office in the files, either one or the other; I cannot recall.

Complainant rests.

20 PATRICK J. KANE, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Perkins:

Q. You are one of the defendants in this case? A. Yes, sir.

Q. And the man who is building this apartment on the corner of Bergen Avenue and Bidwell? A. Yes, sir.

30 Q. Through whom did you meet William G. Ahrens? A. Dr. Albanesius.

Q. And where did you meet him first? A. In Dr. Albanesius' office.

Q. What was the conversation among you three there?

40 Mr. Runyon: I object to this on this ground: I suppose the only purpose of going into the—before I make my objection, I want to ask the privilege of the Court to put in a further matter, which I understand we had agreed to do by stipulation as a

Patrick J. Kane, direct.

part of the complainant's main case. The stipulation was—

Mr. Perkins: It is stipulated that the deed dated May 21, 1913, between Patrick J. Kane and Esther, his wife, to Mary Kelly, recorded July 16, 1913 in Book 1162 of Deeds, page 121, may be offered in evidence as though produced; and the Court's attention is called to the following clause in said deed, "It being the intention of the parties of the first part to convey the said land, together with the buildings thereon, subject to a first and second mortgage now on said property, which the party of the second party assumes." 10 20

Mr. Runyon: Now, I object to the question for this reason: the question of necessity must go to the defence of usury pleaded by the defendant. Now, then, this defendant, Mary J. Kelly, purchasing, subject to the mortgage, such a defence of usury is not available to her, inasmuch as the original mortgagor by the terms of his express deed, waived the usury, if there were any. 20 30

The Court: Do you mean to say there can be a waiver where there is no new consideration?

Mr. ^{Perkins}Runyon: Mary Kelly is a party to the bond in this case, and Patrick J. himself is a party to the suit here. All the cases hold, that where the original mortgagor is a party to the suit, that he may set it up, and in this case we have the additional fact that Mary Kelly is on this 40

Patrick J. Kane, direct.

bond, and it was an usurious transaction against?

Mr. Runyon: Our proposition is, that the defence of usury cannot be set up by the defendants in this case.

10 The Court: On what ground?

Mr. Runyon: On the ground that it has been expressly waived by the admission of the mortgage by the present owner, but it is not a suit to collect the deficiency on a bond; this is a mere suit to foreclose against the present owner of the mortgaged premises. It has nothing to do with the collection of a deficiency debt.

20 Mr. Perkins: There are half a dozen cases in New Jersey; there is no question about it. (Citing cases.)

I have a right to show what that transaction was. In the first place, all the cases hold that where the original mortgagor is a party to the suit he can come in and defend on the ground of usury.

30 We have the original mortgagor a party to the suit, who is entitled to defend on the ground of usury; and Mary Kelly, the present owner, a party to the bond.

This is a mere suit to foreclose the equity; this is a mere suit to foreclose the security; it is not a suit on the deficiency.

(Further discussion.)

40 The Court: I think I will take the testimony in this case, and in the meantime, Mr. Perkins and you can argue at the end of the case on that very point; you can move to strike out that testimony; I am

Patrick J. Kane, direct.

inclined to believe we shall have to take his testimony.

Q. What was the conversation when you first met Mr. Ahrens in the presence of Dr. Albanesius? A. I went down to Mr. Albanesius' house one day around this time, and I asked Mr. Albanesius if he had any money that he wanted to put out on second mortgage; so the doctor said, "No," that he had none, but that he had a friend of his that he thought he could get it from.

10

Mr. Runyon: I object to this; it was not said in the presence of Mr. Ahrens.

Q. Was Mr. Ahrens there? A. No, sir.

Q. The question is when Mr. Ahrens was there? A. When Mr. Ahrens was there we already had the check signed.

20

Q. Did you see Mr. Ahrens before the mortgage was signed? A. No, sir.

Q. With whom did you deal respecting the loan before the mortgage was signed? A. Dr. Albanesius.

Q. And after the mortgage was signed, Dr. Albanesius introduced you to Mr. Ahrens? A. Yes, sir.

Q. Now, what conversation did you have with the doctor respecting the loan that was to be gotten?

30

Mr. Runyon: Objected to as incompetent, immaterial and irrelevant; it cannot bind this complainant.

Q. Mr. Kane, when did you first know that Mr. Ahrens was the man that was to be the man that was lending the money to you? A. When

40

Patrick J. Kane, direct.

I first had the conversation with Dr. Albanesius—
he said he had a friend—

Mr. Runyon: I object to what he said.

10 Q. Now, pursuant to that conversation with Dr. Albanesius, did you execute the bond and mortgage in this case? A. Pursuant to that, no, sir.

Q. What was it pursuant to, that you executed this bond and mortgage? A. It was pursuant to meet Mr. Ahrens.

Q. Listen to the question: Did you ever see Mr. Ahrens before you executed the bond and mortgage? A. No, sir.

20 Q. Well, with whom did you have dealings which led up to your signing the bond and mortgage? A. Dr. Albanesius.

Q. Who told you to go to the Title Company's office to sign? A. Dr. Albanesius.

Q. Who arranged the amount of money that was to be loaned? A. Dr. Albanesius.

Q. Who had all of the transactions with you previous to your actually signing the bond and mortgage? A. Dr. Albanesius.

Mr. Runyon: I object to this as incompetent, immaterial and irrelevant.

30 The Court: The objection is overruled.

Q. Now, what was the date when you first met Mr. Ahrens? A. The date when the first checks were signed—

Q. Where did you meet Mr. Ahrens that time? A. In Dr. Albanesius's office.

Q. Is that the first time you ever met William G. Ahrens? A. Yes, sir.

40 Q. Were any of these checks delivered to you before you saw Mr. Ahrens on that day? A.

Patrick J. Kane, direct.

No, sir, they were lying there on the desk when Mr. Ahrens came in.

Q. And then what was done after Mr. Ahrens came in? A. After Mr. Ahrens came in he said, "Everything is all right now."

Q. Then what happened? A. Then I went away. 10

Q. Was anything signed, or any checks, delivered?

Mr. Runyon: I object to your leading the witness.

Q. After Mr. Ahrens came in and said that everything was all right, what happened then; did you get the money? A. I got one check for \$2,000, and there was another check for \$500, and another check for \$1,500. 20

Q. Did you indorse them? A. Yes, sir.

Q. Whom did you give them to after you indorsed them? A. I left them right there on the table.

Q. Are those the checks you have in your hand now? A. Yes, sir.

Q. And when you went away from there, what checks did you take with you? A. The \$2,000 check. 30

Q. Did you ever get any money on the check of \$500 or the check of \$1,500? A. No, sir.

Q. And when you left who were present there? A. Dr. Albanesi and Mr. Ahrens.

Q. Together? A. Yes, sir.

Q. And after you left those checks lying on the desk as described, did you ever see either of these two checks representing the \$500 and the \$1,500? A. No, sir. 40

Patrick J. Kane, direct.

Q. You don't know what ever became of them?

A. No, sir.

Q. And they were left lying there in the presence of Mr. Ahrens?

10

Mr. Runyon: Objected to as leading.

The Court: Objection sustained.

By the Court:

Q. When you left the checks on the table, who were present? A. Mr. Ahrens and Dr. Albanesius.

Further direct:

Q. This money was borrowed to complete a building? A. Yes, sir.

20

Mr. Runyon: Objected to as leading.

Q. Where was the money deposited that you got on this \$10,000 mortgage? A. The New Jersey Title Guarantee and Trust Company—

Q. How many bank accounts did you have at that time? A. Just one.

Q. I show you a pass-book, New Jersey Title Guarantee Company, in account with Patrick J. Kane, and I ask you if that is your pass-book? A. Yes, sir.

30

Q. Does that show the deposit of all the moneys you received out of that \$10,000 mortgage? A. Yes, sir.

Q. Tell us the first deposit? A. \$2,000, March 10.

Q. What is the next? A. \$3,000.

Q. What is the date? A. March 18.

Q. When is the next? A. March 22, \$1,000; March 29, \$500.

Q. Next? A. And April 12, \$500.

40

Q. Next? A. April 26, \$1,000.

Patrick J. Kane, direct.

Q. That makes how much money? A. \$8,000.

Q. Now, I ask you if all of the checks or all of the money arising out of this \$10,000 loan was deposited in the New Jersey Title Guarantee and Trust Company? A. Every one.

10

Mr. Runyon: Objected to as leading.

Q. Were there any moneys which you got out of this \$10,000 loan which are not indicated in that pass-book?

Mr. Runyon: Objected to as leading.

The Court: Why is that leading?

Q. What was done with all the money that you got out of this mortgage? A. It was all put in the New Jersey Title Guarantee and Trust Company.

20

Mr. Perkins: I offer that book in evidence.

The Court: It will be received.

Q. Do you remember the occasion of turning the title over to your mother? A. Yes, sir.

Q. Why did you do that?

Mr. Runyon: Objected to as incompetent, irrelevant and immaterial.

30

The Court: I will allow it.

The bank book was marked "Exhibit D-5."

A. For money borrowed from my mother in the construction of this building; she loaned me money. For money that she loaned me in the construction of this building.

Q. What amount? A. I guess she loaned me about three or four or five thousand dollars.

40

Patrick J. Kane, direct.

Q. At the time of the deed was any money passed over? A. No, sir.

Q. Was there any arrangement when you should repay the moneys to your mother?

10

Mr. Runyon: Same objection, as incompetent, irrelevant and immaterial; the deed speaks for itself.

The Court: What is the object of it?

Mr. Perkins: There is a case in our New Jersey decisions that where the deed was merely given as a mortgage, that she occupies the position of a mortgagee.

20

Q. (Question read.) A. Just as soon as I was able to pay the money back to her, she would re-deed the building back to me.

Q. When did you afterwards see Mr. Ahrens after this time when you and Dr. Albanesius and he met together? A. When I went for my next payment after this transaction with the three checks.

Q. Did you have any conversation with them at that time? A. No, sir, only relative to just how I was making out with the building; how the work was progressing.

30

Q. What was this \$2,000 check for? A. The doctor told me—

Mr. Runyon: I object to what the doctor told him.

By the Court:

Q. Was it in Mr. Ahrens's presence when the doctor told you this? A. No, sir.

The Court: I don't think it is suffi-

40

Patrick J. Kane, direct.

ciently shown; he seems to have acted for Mr. Kane, so far.

Mr. Perkins: I think the testimony thus far proved, shows that Dr. Albanesi was in the position of a broker. The cases hold this: That if the broker took a usurious brokerage to the knowledge of the lender, that the contract is usurious; I have proved already that he left the two checks there. 10

The Court: I am not satisfied as yet, that Dr. Albanesi was the agent of Mr. Ahrens.

Mr. Perkins: I don't have to prove his agency.

The Court: We will see about that after; go ahead. 20

Q. Did you know who was lending the money up to the time you signed the bond and mortgage? A. No, sir.

Q. When did you first know that Mr. Ahrens was named as the mortgagee? A. The morning I went there to close the deal; when I was receiving my money.

Q. Hadn't you already signed the bond and mortgage? 30

Mr. Runyon: Objected to on the ground that it is leading.

The Court: Objection overruled.

A. Yes, sir.

Q. Had you signed the mortgage when those checks were there? A. Yes.

Q. The bond and mortgage we offered in evidence, bore date March 7, 1913, and appear to have been acknowledged on that day before 40

Patrick J. Kane, direct.

John C. Enright; now, when were they signed?
A. They were signed on that date.

Q. And was any money delivered to you at the time of the execution and delivery of the bond and mortgage? A. The next day.

10 Q. Now, the next day was the 8th; that is the day of the transaction when the three checks were made out; how did it happen that three checks were made out, one for \$1,500, one for \$500 and one for \$2,000, rather than one check? A. The doctor said he would have to give Mr. Ahrens some.

Mr. Runyon: I object to what the doctor said.

20 The Court: This was in the presence of Mr. Ahrens.

By Mr. Runyon:

Q. Was Mr. Ahrens there on this occasion to which you are testifying; was Mr. Ahrens there?
A. Mr. Ahrens came in when I was indorsing the checks over.

Q. What was said about this \$1,500 check and the \$500 check? A. They said they would have to have some money for making this loan.

30 Q. Who said that? A. The doctor said that.

Q. Did Mr. Ahrens say anything? A. Mr. Ahrens was standing there.

Q. How much did he ask for? A. The checks were made out that way, and I should indorse them over to them—one check for \$1,500, and the other for \$500.

Further direct:

40 Q. Did you ever receive any money out of those two checks? A. No, sir.

Patrick J. Kane, direct.

Q. Did you owe Dr. Albanesius any money up to that time? A. No, sir.

Q. Did you ever have any financial transactions with them? A. Never with the doctor; only through a corporation that I belonged to.

Q. Did you ever have any financial transactions with Mr. Ahrens before that date? A. No, sir. 10

Q. Did you owe Mr. Ahrens any money before that date? A. No, sir.

Q. Had there been any conversation between you and Dr. Albanesius respecting what you would have to pay for the \$10,000, previous to this date? A. Yes, sir.

Q. What was that conversation? A. That conversation was, that it would cost me about \$2,000 for that loan of this money. 20

Q. How many days was that before you signed the bond and mortgage? A. That was about three days before I signed the bond and mortgage.

Q. Did you ever go to Mr. Ahrens' house? A. No, sir.

Q. Were you ever in Mr. Ahrens' house? A. When I went to collect my money—to get my portions of the payment. 30

Q. But previous to the 8th of March, when these two checks were indorsed and left lying on the table, in the presence of Ahrens and Dr. Albanesius, had you ever been to Mr. Ahrens' house? A. No, sir.

By the Court:

Q. Was there anything said about what the \$2,000 was for that day? A. It was for a bonus; he said that was customary, and I would have 40

Patrick J. Kane, cross.

to pay a bonus—that on a second mortgage it was customary to pay a bonus.

Cross examination by Mr. Runyon:

10 Q. Who said it was for a bonus? A. Dr. Albanesius.

Q. Didn't he say part of it was for brokerage?
A. No, sir, he said I would have to pay a bonus for it.

Q. Are you sure he did not say brokerage? A. Positive.

20 Q. What else was said; now, just tell us the first conversation that was had there? A. When I went to look for my mortgage, a party said to me, "Why don't you go down to see Dr. Albanesius?"

The Court: Strike that out.

Q. You had considerable other transactions with Dr. Albanesius, didn't you? A. No, sir.

Q. And you owed Dr. Albanesius money? A. No, sir.

Q. On the occasion of this particular deal, didn't you? A. No, sir.

Q. You owed him \$1,000? A. No, sir.

30 Q. He had your note, didn't he? A. No, sir.

Q. You did not have any business transactions with Dr. Albanesius before this particular occasion? A. Not me.

Q. Sure about that? A. Positively.

Q. How did you come to know Dr. Albanesius?
A. Through the New Jersey Stone Construction Company—erecting the Merchants' National Bank on Central Avenue.

Q. And Dr. Albanesius was President of the

Patrick J. Kane, cross.

bank? A. Yes, sir, and I was President of the New Jersey Stone Construction Company.

Q. Now, how much first mortgage was there on this property at the time you borrowed the second mortgage of \$10,000? A. There was \$23,000, with the understanding that \$1,000 had to be paid back at the end of the first year; that left a permanent first mortgage of \$22,000. 10

Q. And there were large arrearages of taxes due at that time and lien claims, were there not? A. No, sir.

Q. The building was in course of construction, wasn't it? A. Yes, sir.

Q. And the mechanics had not been paid, had they? A. Yes, sir.

Q. Work had been done on the building for which payment had not been made? A. Well, no more than any other building. 20

Q. The same as any other building in construction? A. Yes, sir.

Q. They had not been paid up to date? A. Every man was paid up to date.

Q. Had they been paid for all the work that had been done on the building? A. Yes, sir.

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

Q. How much had they been paid? A. They were all paid up to the point of their contract. 30

Q. No further payments were due under their contract at the time you made this second loan? A. No, sir.

Q. Now, you had made very many efforts to get this \$10,000 elsewhere, hadn't you, Mr. Kane; you had gone all around? A. No, sir, I don't think I had.

Q. You had had brokers and agents trying to do it for you, hadn't you? A. No, sir. 40

Patrick J. Kane, cross.

Q. Dr. Albanesius was the first person you went to, to ask for that loan? A. Yes, sir.

Q. Was he the first broker you went to? A. Yes, sir.

10 Q. Was he the only broker you went to? A. Yes, sir.

Q. You knew that Dr. Albanesius was in the real estate business, didn't you? A. Yes, sir.

Q. You did not know Mr. Ahrens at the time you went to Dr. Albanesius? A. No, sir.

Q. Now, you are not clear just what the real conversation was between Dr. Albanesius and yourself on the occasion of this loan? A. I am pretty positive.

20 Q. Are you positive about the exact language that was used? A. Pretty positive.

Q. Now, tell us what did he say to you? (Question withdrawn.) The first time you went to Dr. Albanesius' house, who was there? A. Dr. Albanesius.

Q. The second time you went there, who was there? A. Dr. Albanesius.

Q. Anyone else there? A. No, sir.

Q. How many times did you go there all together? A. I went down there three times.

30 Q. When was the first time? A. The first time was when I went down to see him about the loan, and the second time I went down, I went down to see if he was going to give it to me, and the third time was when I went down to get the check.

Q. Do you remember going to Mr. Ahrens' house? A. I never went to his house previous to getting these checks.

40 Q. Didn't you go to Ahrens' house the day after the date of the mortgage; the day after the

Patrick J. Kane, cross.

mortgage was executed— A. Never previous to receiving these checks.

Q. Didn't you go to Ahrens' house on the day that you executed the mortgage? A. No, sir.

Q. And didn't you take to Mr. Ahrens the executed mortgage and a report of title from the Title Guarantee and Trust Company? A. I brought that to Dr. Albanesius. 10

Q. By that you mean the property I am now exhibiting to you, being marked "Report of Title," dated March 7, 1913? A. I did not bring it to Mr. Ahrens' house.

Q. What is this paper I show you? A. It is a report of the title.

Q. Have you ever seen it before? A. I don't know that I have ever seen that before. 20

Q. Didn't you hand that to Mr. Ahrens? A. I don't know whether I did or not.

Q. Will you swear you did not? A. No, sir.

Q. You did hand him a report of title, didn't you? A. I don't know whether that is the one or not.

Q. Do you remember handing him in his hand a report of title? A. No, sir.

Q. What did you hand him? A. I handed it to Dr. Albanesius. 30

Q. You knew that Dr. Albanesius did not have anything to do with the searching of Mr. Ahrens' title? A. Dr. Albanesius had all the papers.

Q. Now, what was the date on which you first went to Dr. Albanesius' house? A. Around about March 2nd or 3rd, or somewheres around that.

Q. And the date of the second visit was when? A. The doctor came to the building the next day

Patrick J. Kane, cross.

or so, and then I went down to the place again to see him two or three days afterwards.

Q. And the third time? A. On March 8.

10 Q. The mortgage is dated March 7? A. Well, I signed that at the Title Guarantee and Trust Company.

Q. Do you know whether you went there on the 7th or the 8th? The mortgage is dated March 7th. A. I will say March 7th.

Q. So that the last occasion that you went to Dr. Albanesius' house was March 7th. Was it March 7th or March 8th; the mortgage bears date March 7th; when was the last occasion you went to Dr. Albanesius' house? A. March 8th.

20 Q. Then the last occasion you went to Dr. Albanesius' house was the day after the mortgage was made? A. That is the day I went down to get my checks.

Q. Mr. Kane, you don't remember before this loan was made your helping Mr. Ahrens in going and looking at the particular building in question? A. Mr. Ahrens never went down to the building before this loan was made.

30 Q. He never went to your building with you to examine this building before the loan was made? A. Not with me.

Q. Didn't you go there and point out all the features of the building? A. No, sir.

Q. You don't recall Mr. Ahrens being there with you? A. I never saw him there until two weeks afterwards.

Q. Your recollection as to dates is not very clear? A. It is pretty clear on this point.

40 Q. When did Dr. Albanesius go to see the place? A. Two or three days before I received this money.

Patrick J. Kane, cross.

Q. March 5th, then? A. Between March 1st and March 8th.

Q. Was it before your first interview with Dr. Albanesius? A. No, sir, I had an interview with Dr. Albanesius and then he came up and looked at the building.

10

Q. After your first interview? A. Yes, sir.

Q. Now, on May 2, 1913, how much money did you owe your mother, Mary Kelly? A. Well, I don't just know; I could not just tell you.

Q. You owed her \$10,000, did you? A. Well, I had been borrowing from her from time to time, about \$2,000.

Q. Did you owe her any more than that? A. Not that I know of.

Q. Are you sure about that? A. Pretty sure.

20

Q. Why did you state in your direct examination, then, that on March 21st you made for something like \$5,000?

Mr. Perkins: I object on the ground that it is a mis-narrative of the evidence.

The Court: It is a mis-statement of the evidence; he said he was not sure what sum he owed.

Q. Who owns the property now? A. My mother.

30

Q. Have you any interest in it? A. No interest at all in it now.

Q. Your mother never paid you any further money in it? A. No, sir.

Q. You transferred it to your mother on May 21, 1913, in discharge of the money you owed to her? A. Yes, sir.

Q. Now, she never paid you any further money, did she, and you never paid her any further

40

Patrick J. Kane, cross.

money, and that closed the transaction? A. Yes, sir.

Q. So that she is the owner of the property to-day? A. Yes, sir.

10 Q. You have not any claim against the property to-day, have you? A. No, sir, only the moneys I have got in there, until she is able to deed it back to me.

Q. What moneys have you got in there now after your debt to your mother is cancelled? A. Well, the money that I lost—when I had to turn it over to her—I was not able to complete the building.

20 Q. You turned it over to your mother, and your mother has released you from all obligation, hasn't she? A. Except the debt that I owe her.

Q. How much do you owe her? A. Around between three or four or five thousand dollars. She has been paying the interest on this ever since, and one thing and another, and I suppose, maybe, she still holds that all against me.

30 Q. Can you tell us the terms on which you deeded it over to her? A. That when I was able to pay her back that she give it back to me as soon as I was able to pay her off.

Q. There was not any specific date mentioned when you would have to pay it back; did she state if you were ever able to pay it back she would deed the building back to you? A. Yes, sir.

Q. And you never have paid her since? A. No, sir.

Q. She is now collecting the rents? A. Yes, sir.

40 Q. And you have had nothing to do with the

Mary A. Kelly, direct.

property from that day to this? A. Only taking care of it for her.

Q. And who pays you for doing that, does she? Yes, sir.

Q. So that you have not any claim against that property to-day? A. No claim at all; she is the owner. 10

MARY A. KELLY, being recalled, testified as follows:

Direct examination by Mr. Perkins:

Q. You are the mother of Mr. Patrick J. Kane, the last witness? A. Yes, sir.

Q. Are you a widow? A. Yes, sir.

Q. I show you the bond marked "Exhibit C 1," and ask is that your signature "Mrs. Mary Kelly"? A. Yes, sir, that is my signature. 20

Q. Mrs. Kelly, you are one of the defendants in this case? A. Yes, sir.

Q. Do you remember the occasion of drawing a check for \$500.00, which has been marked "Exhibit D1 for identification"? A. Yes, sir.

Q. What was that \$500.00 for? A. For a bonus.

Q. On what? A. On that \$8,000.

Q. Did you ever get any part of that money back? A. No, sir. 30

Q. Mrs. Kelly, whom did you talk with about that \$500.00? A. Mr. Johnson—Mr. Ahrens told me to go to Mr. Johnson.

Q. Did you go to see Mr. Ahrens about the mortgage? A. Well, he demanded the money, and I had to go and see him, and he told me to go to Mr. Johnson, his lawyer, and he would attend to that.

Q. Do you remember when it was that he de- 40

Mary A. Kelly, direct.

10 manded the money on the mortgage? A. It was 18 months, or a little over 18 months; Mr. Ahrens had it 18 months like, and then he told me that a friend of his would give me money on it, but he wanted his money, and I told him I could not pay it, and then I went to Mr. Johnson; he told me to go to Mr. Johnson, and Mr. Ahrens told me he had a friend who would give the money to me.

Q. Did he say who his friend was? A. No, sir, I said I did not like to make any change, because it would be costing me money all the time, and he said the friend would take Mr. Ahrens' and Mrs. Ahrens' word.

20 Q. For what? A. Not to make any search, don't you see; I did not want any search; and he said that he would take their word, so then I went to Mr. Johnson.

Q. Was anything said between you and Mr. Ahrens about how much money you would have to pay? A. He said he thought there would be about \$7,500 he would give me for the \$8,000.

Mr. Runyon: Objected to.

The Court: Strike it out.

30 Q. Was anything said between you and Mr. Ahrens about money? A. No, sir.

Q. Was anything said about figures? A. He wanted his money, that was all.

Q. Was anything said about \$7,500? A. I think he did; I would not be sure, but I think so.

Q. What did he say? A. He told me to go to his lawyer, that he would make the arrangements.

40 Q. What was the conversation when you gave them that check for \$500.00; how did you come

Mary A. Kelly, direct.

to give that? A. Mr. Johnson made the arrangement to meet Miss Smith there, and she did not come, and I did not know what to do, and he said, "Well," give him the money, that he attended to Miss Smith's business, he said; so I gave him the money. 10

Q. What was the \$500.00 for? A. For the bonus; he wanted his money.

Q. Bonus for whom; who was the bonus for? A. For Miss Smith, I suppose.

Further direct:

Q. I show you "Exhibit C-8," and ask you if you remember the occasion of your signing that paper; do you remember it? A. I remember signing that. 20

Q. Was that the same time you gave the check for \$500.00? A. I think so; I did not sign anything in his office only that time, except to give him the receipts.

Q. Did you ever see Miss Smith afterwards? A. No, sir, not until after they demanded their money again, and I looked up her name in the telephone book, and I went to her house.

Q. When did they begin to demand the money again? A. A year afterwards. 30

Q. Then what did they want? A. Well, they wanted \$500.00 first.

Mr. Runyon: I object.

The Court: Objection overruled.

A. Mr. Johnson said that he got them down to \$400.00, that I would have to give security, as they wanted a note, and I told them I did not understand about notes, and I told him then to ask how much they wanted. 40

Mary A. Kelly, direct.

Q. For what? A. Bonus.

10 Q. When was this? A. This was when Miss Smith was through with it, when she was supposed to be selling it, so then they wanted security on my property for the balance, so I could not do that.

Q. How much was the amount of bonus demanded? A. \$400 and security.

Q. And did you pay that? A. No, sir, I did not; I put up my house for sale; I tried to sell it to give it to them—

20 Q. Where did you get the \$500.00 that is in that check "Exhibit D-1"? A. I sold two lots that I had over in Elizabeth, and I had a little over in the bank; I sold them at half-price to get the money.

Q. Now, I show you two checks, one bearing date March 15, 1915; and one September 7, 1915, both to the order of Rita B. Smith, each for \$240.00; did you pay those to Miss Smith? A. No, sir, I paid that to Mr. Johnson; I never saw Miss Smith until I saw her after she called the money in.

Q. What were those payments for? A. For the interest.

30 Mr. Perkins: I offer them in evidence. Marked "Exhibits D-7½, D-8½."

Q. When was the first time you ever saw Miss Smith? A. Not until after they demanded the \$500.00; they wanted the money and the \$400.00 and security.

40 Q. Do you remember about the time of the year when that was? A. She had it a year, and it was after that; I went to see her then, and she said well, she would see her lawyer; I begged

Mary A. Kelly, direct.

her then to leave it up for another year, if she would, and give me a chance, and she said, well, she would see what her lawyer said; so then the next thing, in a few days I got a letter from Miss Smith,—

Q. Was that a year after the assignment; tell me about the date, when it was. A. Well, I always paid as near as I could to the 17th. 10

Q. About what date was this? A. The 7th, I think it was the 7th of September.

Q. Of what year? A. 1915.

Q. You saw Miss Smith at her house then? A. Yes, sir.

Q. Did she say who owned the mortgage then? A. No, sir, she said very little; we were talking about the property, and I begged her to leave it stand. 20

Q. What did you see her about? A. I went to see if she would extend the mortgage.

Q. You thought she was the holder of the mortgage at that time? A. Yes, sir, and she did not say anything about the mortgage; she said she would see what her lawyer would say; she did not mention the mortgage at all.

Q. I show you check for \$2,000, dated April 5, 1914, signed "Mary Kelly," to the order of W. G. Ahrens; what was that paid for? A. It was off of the principal. 30

Mr. Perkins: I offer that in evidence.
Marked "Exhibit D-9½."

Q. I show you check dated September 15, 1913, for \$300.00; what is that for? A. Interest.

Marked "Exhibit D-10½."

Q. I show you check dated September 8, 1914, 40

Mary A. Kelly, direct.

Mary Kelly to William G. Ahrens, marked "Exhibit D-2"; what was that for? A. That was for interest, \$250.00.

Q. Did he give you \$10.00 of that back? A. Yes, sir.

10 Q. I show you check dated March 13, 1914, to William G. Ahrens, \$300.00; what was that for? A. Interest.

Marked "Exhibit D-11½."

Q. I show you check dated March 8, 1916, to the order of Augusta N. Ahrens, signed "Mary Kelly"; what was that for? A. Interest on this mortgage.

Marked "Exhibit D-13½."

20 Q. Did you ever meet Augusta N. Ahrens? A. Yes, sir.

Q. Where? A. In her own house.

Q. When? A. Sometimes I met her when I went to pay the interest there, and sometimes I did not.

Q. Did you ever pay interest to her? A. No, sir.

30 Q. Did you ever have any conversations with her about this bond and mortgage? A. Yes, sir, I wanted her to extend it then.

Q. What did she say? A. She wanted to know if I would pay the interest every three months.

40 Q. What did she say? A. She asked me then if I would pay the interest every three months, and I said, "Well, I would just as soon"; and she said they got all their interest mostly every three months, and she seemed to be satisfied to let me have it then; I was very glad she was going to extend it, and that night Mr. Ahrens called

Mary A. Kelly, direct.

me up on the telephone and told me I should come there again.

Q. When was this? A. Me and my son went over then.

Q. When was this? A. That was after she had changed it back to Miss Ahrens. 10

Q. Did you go and see Mr. Ahrens in response to his telephone message? A. Yes, sir.

Q. What did you say to him? A. He demanded his money; he said that he wanted money; and I went to the house then afterwards.

Q. What was said; what did he say? A. He said he could make use of the money.

Q. Was anything more said? A. No more that I know of.

Q. Was anything said by you? A. I only was pleading with him to let it stand. 20

Q. Was anything said by him in response to that? A. He told me to go to his lawyer; he had very little to say; he told me to go to his lawyer, and then one day I went there and I offered to give him half the money; I told the servant to tell him that; he was not there himself. He called me up on the telephone again over to my house, and he told me he wanted all his money. 30

Q. Did he say anything about the conversation you had had with the servant? A. No, sir.

Q. I show you a letter dated March 14; do you know whether that is Mr. Ahrens' signature or not? A. That is Miss Ahrens', isn't it?

Q. Do you remember receiving this letter? A. I cannot read without my glasses.

Q. Do you remember receiving this letter from Roe, Runyon and Autenrieth? A. Yes, sir. 40

Mary A. Kelly, cross.

Mr. Perkins: I offer that in evidence.
Marked "Exhibit D-15."

10 Q. Do you remember receiving a letter from Mr. Ahrens about the 14th of March, 1914, asking to pay half the money—just before you paid this \$500.00? A. Yes, sir.

Q. Do you remember whether that is the letter? A. Yes, sir, that is the letter.

Mr. Perkins: I offer that in evidence.
Marked "Exhibit D-16."

Cross examination by Mr. Runyon:

20 Q. Mrs. Kelly, the mortgaged premises are your property, are they not? You own the property?

Mr. Perkins: I object, I would like to further direct examine her on that.

Direct examination (continued) by Mr. Perkins:

Q. Why did you take over the property from your son?

Mr. Runyon: Objected to on the ground that it is immaterial and irrelevant.

The Court: Objection overruled.

30 A. I took it over until he would be able to give me my money; I had money in it.

Q. And if he should give you back your money what would you do? A. I would return it to him.

Mr. Runyon: Objected to as leading.

Q. Had you loaned him any money—your son?
A. I loaned money to my son.

40

Mary A. Kelly, cross.

Q. Do you know how much? A. I had about \$3,000 all together.

Q. Have you got any record of it, Mrs. Kelly; did you put it down as you loaned it to him? A. I don't understand you.

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

10

Q. Did you keep the checks? A. Yes, sir.

Q. Have you the checks which show how much money your son owes to you? A. I may have them at home, but they are not here.

Q. When the deed was given to you, did you pay any money over to your son? A. No, sir.

Q. What was the purpose of the deed?

Mr. Runyon: Same objection.

A. The purpose of the deed—that I would take the property until he was able to pay me my money.

20

Cross examination by Mr. Runyon:

Q. Have you an account of all the rents that you have received since you took the title to the property; have you kept any record of how much money you have received in rent from all these various tenants since you took title? A. No, sir, I did not, because I had to pay some out just the same.

30

Q. Have you any record of the moneys you paid out in taking care of the property since you took the title; can you show a complete record of what you received and what you have paid out since you took title from your son? A. No, sir.

Q. There was no reason for you to keep such an account, was there? A. Yes, sir I pretty

40

Mary A. Kelly, cross.

nearly know how much. I had about \$3,000 at first, you see—

Q. Your son has not paid you any money at all on account of the moneys he originally borrowed from you? A. No sir.

10 Q. And you are still loaning him money? A. No, sir, I am not.

Q. Well, he is working for you under a salary, isn't he? A. No, sir, he is not; sometimes he is and sometimes not; I don't keep any record between me and my son.

Q. You have not kept any record of the receipts and disbursements of the property since you have had it. A. Yes, sir, but not from my son, because I feel that he is working there for me.

20 Q. Now, there is no question—nobody else has any claim against your property—the title? A. No, sir.

Q. You hold that property for yourself, don't you? A. Yes, sir, until he gives me my money.

Q. Mrs. Kelly, on the occasion of your paying a check for \$500.00, being "Exhibit D 1 for identification"—

30 Mr. Perkins: It is now marked in evidence as "D 1."

Q. You signed a written paper, being "Exhibit C6," didn't you? A. Sometimes I signed papers when I did not know what they were—

Q. Look at that note and see if that is your signature? A. Yes, sir, it is.

Q. Can you read, Mrs. Kelly? A. With my glasses I can.

40 Q. Just read that paper? A. I could not read it.

Mary A. Kelly, cross.

Mr. Runyon: (Reading), "September 12, 1914. William G. Ahrens, Esq., 115 Fairview Avenue, Jersey City, N. J. Dear sir: As I have been unable to make provision to pay off the second mortgage held by you on my property at the corner of Bostwick and Bergen Avenue, Jersey City, I will be very glad if you would see if you could not get some one to take it over and save me costs of foreclosure, brokerage, etc. If you are able to secure either a purchaser therefor, new mortgagee, or some other person to take it over, I agree to pay you the sum of \$400.00 as your commissions therefor, together with the purchaser's or new mortgagee's search fees to an amount of \$100.00. Please see what you can do in this respect.

Very truly yours,

Mrs. Mary Kelly."

Q. Now, then, that letter was signed by you at the time of making this payment of \$500.00, wasn't it? A. I never knew what was in that, but I knew that he wanted the money.

Q. You knew that the \$500.00 was to pay Mr. Ahrens for his services in getting a new mortgagee? A. No, sir, never.

RECESS TO 2 P. M.

Mary A. Kelly, cross.

AFTER RECESS.

MARY A. KELLY, resumes the witness stand.

Cross-examination (continued) by Mr. Runyon:

10 Q. This check for \$500.00, Mrs. Kelly, being
"Exhibit D 1 for identification," and later "Ex-
hibit D 1," that was at the time that Mr. Ahrens
said he had a friend that he could get to take
the mortgage? A. Yes, sir.

Q. You knew that Mr. Ahrens was to get
\$400.00 out of that money, and \$100.00 for ex-
penses? A. No, sir.

Q. You knew it went to Mr. Ahrens? A. Yes,
sir.

20 Q. And that was on the occasion that the mort-
gage was assigned by Mr. Ahrens to Miss Smith;
that was on the occasion that Miss Smith came
into the transaction? A. He never mentioned
that to me at all.

Q. That was on the occasion—at Mr. Johnson's
office?

Mr. Perkins: It does not appear that
there was any assignment in the presence
of this witness whatever, or that she knew
anything about an assignment.

30 Q. You knew that Mr. Ahrens was no longer
to hold that mortgage, didn't you? A. He told
me to go to his lawyer.

Q. Then you asked Mr. Johnson to make out
this check for you? A. Yes, sir.

Q. You asked him to fill it out for \$500? A.
Yes, sir; because I could not fill it out for my-
self.

40 Q. And you knew that money was going to Mr.
Ahrens? A. No, sir; I thought it was going to
Miss Smith; that was the understanding.

Mary A. Kelly, cross.

Q. Then why did you sign that paper, "Exhibit C6"? A. I never heard that read.

Q. Why didn't you state this morning that you thought it was going to Miss Smith? A. If I did not, I did not understand what it was; I did not know anything about it.

10

Q. This paper was read over to you before you signed it? A. Never.

Q. Wasn't it read over to you? A. No, sir; I would not give any \$400 at that time.

Q. It was later that you decided to give the \$500? A. No, sir; it was decided to give the \$500 but not on anything only to Miss Smith, because she was going to loan me the money, Mr. Johnson said; he said he had made arrangements for Miss Smith and me to meet there, and she did not come in. I was nervous, and I could not write that.

20

Q. Now, the other occasions of which you have testified that money was demanded, was one and a half years later, wasn't it? A. Well, this last money was; Miss Smith held it a year, then she turned it over to Miss Ahrens again. She wrote me to that effect, that she had turned it over to Miss Ahrens; she never told me that she wanted money.

30

Mr. Runyon: I ask to have the last part struck out.

The Court: All right.

40

Rita B. Smith, direct.

MISS RITA B. SMITH, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Perkins:

10 Q. Where do you reside? A. 624 Bramhall Avenue, Jersey City.

Q. Are you any relation to Mr. William Ahrens, or to Augusta N. Ahrens? A. No, sir.

Q. I show you check dated March 15, 1915, marked "Exhibit D18," and ask you if that is your indorsement? A. Yes, sir.

Q. I show you another check, \$240, dated September 7, marked "Exhibit D7," and ask you if that is your indorsement? A. Yes, sir.

20 Q. I show you "Exhibit C8," and ask you if that is your signature? A. Yes, sir.

Q. Was Mrs. Kelly present at the same time that you signed "Exhibit C8"? A. I don't remember.

Q. When was the first you can remember seeing Mrs. Kelly? A. I don't remember that either.

Q. Have you any recollection about it at all? A. No, sir.

Q. How many times did you see her? A. That I don't remember either.

30 Q. There was offered in evidence, although not produced, an assignment of a mortgage executed by William G. Ahrens to Rita B. Smith; did you ever see that paper? A. I don't remember; I don't remember any of these things.

Q. You don't know anything about this transaction at all? A. I simply did this as an accommodation to Miss Ahrens, that is all.

Q. Please answer my question. A. That is it.

Rita B. Smith, direct.

Mr. Perkins: I move that answer be stricken out as not responsive.

The Court: Let it stand.

Q. You never put up any money to Mr. Ahrens, did you? A. No, sir.

10

Q. Do you know whether or not you executed "Exhibit C3" on the 14th of September, 1914, or not? A. I don't remember anything about it.

Q. Do you know whether you signed "Exhibit C3"? A. I don't remember.

Q. Did you ever cause an assignment of this mortgage to be recorded? A. I don't recollect anything about it.

Q. Did you ever have any money interest in the mortgage being foreclosed in this suit? A. I don't know anything about it; I know nothing about it.

20

Q. Do you know whether you have had any interest in this mortgage? A. I know nothing about it; I did it all to accomodate Mr. Ahrens.

Q. Did you get any cash for it? A. No, sir.

Q. Or did you put up any cash? A. No, sir.

Q. How long have you known Miss Ahrens? A. Almost all my life.

Q. How long have you known Mr. Ahrens? A. Almost all my life.

30

Q. When was the first time Mr. Ahrens spoke to you about this transfer to you? A. I don't remember.

Q. When was the first time Miss Ahrens spoke to you about it? A. I don't remember that either.

Q. Which spoke to you first of the two? A. I don't remember.

Q. Did either of them ever speak to you about it? A. I don't remember.

Q. You have no conscious recollection of Mr.

40

Rita B. Smith, direct.

Ahrens ever speaking to you about this? A. No, sir.

Q. And you have no conscious recollection of Miss Ahrens ever speaking anything to you about it? A. I don't know anything about it.

10 Q. When was the first time you knew this mortgage had been transferred to you? A. I don't know.

Q. You did receive the \$240 shown on that check, didn't you? A. I don't remember.

Q. Don't you remember receiving these two checks for \$240 each? A. I don't remember anything about it.

Q. Have you no recollection of your signing your name on the back of these checks I show you? A. No, sir.

20

Q. Have you a bank account? A. Yes, sir.

Q. Do you know whether or not you put this money in your bank account? A. I don't know anything about any of it.

Q. Do you know whether or not you turned over any of this money to Mr. Ahrens? A. I don't know what I did with it.

Q. Don't you remember that you turned over these two items of \$240 to Mr. William G. Ahrens? A. Everything of this was done in my lawyer's office; he had charge of everything.

30

Q. You did not endorse those two checks in your lawyer's office? A. I don't remember where I endorsed them.

Q. Didn't you see Miss Kelly at your house? A. I don't remember anything about Mrs. Kelly.

Q. Didn't you ever see Mrs. Kelly before? A. I have seen her house.

40

Rita B. Smith, direct.

Q. Didn't you see her at your house? A. But I don't remember anything about her.

Q. Didn't you see her at your house? A. Sometime, I suppose.

Q. Don't you know? A. I don't remember when it was. 10

Q. Don't you remember the fact of seeing her at your house? A. Yes, sir.

Q. Do you remember upon one of those occasions she paid you one of these checks for \$240? A. No, sir; I don't remember it.

Q. Do you mean to tell this Court that you recall \$480, as shown by these checks, and you have no idea whatever what you did with the money? A. My lawyer attended to it all for me; my lawyer did all my business for me. 20

By the Court:

Q. The question is, do you mean to tell the Court that this money passed into your hands by this check, and you don't know anything about it? A. I left all this in charge of my lawyer.

Q. Did this money go to your lawyer; it went to you—this check was made to you; is that your name on the back of it? A. Yes, sir. 30

Q. You are not in the habit of taking checks made payable for two or three hundred dollars to you without knowing what they are about? A. I simply did this to accommodate my friend, Miss Ahrens, and I was ignorant of this whole matter as a newborn child.

Further direct:

Q. What did you do with the money you received on those two checks? A. I don't know. 40

Rita B. Smith, direct.

Q. What is your best recollection? A. I don't know anything about it; I simply did it as an accommodation, and I laid everything in my lawyer's hands.

10 Q. But you know you signed your name on the back of those two checks, don't you? A. That is my signature.

Q. Don't you know whether you put them in your bank account or not? A. I don't remember.

Q. Have you a bank account? A. Yes, sir.

Q. Where do you keep this? A. Several places.

Q. Where? A. Bergen and Lafayette Trust Company—

20 Q. Have you produced your checks today? A. I was not asked to, only on the mortgage; I have received nothing on the principal of the mortgage.

Q. Didn't you receive a subpoena? A. Yes, sir.

Q. Have you got it with you? A. Yes, sir.

Q. Is that the subpoena you received? A. Yes, sir.

30 Q. This subpoena calls for you to bring with you all books, papers, memoranda and entries showing or relating to the payment by said Kane or Kelly to Otto H. Albanesius or William G. Ahrens of that sum of \$2,000, or any other sum on said date, including cancelled checks, and also all paper writings, memorandums showing the payment of the sum of \$500.00 paid by defendants, or either of them to said Rita B. Smith, William G. Ahrens or Augusta N. Ahrens in relation to a bond and mortgage dated April 7, 1913, executed by the defendants or either of them, to the said William G. Ahrens, and also
40 bring with you your bank deposit book or pass-

Rita B. Smith, direct.

book, showing deposits of any such sum of money; now, have you produced any such books here?

A. No, sir.

Q. Did you bring any books with you? A. No, sir; I haven't any to bring.

Q. You said you had a deposit book in the Bergen-Lafayette Trust Company, didn't you? (Reads the subpoena again to the witness). 10

The Court: You can re-subpoena her, if you want to. Do you think it necessary, Mr. Perkins?

By the Court:

Q. Have you any account books—do you keep account books? A. My own personal accounts. 20

Further direct:

Q. Did you ever draw any checks out of your personal account representing this interest money which was paid to you? A. I don't remember.

Q. Did you make any investigation to find out? A. I don't remember.

Q. Did you make any investigation? A. No, sir.

Q. Did you make any investigation to find out if you had paid any checks over to William G. Ahrens? A. I don't remember. 30

Q. You received this subpoena on Friday, the 10th of December, didn't you? A. No, sir.

Q. On Friday, the 8th—you got it on the 9th of December? A. I got it Saturday.

Q. Have you made any effort to find any books or papers called for in that? A. No, sir, I was perfectly ignorant about it—I saw my lawyers. 40

Rita B. Smith, direct.

Q. Were you instructed not to produce your books or papers? A. Yes, sir.

Mr. Runyon: She knew nothing about those two transactions.

10 Q. Did you make any investigation of any of your books or papers after you received this subpoena? A. No, sir.

Q. Now, do you know whether or not you got anything in any of your books or papers in relation to a payment of \$500? A. I don't remember.

Q. So that you don't deny that it is possible that you might have such memoranda of payment? A. I don't remember anything about it.

20 Q. After you received this subpoena did you make any effort to look up any papers? A. No, sir.

Q. Why didn't you? A. Because I did not know anything about anything; I did not think it was necessary; I don't know anything about anything concerning it.

Q. Is that your signature signed to "Exhibit D3"? A. Yes, sir.

Q. And this is your letter? A. Yes, sir.

30 Q. You wrote that letter? A. Yes, sir.

Q. You know something about the transaction then, didn't you? A. No, sir.

Q. At whose request did you write that letter? A. I don't know.

Q. Did you write that letter at the request of William Ahrens? A. I don't remember.

Q. Did not Mr. Ahrens prepare the letter for you and then you re-wrote it? A. I don't remember.

40 Q. In this letter of October 30 you say: "Mrs.

Rita B. Smith, direct.

M. Kelly, 84 South Street, Newark, New Jersey.
Dear Madam: I had to have some money and have sold the mortgage I hold on your Bergen Avenue and Bostwick Avenue property"; you signed that, didn't you? A. That is my signature.

10

Q. Is it true that you had to have some money?

A. I don't remember.

By the Court:

Q. You know? A. I simply did it to accommodate Miss Ahrens.

Further direct:

Q. But this letter was written on the 30th of October, 1915? A. I don't remember it at all.

20

Q. It is in your handwriting? A. Yes, sir.

Q. And it is all in your handwriting, isn't it? A. Yes, sir.

Q. At whose instance did you write the letter? A. I don't remember—I tell you the God's truth; I don't remember; I am not going to lie about the thing; I don't remember anything about it.

Q. Haven't you any recollection of having written that letter? A. No.

Q. You reside at this address? A. Yes, sir.

30

Q. Don't you remember anything about it? A. No, sir.

Q. Don't you remember the fact that you did write that letter? A. I don't remember; I could not tell you anything more.

Q. Did you sell the mortgage to Miss Ahrens? A. I don't remember; I don't know anything about it.

Q. Who instructed you to answer every ques-

40

Rita B. Smith, direct.

tion: "I don't know anything about it?" A. My own common sense.

Q. Have you talked it over with Miss Ahrens before? A. No, sir.

10 Q. Do you mean to tell this Court that you have absolutely no recollection whatever about any of these transactions? A. No.

Q. You have not? A. I really do not.

Q. Do you mean to tell this Court that you have absolutely no recollection about writing this letter marked "Exhibit D3"? A. It is my handwriting, but I don't remember when I wrote it.

Q. You remember the fact that you did write it? A. There is the letter.

20 The Court: We will take it that she wrote it, all right.

Q. Don't you remember having a conversation with Mrs. Kelly at your house in which she begged you to extend this mortgage? A. A slight remembrance of Mrs. Kelly; I recollect that part; I told her then that my lawyer had charge of my affairs, and I had nothing to do with it.

30 Q. Can you not refresh your recollection as to whether or not you paid this money represented by the two checks "D7" and "D8," over to Mr. Ahrens? A. I don't remember anything about it.

By the Court:

Q. Are you sure you did not take it yourself? A. I don't remember anything about it.

Q. Are you sure you did not put it in your own pocket? A. No.

40

Rita B. Smith, cross.

Further direct.

Q. What did you do with the money? A. I gave the whole matter in charge of my lawyer.

Q. This money never went to any lawyer, did it? A. I don't know anything about it.

Q. Were not those checks deposited in your bank account in the Bergen and Lafayette Branch of the Trust Company of New Jersey? A. I don't know.

10

The Court: You can look at her bank account if you need to, Mr. Perkins.

Cross examination by Mr. Runyon:

Q. Was there anything done, Miss Smith, in this matter, that especially charges your attention that it caused Miss Kelly's visit to your house? A. No, sir.

20

Q. Have you ever had occasion to have anything to do with the matter from that day until the day the subpoena was served on you? A. No, sir; it did not concern me.

Q. Have you any books, papers, accounts, records of anything else that will show any payments to you of \$500.00, or \$2,000, as mentioned in the subpoena which was served upon you? A. I don't remember.

30

Q. Did you ever receive any sum of \$2,000, or \$500.00 mentioned in the subpoena? A. No.

Q. You don't remember? A. No, sir, emphatically, I did not receive it.

Q. Directly or indirectly? A. No, sir.

Q. Have you any money of your own in this transaction? A. No.

Q. Miss Smith, you have got out of a sick-bed to come here this morning? A. Yes, sir, I certainly did.

40

Rita B. Smith, redirect.

Redirect examination by Mr. Perkins:

10 Q. Have you no recollection whatever of having any conversation with Mr. Ahrens about this matter? A. I don't remember; I have no recollection whatever of having any conversation with Mr. Ahrens about it.

Q. Have you no recollection whatever of having any conversation with Miss Ahrens about it? A. I don't remember.

Q. Then why do you say you did it to accommodate Miss Ahrens? A. Well, I did.

20 Q. Why do you say that you did this to accommodate Miss Ahrens when you stated you never recollect any conversation whatever with Miss Ahrens about it? A. Why, I can easily explain that; the thing was so trivial to me, not being interested in it, that it went in one ear and out of the other; if it had been my own I would have been interested in it.

Q. Why do you say you did it to accommodate Miss Ahrens instead of Mr. Ahrens; why do you distinguish between the two of them? A. I don't know.

Q. Please answer. A. I don't know.

30 Q. You did it just as an accommodation—you did it just as much for the accommodation of Mr. Ahrens as you did for the accommodation of Miss Ahrens? A. I did it for Miss Ahrens.

Q. And yet you have no recollection whatever of any conversation with Miss Ahrens about it, is that right? A. I was not interested in it; it was not my affair.

40 Q. How do you know that you did it to accommodate Miss Ahrens? A. How would you know?

Rita B. Smith, redirect.

By the Court:

Q. How did you know; that is the question.
A. How would you know?

Further redirect:

Q. How do you know that you did this to accommodate Miss Ahrens; how do you recollect that? A. I don't; the whole thing is simply vague; it is not impressed on my mind a bit. 10

By the Court:

Q. Then why do you say you did it to accommodate Miss Ahrens, if you don't recollect that you did it for that purpose? A. I don't know what to answer to that.

Q. Why do you say you did it to accommodate Miss Ahrens, if you cannot answer that question why you did it for that purpose; you know Miss Ahrens did not transfer it to you? A. I don't know. 20

Further redirect:

Q. Who was it that asked you to have anything to do with this transaction? A. I don't know; I am not in it at all, really I am not.

The Court: You had better look it up. 30

Q. Do you know what the transaction is, Miss Smith, that went through your hands; did you ever understand what the transaction was? A. (No answer).

By the Court:

Q. Have you got a bond and mortgage yourself? A. I don't think it is necessary to answer.

Q. You must answer. A. Yes, sir. 40

Rita B. Smith, redirect.

Further redirect:

Q. You were asked if you ever had owned a bond and mortgage; have you ever owned a bond and mortgage? A. No, sir.

10 Q. Were you ever the mortgagee on a bond and mortgage? A. No. I cannot answer you much more.

Q. Have you ever had any bonds and mortgages in your name, or handled them? A. No, sir.

Q. Do you know what a bond and mortgage is? A. Yes, sir.

Q. Did you know what this particular transaction with Miss Ahrens was? A. No, sir; I did it just for accommodation, that is all.

20 Q. Don't you remember who it was that asked you to do this for an accommodation? A. I have been trying to think, and it might have been Miss Ahrens that asked me; I did it to accommodate her.

Q. Try and search your memory and give us your best recollection about it; who asked you to do it; now, who was it asked you to? A. It is so long ago; as far as I recollect, it was simply as an accommodation for Miss Ahrens, and I simply said I had nothing to do with it; she said everything would be done down in Mr. Johnson's office; that is all I was told.

30 Q. Told by whom? A. I think Miss Ahrens told me that; that is the reason I am perfectly ignorant of the whole business.

Q. At the time the mortgage was assigned to you, did you know about it? A. Know what?

Q. That is had been assigned to you. A. I don't know.

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Defendants Rest.

Otto H. Albanesi, direct.

REBUTTAL.

Doctor OTTO H. ALBANESIUS, sworn in rebuttal.

Direct examination by Mr. Runyon:

Q. You heard the testimony of Mr. Kane? A. Yes, sir. 10

Q. Do you recall that transaction that took place where Mr. Ahrens, he and you were concerned? A. Yes, sir; I remember the incident.

Q. You heard the testimony? A. Yes, sir.

Q. You heard the testimony of Mr. Kane this morning as to his conversations with you with regard to bonus transactions? A. I did, yes, sir.

Q. Was that true? A. No, sir.

Mr. Perkins: Objected to; that is entirely improper. 20

The Court: Yes, strike that out.

Q. Was Mr. Ahrens ever present on any occasion at your house with Mr. Kane when the mortgage transaction was closed?

Mr. Kane: Objected to as leading.

The Court: The objection will be sustained. 30

Q. I show you checks dated both March the eighth, to the order of Patrick J. Kane, one for five hundred dollars and the other for fifteen hundred dollars, with an endorsement on the back, "Patrick J. Kane;"; underneath that, the words "O. H. Albanesi," and is that latter endorsement your endorsement? A. Yes, sir.

Q. Now, when did you receive those checks and from whom? A. I received those checks from Mr. Kane. 40

Otto H. Albanesius, cross.

Q. On the occasion of receiving those checks from Mr. Kane was Mr. Ahrens present? A. No, sir.

10 Q. Do you know whether or not Mr. Ahrens was present at your house on the occasion of the closing of the mortgage in question?

Mr. Perkins: I object.

Q. On this occasion was Mr. Ahrens present?
A. When those checks were handed to me?

Q. Yes. A. No, sir.

Q. Was Mr. Kane? A. No, sir.

Q. Did Mr. Ahrens, so far as you know, know anything about the delivery of those checks to you?

20 Mr. Perkins: Objected to as leading.

The Court: The objection will be sustained.

Q. Didn't you make the remark to Mr. Kane, on the occasion of the delivery of these checks to you, or at any time before this, that "we will have to have some bonus on this transaction," or words to like effect? A. No, sir, I never did.

30 Q. Did Mr. Ahrens ever make such a remark to Mr. Kane on any occasion when you were present? A. Not in my presence.

Q. Did Mr. Ahrens ever get any part of this money? A. No, sir.

Q. Represented by the two checks that we have just mentioned? A. No, sir.

Cross examination by Mr. Perkins:

Q. You interceded with Mr. Ahrens to procure the loan in question? A. Yes, sir.

Otto H. Albanesi, cross.

Q. And you told Mr. Ahrens that it was a good loan? A. I did, yes, sir.

Q. And you told him that it was a second mortgage? A. I did.

Mr. Runyon: I object to this; it is not cross examination.

10

The Court: Objection overruled.

Q. Did you go down with Mr. Ahrens to look at the property? A. Yes, sir.

Q. You did receive these checks in your office? A. Yes, sir, at my home; it was a sun parlor in my home.

Q. They were endorsed by Patrick J. Kane? A. He endorsed them and handed them to me and I put them in my desk.

20

Q. You had a number of business transactions with Mr. Ahrens? A. Yes, sir.

Q. You have known him ten or twelve years? A. I have.

Q. And had a number of mortgage transactions with him? A. I had some.

Q. And occasionally you have procured loans from him for third parties? A. Let me recollect; I don't want to answer hastily—I don't think they ever procured any direct—I think that I had him take up some second mortgages on one or two occasions that had already been placed; after he bought them—

30

Q. He has bought second mortgages that you were interested in? A. Yes, sir.

Q. And the transactions you have had with him in the last ten years are quite numerous? A. Not so many; possibly four or five.

Q. Not more than that? A. No, sir; I don't think so, Counsellor.

40

Otto H. Albanesi, cross.

Q. After you received these checks and endorsed them, what did you do with them? A. I deposited them.

Q. In what account? A. In the Title Guarantee & Trust.

10 Q. Jersey City? A. Yes, sir.

Q. You keep accounts in other banks besides that? A. I do not at the present time; I did then; I still had a small account in the Merchants National at that time—a bank that I was connected with some years ago—and I think I had a small account up there; but I did my principal business with the Title Company and do so yet.

20 Q. When did Mr. Kane first approach you on the subject of this loan? A. To the best of my recollection, it must have been in the latter part of February, 1913.

Q. Nineteen-thirteen? A. Yes, sir; I believe it was in 1913.

Q. How long after that time did you speak to Mr. Ahrens about it? A. I spoke to him that same day, possibly, or very shortly afterwards; as soon as I got a chance to speak to him.

30 Q. How soon after that did you both go around and look at this property? A. It may have been the same day; I don't know.

Q. How long a time previously had you financial transactions with Mr. Kane—about ten years? A. A period of six or seven years.

Q. You had not had any transactions with him for six or seven years? A. Oh, I had had them in between, on and off, all the time.

Q. When was the last transaction you had? A. Possibly a month or so previous.

40 Q. Do you mean that you—personally? A.

Otto H. Albanesi, cross.

Yes, sir; I was out of the company; I was out of the company, I think, two or three years at that time.

Q. Have you a definite recollection of what the last transaction was about?

Mr. Runyon: I object to that. 10

The Court: You might ask the question for the purpose of testing the recollection of this witness as to the transaction in this particular.

Q. (Question read): I think five or six weeks previous to this transaction with Mr. Ahrens' mortgage.

Q. Second mortgages in Jersey City generally carry bonuses with them, don't they? A. I don't know. 20

The Court: Strike that out.

Q. Do you know why these were in the form of two checks rather than one? A. Yes, sir.

Q. How long previous to the eighth of March is it that you lost sight of Mr. Ahrens? A. I left things to him, and I possibly saw him anywhere from once a day, twice a day, to a dozen times a day; I had property right adjoining Mr. Ahrens, at that time. 30

Q. How many different financial transactions did you have with Mr. Ahrens pending at that time? A. Only that one.

Q. Had you procured any other second mortgages from Mr. Ahrens at that time? A. No, sir.

Mr. Runyon: Certainly this is not cross-examination.

The Court: It is done for the purpose of 40

Otto H. Albanesius, cross.

testing the recollection of this man, and the accuracy of his statements. The Court will admit the question.

10 Q. Now, regarding Mr. Ahrens having got any of this two thousand dollars— A. Not from me.

Q. Now, do you know that he never got any of the two thousand dollars? A. He never got any of that money.

Q. How do you know that? A. Because the money was paid to me and I put it in my bank and I never gave him any of it, so I must know that he never got it.

By the Court:

20 Q. How did you come to be paid that sum of money? A. Five hundred dollars of that money was paid to me for procuring a second mortgage, and the fifteen hundred dollars was money that was owing to me by Mr. Kane, on a promissory note.

30 Q. Where was that note? A. That note I still have; Judge Carey has it in his possession; there was a suit brought against me by Mr. Kane, and I turned the summons over to Judge Carey and he has it in his possession; the money was paid to me in my home, and the note was in my office, and Kane never came for it; Judge Carey has the note downstairs; I may have given him a receipt; he may have asked for a receipt, I don't know, but the note was not at my home, it was in my office.

Q. What was the note for? A. For money advanced to Mr. Kane from time to time.

40 Q. What period? A. Well, he was operating that building and some other work that he was doing; I did that over a period of a number of

Otto H. Albanesius, cross.

years; when the bank said that he had all he could get on account of the size of his deposits, I gave him personal notes.

Further cross:

Q. Now, you are speaking about a period, six or seven years before? A. Yes, sir; and I did it from that time on and off, at various times; Kane always made good his obligations. 10

The Court: Why don't you get that note, Mr. Runyon?

Mr. Runyon: We assumed that Mr. Perkins was going to offer it. He subpœnaed Doctor Albanesius; we did not subpœna Doctor Albanesius.

The Witness: Judge Carey has the note downstairs; Judge Carey has it downstairs. 20

Q. Now, Doctor, when was this note executed—this Kane note of fifteen hundred dollars? A. It was either the third or fourth of February, 1913.

Q. And that was in anticipation of your procuring a loan, wasn't it? A. No, sir.

Q. What did you give to him at that time? A. I gave to him at that time some money; now, the amount I cannot remember; and he returned some smaller notes; he said he was up against it and needed it for pay-roll— 30

Q. Did you give him cash at that time? A. Yes, sir.

Q. Do you know how much it was? A. I cannot recollect, but it was probably five or six hundred dollars.

Q. Cash? A. Yes, sir; and he returned one or two smaller notes.

Q. How small were these notes that he re- 40

Otto H. Albanesius, cross.

turned? A. I think there was one for four hundred dollars and one for four hundred and fifty dollars or five hundred dollars.

Q. He returned those notes to you? A. Yes, sir.

10 Q. How many were there of those small notes?
A. Two.

Q. You said he returned two smaller notes to you? A. That was a mistake in my answer; he could not return my notes—I have his notes upon which I had given him some money; he then returned the two small notes.

Q. How much were these smaller notes for?
A. I cannot swear positively, but in the neighborhood of four hundred or four hundred and
20 fifty dollars.

Q. You mean together? A. Each of them.

Q. How much was the cash you gave him? A. In the neighborhood between six and seven hundred dollars.

Q. Do you keep books of account? A. Not of these things I do not.

Q. Have you kept a memorandum? A. Possibly.

Q. You are subpoenaed to produce all of those
30 papares, paper writings? A. I have not any.

Q. Were not you subpoenaed to produce all paper writings? A. I have not read the subpoena all the way through; I have it here somewhere.

Q. The subpoena says you are to produce your books, papers, memoranda and entries showing or relating to payments by Kane or Kelly to Albanesius or William G. Ahrens of the sum of two thousand dollars or any other sum; now,
40

Otto H. Albanesius, cross.

have you produced them? A. No, sir; I have not.

Q. Have you produced any books, or papers in writing? A. No, sir.

Q. Why not? A. I did not know it was required of me; I did not read the subpoena all the way through; I saw that I was to appear here. 10

Q. You saw something was pasted on the subpoena? A. Yes, sir, but I did not read it all the way through.

Q. Didn't you tell the young man who served that subpoena on you that you did not have any books, papers or writings? A. I did not speak to him any further about it.

Q. When he served the subpoena on you, didn't you say, "I have no such paper or paper writings"? A. No, sir; I never did. 20

Q. Didn't you speak to him about anything of that sort? A. No, sir; I did not.

Q. Why were there two checks? A. You will have to ask Mr. Kane or Mr. Ahrens.

Q. Just a few moments ago you said you knew the reason why. A. I thought you said, "Did you know that there were two checks"; the checks were not drawn in my presence; I did not see them drawn; they must have been drawn somewhere, and Mr. Kane came into my house and handed them to me. 30

Q. How long after that was it that you first saw Mr. Ahrens? A. I don't know; maybe the same day; I saw him every day.

Q. You probably saw him the same day? A. I don't know; it is more than likely that I did.

Q. Did you bring your books and checks show-

Otto H. Albanesi, cross.

ing what checks you had drawn out of your account? A. No, sir.

Q. Have you any checks drawn to Mr. Ahrens or any one for him? A. Not to my knowledge.

10 Q. You would know something about it, wouldn't you? A. I have checks that I can show that I have drawn to Mr. Ahrens; Mr. Ahrens owned a mortgage on some of my property.

Q. When were they drawn? A. They are drawn for six months.

Q. Any other checks? A. Not to my knowledge.

Q. Any checks drawn to Augusta N. Ahrens? A. They are all drawn to Augusta N. and William G.; they are drawn jointly.

20 Q. When next, after March the eighth, did you draw a check to Mr. or Miss Ahrens? A. After March the eighth; I think the interest is due in May and November; it must have been May the first.

Q. Did you owe him any interest on March the eighth? A. No interest that was due.

Q. Will your check book show what became of the two thousand dollars which was deposited — A. It was deposited in my general account.

30 Q. I mean where it went to eventually? A. It went all over; I don't know where it went, not that particular money.

Q. Did you keep a large amount down there? A. All the way from ten thousand to one hundred thousand dollars at times.

Q. And you don't know what became of this two thousand dollars? A. I deposited it in my account and used it all in my regular way.

40 Q. You knew you were to testify about those

Otto H. Albanesius, cross.

checks today, didn't you? A. I knew I was subpoenaed here.

Q. And you knew you were to talk about these fifteen hundred dollar and five hundred dollar checks? A. Yes, sir.

Q. Why didn't you bring the note here? A. Judge Carey has it; I can get it for you; it is down stairs. 10

Q. Why didn't you bring it here? A. I did bring it and turned it over to Judge Carey, I told you.

Q. When was that note payable? A. On demand.

Q. What date did it bear? A. February the third or February the fourth, I think.

Q. In whose handwriting is it? A. In my handwriting, signed by Patrick J. Kane. 20

Q. Where was it signed? A. Signed in my home.

Q. On the day of its date? A. The day of its date, yes, sir.

Q. Where did you get the five hundred dollars that you gave in cash? A. Out of my pocket.

Q. When, previous to that time, did you have any other financial transactions with Kane? A. I could not say the exact dates; it was on and off, at various times; some time he had contracts for stone work, and he would come in and say he was short and would I let him have a little money, and I would let him have it, and he gave me his note. 30

Q. That was seven or eight years ago? A. I am speaking now of what I loaned him personally—nothing to do with the bank.

Q. On what job was he working? A. I don't 40

Otto H. Albanesi, cross.

know; I know he was in the stone-cutting business; he worked on the bank, and I think the bank was put up in 1908 or 1909.

10 Q. Were these two smaller notes which you have mentioned, representing cash which you gave him, out of your pocket too? A. I think so; he would come in and want cash because he was going to make some payments.

Q. Now, did you draw checks to him? A. I cannot recollect.

Q. As far as you recollect, this fifteen hundred dollars was cash paid out of your pocket to Kane? A. I know positively that the last payment was cash; when I took up the smaller notes and he signed the big note for fifteen
20 hundred dollars, I had a lot of money in the house, because it was right after the first of the month; I had rent, but I had not deposited it; I think it was February the third.

Q. When were these other two notes dated? A. Some time previous.

Q. How long? A. I don't know.

Q. Any idea? A. Possibly a month.

Q. And were they both given at the same time? A. No, sir; they were not.

30 Q. Are you sure this note was not signed on the eighth of March? A. I am positive it was not.

Q. Did he come to you on the eighth of March by appointment? A. That I cannot say; he came into the house and brought me those two checks, whether it was by appointment or not; as a rule, he never came by appointment; he would come in and catch me there, and if I was not in he would come back.

40

Edmund S. Johnson, direct.

Q. Did you draw a receipt for the fifteen hundred dollars? A. That I cannot remember.

Q. Did you draw a receipt for the five hundred dollars? A. That I don't know.

Q. Where was the note at the time you got these two checks? A. In my office. 10

Q. Where is that? A. In the Orpheum Theatre Building at that time, at the five corners; the reason he did not get the note at that particular time, the note was in my office, and Mr. Kane came to my house with those two checks.

EDMUND S. JOHNSON, recalled in rebuttal, testified as follows:

Direct examination by Mr. Runyon: 20

Q. Mr. Johnson, did you hear the testimony of Mrs. Kelly to the effect that she never read over "Exhibit C6;" were you present at the time Mrs. Kelly signed that paper? A. She signed it in my presence.

Q. What was done with regard to making known to her the contents thereof before she signed it? A. I dictated it in her presence, and after talking it over with her and understanding what the arrangement was at that time— I understood that embodied the arrangement— and I read it over to her; I am sure about that; I would not have had her sign it if I had not. 30

Q. Did you make it clear to her who was to get that money? A. Yes, sir; that is why I had the paper drawn up, so that there would not be any misunderstanding about the arrangement.

Q. Did you ever tell her that Miss Smith was to get that money? A. I did not. 40

No Cross Examination.

Augusta M. Ahrens, direct.

John J. Towbin, direct.

AUGUSTA M. AHRENS, sworn in rebuttal, testified as follows:

Direct examination by Mr. Runyon:

10 Q. You are the complainant? A. Yes, sir.

Q. What relation did Miss Rita B. Smith have to the assignments of mortgage which have been produced in evidence.

The Court: I don't see that this is rebuttal; the whole thing is a matter of paper writing; if there is anything you want to rebut, you can do it.

Complainant Rests.

20 JOHN J. TOWBIN, sworn in surrebuttal, testified as follows:

Direct examination by Mr. Perkins:

Q. Did you serve a subpoena upon Dr. Albanesi containing this *duces tecum* clause? A. Yes, sir.

Q. When was it served? A. Saturday afternoon.

30 Q. State to the Court what your conversation with the Doctor was at that time? A. I served a copy of this on Dr. Albanesi; he looked at it and he said, "What is this?" and I said, "It is a subpoena *duces tecum* to bring all the papers you have appertaining to this cause;" and he said, "I have no books, papers, or anything else appertaining to this case;" and I said, "I guess it will come to your mind when you read it over;" and when I went out he said, "Oh, Patrick Kane"; and I said, "Yes"; that
40 was all.

SURREBUTTAL.

Patrick J. Kane, direct.

PATRICK J. KANE, recalled.

Direct examination by Mr. Perkins:

Q. When, previous to the 8th of March, 1913, did you last have any financial transactions with Dr. Albanesius?

10

Mr. Runyon: I object to the question; I, at great length, went over the same proposition with Mr. Kane on the defendant's case, of such length that I probably exasperated the Court with the details of "When did you have previous transactions with Dr. Albanesius," and the witness said he had never had a single transaction.

The Court: I will overrule the objection.

20

A. About five years ago, five or six years.

Q. Within a few months previous to March 8, 1913, had you borrowed money from Dr. Albanesius? A. I never borrowed money from Dr. Albanesius.

Q. Had you, within two or three months before March 8, 1913? A. No, sir.

Q. Had you given him your notes for four or five hundred dollars? A. Never.

30

Q. Did he ask you to sign a note at the time the transaction went through? A. He had those three checks there and he may have put a note down and had me sign it at that time, but I had no such transaction with him.

Q. Had you borrowed any money from Dr. Albanesius within four or five years? A. No, sir.

Q. Had you given him two notes of about

40

Patrick J. Kane, cross.

\$400 or \$450.00 in February or January? A. No, sir.

Q. At the time you indorsed those two checks on the desk of Dr. Albanesius, who were present in the room? A. Mr. Ahrens.

10 Q. And who else? A. And Dr. Albanesius.

The Court: That has been gone over before.

Cross examination by Mr. Runyon:

Q. Mr. Kane, now just what transactions did you have with Dr. Albanesius prior to this transaction in question; you were associated with a stone company, were you not? A. Yes, sir.

20 Q. And your stone company went to the bank of which Dr. Albanesius was president, from time to time, to borrow money? A. We built the bank for Dr. Albanesius.

Q. How many times did you go there after you built the bank? A. Dr. Albanesius made us put an account in the bank.

Q. What was the first transaction prior to that that you had with Dr. Albanesius, that is the question? A. That was when I built the bank for him, about five or six years ago.

30 Q. Then you opened an account in the bank? A. The company did.

Q. You practically owned the company? A. Yes, sir.

Q. And you had all the financial transactions— A. All checks were signed by me and the treasurer of the company.

Q. Well, then, you went to the bank frequently? A. Yes, sir.

40 Q. With regard to that account, and saw Dr. Albanesius there? A. Yes, sir.

Patrick J. Kane, cross.

Q. For years you carried that account? A. No, sir; we only carried it there for about three years, I guess.

Q. During that time you saw Dr. Albanesius frequently and had frequent dealings with him?

A. Yes, sir.

10

Q. And frequent financial dealings with him?

A. I never had any—always the company.

Q. The company was really an underwriter that you owned and you treated it as your individual partner? A. I never borrowed any money from him.

Q. Your affairs and the company's affairs were very much mixed up? A. No, sir.

Q. You owned all the stock of the company?

A. No, sir; I only held an equal share; we each held two shares; there were four others besides me.

20

Q. What was the first transaction that you had with Dr. Albanesius—that was building the building; what was the second time you went to see Dr. Albanesius? A. Then I went to see Dr. Albanesius in reference to this mortgage.

Q. Before then, when was the last transaction; you went to his office and saw him frequently about your stone company borrowing money?

30

A. No, sir.

Q. You never went to borrow money? A. No, sir.

Q. Never gave notes made by yourself, or your stone company, or either of you, which you had discounted at his bank? A. No, sir.

Q. Tell me why it was that this morning, on the witness stand, you told us that prior to this occasion in question, that is, when you gave Dr. Albanesius the \$2,000, that you had never had a

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Patrick J. Kane, cross.

single business transaction after— A. I had it through the board of directors of the bank; Dr. Albanesius was only the president of the bank.

10 Q. This morning when you said you had never had any dealings with Dr. Albansius, you lied, didn't you? A. No, sir; I dealt with the bank.

Q. With Dr. Albansius? A. With the bank.

Q. Did you see anyone else there? A. I did the most of by business with Mr. Smith.

Q. And the other part was with Dr. Albanesius; part of it with Mr. Smith and part of it with Dr. Albanesius? A. Mr. Smith and Dr. Albanesius.

20 Q. Don't you know that Mr. Smith left the bank long before your account was closed out of the bank? A. No, sir; Mr. Smith left long after my account was closed out.

Q. When was your account closed out in the Merchants' National Bank? A. Five or six years ago; about five years ago.

Q. Have you ever kept any account of the moneys you have received—moneys that have been received for rent or expenses of the house in question since you conveyed it to your mother?

30 Mr. Perkins: Objected to as not cross examination.

The Court: The objection is overruled.

A. No, sir.

Q. You still own property, don't you, Mr. Kane?

Mr. Perkins: Objected to as entirely immaterial.

The Court: What is the object of it?
(Question withdrawn.)

40

BOTH SIDES REST.

Otto H. Albanesius, direct.

IN CHANCERY OF NEW JERSEY

Between

AUGUSTA M. AHRENS,
Complainant,

and

MARY KELLY, *et al.*,
Defendants.

On Bill &c.

10

Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Tuesday, February 6, 1917, at 10 o'clock in the forenoon, before His Honor

20

VIVIAN M. LEWIS,
Vice-Chancellor.

Present:

HENRY W. RUNYON, Esq.,
EDMUND S. JOHNSON, Esq., for the Complainant.
RANDOLPH PERKINS, Esq., for the Defendants.

OTTO H. ALBANESIUS, recalled on behalf of the complainant, testified as follows:

30

Direct examination by Mr. Runyon:

Q. Dr. Albanesius, you came here by subpoena to-day? A. Yes, sir.

Q. Issued by the complainant? A. Yes, sir.

Q. Have you with you the note which was mentioned in your last testimony as being in the hands of Judge Carey? A. I have.

40

Otto H. Albanesius, direct.

Q. Will you produce it? A. Yes, sir (witness producing paper).

Q. Do you know the handwriting of Mr. Patrick J. Kane? A. Yes, sir, I do.

10 Q. I call your attention to the signature at the bottom of that note, being a note for \$1,500, dated February 4, 1913, made by Patrick J. Kane, to the order of Otto H. Albanesius, and ask you whose signature that is. A. Patrick J. Kane's signature.

Q. Have you seen him write his signature? A. I have seen him sign this and a great many in the bank, and a great many individually after I resigned from the bank.

20 Q. Doctor, just a few days before the last hearing in which you testified you were served with process in a certain proceeding in the New Jersey Supreme Court wherein this same Patrick J. Kane was plaintiff and you were defendant? A. Yes, sir.

Q. And I show you the summons and complaint in that case and ask you if that is a copy of the paper that was served upon you?

Mr. Perkins: We will admit it.

30 Mr. Runyon: I offer in evidence the summons and complaint in a proceeding in the Supreme Court, wherein Patrick J. Kane is plaintiff, and Otto H. Albanesius is defendant, filed December 18, 1916.

(The same is marked Exhibit C-1 of this date).

Q. When were you served with papers in that proceeding, doctor, which we have just mentioned with reference to the last hearing? A.

40

Otto H. Albanesius, cross.

Just a few days before; I can't tell whether it was two or three days.

Q. Wasn't it on the morning of the hearing

A. That I don't remember.

Mr. Perkins: We will admit it was just before the hearing. 10

A. (Continuing). Just before, I should imagine; I gave it to Judge Carey and didn't pay any particular attention to it.

Cross examination by Mr. Perkins:

Q. When did you first become acquainted with Patrick J. Kane? A. Why, I should think it was somewhere in 1908, I believe. We got bids for putting up a new bank at Central Avenue, the Merchants National Bank, and we sent out the plans and specifications to various contractors. 20

Q. When did you sever your connections with that bank? A. In 1910, I believe.

Mr. Runyon: If the Court please, I have no objection to this line of examination, but I don't want to make interruptions all along the line.

The Court: I don't know what the object of the inquiry is at present and I am unable to rule on the question. It may lead to something that is material. It may be a testing of the witness's memory. 30

Mr. Perkins: He said he knew his signature, because Mr. Kane had given other notes.

The Court: And he is telling now his first relationship with Kane. I suppose counsel has the right to inquire into it somewhat, because we find a note, which 40

Otto H. Albanesi, cross.

is alleged to have been paid, in the possession of the payee. Isn't that a fact?

Mr. Perkins: Yes.

10 Mr. Runyon: That has all been gone into on cross examination. This is merely as to the actual production of the thing, all of which has been cross examined into at length.

The Court: The original transactions together may have resulted in this indebtedness.

Mr. Runyon: That subject has been fully gone into by Mr. Perkins on cross examination.

20 The Court: I didn't think so, because I interrupted the proceedings to ask for a note or something. I will note your objection, and he may state when he first met Mr. Kane and what connection he had with him.

A. (continuing): I got acquainted with him when he put in some estimates for the stonework on the Merchants National Bank.

30 Q. When did you sever your relations with the bank? A. In 1910 or 1911; I am not clear about that.

Q. What have you been doing since that time? A. Building and attending to my real estate investments. I have done some little practicing—a few operations here and there.

Q. Can you state from memory when you received \$1500 from Mr. Kane? A. When I received the \$1500 from Mr. Kane?

Q. Yes. A. On this particular—

40 Q. Interrupting): Yes. Why, it was possibly

Otto H. Albanesi, cross.

the seventh or eighth, or maybe the ninth; between the seventh and ninth of March, 1913.

Q. And at that time you also received other moneys from him? A. I received the \$500 additional. I received two checks, one for \$1500 and one for \$500, at the same time. 10

Q. And they were the checks of Mr. Ahrens? A. Checks made by William G. Ahrens and endorsed over to me by Patrick J. Kane.

Q. When did Mr. Kane sign the note which has just been offered in evidence? A. On the fourth of February.

Q. Where? A. In my sun parlor.

Q. Who were present? A. Mr. Kane and myself.

Q. When, previous to that, had you last loaned him money? A. About five or six weeks. 20

Q. How much had you loaned him? A. I had loaned him at that time—I think it was \$400, or possibly \$450.

Q. When, previous to that, had you last loaned him money? A. About three or four weeks.

Q. How much was that? A. Either \$350 or \$400.

Q. And those two items, together with what other item made up the \$1500. A. The item that I gave him on the day of the note. On the fourth of February I returned his two small notes, gave him additional cash, and he drew a note for \$1500. 30

Q. Did he draw it? A. No, sir; I drew it.

Q. How much did you give him on the fourth of February, 1913? A. I think it was \$700; I am not positive about that, but about that amount.

Mr. Runyon: If the Court please, it 40

Otto H. Albanesius, cross.

10 seems that the parties have a suit between them pending at law. Of course, we have a right to exercise our process of subpoena against Dr. Albanesius in this case, but it doesn't seem to me that this suit ought to be used as a fishing excursion. Isn't it so?

The Court: Not to my mind yet.

Mr. Runyon: Isn't it so when they have closed their case?

20 The Court: The Court asked that the matter be opened, because I wasn't satisfied with the proofs, and it was your suggestion to recall Dr. Albanesius. Mr. Perkins offered to rest at the time. If the Court finds, after the investigations have been made, that the transactions between Albanesius and Kane are not material, the Court will rule it all out in case the Court should find adversely to you—

Mr. Runyon: But is it doing justice to Dr. Albanesius to allow Mr. Perkins to examine this witness in this way?

30 The Court: The Court can only perform its duty by having a careful investigation of the matter.

A. (continuing): Judge Carey was to be up here this morning.

The Court: Judge Carey is right downstairs and if he wants to come up he can do so.

40 A. (continuing): Mr. Johnson, wont you send for him. (Mr. Johnson leaves the room to call Judge Carey.)

Otto H. Albanesi, cross.

Q. When did you last give a check to Patrick J. Kane? A. When did I last give him a check? Why, I'm not certain whether I gave him a check or cash on the previous two small notes that I mentioned.

Q. You keep a bank account, don't you? A. Yes, sir. 10

Q. In what banks? A. Title Guarantee & Trust Company.

Q. Now, don't you know whether you gave him a check or cash? A. No; I have wrote thousands, and thousands, and thousands of checks since 1913, and it is impossible for me to say truthfully whether I gave him a check or cash.

Q. On either of the previous smaller loans? A. I couldn't tell you. 20

Q. Now, don't you think you gave him cash? A. I don't know.

Q. Have you any idea whatever? A. None whatever.

Q. Have you made an effort to find the checks? A. I have. You were cross the last time because I didn't bring my books and I went home—

Q. (By the Court): Did you bring your books today? A. I have no previous books. 30

Q. Where are the books previous? A. Destroyed.

Q. By whom? A. Threw them away.

Q. Bank books, you mean? A. Yes, October the 15th, if your Honor please, I transferred my account downtown; they had a branch up there. I transferred my account up there and took my balance of ninety and some odd thousand dollars from this bank up there, and they issued

Otto H. Albanesius, cross.

new check books, and the other books I destroyed.

10 Q. (By the Court, continued): You didn't destroy your check books, did you? A. Yes, I always do after two years, because I have no place to carry rubbish and old checks when they are paid.

By Mr. Perkins:

Q. And you destroyed your cancelled checks, too? A. Yes, sir.

Q. And you have drawn thousands, and thousands, and thousands in the last three years? A. Yes, sir.

20 Q. And notwithstanding the great multiplicity of your business transactions, you kept no evidence of them at all? A. Why, the transaction was closed and paid.

Q. (By the Court): You mean this \$1,500 transaction? A. Yes. I never dreamt there would be any question about that being honestly paid.

30 Q. What did you keep the note for? A. It happened this way: When Mr. Kane paid that money, he paid it to me in my sun-parlor at my home. When the note was given me I took the note up to my office in the Orpheum Theatre Building and put it in the safe.

Q. Why didn't you mail it to him or give it to him? A. I never gave it another thought. It was only when I moved down to the other place that I came across it, and I never thought any more of it; just stuck it in and spoke to Mr. Ahrens about it.

40 Q. When did you speak to Mr. Ahrens about is? A. After I was served in this suit. I was dumbfounded to be served in that suit.

Otto H. Albanesius, cross.

By Mr. Perkins:

Q. You were served with the papers in the suit in the Supreme Court respecting this very thing? A. Yes, sir.

Q. Why didn't you produce the note in the trial before? A. I came down here and said Judge Carey had it in his possession.

10

Q. You afterwards had the note, didn't you? A. Yes.

Q. When you were served with the papers in this suit you knew you had the note? A. I thought I would have to look and find it. I wasn't sure that I had it when I was served, but I looked it up and found it.

Q. Now, can't you say whether you paid these two smaller loans in check or cash? A. I have answered that I don't know.

20

Q. You did on the previous trial, didn't you? A. No.

Q. What did you give for the last payment of February 14, 1913? A. Cash.

Q. Something like \$750 in cash? A. Something like that, yes, sir.

Q. Why didn't you give him a check? A. Because I had my check books all up in the office, and he wanted cash anyway, because he wanted to pay some labor. It was right after the first of the month and at a time I have very often \$500 to \$1,500 in my pocket.

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Q. Do you keep books of account of any kind at all? A. Yes.

Q. Have you any books of account of any kind or description dealing with February and March, 1913? A. No, I have not.

Q. Where are they? A. I told you, the books

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Otto H. Albanesi, cross.

were old four or five years ago and I got rid of them.

10 Q. Have you got any paper or paper writing, or book, or bank book, or check book that shows anything about this transaction of February 4, 1913? A. No, sir; I have not.

Q. Have you any paper writing, check book, or checks, or any other evidence in writing that shows the transaction when you received the \$1,500 check? A. No, sir; I have not.

Q. Have you no checks of your own of any kind previous to 1914? A. No, sir; I have not.

Q. All destroyed? A. Yes, sir.

20 Q. You retained no evidence of any nature previous to 1914? A. I have from October 15, 1913.

Q. And you didn't even keep your old pass books in the bank? A. No, sir, except this.

Q. What bank? A. This is a pass book that I took when I changed my account. I had it balanced and the balance transferred from the downtown office to the Bergen Branch.

Q. Balance of what? A. Of \$90,187.06.

30 Q. What bank? A. New Jersey Title Guarantee & Trust Company, from their main office on Montgomery Street to their branch office, the Bergen branch at Foye Place.

Q. You say that many, many times you loaned Kane money? A. I loaned Kane money, yes, sir.

Q. Sometimes you took notes and sometimes you didn't? A. I always took a note.

Q. And sometimes a loan was made by check and sometimes by cash? A. Yes, sir.

40 Q. And you loaned a great deal of other money during that time, didn't you? A. I have loaned some.

Otto H. Albanesius, cross.

Q. Well, your accounts run into the hundreds of thousands of dollars, don't they? A. Well, I wouldn't say hundreds of thousands; I have had as much as two hundred thousand in the bank, possibly more.

Q. And you kept absolutely no evidence of any kind of cancelled checks showing very large figures? A. Not after I changed my account. I got rid of my books and started anew. 10

Q. Where did you put them? A. Put them in the furnace.

Q. Actually burned them up yourself? A. Yes.

Q. And you burned up your cancelled checks? A. Yes. I have been doing business in this way since 1890.

Q. And you burned up the old notes you held? A. I had no old notes. It is customary to return those notes when they are paid. 20

Q. By the way, Doctor, how was it that Kane came to your house on the particular day that the transaction went through relating to the \$1500 check? A. One night when I got Mr. Ahrens to make the loan he agreed the first moneys he got he would pay my indebtedness, and he came to the house one morning and said, "Doctor, I am here to give you this money owing you"— 30

Q. So you expected to get this money? A. I certainly did.

Q. Did he come to your house by appointment? A. I don't know; I don't think so. He used to drop in there whenever he wanted to see me.

Q. (By the Court): Did you do much business with him? A. Why, no. I done some business with him. He holds a mortgage on some of my property for money that he has loaned me. 40

Otto H. Albanesius, cross.

Q. Do you invest any of his money? A. No more than he bought some mortgages.

By Mr. Perkins:

10 Q. Well, now, did you have an appointment with Kane the day that he came and turned over the note and checks to you?

(At this point Judge Carey comes into the room and the Court addresses him as follows):

The Court: Mr. Carey, this proceeding was practically closed, but the Court is not satisfied on a certain point and has called for further evidence and the case has been opened to put Dr. Albanesius on the stand.
20 Do you wish to appear in the case?

Judge Carey: No; I have no interest in the matter.

Q. (Question read by the stenographer): A. I don't think so; I think he just came in the office. I didn't know when he was going to get money enough; in fact, I hadn't seen Kane when I went down to the building with Mr. Ahrens in the automobile and went through the building to see if it satisfied Mr. Ahrens, Mr. Ahrens and he had the entire business between them after that.
30

Q. Well, how long before was that? A. Before what?

Q. How long before the tenth of March? A. It was the latter part of February or the early part of March—probably between the 26th of February and the first of March—along about there. Mr. Kane came in and asked me if I could get him some money, he was up against it;
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Otto H. Albanesius, cross.

the Title Company had advanced twenty-two or twenty-three thousand dollars on the building, and he needed more money to finish.

Q. That was about the latter part of February?

A. About the latter part of February.

Q. And he told you about getting a loan from the Title Company? A. No. 10

Q. Didn't you just say so? A. No, he told me that he had gotten a loan that was insufficient.

Q. That is what I say; the latter part of February, 1913, Kane came to see you to see if he couldn't get a loan from somebody? A. A second mortgage, yes.

Q. And he then told you that he was building these houses? A. Yes.

Q. And he told you that the Title Guarantee & Trust Company had made a loan and that was not sufficient? A. Yes. 20

Q. And he needed more money? A. Yes.

Q. And you said you would see what you could do? A. Yes; and I immediately saw Mr. Ahrens and we went down to the building.

Q. That was the first time you were in the building? A. Yes, sir.

Q. And after that you left the matter between Kane and Ahrens? A. Yes, sir. 30

Q. And where did Ahrens see you the next time after you first called regarding the second mortgage? A. I saw him sometimes every day.

Q. When did Kane see you next after that? A. Why, he came in, I think it was, the day after—one or two days after they went down to the building, to tell me that Ahrens had agreed to give it to him; as soon as he could get the money he would square up with me.

Q. Well, when he talked to you about this 40

Otto H. Albanesi, cross.

mortgage he told you what kind of a building he was building, didn't he? A. Yes.

Q. And he told you where it was located? A. Yes.

10 Q. That is the first you knew about it? A. I knew he was building.

Q. Did you know where? A. Approximately, yes; and we passed the building in the machine.

Q. You have placed money on buildings? A. Yes, lots of them.

Q. You didn't pay any particular attention to this until he came for the second mortgage? A. No.

20 Q. How long was it before that that you loaned him money previously? A. About five or six weeks.

Q. And you don't know now whether you gave him the money in check or cash? A. I do not.

Q. Haven't you any means of finding that out? A. I haven't any means of finding that out more than that it happened a few years ago.

30 Q. Did I understand your statement at the former hearing in this case to be that the money which went to make up this \$1500 note was money that you loaned prior to that? A. Yes; in two loans.

Q. Can you tell how long ago that was? A. No, sir; no; it is a long time ago. I was putting up the Alban Court at that time and drawing checks and paying out money every day in large quantities and small quantities, and I couldn't tell that; it would be guess work.

By Mr. Perkins:

40 Q. Now, Doctor, what would be the outside

Otto H. Albanesius, cross.

limit of the period that you gave him the first money on this \$1500 loan? A. I think it was some part of January.

Q. Nineteen hundred and what? A. Thirteen.

Q. When, previous to that time, had you last made him a loan? A. Why, possibly a year or two, his having some contract for some stonework or something, and he came in and got a small amount.

Q. A year or two? A. Yes.

Q. When previous to that one, a year or two before? A. I can't tell you that.

Q. Haven't you any idea at all? A. No, I haven't; I kept no tabs on that.

Q. (By the Court): How did you reach the sum of \$1500 when this note was made? A. He had given me two notes, amounting somewhere to about \$800, and then he came in and he said, "Can you help me out with a little more money until I get a loan?" "Why," I said, "I guess I can, Kane." So I gave him the extra money, and then he gave me that note, and he paid that note when he got the money off of Mr. Ahrens, and also paid me the \$500 brokerage.

By Mr. Perkins:

Q. Now, Dr. Albanesius, you say he came in around the month of January and borrowed some small sums of you, didn't he? A. Yes.

Q. How many times did he come in January, 1913? A. Why, I think that he got the first money shortly after the holidays, and then about three weeks afterwards, or something of that kind.

Q. You say the first time was the holidays of

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Otto H. Albanesi, cross.

1912, you mean Christmas? A. I don't understand your question.

Q. I want to know when he got the first money that went to make up the note of \$1,500? A. Around the holidays.

10 Q. What do you mean by that? A. Around Christmas some time.

Q. Christmas of 1912 or the holidays of 1913? A. Yes.

Q. Did he state any specific purpose he wanted to use it for? A. To pay some bills, that's all.

Q. Then the loan of \$23,000 that he got from the Guarantee Title & Trust Company didn't go far enough? A. I don't know; he said it was insufficient to go ahead.

20 Q. And he had that money? A. That I don't know.

Q. Didn't he tell you whether he had, or not? A. He was asking to borrow some money.

Q. How much did he ask for? A. I can't say exactly; somewhere about \$400.

Q. Did you give him the exact amount he asked for? A. I think so.

Q. When was the second time that he came? A. A couple of weeks later on.

30 Q. What time would you fix that to be? A. I can't fix it definitely.

Q. Anywhere in January, 1913? A. Possibly.

Q. How much did he get? A. Perhaps three or four hundred dollars.

Q. That is a guess, isn't it? A. Yes.

Q. You don't know whether it was check or cash? A. No, sir.

Q. Did he say what he wanted it for? A. Labor.

40 Q. On the buildings? A. He didn't tell me.

Otto H. Albanesius, cross.

Q. Did he say that the loan of the Guarantee Title & Trust Company hadn't gone far enough?

A. I don't know whether he said that again or not.

Q. What did he say the second time? A. I can't say. 10

Q. Did you ask him for any security? A. No, except the note.

Q. That is not security; that is evidence of indebtedness; did you ask him for any security?

A. No, sir; I did not.

Q. Took his word for it? A. Yes; always found him good in the bank; he made good on everything.

Q. Found him straightforward? A. Found him straightforward and clean. 20

Q. From the time you severed your relations with the bank, do you mean to say that at any time up to the time you made this \$1,500 loan, that you made him a loan personally? A. I have.

Q. Many times? A. I don't know; what would you call "many times"?

The Court: Answer the question that is asked you. 30

A. I would say, two or three times.

Q. Since you severed your relations with the bank? A. I think so.

Q. In 1911? A. Yes.

Q. In the Fall or Spring? A. Fall.

Q. And he paid it back? A. Each time.

Q. When was the last time, Christmas, 1912?

A. I don't know.

Q. Have you any definite idea about these loans? A. Why, no; they were made different 40

Otto H. Albanesius, cross.

times. The man would come in and ask for \$100 and I would give it to him.

Q. Do you know the amounts of any of them?

A. No, I couldn't say; possibly a hundred dollars, or two hundred dollars.

10 Q. That is guesswork, isn't it? A. That is guesswork.

Q. And you don't know whether you gave him a check or cash? A. No, I don't know anything about it.

Q. Now, is this the first time that you retained a note evidencing the indebtedness of the loan? A. Yes.

Q. Every other time you gave him the notes back, did you? A. Yes, sir.

20 Q. Every other time? A. Yes.

Q. And your explanation of the reason why you didn't give him this note back is that it was at the Orpheum Theatre and you got a check in payment? A. That is exactly my explanation, yes.

Q. And you let the matter run from March, 1913, to the latter part of 1916, and never made any effort to return the note? A. Never gave it a thought.

30 Q. Kept possession of it all the time? A. Kept it by chance.

Q. And you knew where it was? A. No, I didn't.

Q. Did you see this note of February 4, 1913, at any time between the time he repaid the loan to you and the time you gave the note to your counsel? A. Yes, sir.

40 Q. When was that? A. The time that I moved my office from the Orpheum and I went through my papers—moved from the Orpheum to the

Otto H. Albanesius, cross.

office in the Alban Court.

Q. Well, when was that? A. This is the second year. It has been about two years that I have been there; must have been about 1914.

Q. And you saw the note then? A. I saw the note then.

10

Q. What did you do with it then? A. Left it lay where it was in a little box.

Q. That is the only time you have seen it in the meanwhile? A. In the meanwhile, yes.

Q. You knew where to look for it when you were sued? A. I didn't know where to look for it; I went and hunted all through the papers. I thought if I could find that, it would be positive proof of the transaction. When you get accused of doing certain things and get summons, you naturally look for evidence.

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Q. You thought the production of the note would be proof positive of the nature of the transaction? A. It wouldn't be any proof at all positive; it proved simply that I had given Mr. Kane \$1,500 a month prior to the time that he says that he got the money.

Q. (By the Court): In your hands, it would also indicate that he owed you \$1,500? A. It would indicate that, yes.

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By Mr. Perkins:

Q. And you knew that when you saw it and moved into Alban Court? A. I never gave that a thought.

Q. You knew it was evidence of \$1,500 indebtedness? A. Yes.

Q. And you knew that it belonged to him, because the indebtedness had been paid? A. I

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Otto H. Albanesius, cross.

think Mr. Kane had a receipt. I think he asked for a receipt; I'm not positive about that.

Q. You never mentioned in either the last hearing or this, anything about that receipt? A. I wasn't asked.

10 Q. You have been given a wide chance to tell all you know about this case. A. I have told all I know.

Q. This is the first you have even suggested that you gave a receipt.

Q. (By the Court): Do you say now you gave him a receipt? A. Not definitely.

By Mr. Perkins:

Q. Did you, or did you not? A. I don't know.

20 Q. Then why did you say you did? A. Because sometimes when he promised to call for anything he wouldn't call, and he promised to call for this note and he never called for it.

Q. Where was he to call? A. I don't know where he was to call; to call to see me.

Q. Now, why did you suggest that possibly you gave him a receipt? A. Because he would probably ask for it.

30 Q. You know the \$1,500 check which you got wasn't the check of Kane? A. No, but it was endorsed by Kane.

Q. But you knew it wouldn't be returned to him as a voucher? A. Certainly I knew it—knew it well.

Q. So that he had nothing to show that on the 10th of March he paid you \$1,500 at all? A. Nothing more than his endorsement on Mr. Ahrens's check.

Q. But that wasn't going to him? A. No.

40 Q. And you had the note? A. Yes.

Otto H. Albanesi, cross.

Q. And you saw the note when you moved to Alban Court? A. Yes.

Q. (By the Court): You are not in the habit of keeping people's notes when they pay you the money? A. No, absolutely not.

10

By Mr. Perkins:

Q. This was an exceptional case? A. This was, perchance.

Q. A lucky chance; it turned out in your favor? A. It seems so.

Q. At the time you got the \$1500 check of Ahrens endorsed to you by Kane you also got a \$500 check? A. Yes, sir.

Q. Did you give a receipt for that? A. I don't know whether I did or not.

20

Q. Well, you don't seem to clearly remember what happened? A. No, I have had a good many transactions, Mr. Perkins, and about that time I was getting ready to build Alban Court and had other matters, and in trivial matters of that kind I wouldn't bother keeping track of matters of that kind.

Q. So that you were at that time a busy man with your own affairs? A. I was a busy man.

Q. And you made this loan to Kane as an accommodation to him? A. No, not altogether; I was paid for making the loan.

30

Q. For the \$1500 loan? A. No, for the mortgage.

Q. I am talking about the \$1500 loan. A. No, that was simply to help him out.

Q. As a mere accommodation to him? A. Yes, sir.

Q. And you took his note without an endorser? A. Yes.

40

Otto H. Albanesius, cross.

Q. And it was so trivial a thing you don't know what happened since that time? A. No.

Q. You have had multitudinous things happen right along? A. Yes, every day.

10 Q. And this occurrence is wedged in your memory with a lot of other events? A. Yes.

Q. And therefore you don't remember that clearly? A. No.

Q. Didn't you get a little bonus on the \$1500 loan? A. No, positively not.

Q. What was the \$500 Ahrens check that he gave you? A. Brokerage.

Q. On the \$10,000 loan? A. On the \$10,000 loan, yes, sir.

20 Q. How long previous to receiving those two checks of Ahrens had you seen Mr. Ahrens? A. I saw Mr. Ahrens every day.

Q. And you saw him the same day, didn't you? A. Possibly.

Q. And the day before? A. Possibly.

Q. And you talked about this second mortgage loan, didn't you? A. I certainly did. That is what I was getting paid for.

30 Q. You told him you were getting paid for what work you did? A. I might have told him that. It is customary to pay a man for procuring loans.

Q. You didn't make any secret to Ahrens that you were getting \$500 for procuring the loan? A. Why, no.

Q. And he didn't object to your getting it, either? A. Why would he.

40 Q. I don't know. A. He didn't state his objections to me. I don't know whether I told him or not I was getting \$500; I might have told him. I would have been perfectly willing to tell him, so far as that goes.

Otto H. Albanesi, cross.

Q. You haven't any clear recollection of any conversation with Mr. Ahrens about that time?
A. No.

Q. You didn't have any conversation when you asked him to be careful to draw it in two checks, one for five and the other for fifteen? A. The only time I knew that he was drawing two checks was Mr. Kane walked into my sun-parlor and brought me those two checks, and why he had them made in two checks I don't know. That is for him to explain. 10

Q. You don't mean to say that Mr. Kane personally got any loans from the Merchant's Bank when you were President, do you? A. No, I don't think he did.

Q. You don't recall whether you have given him a personal loan or not? A. I don't think so, because the company—I don't know what they call it any more, some construction company—Mr. Kane and a Mr. Mills, I think his name was, had been in business for a stone company— 20

Q. Then it amounts to this, that Kane did not personally get any loans from the Merchants Bank while you were president? A. I don't think he did.

Q. And after you ceased to be president of the bank you did not see Kane, did you? A. I met him occasionally and asked him how he was getting along. 30

Q. You knew he had gone out of the stone business, didn't you? A. I didn't until he started to build over here.

Q. You knew the stone company had gone to pieces, didn't you? A. It must have been after I left the bank.

Q. After you left the bank you knew that he 40

Otto H. Albanesius, redirect.

had gone out of the stone business and lost all he had? A. No.

Q. When you made this first loan of a thousand dollars you didn't know about his financial ability to repay it? A. No.

10 Q. And you didn't make any inquiry? A. No.

Q. And when you made this first loan that went into this \$1500? A. I knew that that was part.

Q. That is all you knew? A. Yes.

Q. And you knew he was short of money? A. Yes.

Q. And you knew that the Title Company wouldn't give him enough? A. That is what he said.

20

Redirect examination by Mr. Runyon:

Q. You said you were a neighbor of Mr. Ahrens; what did you mean? A. I lived next door to Mr. Ahrens for six or seven years, I guess.

Q. When was that? That was some time ago, wasn't it? A. That was—oh, I think it was 1906.

Q. But that is not within the time of the transactions which you have just related? A. No.

30 Q. When you say you lived next door to Mr. Ahrens, don't you mean that you own an apartment house which is next door to Mr. Ahrens, and that you are in that apartment house frequently? A. I am in that apartment house all the day; I spend my time there.

Q. You don't live there? A. I have moved since then.

Q. Further up the block? A. Yes.

Q. Now, you have mentioned some mortgage transactions with Mr. Ahrens; you said Mr. Ah-

40

Otto H. Albanesi, recross.

rens bought some mortgages from you? A. Yes, sir.

Q. That is to say, you were the owner of the mortgages? A. Yes, sir.

Q. And Mr. Ahrens took them off your hands? A. Yes, sir, and paid me cash for them. 10

Q. That was a cleaning up of all your transactions at that time? A. Yes, sir.

Q. And that was how many years ago, approximately? A. Oh, I can't recall that; possibly three or four years ago.

Q. Now, have you had any other transactions with Mr. Ahrens, with the exception of that mortgage transaction, and the transaction whereby you took from Mr. Ahrens a purchase-money mortgage on the Orpheum Court property? A. Purchase-money mortgage, yes, sir. 20

Q. Has there been any other transaction between you? A. No, sir.

Q. You have, in your daily life, been accustomed to making loans to many people, have you not? A. Why, I have helped people out, yes; lots of times, with small amounts of money.

Q. You were accustomed to having large sums of money in cash? A. Why, yes.

Q. Do you recall an occasion when you and Mr. Ahrens went to the building of Mr. Kane prior to the making of the loan? A. Yes, sir, I do. 30

Q. And do you recall whether or not Mr. Kane saw Mr. Ahrens on that occasion? A. Certainly; he took us all through the building; showed us all through.

Recross examination by Mr. Perkins:

Q. Did you ever have occasion to lend a few 40

Otto H. Albanesius, recross.

dollars out of your pocket to Mr. Ahrens? A. No, I didn't.

Q. And no with a smile? A. No with a smile, yes.

10 Q. Have you borrowed money from him from time to time? A. No, sir.

Q. Never? A. Purchase-money mortgage when I bought the property upon which Alban Court is built.

Q. Did he ever buy any mortgages from you? A. Yes, sir.

Q. On various occasions? A. No; on one occasion.

Q. Not more than one? A. No.

20 Q. Won't the records of this county show more than one? A. More than one mortgage, but one occasion.

Q. How many? A. I think, three.

Q. Purchased in his name or his sister's name? A. I'm not certain about that, whether purchased jointly or purchased in his name.

Q. When was that, Doctor? A. I should judge, three or four years ago.

30 Q. Well, it was just about the time of this transaction, wasn't it? A. Somewheres along there.

Q. Can't you fix it a little more definite? A. No, I can't. They were mortgages that I took, and I needed some money on account of the building, and Mr. Ahrens purchased them.

Q. It was just at the time this thing went on, wasn't it? A. I don't think just at the time; possibly three or six months. The records will show that.

40 Q. Before or after? A. I can't say that.

Otto H. Albanesi, recross.

Q. Then you can't fix it within a year? A. I can't fix it exactly.

Q. What mortgages were they? A. The mortgages were one on Violet Street and one on Kerrigan Avenue, and one on—I forget the name of the street, in West Hoboken. They were mortgages that I took from George Birkamp in settlement of a debt that he owed me.

10

Q. And you sold them to Mr. Ahrens at a discount? A. I don't know whether I sold them at a discount or not; possibly I did.

Q. It was just about the time this thing happened? A. I don't know.

Q. You won't say as to that? A. I can't say exactly what time it was.

Q. Did you ever pay him any interest money? A. Yes; pay it to him yet.

20

Q. How many mortgages does he have on property of yours? A. He has one on Alban Court—small one, and one on 115 and 117 Fairview Avenue, that is, the original property, part of the same building, two private houses.

Q. When did you buy that property from him? A. I bought that property—let's see—I think it was March, 1912.

Q. Aren't you sure it was March, 1913? A. No; 1912.

30

Q. When did you start to build Alban Court? A. Nineteen twelve.

Q. When did you finish it? A. October, 1914.

Q. So that you were building it at the time of this Kane matter? A. So I stated before, yes.

Q. And you have been having financial transactions by way of payment of interest, with Ahrens, since 1912? A. Yes.

40

Otto H. Albanesius, recross.

Q. Did you take receipts from him? A. Sometimes, and sometimes I don't.

Q. Don't keep your checks, either? A. Keep them for several years.

10 Q. Well, haven't you got these early checks of interest payment? A. No, I haven't; I haven't any checks prior to 1913, or whatever this date shows.

Q. So you haven't anything to show the interest payments to Ahrens around the transactions of March, 1913, have you? A. No, sir.

Q. Either in the way of receipt or check? A. I may have receipts; I don't know. I have a bookkeeper in the office and I sign the checks and she attends to that.

20 Q. You didn't at that time, though, did you? A. At that time I had a bookkeeper.

Q. Where did you keep the bookkeeper then? A. In the Orpheum Theatre.

Q. And she kept regular books for you? A. Kept daily books, yes.

Q. And those are the books that you destroyed? A. Yes.

Q. Kept by a bookkeeper? A. Old books, yes.

30 Q. (By the Court): You have only got books back to March, 1913? A. No; October, 1913.

By Mr. Perkins:

Q. You have had enough experience to know that an ordinary contract runs for six years, don't you? You know a note runs for six years before it outlaws? A. No, I didn't know it.

Q. You didn't even know that, once president of a bank? A. No.

40 Q. Don't you know— A. (interrupting): We took action on our notes, and if they weren't

Otto H. Albanesius, recross.

paid we went on to collect them; we didn't wait six years.

Q. You mean to say you didn't know an ordinary note in six years outlawed? A. No, I didn't.

Q. And that a bond under seal outlawed in sixteen years? A. No, I didn't; I have never had any experience letting anything run that long. 10

Q. Have you a book that shows the payments of interest to Mr. Ahrens on that mortgage, which you owed him in March, 1913? A. The first payment I made?

Q. No. Please answer the question. A. I have books from October, 1913.

Q. And you have absolutely nothing previous to that? A. No, sir.

Q. By way of books of account, checks, notes— A. (interrupting): There may be some books of account that I don't know about. There may be some books of account. 20

Q. Why do you make an exception in favor of some possible book of account? A. Because old check books, if I had to save them all, I would need a vault.

Q. Why do you make an exception in favor of some possible book of account, is the question? A. I say there may be one there among those books. 30

Q. Well, didn't you swear absolutely a few minutes ago that you didn't have a book of account, or paper, or any check book, or pass book, or the cancelled checks? A. Previous to October, 1913, I don't know. I say I may have a book of account. When I referred to that, you asked me about cancelled checks.

Q. How long have you kept a bookkeeper? A. Five years. 40

Otto H. Albanesius, recross.

Q. And it takes one bookkeeper her entire time to take care of your books? A. Oh, no.

Q. Well, practically? A. She does stenographic work and answers the 'phone.

10 Q. You don't know whether you took receipts from Mr. Ahrens or not, showing interest payments on the mortgage which he holds on the property where Alban Court is located? A. I don't know about that. I know I have got some receipts, but I don't know whether I got them every time.

20 Q. How much was the mortgage? A. (Addressing Judge Carey, who sits at the counsel table): Judge Carey, he is asking me my private affairs, what my mortgages are and so forth.

The Court: Just a minute, Doctor—

A. (continuing): I want Judge Carey's advice.

The Court: If Judge Carey wants to enter his appearance on the record as your counsel in this matter, he may do so. What do you want to ask him? You may do so privately if you want.

30 Judge Carey: If my understanding is correct, he is just a witness in the cause. If that is so, I don't wish to take any part in the case.

A. (continuing): \$40,000.

Q. How often did you pay interest on it? A. Every six months.

Q. At what rate does it run? A. Five per cent.

40

Otto H. Albanesius, recross.

Mr. Runyon: I would like to enter this general objection.

The Court: You have got a general objection to all of this testimony.

Mr. Runyon: In the first place, it is not proper cross examination, and, in the second place, no matter what the transaction was with Dr. Albanesius—no matter if Mr. Perkins is trying to insinuate on the record it was a few dollars more, it would be immaterial to the issues in this case. 10

The Court: I cannot determine that at present. I am going to allow it at present. All this evidence which he is going into now may indicate another relationship, and the Court may so find upon the evidence after it is all in. 20

Mr. Runyon: It is all along the line of a broker receiving excessive commissions. That is Mr. Perkins' insinuation. But what has that got to do with a foreclosure suit. Here is a complainant foreclosing a mortgage.

The Court: And at the time he foreclosed, this note develops for \$1,500, which, it is alleged, was a usurious charge. 30

Mr. Runyon: Alleged by Kane that Dr. Albanesius received it in excess of the sum to which he is entitled.

The Court: The Court thinks he ought to hear this testimony, subject to your objection, because of the extraordinary fact that Dr. Albanesius goes upon the stand and says that Kane had paid him \$1,500 in cash, the note being cancelled 40

Otto H. Albanesius, recross.

and paid and yet it still remains in the possession of Dr. Albanesius.

Mr. Runyon: It is a daily occurrence.

10 The Court: I understand, but it remained in his possession since March, 1913, a period of nearly four years, and it develops at just the right time in this suit. Your objection may be noted to it as immaterial and irrelevant and improper cross examination, and the Court will hear the evidence before making its final ruling.

20 Q. On what days was the interest due from you to Ahrens on that mortgage? A. May and November.

Q. That would be a thousand dollars in May and a thousand dollars in November? A. Yes, sir.

Q. Have you the receipt from Ahrens showing payment in May, 1913? A. I can't answer that now, because I haven't my records here.

30 Q. Well, you told me you destroyed your records. A. May, 1913, there wasn't any interest due. I bought the property in March and title passed in May, and the first interest day would be due in November.

Q. You said you bought the property in 1912, and I said 1913. A. I can't answer that.

Q. A minute ago you said all of your paper writings, checks and notes had been destroyed previous to October, 1914. A. When I said that, you were referring to cancelled vouchers or checks.

40 Q. I was referring to all notes, books, paper writings and evidence of indebtedness, and so

Otto H. Albanesius, recross.

forth. A. I can't answer that question, because she kept them, and she may not have them.

Q. So you don't know whether she has destroyed them or not? A. I don't know whether they are in existence or not.

Q. Do you know whether you paid them by check, or otherwise? A. The interest? 10

Q. Yes. A. Always by check.

Q. Did you ever pay the interest by cash? A. No, sir.

Q. Did you ever pay the interest before it was due? A. No, sir.

Q. Didn't you sometimes have a lot of other business transactions with Mr. Ahrens that entered into your interest payments? A. No, sir.

Q. Never? A. No, sir. 20

Q. The receipts would show the receipt of exactly the amount of interest due on the mortgage? A. On that particular date, yes, sir.

Q. And you don't know whether you have anything in existence by way of evidence to show whether you paid the May, 1913, interest—
A. (interrupting): I don't know whether I have or not.

Q. —to Ahrens? A. No, sir.

Q. You had some other business transactions with Mr. Ahrens besides, didn't you? A. I don't think so. 30

Q. Nothing except the sale of these three second mortgages? A. Nothing but the three second mortgages, and the purchase of this property for which I gave him back a purchase-money mortgage of \$40,000.

Q. Whose house do you live in? A. In my own.

Otto H. Albanesius, recross.

Q. Didn't you ever rent property from Ahrens?
A. No, sir.

Q. Or he from you? A. He rents from me now. He lives in the old homestead that still stands on the place; never has moved out.

10 Q. Then you have had business transactions by way of the collection of rent for the past seven years? A. Seven years? No, about four years—three years and a half.

Q. And he pays you rent? A. He pays me rent every month.

Q. And was paying you rent in March, 1913?
A. Paying rent ever since title passed May 1, 1912.

20 Q. Did you ever procure a mortgage from any other person than Mr. Ahrens before? A. No, sir.

Q. Or since? A. No, sir.

Q. This is the only time you have ever had a second mortgage? A. The only time I have ever had a second mortgage.

Q. Mr. Ahrens knew it was a second mortgage? A. He certainly did.

Q. And he knew that the rate of interest was only 6 per cent.? A. Yes.

30 Q. He knew that there were lots of second mortgages at 6 per cent. around Hudson County?
A. I should think there was.

Q. What was the object of taking a second mortgage at 6 per cent., then? A. I don't know; Mr. Ahrens will have to answer that.

Q. The building was unfinished when you and Mr. Ahrens went down to look at it? A. Oh, about three-quarters finished.

40 Q. And the money had been exhausted from the first loan? A. I don't know whether it had

Otto H. Albanesius, recross.

or not. It is not customary for the Title Company to make final payments until the building is completed, and I suppose Kane needed this money so that he could finish up his building, so that he could get his final payment.

Q. You know that a second mortgage on a building is more or less precarious? A. Depends upon the amount of the first, entirely. 10

Q. You knew this particular one was, didn't you? A. I didn't think so.

Q. Did Kane ever tell you that he put any money of his own in there? A. I don't know; I suppose he did.

Q. He never said that? A. I don't remember that.

Q. The entire building and land was bought with mortgage money from the Guarantee Title & Trust Company, wasn't it? A. I don't think so. 20

Q. Didn't he tell you so? A. No, he didn't tell me so. He naturally must have had his land.

Q. You know the common way for a builder is to get a piece of land on a purchase-money mortgage? A. I never built that way.

Q. I mean poor men that are speculating in building? A. I don't know; I never was in that position with any building, so that I can't answer that question. 30

Q. Did you figure out how much it would take to finish this building when you were down there with Ahrens? A. No, I didn't.

Q. Did Kane tell you how much the building was to cost? A. I don't remember whether he did or not.

Q. Wasn't anything like that discussed between 40

Patrick J. Kane, direct.

you? A. It is utterly impossible for me to recall that.

Q. But you advised Mr. Ahrens to take the loan? A. I went over the thing with Mr. Ahrens and he said, "Is it a good thing," and I says, "Yes, it is a well-constructed building."

Q. You advised Mr. Ahrens to take the loan, didn't you? A. I think so.

Mr. Perkins: That is all.

PATRICK J. KANE, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. Perkins:

Q. Mr. Kane, I show you Exhibit D5½, which is the pass book of yours in the Title Guarantee & Trust Company, which seems to have been an open account November 26, 1912; the first item is how much? A. Five thousand nine hundred dollars.

Q. Where was that money obtained from? A. That was obtained from the New Jersey Guarantee Title & Trust Company.

Q. The next item is December 27, \$2,000; where was that obtained from? A. The New Jersey Title Guarantee & Trust Company.

Q. The next is February 14, 1913, \$1500; where was that gotten from? A. The New Jersey Title Guarantee & Trust Company.

Mr. Runyon: I object to this, if the Court please, on the ground as immaterial and irrelevant.

The Court: I will receive it at present.

Q. The next item is December 13, 1912, \$1500;

Patrick J. Kane, direct.

where was that obtained from? A. New Jersey Title Guarantee & Trust Company.

Q. The next is January 10, 1913, \$1,000; where did you get that from? A. New Jersey Title Guarantee & Trust Company.

Q. On January 13, 1913, \$3500; where did you get that from? A. New Jersey Title Guarantee & Trust Company. 10

Q. The next is a balance of February 4, 1913; where did that money come from? A. All from the New Jersey Title Guarantee & Trust Company.

Q. The next is a deposit of February 21, of \$2,000; where did that come from? A. That came from the New Jersey Title Guarantee & Trust Company. 20

Q. Now, the next is March 10, 1913, \$2,000; do you know where that came from? A. I think that came from Ahrens.

Q. March 14, 1913, \$3,000? A. That came from Ahrens.

Q. March 29, \$500? A. That came from Ahrens, too.

Q. Now, April 27, \$1,000? A. I think that came from my mother.

Q. April 12, 1913, \$500? A. That came from my mother, too, I think. 30

Q. April 26, \$1,000? A. That came from my mother, too.

Mr. Perkins: I would like the other side to produce the checks of Mr. Ahrens that have been referred to here.

Mr. Runyon: And stubs?

Mr. Perkins: Yes. Not that note; I mean

Patrick J. Kane, direct.

the checks that you have. I want the check of April 26, 1913, of \$1,000.

The check referred to is produced by counsel.

10 Q. Now, I show you a check of William Ahrens, to your order, April 26, 1913, for \$1,000, and a deposit of the same day of \$1,000— A. That is from Ahrens.

Q. Now, I call your attention to the fact that the deposits in your book as coming from Ahrens amount to \$8,000; did you receive any more money from Ahrens? A. No, sir.

20 Q. How much was the loan by the New Jersey Title Guarantee & Trust Company? A. Twenty-three thousand dollars, and there was \$1,000 due to be paid back at the end of the first year, so that the final loan was \$22,000. I received \$23,000.

Q. Mr. Kane, did you ever borrow from Mr. Otto H. Albanesi any money? A. I never borrowed a nickle off of him.

Q. Did you ever borrow money from him about Christmas, 1912, or New Year's, 1913? A. Never borrowed five cents of him.

30 Q. Did you borrow any money from him in January, 1913? A. Never.

Q. Did you ever receive any money from him by way of check or cash, in November? A. Never.

Q. Did you borrow \$1500 of him at any time? A. I never borrowed \$1500 from him.

40 Q. I show you a note of \$1500, dated "Jersey City, February 14, 1913, on demand after date I promise to pay to the order of Otto H. Albanesi \$1500"; is that your signature? A. Yes.

Patrick J. Kane, direct.

Q. When did you sign it? A. I signed it the day I went to close the deal for the two mortgages. He had this note, and he said, "You had better sign this; this is a way we have of covering this thing up, and I want to protect ourselves. We have got to have a way of protecting ourselves if anything happens." 10

Q. He said, "That is a way we have of protecting ourselves"? A. Yes.

Q. Immediately before you signed the note of \$1500 what papers had you signed? A. The checks.

Q. A check for \$500 and a check for \$1500? A. Yes.

Q. That is to say, you endorsed it?

Mr. Runyon: I object to leading this witness. 20

The Court: Don't lead him at all.

Mr. Runyon: We have gone over this subject very fully by this witness.

The Court: He is going to rebut the testimony just given; that is what it is offered for, I presume. It doesn't do any harm to inquire about it; it will enable the Court to know more about it. 30

Q. After you had endorsed the two checks, one for \$500 and the other for \$1500, what did you do with those checks? A. Left them there on the table and went out.

Q. When was it that Albanesi presented to you the note which is dated February 4, 1913? A. The day that I signed the checks and laid them on the table.

Q. Was it before or after the signing of the 40

Patrick J. Kane, direct.

checks? A. Why, it was the same time. I signed the checks and he had me sign the note.

Mr. Perkins: May I see those checks? I want the \$500 note dated March 8.

10 Q. When you endorsed the two checks just mentioned, was there any other endorsement on the back? A. There was no other endorsement on the back when I endorsed the two checks.

Q. Which did you do first, endorse the checks or sign the demand note for \$1500? A. I endorsed the two checks first.

Q. Just previous to your signing the note what did Dr. Albanesius say to you about it?

20 Mr. Runyon: I object to your leading the witness.

The Court: I think that question is objectionable.

Mr. Perkins: All right; strike it out.

30 Q. What was it that Dr. Albanesius said to you about signing the \$1500 demand note? A. He says, "Kane, you will have to sign this note, because we will have to have something to cover this thing up if anything happens. That is the way we have of doing it."

Q. When was that said? A. The same morning when I signed the checks.

Q. (By the Court): Did he tell you what might happen? A. No; he says, "This is the way we have of covering this thing up if anything happens."

40 Q. Did you ask him what he meant by "what might happen"? A. No, I didn't. He says, "This is a way we have of protecting ourselves."

Patrick J. Kane, direct.

By Mr. Perkins:

Q. Did you know what he meant? A. I didn't know what he meant, Mr. Perkins.

Q. Was the note of February 4, 1913, delivered to Dr. Albanesius on the day of its date?

Mr. Runyon: I object, on the ground as leading. 10

The Court: In what way is it leading?

Mr. Runyon: It couldn't be more leading, I submit. Let the witness tell his story.

Q. (By the Court): Well, when was the note given to Dr. Albanesius? A. Dr. Albanesius had the note already written out with the two checks, and when he went to sign the checks, then he had me sign the note. 20

Q. When was it given? A. The same morning that the checks were made out.

Q. The same day? A. The same morning.

By Mr. Perkins:

Q. How many times did you call there that day? A. Only once. I was only once there, in the morning.

Q. Did you have any arrangement with Dr. Albanesius whereby you were to call some other day— 30

Mr. Runyon: I object, on the ground as leading.

Q. (By the Court): Did you see Dr. Albanesius subsequently about this note? A. I never seen Dr. Albanesius about any note at all.

Q. Did you have any arrangement about his keeping the note? A. No, sir. 40

Patrick J. Kane, cross.

By Mr. Perkins:

Q. Did you have any arrangement about his returning the note to you? A. No, sir.

Q. Did you ever ask him to return it? A. No, sir.

10 Q. Did you ever make any application to Dr. Albanesius for small loans while you were getting your loan from the Title Guarantee & Trust Company? A. No, sir.

Cross examination by Mr. Runyon:

Q. Mr. Kane, you were on the witness stand before in this matter, weren't you? A. Yes.

20 Q. And you were questioned about the full transaction regarding the signing of this check of March 8th?

Mr. Perkins: I object.

The Court: It is entirely objectionable.

Q. Why is it that at the last hearing you made no mention of this transaction and said that you never signed the note? A. I never said I didn't sign the note.

30 Q. Isn't it true that at the last hearing you said you had no transaction with Dr. Albanesius, with the exception of these check transactions, which checks have been offered in evidence in this proceeding? A. I never said I didn't sign a note.

Q. Did you make any mention of the note in your previous testimony? A. Nothing was asked me about the note.

40 Q. Isn't it true that at the last hearing I asked you the question whether you ever gave notes, made by yourself or by your stone company, which you had discounted at the bank,

Patrick J. Kane, cross.

and that your answer to that was, "No, sir"? Isn't that true? A. I never gave my note. I gave the note of the New Jersey Stone Construction Company at the Merchant's National Bank. I never gave any note to Albanesius.

Q. When did you first tell Mr. Perkins about this note? 10

Mr. Perkins: I object. That is an entirely improper question.

The Court: Why is it improper?

Mr. Perkins: I withdraw my objection; go ahead.

A. The morning that the trial was coming on.

Q. That is the day of the last hearing, before you testified? A. Before I testified. 20

Q. Didn't you know it was very important to your interests in this case to show about that note transaction on the stand? A. No, I didn't know whether it was or not; I didn't know.

Q. Now, on March 8, 1913, Mr. Kane, you were badly in need of funds for going ahead with the erection of this particular building, weren't you? You were short? A. I don't know. That is, the time I went and made the application for the loan? 30

Q. Do you remember testifying that you never saw Mr. Ahrens at your building—the building in question? A. I never seen Mr. Ahrens at my building before I got that loan. It was a week or two later before I saw Mr. Ahrens in that building. I never saw him in the presence of Mr. Albanesius. When Mr. Albanesius was there he was alone; Mr. Ahrens wasn't with him.

Mr. Runyon: Did you offer in evidence the bank book? 40

Patrick J. Kane, cross.

Mr. Perkins: It is in evidence; it is Exhibit 5½.

Q. In February or March, 1913, how many bank accounts did you have? A. Only one.

10 Q. This bank book which Mr. Perkins has been examining you on, that is marked Exhibit 5½, is the special book that the Title Company issued when you opened your account upon your making a loan there? A. Yes.

Q. And it only shows the transactions, so far as those dates go in regard to that loan, doesn't it? A. Yes.

Q. It doesn't show your other transactions? A. No.

20 Q. It doesn't attempt to show any other transactions in regard to the Title Company loan? A. It shows all the moneys that I received from the New Jersey Title Guarantee & Trust Company at the time, in connection with the building.

Q. It was merely your building account, wasn't it? A. Yes.

30 Q. Well, Mr. Kane, how was it that you left the note for \$1,500 with Dr. Albanesius after you paid him the money? A. He told me to leave it there. He said he wanted the note there to protect himself if anything happened; that that was a way he had of doing business.

Q. You voluntarily went to Dr. Albanesius's house with the check for \$1,500 and the check for \$500, and you knew at that time that he had your note for \$1,500, didn't you?

Mr. Perkins: I object, because it doesn't correctly recite the testimony. He says he didn't go to the house with those checks.

40

Patrick J. Kane, cross.

A. I didn't go to the house at all; they were there on the table. He had them all made out to sign.

Q. Where? A. In Dr. Albanesius's house.

Q. And who was there? A. Dr. Albanesius.

Q. Anybody else there? A. Mr. Ahrens came there shortly afterwards. 10

Q. After the transaction was closed? A. Yes, when we were closing up the transaction Mr. Ahrens came there.

Q. Did Mr. Ahrens hear any of the conversation between you and Dr. Albanesius? A. I think he did. Dr. Albanesius introduced me to Mr. Ahrens, and that was the first time I met Mr. Ahrens.

Q. Are you sure about that? A. Positive; the first time I had met Mr. Ahrens. 20

Q. And that, you mean, was on the occasion that you received these checks, dated March 8th, which have been offered in evidence, and you had never seen Mr. Ahrens until that day; is that right? A. That's right; positive.

Q. And you were at Dr. Albanesius's house and had closed the transaction with Dr. Albanesius when Mr. Ahrens walked in; is that right? A. Yes, Mr. Ahrens came there just when we were about finishing up with this transaction. Then Dr. Albanesius introduced me to Mr. Ahrens, and Mr. Ahrens was very pleased to meet me and said he hoped I would have a lot of success with my building. 30

Q. You hadn't met him down at your building, looking at the building? A. No, sir, Mr. Ahrens was never at the building. Dr. Albanesius was there alone.

Q. Who told you to make that statement, that 40

Patrick J. Kane, cross.

you ever saw Mr. Ahrens before the closing of this transaction? A. Why, I never seen Mr. Ahrens before that. Dr. Albanesius was there.

10 Q. Who told you to make the statement about the note transaction to which you have testified today? A. Now, who told me to make it?

Q. Yes. A. Nobody, because the note and the checks were there on the table that morning when I went in there, and he told me: "Now, Kane"—that was the first he mentioned anything to me about a note. He says, "Kane, you will have to sign this note, because I want to have it if anything turns up. This is a way we have of doing business."

20 Q. That was before you saw the checks? A. The same morning that I signed the checks.

Q. Did you sign the notes then? A. I signed the checks first and then I signed the note.

Q. Well, now, just tell us precisely, Mr. Kane; we want to go over this transaction very carefully. When you went to Dr. Albanesius's house what room did you go in? A. I went in the front door—no, there is a little side door.

30 Q. What house did you go to? A. I think the corner of Fairmount Avenue and the Boulevard, a stucco house. We went in the driveway-like.

Q. You went in the front door, and where did you go? A. Some kind of an office there—a little office on the first floor.

40 Q. State precisely everything that happened while you were there. A. Well, the doctor he went to work and he fixed up these checks, and then he fixed up the note, and then he had me sign the checks, and then he had me sign the note, and around about that time Mr. Ahrens came walking in while we were talking about

Patrick J. Kane, cross.

it, and then he introduced me to Mr. Ahrens and he was pleased to meet me and wished me success with the building, and hoped to meet me in the future and have some business transactions.

Q. Did you have any further conversation with Mr. Ahrens? A. No, sir, I did not, because I went on with my work and went out and left Dr. Albanesiuis and Mr. Ahrens there.

10

Q. You are sure about that? A. I'm positive about it.

By the Court:

Q. You never saw him before, eh? A. I never seen Mr. Ahrens before that morning.

By Mr. Perkins:

20

Q. When did you next see Mr. Ahrens? A. When I went to make payments to him. After that I always went to Mr. Ahrens' house when I made payments.

Q. You haven't a very clear recollection about this occasion, have you? A. How's that?

Q. This occasion at Dr. Albanesiuis's house? A. Yes, I have a very clear recollection.

Q. You say you didn't have any conversation with Mr. Ahrens whatever? A. Not before the meeting of that morning in Dr. Albanesiuis's house.

30

Q. You just testified at that meeting at Dr. Albanesiuis's house you had no conversation with Mr. Ahrens except, "How do you do"? A. I said that Dr. Albanesiuis introduced me to Mr. Ahrens, and Mr. Ahrens wished me success and things like that, and hoped to meet me in the future.

40

Patrick J. Kane, redirect.

Q. Did you and Mr. Ahrens and Dr. Albanesi-
sius have any conversation together on that oc-
casión? A. No.

Redirect examination by Mr. Perkins:

10 Q. I show you a paper which has been offered
in evidence, which is a copy of a summons and
complaint in the case of Patrick J. Kane against
Otto H. Albanesisus; what can you say about
that suit? A. Well, I don't know nothing about
this.

Q. In whose hands did you place this matter?

A. I placed everything entirely in your hands.

Q. Well, how did you place it in my hands?

A. To do whatever you saw fit; to use your judg-
20 ment.

Q. Did you know on the day just previous to
the last hearing that I had instituted a suit for
you in the Supreme Court? A. No, I did not,
Mr. Perkins; I told you to do whatever you
liked—to use your own judgment.

Mr. Perkins: I have subpoenaed *duces*
tecum the New Jersey Title Guarantee &
Trust Company to produce the books here,
and they said they would be here in a few
30 minutes.

The Court: All right; anybody else on
your side, Mr. Runyon? If not, we will
wait for them to come.

Mr. Runyon: I will recall Mr. Kane.

Patrick J. Kane, recross.

PATRICK J. KANE, recalled for further examination, testified as follows:

By Mr. Runyon:

Q. Mr. Kane, I show you a report of title of the property in question, issued by the Title Company; ever see that before? A. I don't know that I ever have seen that before. 10

Q. Well, do you remember bringing a report of title to Mr. Ahrens before you got the money? A. I never seen Mr. Ahrens before I got the money.

Q. Don't you recall bringing that paper to Mr. Ahrens before you got the money, and Mr. Ahrens acted on your giving him that paper? A. I never seen Mr. Ahrens before I met him in Dr. Albanesius's office on the transactions of the checks and note. That was the first time I met Mr. Ahrens in my life. 20

Q. Did you ever see this paper before? A. I don't know whether I did or not.

Q. Look it over (handing paper to witness). A. (The witness looks at paper and replies): I don't know whether I ever seen that one before.

Q. Will you say you didn't see it before? A. I couldn't tell you. 30

Q. Don't you recall bringing this paper to Mr. Ahrens? A. No, sir, I never did, because I never met Mr. Ahrens before I met him at Dr. Albanesius's office.

Q. Do you recall anything about this paper? A. I suppose I had to bring it to Dr. Albanesius, probably.

Q. Do you recall anything about this paper? A. I don't know whether that is the paper or not.

Q. Do you recall taking any paper from the 40

Patrick J. Kane, recross.

New Jersey Title Guarantee & Trust Company?

A. Yes, I had to bring it to Dr. Albanesius.

Q. What date was it that you got the report of title from the Title Company? A. I couldn't just tell you.

10 Q. It was before the closing of the transaction, wasn't it? A. It was before the closing of the transaction.

Q. Several days before, wasn't it? A. Yes, I suppose it was.

Q. What did you do with that report of the Title Company which you got from them in regard to this particular property? A. I gave it to Dr. Albanesius.

Q. When? A. When I was closing the deal.

20 Q. That is something you forgot about a little while ago, wasn't it, when you were telling us about all the transactions that happened? You forgot that? A. You never asked me anything about it before.

Q. I will now ask you, did anything else of any kind happen on that occasion when you were at Dr. Albanesius's house—anything else happen than what you have testified to? We don't want you next week bringing in something else.

30 A. Nothing else happened that I know of.

Q. Now, go all over it again and tell us what did happen when you first went in there. You had the report? A. The morning that he went there Albanesius went to work and he had the checks ready for me and the note, and one thing and another.

Q. (By the Court): Who came in first in the room, Albanesius or Ahrens? A. When I went

Otto H. Albanesius, direct.

there Albanesius was in there, and in a few minutes Mr. Ahrens came in.

Q. What did Albanesius tell you the \$2,000 was for? A. He told me that would be the fee for them; and then Mr. Ahrens comes in and he introduced me to Mr. Ahrens, and says, "This man is putting up the money on the plot;" and so Mr. Ahrens was very glad to meet me, and he wished me luck with my new buildings, and wished we would have a lot of business transactions in the future. Then I went about my business and I didn't see Mr. Ahrens again until I went after some more money.

10

Examination by Mr. Perkins:

Q. Do you know whether Mr. Ahrens saw the checks lying on the table? A. They were lying on the table at the time.

20

Q. Do you know whether he saw the note lying on the table? A. I don't know whether he seen it or not. All three was lying there.

Q. Out of what room did Mr. Ahrens come? A. The same ways that I came in.

Q. And when you left who remained? A. Dr. Albanesius and Mr. Ahrens.

Q. And what else remained? A. The two checks and the note.

30

OTTO H. ALBANESIUS, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Runyon:

Q. You have heard Mr. Kane's statement about what happened on the occasion when they were at your office on March 8th, have you? A. The testimony just given?

40

Otto H. Albanesius, direct.

Q. Yes. A. Yes, sir.

Q. Was Mr. Ahrens in your office on that occasion? A. Absolutely and positively no.

10 Q. Were you present at the passing of these checks? A. No, sir. I had no further conference and was never present when Mr. Ahrens and Kane were together, except on one occasion when Mr. Ahrens and I were going through the building. That was the only other time that the three of us were together.

Q. And with reference to the passing of these checks which Mr. Kane has just testified to, when was it that you and Mr. Ahrens went through the building and met Mr. Kane? A. Along about the first of March.

20 Q. (By the Court): Prior to this check matter? A. Yes, when he made the application.

Q. Was Ahrens with you? A. I went over to Ahrens' house and spoke to him about the loan; I says, "This is a good loan" and I said, "Jump in the machine with me and go down and look at it," and we went down, and Kane wasn't there, and a laborer that he had around the place said he was down in the saloon, and he went down and brought him up there, and we spent two hours and a half or three hours on the building.

30 By Mr. Runyon:

Q. On that occasion did you see whether Mr. Kane was talking with Mr. Ahrens? A. We were talking, generally.

40 Q. (By the Court): Did you introduce Kane to Ahrens? A. I did, that morning. When Kane came, I introduced him to Mr. Ahrens and I said, "This is the gentleman that is talking

Otto H. Albanesi, cross.

about the mortgage, and he wants to go through the building and get a general view and the general condition.

By Mr. Runyon:

Q. Did you take any note from Mr. Kane on March 8th, in regard to this transaction? A. Absolutely none. The note was way along toward the time when he had spoken to me about the second mortgage. 10

Q. Was Mr. Kane in your house on March 8th? A. The day those checks were given to me, on March 7th or 8th, I was reading the morning paper; he came and he says, 'Doc, I have got some money from Ahrens and I am going to pay your indebtedness,' and I says, "All right; sit down." 20

Cross examination by Mr. Perkins:

Q. You say, previous to the 7th or 8th, he was constantly applying to you for money? A. Not constantly. He borrowed small sums.

Q. He borrowed various small sums and then he got this \$10,000 second mortgage? A. Yes, sir.

Q. And the very first money that he got out of it he paid to you as a bonus for getting the loan? A. He never paid me any bonus. 30

Q. Well, commission? A. Brokerage. It wasn't the first dollar, because he told me he received \$4,000. He told me that; whether he did or not I don't know.

Q. Didn't he tell you that he received three checks? A. He gave me two checks, one for \$1,500 and one for \$500.

Q. Did he show you the other one of \$2,000? 40

William L. J. Nebauer, direct.

A. No, sir, he did not. He told me, though, that he had gotten \$4,000 from Mr. Ahrens as the first payment.

10 Q. He said he had come from Mr. Ahrens' house? A. No, he didn't say that, but no doubt he did.

Q. Ahrens lived right next door? A. No, I wasn't living there at that time. The apartment house where I have the office is next door to Mr. Ahrens, but I lived two blocks from there at that time.

20 WILLIAM L. J. NEBAUER, sworn on behalf of the defendants, in rebuttal, testified as follows:

Direct examination by Mr. Perkins:

Q. What is your position? A. Bookkeeper.

Q. With the New Jersey Title Guarantee & Trust Company? A. Yes.

Q. Have you made a transcript of Patrick J. Kane's account from January 26, 1912? A. Yes.

Q. I have asked you to produce a transcript of Patrick J. Kane's account, showing daily balances; have you done so? A. Yes.

30 Q. And it begins January 26, 1912, and ends January 23, 1915; is that correct? A. Yes.

Q. And that is a correct transcript? A. Yes.

WILLIAM G. AHRENS, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Runyon:

40 Q. Mr. Ahrens, were you present in Dr. Albanesi's office on the first of March, when Mr. Kane was there? A. No, sir.

William G. Ahrens, cross.

Q. When did you first see Mr. Kane? A. The first time I seen Mr. Kane, he was introduced to me by Dr. Albanesius at his office the latter part of February.

Q. Were you ever at the building with Mr. Kane prior to the closing of this transaction? 10

A. Yes, sir; I was with Dr. Albanesius. Dr. Albanesius took me down in his car to the building, and Kane and I went through the building, and Kane was there the first part of March.

Q. Did Mr. Kane know you on that occasion? A. He met me before that, yes, sir.

Q. How long were you with Mr. Kane on that occasion? A. I think we were in the building an hour, if not an hour and a half.

Q. What were you doing there? A. I was there to look at the building, to see what kind of a loan I was putting my money on. I would make no loan whatever to anybody without looking at it. 20

Q. Did you see the plans of the building? Did Kane, on that occasion, show you the plans of the building? A. I can't recall that I seen the plans of the building at that time or any time, but the building was under roof and the rooms were all plastered and pretty near completed. In some cases—no, I don't think they had the doors on. 30

Q. (By the Court): Well, you estimated the building as it stood as safe for a loan of \$10,000, didn't you? A. Yes, sir.

Cross examination by Mr. Perkins:

Q. Mr. Ahrens, you saw when you got the checks back that they were endorsed by Alban-

William G.-Ahrens, cross.

esius? A. I didn't know anything about it until I got the checks up, ready for this case.

Q. You knew this was a second mortgage?

A. I did.

10 Q. And you knew there was to be a first mortgage of \$23,000 ahead of it? A. Twenty-two, I think I understood.

The Court: Well, it is twenty-three.

Mr. Perkins: Yes, twenty-three.

Q. And you knew it was a building loan? A. Well, I was to pay the money as the building was to be completed, yes.

20 Q. What was there attractive about this loan, to you? A. I had the money and I thought it was a good loan.

Q. (By the Court): The second loan? A. Yes.

By Mr. Perkins:

Q. A second mortgage on a building proposition where a man was practically without finances was a good loan? A. I didn't know that.

30 Q. Didn't Dr. Albanesius tell you that he came and borrowed money from him? A. No, sir.

Q. Never said a word about that? A. No, not that I can recall. He told me he was in the stone business.

Q. Didn't Kane tell you that he needed the loan very much? A. I can't recall that.

40 Q. What did Kane tell you about needing the loan? A. The most Kane told me was that when he first completed the building he was going to put steam heat in, and he was making this loan to put in steam heat.

William G. Ahrens, cross.

Q. You make a good number of loans, don't you, Mr. Ahrens? A. Sometimes.

Q. Second mortgage loans? A. Sometimes. I've got two.

Q. (By the Court): As I understood you, a part of the money you put in on this loan was your sister's? A. Well, I sometimes would be short of money, and we borrowed and loaned to each other, both ways. 10

Q. Do you mean to say that you put your sister's money in this loan, or part of it? A. I had one check from my sister, yes.

Q. After that did you see that the whole sum of money went into the house? A. Yes; I went there several times; I was there I think six or seven times before the last payment was made. 20

Q. Well, this was the last payment, wasn't it? Oh, was this the first? A. No, that was the first. I think the last payment was something like April the 29th. Yes, April 29 I think was the last payment.

Q. When this payment was made had you been down to the building? A. Yes.

Q. And had there been some changes or progress? A. Yes, it was progressing.

Q. (By Mr. Perkins, resumed): You knew that the building was subject or liable to mechanics' liens didn't you? A. I had the search from the Title Company on March the 8th, and there was nothing then against it, and when I paid Kane the last thousand dollars— 30

Q. (interrupting): Please answer the question: You knew when you were making the loan that the building might be subject to mechanics' liens? A. I did not. There was no contract on file; I didn't know. 40

William G. Ahrens, cross.

Q. You knew that a mechanic's lien came ahead of the mortgage? A. Yes.

Q. And you knew that money advanced in this manner, so far as it went into the building, was good as against a mechanic's lien? A. (The witness pauses).

The Court: Do you know that?

The Witness: I want to think about that a minute. Well, I didn't give that a thought.

Q. You knew it, didn't you? A. I'm not sure.

Q. Well, you've had a lot of experience in these loans, haven't you, Mr. Ahrens? A. I have had very few with mechanics' liens against it.

Q. But you have had a lot of experience in second mortgage loans? A. No, sir.

Q. You have had a lot of experience in mortgage loans? A. Yes, sir.

Q. Building loans? A. Not much.

Q. You knew that a mechanic's lien was ahead of every possible item except mortgage money that went into the building? A. I didn't give it a thought.

Q. You know it now? A. No, I'm not sure.

Q. Did you think that it was possible that mechanics could come along and file liens on this building ahead of your mortgage? A. I knew that the Title Company had a mortgage there and they looked after their interest.

Q. Won't you please answer my question? Didn't you give it a thought as to whether materialmen or mechanics could come along and file a lien ahead of your mortgage? A. I did not.

Q. Why didn't you make it certain that the

William G. Ahrens, cross.

money that you loaned to Kane went into the building? A. Well, I thought it did.

Q. Why didn't you make it certain, so far as you were concerned? A. I thought Kane was honest.

Q. (By the Court): How soon did you have your bank book balanced after these checks went in? A. That's more than I can say. 10

Q. Have you got your bank book here? A. No, sir.

Q. You always look over your returned checks, to see where they went to? A. Yes.

Q. (By Mr. Perkins): You do look over your returned checks? A. Yes, sometimes. I simply check up my check book to get my balance.

Q. (By the Court): Were these checks brought in before the building was completed? A. I don't know. 20

Q. When the book was balanced those checks would come back to you and then you would see Albanesi's name on it? A. I seldom turned over the checks to notice that.

Q. All the other checks except those were endorsed by Kane over to the materialmen or contractor, or workmen, weren't they? A. No.

Q. Whom were they endorsed over to? A. Every one was deposited in this account. 30

Q. (By Mr. Perkins): Mr. Ahrens, you know that of the \$10,000 of the checks that you gave to Kane \$8,000 were deposited in Kane's account in the Title Guarantee & Trust Company, and \$2,000 of those checks belonged to Albanesi, don't you? A. I only know it from your examination to-day.

Q. Then you didn't follow that matter at all, did you? A. No, sir. 40

William G. Ahrens, cross.

Q. You didn't take any trouble to see to it that the money that you loaned on the second mortgage went into the building? A. No, I didn't, except I went there and looked into the building as it progressed.

10 Q. You didn't know whether it was paid in, did you? A. I thought so.

Q. I am asking you what you took the trouble to know. A. I went there and looked in the building as the building progressed.

Q. You didn't pay any attention to the fact whether Kane was paying the money out for work on the building or not? A. No, I don't know about that.

20 Q. You never took any precaution to see that the money which you gave to Mr. Kane went into the building of this building on which you had a mortgage? A. I took the precaution, but how could I tell what Kane would do with that money. I went to the building, but you see I couldn't dictate who to pay it to. I couldn't dictate who to pay it to.

30 Q. Why, yes, you could; you could draw the checks to the materialmen or have them endorsed to the materialmen; that is a customary thing. You know that, don't you? A. No, I don't. When he delivers me the mortgage it is my duty to give it to him.

Q. Well, it is clear you didn't pay any attention to whether that \$10,000 went into the building or not. A. I certainly did, because I went and examined the building as it progressed.

40 Q. How did you know that the \$10,000 which you had loaned on this mortgage had gone into the building? A. How would I know?

William G. Ahrens, cross.

Q. Please answer the question.

The Court: How did you know that the \$10,000 that you put into this transaction went toward the payment for materials?

10

The Witness: I went to the building to see how it progressed, to see where it went to, and if it progressed it would be used for that purpose.

Q. Did you ask Kane to produce receipts from materialmen or workmen on the building, to show payment? A. Yes; the last payment I gave him I asked: "Is everything paid?" and he said it was.

Q. I asked you if you asked him to produce receipts and releases? A. No. 20

Q. You never asked him to produce any receipts or any release? A. No.

Q. Why did you make the first payment of \$4,000 in three checks, one for \$500, one for \$1,500, and one for \$2,000? A. Because he asked me to do it.

Q. And that is the only reason? A. That is the only reason.

Q. That is the only reason you did that? A. 30
(No answer.)

The Court: Did you ask him why he wanted it that way?

The Witness: No.

The Court: You just gave him \$2,000 without asking him anything about it?

The Witness: No, sir, \$4,000.

Q. You were parting with \$4,000 and you knew that he was going to deposit it in the bank and 40

William G. Ahrens, cross.

he wouldn't need three checks. A. I didn't know anything about it. He asked me to give him \$4,000 in them three checks.

10 Q. But you knew if Mr. Kane was going to deposit it in the bank he would need only one check for \$4,000? A. I didn't know that.

Q. You have often deposited money in the bank, haven't you? A. Yes, sir.

Q. Could you think of any reason why it should be split into three checks if it was going to be put in the bank? A. No, sir.

20 Mr. Runyon: He has gone fully over the subject. It is merely trying our case all over again. I object as not proper cross examination.

The Court: The matter is a little afield, but the case isn't being opened up again.

Q. Didn't you ask Mr. Kane what he was going to do with this \$4,000?

Mr. Runyon: I object, as not proper cross examination. We are going over the whole case again.

The Court: I imagine it won't be very long.

30 Mr. Perkins: I will be very short.

A. No, sir.

Q. You just simply complied with his request and drew it in three separate checks? A. Yes, sir.

Q. And turned it over to him? A. Yes.

Q. Without paying any attention whether it went into the building or not? A. I went and looked at the building.

40 Q. At the time you gave him the \$4,000? A. I

William G. Ahrens, redirect.

looked at the building before that, but I paid no attention, no, at the time I gave him the \$4,000.

Redirect examination by Mr. Runyon:

Q. Who was your lawyer on the occasion of your making this loan? A. I had no lawyer. 10

Q. Who was doing your legal work? A. Roe, Runyon & Autenreith.

Q. Had you any other lawyers at that time? A. No.

Q. Did you consult any? A. No.

Q. Now, when did you consult any lawyers in regard to this loan—the manner of placing the loan and giving the loan? A. I didn't consult any lawyer, because when I talked it over with Kane, Kane said he would give me the title search up to the date of the loan. 20

Q. You have mentioned having obtained money from your sister on the occasion of making this original loan; in what way did you obtain from your sister that money, that is to say, did you invest your sister's money in the loan or did you borrow money from your sister? A. Well, I can't hardly say that.

The Court: He was asked in his previous testimony whether he borrowed it from his sister and he answered that they borrowed from each other. There is no doubt about that, according to the testimony. 30

Q. How much money did you get from your sister at that time?

Mr. Perkins: He said \$2,000.

A. \$2,000. 40

William G. Ahrens, recross.

Q. Under what arrangement did you get that \$2,000 from your sister?

Mr. Perkins: You have been all over that.

10 A. That I can't just recall now, whether I borrowed it or that her money went in.

Q. Well, did you pay her back? A. Yes.

Recess until 2 o'clock.

20 Q. Did you receive any part of the sum of \$2,000 which is represented by checks marked exhibits in this case, one made by you to the order of Patrick J. Kane, No. 153, dated March 8th, for \$1,500? A. No, sir.

Q. Or the moneys paid thereon? A. No, sir.

Q. Did you ever receive any part of the check marked Exhibit 152 offered in evidence, for the sum of \$500? A. No, sir.

Q. Directly or indirectly? A. No, sir.

Recross examination by Mr. Perkins:

30 Q. You had a number of financial transactions with Dr. Albanesius covering the early part of 1913, didn't you? A. Yes, sir.

Q. In the payment and repayment of moneys? A. Well, what we have had is I sold him some property and I bought some mortgages, and I guess that's all.

Q. How many mortgages did you buy? A. I think there was two.

Q. How many did you buy for your sister? A. Well, part of them mortgages I took for my

William G. Ahrens, recross.

sister were taken in payment of the Fairview Avenue property.

Q. How many mortgages did you buy for your sister? A. I think one.

Q. And how many did you buy for yourself? A. Oh, I think—

10

Q. (interrupting): On the 8th of March, 1913, Dr. Albanesi^{us} owed you money for interest, didn't he? A. I think he paid that on the 1st. Yes, he owed the interest from November 1st to May 1st.

Q. On a \$40,000 mortgage? A. On a \$40,000 mortgage.

Q. (By the Court): May 1st, 1913? A. Then the interest was due.

20

By Mr. Perkins:

Q. Do you keep books of account? A. Some, yes, sir.

Q. Showing payments to you? A. Yes.

Q. You didn't produce any of those books, did you? A. No, I didn't have them here.

Q. Do they go back to March, 1913? A. Yes.

By Mr. Runyon:

Q. Do those books of account show anything in regard to this transaction, so far as Dr. Albanesi^{us} is concerned?

30

Mr. Perkins: I object to that. The books are best evidence of what they show.

A. I don't think they do, no, sir.

Q. (By the Court): You don't think they show back of it? A. They show back of it, but I don't think they show any of this transaction.

40

Exhibits.

because this was simply a mortgage and I kept no record further than that.

By Mr. Perkins:

10 Q. Then you didn't keep any record, so far as the mortgage is concerned, but you considered the mortgage a record itself? A. No, I didn't keep no record. The mortgage is a record of it, and the checks and my books.

Case Closed.

Exhibit C1.

20 KNOW ALL MEN BY THESE PRESENTS, That WE, PATRICK J. KANE of Jersey City, Hudson County, New Jersey, and MARY KELLY, of Newark, Essex County, New Jersey, are held and firmly bound unto WILLIAM G. AHRENS, of Jersey City, Hudson County, New Jersey, in the sum of TWENTY THOUSAND (\$20,000) Dollars, lawful money of the United States of America, to be paid to the said WILLIAM G. AHRENS, his executors, administrators or assigns: For which payment, well and truly to be
30 made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the seventh day of March one thousand nine hundred and thirteen.

40 THE CONDITION of the above obligation is such, that if the above bounden PATRICK J. KANE and MARY KELLY, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named WILLIAM G. AHRENS, his executors, administrators or assigns, the just and full sum of TEN THOU-

Exhibits.

SAND (\$10,000) Dollars, on the seventh day of March which will be in the year one thousand nine hundred and fourteen and the interest thereon, to be computed from the date hereof, at and after the rate of six per cent., per annum, and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue. 10

AND it is hereby expressly agreed, that should any default be made in the payment of the said interest or of any part thereof on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of TEN THOUSAND (\$10,000) Dollars with all arrearage of interest thereon, shall, at the option of the said WILLIAM G. AHRENS or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore con- 20

30

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Exhibits.

tained to the contrary thereof in anywise notwithstanding.

PATRICK J. KANE [SEAL.]

Mrs. MARY KELLY [SEAL.]

10 Sealed and delivered in
the presence of
John C. Inwright.

Jersey City 4/7 1914

Recfrom Mrs. Mary Kelly Two Thousand 00/100
Dollars on this bond & mortgage and Intrest to
date.

WM. G. AHRENS.

20

Exhibit C2.

THIS INDENTURE, made the seventh day of
March, in the year one thousand nine hundred
and thirteen, Between PATRICK J. KANE and
ESTHER M. KANE, his wife, of the City of
Jersey City, in the County of Hudson and State of
New Jersey, party of the first part, AND WILL-
IAM G. AHRENS, of the City of Jersey City, in
the County of Hudson and State of New Jersey,
30 party of the second part,

WHEREAS, the said Patrick J. Kane and
Mary Kelly, are justly indebted to the said party
of the second part, in the sum of TEN THOU-
SAND (\$10,000) Dollars lawful money of the
United States of America, secured to be paid
by their certain bond or obligation, bearing even
date with these presents, in the penal sum of
TWENTY THOUSAND (\$20,000) Dollars, lawful
money as aforesaid, conditioned for the payment
40 of the said first mentioned sum of TEN THOU-

Exhibits.

SAND (\$10,000) Dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the seventh day of March, which will be in the year one thousand nine hundred and fourteen and interest thereon, to be computed from the date thereof and hereof at and after the rate of six per cent. per annum, and to be paid semi-annually, 10

AND it is thereby expressly agreed, that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of TEN THOUSAND (\$10,000) Dollars with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, 20 30 40

Exhibits.

may more fully appear, NOW, THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever, ALL those two certain lots, pieces or parcels of land and premises, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which upon a certain map entitled, "Map No. 1, showing partition of property in Jersey City, Hudson Co., N. J., belonging to the Estate of Stephen B. Vreeland, deceased, made by Frank H. Earle, Lucien D. Fowler & James C. Clarke, Commissioners, appointed by the Court of Chancery of New Jersey," surveyed by Earle and Harrison, Civil Engineers and Surveyors, are known and designated as Lots One (1) and Two (2), lettered "C" in Block Thirteen Hundred and Six (1306) and more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly line of Bostwick Avenue with the easterly line of Bergen Avenue; thence running (1) easterly along the southerly

Exhibits.

line of Bostwick Avenue one hundred and three and twelve one-hundredths (103.12) feet; thence (2) southerly at right angles to Bostwick Avenue forty-nine and forty-eight one-hundredths (49.48) feet to the southerly line of said Lot Number Two (2); thence (3) westerly parallel with Bostwick Avenue and along the southerly line of said Lot Number Two (2), ninety-five and nine-tenths (95.9) feet to the easterly line of Bergen Avenue thence (4) northerly along the easterly line of Bergen Avenue fifty (50) feet to the point or place of beginning,

10

BEING the same premises conveyed to Patrick J. Kane by Charles Barbash and Eva Barbash, his wife, by deed dated November 20, 1912, recorded November 26, 1912, in Book 1139, page 190;

20

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; AND ALSO all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever, AND THE SAID party of the first part and their heirs the above described premises, and every part thereof, with the appurtenances, in the quiet and peaceable possession

30

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Exhibits.

of the said party of the second part, his legal
representatives and assigns against every person
whomsoever will WARRANT and forever DE-
FEND. PROVIDED, ALWAYS, and these pres-
ents are upon this express condition, that if the
10 the said party of the first part, their heirs, executors,
or administrators shall well and truly pay unto
the said party of the second part, his executors,
administrators or assigns, the said sum of money
mentioned in the condition of said bond or ob-
ligation, and the interest thereon, at the time
and times, and in the manner mentioned in the
said condition, according to the true intent and
meaning thereof, that then these presents, and
the estate hereby granted, shall cease, deter-
20 mine and be void. AND THE SAID party of the
first part for themselves, their heirs, executors
and administrators, do covenant and agree to
pay unto the said party of the second part, his
executors, administrators or assigns, the said
sum of money, and interest, as mentioned above
and expressed in the conditions of the said bond,
AND IT IS ALSO AGREED, by and between the
parties to these presents, that the said party of
the first part, shall and will keep the buildings
30 erected, and to be erected, upon the lands above
conveyed, insured against loss or damage by
fire; by insurers, and in an amount approved by
the said party of the second part, his executors,
administrators, or assigns and assign the policy
and certificates thereof to the said party of the
second part; and in default thereof, it shall be
lawful for the said party of the second part to
effect such insurance, and the premium and pre-
miums paid for effecting the same shall be a lien
40 on the said mortgaged premises, added to the

Exhibits.

amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums;

AND THE SAID Patrick J. Kane, the owner of the lands above described for himself, his heirs and assigns, does further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that he or they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage. 10 20

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

PATRICK J. KANE (L. S.)
Mrs. ESTHER M. KANE (L. S.)

Signed, sealed and delivered)
in the presence of {
John C. Inwright.

Acknowledgment by Patrick J. Kane and Esther Kane, his wife, on March 7, 1913, before John C. Inwright, Master in Chancery of New Jersey, recorded March 8, 1913, in Book 704 of Mortgages for Hudson County, page 188, etc. 30

*Exhibits.***Exhibit C3.**

10 KNOW ALL MEN BY THESE PRESENTS,
THAT I, RITA B. SMITH, of the City of Jersey
City in the County of Hudson and State of New
Jersey, party of the first part, in consideration
of the sum of eight thousand (8,000) dollars,
lawful money of the United States, to me in
hand paid by AUGUSTA M. AHRENS, of the
same place, party of the second part, at or be-
fore the en sealing and delivery of these pres-
ents, the receipt whereof is hereby acknowl-
edged, have granted, bargained, sold, assigned,
transferred, and set over, and by these presents
do grant, bargain, sell, assign, transfer, and set
over unto the said party of the second part, a
20 certain Indenture of Mortgage, bearing date the
seventh day of March, in the year one thousand
nine hundred and thirteen made by Patrick J.
Kane and wife to William G. Ahrens, to secure
the payment of the sum of ten thousand (10,000)
dollars in one year from the date thereof with
interest at six per cent. payable semi-annually,
which said Mortgage was recorded in Liber 794
of Mortgages for the County of Hudson, on pages
188 etc., and thereafter assigned by William G.
30 Ahrens to me by assignment dated September
14th, 1914, and to be recorded,

TOGETHER with the lands therein described
and the covenants and stipulations therein con-
tained, and the bond or obligation therein re-
cited, and the money due and to grow due
thereon with the interest, TO HAVE AND TO
HOLD the same unto the said party of the sec-
ond part, her heirs, executors, administrators
and assigns forever, subject only to the proviso
40

Exhibits.

in the said Indenture of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at her proper cost and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as I might or could do, if these presents were not made. AND I do hereby covenant, promise, and agree to and with the said party of the second part, that there is now owing upon the said bond and mortgage the sum of eight thousand (8,000) dollars, together with interest from September 7th, 1914. 10

IN WITNESS WHEREOF, I have hereunto set my hand and seal the fourteenth day of September, in the year one thousand nine hundred and fourteen. 20

RITA B. SMITH (L. S.)

Signed, sealed and delivered)
 in the presence of {
 Edmund S. Johnson.

Acknowledged by Rita B. Smith, September 14, 1914, before Edmund S. Johnson, Master in Chancery of New Jersey. 30

Exhibits.

TO HAVE AND TO HOLD the same unto the said party of the second part, her heirs, executors, administrators, and assigns forever, subject only to the proviso in the said Indenture of Mortgage mentioned,

AND I do hereby make constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in name or otherwise, but at her proper cost and charges, to have, use and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as I might or could do, if these presents were not made.

AND I DO HEREBY covenant, promise, and agree to and with the said party of the second part, that there is now owing upon the said bond, and mortgage the sum of Eight Thousand (8,000) Dollars, together with interest from September 7th, 1914.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the fourteenth day of September, in the year one thousand nine hundred and fourteen.

WILLIAM G. AHRENS (Seal.)

Signed, sealed and delivered

in the presence of

Edmund S. Johnson.

Acknowledged by William G. Ahrens September 14, 1914 before Edmund S. Johnson, Master in Chancery of New Jersey. Recorded September 16, 1914, Book 118 of Assignments for Hudson County, page 240.

10

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*Exhibits.***Exhibit C5.**

No. 152

Jersey City, N. J., March 8, 1913.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

10

15 Exchange Place.

Pay to the order of Patrick J. Kane Five hun-
dred 00/100 Dollars

\$500.00

WM. G. AHRENS

(Perforated stamp—Paid.)

(Endorsed on back):

20

Patrick J. Kane

O. H. ALBANESIUS, d. d. s.

Pay to the order of the
First Nat'l Bank, Jersey City

Endorsements Guaranteed

N. J. Title Guarantee & Trust Co.

Andrew C. Greene, Treas.

Received Payment

Mar 10 1913

30

First Nat'l Bank, Jersey City

E. I. Edwards, Cashier.

40

Exhibits.

No. 152½

Jersey City, N. J., March 8, 1913.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

15 Exchange Place.

10

Pay to the order of Patrick J. Kane Two
thousand 00/100 Dollars
\$2000.00

WM. G. AHRENS

(Perforated stamp—Paid.)
(Endorsed on back):

Patrick J. Kane

Pay to the order of the
First Nat'l Bank, Jersey City
Endorsements Guaranteed

20

N. J. Title Guarantee & Trust Co.
Andrew C. Greene, Treas.

Received Payment
Mar 10 1913

First Nat'l Bank, Jersey City
E. I. Edwards, Cashier.

No. 153

Jersey City, N. J., March 8, 1913.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

15 Exchange Place.

30

Pay to the order of Patrick J. Kane Fifteen
hundred 00/100 Dollars
\$1500.00

WM. G. AHRENS

40

Exhibits.

(Perforated stamp—Paid.)
 (Endorsed on back):

10 Patrick J. Kane
 O. H. Albenisus, D.D.S.
 Pay to the order of the
 First Nat'l Bank, Jersey City
 Endorsements Guaranteed
 N. J. Title Guarantee & Trust Co.
 Andrew C. Greene, Treas.
 Received Payment
 Mar 10 1913
 First Nat'l Bank, Jersey City
 E. I. Edwards, Cashier.

No. Jersey City, N. J., March 14, 1913.
 20 COMMERCIAL TRUST COMPANY OF NEW
 JERSEY.
 15 Exchange Place.

Pay to the order of Wm. G. Ahrens One
 thousand 00/100 Dollars
 \$1000.00

AUGUSTA M. AHRENS

(Perforated stamp—Paid.)
 (Endorsed on back):
 30 Wm G Ahrens
 Patrick J. Kane
 Pay to the order of the
 First Nat'l Bank, Jersey City
 Endorsements Guaranteed
 N. J. Title Guarantee & Trust Co.
 Andrew C. Greene, Treas.
 Received Payment
 Mar 14 1913
 40 First Nat'l Bank, Jersey City
 E. I. Edwards, Cashier.

Exhibits.

No. 155

Jersey City, N. J., March 22, 1913.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

15 Exchange Place.

10

Pay to the order of Patrick J. Kane One
thousand 00/100 Dollars
\$1000.00

WM. G. AHRENS

(Perforated stamp—Paid.)
(Endorsed on back):

Patrick J. Kane

Pay to the order of the
First Nat'l Bank, Jersey City
Endorsements Guaranteed
N. J. Title Guarantee & Trust Co.
Andrew C. Greene, Treas.

20

Received Payment
Mar 22 1913First Nat'l Bank, Jersey City
E. I. Edwards, Cashier.

No. 156

Jersey City, N. J., March 14, 1913.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

15 Exchange Place.

30

Pay to the order of Patrick J. Kane Two
thousand 00/100 Dollars
\$2000.00

WM. G. AHRENS

40

Exhibits.

(Perforated stamp—Paid.)
(Endorsed on back):

10 Patrick J. Kane
Pay to the order of the
First Nat'l Bank, Jersey City
Endorsements Guaranteed
N. J. Title Guarantee & Trust Co.
Andrew C. Greene, Treas.

Received Payment
Mar 14 1913
First Nat'l Bank, Jersey City
E. I. Edwards, Cashier.

No.

20 Jersey City, N. J., March 29, 1913.
COMMERCIAL TRUST COMPANY OF NEW
JERSEY.
15 Exchange Place.

Pay to the order of Patrick J. Kane Five hun-
dred 00/100 Dollars
\$500.00

WM. G. AHRENS

30 (Perforated stamp—Paid.)
(Endorsed on back):

Patrick J. Kane
Pay to the order of the
First Nat'l Bank, Jersey City
Endorsements Guaranteed
N. J. Title Guarantee & Trust Co.
Andrew C. Greene, Treas.

40 Received Payment
Mar 29 1913
First Nat'l Bank, Jersey City
E. I. Edwards, Cashier.

Exhibits.

No. 164

Jersey City, N. J., Apl. 12, 1913.

COMMERCIAL TRUST COMPANY OF NEW	8500	
JERSEY.	500	
	<hr/>	
15 Exchange Place.	9000	10

Pay to the order of Patrick J. Kane Five hundred 00/100 Dollars
\$500.00

WM. G. AHRENS

(Perforated stamp—Paid.)
(Endorsed on back):

Patrick J. Kane
Pay to the order of the
First Nat'l Bank, Jersey City
Endorsements Guaranteed
N. J. Title Guarantee & Trust Co.
Andrew C. Greene, Treas.

20

Received Payment
Apr 12 1913
First Nat'l Bank, Jersey City
E. I. Edwards, Cashier.

No. 165

Jersey City, Apl. 26, 1913.

COMMERCIAL TRUST COMPANY OF NEW		
JERSEY.		
15 Exchange Place.		30

30

Pay to the order of Patrick J. Kane One thousand 00/100 Dollars
\$1000.00

WM. G. AHRENS

40

*Exhibits.***Exhibit C8.**

THIS AGREEMENT made this fourteenth day of September, A. D. Nineteen hundred and fourteen, between MARY KELLY, widow, of the City of Newark, New Jersey, party of the first part and RITA B. SMITH of Jersey City, New Jersey, party of the second part,

10

WHEREAS the party of the first part is the owner of certain lands and premises situate at the southeast corner of Bostwick Avenue and Bergen Avenue, Jersey City, New Jersey, which is subject to a certain bond and mortgage dated March 7th 1913 given by Patrick J. Kane and Esther M. Kane, his wife, which said mortgage was given to secure the payment of the sum of ten thousand dollars in one year from the date thereof at the rate of six per cent payable semi-annually and which said mortgage was recorded in the Hudson County Register's office on March 8th 1913 in Book 794 of Mortgages for said County pages 188 &c.

20

AND WHEREAS, the said mortgage has this day been assigned by the said William G. Ahrens to the party of the second part,

NOW, THEREFORE, this agreement witnesseth, that in consideration of the said party of the second part hereby agreeing to extend the time for the payment of said mortgage for one year from the date hereof, subject to the party of the first part complying with the terms and conditions of said mortgage, the said party of the first part doth covenant and agree to and with the said party of the second part that if any municipal taxes due the City of Jersey City should remain unpaid for ninety days

30

40

Exhibits.

10 after they become due, or should there be de-
 fault in the payment of the interest when due
 upon any prior mortgage which may be a su-
 perior lien upon the premises mentioned and
 described in the mortgage above referred to,
 and should default continue for a period of
 20 thirty days, then and in that case, the party of
 the second part shall have the right to pay the
 taxes and interest, and the amount so paid
 with interest thereon, from the time of such
 payment, may be added to the indebtedness
 secured by the said mortgage and the bond ac-
 companying the same and shall be a lien on
 said premises and be secured by the party of
 the second part's said mortgage and bond and
 may be collected thereunder, and in case of
 any such payments of said taxes and interest
 as aforesaid, the said mortgage and said bond
 shall, at the option of the said party of the
 second part, or the holder thereof, without no-
 30 tice or demand become and be due and pay-
 able forthwith, although the time limited for
 the payment of principal sum of said mortgage
 may not then have expired, and the owner and
 holder of the aforesaid bond and mortgage shall
 have the same right and remedies as such
 holder would have if default were made in the
 payment of the principal sum of said mort-
 gage.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year above stated.

MARY KELLY [SEAL.]

RITA B. SMITH [SEAL.]

40 Signed, sealed and delivered }
 in the presence of }
 Helen M. Griffin
 Edmund S. Johnson.

Exhibits.

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

Be it remembered that on this fourteenth day of September, one thousand nine hundred and fourteen, before me the subscriber, a Master in Chancery of New Jersey, personally appeared Mary Kelly and Rita B. Smith, who I am satisfied are the persons mentioned in and who executed the foregoing agreement and I, having first made known to them the contents thereof, they thereupon acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein set forth.

10

EDMUND S. JOHNSON,
 Master in Chancery of New Jersey.

20

Exhibit C1 (February 6th, 1917).

State of New Jersey,
 To

Otto H. Albanesius.

You are hereby summoned to answer the annexed complaint of Patrick J. Kane in an action at law in the Supreme Court, and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, within twenty days after service upon you of this Writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

30

Witness, William S. Gummere, Chief Justice of

40

Exhibits.

the Supreme Court, at Trenton, this 8th day of December, 1916.

RANDOLPH PERKINS, Attorney.
WILLIAM C. GEBHARDT, Clerk.

10

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

PATRICK J. KANE,
Plaintiff,

v.

OTTO H. ALBANESIUS,
Defendant.

} Complaint.

20

The plaintiff, Patrick J. Kane, residing in the City of Jersey City, County of Hudson, and State of New Jersey, shows that

1. On March 7th, 1913, the defendant exacted from the plaintiff the sum of \$2,000 for procuring a loan of \$10,000.

30

2. On said date the plaintiff paid to the said defendant the said sum of \$2,000 as brokerage on a loan of \$10,000.

3. Said plaintiff is entitled to have said sum of \$2,000 repaid to him by the defendant, with legal interest thereon from March 7th, 1913.

Second Count.

40

1. On the 7th day of March, 1913, the plaintiff loaned to the defendant the sum of \$2,000 which defendant promised to return upon request.

Exhibits.

2. That thereafter and on the 8th day of March, 1913, the plaintiff requested from the defendant the repayment of said sum, which defendant refused.

Plaintiff demands as damages the sum of \$2,000 with interest thereon from March 7, 1913.

10

RANDOLPH PERKINS,
Attorney for Plaintiff.

To the within named Defendant:

Please take notice, that if the within summons and complaint be served upon you personally and you intend to make defense, then you must file an affidavit of merits within ten days of such service, and you must file an answer within twenty days after such service; and that in default thereof, judgment will be entered against you.

20

RANDOLPH PERKINS,
Attorney for Plaintiff.

I hereby deputize John Crudden to serve the within writ. Witness my hand and seal this 9th day of Dec., 1916.

EUGENE F. KINKEAD, Sheriff.
By Jas. H. Clark, Under Sheriff. [SEAL.]

30

Served within summons and complaint Dec. 12/16, personally on the defendant Otto H. Albanesi at 2540 Hudson Boulevard, Jersey City.

EUGENE F. KINKEAD, Sheriff.
By John Crudden, S. D. S.

Sheriff's Fees \$2.78.

A true copy.

WM. C. GEBHARDT,
Clerk.

40

Exhibits.

Exhibit C

\$1500.00

Jersey City, N. J., Feb. 4th, 1913.

10 On Demand after date I promise to pay to the order of Otto H. Albanesius Fifteen hundred Dollars 00/100.....Dollars at the Merchants Bank of Jersey N J

Value received.

PATRICK J. KANE.

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

Exhibit C

20 Patrick J. Kane, DEED
Esther Kane, his wife, } Dated May 21, 1913.
to } Ack. May 22, 1913, Mcc.
Mary Kelly, widow. } Rec'd. July 16, 1913.
} Liber 1162, page 121.
} Consid \$1.00 and other

GRANTS: Give grant, sold, alien, release, enfeoff, confirm and convey unto second party, her heirs and assigns forever.

30 PREMISES: ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, Hudson County, N. J. and which on a certain map entitled "Map No. 1 showing a partition of property in Jersey City, Hudson Co., N. J. belonging to the Estate of Stephen B. Vreeland, dec'd. made by Frank H. Earle & Lucien D. Fowler and Jas. Clarke, and filed as map No. 1138", are known as lots numbered one and two lettered C in Block numbered 40 1306, said lots having frontage of 50 feet on Bergen Avenue and a depth of 103.12 feet on Bost-

Exhibits.

wick Avenue and 95.90 feet on Southwesterly side thereof. Be the said dimensions more or less. Being the same premises conveyed to party of the first part by deed dated Nov. 20, 1912, by Chas. Barbash and Eva, his wife, and recorded in Liber 1139 of Deeds, page 190 in Register's Office. It being the intention of the party of the first part to convey the said land together with the buildings thereon subject to a first and second mortgage now on said property which the party of the second part assumes. 10

HABENDUM: To second party, her heirs and assigns forever.

COVENANTS: Seizin, right to convey, peaceable possession, free of encumbrances, except as aforesaid, warrantee, further assurance. 20

Exhibit D1.

FEDERAL TRUST COMPANY 55-14
747 Broad Street.

Newark, N. J. Sept. 14 1914

Pay to the order of Roe, Runyon & Autenrieth,
Attys. of W. G. Ahrens, \$500.
Five Hundred and no/100.....Dollars 30
No. \$500.00/100

Mrs. MARY KELLY

(Perforated stamp: Paid—9 16 14).

Stamped on back:

Pay to the order of
FIRST NATIONAL BANK
of Jersey City
Roe, Runyon & Autenrieth 40
Attorney Account

Exhibits.

UNION NATIONAL BANK

5

Sep. 16 1914

Newark, N. J.

10

UNION NATIONAL BANK,

Newark, N. J., or order,

Nat. Bank, Jersey City, N. J.

F. I. Edwards, Cashier.

Exhibit D2.

FEDERAL TRUST COMPANY 55-14

747 Broad Street.

Newark N. J. Sept. 8 1914

20

Pay to the order of William Ahrens \$250.00/100
Two hundred and fifty 00/100Dollars.

No.....

Mrs. MARY KELLY

Stamped on back:

William Ahrens.

Wm. G. Ahrens.

Pay to the order of
Any Bank or Trust Co.

30

Sep. 9 1914.

Commercial Trust Company

55-41 of New Jersey 55-41

William J. Field, Treasurer.

North Ward

Sixth Nat'l Bank,

Newark, N. J.

Sep 10 1914.

40

*Exhibits.***Exhibit D3.**

624 Bramhall Avenue
 Jersey City, N. J.,
 Oct. 30 1915.

Mrs. M. Kelly, 10
 84 South St.
 Newark, N. J.

Dear Madam:

I had to have some money and have sold the
 Mortgage I held on your Bergen Avenue and
 Bostwick Avenue Property to Miss A. M. Ahrens.

Yours respectfully,

RITA B. SMITH.

20

Exhibit D5.

THE NEW JERSEY
 TITLE GUARANTEE AND TRUST COMPANY,
 Jersey City, N. J.

IN ACCOUNT WITH

PATRICK J. KANE

1912

Nov. 26 Bro	5,900.	30
Dec. 27 M	2,000.	
Feby 14/13 D	1,500.	
Dec. 13/12 R	1,500.	
Dec. 31 Int.	1.31	
Jan 10/13 R	1,000.	
Jan. 31 R	3,500.	

Total Deposits	\$15,401.31
Ch'ks Ret'd per list	13,652.40

40.

Exhibits.

	Feb. 14/1913	Balance	\$1,748.91
	Feb. 21	M	2,000.
	Mar. 10	D	2,000.
	Mar. 14	D	3,000.
	Mar. 22	D	1,000.
10	Mar. 29	D	500.
	Apr. 7	D	100.
	Apr. 12	M	500.
	Apr. 26	M	1,000.
	May 10	D	650.
	May 21	M	200.
	Feb. 28	Int.	1.81
		Total Deposits	<hr/> \$12,700.72
		Ch'ks Ret'd per list	12,655.79
20			<hr/>
	Dec. 7/14	Balance	\$44.93

Exhibit D7 1-2.

FEDERAL TRUST COMPANY 55-14
747 Broad Street.

Newark, N. J., Sept. 7, 1915.

Pay to the order of Miss Rita Smith \$240.00
Two Hundred & Forty Dollars
30 No.

Mrs. MARY KELLY

Exhibits.

(Perforated stamp.)

(Endorsed on back):

Miss Rita Smith

Rita B. Smith

Pay Hudson County National Bank
 Jersey City, N. J., or order
 Sep 9 1915

10

The Trust Company of New Jersey
 Bergen and Lafayette Branch
 Jersey City, N. J.
 Joseph Harrison, Vice President

Pay to the order of
 National Newark Banking Co.
 Newark, N. J.

20

Prior Endorsements Guaranteed
 Hudson County National Bank
 Jersey City, N. J.
 55-32 Samuel Drayton, Cashier

Pay to the order
 of any Bank
 Endorsements Guaranteed
 89 Sep 11
 National Newark Banking Co.
 Newark, N. J.

30

40

*Exhibits.***Exhibit D8 1-2.**

FEDERAL TRUST COMPANY 55-14
747 Broad Street.

Newark, N. J., March 15, 1915.

10 Pay to the order of Miss Rita Smith \$240.00
Two Hundred & Forty Dollars

No.

Mrs. MARY KELLY

(Perforated stamp.)

(Endorsed on back):

Rita Smith
Rita B. Smith

20 Pay Hudson County National Bank
Jersey City, N. J., or order
Mar 16 1915

The Trust Company of New Jersey
Bergen and Lafayette Branch
Jersey City, N. J.
Joseph Harrison, Vice President

Pay to the order of
any Bank, Banker,
Bankers or Trust Co.

30 Previous Endorsements Guaranteed
The Nat'l Park Bank of N. Y.
Maurice M. Ewer, Cashier.
Mar 18 1915

Pay to the order of
National Park Bank
New York City

Prior Endorsements Guaranteed
Hudson County National Bank
Jersey City, N. J.

40 Samuel Drayton, Cashier.

*Exhibits.***Exhibit D9 1-2.**

FEDERAL TRUST COMPANY
747 Broad Street.

Newark, N. J., Apr. 7, 1914.

Pay to the order of Wm. G. Ahrens \$2000.00 10
Two thousand & No /100 Dollars

No.

Mrs. MARY KELLY

Certified Apr. 7, 1914. Federal Trust Co.
Newark, N. J. (Teller's sig. illegible.)

(Perforated stamp.)

(Endorsed on back):

Wm. G. Ahrens 20
for Deposit only

Pay to the order of
any Bank or Trust Co.
Apr 9 1914
Commercial Trust Company
of New Jersey
William J. Field, Treas.
55-14

North Ward 30
Sixth Nat'l Bank

Newark, N. J.
Apr 9 1914

*Exhibits.***Exhibit D10 1-2.**

FEDERAL TRUST COMPANY 55-14
747 Broad Street.

Newark, N. J., Sept. 15, 1913.

10 Pay to the order of Wm. G. Ahrens \$300.00
Three hundred 00/100 Dollars

No.

Mrs. MARY KELLY

(Perforated stamp.)

(Endorsed on back):

Wm. G. Ahrens
for Deposit only

20

Pay to the order
of any Bank
Endorsements Guaranteed
38 Sept 16
National Newark Banking Co.
Newark, N. J.

Exhibit D11 1-2.

FEDERAL TRUST COMPANY 55-14
747 Broad Street.

30

Newark, N. J., March 13, 1914.

Pay to the order of William G. Ahrens \$300.00
Three hundred 00/100 Dollars

No.

Mrs. MARY KELLY

40

Exhibits.

(Perforated stamp.)
 (Endorsed on back):

William G. Ahrens

Wm. G. Ahrens

Pay to the order of
 any Bank or Trust Co.

Mar 16 1914

Commercial Trust Company
 55-41 of New Jersey 55-41

William J. Field, Treas.

(Other rubber stamp illegible.)

10

Exhibit D13 1-2.

FEDERAL TRUST COMPANY 55-14
 747 Broad Street.

Newark, N. J., March 8, 1916.

Pay to the order of A. M. Ahrens \$240.00
 Two hundred & Forty 00/100 Dollars

No.

Mrs. MARY KELLY

(Perforated stamp.)
 (Endorsed on back):

A. M. Ahrens

Pay to the order
 of any Bank

Endorsements Guaranteed

52 Mar 10

National Newark Banking Co.
 Newark, N. J.

(Other rubber stamp illegible.)

30

40

*Exhibits.***Exhibit D15.**

Letterhead of
ROE, RUNYON & AUTENRIETH

October 20, 1915.

10 Mrs. Mary Kelly,
84 South Street,
Newark, N. J.

Dear Madam:—

The owner of the second mortgage on your property at the corner of Bostwick and Bergen Avenues, desires the mortgage paid off on November 1st.

Yours very truly,
ROE, RUNYON & AUTENRIETH.

20 J/G

Exhibit D16.

Jersey City, N. J.
March 14, 1914.

Mrs M. Kelly
84 South St
Newark, N. J.

30 Dear Madam

Yesterday when you paid your Interest on Bond and Mortgage you did not say anything about the payment of the Mortgage that was due on March 7 I can use the money or part of it next month so when in Jersey City before Apl 1 call in regard to it

Yours res

WM. G. AHRENS

40

*Exhibits.***Exhibit D1, February 6th, 1917.**

NEW JERSEY TITLE GUARANTEE CO.

		PATRICK J. KANE		
		DR.	CR.	BALANCE
1912				10
Nov.	26		5,900.	
	26	205.		
	26	ctfd. 1,000.		
	26	ctfd. 286.		4,409.
	27	500.		
	27	791.		
	27	ctfd. 335.		2,783.
	29	15.		
	29	ctfd. 200.		2,568.
	30	10.		20
	30	500.		
	30	1,140.		918.
Dec.	2	57.		861.
	3	57.35		803.65
	4	64.		739.65
	5	20.		719.65
	6	89.87		629.78
	7	24.		605.78
	9	240.		365.78
	10	13.15		30
	10	10		342.63
	11	100.		242.63
	12	50.		192.63
	13	300.	1,500.	1,392.63
	14	200.		1,192.63
	16	45.		
	16	200.		947.63
	17	100.		847.63
	20	10.		
	20	30.		807.63
				40

Exhibits.

PATRICK J. KANE

		DR.	CR.	BALANCE
	21	60.		747.63
	23	300.		
10	23	15.		432.63
	24	25.		407.63
	26	50.		357.63
	27	85.	2,000.	2,272.63
	28	15.		2,257.63
	30	100.		
	30	800.		1,357.63
	31	15.		
	31	300.		1,042.63
	31 Int.		131.	1,043.94
	1913.			
20	Jan. 2	120.		923.94
	3	25.60		898.34
	4	120.		778.34
	6	56.		722.34
	7	46.		676.34
	8	410.		266.34
	9	15.		251.34
	10	10.	1,000.	
	10	25		1,216.34
	11	150.		1,066.34
30	13	225.		
	13	30.		811.34
	15	6.75		804.59
	16	25.		
	16	50.		729.59
	17	100.		629.59
	18	150.		479.59
	21	125.		
	21	50.		304.59
	25	81.75		222.84
40	27	135.		87.84
	28	10.		77.84
	31	100.	3,500.	3,477.84

Exhibits.

		PATRICK J. KANE		
		DR.	CR.	BALANCE
Feb.	1	60.		
	1	250.		3,167.84
	3	135.		
	3	2,165.		867.84
	4	200.		667.84
	5	4.93		662.91
	7	124.		538.91
	10	5.		
	10	25.		508.91
	11	150.		358.91
	13	110.		248.91
	14		1,500.	1,748.91
		1,748.91		
		<u>15,401.31</u>	<u>15,401.31</u>	
Feb.	14 Bal.		1,748.91	1,748.91
	17	245.		
	17	500.		
	17 cfd.	200.		803.91
	18	100.		703.91
	1913.			
Feb.	18	65.		638.91
	19	425.		213.91
	20	20.		193.91
	21	25.	2,000.	
	21 cfd.	500.		1,668.91
	25	295.		1,373.91
	26	400.		
	26	78.78		895.13
	27	250.		645.13
	28 Int.		1.81	646.94

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Exhibits.

		PATRICK J. KANE		
		DR.	CR.	BALANCE
	Mch. 1	300.		346.94
	3	125.		
	3	10.		211.94
10	6	100.		111.94
	7	10.		101.94
	10 ctd.	700.	2,000.	
	10	50.		1,351.94
	11	770.		
	11	75.		506.94
	12	144.		
	12	25.		337.94
	14	150.	3,000.	3,187.94
	15	1,300.		1,887.94
20	17	770.		
	17	200.		917.94
	18	10.95		906.99
	19	550.		356.99
	22	275.	1,000.	1,081.99
	24	80.		1,001.99
	25	299.69		702.30
	26	30.		672.30
	27	270.		402.30
	29		500.	902.30
30	29	100.		802.30
	31	100.		702.30
	Apr. 1	350.		352.30
	2	130.		222.30
	3	100.		122.30
	7	100.	100.	122.30
	8	40.		
	8	50.		32.30
	12		500.	532.30
	Apr. 14	145.60		386.70
40	15	185.		201.70
	16	20.99		180.71
	17	45.		135.71

Exhibits.

		PATRICK J. KANE		
		DR.	CR.	BALANCE
	19	40.		95.71
	23	30.		65.71
	24	20		45.71
	26		1,000.	1,045.71
	28	80.		965.71
	28 cfd.	222.50		
	28	35.		708.21
	29	400.		308.21
	30	25.		283.21
May	1	24.		259.21
	2	10.		249.21
	5	10.		239.21
	6	85.		154.21
	7	30.		124.21
	10		650.	774.21
	12	25.		749.21
	14	80.		669.21
	15	8.35		660.86
	16	300.		360.86
	19	166.		194.86
	20	20.50		174.36
	21	100.	200.	274.36
	23 cfd.	112.		162.36
	26	25.		137.36
June	2	10.		127.36
	4	5.		122.36
	6	55.43		66.93
	14	5.		61.93
	16	5.		56.93
	23	5.		51.93
	24	5.		46.93
Sep.	13	2.		44.93
		44.93		
		<hr/>	<hr/>	
		12,700.72	12,700.72	40

Exhibits.

		PATRICK J. KANE		
		DR.	CR.	BALANCE
1914.				
	Dec. 9 Bal.		44.93	44.93
	26	10.		34.93
10	28	10.		24.93
1915.				
	Jan. 2	10.		14.93
	5	5.		9.93
	9	5.		4.93
	23	4.		.93

Jersey City, N. J., February 6, 1917.

I hereby certify that the within is a true transcript of the account of Patrick J. Kane as it appears on the books of THE N. J. TITLE GUARANTEE & TRUST CO. from November 26, 1912, to January 23, 1915.

THE N. J. TITLE GUARANTEE & TRUST CO.

ANDREW C. GREENE,
Treasurer.

[958]

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40

New Jersey Court of Errors and Appeals

Between

AUGUSTA M. AHRENS,
Complainant-Appellant,

and

MARY KELLY, *et al.*,
Defendants-Respondents.

On Appeal
from Chancery.

BRIEF FOR COMPLAINANT-APPELLANT.

Statement of Case.

The bill seeks to foreclose a mortgage for \$10,000 with interest at 6%, payable semi-annually, made by Patrick J. Kane and wife to William G. Ahrens, bearing date March 7, 1913, on premises at Jersey City, consisting of a large apartment house. The bond accompanying the mortgage was signed by both Patrick J. Kane and his mother, Mary Kelly. The latter is the present owner. The mortgage by its terms became due March 7, 1914 and contained the usual interest, tax and insurance clauses.

On May 21, 1913, Patrick J. Kane and wife, conveyed the premises to his mother, the defendant, Mary Kelly, in fee, *expressly subject to the mortgages then upon said premises*, being the mortgage now under foreclosure, payment thereof being *expressly assumed* by Mary

Kelly, the present owner; said mortgage was subject to a first mortgage of \$23,000 held by the New Jersey Title Guarantee & Trust Company, which was subsequently reduced to \$22,000.

On April 7, 1914, the present owner, defendant Mary Kelly paid the then mortgagee, William G. Ahrens, \$2,000 on account of the principal of his mortgage, reducing it to \$8,000. On September 14, 1914, William G. Ahrens assigned said bond and mortgage to Rita B. Smith, as an intermediary for Augusta M. Ahrens, and on the same day the said Rita B. Smith gave Mary Kelly an extension agreement extending the mortgage to September 14, 1915. Rita B. Smith thereupon assigned said mortgage to Augusta M. Ahrens, the complainant.

Complainant claims there to be due thereon the sum of \$8,000, with interest from March 7, 1916.

Defendants admit the making of the bond and mortgage for \$10,000, but assert they received thereon but \$8,000. Furthermore, by way of counterclaim, defendants assert that the said transaction was that on March 7, 1913, William G. Ahrens agreed to loan Patrick J. Kane \$8,000 and demanded and received therefor the above mentioned \$10,000 mortgage (which defendants assert as usurious), from Patrick J. Kane and the sum of \$500 for an extension of said mortgage, defendants claiming that such latter payment should be credited on the principal.

The Vice-Chancellor found that William G. Ahrens exacted a usurious charge of \$2,000 at the making of said mortgage which was directed to be deducted from the principal, and further that said sum of \$500 was paid for an extension, which was also directed to be credited on the

mortgage; the amount due complainant was ascertained by the decree to be \$5,500, together with interest of \$455.84, making a total of \$5,955.84.

Complainant appeals from the whole of said decree.

Complainant's Testimony.

Complainant's testimony shows that Patrick J. Kane, the mortgagor, was introduced to William G. Ahrens, the original mortgagee, by Dr. Albanesius (p. 34) for the purpose of obtaining a second mortgage on the premises then under construction; that Ahrens made an inspection of the premises in the presence of Kane and Albanesius and considered the property safe for a loan of \$10,000 (p. 165); that Kane delivered the bond and mortgage and Title Guarantee & Trust Company search to Ahrens at the latter's home, 115 Fairview Avenue; that then, at the request of Kane, Ahrens (who had no lawyers in this transaction) made out three checks (pp. 188, 189) to the order of Kane for \$500, \$2,000 and \$1,500, respectively, the checks being delivered by Ahrens to Kane at Ahrens home (pp. 35, 36). Dr. Albanesius was not present during this transaction. These three checks were all delivered to and endorsed by Kane, and two of them—the one for \$500 and the one for \$1,500—bear the endorsement of Dr. Albanesius following that of Kane.

The witness, Dr. Albanesius, substantiates the testimony that Mr. Ahrens was not present at the home of Albanesius on March 8th, when Kane delivered to the latter the above two Ahrens' checks for \$1,500 and \$500, which he, Kane, had received alone at Ahrens' home.

The mortgage money was advanced to the then mortgagor in nine checks, covering period from

March 8, 1913, to April 26, 1913, aggregating \$10,000 (pp. 188-193).

Ahrens and Albanesius both testified that Ahrens, the mortgagee, never received any of the sum of \$2,000 in question represented by the above two checks (pp. 94, l. 32, 98, l. 10, 174, l. 20) *and there is no testimony in the case showing he did.*

Dr. Albanesius testifies that the above two checks for \$500 and \$1,500, respectively, which were endorsed and delivered over to him by Kane, were given him by Kane at his house without Ahrens' knowledge, in payment of his (Albanesius') brokerage fees of \$500 in that transaction, and that the \$1,500 represented an old indebtedness of Kane to himself for which he held Kane's old note of February 4, 1913 (p. 200). He states that at the time Kane gave him this \$1,500 check, Kane's old note was at his office some distance away, in a safe (p. 105) and that he had forgotten to deliver it up, and only located it when the defendant, Kane, on December 12, 1916, caused to be served upon him, Albanesius, a complaint in an action in the New Jersey Supreme Court for the recovery of \$2,000 (see Exhibit, p. 197) *alleged by Kane therein to have been exacted by Albanesius on March 7, 1913, for procuring a loan of \$10,000* (p. 198).

This was the identical \$2,000 claimed by Kane in this suit to be a usurious payment to Ahrens, while Kane in his other suit against Albanesius was asserting it to be illegal brokerage paid to Albanesius.

Dr. Albanesius was not an interested party and testifies in this chancery proceeding *directly against his own interest* in Kane's other suit then pending against him.

The \$500 paid by the defendant Mary Kelly was paid to William G. Ahrens in pursuance of her letter of September 12, 1914 (pp. 28-194).

Defendant's Testimony.

Defendant's evidence consists only of the testimony of Patrick J. Kane and Mary Kelly, one, the original mortgagor, and the other, the present owner of the property, being mother and son, *both highly interested witnesses.*

Kane, on direct examination (p. 51) in reciting how he got the mortgage, says: "I went down to Dr. Albanesius' house and asked Albanesius if he had any money that he wanted to put on second mortgage; the doctor said 'No,' that he had none but that he had a friend of his that he thought he could get it from; that Ahrens was not present thereat." That he, Kane, did not meet Ahrens until the 8th of March, 1913, when he went to the home of Dr. Albanesius, and that when he got there, the three checks were already on the table and, curiously enough, as Dr. Albanesius was explaining to him, as he says, that he had to be paid for his trouble, Mr. Ahrens at that moment, *for the first time*, appeared on the scene (p. 52, l. 32; p. 53, l. 60). He does not even allege that Ahrens heard the conversation, at best, he leaves it as a mere inference. He said (pp. 60, 62) that Albanesius was the first person he went to ask about a loan. He executed the bond and mortgage to Ahrens on March 7, 1913, and received the three checks on account of his loan the following day, and yet he states (p. 57, l. 25) that he did not know Ahrens was giving him the loan. He says he never went to Ahrens' house, but that he was at Albanesius' house on three occasions, the first time to see him about the loan (p. 62, l. 30), the second

time to see if he was going to give it to him, and the third time to get the check. He says he handed the report of title (p. 63, ll. 10-22) to Dr. Albanesius, but will not swear that he did not hand it to Ahrens at the latter's home.

Kane first denies that Ahrens ever looked at the building for the purpose of a loan, but later says he saw him at the building about two weeks after the transaction of March 8th. He testifies (p. 65-67) that his mother now owns the property and he has no interest in it, although he had previously stated she had (p. 56) by stating that there is an understanding between him and his mother that the property would be re-conveyed to him by her upon payment of a certain indebtedness, although he states (p. 66) he has no records or idea of his indebtedness to his mother.

Kane also states, on his direct examination, *that Albanesius had no note of his* (p. 60) and nowhere in his first testimony does he refer to the note of \$1,500 in evidence.

Thereafter the note was actually produced by Albanesius, and then, *for the first time, after he had been off the stand for recess*, Kane admitted the note and tried to explain it away (p. 60, l. 29), yet Kane testified, "Q. He [Albanesius] had your note, didn't he? A. [Kane] No, sir."

It was not until Mary Kelly (p. 74) claimed that she took over the property as security for the indebtedness of her son, Kane, that Kane, *upon being recalled*, takes a like position, although he later contradicts it by stating that he had no further interest in the property, and that there was no understanding (p. 66).

The testimony of Mary Kelly (who had expressly assumed the mortgage) deals principally (pp. 67, 79) with the payment of \$500 made in pursuance of her letter to Mr. Ahrens of Sep-

tember 12, 1914. She admits that the mortgage was due at this time and that she was making all efforts to prevent foreclosure; that she paid interest respectively to Rita B. Smith and Augusta M. Ahrens thereafter, and the last interest payment was admittedly made to Augusta M. Ahrens, as shown by check dated March 8, 1916 (p. 209), which shows that she was familiar with the assignments; and this, taken with her letter to Mr. Ahrens, hereinbefore referred to, and her acting in pursuance of the arrangement therein made by making the payment of \$500, and thereafter paying the interest to Miss Smith and Miss Ahrens, indicated that she was not misled and that her letter of September 12, 1914 (p. 194) truly sets forth the arrangements she entered into.

Miss Smith was admittedly a disinterested person in the matter and simply acted in the premises for Augusta M. Ahrens. *There is no evidence to the contrary.*

Argument on Facts.

There is *not a scintilla of evidence in the case* that William G. Ahrens *directly or indirectly* received a penny of the two checks of March 8, 1913, representing the first payment of \$2,000 on the mortgage, being the money adjudicated to be usurious.

Kane does not even allege it, *except by mere inference*; the checks themselves show the contrary, and the nearest manner that Kane traced even the *mere suspicion* that Ahrens got the \$1,500 check is his testimony, contradicted by Ahrens and Albanesius, that the two checks of \$1,500 and \$500 were lying on the table in Albanesius' house (p. 58), and that Mr. Ahrens came in while Kane was endorsing the checks. He does not even claim that Ahrens heard the

conversation. Kane merely claims that when he left, the checks were still on the table, leaving the *possible inference only* that Ahrens afterwards got the money.

This testimony of Kane that Ahrens was present at Albanesius' house on this occasion is wholly denied by both Ahrens and Albanesius, and the fact that Kane deliberately testifies that he did not know who was loaning the money (p. 57), *although he had the day previous, March 7th*, signed the bond and mortgage and acknowledged the same before a Master in Chancery and received the bond and mortgage into his possession, and his repeated contradictions and evasions, makes it plain that his whole scheme was to show Albanesius as the principal to sustain his claim for usury.

The Court, on Kane's direct testimony, page 57, line 1, remarks that "he [Albanesius] seems to have acted for Mr. Kane, so far."

Kane will not even admit the things that, in the ordinary course of such a transaction, would have happened, such as, that the mortgagee (especially in view of the fact that it was a second mortgage) made an inspection of the premises.

Yet Kane does not deny (p. 63, l. 20) that he did not hand Ahrens the report of title at the latter's house and at other times says he was not at Ahrens' house.

Kane's entire testimony is contradictory and evasive, and after every recess he comes back with a new version or explanation. Such *interested* testimony is surely not such testimony as would warrant the Court to disregard *all the other evidence in the case*, especially evidence given *against interest*.

In order to accept Kane's mere uncorroborated suspicion that Ahrens may have received the \$2,000 (*and there is nothing more in the case*), it is first necessary to wholly disregard as untrue the testimony of both Dr. Albanesi and Mr. Ahrens. On the other hand, such mere inference, showing a possibility that something happened which is not proven, comes from an interested party; while Dr. Albanesi testified directly against his own interest.

The matter of the making of the first payment of \$4,000, by three separate checks is testified to by Ahrens to have been at his, Ahrens's, house, at the request of Kane. There is nothing suspicious in Ahrens (who was not represented by counsel) doing this, and it may be pointed out in this connection that the improbability of Kane's contradictory stories being true can be further deduced from the fact that Kane says he went direct to Albanesi's house on the morning of March 8th and that the checks were already on the table when he got there, and that he gave the mortgage papers to Albanesi, and that it was not until after the checks were being endorsed by Kane and in his possession that he claims Ahrens entered the house.

It is improbable that Ahrens would have made out and signed these checks to Kane's order before at least receiving the bond and mortgage, and Kane, in his story of the entire alleged transaction of March 8th, states nowhere that the bond and mortgage, or any of the papers, were handed to Mr. Ahrens at Albanesi's house at any time while Kane was there, his testimony being that he left the \$1,500 and \$500 checks and took the \$2,000 one and deposited it in his account. It would be very improbable, indeed, for a mortgagee, under any circumstance, to pay out money

without having the evidence of the security in the form of a bond and mortgage, executed, in his possession; and this corroborates Ahrens and Albanesi that what did happen is that Kane came to Ahrens' house with the bond and mortgage and report of title and there received the first payment on the mortgage, Albanesi not even being present.

Check No. 164, dated April 12, 1913 (p. 193, l. 10), from Ahrens to Kane and bearing the latter's endorsement, shows (on the side) the amount paid to that date to be \$9,000.

Check No. 165 (p. 194), dated April 26, 1913, for \$1,000 (being the last payment on the \$10,000 loan) made by William G. Ahrens to Patrick J. Kane, bears the endorsement, *Balance of Mortgage,*

Patrick J. Kane,

showing that Kane acknowledged having received from Ahrens the full sum of \$10,000 for which the mortgage in question was given.

Argument of Law.

"A mortgagee who has no knowledge of or connection with a bargain between his agent and the mortgagor, whereby the latter agrees to pay the agent a bonus for the loan on the mortgage, which the mortgagor testifies he paid to the agent out of the loan, is not chargeable therewith."

Nichols v. Osborn, 41 N. J. Eq., page 92.

"Usurious brokerage taken by a third person, whether an agent of the mortgagee or not, if taken without his knowledge or consent, will not taint the mortgage."

"The payment of illegal brokerage to an agent for effecting a loan, *where no part of it is received by the mortgagee*, cannot taint the loan with usury. The burden of proof is on the party setting up the defense of usury. *He must establish the facts neces-*

sary to constitute it beyond reasonable doubt, and by a clear preponderance of testimony."
Conover v. Van Mater, 18 N. J. Eq., 481.

The Vice-Chancellor in deciding the case lays great stress on the fact that Mr. Ahrens and Mr. Albanesius were friendly and called each other "Doc" and "Bill," and that they had several financial transactions together, and that at the time of the hearing Ahrens was renting and living in a house belonging to Albanesius and that Ahrens held a mortgage on Albanesius' property (the last-mentioned mortgage is a second mortgage).

N. J. Patent Tanning Co. v. Turner, 14 N. J. Eq., 326, says:

"When usury is relied on as a defense to a mortgage, it is not enough that the relation of the witnesses to each other, and the circumstances sworn to by them, render it highly probable that the transaction was usurious. *The usury must be proven, not left to conjecture.*"

"*To establish the evidence of usury on the foreclosure of a mortgage, the fact that the usurious excess was received by the mortgagee must be proven.*" *Spring v. Reid*, 28 N. J. Eq., 345.

"When usury is set up as a defense, the burden of proof is upon the defendant, and he must clearly establish the facts necessary to sustain the defense by the decided preponderance of evidence. *An usurious bargain must be proven and not left to conjecture.*" *Berdan v. Trustees, etc.*, 47 N. J. Eq., 8; *aff'd* 48 N. J. Eq., 309.

The Court, in its findings, disregards entirely the testimony of Ahrens and Albanesius in the matter, and takes as true the unsupported testimony of Kane, forgetting that Kane is an *in-*

interested party and might be held for deficiency on his bond, and that he had an interest both as a son of the present owner of the property and the obligee on the bond to testify as he did.

The Court also lays stress on the fact that Mr. Ahrens *must have seen* the endorsements of Mr. Albanesius on the two checks when they were returned to him from the bank, although there is no such evidence and Ahrens testifies he did not (p. 169, ll. 25-37). The Court considers this aspect to be strongly against the complainant, when the fact is that knowledge thereof is in no wise connected up with Ahrens.

Ahrens was under no obligation to see how this mortgage loan was disbursed by the defendant Kane after he had paid Kane the money.

“To establish the defense of usury, the proof must be clear and cogent. Probabilities will not be accepted, nor can recourse be had to conjecture to aid the defense.”

Hanniss v. Hank, 24 Eq., 124.

“While it is the duty of the Court to maintain the law against usury and carefully to prevent its evasion, it will not enforce severe penalties without evidence entirely satisfactory and free from doubt.

“Where usury is set up as a defense to the foreclosure of a mortgage, it must be satisfactorily proven by a clear preponderance of evidence in its favor. *If the defendant swears to it himself, and the plaintiff denies it by his evidence, in the absence of other proof, there is no preponderance of evidence in defendant's favor, and usury is not proved.*”

Barcalow v. Sanderson, 17 N. J. Eq. (Ct. E. & A.), 460.

The Court also concludes that Ahrens must, by his connection with the \$500 transaction, in

which Mrs. Kelly was concerned, have committed usury at the inception of the mortgage.

“No subsequent taking, or agreement to take illegal interest, will invalidate a bond or other security originally free from corruption.”

Sloan v. Sommers, 14 N. J. L., 510;

Donnington v. Meeker, 11 N. J. Eq., p. 388;

Terhune v. Taylor, 27 Eq., 80.

Mr. Kane could very well have left the whole transaction in Dr. Albanesius' hands for the purpose of obtaining the loan and concluding the matter, but this did not make the latter the agent for Ahrens, but merely the agent for Kane, who had agreed to pay him commissions.

There is nothing in the evidence from which a conclusion can be reached, either of fact or law, that Albanesius was the agent of anyone but Kane.

Still, as another illustration that Kane did not testify truthfully, we refer to his summons and complaint in an action started the day before the hearing below (p. 112, l. 20; p. 198), *in which Kane sues Dr. Albanesius for exacting from him, Kane, on March 7, 1913, the same \$2,000 which he there says was for procuring the loan of \$10,000, and in this suit he claims it went to Ahrens as usury.*

Apparently the plain purpose of Kane's said lawsuit, on the eve of the giving of the testimony below, was to force Dr. Albanesius, under penalty of a personal judgment against him, to testify below that Ahrens, and not he (Albanesius), had received the \$2,000 out of the original payment, and thus relieve himself of liability. But in the face of this lawsuit and the allurements it might

offer Albanesi (were he untruthful) to be relieved of the lawsuit and liability by testifying that it was not he but Ahrens who received the \$2,000 out of the first payment, Dr. Albanesi testified directly against his own interest and verified Ahrens's testimony.

The conveyance by Kane to Kelly of the mortgaged premises (p. 200) was made expressly subject to complainant's mortgage, the deed stating:

"It being the intention of the party of the first part [Kane] to convey the said land together with the buildings thereon subject to a first and second mortgage now on said property which the party of the second part assumes."

Lee v. Stiger, 30 N. J. Eq., 310, says:

"A purchaser of an equity of redemption in lands covered by a usurious mortgage who purchases subject to the lien of the mortgage, will not be allowed to set up usury against such mortgage."

"1. A mortgage, free from usury in the hands of the mortgagee, is not rendered usurious by the payment of a premium to his assignee, to induce him to purchase it.

"2. *But even if the mortgage were usurious, a purchaser of the mortgaged premises, who has taken a conveyance from the mortgagor, expressly subject thereto, cannot set up usury as a defense to a suit on the mortgage.*

"3. *The purchaser of a mere equity of redemption in premises covered by a usurious mortgage, who buys subject to the lien of such mortgage, cannot set up usury as a defense to the encumbrance.*"

Conover v. Hobart, 24 N. J. Eq., page 120.

Therefore, under the decisions, defendant Kelly has no right to defend on that ground, she having taken the conveyance subject to the mortgage of complainant.

Under *Kase v. Bennett*, 54 N. J. Eq., 97 (Emory, V. C.) defendants must allege and prove that the bond was made in pursuance of a contract for the loan of money, *with corrupt intent to evade the statutes against usury*.

Defendants have neither alleged nor proved any such agreement with Ahrens, nor have they shown that Ahrens received any illegal premium or bonus from the \$10,000 loan from which even a *prima facie* intent to evade the statute could be inferred.

The Vice-Chancellor is mistaken in his interpretation of the testimony when he says (p. 14, l. 14):

“He [Kane] says that Ahrens had already told him he would have to pay a bonus of \$2,000 to get \$10,000.”

Kane's testimony on this point (denied by Ahrens and Dr. Albanesius) is (p. 58, l. 15):

“The doctor said he would have to give Mr. Ahrens some.

“Q. Was Mr. Ahrens there on this occasion to which you are testifying; was Mr. Ahrens there? A. Mr. Ahrens came in when I was endorsing the checks over.

“Q. What was said about this \$1,500 check and the \$500 check? A. They said they would have to have some money for having made this loan.

“Q. Who said that? A. The doctor said that.

“Q. Did Mr. Ahrens say anything? A. Mr. Ahrens was standing there” (p. 59, ll. 15-20).

“Q. Had there been any conversations between you and Dr. Albanesius respecting

what you would have to pay for the \$10,000 previous to that date? A. Yes, sir.

"Q. What was that conversation? A. That conversation was that it would cost me about \$2,000, for that loan of this money" (p. 59. l. 2).

"Q. Who said it was a bonus? A. Dr. Albanesi." "

The above is the only evidence connecting Ahrens with knowledge of the alleged bonus and it is contradicted by everything else in the case.

The burden of proof is with defendant.

We find nowhere in Kane's testimony that Ahrens said anything about a bonus or fee.

"Usury will not be inferred when the opposite conclusion can be reasonably and fairly arrived at.

"To sustain such a defense it must be shown that there was a usurious agreement."

Gillette v. Ballard, 25 N. J. Eq., 491; aff'd 27 N. J. Eq., 489.

In the case referred to in the Vice-Chancellor's opinion, to wit, Borchering v. Trefz, 40 N. J. Eq., page 502, usury was paid to a son of the mortgagee. This son concededly was the agent of the mortgagor and not of the mortgagee. In that case, it was part of the mortgagee's contract, through his agent, that usury should be paid. Of course, such was usury.

In the present case, defendant only claims that the original contract was made with Albanesi, as the mortgagor's agent, and all arrangements were made before Ahrens was brought in. Furthermore, there is not a word of testimony except as above, to show that Ahrens knew of the \$2,000 transaction, and two witnesses (and one directly against his own interest), expressly say

he did not. Even defendant does not show that he did.

If Kane's testimony, as against two witnesses to the contrary is to be believed, the mere fact that Ahrens came into the same room after the transaction was closed, and certain checks were on a desk, certainly does not prove knowledge. Against this is Ahrens's and Albanesius' positive denial, and the fact of Kane's pending suit against Albanesius expressly for the brokerage alleged to be paid to him, contradicting his claim in this suit.

The court urged that the endorsement by Albanesius on two checks might have come to Ahrens's attention. Certainly such mere inference, against positive denials cannot be construed to carry defendants' responsibility of the burden of proof.

We submit that the decree of the Court of Chancery should be reversed, and that it should be decreed that the complainant is entitled to the full balance due on her mortgage, to wit, \$8,000, together with interest and costs.

Respectfully submitted,

RUNYON & AUTENRIETH,
Solicitors of Complainant-Appellant.

HENRY W. RUNYON,
Of Counsel with Appellant.

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NEW JERSEY
Court of Errors and Appeals.

BETWEEN

AUGUSTA M. AHRENS,
Complainant-Appellant,

and

MARY KELLY et als,
Defendants-Respondents.

On Bill, &c.

Brief for Defendants-Respondents.

This is an ideal usury case.

From the start to the finish the conduct of the lenders demonstrates their high mastery of the art of making money work at its greatest efficiency.

The finesse exhibited by Ahrens in handling a second mortgage proposition is of such an unusual degree that we but do him justice in saying that it reaches the dignity of *res ipsa loquitur*.

It is not necessary to garnish the story told by complainant's witnesses; but no adequate idea is given in the expurgated edition in her brief

Complainants' case is supported by the testimony of three witnesses, all of whom, it is urged, are disinterested.

It is well, therefore, to become acquainted with these disinterested witnesses upon whose truth complainant stakes her case.

Albaesius and Ahrens were neighbors and friends and had been for years; they called each other "Doc" and "Bill" and had had other financial transactions together.

At the time of the hearing, Ahrens was renting and living in Albanesius' house and held a \$40,000 mortgage on Albanesius' property.

Albanesius introduced Kane, the borrower, to Ahrens, the lender. Disinterested Doctor Albanesius admits he got \$500 brokerage for procuring the loan of \$10,000 for one year. The Usury act allows but one-half of one per cent., or \$50. This disinterested witness exacted ten times the legal brokerage.

Ahrens, the other disinterested gentleman, while denying that he participated in the \$2,000 first fruits of the loan, admits that when the mortgage came due, he got \$400 as a bonus for extending it.

The other disinterested witness is Miss Smith (brief, p. 9, middle). We admit right here on the record that she was both disinterested and tolerably truthful. Her testimony covers thirteen pages (80 to 92, inclusive). Where she fails to answer, "I don't remember," she almost invariably says, "I don't know." In sheer desperation counsel asked (p. 87, bottom):

Q. Who instructed you to answer every question, "I don't know anything about it?"

In response to a question by the Court (p. 91, l. 17), she said, "I don't know what to answer to that." This disinterested witness was called by the defendant.

Kane was building an apartment house, on which he had procured a first mortgage of \$23,000; he needed a great deal more to finish the work.

Through the intercession of Albanesius, Kane procured a second mortgage loan from Ahrens. The bond and mortgage were drawn up for \$10,000, but Kane only got \$8,000.

The way they had of doing this is well understood in Hudson County. The first payment on the mortgage was to be \$4,000. Instead of passing over to Kane a check for that amount, Ahrens drew three checks, one for \$2,000 which was endorsed and deposited by Kane in his bank account. Two other checks for \$500 and \$1,500, were endorsed by Kane, and left lying on the table, in the presence of both Ahrens and Albanesi. Albanesi admits that the \$500 was received by him for brokerage. He had already told Kane that the second mortgage loan would cost him \$2,000 (Kane, p. 59, l. 20).

Albanesi drew up a demand promissory note, dating it Feb. 4th, 1913, and said "Kane, you will have to sign this note, because *we* will have to have something to cover this up, if anything happens. That is the way *we* have of doing it" (p. 150, l. 25).

The only real dispute in the case concerns this \$1,500. After we have traced the history of the existence of the mortgage, this \$1,500 transaction will be dealt with more fully.

The mortgage was made for \$10,000 to run one year. It encumbered an unfinished building, on which there was a prior mortgage of \$23,600. In fact the money was borrowed with the view of using it in the completion of the building, and Ahrens paid over the balance of \$6,000, after the first payment, in six separate payments running from March 8th. to April 26th, 1913. Ahrens was careful in these payments and endorsed on the last check (Ex. C, p. 193, bottom), the words, "balance of mortgage."

Did Ahrens lend his gold on the thin security of a second mortgage, on an unfinished apartment

house, to a stranger who was pressed for money and without financial standing, merely as an investment to obtain the legal rate of interest? We shall see.

Was Ahrens anxious about his mortgage? Yes, and watchful, too.

The mortgage ran only one year. It was a good deal of trouble to take for legal interest, and not a little risky.

The first thing a lender of this kind of security does is to make certain of getting his interest during the term, and then ask for a reduction of the principal. It is absolutely essential for him to play safe.

What does Ahrens do?

His mortgage fell due March 7th, 1914. Kane was unable to complete the building with the money he got from Ahrens, and had borrowed from his aged mother all he could get from her, and finally had to convey the property to her as security for her money.

Mrs. Kelly went to Ahren's house on March 13th, 1914, six days after the due date of the mortgage, and paid the interest, which fell due on the 7th, Ahrens took it and said nothing about the mortgage being due. But the very next day he wrote this artful epistle to Mrs. Kelly:

"Yesterday, when you paid your interest on the bond and mortgage, you did not say anything about the payment of the mortgage that was due March 7th. I can use the money, or part of it, next month, so when in Jersey City before April 1st call in regard to it" (Ex. D 16).

Could anything be more characteristic, or make

one more certain of what was in Ahren's mind? How discreet he was to say nothing about the principal, until he got the interest!

He knew that Kane had been unable to carry the apartment and had borrowed the limit, and finally was compelled to turn the property over to his mother. At the very start, he had not fully believed in his security, for he had insisted upon Mrs. Kelly signing the bond. Mrs. Kelly, old and widowed, might also have to drop the property. Real estate values had been shrinking and apartments had become a drug on the market.

So Ahrens waited patiently for six days after the due date of the mortgage, took the interest and held his peace about the principal. No sooner had he banked the old woman's check than he wrote, "You did not say anything about payment of the mortgage." Neither did you, Mr. Ahrens, and you were thinking of it the very moment when you fingered the \$300 interest money.

At times it is necessary for your second mortgagor to be gentle about his principal, so he says, "I can use the money or part of it next month." A few months later, after he had received a substantial payment on account, his attitude was not so complainant. Then he "demanded" his principal.

To the second mortgagor behind a formidable first, part is very much better than none at all. It requires a certain skillful ease of approach to the subject, coupled with an air of inoffensiveness, to get the loan reduced.

Thus Ahrens began to shorten sail. As a result of his mild insistence, Mrs. Kelly raised \$2,000 and paid it to Ahrens on principal, on or about April 7th, 1914. The next interest was payable and paid in

September, 1914, five months after the reduction of the mortgage to a fairly safe margin. Now, Mrs. Kelly has such a large investment that she will pay to prevent foreclosure.

Does Ahrens take the interest and say nothing about the principal, and the next day write a gentle note suggesting the reduction of the loan, and hinting that he could use the money next month? No. He demands the entire principal (p. 67, line 36). "He told me that a friend of his would give me money on it, but he wanted his money, and I told him I could not pay it (Kelly, p. 68, line 8).

"Q. Did he say who his friend was? A. No, sir; I said I did not like to make any change because it would be costing me money all the time, and he said the friend would take Mr. and Mrs. Ahrens' word.

Q. For what? A. Not to make any search, don't you see? I did not want any search and he said that he would take their word" (Kelly, p. 68, line 15, et seq.).

So Ahrens got a friend—the disinterested Miss Smith—to take the mortgage and he got \$500 (he admits only \$400) for finding the friend

But this thing also had to be covered up. On a former occasion Albanesi had said, "we will have to have something to cover this up if anything happens. That is the way we have of doing it" (supra).

A situation had again arisen where they had to have something to cover this up if anything happens—so they had Mrs. Kelly sign a letter this time.

The untutored Mrs. Kelly, who can't see to read "because she has left her glasses home," phrases amazingly like a law student. "I have been unable

to make provision to pay off the second mortgage;" "glad if you would see if you could not get some one to take it over and save me the costs of foreclosure, brokerage, etc.;" "secure a purchaser therefor;" "I agree to pay you the sum of \$400 as your commissions therefor, together with the purchaser's or new mortgagee's search fees to an amount of \$100" (Ex. C 6, p. 194). When asked about the letter Mrs. Kelly fell off in her literature by saying, "I don't know who did this, but I know it is my signature" (p. 45, line 15).

Ahrens had said that the friend was going to take "his word for the title," but it eventuated that Mrs. Kelly had to "see" Ahrens' lawyer to the extent of \$100 (p. 67, line 38).

This letter is dated Sept. 12. After two days diligent searching Ahrens found the friend who agreed to take an assignment of the mortgage. On the 14th Ahrens executed under his hand and seal a solemn agreement in writing (Ex. C, p. 186) by which "in consideration of the sum of \$8,000 lawful money of the United States to me in hand paid by Rita B. Smith, the receipt whereof is hereby acknowledged, have granted, bargained and sold, assigned, transferred and set over, &c.," the mortgage on Mrs. Kelly's house, and he covenants with Miss Smith that there is \$8,000 due with interest from Sept. 7th, 1914.

Miss Smith does not come to the appointed place, but on the same day executed a solemn extension of the mortgage for one year.

On the same day Mrs. Kelly parted with her check for \$500 (Ex. D 1, p. 201), of which Ahrens admits he received \$400.

Did Ahrens really find a friend in Miss Smith? Did he really assign this mortgage to his new-found

friend? He permitted her to hold herself out to Mrs. Kelly as the owner of the mortgage and to collect interest for a year, during the extension, but he never assigned the mortgage to her.

When, to accommodate her friend, this lady sat down and signed her name to the extension, she remained sitting to sign another solemn legal document, transferring the mortgage to Ahrens' sister Augusta, the present complainant, who has had \$2,000 invested in the mortgage from the beginning. The fluid ink ran uninterruptedly from her name on the extension to her name on the assignment to Ahrens' sister.

Miss Smith never had possession of the papers. She permitted herself to be used by Ahrens, so that he could squeeze another \$500 out of the loan.

Did Mr. Ahrens cause the assignment to friend Miss Smith to be recorded? He did and promptly. What did the business like Mr. Ahrens do with the re-assignment signed by Miss Smith?

He laid it carefully away in his safe, "in case anything should happen," unrecorded, but not unremembered, and it came to light for the first time when he offered it in evidence in a Court of Conscience as Ex. 3 for complainant.

By such means Mr. Ahrens enriched himself to the extent of \$500. By this deceit he exacted a bonus of \$500 from a poor woman.

If this old skinflint carried on his deception for a year to get \$500 of the widow's money, would he be willing to deceive this Court in order to keep it, or would he let his friend "Doc" keep all of the first ill-gotten gain?

Time flies to a second mortgagor, so a year slips by and Mrs. Kelly promptly and regularly pays her

interest to the dummy friend Miss Smith. In September, 1915, the year's extension is up. October comes and brings Mrs. Kelly more trouble in the shape of a letter demanding the principal once more. It says, "The owner of the second mortgage on your property at the corner of Bostwick and Bergen avenues, desires the mortgage paid off November 1st."

Let it be marked, "the owner," not Miss Smith, the friend, not even Augusta, the sister, but "the owner" desires the mortgage paid off in ten days.

To Mrs. Kelly the owner was Miss Smith. She goes straight to see if Miss Smith will not give her a little time. "I went to see her then and she said she would see her lawyer." I begged her then to leave it up for another year (p. 70, line 38).

Q. When did they begin to demand the money again? A. A year after.

Q. Then what did they want? A. Well, they wanted \$500 first. Mr. Johnson said he had got them down to \$400, that I would have to give security and I told him to ask how much they wanted (p. 69, line 30, etc.).

Q. For what? A. A bonus.

Q. When was this? A. This was when Miss Smith was through with it, when she was supposed to be selling it.

Q. How much was the amount of the bonus demanded? A. \$400 and security.

Q. And did you pay that? A. No, sir, I did not; I put up my house for sale. I tried to sell it to give it to them.

Q. Where did you get the \$500 that is in check Ex. D 1. A. I sold two lots that I had over in Elizabeth and I had a little over in the

bank; I sold them at half price to get the money (p. 70, top).

Q. When was the first time you ever saw Miss Smith? A. Not until they demanded the \$500; they wanted the money and the \$400 and security.

Q. Do you remember the time of the year when that was? A. She had it a year, and it was after that" (p. 70, line 33).

Mrs. Kelly sold her lots at half price to pay the first bonus of \$500 for which Ahrens induced his friend, Miss Smith, to take the mortgage for a year; "they" then demanded another \$500. Their lawyer "got them down to \$400" (p. 69, line 30). Mrs. Kelly tried to sell her house to get the money to pay this bonus but couldn't. Ahrens tried for another bonus, as did his friends and assistants but without avail. To use the words of the experts in another line, "It may be termed a reconnoissance in force for the purpose of developing the enemy's strength."

When it became apparent that the old woman simply could not put up any more money for another extension, Ahrens took immediate steps to put himself in a position to foreclose. On October 20th, his attorney notified Mrs. Kelly that "the owner" of the mortgage desired it paid off November 1st. In the intervening ten days she had tried to sell her house and had failed to raise the bonus. No time was lost by Ahrens. Mrs. Kelly received a letter dated October 30th, 1915, "I had to have some money and have sold the mortgage I held on your Bergen avenue and Bostwick avenue property to Miss A. M. Ahrens" (Ex. D 3, p. 203) Miss Smith wrote it. The *hand* was the hand of Rita Smith, but the voice was the voice of Ahrens.

Miss Smith swears time and again that she doesn't know anything about the mortgage at all. "I did it for Miss Ahrens. I was not interested in it; it was not my affair" (p. 90, bottom).

Mrs. Kelly then went to Miss Ahrens; "she asked me then if I would pay the interest every three months" and I said "well, I would just as soon."
* * * I was glad she was going to extend it, and that night Mr. Ahrens called me up on the telephone and told me I should come there again (Kelly, p. 72, bottom).

"Q. What did you say to him (Ahrens)? A. He demanded his money; he said he wanted money; he said he could make use of the money. I only was pleading with him to let it stand. One day I went there and I offered him half the money. * * * He called me up on the telephone again over to my house, and told me he wanted all his money" (Kelly, p. 73, line 10, et seq.).

What then did Mr. Ahrens do? Did he at once start foreclosure proceedings?

Oh, no. Interest had been accruing on his mortgage since September 7th, and Mr. Ahrens just dearly loves interest, legal interest. So he quietly waited a little longer until March 8th, when Mrs. Kelly paid six months interest by check, Ex. D 13½ (p. 209). By endorsement it appears that this check was deposited, and reached the National Newark Banking Co. on March 10th. It probably cleared in Ahren's bank the 11th. Ahren's attorneys needed the 12th to make a foreclosure search, and waited another day for the Trenton searches, prepared the bill to foreclose and mailed it on the 14th, and it was actually filed in Chancery on the

15th. *Vigilantibus non Dormientibus, &c.* No one ever caught Mr. Ahrens asleep. Even when he is asleep, he is conscious that interest is running.

Could Ahrens, even by design, make a clearer record? What has he omitted? From the moment he parted with the three checks, constituting the first payment to the day he filed the bill in his sister's name, he let slip no opportunity to make his money work at its highest efficiency. Can we wonder that he holds a \$40,000 mortgage on Albanesius? That alone in Hudson County is sufficient to stamp a man as a financier. For Albanesius is a man to be reckoned with. The owner of Alban Court, forsooth, who keeps from ten thousand to one hundred thousand dollars in bank (p. 102, line 33).

Who is Albanesius? To Ahrens he is "Doc." To Kane he is the exactor of ten times the legal rate of brokerage. To himself, he is the man who "wrote thousands and thousands and thousands of checks since 1913" (Albanesius, p. 110, line 15). To the Court, he is the man who has no books of account. "(By the Court). Did you bring your books to-day? A. I have no previous book" (p. 117, line 28). To the server of a subpoena duces tecum, he is the man who said, "I have no books, papers or anything else pertaining to this case" (Towbin, p. 106, line 30). To the borrower of money he is the man who said "that it would cost me about \$2,000 for the loan of this money" (Kane, p. 59, line 20,) and "Kane, you will have to sign this note, because we will have to have something to cover this thing up if anything happens. That is the way we have of doing it" (p. 150, line 25). And when something happened he produced the note. He destroyed all his previous records, but when he needed evidence that the \$1,500 was not a bonus he produced the note. Here's another you don't catch napping. He

says the note was paid by the \$1,500 check, but he kept the note and kept it so carefully that notwithstanding his thousands and thousands and thousands of checks he destroyed, the note pops up when useful to him. He is the man who lends \$500 cash right out of his pocket and takes no receipt or note. He is the man who keeps evidence that is useful and destroys the rest.

He is Albanesius.

The Court has to determine the only real controverted question of fact in the case. What became of the \$2,000 diverted from the building construction, which Albanesius says he pocketed?

Kane has sworn that he endorsed the two checks, for \$500 and \$1,500, and left them on the table in the presence of Albanesius and Ahrens.

The Trial Court saw the witnesses on the stand, heard their story completely and decided that Kane was telling the truth. Everybody admits that Albanesius got the checks and the only inquiry left is, was Ahrens in any way connected with the illegal brokerage paid, or the \$1,500 check for bonus?

Both of these checks were endorsed by Albanesius and his endorsement must have come to Kane's attention very shortly after the payment.

The loan was made to enable Kane to buy lumber and material and pay for labor in finishing the house. It was of great importance to the lender to see to it, not only that the building was finished, but that his money went into the building. His mortgage would only be good as against mechanics liens for the amount he could actually trace into the building.

All sorts of complications could arise to jeopardize Ahrens' security and, with the same prudence

that he showed throughout the life of the mortgage, he undoubtedly watched the \$2,00 to its final resting place in Albanesius' and his (Ahrens') bank account.

Why was the first payment split into three checks?

After hearing these disinterested gentlemen testify, can there be any doubt but that one was for "Doc" and one for "Bill."

The Vice-Chancellor, who later heard Ahrens admit that he got an unlawful \$400 through his deceit, had no question as to the correct answer.

Ahrens has reached the stage where he has lost every passion in life save avarice. His sole and engaging purpose throughout the entire transaction is stronger evidence of the fact of his knowledge and participation in the illegal bonus than Kane's sworn word.

That Albanesius is not reliable is shown by the fact that he was subpoenaed to produce all his books, papers, checks, etc., of every description pertaining to this transaction, and did not produce any, smoothly explaining to the Court that he did not know what the subpoena called for—that he had not read it.

Immediately defendant called the subpoena server Towbin (106, middle), who swore,

"I served a copy of this on Dr. Albanesius, he looked at it and said, "What is this?" and I said, "It is a subpoena duces tecum, to bring all the papers you have appertaining to this cause," and he said, "I have no books, papers or anything else appertaining to this case."

This testimony was not contradicted by Albanesi.

Later, when he found it advantageous to produce the Kane note, he had no difficulty in finding it.

The facts being thus established beyond a reasonable doubt, the application of the law is not difficult.

In the case of *Lowenthal v. Myer*, 75 N. J. Eq., 286, the testimony of the complainant was "squarely in the face of that of the defendant." In the opinion V. C. Leaming said that the complainant "conducted transactions in the names of other parties with the view of furtherance of his illegal purposes, and that Lowenthal's transactions in this hypothecation of the name of Taylor and others demonstrates that he was covering up transactions which it was apparent even to his mind would not stand the full light of investigation." The Court held that the transaction was usurious.

The case of *Clarke v. Public Service*, 86 N. J. Eq., 144. It was held that if a witness falsifies in any respect, the jury had a right to believe that he is falsifying in all other respects, following the maxim, "Falsus in uno, falsus in omnibus."

And again in *Earl v. The Norfolk and New Brunswick Hosiery Co.*, 36 N. J. Eq., 188, V. C. Van Fleet said "That a witness is not entitled to credit whose testimony is inconsistent with the common principles by which the conduct of mankind is naturally governed." In *Boyd v. Englebrecht* (*Court of Errors*, 1883), 36 N. J. Eq., 612, the mortgagor claimed that Boyd took \$320 as a bonus or premium for a loan. Boyd, who was a lawyer, claimed that the amount of \$54.90 was deducted for interest and \$255 for services. Chancellor Runyon stated in his opinion in the Court below, "That the mortgagor's

testimony was not corroborated in any way, nor indeed, was that of the complainant." The Court of Errors through Dixon, J., said (page 616), "He (complainant) says that the defendant paid him this compensation without objection as a 'fair professional fee.' We are not able to believe this assertion. We think it manifest that what he received or retained, he got as a usurious bonus for a loan." In this case it was the unsupported testimony of the defendant against the unsupported word of the complainant, and our highest Court determined the matter on the probabilities of the case. It is seen from the above cases that notwithstanding the rule with respect to the quantum of proof necessary to support the defense of usury that where the Court rejects the testimony of one witness as unbelievable, the case may be supported by the testimony of the defendant.

The loan was usurious even if Ahrens did not receive any of the \$2,000 taken by Albanesi.

In *Phenning v. Scholer*, 43 N. J. Eq., 16, the defense was usury. The mortgage was for \$1,650, but the mortgagee received only \$1,473. Of the difference \$27 was kept for preparing papers, etc. Chancellor McGill said: "The question disputed in the case is whether the complainant retained the additional \$150 kept from Mrs. Scholer or knowingly allowed it to be retained by Heerbrandt. His position is that the money was kept by Heerbrandt as compensation for procuring the loan and applied by him to his own use. He denies that he shared in the amount, but does not deny that he knew of its retention by Heerbrandt. * * * The charge for services is manifestly an excuse to cover the taking of a usurious bonus, and it is immaterial whether the complainant shared in it or not if he knowingly allowed its payment to be a condition to the loan,

or assisted in its exaction at the time of the loan." Citing *Borcherling v. Trefz*, 13 Stew., 502, *Demarest v. Vandenberg*, 14 Stew., 63.

Borcherling v. Trefz, 40 *N. J. Eq.*, 502, holds that to taint a contract with usury it is not necessary that the illegal interest or bonus shall have been taken by the lender himself, but if it be shown that the illegal consideration was paid to some other person than the lender pursuant to the terms of the contract of loan with the knowledge of the lender, the contract must be declared to be usurious.

Demarest v. Vandenberg, 41 *N. J. Eq.*, 63. Evidence that a father permitted a son to act as agent for him in lending money on a mortgage and knew that his son had charged a large sum to the mortgagor for procuring the sum from him. *Held* sufficient to establish usury.

Kane can set up usury.

Scull v. Idler, 72 *N. J. Eq.*, 466, *Andrews v. Stelle*, 22 *N. J. Eq.*, 478, are both to the effect that a mortgagor in a usurious mortgage that is made a party to a foreclosure suit against the purchaser subject to the lien of the mortgagee may assert the defense of usury as against a liability for a deficiency.

The decree of the Court of Chancery is agreeable to equity and good conscience.

RANDOLPH PERKINS,

Of Counsel with Defendants-Respondents.

HAMMERMAN

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