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NOTICE OF APPEAL.

Filed November 28, 1930.

In Chancery of New Jersey

54-319.

Between	
H. Rae Scull Rosecrans, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
Paul C. Rosecrans, *Defendant.*	

The defendant, Paul C. Rosecrans, hereby appeals from the final decree of his Honor Edwin Robert Walker, Chancellor, advised by Vice-Chancellor Ingersoll and made in this court, in the above-entitled cause, dated the 25th day of November, 1930, which orders, adjudges and decrees as follows:

1. Each of the said Masters' reports, that is to say, the report dated the 24th day of July, 1929, and the further report dated the 17th day of October, 1930, be and they are hereby confirmed.

2. There is due to the complainant from the defendant the sum of twenty-two thousand seventy-seven dollars and thirty-two ($22,077.32) together with interest thereon from the first day of June, 1929, and that the defendant do pay the same to the complainant.

3. The said sum so adjudged to be due to the complainant from the defendant, together with interest thereon as aforesaid, is hereby declared to be a lien upon all the right, title and interest of the defendant in and to the lands and premises in the bill of complaint described.

4. There is allowed to the solicitors of the complainant a counsel fee of Twenty-five Hundred Dollars ($2500) which shall be included in the taxed bill of costs and collected with other items in the said bill.

5. The defendant do pay the complainant her costs of this suit to be taxed; and the said costs are hereby declared to be a lien against the said premises in the said bill of complaint described.

6. Unless the defendant within ten days from the date hereof pay to the complainant or her solicitors the several sums hereinabove decreed to be paid by the defendant, all of the right, title and interest of the defendant in and to the land and premises in the said bill of complaint described be sold to raise and satisfy the several sums of money due to the complainant as aforesaid; and that a writ of *fieri facias* do issue out of this court, directed to the Sheriff of the County of Atlantic, commanding him to make sale according to law of the whole right, title and interest of the defendant in and to the said lands and premises in the said bill of complaint described, and that out of the money arising from such sale he pay to the complainant or her solicitor the sums hereinabove adjudged to be due to the complainant, together with interest and costs.

Notice of Appeal.

7. It be referred to Clifton C. Shinn, Esquire, one of the Masters of this court, to continue the accounting heretofore referred to him from the first day of June, 1929, until the date of such continued accounting, and jurisdiction of this cause is retained for the purposes of such accounting and of the making of an appropriate supplemental decree thereon until the coming in of the said Master's report; to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated November 28, 1930.

STARR, SUMMERILL & LLOYD,
Solicitors for Paul C. Rosecrans, Defendant.

LEWIS STARR,
Of Counsel.

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

LEWIS STARR,
Of Counsel for Paul C. Rosecrans, Defendant.

PETITION OF APPEAL.

Filed December 10, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
H. Rae Scull Rosecrans, *Complainant-Respondent,*	*On Appeal, &c.*
and	*Petition of Appeal.*
Paul C. Rosecrans, *Defendant-Appellant.*	

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Paul C. Rosecrans, the appellant in the above-entitled cause, respectfully shows:

Your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Robert H. Ingersoll, Vice-Chancellor, bearing date the 25th day of November, 1930, in a cause pending therein, wherein the said H. Rae Scull Rosecrans was complainant, and your petitioner was defendant, in this respect, to wit: The said decree ordered, adjudged and decreed that:

1. Each of the said Masters' reports, that is to say, the report dated the 24th day of July, 1929, and the further report dated the 17th day of October, 1930, be and they are hereby confirmed.

2. There is due to the complainant from the defendant the sum of twenty-two thousand seventy-seven dollars and thirty-two cents ($22,077.32) together with interest thereon from the first day of June, 1929, and that the defendant do pay the same to the complainant.

3. The said sum so adjudged to be due to the complainant from the defendant, together with interest thereon as aforesaid, is hereby declared to be a lien upon all the right, title and interest of the defendant in and to the lands and premises in the bill of complaint described.

4. There is allowed to the solicitors of the complainant a counsel fee of twenty-five hundred dollars ($2500) which shall be included in the taxed bill of costs and collected with other items in the said bill.

5. The defendant do pay the complainant her costs of this suit to be taxed; and the said costs are hereby declared to be a lien against the said premises in the said bill of complaint described.

6. Unless the defendant within ten days from the date hereof pay to the complainant or her solicitors the several sums hereinabove decreed to be paid by the defendant, all of the right, title and interest of the defendant in and to the land and premises in the said bill of complaint described be sold to raise and satisfy the several sums of money due to the complainant as aforesaid; and that a writ of *fieri facias* do issue out of this court, directed to the Sheriff of the County of Atlantic, commanding him to make sale according to law of the whole right,

title and interest of the defendant in and to the said lands and premises in the said bill of complaint described, and that out of the money arising from such sale he pay to the complainant or her solicitor the sums hereinabove adjudged to be due to the complainant, together with interest and costs.

7. It be referred to Clifton C. Shinn, Esquire, one of the Masters of this court, to continue the accounting heretofore referred to him from the first day of June, 1929 until the date of such continued accounting, and jurisdiction of this cause is retained for the purposes of such accounting and of the making of an appropriate supplemental decree thereon until the coming in of the said Master's report.

And your petitioner humbly appeals from the decree of the said Chancellor, which decrees as aforesaid, upon the ground that the same was and is erroneous, for that said Court of Chancery, should have sustained the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th exceptions, presented by the defendant, to said Master's report, dated July 24, 1929; and the said Court of Chancery should not have found that the said sum of $22,077.22, with interest from the 1st of June, 1929, was due to the complainant from the defendant; and the said Court of Chancery should not have found that the complainant was entitled to a lien upon the right, title and interest of the defendant, in and to the lands and premises in the bill of complaint described, for said amount set forth in said decree or any part thereof; and the said Court of Chancery should not have found that the solicitors of the complainant were entitled to a counsel fee of $2500,

or any part thereof, to be included in the taxed costs and collected with the other items of said bill; and the said Court of Chancery should not have found that the complainant was entitled to her costs against the defendant, to be a lien upon the lands and premises; and the said Court of Chancery should not have found that the complainant was entitled to a writ of execution to be issued out of the Court of Chancery, to make sale of the right, title and interest of the defendant, in the lands and premises, in said bill of complaint described, to raise and pay the said sum of money found to be due, in accordance with the terms of said decree; and the said Court of Chancery should not have found that the complainant was entitled to any further accounting from the defendant, or decree based thereon.

And your petitioner further shows that by an interlocutory decree made in this cause and dated the 16th day of April, 1926, the said Court of Chancery ordered, adjudged and decreed, *inter alia,* that the said complainant was, and from the date of the acquisition of the lands and premises, in said bill of complaint described, had been a co-tenant with the said defendant, by the entirety, of the lands and premises described in the bill of complaint and that the said defendant account, to the complainant, for the rental value of said premises from the 1st day of June, 1922 to the date of said accounting, and that it be referred to W. Frank Sooy, one of the Special Masters of this court, to take and state said accounting.

And your petitioner further shows that the terms of the interlocutory decree aforesaid were and are erroneous, for that the said Court of Chancery should have found that the complain-

ant had no title to said lands and premises, but was entitled only to an equitable lien thereon by reason of her advance of moneys to the defendant; and the said Court of Chancery should not have decreed that the said defendant account to the complainant from the first day of June, 1922 as in said interlocutory decree adjudged; and the said Court of Chancery should have dismissed the complainant's bill of complaint, insofar as it was based upon the cause of action set forth therein; and the said Court of Chancery should have granted to the defendant the relief prayed for in his counter-claim; and should have limited the right of the complainant to a lien, for the moneys advanced by her to the defendant and not based upon the right of the complainant to be paid the rental value of the said lands and premises from the first day of June, 1922.

And your petitioner further shows that by virtue of another interlocutory decree, made in said cause, dated the 10th day of April, 1928, the aforesaid interlocutory decree dated the 16th day of April, 1928, was amended so as to read:

"That the said Paul C. Rosecrans do account to the complainant for the rental value of the said premises (including the furniture, fittings and hotel equipment therein contained), from the 1st day of June, 1922 to the date of the said accounting, and that the order of reference to William F. Sooy, Esq., and the re-reference to Clifton C. Shinn, Esq., heretofore made, be amended in that particular, and that the accounting shall hereafter proceed as if said orders of reference and re-reference had originally read as hereby amended, and

"that the said Clifton C. Shinn, Esq., pro-
"ceed to take and state said accounting,
"which shall include any credits to which the
"defendant is entitled, and to report to this
"Court with all convenient speed."

And your petitioner further shows that the terms of the said interlocutory decree last mentioned were and are erroneous, for that said Court of Chancery should not have directed the defendant to account, to the complainant, for the rental value of the said lands and premises, described in the bill of complaint including furniture, fittings and hotel equipment, for the reason that a large portion of said furniture, fittings and equipment was purchased and paid for by defendant individually; and also for the reason that the complainant was not entitled to an accounting, from the defendant, for any sum of money, but to an equitable lien only, on the lands and premises for moneys advanced by her to the defendant, in accordance with the allegations contained in the counter-claim filed by the defendant.

And petitioner further shows that by virtue of another interlocutory decree made in said cause, dated the 18th day of September, 1930, the exceptions filed, by the defendant, to the report of C. C. Shinn, Master, were overruled.

And your petitioner further shows that the terms of the said interlocutory decree last mentioned were and are erroneous for that the said Court of Chancery, instead of overruling the same, should have sustained the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th exceptions presented by said defendant to said Master's report.

And defendant further shows that the said final and interlocutory decrees were and are also erroneous for the reason that the complainant was not entitled to an accounting for rents from the 1st day of June, 1924, and for the further reason that the defendant should have been allowed, as credits against any rental value, expenditures made by him in the payment of taxes, interest, installments on mortgages, water and sewer rents, repairs and insurance premiums before the first day of June, 1922, and from the time of the acquisition of said lands and premises by the complainant and defendant; and also the defendant should have been allowed as credits against any rental value, other moneys expended by the defendant for supplying new furniture and replacements of existing household goods and hotel equipment from the time of the acquisition of said land and premises during the period of the accounting.

Your petitioner, therefore, prays that the final decree of the Chancellor, as well as the interlocutory decrees above referred to, may, in the particulars aforesaid, be reversed, set aside and for nothing holden.

And that your petitioner may have such further relief in the premises as to this Honorable Court shall seem meet.

STARR, SUMMERILL & LLOYD,
Solicitors for Appellant.

LEWIS STARR,
Of Counsel.

ORIGINAL BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, H. Rae Scull Rosecrans, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows that:

1. Complainant and defendant, Paul C. Rosecrans, are husband and wife, having been married on the tenth day of September, 1918, in the City, County and State of New York, by Rev. Benjamin C. Warren, a Minister of the Gospel.

2. That on or about the first day of December, 1919, complainant and defendant purchased from one, Charles B. Prettyman, the premises in the City of Atlantic City on the west side of South Carolina avenue, which property is bounded and described as follows:

> BEGINNING at a point on the Westerly line of South Carolina avenue, seven hundred and twenty-seven feet Southwardly of the Southerly line of Pacific avenue, and extending thence (1) Southwardly, along the said line of South Carolina avenue, one hundred feet; thence (2) Westwardly, parellel with Pacific avenue, one hundred and fifty feet; thence (3) Northwardly, parallel with South Carolina avenue, one hundred feet; thence (4) Eastwardly, parallel with Pacific avenue, one hundred and fifty feet to the place of BEGINNING.

and obtained therefor from the said Charles B. Prettyman, et ux., a deed dated December 1, 1919, duly acknowledged on December 2, 1919,

and recorded in the Clerk's office of Atlantic County on December 8, 1919, in Book of Deeds No. 621, page 14 &c., and, at the same time, and by virtue of the same conveyance, acquired from the said Charles B. Prettyman, the hotel furnishings mentioned in the schedule of said deed, which said deed and schedule thereto attached are in the possession of complainant and ready to be produced as this Honorable Court may direct.

3. The price paid to the said Charles B. Prettyman by complainant and defendant for the said above described premises, was the sum of one hundred and twenty-five thousand ($125,000) dollars, which price was paid by the assumption of a mortgage in the sum of thirty thousand ($30,000) dollars, then, and now an encumbrance against said premises; by the making and execution of a purchase money mortgage in the sum of seventy-five thousand ($75,000) dollars to the said Charles B. Prettyman, which last mentioned mortgage, and the bond accompanying the same, were executed by both complainant and defendant; the balance of the consideration money was paid in cash, subject to certain adjustments for fire insurance, interest and municipal liens.

4. The premises herein mentioned are improved by a large building, to wit, a building known as the Hotel Princess, containing, in addition to the public rooms, dining room and kitchen, one hundred and eighty-five (185) bedrooms, and being of a height of six (6) stories, fully furnished.

5. Shortly after the purchase of the property, as above described, defendant, Paul C. Rosecrans, opened the hotel and began to conduct his

hotel business there, and has ever since conducted his said business in the premises.

6. Defendant is in complete and exclusive possession of the premises hereinabove described with the exception of one small bedroom occupied by complainant.

7. That defendant conducts the business of keeping a hotel in said premises and, with the exception of the one small bedroom mentioned as occupied by complainant, is in possession of the entire premises, and the furnishings thereof, and excluded complainant completely from the use, enjoyment, rents, issues, profits or usufruct thereof.

8. Defendant has refused to pay to complainant any sum or sums of money as the proceeds of his said business, or, as the rental value of her one-half interest in the said premises, but has collected and kept to himself, and excluded complainant from participation therein, all of the rents, issues, profits and usufruct of said premises, and has himself used and occupied the said premises exclusively, except for the bedroom mentioned.

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

1. That the defendant, Paul C. Rosecrans, may be compelled to render to the complainant an account of all and any rents which he has, or may have, collected from lesses in possession of the premises described.

2. That the said defendant may be compelled to render an account for the rental value of the premises described, and for the value of his use

and occupancy of the same from the first day of December, 1919.

3. That a receiver may be appointed for the said premises, to lease the same and collect therefrom the rents, issues and profits thereof.

4. That the said defendant may be decreed to pay to complainant the amount found due to complainant, with interest and costs, by a short day to be appointed by this Court.

5. That a writ of subpoena may issue against the said defendant, Paul C. Rosecrans, commanding him to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

THEO. W. SCHIMPF,
Solicitor for and of Counsel
with Complainant.

ANSWER AND COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between	
H. Rae Scull Rosecrans, *Complainant,*	*On Bill, &c.*
and	*Answer.*
Paul C. Rosecrans, *Defendant.*	

The defendant, a resident of Atlantic City, in the County of Atlantic and State of New Jersey, by this answer:

1. Admits the allegations contained in paragraph 1.

2. Denies that the lands and premises, together with the personal property described in paragraph 2 of the bill of complaint, were purchased by the complainant and defendant as alleged therein, but alleges that the lands were purchased by the defendant and title thereto taken in the name of the complainant and defendant under the circumstances hereinafter set forth.

3. Admits that the purchase price of the lands and premises referred to in paragraph 3 of the bill of complaint, to wit: $125,000, was by the assumption of a $30,000 mortgage thereon and the execution of a purchase money mortgage for $75,000, but denies that the balance of the purchase price was paid by the complainant and defendant, but on the contrary avers that the entire

balance of purchase price was paid by the defendant.

4. Admits the allegations contained in paragraph 4 of the bill of complaint.

5. Admits the allegations contained in paragraph 5 of the bill of complaint.

6. Admits that the defendant, with the consent, leave and license of the complainant, has been in the possession of the said lands and premises, but that the said complainant has, during the period set forth in said bill, occupied an apartment therein comprising two rooms and a bath, except during the summer season, when the complainant's apartment was limited to one room and bath.

7. Denies that the possession of said lands and premises has been complete and exclusive of any right to the complainant in the possession thereof.

8. Admits that the defendant conducts the business of keeping a hotel on said premises and denies that the defendant has excluded complainant completely from the enjoyment of the rents, issues and profits thereof, but on the contrary avers that complainant had the privilege of using any portion of said lands and premises.

9. Denies the allegations contained in paragraph 8 of the complaint, but on the contrary avers that complainant has never made any claim to the defendant that she was entitled to any part of the proceeds of the hotel business or any part of the rental value of her alleged one-half interest in the premises.

10. Defendant admits that he has collected and kept for himself the proceeds of the hotel

business, which was owned by him, and has used the same for the purpose of paying the expense of the up-keep of the real estate and in reduction of the mortgage indebtedness thereon and the carrying charges of the same, and has used part of the proceeds in repaying to the complainant moneys loaned by her to him, which was used for the purpose, partially, of paying part of the purchase price of the premises and interest thereon.

11. When the said hotel was purchased by the defendant, it was agreed between complainant and defendant that the complainant would loan to the defendant approximately $8,000 for the purpose of enabling defendant to pay the balance of the purchase price in cash, and it was further agreed that the title to said lands and premises should be taken in the joint names of complainant and defendant as security to the complainant for the moneys which she advanced to the defendant, until such time as the defendant could repay the same, when the complainant would release and transfer to the defendant the title which was put in her name for her security and pursuant to said agreement the said complainant did loan and advance to the defendant approximately $8,000 and the title was taken in the joint name of both complainant and defendant, solely as security so far as the complainant was concerned, until such time as the defendant would repay the moneys advanced.

By way of counter-claim against the complainant, defendant says:

1. Shortly prior to the 1st day of December, 1919, defendant made an arrangement with

Charles B. Prettyman, of Atlantic City, to purchase the lands and premises described in paragraph 2 of the bill of complaint, together with the hotel furnishings contained therein, for the sum of $125,000, said price to be paid by the assumption of a $30,000 mortgage thereon and the execution of a purchase money mortgage of $75,000 and the payment of $20,000 in cash, less certain adjustments for fire insurance, interest, municipal liens and other items, and the complainant agreed to assist defendant in the purchase of said premises and loan and advance to him the sum of approximately $8,000 for that purpose, provided the title would be taken in the joint names of complainant and defendant as security so far as complainant was concerned, for moneys advanced by her, until such time as the same were repaid to her, when she would release and quit-claim to the defendant the title so conveyed to her and, pursuant to this arrangement a contract of sale was entered into between Prettyman and complainant and defendant, and the defendant made the first payments of $5,000 to said Prettyman, out of his own funds, and immediately purchased, with his own funds, furnishings for the building.

2. Subsequently, when the lands and premises were conveyed by Prettyman to the complainant and defendant, pursuant to the agreement between them, as set forth in the last preceding paragraph, the complainant advanced to the defendant approximately $8,000, and all the remainder of the purchase price paid in cash was furnished by the defendant.

3. It was then and there understood and agreed between complainant and defendant that

the conveyance of the said lands and premises in their joint names was, so far as the title of the complainant was concerned, merely as security for moneys advanced and for no other purpose.

4. After the title was acquired to said lands and premises, it became necessary to improve same and make additions thereto, and the complainant loaned to the defendant, from time to time, certain other sums of money, to be used for this purpose under the same arrangement made between them with respect to the original purchase thereof, said sums subsequently advanced amounting to between six and seven thousand dollars.

5. From time to time, defendant has paid to the complainant various sums on account of the moneys so loaned and advanced to him by the complainant, together with interest thereon, and there remains due at the present time, from the complainant to the defendant, on account of the moneys so loaned and advanced, under the agreement herein set forth, the sum of approximately $7,000.

6. Defendant has offered to pay to the said complainant the entire balance due her for moneys loaned and advanced to him and has demanded that upon the payment of said balance she quit-claim and convey to the defendant the undivided half interest in said lands and premises and personal property contained therein, but that the said complainant has refused to accept such balance and execute and deliver a quit-claim and conveyance in accordance with such request, and complainant has also arranged with the holder of the mortgage on said lands and premises to release the said complainant from all

liability on the bond accompanying same upon the conveyance of her interest in said lands and premises.

7. Under the agreement between complainant and defendant, as above set forth, which resulted in the acquisition of said lands and premises and personal property contained therein, and the conveyance thereof to the complainant and defendant jointly the title vested in the name of the complainant was by way of security only for the moneys advanced by the complainant to the defendant and did not create in her any right, title or interest in said lands and premises and personal property except as a pledge or mortgage for the money so advanced.

8. Defendant is ready, willing and anxious to repay to the complainant the entire balance due from him to her, with interest thereon and hereby tenders such payment upon a conveyance and quit-claim by the complainant to the defendant of her interest in the said lands and premises and personal property, and defendant is entitled to a decree of this Court requiring the complainant to make, execute and deliver such quit-claim and conveyance upon the payment to her of the balance due from this defendant.

Defendant is without adequate remedy in the Courts of Law and therefore prays under this counter-claim:

1. That the complainant may answer this counter-claim and all statements contained therein.

2. That it be decreed that the only right, title or interest the complainant has in the lands and premises above described and the personal prop-

erty contained therein is as a mortgage, to secure her for the repayment of the moneys advanced by her to the defendant.

3. That an account may be taken of the exact balance due by the defendant to the complainant of the moneys so advanced, and that the complainant be required to accept same and be compelled to execute a quit-claim and conveyance for her right, title and interest in said lands and premises to the defendant, upon the payment by the defendant to the complainant of the amount owing by him.

LEWIS STARR,
Solicitor for and of Counsel
with Paul C. Rosecrans, Defendant.

AMENDMENT TO COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between

H. RAE SCULL ROSECRANS,
Complainant,

and

PAUL C. ROSECRANS,
Defendant.

Amendment to Counter-claim.

7-a Defendant paid all the consideration for the purchase of the said hotel property, partly from his own funds and partly from funds which the complainant loaned to him, as a result of which a trust resulted in his favor for the entire title including the right which the complainant acquired by the deed from the said Prettyman.

2-a of the prayer for relief that it may be decreed that a resulting trust arose in favor of the defendant for the entire title of said lands and premises, by reason of the payment by the defendant of the entire purchase price thereof.

LEWIS STARR,
Solicitor.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between H. Rae Scull Rosecrans, *Complainant,* *and* Paul C. Rosecrans, *Defendant.*	*On Bill, &c.* *Replication and Answer to Counter-claim.*

The complainant joins issue on the answer of the defendant.

ANSWER TO COUNTER-CLAIM.

As to the counter-claim contained in said answer, complainant says:

1. That she denies that she loaned the defendant money for the purpose of purchasing the premises mentioned in the bill of complaint, or that she and the defendant ever agreed that the deed should be made to them jointly as security for the repayment of such loans; but on the contrary says that the money which she paid to the vendor of the premises was paid by her for the purchase of her interest in the property.

2. The complainant denies that there was any agreement between her and the defendant to loan the defendant eight thousand ($8,000) dollars, or any other sum; but avers the fact to be that she paid a sum considerably in excess of eight thousand ($8,000) dollars to the vendor of the

premises for her interest in the premises conveyed to her and the defendant.

3. Paragraph three of the counter-claim is denied.

4. The complainant admits that from time to time she loaned to the defendant certain sums of money for the purpose of making repairs to the premises described in the bill of complaint, but not for the purpose of making improvements, and that of the sum so loaned, the defendant has repaid the complainant in part; but that of these sums so loaned to the defendant for the purpose of making repairs to the premises, a large sum is still unpaid to the complainant.

5. Paragraph five of the counter-claim is denied. The statement made by complainant in paragraph four hereof being applicable to paragraph five.

6. The complainant admits that from time to time recently the defendant has demanded that she quit-claim and convey her interest in the property to the defendant, and complainant admits that she has refused to make any such conveyance; but she denies that the defendant has ever tendered her any sum of money for her interest in the premises, or for a deed for her undivided one-half interest therein.

7. Paragraph seven is denied.

8. Complainant asserts that the defendant has no right to have a conveyance from her of her one-half undivided interest in and to the premises described in the bill of complaint. She denies that the defendant is ready, willing and anxious to repay to her any balance due from defendant to complainant, or sums of money

loaned for any purpose, and says that defendant has always carefully concealed from complainant his readiness, willingness and anxiety to repay to the complainant the balance of the sums due to her and loaned to him for the purpose of his business, or repairs to the premises.

THEO. W. SCHIMPF,
Solicitor for Complainant.

TESTIMONY TAKEN AT THE ORIGINAL HEARING.

IN CHANCERY OF NEW JERSEY.

Between

H. RAE SCULL ROSECRANS,
Complainant,

and

PAUL C. ROSECRANS,
Defendant.

On Bill, &c.

Atlantic City, N. J., January 3, 1924.

Before Hon. Robert H. Ingersoll, Vice-Chancellor.

Appearances:

For complainant, Theodore W. Schimpf, Esq.

For defendant, Lewis Starr, Esq.

Mr. Schimpf: I offer in evidence the deed made between Charles B. Prettyman and Matilda W. Prettyman, his wife, of the first part, dated December 1, 1919, and Paul C. Rosecrans and Rae Scull Rosecrans, his wife, of the City of Atlantic, County of Atlantic and State of New Jersey, of the second part, which deed was recorded in the Clerk's office of Atlantic County in Book of Deeds No. 621, page 14.

(Paper received in evidence and marked Exhibit C. 1.)

H. RAE SCULL ROSECRANS, sworn for the complainant.

Direct examination by Mr. Schimpf.

Q Is Paul C. Rosecrans, the defendant in this case, your husband? A He is.

Q When were you married? A September 10, 1918.

Q You and your husband together, purchased this property from Mr. Prettyman in December, 1919?

Mr. Starr: I object to that.

The Court: I sustain the objection.

Q You and your husband were living together in December, 1919, were you not? A We were.

Q Did you go together to the Hotel Princess? A We lived at the Amsterdam, and that was conducted as the business, and I went over there and worked.

Q Well, how soon after you got the deed for this property did you go to the Princess Hotel? A That afternoon.

Q And who conducts the business in the Hotel Princess? A Mr. Rosecrans.

Q Has he conducted that business since the time you went and took possession of the hotel? A He has.

Q Who gets the proceeds of that business? A Mr. Rosecrans, absolutely.

Q Have you ever received anything from the proceeds of the hotel? A Not one cent.

Q Has Mr. Rosecrans ever paid you any rent? A Not a cent.

Q Do you occupy any part of the hotel premises yourself? A Yes; I have a room there.

Q A room? A Yes.

Cross examination by Mr. Starr.

Q Have you occupied this room continuously since the time of the purchase until the present time? A I have not.

Q What portion of the time has your apartment not been occupied? A In October, 1922—the lease of the Amsterdam was up on October 2nd, if I recall the correct date, and he said he was going to California and, "You can live in the apartment or you can do to suit yourself, I am not going to pay a cent of rent."

Q I am not asking the conversation. A So then I moved.

Q I want the fact. A I am giving you the fact. I moved to the Princess Hotel. My goods was packed in the basement and I took a room upstairs.

Q This property was purchased on the 1st of December, 1919? A Yes.

Q How soon after that did you occupy your apartment? A What apartment?

Q The apartment in the hotel? A I just told you around about October 2, 1922, when Mr. Rosecrans left for California.

Q Then you and he lived in an apartment in the Amsterdam at the time the hotel was purchased? A We did.

Q And you continued to live there until about the 1st of October, 1922? A Yes.

Q Then you went to the Princess and have been occupying an apartment there since that time? A No. I moved from the apartment in

the Princess Hotel around about—well, it was the latter part of October, I don't just know the date—over to the Hotel Strand, because it got too cold in the hotel and he was away and I was paying the expenses, and I moved over to the Hotel Strand. The hotel was closed.

Q What I am trying to find out is what portion of the time from the 1st of December, 1919, until the present time you have occupied an apartment in that hotel? A I just told you from October, 1922, to three to four weeks—

Q You are living there now, aren't you? A Wait a minute; and then I went over to the Hotel Strand and then I went to California, traveled in California and came back around about March. I went to the Hotel Strand and stayed there from two to three weeks and moved over to the Hotel Princess.

Q I don't want that. You can tell me what portion of the time without going into this detail, what portion of the time you have lived at the hotel? A You can figure it up.

The Court: No, you will have to answer the question.

A You see, I was in and out, and it is from March until this time, and about three weeks last fall.

Q And you are living there now? A I am living there now. That is, I have a room there. I don't eat there.

Mr. Schimpf: Is that March of 1923?

A Yes.

Q You knew during all this time that Mr. Rosecrans was running the business in his name, did you not? A Yes.

Q You never made any objection to that? A I did.

Q How? A At various times.

Q In what way? A I spoke to him about it.

Q But he continued to run the business in his name? A Yes.

Q Do you remember when it was that you and he first discussed the question of the purchase of the hotel? A Purchase of the Hotel Princess?

Q Yes. A September 10, 1919. I remember distinctly, because it was our first wedding anniversary.

Q And did you contribute any moneys toward the purchase of this hotel? A I did.

Q Were those checks drawn to your husband's order and deposited by him?

(Question objected to as not cross examination.)

(Question allowed.)

(Question repeated.)

A Yes, they were drawn to his order, but I put them in bank for him.

Q They were deposited to his credit? A Yes.

Q And he drew moneys out for the purpose of paying the consideration for the hotel? A Repeat that question.

Q He drew the moneys out of the bank where you deposited them for the purpose of paying for the hotel? A Yes.

Q And since December, 1919, Mr. Rosecrans has returned the moneys loaned by you to him, has he not? A Some, yes.

Q I show you a check dated March 9, 1920, and ask you whether or not that is Mr. Rosecrans' check to your order? A Yes.

Q And you endorsed it? A Yes.

Q I call your attention to the words, "Account of loan." That is in your handwriting, is it not? A Yes.

(Check marked D. 1 for identification.)

Q And that check which is marked D. 1 for identification was given you by Mr. Rosecrans on account of the moneys which you had loaned him before that time? A Before what time?

Q Before the 9th of March, 1920? A Yes, on account of the loan, as it is marked on the check.

Q And the loan was from you to him for the purpose of buying this property? A I don't know whether it was for the purpose of buying the property, because I have been loaning him money ever since I have married him.

Q You can answer that question. A I can't tell on what loan it was given me for, I have loaned him money ever since I have married him.

Q You loaned him money to buy this hotel? A Yes, but I don't know whether that particular check refers to the loan on that purchase or not.

Q I show you another check to your order, dated June 25, 1920, signed Paul C. Rosecrans. Is that another check by him to your order? A Yes.

Q And did you endorse it and collect the money on it? A I endorsed it, and the chances are I deposited it.

Q The words, "Acker's linen account," those words are in your handwriting, are they not? A Yes.

Q And you signed that notation, "Acker's linen account"? A Yes.

(Check marked D. 2 for identification.)

A Acker's linen account, by the way, is a purchase of linen for the hotel.

Q Did you make the purchase and he return it to you? A Yes, I did.

Q I show you another check dated August 2, 1920, drawn to the order of cash, signed Paul C. Rosecrans, and ask you whether you received that check. Will you look on the back and see if that is your endorsement on the back? A Yes, it is my endorsement.

Q And the words "account of loan, 12-1-19" are in your handwriting? A It doesn't look like it.

Q Is it your handwriting or not? A I wouldn't say that it was. I wouldn't say positive it was my handwriting. It doesn't look like it.

Q Mrs. Rosecrans, I am asking you—you certainly know your handwriting—whether you wrote those words or not?

Mr. Schimpf: I think the witness has answered. She says she would not say it was her handwriting and it does not look like it.

A I never wrote that way before.

The Court: She can either say yes or no or she does not know.

A I never wrote that way before.

Q I am asking you now, Mrs. Rosecrans, whether those words endorsed on that check are in your handwriting? A I wouldn't say that it was.

Q You would not? A Would not.

Q Would not say that it was? A No.

Q Well, would you say that they are not in your handwriting? A Just as I said, I would not say it was my handwriting.

Q I am entitled to an answer whether you will say now that they are not in your handwriting.

Mr. Schimpf: He is entitled to have an answer that she does not know.

The Court: Yes, but she does not state that at all. I have said that she can say yes, no, or that she does not know. She must answer.

A I don't know.

(Check marked D. 3 for identification.)

Q I show you another check dated September 7, 1920, drawn to your order for $2,500, signed Paul C. Rosecrans, and ask you whether or not you received the money on that check? A It is my endorsement.

Q Did you get the money on it? A I put it in bank.

Q I call your attention to the words, "on account loan," endorsed on that check. Are those words in your handwriting? A I think so.

(Check marked D. 4 for identification.)

Mr. Schimpf: Did you say you think so or don't think so?

A I don't remember ever writing anything on the face of the checks, but that does look more like my writing than the others. The checks were given to me in blank, without any notation on them, but it is my endorsement on the back.

Q Then you put the notation on the check after your husband had given it to you? A It is my endorsement on the back.

Q You put the notation on the face of the check, "On account loan" after your husband gave it to you? A I don't know whether I did afterwards or before. I don't remember doing it, but it is my endorsement. I acknowledge the check.

Mr. Schimpf: That does not give us much light.

Q If Mr. Schimpf desires any further explanation, I will ask you again on the check which is marked D. 4 for identification, you say that you think you wrote the words, "On account loan." Now, were those words written before you received the check from Mr. Rosecrans or after you received it from him? A What is the date?

Q September 7, 1920. A That would be a thing that would be impossible to say, three years ago, not having it in mind.

Q I call your attention to another check on the same day, September 7, 1920, for $250 and ask you whether or not you received that check from Mr. Rosecrans? A That is my endorsement.

Q You got the money? A Yes.

Q I call your attention to the words endorsed on the face of the check, "On account of interest." Are those words in your handwriting? A Yes, because that is the only interest he ever paid me.

Q They are in your handwriting? A Yes.

Q And that check for $250 was received the same day you got the check for $2,500, was it not? A I don't remember. According to the date on the check will show that.

(Check marked D. 5 for identification.)

Q I call your attention to another check which is dated the 5th of November, 1920, signed by Paul C. Rosecrans, to your order, for $200, and ask you whether or not you got that check from Mr. Rosecrans and also the money on it? A It is my endorsement and it was put in bank.

Q I call your attention to the words on that check, "On account of loan." Are they in your handwriting? A I think that is.

(Check marked D. 6 for identification.)

Q Now another check July 1, 1921, drawn to your order by Paul C. Rosecrans for $1,000, endorsed "Loan account." Did you receive that check from Mr. Rosecrans? A Yes.

Q And that was deposited to your credit and you got the proceeds? A The chances are I did. I endorsed it.

(Check marked D. 7 for identification.)

Q I call your attention to another check dated the 25th of July, 1921, to your order for

$1,500, which is endorsed by you, and ask you whether you got the money on that check? A That is my endorsement.

Q Well, it was deposited to your account and you got the money? A I am not denying those things. It is marked there on account of furniture that I loaned him. He is paying back a loan for money that I advanced for furniture.

Q It is endorsed "Parlor furniture and carpet account"? A Yes, but that isn't my writing.

Q I am not asking you that. That was for moneys which you advanced to buy the parlor furniture, was it not, and he returned it to you? A I advanced it in January.

Q Has he returned it to you? A Absolutely. I am not denying that.

(Check marked D. 8 for identification.)

Q Another check dated August 2, 1921, to your order, signed by Paul C. Rosecrans for $2,000, endorsed "Loan account." Did you receive the money on that check? A That is my endorsement.

(Check marked D. 9 for identification.)

Q Another check dated the 17th of August, 1921, for $1,500 to your order, signed by Paul C. Rosecrans, endorsed "L. Ret." Did you receive the money on that check and deposit it to your account? A It is my endorsement. I don't know what that notation means, though. All those checks are—

Q No, there is no question. A I am not denying those.

H. Rae Scull Rosecrans, cross.

Q This is your endorsement on the back of the check and you got the money? A Yes, I said that was my endorsement.

(Check marked D. 10 for identification.)

Q Another check dated September 10, 1921, to your order, signed Paul C. Rosecrans for $550, and ask you whether or not you got the money on that check? A Yes.

Q And the words "Loan account," endorsed on the face of the check are in your handwriting, are they not? A Yes, that is mine.

(Check marked D. 11 for identification.)

Q I show you another check dated August 5, 1922, drawn to your order, signed Paul C. Rosecrans for $1,000 and endorsed "acct. L." and ask you whether or not you got the money on that check? A Yes, that is my endorsement.

(Check marked D. 12 for identification.)

A It is not my writing. I never saw it before, the notation on the face of the check.

Q I show you a receipt dated September 16, 1922, and ask you whether or not the written part of that is in your handwriting? A Yes.

Q And the words "On account loans"? A Yes.

Q That is your handwriting? A Yes.

Q And you received that money from the hotel, did you not, and gave that receipt for it? A I did what?

Q Received the money from the hotel in cash. You gave this receipt for it? A Yes, that was cash.

Q And you gave that as evidence of the money you received? A Yes.

(Paper marked D. 13 for identification.)

Q Now, Exhibit D. 13 for identification is dated the 16th of September. Do you remember about the 20th of September of that same year you got amount of $500 in cash from somebody in charge of the hotel and gave a similar receipt? A Yes, I do.

Q And the receipt that you gave for the $500 was substantially the same as the one for $750, which is Exhibit D. 13, was it not? A The $500 receipt was given to the clerk.

Q Yes, but the contents of the receipt were substantially the same? A I don't know. I haven't got the receipt. He should have the receipt, the one who I gave it to.

Q I will say for your information we can't find the receipt and I want to get your recollection of the contents of it. You got the $500? A Yes.

Q And you received it on account of loans, the same as you did the payment of $750 on the 16th of September? A Yes, but that was returned. The $500 was returned.

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

The Court: Yes.

Q I show you a check dated the eighth of August, 1923, drawn to your order and signed Paul C. Rosecrans for $500, and ask you whether or not your endorsement is on the back of that check and you got the money? A Yes.

Q The words, "For personal expenses," at the bottom on the face of the check are in the handwriting of your husband; isn't that a fact? A I don't know. It wasn't there when I got the check.

Q Don't you know his handwriting? A The check was blank when I put it in bank. The check had no notation on the face at all.

Q It is your handwriting on the face of the check, "Loan account," is it not? A That is my handwriting.

Q You also endorsed on the back of this check the following words, "This check is cashed on account of loan"? A Yes.

Q That is in your handwriting, is it not? A Let me see. Yes.

Q So it is a fact, isn't it, that when this check was handed to you there was a notation on it that it was given for personal expenses? A No notation. It was a perfect blank. No notation on the face of the check whatsoever. He says, "Here is $500 I am giving you. You can charge it up to the loan account." That is the first time I ever saw "Personal expenses" on the face of it.

Q Isn't it a fact that the word "Loan" is written over personal expenses? A I wrote the word "Loan" there.

Q And you wrote it over "Personal expenses," did you not? A The check was given to me blank.

Q Can't you please answer the question? You wrote the word "Loan" over the words "For personal expenses"? A I am acknowledging the $500.

The Court: Answer the question.

(Question repeated.)

A I don't know whether it was personal expenses there or not, but that word there "Loan" is my writing.

Q Look at the check itself. You see the words "For expenses." Wasn't that on the check when you received it and you wrote over those words "Loan"? A Nothing like "Personal expenses" on the check that I ever saw until this morning.

Q Look at the check. A Absolutely nothing on it but the word "Loan." I never saw that word until this morning.

Q Doesn't that check show that the word "Loan" was written over the words "For expenses"? A I don't know what was written underneath that. I didn't see "Personal expenses" on it until this morning. He said it was given to me for the loan.

(Check marked D. 14 for identification.)

Q He told you it was the return of a loan, did he not? A To be charged up against the loan account.

Q When he told you that you assented to it and wrote the word "Loan" on the face of the check is that right? A I don't know when I wrote it.

Q You did write the word "Loan" over the face of the check? A Surely.

Q I show you a letter dated the 10th of April, 1922, addressed to Mr. Charles Prettyman, and ask you whether or not the words "R. S. Rosecrans" signed at the bottom of the letter are in your handwriting? A Yes.

(Letter marked D. 15 for identification.)

Q Mrs. Rosecrans, when did you agree with your husband to loan him the money so that

he could make this purchase, the purchase of the Princess? A September 10, 1918, was the first we talked about it.

Q Was that the time you agreed to loan him the money so he could make the purchase? A I didn't agree. Didn't make any agreement whatever.

Q Did you tell him you would loan him the money, whether you agreed to it or not? A No.

Q What was the conversation about your advancing him the money so he could make the purchase? A He said he was tired of leasing the hotel from the man which he did, because he said as soon as he got a little money that man would come down on him and put him out, which the man was taking account of stock and so forth, so that night he came up to the apartment and he sat there until near daylight in the parlor crying and worrying because he had no place to go. The next morning I called up Miss Farley, who was Mr. Prettyman's secretary, and asked her if the Hotel Princess was for sale.

Q I am asking you what the conversation was when you agreed to loan him the money so he could make the purchase? A I didn't agree to loan him the money.

Q Was there any talk about it? A He was out—

Q Just answer that question, was there any talk about your advancing the money to him so he could make the purchase? A Of course, there was talk about it.

Q What was said between you and him as to your loaning him the money so he could make the purchase? A He said he was tired of renting hotels, he wanted a property of his own, and I had a business education and he was good in

advertising, and we could get a hotel by ourselves and begin the business. He said, "I haven't enough money," and he said, "I haven't any credit." I said, "Well, I have some money and I will help you what I can."

Q Is that all was said? A Then the understanding was—

Q I don't want the understanding. I want to know what was said between you? A That was all was said.

Q You would let him have the money to make the purchase?

Mr. Schimpf: She did not say that.

Q Is that the fact or not? A He said he wanted to buy a hotel and we could go in business for ourselves. He said, "You have always been working for other people and so have I," and he said, "We will never get ahead working for other people and we should have a business for our own." I said, "I have worked all my life and have a few thousand saved up and I will help you," and he said he would take what he made in the Osborne. By the way, I had the lease on the Hotel Osborne.

Q Subsequent to that conversation, how much money did you let him have to make the purchase? Can you approximate it? A It is right there.

Q Could you tell us approximately what it was? A The figures are right there.

(Question repeated.)

A I should imagine between eight and nine thousand. The checks are all there.

H. Rae Scull Rosecrans, re-direct.

Q Where did you have that money on deposit? A I had some in some of the banks. I took up my building and loan stock. I borrowed money on my building and loan stock. My mother endorsed a note and I took fifteen hundred dollars of the money which my brother had left my mother and myself.

Q And you turned the money over to him; is that right? A To purchase that property so we would have a business of our own, and I was to share in the profits.

Mr. Starr: I move that be stricken out.

The Court: It is not responsive.

Q You turned the money over to him; that is a fact, isn't it? A Yes.

Q Then he deposited the money to his credit in bank? A He said, "You turn"—

Q He deposited the money to his credit in bank? A I have told you he deposited the money.

Q And it was his check that made the settlement with Mr. Prettyman? A Because he said he wanted—

Mr. Starr: I object.

(Question repeated.)

A Yes.

Re-direct examination by Mr. Schimpf.

Q Did you loan this money to your husband to make the purchase, or did you hand it to him to be paid on the purchase?

Mr. Starr: I object. She is his witness.

The Court: Yes, but the difficulty is you have asked the question continually, "Was this money loaned?"

Mr. Starr: That is proper on cross examination, but I think it is not proper so far as the plaintiff is concerned, his own witness.

The Court: I will permit it.

(Question repeated.)

A The money represented by those checks does not represent the purchase money.

Q Won't you direct your attention to my question and answer it? A I don't understand what the question is.

Q You say you gave your husband eight or nine thousand dollars to pay down on the Princess Hotel? A Yes.

Q I want to know was that a loan or was that money handed to him to pay on account of the purchase price? A That money was loaned for the purchase of the hotel.

Q It was loaned for the purchase of the hotel by you to your husband? A Yes, it was.

Q How much did he contribute on the purchase? A That would show on the settlement sheet. It was about—well, that is all there in those figures. I would rather not give the figures unless I saw them beforehand.

Q What was your agrement with your husband concerning the purchase of this hotel? A The lease had expired at the Hotel Osborne and he wasn't—the owner of the property was going to raise the rent and he had gone down to take account of stock, and on September 10, 1919, I came back with the expectation of having some guests for dinner, because it was our first wed-

ding anniversary. He was in the back office crying, and he told me he was afraid he would have to get out of that hotel because the property had increased so and the owner was going to raise the rent, and he stopped in to see him only that night on his way up to the apartment, and he came up very much discouraged and he said he didn't know what to do, because he didn't have money to buy a hotel and rents were so high, and I said to him, "Paul, we are both smart and we are both young, we don't have to take anything off of anybody, and we will buy a property of our own." He said he didn't know of any. He spoke of several, but he said, "I haven't money enough to even attempt to think of those," and he said, "The small ones I don't want, because in the summertime when the business comes, they will be too small, and there will be carrying charges," so he sat there all night, and between three and four o'clock in the morning in the parlor, and I said, "Go on to bed and forget it. We are as smart as the owner of that property and we will have a property of our own." He said, "That is right, we will go into business together; you have a business education and I have a knowledge of advertising, and we will show these Atlantic City people we can get along without a rented property," and I said, "Yes, provided we can get a hotel," and about seven o'clock in the morning I called up the New Clarion and asked for Miss Farley, and the clerk told me she wasn't up at that time.

Mr. Starr: That is objected to.

Q I want to know what agreement you had with your husband respecting the purchase of this hotel?

Mr. Starr: She has already stated it, it seems to me, in response to the questions already asked.

A No agreement. I loaned him the money to get started in business and he was to take charge of one part of the house and I was to take charge of the other, and we were to share the receipts.

Q What was said between you and him with respect to the title itself? A At the time of the purchase?

Q At any time. A Well, he owned half and I owned half.

Mr. Starr: I object to that answer. That is not responsive to the question and it is a conclusion, it seems to me.

Q I want to know what he said and what you said with respect to taking title to the property?

Mr. Starr: I move the answer be stricken.

The Court: Yes, let it be stricken.

A At the day of the purchase or prior to that time?

Q I don't care when. Before, the day, or any time from the time the negotiations began down to the time you actually got the deed, what was said between you and your husband with respect to where this title should reside? A Nothing was said. I never knew any different until this spring, this summer, around about July.

Q I am talking about when you bought the property what was said? A We were to take it together.

Q Who said so? A Mr. Rosecrans.

Q And did you? A He said, "We will buy the property together."

Q Who conducted the negotiations for the property? A Before the settlement was made?

Q You had to see somebody to buy the property first, didn't you? A I saw Miss Farley.

Q And Miss Farley was who? A Miss Farley represented Mr. Prettyman, the owner of the Hotel Princess.

Q And did you conduct the negotiations for the purchase of the hotel, or did Mr. Rosecrans? A We both together.

Q Finally you purchased the hotel, didn't you? A Yes.

Q You made a settlement? A We did together.

Q Who was present at the settlement? A Mr. Iszard and Mr. Robbins and Mr. Prettyman, the owner, and Mr. Rosecrans and myself.

Q And Miss Farley, was she there? A Not at the time of the settlement.

Q At the time of the settlement was there any discussion as to how the deed should be drawn? A It should be drawn—

Q I am asking you if there was a discussion. Was there? Yes or no. A Yes.

Q There was a discussion? A Yes.

Q Between whom did the discussion occur? A Mr. Prettyman and myself and Mr. Rosecrans.

Q And what was said by Mr. Prettyman, you and Mr. Rosecrans with respect to drawing the deed and how the title should reside? A Mr. Prettyman said he positively would not convey the property unless I joined in the deed. He said he was not selling it to Mr. Rosecrans, he was selling it to me because he had known me a

good many years and I had worked hard and he wanted to see me get along, and he said, "I am going to help you," and with that understanding he deducted five thousand from the purchase price. He said, "I am allowing you that to see you get started, because you have worked hard."

Q Your purchase price was what? A One hundred and twenty-five thousand.

Q And you say at the settlement he deducted five thousand as a present? A Yes, through his friendship for me and trying to see me get started.

Q Did Mr. Rosecrans say anything at that time about the deed being made in his name? A Not a thing that I ever heard.

Q Did Mr. Prettyman say anything to you about a bond and mortgage to be given back to him? A No.

Q Was there a bond and mortgage given back? A A bond and mortgage given back to Mr. Prettyman, yes. Chattel mortgage.

Q Did he say anything about it? A He said the bond would have to be in my name.

Q The answer is yes or no. He did or didn't say something about it. A Yes.

Q What did he say? A That it would have to be in the joint name.

Q There was a bond and mortgage given back as part of the purchase price. What was the amount of that bond and mortgage? A One hundred and five thousand, I think.

Q Don't you know it was seventy-five thousand, as a matter of fact? A There was a first mortgage of thirty thousand.

Q That was already on the property? A That came with the property.

Q By the terms of the deed that was assumed by the purchasers, wasn't it? A Yes.

Q You gave back a bond and mortgage to Mr. Prettyman, a purchase money bond and mortgage? A Yes.

Q To secure part of the purchase money. How much was that? A Well, I haven't got the figures here.

Mr. Schimpf: Won't you concede it was seventy-five thousand dollars?

Mr. Starr: Oh, yes, there is no doubt about that.

Q Now, the settlement sheet shows the making of a bond and mortgage to Charles B. Prettyman in the sum of seventy-five thousand dollars as part of the consideration for the purchase of that property? A Yes.

Q That was given to Mr. Prettyman and by whom was it signed? A Signed by Mr. Rosecrans and myself.

Q And that mortgage is still in existence, is it not? A Yes.

Q It has been reduced by some payments, has it not? A Three thousand each year.

Q But the mortgage and bond are still outstanding? A Yes.

Q And still your obligation, aren't they? A Yes.

Q This settlement sheet shows that there was five thousand dollars cash paid. Who paid that? A What date is that?

Q It doesn't give any date. This is December 1, 1919. Of course, that five thousand was probably paid before. A That was the day of the agreement. Mr. Rosecrans paid that.

Q Whose money? A His.

Q How was the agreement drawn? Do you recall? A No, I do not.

Q You haven't a copy of it, have you? A No.

Q There was a mortgage of thirty thousand assumed. A mortgage of seventy-five thousand given, and allowance for Mary Graham's furniture of twenty-five hundred, and allowance for amount of usual commission, twenty-five hundred, the balance due Prettyman, eleven thousand eight hundred and twenty-four dollars and fourteen cents, plus the Title Company's bill, making $12,097.10. This settlement certificate shows, then, that there was eleven thousand eight hundred and twenty-four dollars due Prettyman for the deed, revenue stamps of ninety-five, interest of seven hundred and fifty, Brode and Wright insurance bill of thirteen hundred and forty-six dollars and forty cents to come off of that, so that the balance due Prettyman was nine thousand six hundred and thirty-two dollars and seventy cents. Who paid that money? A We paid it together.

Q How much of the money did you pay? A What is on that sheet with the yellow slip on the top.

Q This one? A Yes.

Q Now, by referring to this memorandum which is headed at the top, "Settlement December first, 1919, Hotel Princess," how much of the balance of the money due Prettyman did you pay? The whole eleven thousand two hundred and fifty-eight dollars? A Yes.

Q You paid that yourself? A Yes, what is there.

Q That means eight thousand seven hundred and fifty-eight dollars, with the allowance of twenty-five hundred dollars for the agent's commission. That is what that means, doesn't it? A Yes.

Q So that the balance of the cash actually paid Prettyman was eight thousand seven hundred and fifty-eight dollars? A Yes.

Q And that, with the allowance of twenty-five hundred, made eleven thousand two hundred and fifty-eight dollars, and you paid that all? A Yes.

Q Mrs. Rosecrans, I show you a number of checks—let me first inquire what this means, "Charge H. Rae Scull $1500." A That is in the May's Landing bank, and it was money that my brother had willed to my mother and myself, and at the time of the purchase of the property he said that he would sign and give me the advantage of fifteen hundred. I didn't give any check for it, but this is the bank's memorandum which I will have to return. This is my mother's signature and this is my signature.

Q You got that fifteen hundred? A From the May's Landing bank.

Q And that fifteen hundred was paid down on account of this property? A Yes.

(Paper offered in evidence and marked Exhibit C. 2.)

Q I show you a check dated Atlantic City, New Jersey, November twenty-eighth, 1918, pay to the order of cash $2,500 on the Atlantic City National Bank, signed Rae Scull Rosecrans and endorsed Rae Scull Rosecrans and Paul C. Rosecrans. A Yes.

Q That twenty-five hundred dollars was part of this money? A Yes.

(Check offered in evidence and marked Exhibit C. 3.)

Q I show you a check dated Atlantic City, New Jersey, December 5, 1919, to the order of Paul C. Rosecrans, $300, signed Rae Scull Rosecrans, and endorsed Paul C. Rosecrans, drawn on the Atlantic City National Bank, and ask you was that part of this money? A Yes.

(Check offered in evidence and marked Exhibit C. 4.)

Q I show you a check dated December 2, 1919, to the order of Paul C. Rosecrans, for $50, signed H. Rae Scull, endorsed Paul C. Rosecrans, drawn on the Atlantic Safe Deposit and Trust Company, and ask you if that was part of the money paid to Mr. Prettyman? A Yes.

(Check offered in evidence and marked Exhibit C. 5.)

Q I show you a check to the order of Paul C. Rosecrans for $300, signed H. Rae Scull, and endorsed, "For deposit to the credit of Paul C. Rosecrans," drawn on the Second National Bank. On the face of this are some words I can't very well read, "Parlor furniture, Hotel Princess," isn't it? A That belongs on the other list.

Q That doesn't belong here? A No, not on this first one.

Q I show you a check dated January eleventh, 1920, for $300, to the order of Paul C. Rosecrans, signed H. Rae Scull, and endorsed Paul C. Rosecrans, and on the face of it the notation, "Princess account," and ask you if that is part of this money? A Yes.

(Check offered in evidence and marked Exhibit C. 6.)

Q Another check dated January seventeenth, 1920, to the order of Paul C. Rosecrans for the sum of $250, signed Rae Scull Rosecrans, there appears to be no endorsement on the back. It says, "For deposit to the credit of" but the stamp didn't seem to reach far enough to show to whose account it was credited. That is drawn on the Atlantic City National Bank. Was that part of the money? A Yes.

(Check offered in evidence and marked C. 7.)

Q In addition to those sums, what moneys did you contribute to your husband at that time to pay down on account of this property? A Whatever is here.

The Court: You will note that this last check is endorsed by the bank, "Deposit to the credit of payee."

Q Will you tell me the additional moneys, aside from the checks which I have just offered, that you contributed towards the purchase of that house? A A thousand dollars from the May's Landing Building and Loan Association which I borrowed on my stock over there.

Q What about the two thousand dollars from your mother? Is that in among those checks? A That is in the notes. My mother signed a note at the May's Landing National Bank for two thousand dollars.

Q And you got the proceeds? A Yes. That is over there. That totaled seven thousand. We did not have money enough between Mr. Rosecrans and myself to complete settlement, and then I go on just how I raised the other moneys.

Q And the other moneys are those represented by the checks? A No. I have them here.

Q All right. What moneys, then, did you raise? A May's Landing Building and Loan Association I had two shares of stock over there that had matured, and I was getting six per cent. on that, and I called that in, and that was four hundred dollars. Cash that I had collected around the apartment, which amounted to one hundred and twenty dollars. Check that Strawbridge and Clothier's had mailed to me for refund for a hat, I gave him that, which was eighteen dollars. A twenty-dollar gold piece my mother gave me, I gave him that.

Q And that is the way you made up this purchase price? A Yes, and, of course, I haven't any receipt for the small minor amounts. I trusted Mr. Rosecrans and was glad to help him at that time.

Mr. Schimpf: May I offer that? It is not a document that I can prove, especially.

Mr. Starr: I do not think it is competent.

Mr. Schimpf: I doubt it myself, but it does give a history of this transaction.

Q After you purchased the hotel, did you loan your husband some money? A Yes.

Q Can you give me the amounts or produce the checks of the money that you loaned him after you purchased the hotel? A Yes.

Q Are these the checks? A That is a portion of them.

Q This is the way they start, is it? A Yes.

(Witness is shown check dated January seventeenth, 1920, on the Second National

Bank to Paul C. Rosecrans, $300, signed H. Rae Scull," endorsed "For deposit to credit of Paul C. Rosecrans," with a notation on the face, "Parlor furniture for Hotel Princess.")

(Check offered in evidence and marked Exhibit C. 8.)

Q There is a letter there which I show you on the stationary of California Bank, Los Angeles, California, dated December seventeenth, 1923, which reads as follows: "Mr. R. S. Rosecrans"—

Mr. Starr: One moment.

The Court: How can that be admissible. You are now offering it in the record.

Q Did you receive that letter from the California bank? A Yes, acknowledging—

Mr. Starr: I object.

Q Never mind what it acknowledges. Does this letter relate to a check of yours? A Yes.

Mr. Starr: I object to that on the ground it is incompetent, immaterial and improper.

The Court: I will permit it to that extent.

Q Did you, on or about December seventeenth, loan your husband any money? A Yes.

Q In what form was that loaned? A That letter is dated December seventeenth—

Q Never mind the letter. A It wasn't December. It was when I returned from California in February, 1922. I closed out my account in the California bank and they gave me a cer-

tified check for $300, and I gave that to Mr. Rosecrans, and that letter is the information that I asked for.

Q When you say certified check, do you mean cashier's check? A Yes; treasurer's check.

Mr. Starr: I move the portion of the answer respecting the letter be stricken out.

The Court: Yes.

Q You loaned him three hundred dollars and that was represented by a treasurer's check of the California bank? A Yes.

Q I show you a check dated November seventh, 1921, on the Second National Bank of Atlantic City, the check says, "To the order of Land Title and Trust Company," $500, H. Rae Scull signs it, and it is endorsed, "Deposit account of Paul C. Rosecrans." I don't know just how that happens. A He asked for a loan of $500 and I left it payable to the order of blank, and he filled it in himself.

Q That is his handwriting? A Yes.

Q In any event, he got the $500? A Yes.

(Check offered in evidence and marked Exhibit C. 9.)

Q I show you a check dated November 24, 1921, on the Atlantic Safe Deposit and Trust Company, which again says to the order of Land Title and Trust Company, $2,000, signed H. Rae Scull, having the notation on, "Given in interest on mortgage, Hotel Princess; given in San Francisco, interest on Hotel Princess," and that is endorsed, "Account Paul C. Rosecrans, E. B. B." as near as I can make out the letters. Did you

give that check to your husband? A Yes, in San Francisco.

Q That was for interest on the Hotel Princess? A Yes, he said it was due.

(Check offered in evidence and marked Exhibit C. 10.)

The Court: This check drawn to the Land Title and Trust Company bears such endorsement as would indicate that it was deposited in the Land Title and Trust Company to the credit of Rosecrans.

Mr. Starr: I think there is no doubt about that.

Q I show you check dated February twenty-sixth on the Atlantic Safe Deposit and Trust Company to the order of Paul C. Rosecrans, $500, signed H. Rae Scull, and the notation on the front, "Mailed to Los Angeles" endorsed Paul C. Rosecrans, and ask you if you loaned that money to your husband? A Yes.

(Check offered in evidence and marked Exhibit C. 11.)

Q I show you check dated May 10, 1922, on the Atlantic Safe Deposit and Trust Company to the order of cash $500, signed H. Rae Scull, bearing a notation, "To be wired California Bank for unpaid checks P. C. Rosecrans," and having no endorsement. A No, that wasn't endorsed. I took it down to the bank. I did that to make his credit good in the Los Angeles Bank. He said he owed money out there and would have to make the checks good. I think he will acknowledge that.

H. Rae Scull Rosecrans, re-direct.

By Mr. Starr.

Q I understand you deposited that at the Atlantic Safe Deposit and Trust Company? A No, I didn't deposit it. I gave that check to Mr. Rosecrans in the Amsterdam when he returned from California and he said his account was overdue out there and he asked me to make it good. He wired it by Western Union.

(Check offered in evidence and marked Exhibit C. 12.)

By Mr. Schimpf.

Q I show you a check dated June 2, 1922, on the Atlantic Safe Deposit and Trust Company to the order of May's Landing Building and Loan Association, $200. Well, this has nothing to do with Mr. Rosecrans? A No. This is in payment of this note of $600 which I loaned him. That is the $600 loan due that date.

Q Have you already testified to the $600 loan? A No.

Q Then I show you a note dated May 15, 1922, for $600, signed H. Rae Scull, to the May's Landing Building and Loan Association, and ask you what you did with the proceeds of that note? A This is paid up—

Q What did you do with the money when you got it? A Gave it to Mr. Rosecrans.

Q You subsequently paid that note off? A Yes.

Q By these two checks? A Yes.

Q One dated June 2, 1922, and the other dated June 19, 1922, both to the order of May's Landing Building Association, the first in the sum of $200 and the second in the sum of $400?

A Yes. I also paid the interest during that time.

Q And the interest amounted to $6.50? A No. $6.50 every month. I am to get that, but it didn't come in the mail this morning. I will get it later.

Mr. Schimpf: I offer the note and the two checks.

(Note and checks fastened together and marked Exhibit C. 13.)

Q Now, there are three checks here which have a notation on the front "Expenses for trip." Have they anything to do with Mr. Rosecrans? A I gave them to Mr. Rosecrans to pay the expenses to California. He hadn't the money himself.

Q These checks, then, represent three loans? A To Mr. Rosecrans to go to California.

Q Your first check is dated November 29th—

Mr. Starr: May I ask whether this has anything to do with the Hotel Princess?

A I gave it to him.

Mr. Schimpf: These are loans to him.

Q The first is dated November 29, 1921, Second National Bank, $300, signed H. Rae Scull, marked "Expense for trip." Did you give the proceeds of that check to your husband? A Yes.

(Check offered in evidence and marked Exhibit C. 14.)

Q December 12, 1921, to the order of Atlantic Safe Deposit and Trust Company $300, with a notation, "Expense for trip," signed H. Rae Scull, and I ask if you gave that money to your husband? A Yes.

(Check offered in evidence and marked Exhibit C. 15.)

Q I show you a check of October 27, 1921, to the order of Atlantic Safe Deposit and Trust Company in the sum of $1,300, signed H. Rae Scull, with the notation—what is that? A Mr. Rosecrans.

Q And the further notation, "$500 Am. B. Cks," which Mrs. Rosecrans explains means American Bankers' Checks, "$500 and $800 cash, traveling expenses." Did you give the proceeds of that check to your husband? A I gave another check to him at that time, but I can't produce it. It has been lost.

Q Can you tell us what the amount of it was? A It was money to buy three tickets, amounting to—the tickets amounted to $645.

Q You loaned him that money, but at the same time you gave him this check? A Yes, but I haven't the check to produce.

(Check offered in evidence and marked Exhibit C. 16.)

Q Are those all the sums of money you can recall loaning to your husband since you bought the Hotel Princess? A No.

Q Tell us what other moneys you loaned to him. A I loaned him money from time to time to keep the hotel going for linens and dishes, and I paid the help when he wasn't here.

Q Have you any list of those things? A Yes, I can give it to you.

Q Can you tell from that list what items you paid on his account or loaned to him? A Yes. Here is a package of checks, and at another time here is another package of checks representing a different amount.

Q Are all the checks which are in this package represented on this list? A Yes.

Q Are any of them missing? A This first item, William Hohe, night watchman, there is one check missing, one week, but I have a stub in my check book showing the amount.

Mr. Starr: What is the purpose of going into this?

Mr. Schimpf: It is to refute your implication that you paid us back the money we put into the house.

Q What is the first check you find? A William Hohe.

Q This $231.52 is represented by a number of checks? A Yes, each week's salary. Mr. Rosecrans wasn't here, and I paid his salary. One check is missing, one week. I can't locate it.

Q Suppose you produce the checks for each of these items.

Mr. Starr: I have no objection to having them go in all as one exhibit. Of course, the dates will show.

Mr. Schimpf: I have a statement here of the amount and of the checks which I have not personally checked off, but Mrs. Rosecrans has, and assures me it is correct.

Q I show you a statement which do you now say is represented by checks in your hand? A Yes.

Q With the exception of one check for $19.50 to William Hohe, night watchman? A $19.25, one check, is missing; one week's salary.

Q These checks on this statement total $3,-133.37? A Yes.

Q Was that money loaned your husband in the conduct of his business? A Mr. Rosecrans was in California at this time when I paid these amounts.

Q You paid these amounts on his account? A Yes.

Q For bills owed by him or by you? A Owed by the hotel. For instance, one is the Dorland Advertising bill for $921. They wouldn't take any new advertising until the 1921 bill was paid.

Q These are all hotel bills? A Absolutely.

Q And he was running the hotel? A Yes.

Q And you paid these on his account? A When he was in California.

Mr. Schimpf: I offer the statement and the checks as one exhibit.

(Papers marked Exhibit C. 17.)

Q Now, Mrs. Rosecrans, did you ever loan your husband money before you bought the Princess Hotel? A Yes.

Q Covering what period of time? A 1918 and 1919, represented by those checks.

Q All of these? A That is 1918 and 1919 represented there.

Q This package of checks all represents money that you loaned your husband during 1918 and 1919? A Yes.

Mr. Schimpf: I offer them.

Mr. Starr: I do not object to them going in, but I do not think they have very much relevancy in this controversy.

The Court: They will be admitted.

(Checks marked Exhibit C. 18.)

The Witness: There is another package of checks, 1922 or 1923, the spring of 1923.

Q I show you—what are these? A Those represent moneys loaned him in 1922 and 1923.

Q I show you a number of checks beginning with May 12, 1922, and ending with—what is that? A Mr. Rosecrans bought furniture from Snellinburg's and they sent it C. O. D., and he didn't have money enough to cover it, and myself and brother paid for the Hotel Princess furniture in the parlor, and that represents my share.

Q Witness produces checks dated November 5, 1920, for $200 on the Second National Bank, signed by H. Rae Scull, and endorsed, "For deposit to credit Paul C. Rosecrans," check dated November 23, 1920, to the order of Paul C. Rosecrans on the Atlantic Safe Deposit and Trust Company for $2,500, signed H. Rae Scull and endorsed Paul C. Rosecrans; check dated December 15, 1920, to the order of Paul C. Rosecrans on the Second National Bank, $100, signed H. Rae Scull, endorsed "For deposit to credit Paul C. Rosecrans"; and check dated December 15th on the Atlantic City National Bank to the order of Paul C. Rosecrans, $500, endorsed Paul C. Rosecrans. You say that those checks represent the amount that you paid for furniture for the Hotel Princess? A Yes.

Q Parlor furniture? A Parlor furniture, pictures and so forth.

(Checks offered in evidence and marked Exhibit C. 19.)

Recess taken until 1:30 P. M.

AFTERNOON SESSION 1:30 P. M.

Mr. Starr: It seems to me it should appear on the record that all testimony can be used on all phases of the case, the bill and answer, and counter-claim and answer.

The Court: I think that can be done by consent.

Mr. Schimpf: In view of the amendment to the counter-claim, I think it probably becomes important that I answer the counter-claim. I want to set up two answers, one a denial and the other the Statute of Frauds.

The Court: No objection to that, is there?

Mr. Starr: I have no objection.

The Court: You may do that as of this time.

H. RAE SCULL ROSECRANS, resumed.

Re-direct examination (continued) by Mr. Schimpf.

Q I show you a number of checks, the first of which is dated May 12, 1922, and the last of which is dated May 29, 1923, and ask you to look at those checks. They purport all to have been signed by you, and I ask you what those checks were used for or what the proceeds of those checks was used for?

Mr. Starr: To whose order are they?

Mr. Schimpf: They are mostly for cash.

A Those checks represent moneys I advanced to pay bills when there wasn't sufficient money in the cash drawer. Mr. Rosecrans was in California at the time.

Q Do you know what the total of those checks is? A No, I didn't total them.

Mr. Schimpf: They are made to the Atlantic City Storage Company and cash and Lewis Coal Company and others. I offer them as one exhibit.

(Checks marked Exhibit C. 20.)

Q I show you a number of checks beginning with the date of November 4, 1923. A Those checks are personal expenses.

Q Are these the same thing? A They are where I paid my hotel bills.

Q Mrs. Rosecrans, when did you say you married your husband? A September 10, 1918.

Q Did you loan him any money in 1918? A Yes.

Q Do you know what the amount was? A No. It is represented by those checks that are here.

Q What checks? Did you loan him any money in 1919? A I did. There is a package of notes there that I borrowed money on that you haven't yet shown me.

Q Are these checks in order? A I am afraid not. They represent the two years, 1918 and 1919.

Q Witness is shown a number of notes beginning December 1, 1919, and ending February

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2, 1920, and is asked what became of the proceeds of those notes? A That was a note on the First National Bank of May's Landing, New Jersey, signed by my mother for two thousand dollars.

Q Wait. That has been testified to. A That is in the first. This is a renewal of that same note. This is a thousand dollar note I got on my Building and Loan.

Q Has this amount been testified to? A Yes.

Q I don't want any you have already testified to. A That goes with that, representing a thousand on the Building and Loan stock. This is $900 that I got from the bank on a Liberty Bond, Victory Liberty Loan Bond.

Q Witness produces a note dated December 1st, May's Landing, New Jersey, on demand, for $900, signed H. Rae Scull. What became of the proceeds of that note? A Gave it to Mr. Rosecrans.

Mr. Schimpf: I offer the note.

(Note marked Exhibit C. 21.)

The Witness: $700 borrowed on a Liberty bond.

Q Witness produces a note dated July 24, 1919, for $700, signed by Rae S. Rosecrans. What did you do with the proceeds of that note? A Gave it to Mr. Rosecrans.

Note offered in evidence and marked Exhibit C. 22.)

The Witness: There is a note for $1,350 representing money which I got from the First National Bank, and I put up $1,500

worth of Cape May County Road bonds as collateral, and they gave me $1,350 on $1,500 collateral.

Q Are any of these notes represented by the checks you have already put in evidence? A No.

Q Witness produces a note dated April 12, 1920, for $1,350, signed Rae Scull Rosecrans. What did you do with the proceeds of that note? A Gave it to Mr. Rosecrans.

(Note offered in evidence and marked Exhibit C. 23.)

The Witness: This is a renewal of that same note. This is another renewal of the same note. These notes are for Liberty Bond 77425. I gave the money to Mr. Rosecrans and it was paid and I put the bond up again at different times, as you can see by the dates. The same bond was put up different times.

Q These notes are not renewals of each other? A No.

Q Witness produces notes dated June 24, 1919, for $800, signed Rae S. Rosecrans, and is asked what did you do with the proceeds of that note? A Gave it to Mr. Rosecrans.

(Note offered in evidence and marked Exhibit C. 24.)

Q A note dated December 2, 1919, for $900, signed Rae Scull Rosecrans and ask what you did with the proceeds of that note? A I gave it to Mr. Rosecrans.

(Note offered in evidence and marked Exhibit C. 25.)

Q Now, Mrs. Rosecrans, won't you look at this note of January 2, 1920, and see if that isn't a renewal of that note of December 2, 1919? A Well, I am not so sure about that. I put them up different times, different bonds different times, whenever he was short of money.

Q Just direct your answer to that particular note? A Yes.

Q That is a renewal? A Yes. I paid the interest.

Q Now, this note of February 2, 1920, isn't that a renewal of the same note? A It was put up again, you see. It was paid in full. The same bonds were put up several different times as collateral.

Mr. Schimpf: I will not offer these notes until my client has had an opportunity to examine them. They look to me as though they are renewals.

Q Now, Mrs. Rosecrans, has your husband ever paid you any of this money which is represented by these checks and notes which you have produced, other than that represented by the checks and receipts which Mr. Starr showed you? A No.

Q You say you were married in September, 1918? A Yes.

Q Has your husband ever supported you?

Mr. Starr: That is objected to as immaterial and irrelevant.

The Court: What relevancy can that have on this issue?

Mr. Schimpf: He had an obligation to support her, there is no doubt about that, and he is asserting here a contract between himself and his wife whereby she was to loan him a certain amount of money and take a deed in the nature of a mortgage, and it seems to me it is relevant to show that he had not performed any obligation to her at all. Some of the money which he has given her he was obliged to give her, or should have given her.

The Court: I will overrule the question in the broad statement. It may be that on cross examination as to some of these payments that it may be admissible. As it now stands I will overrule the question.

Q Now, Mrs. Rosecrans, did you ever make any agreement with your husband to the effect that the deed given to you by Mr. Prettyman should be a mortgage? A No.

Q Did you ever make any agreement with your husband that when you received that deed you did not have an equity in that property? A No.

Re-cross examination by Mr. Starr.

Q Mrs. Rosecrans, Mr. Schimpf has been examining you with reference to a statement which is marked "Settlement December 1, 1919," and that shows that up until that date you had advanced $7,000, which was used for the purchase, you had loaned Mr. Rosecrans $7,000 which he used for the purchase of the Princess. A Not up to that time. That is the settlement on December 1st when he purchased the property.

Q And that amounted to $7,000? A On December 1st, that day.

Q The other items about which you have been examined were paid subsequently to the first of December, were they not, 1919? A Not all of them, no.

Q What I want to know is, what, in addition to the $7,000, was advanced or loaned by you to Mr. Rosecrans which was used for the purpose of buying this hotel. How much in addition to the $7,000, independently of loans you made for other purposes? A What is listed below.

Q There are some checks there that were dated after the first of December. How do you account for that, if they were loans made for the purpose of buying this property? A It tells you right there.

The Court: Answer the question.

A At the time of the settlement we didn't anticipate taking into consideration taxes in the settlement at all, and Mr. Prettyman wouldn't turn over the deed until a certain amount of money was raised.

Q You got your deed on the first of December, didn't you? A No, we didn't get it that day. It was dated that day, but we didn't get it until a couple of weeks later, because we couldn't raise all of the money.

Q Well, it was recorded, apparently, on the eighth of December. That is seven days later. What I am trying to find out—I don't want to confuse you; what I want to know is the actual amount of money you loaned your husband up to the time that deed was delivered which he used for the purpose of purchasing the property.

A You have it right before you.

Q Is this the amount, $8,758? A Yes.

Q Well, now, if there are any checks for some of these items dated after the eighth of December, 1919, do they represent moneys that were paid to Mr. Prettyman? A No. I gave them to Mr. Rosecrans. We didn't get the deed.

Q Loaned to Mr. Rosecrans and he used it for the purpose of paying Prettyman? A Yes.

Q If there are any checks dated after the eighth of December, is it a fact that that money was used to buy the hotel? A I don't know just what the dates were. We didn't have enough money.

Q I am trying to get your best recollection if there are any checks dated after the eighth of December— A I don't know. They are all here.

Q —you still say they were used for the purpose of buying this property? A We didn't get the deed on the first of December because we didn't have enough money, and I went out and raised more money.

Q If there are any checks after the eighth of December you still say that is money you loaned Mr. Rosecrans to buy this property? A Yes, right around that time.

Q You expected to get this $8,758 back, did you not? A I gave it to him to purchase the property.

Q Answer the question. Did you expect to get it back? A There was no promise of getting it back.

Q Didn't you expect to get it back? A It was money I advanced him for the purchase of the property.

The Court: You can answer that yes or no.

(Question repeated.)

A It was money I advanced for the purchase of the property, and—

Mr. Starr: I insist on an answer.

The Court: You can answer that, Mrs. Prettyman. You can answer it yes or no.

A Yes, I expected to get it back.

Q You expected to get it back from your husband, did you not? A When the money came in from the hotel.

Q Isn't it a fact that when you gave the purchase money mortgage at the suggestion of Mr. Prettyman, that you asked him to make you remain on the bond only for one year? A Absolutely no; nothing was mentioned at that time.

Q That isn't a fact? A No.

Q And didn't you object to going on the bond generally and wanted your liability on the purchase money bond limited to one year? A No.

Q Didn't you make that request of him? A Mr. Rosecrans asked him.

Q Didn't you make that request of him? A No.

Q And didn't he promise to release you from the bond after one year? A Not that I know of.

Q At your request? A Not that I know of.

Q Don't you remember a conversation of that kind? A No.

Q You wrote a letter to Mr. Prettyman in April, 1922? A Yes.

Q What you said in that letter to him was true, was it not? A Mr. Rosecrans—

Q Answer the question, please. What you wrote in the letter to Mr. Prettyman was true? A It is my signature there.

The Court: You must answer the question. The law requires you to.

A Yes. I didn't read the letter over. It has been two years.

Q Didn't you sign it? A Yes, I acknowledge that.

Q I want to call your attention to a clause in this letter—

Mr. Schimpf: May she be permitted to look at the letter to refresh her memory?

The Court: Yes.

(Letter handed witness.)

A Yes, I guess that is true.

Q Then it is a fact, isn't it, that it was arranged at the time you went on that purchase money bond and mortgage that you were to be released at the expiration of a year? A No.

Q Let me call your attention to this clause in the letter: "I only asked you to release me from the bond, and so did he, because you promised me on the day of settlement that after the first year you would do so. John Iszard and also Mr. Robbins was present." Isn't that a truthful statement in your letter? A He—

Q Answer the question, please. Isn't that a truthful statement of what occurred?

Mr. Schimpf: I think that is objectionable. Whether or not she made that statement in the letter is all right, but to ask her as to the truth of it is another matter.

That is a matter of drawing conclusions. The statement is there, and it is binding upon her.

The Court: I think counsel is entitled to ask her whether she believed that to be true at the time or whether it was true. She has made that statement. I think she can answer that question if she believed it to be true. I will permit the question.

(Question repeated.)

A Let me see it.

(Letter handed witness.)

A It is a truthful statement, but the circumstances were changed.

Q What is the answer. A It is a truthful statement.

Q Then, as a matter of fact, you made the request of Mr. Prettyman at the time of the settlement that you would be released from your bond after the expiration of one year? A The circumstances were altogether different.

Q I know, but isn't that the fact? A I wrote that to Mr. Prettyman to help Mr. Rosecrans.

Q Isn't it a fact—you can answer this question yes or no, Mrs. Rosecrans. Isn't it a fact that at the time of the settlement you requested Mr. Prettyman that he would release you from the bond after the expiration of a year? A Can I tell the circumstance why it was asked?

The Court: Just answer this question yes or no, and Mr. Schimpf will give you an opportunity, probably, to explain it.

A I do not recall on December 1, 1919, making any such statement.

Q If that is so, why did you write this letter in which you wrote to Mr. Prettyman that such a statement had been made? A That will be explained later.

The Court: You can explain that now.

Q Answer me this question: If you were to become one-half owner of this property absolutely, why did you want to be released from the bond? A Mr. Rosecrans—we were in California, and he was telling me all the time that he couldn't get any credit, and I said, "I am willing to"—on account of the title, and I said, "If you do right and conduct the business properly, I want to help you and I will do all I can to help you," and he said, "I can never do anything while you are on the deed," and I wrote that letter to Mr. Prettyman, thinking I could help Mr. Rosecrans, thinking Mr. Rosecrans would do to me what he promised.

Q If that is a fact, why did you want to be released from the bond after one year at the time the settlement was made, if you were to become half owner of the property? A I don't recall any such statement.

Q Well, Mr. John Iszard was present there, wasn't he? A Yes, sir.

Q And Mr. Robbins was also present, representing the Title Company? A Yes.

Q Read that letter over again and answer me whether the rest of the statements contained in that letter are true. I am referring now to D. 15 for identification. A That was a friendly letter to Mr. Prettyman.

Q Are the statements contained in that letter true? Yes or no. A I think so.

Q You referred to some money expended for tickets to California. You went out there with Mr. Rosecrans, didn't you? A Yes.

Q And it was partially your expenses as well as his paid for by those loans you made to him? A I paid all the expenses.

Q What? A I paid his expenses.

Q The moneys you say you loaned to him were used by him for the purpose of paying expenses to California. A He said he was sick, and he said—

Q Can't you answer that question? A —if I would loan him money he would go away.

Q And you took some relative along, a niece? A At his suggestion.

Q Now, these securities or notes that you have spoken about this afternoon, they were also loans to Mr. Rosecrans, were they? A Money advanced, yes.

Q They were loans to Mr. Rosecrans, the same as you testified this morning? A Moneys advanced to Mr. Rosecrans to conduct the hotel.

Q Were they loans? A Advances. You can consider them what you please. Moneys advanced to him.

Q Were they the same character about which you testified this morning? A They were moneys advanced to him.

Mr. Starr: I think I am entitled to an answer.

The Court: Yes, you are entitled to an answer to the question.

A It was advanced as loans.

H. Rae Scull Rosecrans, re-cross.

Q Do you remember having a conversation with your husband in the presence of a man named Powell who was working up at the hotel, one of the hotels, either the Osborne or the Princess, about the purchase of the Princess? A No, I don't recall any.

Q Do you know Mr. Powell? A I know two Mr. Powells. I don't know which one you refer to.

Q John Powell, a painter? A Yes.

Q Do you remember having a conversation with your husband in his presence? A I don't remember any conversation. I know Mr. Powell.

Q Don't you remember saying when you were discussing the purchase of the Princess with your husband in the presence of Mr. Powell that you expected to get your money out of it, back, that you were loaning your husband? A No, I don't remember any such conversation.

Q Any conversation of that kind, that all you wanted was your money out of it? A I don't recall any conversation. I didn't like Mr. Powell and didn't talk to him.

Q Will you say you didn't have any conversation with your husband in the presence of Mr. Powell? A I don't recall it, no.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY.

Mr. Starr: I offer in evidence those checks that have been marked for identification.

The Court: They may be admitted.

(Checks previously marked for identification now marked in evidence Exhibits D. 1 to D. 14 inclusive.)

Mr. Starr: I also offer in evidence the letter which has been identified by Mrs. Rosecrans and marked D. 15 for identification.

(Letter previously marked D. 15 for identification now marked Exhibit D. 15.)

PAUL C. ROSECRANS, sworn for the defendant.

Direct examination by Mr. Starr.

Q Mr. Rosecrans, you are the defendant in this case, are you? A Yes.

Q What was your business prior to the time you purchased the Princess? A Hotel business.

Q How long have you been in the hotel business? A Twenty years.

Q Where have you conducted that business? A I began at the Lexington in 1904 and at the Osborne in 1918 and 1919, and the Princess from 1919 on.

Q In 1919, prior to the time you bought the Princess, were you running the business at the Osborne in your own name? A I was.

Q And since you purchased the Princess, in whose name has the Princess been run? A In my name.

Q All the advertising done in your name? A All the advertising.

Q The bills charged to whom? A To me.

Q I wish you would state in your own way when and how it was brought to your attention that the Hotel Princess was for sale? A Miss Farley came to the hotel—

Q Who is Miss Farley? A Miss Farley was Mr. Prettyman's secretary. Mrs. Rosecrans called her on the phone and she came to the hotel and she said that they had the Princess for sale and it would be a good proposition for us to take it over, but there was no terms mentioned. She wasn't quite sure what the terms were. So Mr. Prettyman came down a few days later and he saw both Mrs. Rosecrans and I, and he gave us the terms; he was to allow us five thousand dollars off of the original price if I would take it over. He said he knew I could make it go from the experience I had had. He said he wasn't able to get in the hotel, because the people that had it, the tenants, were trying to pull something over on him, they wasn't living up to an agreement they had made and they were trying to pull something over on him, and every time he would take people down there they would put him out, so he said, "I will tell you the best plan to do to get in the hotel; you go down there and rent a room." I went down the 1st of October, 1919 and rented a room, room No. 200, and after twelve o'clock at night I took my shoes off—

Q I don't care anything about the details. A Well, I went through the hotel.

Q That is the way you got in there? A That is the way I got in; I registered and they didn't know me, and I got through the hotel and got an idea of the shape it was in and how much I had to spend on it.

Q When did you come to an agreement with Prettyman as to the terms of the sale? A About the last week in September of that year.

Q September, 1919? A Yes.

Q When did you first talk with Mrs. Rosecrans about your buying the hotel? A When Mr. Prettyman was there. Mr. Prettyman came to make the terms.

Q What conversation did you have with her in relation to the hotel, buying the hotel? A I said that I—

Mr. Schimpf: That is objected to, if it is an effort to show any agreement whereby there might be a resulting trust. That agreement, I think, must be in writing under the Statute of Frauds.

The Court: I will permit the testimony.

Mr. Starr: My view is this: That in either aspect of the case, that if there was an agreement by which the property was pledged, that can always be shown. If there was a resulting trust, resulting from the payment of money, the Statute of Frauds does not apply.

Mr. Schimpf: A resulting trust can only arise where one person pays the purchase price and has the title taken in another person's name. In this case there is no testimony at all that the husband put up the money. The wife put up the money.

Mr. Starr: That is the disputed question in the case, as I view it.

The Court: I think that is the issue. I will permit it.

(Question repeated.)

A I told her I was not in a position to finance it, I didn't have enough money, and she says, "Well, you have always repaid me the money I have loaned you before, and I will trust you with the—I will advance you the money you need at the time of settlement, and you can pay the money as you make it; you ought to make that much money in one year's time in a hotel like that to repay me what I am putting in."

Q What was said about taking the title, if anything? A The title was to be placed—I told her that the only security I could give her would be to let her name appear on the deed, and when I would pay the money, she should release me.

Q Was that the conversation you had with her? A That was the conversation.

Q When was that conversation? A That was right after Mr. Prettyman left, about the last week in September.

Q The settlement occurred when? A On the 1st of December.

Q Did you pay the five thousand dollars that was paid at the time the contract was made? A I did.

Q How was that paid? A It was paid in two checks, one on the Land Title for two thousand.

Q Is that the check for two thousand? A That is the check.

Q Was that your money? A That was my money.

(Check offered in evidence and marked Exhibit D. 16.)

Q The other three thousand was paid how? A By a certified check on the Atlantic City National.

Q Have you been able to find that check? A No, but they have a record of it there.

Q You paid the additional three thousand dollars? A I paid the five thousand in two checks.

Q And have you been able to find that three thousand dollar check? A No, I have not.

Q Whose funds were they? A My own funds.

Q Deposited where? A Atlantic City National Bank.

Q When the settlement occurred at the Title Company, did you get a statement of the settlement? A I did.

Q I show you a paper which is dated December 1, 1919 and ask you whether or not that is the statement that you got showing the way in which the property was paid for and the settlement made? A Yes.

(Statement offered in evidence and marked D. 17.)

Q Did you pay the balance shown by that statement of $11,824.10? A I did.

Q It is more than that. It is $12,097.10. A I did.

Q Did you pay that by checks? A By checks, yes.

Q I show you four checks and ask you whether or not those are the checks which made the settlement of twelve thousand and some odd dollars? A Yes.

Mr. Starr: I offer in evidence a check dated December 1, 1919 to the order of Charles B. Prettyman for $325, drawn on the Land Title Company.

(Check marked Exhibit D. 18.)

Mr. Starr: Another check of the same date drawn on the Citizens' National Bank of Marietta, Ohio, for $2,000 to the order of Prettyman.

(Check marked Exhibit D. 19.)

Mr. Starr: Another check drawn in favor of Prettyman on the Atlantic City National Bank for $7,950, dated December 1, 1919.

(Check marked Exhibit D. 20.)

Mr. Starr: Another check dated December 5, 1919 to the West Jersey Title and Guarantee Company of $1,822.10.

(Check marked Exhibit D. 21.)

Mr. Starr: They figure up $12,097.10, which is shown as the amount due.

Q I notice there is a credit allowed of five thousand dollars, allowance for Mary Graham of twenty-five hundred dollars, allowance for the usual commission of twenty-five hundred dollars, making a deduction of five thousand dollars. Will you explain how those deductions came to be made? A Mr. Prettyman told me that he was allowing me that commission because he wasn't selling it through an agent, and the twenty-five hundred dollars he was allowing for—there was about a hundred rooms, approximately a hundred rooms without any furniture that belonged to those people that were in there. He says, "I will allow you twenty-five hundred dollars toward furnishing that."

Q That made the real consideration of the property one hundred and twenty thousand dollars instead of one hundred and twenty-five? A That is right.

Q Now, what happened with reference to the furniture? Did you subsequently buy that furniture? A No, not all of it. I bought some of it.

Q From Graham? A I bought some from Graham, and I went down to where the Ambassador is now, and they were tearing down some hotels there, and I bought the rest of it. That was in October and November. I bought approximately five thousand dollars' worth of furniture.

Q Whose money was that? A That was my money.

Q Your money used for that? A Yes, sir.

Q It is a fact, isn't it, that the moneys which were used at the settlement for which you drew a check, some of it was loaned to you by your wife? A Yes; that was the agreement.

Q That was according to the arrangement you made before? A According to the arrangement I made with her.

Q At the time of the settlement was there any talk between Mrs. Rosecrans and Prettyman with relation to her being released from the purchase money mortgage, and if there was, state exactly what happened. A No. They were talking about how the property should be placed, and Mrs. Rosecrans told him that we had agreed to place it jointly, for the loans that she had made me, and when I got the money back I was to repay her and she was to release me from the deed, and he said that he would—he practically agreed that he would release her from the bond and deed in one year.

Q But she did go on the purchase money mortgage? A Yes, and later on he made an agreement in writing to release her from the bond after the first year. He made an agreement in writing with me personally if I paid him

another thousand dollars additional on the installment on the mortgage, he would release her on the bond, so that the property could be held in my name.

Mr. Schimpf: The witness has said that agreement was in writing, and I think it ought to be produced.

The Court: Yes.

Q Have you got that? A You have that.

Mr. Starr: If I have it, I will produce it.

The Witness: I called your attention to it a little while ago. It was a long agreement, a letter that he wrote me.

Q I will see if I have it here. Now, what did Mrs. Rosecrans say with reference to the proposition that she was to be released from the purchase money mortgage at the expiration of a year? A Well, she expected to be released in a year, but if I couldn't make the payments in a year, it was all right, she would release any time that Prettyman would sign such an agreement, or release her.

Q Had you talked with her prior to that time about being released from the bond and mortgage at the expiration of a year? A I did. She said I ought to make enough money in a year's time in a hotel like that to repay her that loan.

Q Now, has Mrs. Rosecrans ever objected to your running the business in the hotel? A No. She told me after we took possession of the house and she saw the entire heating system and water system had to be torn out and the place was an entire wreck, wasn't fit to use, she told me only

that she knew my ability for years and years in the hotel business, she would never have considered advancing the money she did. She was afraid to lose the money she had in it. She told me that on the second floor of the hotel.

Q Now, these checks that have been introduced in evidence, I show you the bunch of checks that are marked D. 1 to D. 14 for identification inclusive, and ask you for what purpose those checks were given to Mrs. Rosecrans? A In repaying her the loans.

Q What loan? A The loan that she made at the time of settlement, and then subsequently some other loans.

Q Those loans were made for what purposes? The other loans were made for what purposes? A To help me to re-furnish the hotel.

Q Were these checks paid to her for any other purpose than to repay the loans which Mrs. Rosecrans had made to you? A No; just for the loans.

Q How much has been paid on account of the second mortgage since December, 1919? A Twelve thousand dollars.

Q Three thousand dollars a year? A Three thousand a year.

Q Who paid that money? A I did.

Q With whose funds? A My funds.

Q Your own funds? A Yes.

Q Who paid the interest on the mortgage? A I did.

Q With whose funds? A My funds.

Q Since December, 1919 what portion of the time has Mrs. Rosecrans lived in the hotel? A We were at the Amsterdam Apartments four years. That takes it up to October, 1922.

Q And since that time has she lived at the hotel? A Since that time she has lived—we had an apartment in California and we had an apartment in California last winter, and I paid for the apartment, and she left the apartment. I paid a month in advance and she left the apartment.

Q Confine yourself to that one question. What portion of that time has she lived in the hotel since October, 1922? Has she lived in the hotel any portion of the time? A Since last spring.

Q The spring of 1923? A As near as I can remember.

Q What sort of apartment has she had there? A Two rooms and bath.

Q During the time that you were at the Amsterdam Apartment, did she take her meals at the hotel? A She did.

Q You and she had this apartment away from the hotel? A Away from the hotel.

Q But the meals of yourself and wife were served at the hotel? A Served at the hotel, yes. I paid the rent at the apartment and all the expenses.

Q Now, what were you obliged to do to the hotel after you purchased it in order to make it tenantable? A I had to take out all the pipes, the water pipes, all the plumbing fixtures, practically all the plumbing fixtures, the entire steam plant had to be remodelled, and new bathtubs had to be put in. The doors were all broken. The locks on all the doors were broken. They didn't like to lose the hotel, and in the time between October 2nd and December 1st they did all the damage they could to the place.

Q What about the furnishings? Were you obliged to re-furnish it? A I re-furnished a

hundred rooms, not quite a hundred rooms, somewheres around eighty-five or ninety rooms, and I re-furnished the parlor and the lower lobby and the dining room, equipped it with silver and the kitchen with kitchen utensils.

Q Whose funds were used for that purpose? A My own funds. I gave notes to Faith and Company in Philadelphia to remodel the whole place, and I paid those notes when they were due.

Q Can you tell us about how much you spent on the property the first year? A The first year the properties, according to the income tax figures—

Q I don't care about the income tax figures. A Thirty-two thousand dollars.

Mr. Schimpf: The question, after all, goes to whether or not Mrs. Rosecrans has a half interest in the property.

The Court: Yes. We are not accounting now.

Mr. Starr: No, but it seems to me it is the general conduct of the parties in relation to the status as to the property. If this man spent all his own money in refurnishing and remodeling and making improvements, it is not conclusive, but I think it is a fact that ought to go in the case.

Mr. Schimpf: She is either an owner with a mortgage as security, or there is a resulting trust in his favor.

The Court: I will permit it.

(Question repeated.)

A Approximately thirty-two thousand dollars.

Q The second year how much did you spend on it? A Something like twenty thousand dollars.

Mr. Schimpf: I think, if these items were spent, we ought to have some better proof.

The Court: Yes, if the items are to be of any real service to us. I think the only purpose of this is to show that he spent large sums of money.

Mr. Starr: Just generally, without going into details.

The Court: I will permit it that way.

A It took five months before the house could be used at all from the day we bought it. We couldn't use it until Easter time. It took men working day and night there from the day we bought the place until April to get the house so a person could live in it. It wasn't habitable.

Q The third year about how much did you spend? A Around six and seven thousand dollars. The fourth year about the same. It totals somewhere around sixty-five and seventy-five thousand dollars. I have obligated myself for all the bills. Notes. Gave my own notes.

Q Did Mrs. Rosecrans obligate herself for any of the bills at all? A She did not.

Q I understand she did from time to time loan you money for that purpose? A Yes, she loaned me money for that purpose and I was to repay her as I got the business under way.

Q Mrs. Rosecrans in her testimony says that you and she talked about this purchase and that you agreed with her that the purchase should be made jointly and the business was to be operated and you were to share in the receipts. Did any

conversation of that kind ever occur? A No, nothing said about such a thing.

Q Did you ever make any agreement to buy this hotel and give her an interest in it, except by way of security for the moneys she advanced? A No.

Cross examination by Mr. Schimpf.

Q You say you have been in the hotel business for twenty years? A Twenty years, yes.

Q And you are a very successful hotelman? A Yes.

Q Did you ever go into bankruptcy as a result of your operation of hotels? A Through your advice I went into bankruptcy. You were my attorney for fourteen years. You steered me into it to sign an option where the people didn't own the land, they don't own it yet, they can't sell it yet.

Q Then it was my fault you went into bankruptcy? A It was your fault. I trusted you. You took me in Judge Thompson's office and got me to sign an option that wasn't worth the paper it was written on. I took it to the bank, I took it to Joe Thompson and he told me it wasn't worth the paper it was written on.

Q Then did you go into bankruptcy? A Yes.

Q And you went through bankruptcy? A Yes.

Q And you left a lot of creditors behind you, didn't you? A They were nearly all paid subsequently. They all got their money.

Q Will you give me the names of those you paid subsequently?

Mr. Starr: I don't think that is at all helpful.

Mr. Schimpf: This witness is volunteering.

The Court: If it is objected to, I will overrule it.

Mr. Starr: I object to it.

The Court: I sustain the objection.

Mr. Schimpf: Then I ask that the witness' answer which was not directly responsive to my question be stricken out.

The Court: It is too late to do that now.

Q When did all this happen? When did you go into bankruptcy? A In 1913.

Q And when you went into bankruptcy you had no money, did you? A No.

Q When you came out of bankruptcy you had no money, did you? A I had very little. I had some, yes. I had very little.

Q How much did you come out with? A I don't just recall. It wasn't very much.

Q And about that time you met your present wife, didn't you? A Yes, she came there—they put her in charge of the hotel, the Lexington, and they put her as manager. I owned the business. They put her in as bookkeeper to audit the books.

Q As a matter of fact, isn't it true that for several years after your failure, the Hotel Lexington was run by a committee of your creditors? A For one year.

Q For one year? A For one year, 1915; and they got their money.

Q Mrs. Rosecrans was there representing the creditors as bookkeeper, was she not? A Yes, one year.

Q And in 1915 the hotel was operated by another set of your creditors, wasn't it? A No. Yes, it was. 1915.

Q 1915 there was another set of your creditors, and Mrs. Rosecrans' services were retained by them to look after the management of the house? A 1916 and 1917 it was operated by one creditor and myself.

Q You were married to Mrs. Rosecrans in September, 1918? A Yes.

Q And at that time you had no money, had you? A 1898?

Q Yes. A I did.

Q September, 1918? A I did, yes.

Q Where did you get it? A I was employed as manager.

Q Employed as manager where? A At the Lexington for four years; during four years.

Q What salary did you receive? A I received a hundred and fifty a month.

Q What family did you have to support? A I had three children.

Q And your wife, too? A They were at the hotel. My wife was dead.

Q When did your wife die? A 1913, the year I went into bankruptcy. You killed her by your advice.

Q I did that, too, did I? A Yes.

Q Then I have a lot to answer for. A Well, she worried herself to death about it.

Q You had three children, you say? A Yes.

Q And you still have three children dependent on you, do you not? A Yes, but I made money on the side, operating that hotel.

Q Mrs. Rosecrans at that time had a lease on the Hotel Osborne, didn't she? A No, she did not.

Q When did she take that lease on the Hotel Osborne? A Mr. Powell had the lease. I paid the money to Dr. Ludy, and Mr. Powell took the lease. Later on she put up some money, she wasn't satisfied, she didn't like Mr. Powell, she didn't want him to have the lease, and to settle the controversy we gave her the lease for security. That is how I came to trust her to go on this deed.

Q You gave her that lease for security? A Yes.

Q She did put up some money for you when you went into the Hotel Osborne? A Not at that time, no. I put up all the money. Later on—after I took the lease and paid the first installment of two thousand dollars, later on she advanced the money. Dr. Ludy guaranteed my bills.

Q Were you married then? A No, we were not.

Q So that even before you were married she started to loan you money? A Yes.

Q And she has been loaning you money ever since? A Yes, she has been loaning money, yes.

Q You know that Mrs. Rosecrans is an experienced hotel woman, do you not? A I know she is a bookkeeper, not an experienced hotel woman. I know she was never in the hotel business, never conducted a hotel in her name, never known as a hotel woman.

Q Never had anything to do with a hotel except to keep books? A Keep books.

Q You knew that, of course, when you married her? A Yes.

Q When you went to the Hotel Princess, it is undoubtedly true that she put up most of the money when the Princess was bought, isn't it?

A No, not most of the money. Somewheres around seven thousand dollars. I put up five thousand dollars when we made the agreement of sale. I put up—after we made the agreement of sale I put up somewheres around five thousand dollars to refurnish the hotel so it could be used.

Q I am talking about the purchase price. She put up every dollar in that purchase price except the first five thousand, didn't she? A No.

Q What did you pay besides the first five thousand? A There was two thousand, and somewheres in the neighborhood of three thousand that I paid in December. I paid the insurance, that was a thousand, thirteen hundred and something, and then there is another check there for two thousand dollars.

Q Didn't you get that money from Mrs. Rosecrans? A No, not that money. There was about seven or eight thousand I got from her.

Q There was only eighty-seven hundred dollars put up in December. Didn't you get that all from her? A No, there was twelve thousand put up in December. Twelve thousand and some was put up the day of settlement.

Q She went into the Princess Hotel with you and worked there, didn't she? A No, she didn't work there.

Q Never did any work in the Princess? A She did some work voluntarily. Not at my request.

Q Did she do any? A She helped some with the books, yes.

Q Did she do any thing else? A When she would go to Philadelphia she would do some buying, but it was all optional with her whether she wanted to do it or not.

Q You attended to business there for a couple of years, didn't you? A I didn't get that.

Q You attended to business there for a couple of years and spent your time there on the job, didn't you, in 1919 and 1920? A I was always on the job.

Q Well, you haven't been much on the job since 1922, have you? A Oh, yes, I have. I have always been there.

Q Didn't you get to drinking pretty heavily in 1922? A I never drank. I just passed an examination for twenty thousand life insurance at forty-five, and I couldn't get that if I drank or went to any excesses.

Q Did you ever tell your wife that half of the property was hers and that you were glad it was that way? A I said, "Perhaps it is well."

Q "Perhaps it is well"? A Perhaps.

Q I show you what purports to be your letter of May 7, 1923, and ask you if you wrote that letter? A Yes.

Q Did you say in that letter to your wife, "The night I came home on Alvarado street and was sick with drink they started me, and after you left they nearly finished me"? A Yes. There was a crowd of fellows got hold of me and gave me something to drink, I didn't know what it was, and made me sick.

Q The letter also says, "That is why I said it is best the property stood the way it did. I told you New Year's Eve I would get out of it, I couldn't say how much, for they were blackmailers, too," and so forth. "One who is leader is now in jail here. The other is in Salt Lake. I got copy of deed and proved it was not my property and you could lay claim to all of it if anything was put over." A Yes.

Q So it is your wife's property when you are in trouble, but it is your property when you are

out of trouble; is that the idea? A No. I said perhaps it was well at that time that it stood that way.

Q So you did prove to some people that you didn't own that property, didn't you? A While it stood that way. I couldn't prove it was all my property.

Q You got a copy of the deed to prove to certain people with whom you were in trouble that you didn't own that property, didn't you, as late as May, 1923? A No.

Q You say you spent so much money in furnishing the Princess? A Yes.

Q You bought those things on your wife's credit, didn't you? A Some things in Wanamaker's, yes.

Q And some things in Strawbridge and Clothier's, too, didn't you? A Yes.

Q I show you a series of bills, beginning in January, 1918, and running to June, 1922, on John Wanamaker, and ask you if you didn't buy for your business the things that are on there, and charge them to your wife? A With the understanding that I was to repay her.

Q Don't qualify it. Did you do it? That is all I want to know? A Yes.

Mr. Schimpf: I offer these bills.

(Bills marked Exhibit C. 26.)

Q I show you bills of June, 1919, from Strawbridge and Clothier and January, 1919, June, 1918, and ask you— A Not all of that stuff was for the hotel.

Q —and ask you whether or not you didn't buy the things that are on there and charge them to your wife at Strawbridge and Clothier's for your business? A No, not all of it.

Q Not all of them? A No.

Q Will you pick out the items that you didn't? A There is sheets and tablecloths; this item here, petticoat, luncheon sets. A lot of this stuff went in the apartment where we lived, our home. A lot of this stuff went in the apartment where we lived and it was bought with the understanding I was to repay her.

Q All I want to know is did you buy that stuff for your house or your business and charge it to your wife? A Not all of it, no.

Q Did you buy a considerable portion of it? A A portion of it, yes.

Mr. Schimpf: I offer those bills in evidence.

(Bills marked Exhibit C. 27.)

The Witness: A portion of those bills. Not all of them. Some was for the home, not for the hotel, and I paid those bills when they became due.

Q You even went so far as to buy your wife an engagement ring and charge it to her, didn't you? A No. She had no engagement ring.

Q After you were married? A No.

Q I show you an item purchased under December 23rd, ring, $240, and I ask you whether or not you didn't buy that ring for your wife and charge it to her account? A Yes, but I paid the bill.

Q "Yes" answers it. A I paid the bill.

Q You paid the bill for that ring, did you? A I paid the bill.

Q Did you pay the bill for that ring? A I did.

Q Don't you know as a matter of fact when your wife found that out, she returned it to

Wanamaker's and it is credited on this bill, "Returned"? A That may be, but I offered to pay it, or I did pay it.

Q On the 23rd you bought it and charged it to her, and on the 24th she returned it and credited on the bill. Isn't that a fact? A It may be, but I did that because I couldn't raise any money on the hotel.

Q I don't care why you did it. A I offered to put a joint note in bank. I couldn't have a hundred thousand dollars in the property and have money in bank, too.

Q So you were affluent enough to pay thirty-two thousand dollars profit in that hotel the first year and yet you couldn't raise money enough to buy your wife a ring in the same year, could you? A I offered to buy her a ring and she didn't want no ring.

Q You have permitted your wife to be sued a number of times since you owned that hotel jointly, haven't you? A I couldn't help that. They brought suit on account of the deed.

Q You have permitted your wife to be sued, you and your wife jointly, and in some cases her alone, for bills against your hotel; isn't that true? A I couldn't help how they sued. I paid the bills.

Q Isn't it true that she was sued jointly with you and sometimes alone for bills contracted by you in the hotel? A Her name was on the subpoena, yes.

Q That is the only way you knew she was sued? A Her name was on the subpoena, but I paid the bills. I paid the—I didn't let it get into court. I paid it myself out of the business.

Q What cases do you have in mind that you ever paid? A I paid the bill—the grocery bill

for two thousand dollars that they agreed to accept a note on and they didn't take the note and they sued jointly because the deed stood in our joint names.

Q And you paid that? A I paid that bill, something like between fifteen hundred and two thousand dollars, and there was several others the same way. I paid them all.

Q Your wife never paid any of them, in order to avoid judgments against the two of you, did she? A She might have paid some small ones while I was away, and I repaid her later.

Q You say she never helped you in the hotel at your request? A I never requested her. I knew how to keep books.

Q I show you a telegram dated March 2, 1923, from Los Angeles and ask you if you sent that to your wife? A Yes, because this man advised me—

Q Never mind the cause. You sent it? A I sent the telegram, but he wouldn't—I want to explain the reason.

Mr. Starr: You will have an opportunity.

Mr. Schimpf: I offer the telegram in evidence.

(Telegram marked Exhibit C. 28.)

Mr. Schimpf: I do not believe I offered this letter of May 7, 1923. I intended to.

(Letter marked Exhibit C. 29.)

Q Now, Mr. Rosecrans, you said that you had an agreement in writing to release Mrs. Rosecrans at the end of one year. Will you produce that writing?

Mr. Starr: Here it is.

Q I show you a letter purporting to be signed by Charles C. Prettyman, dated May 12, 1922, and ask you if that is the writing you refer to? A Yes.

Mr. Schimpf: I offer that in evidence.

(Paper marked Exhibit C. 30.)

A He gave me that because we both requested him time and again to release her from the bond and mortgage.

Q Why didn't you accept the proposition made in that letter? A Because Mrs. Rosecrans would not release her interest in the property.

Q She wouldn't release her interest in the property? A No.

Q And you thought as late as 1923 that it was a good thing for her to keep her interest in the property, didn't you? A No, I didn't.

Q Didn't you say so? A I said in the letter perhaps sometimes I think it is.

Q Sometimes you think it is and sometimes you don't think it is; is that right? A I thought at that time, yes.

Q Now, you are not living with your wife at present, are you? A I am.

Q You are living with your wife? A Yes, at the Princess Hotel.

Q Well, there are a great many people at the Princess Hotel who are not living with each other? A I have one room—

Q What do you mean by that? A I have one room and she has a suite of rooms and a bath.

Q You are not living on the same floor, are you? A I have good reasons.

Q I have no doubt. A I have good reasons for that, reasons that I can't—

Mr. Starr: It seems to me that is utterly immaterial.

Mr. Schimpf: I think it is perfectly proper to show that this man has changed his mind about his wife's situation, about being entitled to that property.

The Court: I think I shall permit the question. (Former question repeated as follows: "Now, you are not living with your wife at present, are you?")

A I am.

Q You are? A I am providing for her; I am providing a home for her and I live there, and I live in one room and she lives in another. I have very good private reasons for not living with her in the same room, not occupying the same room.

Q Then you are living with her, but not living with her, at the same time? A Living under the same roof, yes.

Q You haven't been there all winter, have you? A I have.

Q When did you leave Atlantic City this fall? A I didn't leave Atlantic City. I have been back and forward. I have been to Philadelphia, I have been to New York, advertising the hotel open for the season, but I have been here.

Q How many nights have you spent in the Princess Hotel since Labor Day? A Practically the biggest part of the time.

Q The biggest part of the time? A Yes. I am away on business at different times of the year that I have to advertise the hotel, see

people and make arrangements to get conventions.

Q You don't support your wife, do you? A I do.

Q How? A I am conducting the hotel, I am providing a living there for her, her bills are paid at the desk.

Q Haven't you repeatedly requested her to leave the hotel? A I have not.

Q Never? A No.

Q And you are living with your wife in a spirit of amity and conjugal bliss? A Well, she has a violent temper and she strikes me in the face occasionally; she uses bad language around the place, and she tears down signs that I have put up, and interferes with the clerks in different ways, and I think it is best to avoid her whenever I can. I have witnesses that saw her strike me in front of all the guests and employees of the hotel.

Q Mr. Rosecrans, are you seriously saying to the Court that you live with your wife? A Yes. I provide a home for her, I live under the same roof, but a man don't want to come in contact—

The Court: There is no question.

Q Don't volunteer. What did Mr. Prettyman say when he made this deed to you and Mrs. Rosecrans? A I don't recall just what the conversation was.

Q Did he say anything about where the title must reside so far as he, the grantor, was concerned? A About what?

(Question repeated.)

A He insisted that the title be placed in our joint names for at least one year, and my wife

seemed to know that before the settlement was made. She told me about it.

Q And that is all Mr. Prettyman said about it, that it must be there for at least one year? A As I recall it, yes.

Q Did you have an agreement of sale with Mr. Prettyman? A Yes.

Q Have you got a copy of that agreement of sale? A I don't think I have.

Q In whose name was the agreement of sale? A In our joint names.

Q In your joint names? A That was through —he called me on the phone or I called him on the phone and told him I was ready to come to Philadelphia and put up the five thousand dollars deposit, and just as I was about to hang up I asked him—he told me to come up. He was talking to me, and I said, "Will it be necessary for Mrs. Rosecrans to come along?" and he said, "Yes, bring her along."

Q And that agreement of sale was made when? A October 2, 1919.

Q So that from October 2, 1919, until the actual time of settlement, the agreement was in your joint names and the deed was made in accordance with the agreement? A Yes.

Q And Prettyman wouldn't have it any other way, would he? A No. He told me the day of settlement that he wouldn't have it any other way.

Q Did he tell you at the day of settlement that he wouldn't convey to you, but he would convey to your wife? A No. If I hadn't trusted Mr. Prettyman and Mrs. Rosecrans, I would have taken my money and bought a smaller hotel.

Re-direct examination by Mr. Starr.

Q In August, 1923, who represented you in this matter? What lawyer did you have? A Judge Haight.

Q Of Jersey City? A Yes.

Mr. Starr: I offer in evidence a letter that Mr. Schimpf produces on call, signed Wall, Haight, Carey and Hartpence, addressed to Mrs. Rae S. Rosecrans.

(Letter marked Exhibit D. 22.)

Q Now, Mr. Rosecrans, I show you this telegram dated March 22, 1923, marked D. 28, and you can make any explanation you desire in relation to it. A I had placed this man, Charles Devine, in charge of the hotel, to open the hotel. I wired him to come on from New York and made arrangements to pay him twenty-five dollars a week, and he wired me—I have the telegram—he wired me that Mrs. Rosecrans was constantly interfering with his conduct of the hotel, and I was afraid that he would leave the hotel and—

Mr. Schimpf: I do not like to interrupt the witness, but he is testifying apparently to what somebody wired him. I think he ought to produce it.

A I didn't know this was going to come up, or I would have had the telegram with me.

Mr. Starr: It seems to me he has a right to explain this telegram.

The Court: He can explain the telegram, yes.

Mr. Schimpf: He cannot tell the contents of another telegram.

Mr. Starr: I do not ask him to. He can simply say that he received a telegram.

A I was advised by this man that he could not conduct the hotel, and rather than have the hotel closed at Easter time and have the business diverted, the business that I had worked for, I sent out twenty thousand postal cards from Los Angeles, and rather than have that business go to other hotels, I wired this man to let Mrs. Rosecrans have charge if she interfered with the business, because I couldn't tell at that distance what was going on and I wanted the hotel kept open.

Q And you wired her, also? A I wired her, also. I wired him and I wired her.

Q You can make any explanation you desire with relation to this letter which is marked C. 29, sent from the Los Angeles Athletic Club. A I am telling her here in this letter how we came to start on this trip. I asked Mrs. Rosecrans to sign off, as she agreed to, on the deed, if I would repay her all the money. I only owed her at that time something like two thousand dollars, as she figured it out, and I said, "Now, I have worked these last two years day and night, and I have gotten all the credit I could"—

Mr. Schimpf: I do not think that is an explanation of how he came to write this letter. I do not think the letter needs any explanation. It speaks for itself.

The Court: I will permit the explanation. That may be a reason for it, but it is not explaining the letter.

Mr. Starr: He has a right, it seems to me, to explain the reason why he wrote it, explain the letter and also the reason for sending it.

The Court: It must be limited in response to the question. The question is to explain the letter.

Q Explain how you came to write it.

Mr. Schimpf: I think that is objectionable, how he came to write it. The letter says he got drunk, got in trouble—

The Court: Is the other question withdrawn? The first question was to explain the letter, as I recall it.

Mr. Starr: I will withdraw that and ask how he came to write the letter.

Mr. Schimpf: That is objected to, because how he came to write it does not make any difference. The statements in the letter bind him.

The Court: I will sustain the objection.

Mr. Starr: Then I will reframe my question and ask him to explain the letter itself.

The Court: I will admit that.

Q Explain the statements contained in that letter. A There was a crowd of fellows there in Los Angeles that tried to get me to put up my deed for some property out there, and they tried to hold me to a verbal agreement, and I explained the situation to them, that the property was held jointly by my wife and myself, and that they could not hold me for it.

Q You say something about a blackmailing scheme. What was that? A Well, it looked

to me as though they were blackmailers. They tried to blackmail me, from their conversation and their attitude. I mentioned in this letter that I had asked her before we left for California to sign off on that deed. That is what made me leave for California when I did, because I was discouraged, because I couldn't get any credit.

Q The bills of Wanamaker's and Strawbridge and Clothier's, did you pay those eventually? A I paid the bills as they came due, yes.

Q Give the money to her? A No. I paid the bills as they came in. She didn't have to pay any of those.

Re-cross examination by Mr. Schimpf.

Q That is your explanation of why you were afraid of the detectives in that letter, too, is it? A What is that?

Q That is also your explanation of why you were afraid of the detectives in that letter and also of the possibility of being identified? A I found a bill from the detective agency that was mailed to me that Mrs. Rosecrans had contracted, and I knew that they were shadowing me, but I had nothing to fear, because I wasn't doing anything wrong.

Q You didn't want to be identified, though, did you? A It didn't make any difference whether I was or not. I didn't do anything wrong.

Q Your explanation of this letter was that somebody was trying to hold you to a verbal agreement to exchange property. That is your explanation, is it? A That is how I came to write it, yes. It looked like a blackmail scheme, as though they were trying to blackmail me.

Q Wall, Haight, Carey and Hartpence were employed by you to write this letter of August 17th, marked D. 22? A Yes.

Q And did you authorize them to make the statement that they had been authorized by you to tender to Mrs. Rosecrans the unpaid balance of her loan to you? A I told them that I was ready to repay her all loans.

Q They say in their letter, "We beg to inform you that we represent Mr. Rosecrans and have been authorized by him to tender to you the unpaid balance of your loan to him." A That is right.

Q You don't know what the unpaid balance of her loan to you is, do you? A I tried to find out—

Q Do you know? A I don't know exactly, no.

Q And you didn't know when they wrote the letter, did you? A Yes, but I knew I could get the money, no matter what it was.

Q Never mind that. You didn't know how much you owed her at the time this letter was written, did you? A I knew approximately, yes. Near enough to be able to tell them to go and pay it, or I was ready to pay it as soon as she would sign off.

Q Did you give them any amount of money to tender to her? A No, but I told them I would send them the money.

Q You just told them, "You write to her and say I am ready to pay." That is all you did? A No.

Q You didn't put any money up there? A I didn't put any money. I told them I would give them the money whenever she was ready to sign off. It could all be done in one transaction.

Q Why didn't you start suit against Mrs. Rosecrans after you had this letter written? A She started suit first.

Q This was August 17, 1923. A Well, I was busy at the time with the hotel, and I was waiting to give her a chance to sign off the deed.

Mr. Starr: You started suit within a month.

The Witness: You started within a month.

Q Now, this letter is rather strong. I am just wondering—did you read it? I am just wondering whether you authorized all the statements that are made in the leter. A No, I didn't see the letter. I didn't see a copy of it. I was here when they wrote it. I wasn't there when they wrote that letter. I told them the circumstances, that she interfered with the business, struck me in the face and all that sort of thing.

Q And you say you never tried to get her out of the house at all? A No.

Q Never asked her to leave the Hotel Princess? A No.

Q Never instructed your servants and employees to refuse to wait on her? A No.

Q Never told anybody that every time she came in the hotel she was to be insulted? A No.

Q Didn't close the telephones off to her? A No.

Q When she undertook to put a telephone in her own private apartment and pay for it herself, you didn't deny the telephone company the right to come in and put it in, did you? A I did, but I gave a good reason. If there was a phone in one room, everybody else would want a phone in their room in the neighborhood. I gave her

the best rooms in the house. She has access to four phones. I didn't deprive her of a telephone.

H. RAE SCULL ROSECRANS, recalled.

Further cross examination by Mr. Starr.

Q Mrs. Rosecrans, when you received this letter of August 17, 1923 from Wall, Haight, Carey and Hartpence, did you make any reply to it? A No, I turned it over to Mr. Schimpf.

(Copy of answer sent by Mr. Schimpf to Wall, Haight, Carey and Hartpence offered in evidence and marked Exhibit D. 23.)

PAUL C. ROSECRANS, recalled.

Direct examination by Mr. Starr.

Q I show you Exhibit D. 3, which is a check drawn by you to the order of cash, dated August 2, 1920, and there is a notation on the front of the check, "Account loan, 12/1/19." In whose handwriting are those words? A That is Mrs. Rosecrans' handwriting.

No cross examination.

DEFENDANT RESTS.

COMPLAINANT'S TESTIMONY IN REBUTTAL.

JOHN ISZARD, sworn for the complainant.

Direct examination by Mr. Schimpf.

Q Are you a member of the Bar of New Jersey? A I am.

Q Practicing in Atlantic City? A Yes.

Q Did you represent Mr. and Mrs. Rosecrans at the time of the settlement of the Princess Hotel? A I did.

Q That was about December, 1919? A I believe so.

Q At that time did you hear any discussion between the parties concerned, to wit, Mr. Prettyman, Mr. and Mrs. Rosecrans, concerning the title to the property? A You mean as to how the title should be held by the purchasers?

Q Yes. A I did.

Q What conversation did you hear? A Mr. Rosecrans made objection to taking the title in the two names, and there was some discussion over the table in regard to it. Finally Mr. Prettyman said that he would not convey at that figure unless the title was taken in both names, that Mrs. Rosecrans had worked for him, that he was interested in her and it was through consideration for her that he was selling at that figure.

Q Did he say anything about the respective responsibilities of the two purchasers? A Not to my knowledge.

Q Did he say anything as to the execution of the purchase money bond and mortgage? A Mrs. Rosecrans objected to—when I say objected she spoke about her liability of the bond. There

was some discussion about that, and Mr. Prettyman said it would be necessary, of course, for her to sign if the title was taken in both names.

Q And did she sign? A Yes.

Q Did Mr. Prettyman at that time say that he would release her at the end of a year? A I didn't hear any of that discussion. At least, if I did, it didn't impress me so that I recall it.

Q Do you have any recollection that such a thing was said by anybody at that time? A I can't recall it.

Q But you do recall that Mr. Prettyman said he was interested in Mrs. Rosecrans? A Yes. He was getting very impatient. He got up from the chair and started to walk around and made some movement towards leaving.

Q And you say he declined to convey unless it was conveyed to both parties? A He said he would not convey at that figure.

Cross examination by Mr. Starr.

Q Mr. Iszard, don't you recall that there was some talk about Mrs. Rosecrans being liable on the bond given for the purchase money mortgage for a year? A I don't recall anything about a year. There was discussion as to her liability on the bond.

Q Here is what Mrs. Rosecrans says about it: "I only asked you"—this is in a letter written by her to Prettyman: "I only asked you to release me from the bond, and so did he, because you promised me on the day of settlement that after the first year you would do so. John Iszard and also Mr. Robbins was present." Doesn't that refresh your recollection as to what happened? A I didn't hear that. I may have been

busy talking with someone else at that time. I know of the discussion Mrs. Rosecrans had with me in regard to her liability on the bond.

Q Are you testifying now from what she told you, not in the presence of her husband? A Oh, no, we were all present. It was over the table at the time of settlement.

Q And Mr. Rosecrans was there, also? A Yes.

Q When did you first come into this matter? A Sometime after the agreement was written and signed, and before the settlement.

Q Who personally asked you to attend to the matter? A Mrs. Rosecrans brought Mr. Rosecrans into my office and introduced him. That is the first, I believe, I had ever met him, Rosecrans.

MARGARET L. FARLEY, sworn for the complainant.

Direct examination by Mr. Schimpf.

Q Miss Farley, were you employed by Mr. Prettyman? A At the time of the agreement for this property?

Q Prior to that? A Prior to that, but not at that time.

Q You were present at the settlement? A No.

Q Were you present at any time when the question of title was discussed between Mr. and Mrs. Rosencrans and Mr. Prettyman? A No.

No cross examination.

H. RAE SCULL ROSECRANS, recalled for the complainant.

Direct examination by Mr. Schimpf.

Q I show you paper purporting to be an assignment of a lease by J. E. Powell to H. Rae Scull, dated May 1, 1918. A Yes.

Q And ask you whether or not by virtue of that you became the lessee of the Hotel Osborne? A Yes.

(Assignment of lease offered in evidence and marked Exhibit C. 31.)

Q At that time you were not married to Mr. Rosecrans, were you? A No.

Q What business were you in? A Working in the Guarantee Trust Building.

Q Who paid the rent for the Hotel Osborne? A The rent was paid—I was responsible for the rent and paid—

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

The Court: Yes.

Q Who paid the rent? A Mr. Rosecrans.

Q And he conducted the business there under your lease? A Yes.

Q When did he leave the Hotel Lexington, to your knowledge? A He left the Hotel Lexington early in September, 1917.

Q And went where? A I don't know where he went. In a room some place.

Q When did he go to the Hotel Osborne? A In the season of 1918, early in the season of 1918.

Q Whose furniture was in the Hotel Osborne? A It was rented furnished, some furniture, and we had dishes to buy, linens, and so on. We had to supply those things. It wasn't completely furnished. Curtains.

Q Who conducted the business in the Hotel Osborne? A Mr. Rosecrans.

Q And you loaned him money to conduct the business there? A Yes.

Q How long were you in the hotel business? A I have been working since 1909.

Q What was your position at the Hotel Lexington? A I was sent there by representatives of the owners, Walter Edge and Captain Young, to go down there and put a system in the Hotel Lexington.

Q At the time Mr. Rosecrans left the Hotel Lexington, what did he represent to you his financial condition to be? A He had absolutely nothing and he wanted me to help him.

Q Did you help him? A I did.

Q And that was in 1917? A In the winter of 1917 and 1918.

Q When you took the Hotel Princess after your marriage, did you do any work in the Princess? A Yes.

Q What work did you do there? A I worked all through the house. Bought the supplies. He wasn't there and I was always around the house. worked late at night; kept the books.

Q You and your husband lived together? Did you then, I mean? A We were under the same roof in the Amsterdam.

Q What? A We were under the same roof in the Amsterdam Apartments.

Q Did you live together as married people? A Did not occupy the same room, no.

Q Were you on the outs then? A Well, I tried to make the best of it to the world.

Mr. Starr: This may be relevant, but I do not see the pertinency of it.

The Court: How is that pertinent in this case?

Mr. Schimpf: Mr. Rosecrans says they lived together.

Mr. Starr: She says the same thing.

The Court: I sustain the objection.

Q Do you have anything to do with the business at the Princess? A Yes.

Q What do you have to do with it now? A I have nothing to do with it now.

Q That is what I am talking about, now. Has Mr. Rosecrans ever suggested to you that you leave the Princess Hotel? A Yes.

Q How often and when? A Time and again.

Q Beginning about when? A Beginning in the spring of 1922 after he came back from California.

Q Was there any change in his habits about the spring of 1922? A Yes.

Q What was the change? A He did not pay any attention at all to the business.

Q And has he paid any attention to the business since? A Never there.

Q You live in the house now, do you not? A Yes.

Q What with respect to his personal habits? Has there been any change in his personal habits? A Yes.

Mr. Starr: I object.

The Court: I sustain the objection.

Q What, if anything, has he done to induce you to leave the Princess Hotel? A There hasn't been any inducement. He just wanted me to get out.

Q Has he done anything at all to you in the Princess Hotel? Did he ever ask you to get out? A Yes.

Q What did he say? A He told me to get out, he didn't want nothing more to do with me, he wanted the hotel in his own name, he was on his feet now and he didn't need me.

Q Has he ever said anything to anybody else in your presence about your leaving the hotel? A He has insulted me before the help.

Q That is a conclusion. What I want to know is what he has said to the help and to what help and when and under what circumstances. A The employees of the hotel.

Q Well, the clerks, or the chambermaids or the waitresses or who? A Anybody who happens to be around.

Q When and what did he say to you? A During the summer of 1922 and 1923, this past summer.

Q What did he say to you? A He said that —he says, "I don't want nothing to do with you." He says, "I am a man of the world and I have to have a young wife." He says, "You are from the country and I don't want you any more."

Q Has he said that to you in the presence of people in the hotel? A Yes.

Q Has he ever said anything to the servants in the hotel about waiting on you? A Yes.

Q What has he said to them? A He told me he didn't want me to eat in the dining room last summer. He said, "Eat back in the kitchen with

the negroes,'' and during the fall pageant I had two guests here at the hotel and I took them in the dining room and he discharged the waitress for waiting on me.

Q Has he ever said anything to the hotel clerk about your presence in the hotel, in your presence? A Yes.

Q What has he said? A He said not to pay any attention to me, because I had nothing to do with the business, and for me to get out, and he could insult me whenever he pleased.

Q Did you try to put a telephone in your own room? A I did.

Q What happened about that? A I went down and made application for the phone in 106 room, and it wasn't put in, and I called up and the manager told me why.

Mr. Starr: I object to that.

Q What did your husband do about it? A He wrote a letter to Britton, the manager of the telephone company, forbidding him to do it, and instructed his man down at the hotel with power of attorney to put them out—

Mr. Starr: I object and move it be stricken out.

Q Did you hear him say anything to anybody in the hotel about that telephone in your room? A No, because he hasn't been around the hotel since October. He wrote it in the letter.

The Court: Let that part be stricken out.

Q Did Mr. Rosecrans ever tell you that the only way he ever could secure you would be to let your name appear on the deed? A No.

Q Now, I ask you again what was your agreement with your husband, expressed between you and him when you bought that hotel?

Mr. Starr: I object to that. It has already been stated.

The Court: Yes. I sustain the objection.

Cross examination by Mr. Starr.

Q Now, Mrs. Rosecrans, you say you have been in the hotel business since 1909? A Yes.

Q Where were you first employed in a hotel? A Albermarle Hotel first, I think.

Q In what capacity? A As stenographer there, and assistant cashier.

Q Where next were you employed? A Hotel Strand.

Q In what capacity? A The same capacity.

Q Stenographer and assistant cashier? Where next? A With Mr. Cope the next two years.

Q In what capacity? A Cashier.

Q Where next? A The next was in the Fidelity Life Insurance. Cashier.

Q That wasn't in the hotel business? A No.

Q Where next were you employed? A That brings it up to 1914.

Q What? A In 1914 I went down to the Lexington.

Q In what capacity were you employed there? A I was employed by the owners.

Q To put a system of bookkeeping in; is that right? A And to report what Mr. Rosecrans did around the hotel.

Q You had nothing to do with the management of the hotel? A I was to report things to them and they were to take it up with him direct.

Q Did you have anyhing to do with the management of the hotel? A No.

Q Where next were you employed? A The same hotel.

Q In the same capacity? A Yes.

Q Where next? A The same hotel.

Q Same capacity? A Yes.

Q And where next? A The next season I worked at the Guarantee Trust and the Hotel Lexington night and morning.

Q In the same capacity you were before? A Cashier.

Q Just keep the books? A Yes; auditing the accounts.

Q Where next were you employed? A That brings it to 1918. Then I was still in the Guarantee Building.

Q What say? A In the Guarantee Building.

Q You never had anything to do with the actual management and running of a hotel, did you? A Yes.

Q Where? In what hotel? A At these different places.

Q Did you buy the food and engage the help, anything of that kind? A No.

Q Mr. Rosecrans in the last year or so has complained to you about your conduct at the Hotel Princess, hasn't he, and that has been a source of controversy between you? A I never knew there was any complaint until I got the letter from Jersey City, from the lawyers, which is here on the table.

Q Since that time haven't they complained about the way in which you conducted yourself there with the guests and the help, interfering with the management? A I didn't hear of anything.

Q No complaint was made at all about it? A Not about the guests, for I never spoke to the guests.

Q Well, the help, then? A If I saw them doing wrong. I would speak to them. He was never there.

Q Then complaint was made about your interfering with the help. That is right, isn't it? A Maybe they did.

Q And that is the source of the friction between you and him about the management of the Princess; isn't that a fact? A That wasn't the trouble.

Q At one time didn't you strike Mr. Rosecrans? A I don't recall it. Maybe I did. He almost drove me insane. I might have done it.

Q You know whether you did or didn't, don't you? A Maybe I did, but he has done it so many times to me.

Q You say maybe you did; is that it? A Maybe I did, yes.

Q He never told you to get out of your room, did he? He simply wanted you to refrain from interfering with the management of the hotel? A I don't know. The bed was taken out of the room.

Q Did he ever tell you to leave the hotel, remove yourself from the hotel? A Yes.

Q He personally? A Yes.

Q When? A Different times.

Q When? A He told me he didn't want me in there.

Q When? A Time and time again.

Q When was the last time? A Well, I haven't seen him since the 10th of October but once.

Q When is the first time he told you to do that? A When he first came back from California in 1922.

Q During all that time you say you paid the bills at the hotel when he wasn't there is that right? A Yes.

Q And participated, to the extent of loaning money, at least, in the business that has been going on there? A I didn't the season after he returned from California.

Q Haven't you advanced money, loaned to him money, for that business since 1922? A I did in 1922, but not in 1923.

Q No money at all in 1923? A After he returned from California I hardly think I did.

Q Aren't there checks here in 1923? A Yes, but he didn't come back from California until the 1st of June.

Q Up to the 1st of June, at least, you paid bills for him or loaned him money in the management of the hotel? A He was away and there was no one to pay the bills.

Q Can't you answer the question, please? A Yes, he was away.

Re-direct examination by Mr. Schimpf.

Q Mr. Rosecrans, in this letter dated May 7, 1923, marked D. 29, Mr. Rosecrans acknowledges the receipt of a thousand dollar bond. Did he get that bond from you? A He took it from me, yes.

Q He says the bank loaned him $850 on it. Did you ever get the bond back? A No.

Q Or any part of the proceeds? A No.

Q He says the bank loaned him $850 on it and gave him $106 interest? A Coupon bond.

Q And you never got any part of that back? A No.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY IN SUR-REBUTTAL.

PAUL C. ROSECRANS, recalled for the defendant.

Direct examination by Mr. Starr.

Q Mr. Rosecrans, there is some mention in this letter that Mr. Schimpf has just referred to about a bond? A Yes.

Q Did you give that bond? A She gave me the bond on the train before she left Los Angeles.

Q Was she ever repaid that bond? A She took the money from the safe to cover it.

Q From the Princess? A Yes.

Q You don't owe her anything on that bond, then? A No.

Q Did you ever say to her that you were a man of the world and needed a young wife? A I did not. I never thought of such a thing.

Q In the presence of anybody? A I did not.

Q Or when you were alone? A I never thought of such a thing.

Q Did you ever insult her in front of the guests or the help? A I did not. I just walked away from her when she struck me in

the face in front of everybody in the place. I just simply walked away.

Q Did you ever order her out of the hotel? A I did not.

Q What was the source of the friction between you and her at the hotel? What was the reason for it? A When I came back from California I found out that she had guaranteed a young man—

Q I am speaking about her conduct at the hotel in the spring of this year. Did she interfere with the business in any way? A She would give orders directly opposite to the orders that I was giving to the different employees.

Q Was that the source of the friction? A That was the source of the friction all along. I would tell an employee to do something and she would go and tell him directly the opposite, and I had a housekeeper there and she was a good housekeeper, recommended through a New York firm, had been working in New York, and she didn't want her there. Her brother was there one time making some repairs and he saw this woman and asked me who she was, and I said, "That is the housekeeper, but," I said, "she has got to go," and he says, "Why?" I said—

Q I don't care anything about the conversation with the brother. I am examining you just about your wife. A She didn't want this housekeeper there. I would have to continually discharge employees, hire and discharge employees on account of her interference with them.

Q Did you ever tell her to eat in the kitchen with the colored help? A I did not.

Q Ever prevent her from being waited on in the dining room? A I didn't. I gave orders to the clerks—the clerks over at the hotel now

can testify that I gave orders for her meals to be served in her room whenever she wanted them.

Cross examination by Mr. Schimpf.

Q Were you there when she took the money out of the safe? A No.

Q Then you are telling what somebody told you? A She told me herself. I knew the money was in the drawer. The drawer was open and the money was gone and she left a receipt there.

Q She told you she took the money out of the safe? A And she left the receipt there for it in the box where the money was.

Q That is the $750 item? A $750, and she got five hundred from the check.

Q I thought you testified this morning you paid her that seven hundred and fifty on account of the original loan? A She marked it loan.

Q You testified this morning— A No, I did not say on account of the original loan.

Q Now it is on account of the Liberty bond? A It was on account of the loans, whether it was Liberty bond or money.

Q Then all of those checks you paid her were just on account of loans generally? A On account of loans generally sometimes, and on account of the original loan other times.

Q Sometimes specifically and sometimes generally? A Yes, and she could apply—

Q You forgot this morning all about the Liberty bond, didn't you, when you introduced that receipt? A No. That Liberty bond was the same as money. It was worth so much money.

Q You didn't tell Miss Farley that you needed a young wife, either, that you were a man of the world? A No, I did not.

Mr. Starr: I object to that as immaterial and incompetent.

Mr. Schimpf: I am laying the foundation to contradict him.

A What I did tell Miss Farley—

Mr. Starr: My objection is that it is immaterial. There can be no contradiction on an immaterial matter.

The Court: It is quite immaterial.

Mr. Schimpf: But Judge Starr went to the trouble to contradict Mrs. Rosecrans, and I want to prove that he has made that remark, not only to her but to other people.

A What I did tell her—

Mr. Starr: No.

The Court: I will sustain the objection.

A Can I explain where this friction started?

The Court: No.

Q Now, give me the date of that receipt, will you? A September 16th.

Q September 16, 1922? A Yes.

Q And you never got that Liberty bond from her until the winter of 1923, did you? A I don't remember when I got the Liberty bond. No, I got the Liberty bond before that check.

Q Got the Liberty bond before that check, before 1922? A I would have to look up my books to verify that, to make sure of that. I can't remember that offhand.

Q You certainly can't remember whether that receipt was given for that Liberty bond or not, can you? A What is that?

Q You certainly can't remember whether that receipt was given— A I remember telling her that was for the—she could apply that on the Liberty bond.

Q You know very well, don't you, that you didn't get that Liberty bond until the winter of 1922, '23, that you went to California? What date did you go to California? A I got the Liberty bond when Mrs. Rosecrans left Los Angeles, the day she left there.

Q When did she leave Los Angeles? A She left sometime in February or March.

Q Of 1923? A Well, I don't remember—she left there this year, in February or March, and I don't recall whether it was this year or whether it was last year.

Q You don't remember whether it was 1923 or 1922? A She left there—both times when she left there she left—

Q Will your letter refresh your memory any when you say that on May 7, 1923, you got $850 from the bank on it? Will that help you any? A That don't say when I got it.

Q I am trying to get you to say when you got it. There is a letter that you wrote on May 7, 1923, and in that letter you say, "This morning I took the bond you gave me to the bank and they loaned me $850 on it and gave me $106 interest." Were you referring to some morning in 1922 when you wrote that letter on May 7, 1923? A No, that is the day I got it.

Q That is the day you took that bond, isn't it? A Yes.

Q May 7, 1923. Then this receipt which is dated September 16, 1922 isn't a receipt for the money on that bond, is it? A Well, I remember telling her that she could apply that money—

Q Is this a receipt for the money you got on that bond? Can you answer that? A It don't cover the bond. That don't cover the bond.

Q Then you were mistaken when you testified that it did, weren't you? A I remember telling her that that money she took out of the safe would cover the bond when she asked me for the bond.

Re-direct examination by Mr. Starr.

Q Well, independently of the date of the receipt and the date of the letter, as a matter of fact, did she tell you that she had gotten the money on that bond? A Did she say—

Q Did she say she had gotten the money out of the safe for the bond, or did you tell her she could apply it on the bond? A I told her she could apply the money on that. She asked me for that money that I got on the bond when I came back, and I said, "Last year you took money out of the safe and you can apply that on that loan."

TESTIMONY CLOSED.

Defendant's Exhibits.

EXHIBITS PRODUCED AT THE ORIGINAL HEARING.

Exhibit D. 1.

No. 267

Atlantic City, N. J. 3/9 1920

Pay to the order of H. Rae Rosecrans $130.12
One hundred & thirty 12/100.....Dollars
a/c Loan
To Atlantic City National Bank
Atlantic City, N. J.
Paul C. Rosecrans

Endorsement: H. Rae Rosecrans—Rae Scull Rosecrans

Exhibit D. 2.

No. 474 Atlantic City, N. J. 6/25 1920
Atlantic City Nat'l Bank
Pay to the order of Rae Scull Rosecrans
One hundred & thirty three 50/100.....Dollars
$133.50 (ackers Linen a/c) Paul C. Rosecrans

Endorsement: Rae Scull Rosecrans

Defendant's Exhibits.

Exhibit D. 3.

No. 585

Atlantic City, N. J. 8/2 1920

Pay to the order of Cash $182.32

One hundred & eighty two 32/100 .....Dollars

On a/c loan 12/1/19

To Atlantic City National Bank
Atlantic City, N. J.
Paul C. Rosecrans

Endorsement: Rae Scull Rosecrans

Exhibit D. 4.

No. 640

Atlantic City, N. J. 9/7 1920

Pay to the order of H. Rae Scull $2500.00

Twenty five hundred.....Dollars

On a/c Loans

To Atlantic City National Bank
Atlantic City, N. J.
Paul C. Rosecrans

Endorsement: H. Rae Scull

Bank Stamp:

Oct 19 1920—The Atlantic Safe Deposit & Trust Co. Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 5.

No. 641

Atlantic City, N. J. 9/7 1920

Pay to the order of H. Rae Scull.....$250.00

Two hundred & fifty.....Dollars

On account of Int.

To Atlantic City National Bank
Atlantic City, N. J.

Paul C. Rosecrans

Endorsement—H. Rae Scull

Bank Stamp:

Oct 19 1920—Second National Bank
Atlantic City, N. J.

Exhibit D. 6.

No.....

Land Title & Trust Co.

Phila. Pa. 11/5 1920

Pay to the order of H. Rae Scull.....$200.00

Two hundred.....Dollars

On a/c of loan.

Paul C. Rosecrans

Endorsement: H. Rae Scull

Bank Stamp:

Nov 12 1920 Second National Bank
Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 7.

No. 2007

Atlantic City, N. J. 7/1 1921

Pay to the order of H. Rae Scull.....$1000.00

One thousand.....Dollars

Loan acc't

To Atlantic City National Bank
Atlantic City, N. J.

Paul C. Rosecrans

Endorsement: H. Rae Scull

Bank Stamp:
Jul 12 1921—Second National Bank
Atlantic City, N. J.

Exhibit D. 8.

No. 2085

Atlantic City, N. J. 7/25 1921

Pay to the order of H. Rae Scull.....$1500.00

Fifteen hundred.....Dollars

Parlor Furniture & carpet acc't.

To Atlantic City National Bank
Atlantic City, N. J.

Paul C. Rosecrans

Endorsement: H. Rae Scull

Bank Stamp:
Jul 30 1921—Second National Bank
Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 9.

No. 2111
Atlantic City, N. J. 8/2 1921
Pay to the order of H. Rae Scull.....$2000.00
Two thousand.....Dollars
Loan account
To Atlantic City National Bank
Atlantic City, N. J.
Paul C. Rosecrans

Endorsement: H. Rae Scull
Bank Stamp:
Aug 5 1921—Atlantic Safe Deposit & Trust Co.
Atlantic City, N. J.

Exhibit D. 10.

No. 2163
Atlantic City, N. J. 8/17 1921
Pay to the order of H. R. Scull.....$1500.00
Fifteen hundred.....Dollars
L. Ret.
To Atlantic City National Bank
Atlantic City, N. J.
Paul C. Rosecrans

Endorsement: H. Rae Scull
Bank Stamp:
Aug 19 1921—The Atlantic Safe Deposit & Trust Co. Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 11.

No. 2040

Atlantic City, N. J. 9/10 1921

Pay to the order of H. R. Scull.....$550.00

Five hundred & fifty.....Dollars

Loan a/c

To Atlantic City National Bank
Atlantic City, N. J.

Paul C. Rosecrans

Endorsement: H Rae Scull

Bank Stamp:

Sep 13 1921—The Atlantic Safe Deposit & Trust Co. Atlantic City, N. J.

Exhibit D. 12.

No. 2343

Atlantic City, N. J. 8/5 1922

Pay to the order of H. Rae Scull.....$1000.00

One thousand.....Dollars

Acc't L.

To Atlantic City National Bank
Atlantic City, N. J.

Paul C. Rosecrans

Endorsement: H Rae Scull

Bank Stamp:

Aug 8 1922—Atlantic Safe Deposit & Trust Co.
Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 13.

Atlantic City, Sept 16th 1922

Received of PAUL C. ROSECRANS
Seven Hundred Fifty.....Dollars
On a/c loans
$750 xx H-R-Scull

Exhibit D. 14.

No. 2468

Atlantic City, N. J. 8/8 1923

Pay to the order of H. Rae Scull.....$500.00
Five hundred.....Dollars
To Atlantic City National Bank
Atlantic City, N. J.
For personal expenses

Paul C. Rosecrans

Endorsement: H Rae Scull
Bank Stamp: Crossed out
For personal expenses

New Jersey State Library

Exhibit D. 15.

Private Office

(SEAL)

HOTEL PRINCESS
South Carolina Avenue Near Beach
Atlantic City, N. J.

Paul C. Rosecrans

April 10th, 1922

Mr. Chas. Prettyman,
Phila., Pa.

I have your letter of 8th and you should have told me on Saturday, when I met you, that you had received my letter.

In regard to the trip West that was the first trip I had ever ~~had~~ taken in all my life and I paid my own expenses also my niece every cent with money that I had earned many many years ago, some of it was saved from a salary of 25 and 30 dollars a month; my mother had died just a short time before and I thought perhaps it would help me to forget a little my great loss: I have not had a dollar from the receipts of the Princess Hotel in anyway shape or form, the fact of the matter is I have not been able to get back, so far, what I put in it. You see every cent Mr. Rosecrans could get had to be put right back in the property or in furniture in order to do any business at all, it was in such a terrible condition; you would be surprised the thousands and thousands of dollars it has cost.

I only asked you to release me from the bond and so did he, because you promised me on the day of settlement that after the first year you

would do so, John Izard and also Mr. Robbins were present. You know it is so hard from the credit stand point to have a business held jointly, both Dunn and Bradstreet told him that he could never get a rating as long as it was so held; and the reason that we have been able to pay the bills as well as we have has been due entirely to Mr. Rosecrans and not to me, and he is the one that should have the credit if any is due, as he worked early and late during July and August he worked in AM from seven oclock until two and three the next morning and on Saturday nights during August he laid down in the back office and the night clerk would call him if anyone would come in or go out; that is the reason that his health is broken now; and it is for him to decide where his place is and not you, it is where his health can be built up the best in the shortest space of time.

But you see there is no use of having an unpleasant correspondence, you have some money and you win so just don't answer this letter I am tired of it all.

I am, with kind regards,

Yours very truly,

R. S. Rosecrans

Defendant's Exhibits.

Exhibit D. 16.

No. 212 Philadelphia, Oct 1st 1919

The Land Title and Trust Company
Broad and Chestnut

Pay to the order of Chas B. Prettyman
Two Thousand.....Dollars.
$2000.00

Payable through the Philadelphia Clearing House
Paul C. Rosecrans

Endorsement: For Deposit Chas. B. Prettyman

Bank Stamp:

Oct 8 1919—Franklin National Bank, Philadelphia

Stamped on face of check:

Certified when properly endorsed
The Land Title & Trust Co.
(Signature)
Asst Treasurer

Exhibit D. 17.

App. 29990.

December 1, 1919

STATEMENT OF SETTLEMENT PROPERTY PRINCESS HOTEL AS IN DEED CHAS. B. PRETTYMAN TO PAUL & RAY SCULL ROSECRANS.

Price of property		$125000.00
Prop. water 12/1/19	to 8/1/20 on $25.00	50.00
" sewer "	" 7/1/20 " $246.15	143.57
" tax "	" 1/1/20 " $954.80	159.13
" Fire Ins. "	" 12/1/20 on $50,000.	1346.40
" Int. on $30,000. 1st mortgage to 12/1/19 to 12/30/19		125.00
		$126824.10

Defendant's Exhibits.

Credit by:—			
XXXXX Cash paid on account	$5000.00		
Mortgage 69/35	30000.00		
Int. pd. by Prettyman to Dec. 30/19 P. M. mortgage dated 12/1/19	75000.00		10
Allowance for Mary Graham Furniture	2500.00		
amount usual to commission	2500.00	115000.00	
Balance due Prettyman for deed		$11824.10	
Title Co. bill	$220.00		
Drawing papers	10.00		
Recording deed	2.00		
Recording mortgage	3.50	235.50	
I. R. Stamps on bond	———	37.50	20
Amount deposited by Rosecrans		$12097.10	
Amount due Prettyman for deed		$11824.10	
Less to pay:—			
I. R. Stamps on deed	$95.00		
Lizzie P. Bindle 6 mos. int to 12/1 on mortgage	750.00		
Brode & Wright ins. bill	1346.40	2191.40	
Balance due Chas. B. Prettyman		$9632.70	30

$182210

40

Defendant's Exhibits.

Exhibit D. 18.

No. 29990 Philadelphia, 12/1 1919

The Land Title and Trust Company
Broad and Chestnut

Pay to the order of Chas. B. Prettyman
Three hundred and twenty five.....Dollars.
$325.00

Payable through the Philadelphia Clearing House
Paul C Rosecrans

Endorsement: C B Prettyman
Bank Stamp:
Dec 2 1919—Guarantee Trust Co.
Atlantic City, N. J.

Exhibit D. 19.

29990

Marietta, Ohio, 12/1/19 1919 No. 6

The Citizens National Bank
of Marietta

Pay to the order of Chas. B. Prettyman $2000.00
Two thousand.....Dollars
For Princess Hotel
Loan account
Rav 1218

Paul C. Rosecrans

Endorsement: C B Prettyman
Bank Stamps—For Deposit West Jersey Title & Guaranty Co.
Dec 2 1919—Guarantee Trust Co.
Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 20.

29990 No. 95

Atlantic City, N. J. 12/1 1919

Pay to the order of Chas. B. Prettyman $7950.00

Seven Thousand, nine hundred & fifty Dollars

To Atlantic City National Bank

Atlantic City, N. J.

Paul C. Rosecrans

Endorsement: C B Prettyman

Bank Stamps:

For Deposit West Jersey Title & Guaranty Co.

Dec 2 1919—Guarantee Trust Co.

Atlantic City, N. J.

Exhibit D. 21.

29990 No. 95

Atlantic City, N. J. 12/5 1919

Pay to the order of West Jersey & Title Co.

$1822.10

Eighteen hundred & twenty-two 10/100 Dollars

To Atlantic City National Bank

Atlantic City, N. J.

Paul C. Rosecrans

Bank Stamps:

For Deposit West Jersey Title Co.

Dec 6 1919—Guarantee Trust Co.

Atlantic City, N. J.

Defendant's Exhibits.

Exhibit D. 22.

WALL, HAIGHT, CAREY & HARTPENCE
JERSEY CITY, N. J.

AUGUST 17, 1923.

Mrs. Rae S. Rosecrans,
Princess Hotel,
Atlantic City, N. J.

Dear Madam:—

We beg to inform you that we represent Mr. Rosecrans and have been authorized by him to tender to you the unpaid balance of your loan to him, and to request you to release your interest in the Princess Hotel property which you hold as security therefor. Should you refuse, we will have no alternative but to start suit to have the deed declared a mortgage as to your interest.

Mr. Rosecrans informs us that you have been constantly interfering in one way or another with his conduct of his business. For although you may have an interest of some sort in the property itself, you have no interest whatever in the business which Mr. Rosecrans has developed over a period of years. Consequently it is no concern of yours what servants or employees Mr. Rosecrans chooses to employ or what policies he adopts in the general operation of the hotel.

We warn you that you will be held financially accountable for any injury to the business which your attitude might cause and further warn you that unless you immediately stop your efforts to embarrass Mr. Rosecrans, appropriate legal methods to force you to do so will be taken.

Yours truly,

(Signed) Wall, Haight, Carey & Hartpence.

Exhibit C. 1.

Exhibit C. 1.

(U. S.)
(Stamp)
($95.00)

DEED—Charles B. Prettyman et ux to Paul C. Rosecrans et ux.

THIS INDENTURE, made the first day of December in the year of our Lord one thousand nine hundred nineteen.

BETWEEN Charles B. Prettyman and Matilda W. Prettyman, his wife, of the city and County of Philadelphia, State of Pennsylvania, of the first part, and Paul C. Rosecrans and Rae Scull Rosecrans, his wife, of the city of Atlantic City, County of Atlantic and State of New Jersey, of the second part:

WITNESSETH that the said party of the first part, for and in consideration of the sum of One hundred and twenty five thousand dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, their heirs and assigns.

All that certain lot or piece of ground situate in Atlantic City in the County of Atlantic and State of New Jersey, (with the buildings and improvements thereon erected) bounded and described as follows:

Exhibit C. 1.

BEGINNING at a point on the westerly line of South Carolina Avenue seven hundred and twenty seven feet southwardly of the southerly line of Pacific Avenue and extending thence (1) southwardly along the said line of South Carolina Avenue one hundred feet; thence (2) westwardly, parallel with Pacific Avenue one hundred and fifty feet; thence (3) northwardly parallel with South Carolina Avenue one hundred feet; thence (4) eastwardly parallel with Pacific Avenue one hundred and fifty feet to the place of beginning.

Being the same premises that Mary Williams, single, by deed dated April 25, 1903 and recorded in the Clerk's office of Atlantic County in Book No. 288 of deeds page 170 &c. granted and conveyed unto the said Charles B. Prettyman in fee.

SCHEDULE OF GOODS AND CHATTELS IN THE PRINCESS HOTEL, ATLANTIC CITY, N. J.

66 white iron beds 4′6″ and springs,
42 white iron beds 4′ and springs,
36 white iron beds 3′ and springs,
66 mattresses 4′6″
42 mattresses 4′
36 mattresses 3′
299 feather pillows
144 bureaus
40 washstands
45 chiffoniers
20 wardrobes
33 bedroom tables
73 bedrooms rockers
174 bedrooms wall chairs

Exhibit C. 1.

45 china washbowls and pitchers for bedrooms,
6 morris chairs scattered through bedrooms
29 mahogany leather seat arm chairs belonging to exchange in bedrooms.
100 bed room carpets, carpets on bedroom halls, shades to all windows in house.

DINING ROOM FURNITURE

50 four seat tables
35 side tables
272 dining room chairs
1 sideboard.

EXCHANGE FURNITURE

1 carpet on floor of main exchange
1 carpet on writing room floor
2 wicker chairs
1 wicker rocker
1 wicker settee
1 wicker table
shades at windows,
40 porch chairs.

CAFE

46 round top tables, portion of which are used for dining room
6 square cafe tables
53 leather seat cafe arm chairs,
80 black cafe chairs, portion of which are used in dining room.

OFFICE AND BARBER SHOP

1 safe
1 typewriter
1 desk
2 office chairs

Exhibit C. 1.

1 office counter
1 key rack
1 cashier's desk
3 barber chairs
1 three piece mirror.

Together with all other goods and chattels which are now contained in the above described premises as well as all goods and chattels and personal property which may hereafter be placed therein, either in renewal of the above described goods and chattels or in addition thereto, excepting therefrom linen, silver and china ware.

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and of every part and parcel thereof:

And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of, in and to the said premises, with the appurtenances.

To Have and to Hold the said premises, with all and singular the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever. Subject however to the operation of a mortgage of thirty thousand dollars now on said property, recorded in book 69 of mortgages, page 35 &c.

And the said Charles B. Prettyman, for himself, his heirs, executors and administrators doth by these presents covenant, grant and agree to and

Exhibit C. 1.

with the said party of the second part, their heirs and assigns, that he the said Charles B. Prettyman for himself, his heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended so to be with the appurtenances, unto the said party of the second part their heirs and assigns, against him the said Charles B. Prettyman, his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will subject as aforesaid, warrant and forever defend.

In Witness Whereof the said parties of the first part to these presents have hereunto set their hands and seals the day and year first above written.

CHARLES B. PRETTYMAN (SEAL)
MATILDA W. PRETTYMAN (SEAL)

Signed, sealed and delivered in
the presence of

M. E. Gaskill
John E. Iszard

State of Pennsylvania,
Philadelphia County. } ss.

Be It Remembered, that on this second day of December in the year of our Lord one thousand nine hundred and nineteen, before me a Notary Public in and for the Commonwealth of Pennsylvania residing in the city of Philadelphia, personally appeared Charles B. Prettyman and Matilda W. Prettyman, his wife, who I am satisfied are the grantor mentioned in the above deed of conveyance and having first made known to them

Exhibit C. 1.

the contents thereof, they acknowledged *they* they signed, sealed and delivered the same as their voluntary act and deed, and the said Matilda W. Prettyman, being of full age on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely without any fear, threats or compulsion of her said husband. All of which is hereby certified.

GEORGE WILCOX (SEAL)
George Wilcox
Notary Public
My commission expires Feb. 21, 1923.

41444 In the Courts of Common Pleas of Philadelphia County.
State of Pennsylvania, } ss.
County of Philadelphia,

I, HENRY F. WALTON, prothonotary of the Courts of Common Pleas of said County which are Courts of record having a common seal being the officer authorized by the laws of the State of Pennsylvania, to make the following certificate, do certify that George Wilcox Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania and to all whose acts, as such full faith

Exhibit C. 1.

and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In Testimony Whereof, I hereunto set my hand and seal of said Court this 2nd day of December in the year of our Lord one thousand nine hundred and nineteen (1919).

HENRY F. WALTON (seal)
Prothonotary

By Meredith Hanna
Dep. Prothonotary.
Durante Absentia Secundum Legem.

Received and recorded Dec. 8, 1919 at 8 A. M.

EDWIN A. PARKER,
Clerk.

Deed Book No. 621 page 14.

CERTIFIED COPY

OF

DEED

Charles B. Prettyman et ux

to

Paul C. Rosecrans et ux

Exhibit C. 29.

(Letterhead of Los Angeles Athletic Club.)

5/7/'23

Dear Rae:

The helpful thought hits me. Down in my heart I realized you was my best friend, altho' when you would not sign off that time when we first started for here I was not sure and with everything else to worry over I nearly lost all reason and got in with a do—gang. The night I came home on Alvarado St. and was sick with drink they started me and after you left they nearly finished me and I was saved almost by a miracle. That's why I looked so bad. That's why I said it's best the property stood the way it did. I told you New Years Eve I would get out of it. I could not say much for they were blackmailers too. One who is leader is now in jail here, the other is in Salt Lake. I got copy of deed and proved it was not my property and you could lay claim to all of it if anything was put over. I know you went thru lots but I did too, just trying to keep my reason. Detectives don't know much about it. They can't. I know they were shadowing me right after New Years thru a slip Roller made when he wrote you but I let you take the picture at U. S. Grant and told you that's what they need to identify me. They would not have recognized me from the picture with Prince. Everything is for the best I figured. Had my mail transferred from here so I would not have to come in here but changed it back again.

Exhibit C. 29.

This morning I took the bond you gave me to the bank and they loaned me $850 on it and gave me $106 interest. When I saw the bond had no coupons I thought it was worthless but they said it was a temporary bond and they changed it to the regular bond.

Debts are $8000 less on property than last year this time. Paid off over $3000 worth of notes during winter.

I know how you feel and what you suffered and I am sorry it had to be. I know you knew something when you left the way you spoke to me on train but I am safe from that crowd now. They would blackmail me if they could.

Eetinon is altering some clothes and making a coat for me and then I'll start east. Have had enough of this. Have learned a lesson I'll not forget and know better than before that you're my best friend in spite of everything you've said in anger and I hope you'll forgive me altho' I dont deserve it. God has been good to me in lots of ways and guided my footsteps thru a lot of snares and traps and guided me to you and The Princess. Altho' I've been harrassed and persecuted by relentless enemies I guess it's God's will.

Have met some nice people since I joined Golf Club.

Will pay off about half the notes when I get back. Spent $1000 in advertising and opening hotel. I guess I had better kept it closed until June.

Love and best wishes from

Your Husband

Paul

CONCLUSIONS OF THE VICE-CHANCELLOR

IN CHANCERY OF NEW JERSEY.

Between

H. RAE SCULL ROSECRANS, *Complainant,*

and

PAUL C. ROSECRANS, *Defendant.*

On Bill for Accounting.

On Final Hearing.

Conclusions.

Mr. Robert H. McCarter for the complainant.

Mr. Lewis Starr for the defendant.

INGERSOLL, *V.-C.*

The complainant and defendant are husband and wife living in Atlantic City, New Jersey.

The testimony indicates the defendant to be well versed in the hotel business; that while he is able to operate a hotel in an apparently successful manner, he had not prior to the present venture been able to conduct his business in a manner to show financial success.

The wife is an active and energetic woman with the ability to save money, and appears to have considerable financial standing.

They first became associated after he had failed in the conduct of the Hotel Lexington in Atlantic City, and the creditors or some of them were operating the hotel with him as manager, and with her as cashier and auditor. Apparently she was placed there as a check over or upon him.

They afterwards became connected, to some extent at least, in the operation of another hotel. The testimony showed that even before their

marriage, she had loaned him money. They were married September 10th, 1918.

Sometime in the Fall of 1918, an agreement was entered into between one Charles B. Prettyman and the complainant and defendant, wherein Prettyman agreed to convey to them a hotel in Atlantic City, known as the Princess. This agreement resulted in a conveyance by Prettyman and wife to Paul C. Rosecrans and Rae Scull Rosecrans, his wife, of said hotel property together with certain furnishings therein contained. This deed was dated December 1st, 1919, and recorded in the Clerk's Office of Atlantic County, in Book No. 621 of Deeds, page 14, &c.

The bill further alleges that the defendant is in actual control of said premises (with the exception of one bedroom occupied by the complainant) and that he is conducting therein the hotel business, and excludes "complainant from the use, enjoyment, rents, issues, profits or usufruct thereof" and refuses "to pay complainant any sum of money as the proceeds of said business, or as the rental value of her one-half interest in said premises," and prays:

1. For an accounting of all rents he has received.
2. For the rental value of the premises.
3. That a Receiver be appointed.
4. That he be decreed to pay complainant amount found to be due.

The answer alleges that the property was purchased by the defendant, that he borrowed of the complainant, approximately $8,000, and the title was taken in the joint names as security to her for the said loan, and that the complainant

agreed to release same upon the payment of the amount loaned, and prays:

1. That it be decreed that the only right, title or interest the complainant has is as a mortgage.

2. That an accounting be taken, and complainant upon the payment of amount found to be due, be required to execute a quitclaim deed; and in an amended answer further prays: That it be decreed that a resulting trust arose in favor of defendant.

"The rule in this State is well settled, that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and while such presumption may be rebutted, the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties." *McGee* v. *McGee,* 81 N. J. Eq. 190, and cases therein cited (page 194), and surely this rule is not weakened by the wife furnishing a portion of the consideration.

The conveyance of the premises to the husband and wife, endowed the wife with the capacity during their joint lives to hold in her possession, as a single female, one-half the estate in common with her husband, the right of survivorship subsisting as at common law. *Buttlar* v. *Rosenblath,* 42 N. J. Eq. 651; *Vunk* v. *Raritan River R. R. Co.,* 56 N. J. L. 395.

In *Hood* v. *Hood,* 83 N. J. Eq. 695, the Court of Errors affirmed a decree appealed from for the reason stated by Vice-Chancellor Stevens, who said: "The evidence of a resulting trust is to be found only in the assertion and evidence of Mr. Hood, denied by his wife. * * * It being necessary to overcome the presumption of an

advancement by evidence 'certain, definite and convincing.' I cannot say that such evidence has been produced.

I would have little if any difficulty in this matter were it not for the testimony of the complainant herself.

While the reading of these excerpts from her testimony might seem to indicate that the complainant was testifying directly in variance with here claims, still I am convinced by the testimony, the manner of the witnesses on the stand, and by the large amount of documentary evidence, that this money was advanced by the complainant as a part of the purchase money of the property, and that title was intended to be taken by them as joint tenants.

A decree will be so advised.

INTERLOCUTORY DECREE AND ORDER OF REFERENCE.

Filed April 16, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
H. Rae Scull Rosecrans, *Complainant,*	*On Bill for Accounting.*
and	*Interlocutory Decree.*
Paul C. Rosecrans, *Defendant.*	

The complainant having filed her bill of complaint in this Court setting up that she was the co-tenant by the entirety with her husband, Paul C. Rosecrans, the defendant, of certain lands and premises in said bill particularly described, and alleging that she had been excluded from the possession and enjoyment of said premises, and praying that her said husband account for the rental value thereof, and the value of his use and occupancy from the first day of December, 1919, and the defendant having filed his answer and counter-claim in which he alleged that the complainant had no title to said lands and premises, and only entitled to an equitable lien thereon by reason of her advances of certain moneys, and the complainant having answered said counter-claim, and the cause coming on to be heard before the Honorable Robert H. Ingersoll, to whom the said cause was in due course referred, and the proofs having been taken and arguments had, and the Court having duly considered said proofs and arguments, and being of opinion that

the complainant is entitled to the relief prayed for,

It is thereupon on this 16th day of April, 1926, on motion of McCarter & English, solicitors of the complainant, ORDERED, ADJUDGED and DECREED that H. Rae Scull Rosecrans, the complainant, is, and from the date of the acquisition of the lands and premises in said bill of complaint described, has been a co-tenant with her said husband by the entirety of the said lands and premises in the City of Atlantic City, New Jersey, which are described as follows:

> "BEGINNING at a point on the Westerly line of South Carolina avenue, seven hundred and twenty-seven feet Southwardly of the Southerly line of Pacific avenue, and extending thence (1) Southwardly, along the said line of South Carolina avenue, one hundred feet; thence (2) Westwardly, parallel with Pacific avenue, one hundred and fifty feet; thence (3) Northwardly, parallel with South Carolina avenue, one hundred feet; thence (4) Eastwardly, parallel with Pacific avenue, one hundred and fifty feet to the place of BEGINNING."

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that said Paul C. Rosecrans, do account to the complainant for the rental value of said premises from the first day of June, 1922, to the date of the said accounting, and that it be referred to Wm. Frank Sooy, one of the Special Masters of this Court, to take and state said accounting, which shall include any credits which the defendant is entitled and said Master shall have power to hear the witnesses, and is directed to take said accounting and report to this Court with all convenient speed.

Interlocutory Decree and Order of Reference.

And It Is Further Ordered, Adjudged and Decreed that all further equities are reserved until the coming in of said report, and that either party shall have leave to apply to the Court at the foot of this decree, at any time for further order or direction.

And It Is Further Ordered that the complainant do recover from the defendant her costs to be taxed, and that the determination of the amount, if any of counsel fee to be allowed, be deferred until the coming in of the Master's report.

E. R. WALKER,
C.

Respectfully advised,

R. H. Ingersoll,
V.-C.

SUPPLEMENTAL ORDER OF REFERENCE.

Filed April 10, 1928.

IN CHANCERY OF NEW JERSEY.

Between	
RAE SCULL ROSECRANS, *Complainant,*	*On Bill, &c.*
and	*Order.*
PAUL C. ROSECRANS, *Defendant.*	

Notice of an application for an order extending or enlarging the terms of the orders of reference and re-reference in the above-entitled matter having been duly given, and the matter coming on to be heard on this day in the presence of Robert H. McCarter, of counsel with the complainant, and of Lewis Starr, of counsel with the defendant,

It is, on this tenth day of April, 1928, ORDERED that the terms of the orders of reference and re-reference heretofore made in this cause, be extended or enlarged so that the same shall read:

"That the said Paul C. Rosecrans do account to the complainant for the rental value of the said premises (including the furniture, fittings and hotel equipment therein contained), from the 1st day of June, 1922, to the date of the said accounting, and that the order of reference to William F. Sooy, Esq., and the re-reference to Clifton C. Shinn, Esq., heretofore made, be amended in that particular, and that the accounting shall hereafter proceed as if said orders of reference and re-reference had originally read

as hereby amended, and that the said Clifton C. Shinn, Esq., proceed to take and state said accounting, which shall include any credits to which the defendant is entitled, and to report to this Court with all convenient speed.

And It Is Further Ordered that said orders of reference and re-reference in all other particulars do stand."

And notice having been likewise given of an application directing the Special Master, Clifton C. Shinn, Esq., before whom the taking of the accounting heretofore directed herein is pending, to permit the further examination of the complainant before him, and the parties having been heard upon this motion by their respective counsel as aforesaid,

It Is Further Ordered that the further examination of the complainant be permitted touching the treatment of her and the conduct of the defendant and his employees toward her while stopping at the hotel previous to the 17th day of March, 1924.

E. R. WALKER,
C.

Respectfully advised,

R. H. Ingersoll,
V.-C.

REPORT OF SPECIAL MASTER.

IN CHANCERY OF NEW JERSEY.

Between	*On Bill, etc.*
RAE SCULL ROSECRANS, *Complainant,*	*On Accounting.*
and	*Report of Special Master.*
PAUL C. ROSECRANS, *Defendant.*	

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

I, CLIFTON C. SHINN, one of the Special Masters of this court, do report, in pursuance of three several orders of this Court, the last of which was made on April 10, 1928, whereby it was referred to me to take and state an accounting of the rental value of the premises known as Hotel Princess (including the furniture, fillings and hotel equipment therein contained) situate in Atlantic City, Atlantic County, New Jersey, allowing to the defendant any credits to which he is entitled and the further examination of complaint touching the treatment of and the conduct of the defendant and his employees toward her while stopping at the hotel previous to March 17, 1924, and to report with all convenient speed.

I do report that I have been attended by Hon. Robert H. McCarter and George W. C. McCarter, Esquire, solicitors of complainant and Hon. Lewis S. Starr, solicitor of the defendant, and have taken depositions in said matter, which deposi-

tions are returned herewith and made a part hereof.

I further report that upwards of 1200 pages of depositions were taken and because of the engagements of respective counsel, it was difficult to arrange convenient dates for sittings, with the result that the matter was continued, from time to time, the last sitting for the taking of proofs being on January 4, 1929, at the close of which it was agreed that each side submit briefs and the defendant should have his accountant tabulate the credits which he claimed, which briefs and tabulations have but recently come to my hands.

I further report that counsel for complainant abandoned his right to further examine complainant touching the treatment of her and the conduct of defendant and his employees toward her previous to said March 17, 1924.

The files of this suit were offered and admitted in evidence.

By her bill of complaint complainant claimed to be a tenant by the entirety with her husband, the defendant, of the hotel property, but the answer set up a denial and claimed that while the deed of conveyance was made to both, the deed, so far as the complainant's interest was concerned, was in the nature of a mortgage to secure the repayment of moneys advanced by her in part payment of the purchase price for said property; the defendant failed in his proof and by a decree advised by Vice-Chancellor Ingersoll, it was adjudged that complainant and defendant were co-tenants by the entirety.

Up to June 1, 1922, the hotel was conducted by complainant and defendant, but, because of misunderstandings and disagreements existing be-

tween them, defendant assumed possession of the hotel and control of the business on or about that date, to the exclusion of complainant.

By reason of the payments for carrying charges, repairs having been made by defendant on property owned by complainant and defendant, husband and wife, complainant contends the payments so made are presumed to be by way of advancements and contributions for complainant, his wife; under ordinary circumstances that would be the effect of such payments, but here we have a situation which clearly rebuts any such presumption. There was an utter disagreement as to the conduct of the business which culminated in the assumption of control by defendant, who also disputed the title of complainant, claiming her interest to be that of a mortgagee.

And I further report that defendant is not entitled to credit for moneys expended for repairs, replacements, etc. He has been in possession and dictated the policy and conduct of the business of the hotel since June 1, 1922. There is nothing in the record tending to show any agreement between the parties, complainant and defendant, respecting repairs, and, in the absence of any obligation on the part of the landlord to make repairs, same must be made at the expense of the tenant.

When the hotel was purchased by complainant and defendant it contained some furniture as evidenced by the schedule attached to the deed of conveyance. The schedule, however, does not contain a complete inventory, and the amount, kind and quality is left largely to imagination. The proof is that a major portion of the furniture has been discarded, and new and more modern furniture substituted, some at the joint

cost and expense of complainant and defendant prior to June 1, 1922, and the balance at the cost and expense of defendant since that date. The proof does not disclose what portion of the furniture now in the hotel is by way of replacement and replenishment. Such as was installed by defendant by way of replacement and replenishment must be at his own expense and for which he is not entitled to credit. When he entered into possession to the exclusion of complainant, the hotel was a going concern, and such of the fixtures and furniture as he thereafter considered as unfit or undesirable for the purposes and use of the hotel, he replaced on his own initiative and without consulting complainant.

And I further report that defendant is entitled to credit for the carrying charges of the hotel property, consisting of taxes, water and sewer rents, insurance premiums, interest on mortgage indebtedness, payments on account of principal and the cost of extending the time of payment of the principal sum, secured by the mortgage, said principal sum being $30,000.00.

The mortgage in question was held by Ormond Beach Bond, Mortgage and Guaranty Company, and on June 30, 1927, its due date, was called. As a result of negotiations between defendant and one Charles B. Prettyman, the term of said mortgage was extended for five years at a cost of $1,600, which sum I find to be a proper carrying charge against the property and for which defendant is entitled to credit.

I further report that the schedule hereto annexed marked No. 1 and forming a part hereof, contains an itemized statement of the carrying charges for which credits are allowed defendant.

With respect to the rental value of the Hotel Princess there was a wide difference of opinion of the witnesses.

John W. Fetter, on the part of complainant, gave as his opinion a rental value of $40,000.00 per year, but based his value on the owner paying the carrying charges and in addition keeping the roof and plumbing in repair. As heretofore reported, credit for the last mentioned two items has been disallowed, and the opinion of Mr. Fetter is of no help in arriving at a fair rental value and must, therefore, be disregarded.

Defendant produced four witnesses: Frank J. Bloom a real estate agent who specializes in mortgage loans and whose experience in rentals was extremely limited, with the result that his rental values are at best mere guesses and consequently of but little, if any, help in arriving at a fair rental value; William H. Powell, whose experience in rentals is also limited, likewise affords no help; Robert B. Ludy, who owns four hotels, two of which he operates himself and the other two he rents. Dr. Ludy is a keen business man and has had wide experience in the hotel business. He is familiar with the Hotel Princess and fixes as a fair rental value therefor $25,000.00 per year, as does also Frederick B. Hickman, who is, and has been for some years last past, engaged in the real estate, and insurance business in Atlantic City.

Of the five witnesses, Dr. Ludy and Mr. Hickman base their opinions upon conditions which parallel those under consideration.

I further report that the fair rental value of the Hotel Princess beginning June 1, 1922, is $25,000 per year for each and every year thereafter to the date of this report.

I further report that the total fair rental value of said hotel for the seven years from June 1, 1922 to June 1, 1929, is $175,000, and that defendant is entitled to credit for moneys expended for carrying charges, as per schedule No. 1, amounting to $122,368.71, leaving a balance due of $52,631.29, of which complainant, as co-tenant with defendant is entitled to one-half, $26,315.65.

Respectfully submitted this twenty-fourth day of July, 1929.

CLIFTON C. SHINN,
Special Master.

SCHEDULE No. 1.

Interest payments on first and second Mortgages, Reduction of Principal, secured by Second Mortgage, and Extension of First Mortgage.

As in Schedule "CC" omitting testimony page and exhibit numbers.

TAXES

Same as Schedule "V" omitting page and Exhibit numbers.

FIRE INSURANCE PREMIUMS

Same as Schedule "A" omitting testimony and Exhibit numbers.

WATER RENTS

Same as Schedule "D" omitting testimony and Exhibit numbers.

SEWER RENTS

Same as Schedule "F" omitting testimony and Exhibit numbers.

RECAPITULATION

Interest payments, etc.	$56,150.00
Taxes	33,767.64
Fire Insurance Premiums	26,177.92
Water rent	2,574.20
Sewer rent	3,698.95
	$122,368.71

SCHEDULE CC

6-30-22	First Mtge. Interest	$ 900.00
12-30-22	" " "	900.00
6-30-23	" " "	900.00
12-30-23	" " "	900.00
6-30-24	" " "	900.00
12-30-24	" " "	900.00
6-30-25	" " "	900.00
12-30-25	" " "	900.00
6-30-26	" " "	900.00
6-1-22	Second Mtge. Interest	2,070.00
12-1-22	" " "	2,010.00
6-1-23	" " "	1,980.00
12-1-23	" " "	1,890.00
6-1-24	" " "	1,890.00
12-1-24	" " "	1,800.00
6-1-25	" " "	1,800.00
12-1-25	" " "	1,740.00
6-1-26	" " "	1,710.00
7-31-22	Second Mtge. Reduction	3,000.00
8-17-23	" " "	3,000.00
8-27-24	" " "	3,000.00
8-1-25	" " "	3,000.00
1-25-27	" " "	900.00
12-17-26	" " "	1,650.00
8-23-26	" " "	3,000.00
10-8-26	" " "	1,600.00

	5-20-27	"	"	"	1,620.00
	12-15-27	"	"	"	1,600.00
	6-23-27	"	"	"	900.00
	8-27-27	"	"	"	3,000.00
	12-28-27	"	"	"	1,560.00
	1-25-28	"	"	"	900.00
10	6-30-28	"	"	"	1,530.00
	7-30-28	"	"	"	900.00
					$56,150.00

SCHEDULE "V"

	1922	January 1	to June 1	$ 2,203.60
	1923	"	"	4,266.84
	1924	"	"	4,755.00
20	1925	"	"	5,008.60
	1926	"	"	5,338.20
	1927	"	"	6,293.00
	1928	"	"	5,902.40
				$33,767.64

SCHEDULE "A"

	1922	Bldg.	$ 2,961.84
30	1922	Furniture	276.20
	1923	Bldg.	2,901.88
	1923	Furniture	276.20
	1924	Bldg.	3,699.79
	1924	Furniture	276.20
	1925	Bldg.	7,426.45
	1925	Furniture	276.20
	1926	Bldg.	1,640.11
	1926	Furniture	276.20
	1927	Bldg.	1,333.92
40	1927	Furniture	276.20

1-15-28	1,245.50	
3-28-28	298.26	
5-25-28	1,296.79	
6-7-28	656.02	
9-6-28	267.00	
12-1-28	713.16	
	$26,197.92	
3-22-28 As per Credit Memo.	20.00	
	$26,177.92	

SCHEDULE "D"

8-14-22	$ 192.90	
2-16-23	138.39	
8-31-23	230.00	
3-31-24	112.72	
8-12-24	262.47	
4-1-25	256.97	
8-1-25	278.04	
4-30-26	254.10	
8-1-26	275.34	
2-1-27	143.70	
8-1-27	232.14	
2-1-28	197.43	
	$2,574.20	

SCHEDULE "F"

4-16-23	$ 387.05	
11-16-23	399.90	
9-3-24	572.50	
7-30-25	572.50	
7-22-26	595.60	
7-1-27	585.70	
7-1-28	385.70	
	$3,698.95	

DEFENDANT'S EXCEPTIONS TO MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

Between RAE SCULL ROSECRANS, *Complainant,* *and* PAUL C. ROSECRANS, *Defendant.*	*On Bill, &c.* *Exceptions to Master's Report.*

The defendant, Paul C. Rosecrans, presents the following exceptions to the allowance of the report made in the above-entitled cause, dated the 24th day of July, 1929, on the ground that the said report is erroneous in one or more of the following particulars:

FIRST EXCEPTION.

The Master erroneously refused to allow any credit for payments by way of what is characterized in the report as carrying charges made prior to the first of June, 1922.

SECOND EXCEPTION.

The Master erroneously refused to allow as a credit to defendant payments made for repairs and other incidental expenses necessary for the preservation of the property, made prior to the first of June, 1922.

THIRD EXCEPTION.

The Master erroneously refused to allow a credit to the defendant for payments made by him for new furniture and the replacement of old furniture prior to the first of June, 1922.

FOURTH EXCEPTION.

The Master erroneously refused to allow a credit for the payment of moneys made by the defendant since June 1, 1922, for repairs and other necessary expenses incident to the upkeep and preservation of the said premises.

FIFTH EXCEPTION.

The Master erroneously refused to allow a credit to the defendant for payments made by him for new furniture and replacement of old furniture since the first of June, 1922.

SIXTH EXCEPTION.

The Master erroneously neglected to allow a credit to defendant for expenditures made by him covering items characterized in said report as carrying charges from December 1, 1928 to June 1, 1929.

SEVENTH EXCEPTION.

The defendant proved before the Master the payments for moneys with respect to the upkeep and preservation of the premises in question, which should have been allowed as proper credits in the accounting, to the following persons for the amounts set opposite their respective names:

Name	Amount	Kind of Repair
Howard H. Ahn	$ 163.38	Carpenter
Atlantic City Lumber Co.	1,710.66	Lumber
Atlantic City Woodworking Co.	91.50	Lumber
Atlantic Paint Co.	437.30	Paint, etc.
Bakers Paint Store	1,435.94	Paint, etc.
Bell & Thomas	252.40	Electrical Supplies
John Berkheimer	480.00	Painter
Henry Brown	20.25	Wall Paper
L. Buker	33.50	Electrician
Electrical Equipment Co.	2,342.42	Electrical Equipment
Employees for Repairs	2,569.25	Miscellaneous
Louis Eshner & Son	255.60	Elevator Repairs
S. Faith & Co., Inc.	959.84	Plumbing
Henry Goldner Boiler & Tank Works	2,435.43	Repairs to Boiler
Oliver H. Guttridge	3,222.04	Hardware, etc.
H. Hoffman & Sons	99.06	Hardware, etc.
Fred E. Lewis' Sons	467.25	Repairs to Locks
Johns-Mansville Co.	45.00	Repairs to Roof
Lewis L. Mathis	35,341.66	Real Estate Taxes
John Murtland	13.68	Cement, etc.
Miscellaneous Repairs	72.49	Miscellaneous Repairs
National Fire Protection Co.	444.00	Fire Extinguishers
National Machine Works	5,673.87	Repairs to Elevators, etc.
Harry M. Peck	2,238.67	Paperhanger
Payments by Petty Cash	317.27	Miscellaneous
Judson T. Powell	1,142.49	Painting
M. C. Reed	59.50	Doors
William Reid	72.73	Locksmith
Robert Robertson	449.87	Plumbing
Chas. Rooney	487.65	Carpenter
Schwartz Bros.	270.00	Fire Extinguishers
Jos. J. Schultz	81.45	Paper Hanger
Leonard Scott	125.00	Weather Stripping
H. G. Scull	2,022.80	Carpenter
Alfred R. Smith	283.32	Paperhanger
Edwin Smith	92.56	Building Materials
Soltz Paint Store	109.80	Paint, etc.
Somers Lumber Co.	1,022.29	Lumber
A. Swanson	48.60	Wall Paper
John Sykes	347.15	Roofing
West Side Lumber Co.	58.71	Lumber
Edw. W. Yeutter	12,748.79	Plumbing

EIGHTH EXCEPTION.

The Master erroneously refused to allow as a proper credit to the defendant the sums of money referred to in the last preceding exception.

NINTH EXCEPTION.

The defendant proved before the Master the payments for moneys with respect to the upkeep and preservation of the premises in question, which should have been allowed as proper credits in the accounting, to the following persons for the amounts set opposite their respective names:

Name	Amount	Kind
Atlantic City Brass Bed Co.	$141.50	Refinishing Brass Beds, etc.
Atlantic Interior Decorators	137.80	Draperies
Bailey, Banks & Biddle Co.	46.00	Repairing Clock
Benson Bedding Co.	968.25	Mattress & Springs for Beds
Ernest Beyer	85.00	Desk
M. E. Blatt Co.	409.86	Draperies & Rugs
Chelsea Hardware Co.	376.55	Hardware, etc.
Victor V. Clad Co.	170.25	Kitchen Equipment
E. Cooper & Sons	3,366.45	Kitchen Equipment
W. F. Dougherty & Sons, Inc.	677.75	Kitchen Machinery & Repairs to same
Eureka Vacuum Cleaner Co.	137.00	Vacuum Cleaner
Jerome S. Haas	4.83	Electrical Equipment
The Insinger Co.	156.14	Repairs to Dishwashing Machine
Jos. H. Josephson	340.00	Electric Sign
A. R. Justice Co.	8.25	Repairs to Coffee Pots
Kensington Carpet Co.	11,956.98	Furnishings
Lawrence M. Lear	84.50	Labor on Awnings
Lit Brothers	62.80	Carpet
Frank McNamara	16.00	Repairs to Clock
Miscellaneous Purchases	137.00	Miscellaneous
Payments by Petty Cash	170.62	Miscellaneous
Payments to Employees for Repairs	389.01	Repairing Furniture & Laying Carpets
Rope Fire Escape Co.	91.91	Rope Fire Escapes
J. F. Scanlon	544.00	Electric Signs

Sears, Roebuck and Co.	10.03	Window Shades
William Stein	166.31	Repairs to pots & Purchases of Oilcloth & Netting
John Wanamaker	623.20	Carpets
L. J. Wing Mfg. Co.	174.24	Ventilating Fans

TENTH EXCEPTION.

The Master erroneously refused to allow as a proper credit to the defendant the sums of money referred to in the last preceding exception.

ELEVENTH EXCEPTION.

The Master erroneously refused to allow as a proper credit to the defendant each of the sums of money referred to in the seventh and ninth exceptions herein set forth.

TWELFTH EXCEPTION.

The Master erroneously refused to allow as a credit to the defendant for payments made by him covering repairs and other incidental expenses necessary for the preservation of the property since December 1, 1928.

THIRTEENTH EXCEPTION.

The Master erroneously refused to allow as a credit to the defendant for payments made by him for new furniture and replacement of old furniture since December 1, 1928.

FOURTEENTH EXCEPTION.

The Master erroneously refused to allow as a credit to the defendant the sum of $35,341.66 taxes paid by the defendant for the year 1922, the allowance for the entire amount of taxes paid by the defendant was $33,767.64 and the

difference, or $3,777.62, should have been allowed as a proper credit in the accounting.

FIFTEENTH EXCEPTION.

The said Master stated in said report as follows: "The proof does not disclose what portion of the furniture, now in the hotel, is by way of replacement and replenishment," which finding is erroneous because the proof submitted did show that worn out and unsuitable furniture was replaced and that it was unnecessary, in the appraisal accounting, to have a complete inventory of the hotel furnishings, showing what was there prior to June 1, 1922, and what was purchased later.

SIXTEENTH EXCEPTION.

The said report is in divers other particulars erroneous, improper and not based upon the facts presented to the Master.

The defendant, therefore, prays that approval and confirmation of the said report be withheld until the matters and particulars set forth in the foregoing exceptions be heard and determined, and that the said report be amended, changed and altered in one or more of the particulars herein set forth.

Respectfully submitted.

STARR, SUMMERILL & LLOYD,
Solicitors of the Defendant,
Paul C. Rosecrans.

DEFENDANT'S AMENDED EXCEPTIONS TO MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

Between	
RAE SCULL ROSECRANS, *Complainant,*	*On Bill, &c.*
and	*Order Amending Exceptions.*
PAUL C. ROSECRANS, *Defendant.*	

Due notice being given and sufficient cause appearing therefor:

IT IS, on this ninth day of January, A. D. 1930, ordered that the exceptions filed by the defendant in the above cause be amended by adding the following exception:

SEVENTEENTH EXCEPTION.

The amount allowed by the Master of the average rental value of the property was based upon the fact that the hotel was completely furnished and kept in a proper state of repair. In view of the fact that the expense of keeping the property in repair and re-furnishing were borne by the defendant from his own funds, the rental value should not have been based upon the condition of the property as produced by him unless he be allowed as a credit for the expenses incurred in connection with this matter, and if the expenses are disallowed as a proper credit, the rental value should be reduced and based upon the condition of the property as it was at the time it was acquired by the parties

hereto, unimproved by any expenditures made by the defendant.

E. R. WALKER,
C.

Respectfully advised,

R. H. INGERSOLL,
V.-C.

CONCLUSIONS OF THE VICE CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between	
H. Rae Scull Rosecrans, *Complainant,*	*On Exceptions to Master's Report.*
and	
Paul C. Rosecrans, *Defendant.*	*Conclusions.*

THESE CONCLUSIONS ARE NOT TO BE PUBLISHED IN THE OFFICIAL OR UNOFFICIAL REPORTS.

Messrs. McCarter & English for complainant.

Messrs. Starr, Summerill & Lloyd for defendant.

Ingersoll, *V.-C.*

Both the complainant and the defendant have filed exceptions to the report made by the Master. It is unnecessary to restate these exceptions, as upon examination, I find that all should be dismissed, except that the Master, evidently in error, failed to allow disbursements for carrying charges between December 1, 1928 and June 1, 1929, although the rental value was charged to the first day of June, 1929.

The matter will be re-referred to the Special Master to correct this apparent oversight.

Determined: September 8, 1930.

ORDER OF RE-REFERENCE.

IN CHANCERY OF NEW JERSEY.

54-319

Between	
RAE SCULL ROSECRANS, *Complainant,*	*On Bill, &c.*
and	*Order of Re-reference.*
PAUL C. ROSECRANS, *Defendant.*	

Both the complainant and the defendant having filed exceptions to the report heretofore made by Clifton C. Shinn, Esquire, one of the Masters of this Court, and the said exceptions having been argued before the Court, and the Court being of opinion that all of the said exceptions should be overruled, but that it should be referred back to the Master, as hereinafter set forth:

It is, on this 18th day of September, 1930, on motion of Messrs. McCarter & English, solicitors of the complainant, ORDERED as follows:

1. It be referred back to the said Master to ascertain disbursements made by the defendant from January 1, 1929, to June 1, 1929, of the nature allowed by him in his report for the period therein covered; and that the Master do report the said disbursements so ascertained by him and do take such depositions and other evidence as may be offered by either of the parties before him on the matter hereby referred to him, and do return such depositions

Order of Re-reference.

together with his report; and that the Master do make the report with all convenient speed and that all further equity do abide the coming in of his report.

E. R. WALKER,
C.

Respectfully advised,

R. H. INGERSOLL,
V.-C.

FINAL REPORT OF MASTER ON RE-REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between RAE SCULL ROSECRANS, *Complainant,* *and* PAUL C. ROSECRANS, *Defendant.*	*On Bill, &c.* *Report of Master on Re-reference.*

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

I, CLIFTON C. SHINN, one of the Special Masters of this Court, do report, in pursuance of an order of this Court dated September 18, 1930, whereby it was re-referred to me to ascertain disbursements made by the defendant from January 1st, 1929 to June 1st, 1929.

I do report that I have been attended by McCarter & English, Esquires, solicitors of the complainant, and Hon. Lewis Starr, solicitor of the defendant, and have taken further depositions in said matter, which depositions are returned herewith and made a part hereof.

I further report one of the items of disbursements for interest on mortgage was made on December 29th, 1928, and while that date is not included in the period specified in the said order of re-reference, it is my understanding that the purpose of said order is to bring the accounting by the defendant, Paul C. Rosecrans to June 1st, 1929, he having been charged with rent to that date in my former report, said dis-

bursement not being claimed or heretofore allowed, is a proper credit.

I find and report that the disbursements made by said defendant from January 1, 1929 to June 1, 1929, amount to the sum of $8,476.45, for which proper vouchers were produced, as appears by Schedule No. 1, hereto annexed and made a part hereof.

I further report that by my former report, dated July 24, 1929, I found the fair rental value of the premises, for seven years ending June 1st, 1929, to be $175,000, and that defendant was entitled to credit for carrying charges in the sum of $122,368.71; to the amount of said carrying charges should be added said sum of $8,476.45, making a total for carrying charges to June 1, 1929, the sum of $130,845.36, which deducted from said rental value, $175,000.00, leaves a balance due of $44,154.64, of which complainant, as co-tenant with defendant is entitled to one-half, $22,077.32.

Respectfully submitted this 17th day of October, 1930.

C. C. SHINN,
Special Master.

SCHEDULE No. 1.

1928	
Dec. 28, Interest on second mortgage of $51,000, due Dec. 1, 1928	$1,530.00
1929	
Jan. 26, Interest on first mortgage of $30,000, due Dec. 30, 1928	900.00
June 28, Interest on second mortgage of $51,000, due June 1, 1929	1,530.00
July 30, Interest on First mortgage of $30,000, to June 1, 1929, 5 mos.	750.00
March 13, Water rent, January 2, 1928 to July 1, 1928	222.78
June 21, Water rent, July 1, 1928 to January 2, 1929	179.25
March 21, Insurance premiums	1,245.52
March 29, " "	298.18
May 5, " "	1,820.72
	$8,476.00

Special Master.

Depositions.

TESTIMONY BEFORE THE MASTER.

IN CHANCERY OF NEW JERSEY.

Between

H. RAE SCULL ROSECRANS,
Complainant,

AND

PAUL C. ROSECRANS,
Defandant.

On Bill, &c.
Depositions.

DEPOSITIONS taken this twentieth day of July, A. D. 1926, before W. Frank Sooy, Esq., one of the Special Masters in Chancery of New Jersey, at my office, Real Estate and Law Building, Atlantic City, New Jersey, pursuant to order of reference dated the sixteenth day of April, A. D. 1926.

Appearances:

For the complainant, Messrs. McCarter & English.

For the defendant, Hon. Lewis Starr and Irving P. Parsons, Esq.

Mr. McCarter: A bill was filed in this court in which the question as to the ownership of property in Atlantic City was bruited. That property stands in the name of Paul C. Rosecrans and wife. Hearing was had in that case with the result that on the sixteenth of April, 1926, Vice Chancellor Ingersoll, to whom the cause was referred, signed an interlocutory decree or order adjudging that H. Rae Scull Rosecrans, my client, the wife is and from the date of the acquisition of the lands and premises in

the bill of complaint described has been a co-tenant with her said husband by the entirety of the said land and premises, describing them. And the said order further provided, further ordered, adjudged and decreed that Paul C. Rosecrans, the defendant, account to the complainant for the rental value of said premises from the first day of June, 1922, to the date of the said accounting, and that it be referred to William Frank Sooy, one of the Special Masters of this court, to take said accounting, which shall include any credits to which the defendant is entitled. The master shall have power to hear the witnesses and direct the said accounting and report to this court with all convenient speed. It is pursuant to that order that this matter comes up today before your Honor and we are, of course, prepared to go on.

Lest there should be any question about it, I will offer in evidence, as a first step in the proceedings, the original deed from Charles B. Prettyman and wife to Paul C. Rosecrans and Rae Scull Rosecrans, his wife, dated the first of December, 1919, and recorded on the eighth of December, 1919, in book of deeds number 621 at page 14.

(Deed admitted in evidence and marked Exhibit C 1.)

I may say that while that deed includes, as the master has possibly observed, not only a description of the *locus in quo,* but a schedule of goods and chattels in the Princess Hotel contained. This proceeding, as I apprehend it, does not include an inquiry with reference to the furniture or personal property described in the deed but is entirely confined, as I read the order, to an ascertainment of the rental value of the

real estate, subject to such credits as the master may, in his judgment, conclude the husband is entitled to, he having been in the occupation of the premises during the time that the decree covers.

Now I am at a loss perhaps to understand exactly what is the best course of procedure to adopt. I suppose it is up to the defendant to account, therefore I assume that he will go on with his accounting first.

Mr. Starr: My understanding is that it is up to the complainant to show the rental value of the property for which we should be charged.

Mr. McCarter: Well, I leave that question to the master.

The Master: The way it appears to me is that I am supposed to take an account of the rental value of the premises from the first day of June, 1922, and then I am supposed to give credit to the defendant for any credits he is entitled to. It would seem to me that the question of the rental value would be the first in order.

H. RAE SCULL ROSECRANS, the complainant, sworn.

Direct examination by Mr. McCarter.

Q You are the H. Rae Scull Rosecrans, one of the parties to this suit? A I am.

Q You know, of course, the property which is the subject of this litigation? A I do.

Q What is the name of the hotel? A Princess Hotel.

Q You formerly lived at that hotel? A Yes, sir.

Q And are familiar with the building itself? A Yes, sir.

Q How many rooms has it, guest rooms? A When I left there in 1923 it had one hundred and eighty-five.

Q Do you remember the number of private baths? A About forty.

Q There were some stores, were there, on the ground floor at the time you left? A There were.

Q And since then they have been converted into rooms? A Rooms.

Q What is the type of the building? What is it made of? A Brick and stone.

Q How many stories? A Four stories.

Q And the property is a hundred feet, is it, on South Carolina avenue? A Yes.

Q By one hundred and fifty deep? A Yes.

No cross examination.

JOHN H. FETTER, sworn for complainant.

Direct examination by Mr. McCarter.

Q Mr. Fetter, you live where? A In Atlantic City.

Q How long have you been in Atlantic City? A Since 1915.

Q What is your business? A Hotel business.

Q How many hotels do you lease at the present time? A Four.

Q Which are they? A The Avoca, the Monticello, the Devonshire and the Grand Atlantic.

Q Are you familiar with the Princess Hotel on South Carolina avenue? A Yes, I know something about it.

Q From your experience in Atlantic City what rent would you be willing to pay for that hotel?

Mr. Starr: Objected to on the ground that is not the proper method of proving the rental value and also that he has not shown that this witness is qualified to give an opinion as to the rental value and, upon the further ground that the question does not indicate further the rental value as based upon the hotel furnished or unfurnished. As I read this order of reference the rental value is to be based upon the lands and premises unfurnished. Mr. McCarter said that the question of the personal property is entirely eliminated from this case and that being so, the question of the rental value must be predicated upon a hotel without any furniture in it.

Mr. McCarter: Counsel is quite mistaken as to the purport of what I said. I take it that the value of the furniture is not covered by the proceedings, properly enough, perhaps, because that would require too much detail going into the value of this furniture, some of which is old and some of which is new, but that the hotel is furnished appears from the record and also appears from the deed itself, which is offered in evidence, but as to a furnished hotel, whether adequately or inadequately furnished, the matter is before the court as to its value. With reference to the character of the proof, I suppose the best proof which you can present as to the rental value of a hotel is what a man is willing to give as

rent for a hotel. There are two ways of proving rental value, one is expert, real estate expert may give his opinion, another man comes and says I will give so much, and I think the latter is by far the best evidence of what the real rental value is. If I were asked to prove not the rental value of this property but the value itself, and I could bring Mr. John Jones before the court and say I would be perfectly willing to give, I am a responsible man and I would be perfectly willing to give five hundred thousand dollars for it, I suppose any court would let that evidence in as proof of its value. Here is a man who may have offered or is willing to offer, willing to enter into a lease today of this property for a certain sum of money and certainly that will aid the master in getting at the value of the property and we are not limited in inquiries of this kind to opinions of experts as to the value.

The Master: I will take it for what it is worth anyway.

Mr. Starr: May I have on the record another objection in amplification of the objection heretofore made? The question, as I understand it, is what this witness would be willing to pay for rent of the property. The inquiry under this present order is not that but what the fair rental value was from the first of June, 1922. This decree, the interlocutory decree, holds that the parties are co-tenants by the entireties in the real estate. No mention whatever made of personal property or the furnishings of the hotel and the inquiry by

the master is the rental value of the said premises, the said lands and premises from the first day of June, 1922, to the date of the accounting. Now, as I read this order it is limited to the rental value of the property which this decree holds is held by the parties by entireties, which has no relation whatever to the personal property, the contents. Now if this personal property is owned by somebody else and the present personal property enhances the rental value that is not a proper element of inquiry in this proceeding. It seems to me if the rental value is to be based upon what this witness would pay for it as it is now, the testimony is incompetent, immaterial and irrelevant.

The Master: I will take it for what it is worth and pass on the question afterwards.

Q The question is, Mr. Fetter, what rent you would be willing to pay as a hotel man in Atlantic City for the Princess Hotel at any time from the first day of June, 1922, down to the present time, would you have been willing to pay? A Forty thousand dollars a year.

Q To what extent, if any, does the furniture in the hotel, whatever there be, enter into that question? A The furnishings in Atlantic City hotels, since my time here in 1915, always rented with the hotel and they were in a very dilapidated condition.

Q Have you seen the furniture in this hotel? A Yes, I went through at the same time Mr. Rosecrans bought the hotel, I was on the market at the same time.

Q Haven't seen it since? A No.

Q The forty thousand dollars a year you refer to is that subject to charges or over and above charges? A That is subject to a regular lease that people lease hotels. For instance on the same order that I leased the Grand Atlantic, owner to pay all carrying charges of his own property, taxes, sewerages, water rent and keep his roofs and plumbing in condition, same as an apartment is rented.

Q Then your value of $40,000 would be subject to those charges, the landlord would pay those charges? A Yes.

Q You have assumed then that you would pay forty thousand dollars for that property or would have paid any time during that period a year, the landlord to bear what I would call the charges? A Yes.

Cross examination by Mr. Starr.

Q Mr. Fetter, when did you come to Atlantic City? A In 1915.

Q Did you go through this property in 1919 before it was purchased by the Rosecrans? A Yes, I went through with the owner, Charlie Prettyman.

Q Have you been through the hotel since? A No, sir.

Q You have never examined the hotel since that time? A No.

Q Would you be willing to pay forty thousand dollars a year for the hotel without any furniture in it? A No.

Q Would you be willing to rent it at all without any furniture in it? A No. I would rent it as hotels are rented in Atlantic City.

Q You mean by that as a completely furnished and equipped hotel? A Just as it is now, I would take it for forty thousand, yes.

Q Would you take it if there was no furniture in it? A No, of course not.

Q Wouldn't rent it at any price unfurnished? A Wouldn't furnish any man's property.

Q Would the length of the term have anything to do with your willingness to pay forty thousand dollars a year, length of the term of the lease I mean? A No, the length of term wouldn't make any difference; I would take a five or ten year lease.

Q How about a year? A Take a year lease.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY.

FRANK J. BLOOM, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Bloom, where do you live? A I reside in Ventnor, New Jersey.

Q Where is your place of business? A 22 South Pennsylvania avenue, Atlantic City.

Q What is your occupation? A Real estate.

Q How long have you been in the real estate business? A About fourteen years.

Q Are you a member of the Atlantic City Real Estate Board? A I am.

Q Are you on any particular committee of that board? A Yes.

Q What committee? A Well, the present year I am not on any particular committee. I

don't know whether you are referring to appraisals or not, but appraisals in the real estate board are made by different committees.

Mr. McCarter: You speak so low.

A I answered if the judge were referring to an appraisal, there are different committees appointed different times on appraisals so it wouldn't be any fixed committee.

Q Have you as a member of the Atlantic City Real Estate Board made appraisals of real estate in Atlantic City? A I have.

Q Covering what period of time? A Covering a period of the last four years.

Q Have you made an examination of the Hotel Princess on South Carolina avenue? A I have, yes.

Q With the idea of arriving at an appraisement of the rental value of that property? A Yes, I think I have a fair idea, yes.

Q When did you make the examination? A I went through the property yesterday afternoon, between two and three o'clock.

Q Was the house furnished? A It was, at least what I saw of it was furnished. I didn't go through every room but I went on the different floors and the exchange, saw a number of the rooms.

Q Were you acquainted with the rental value of property of that character from the first of June, 1922, to date? A I think so.

Q I want, Mr. Bloom, first for you to give me, if you can, an appraisal of the fair rental value of that property per annum from the first of June, 1922, to the present time first with the furniture in it, what in your opinion would be

a fair rental value of that property? A 1922, there were during that period, a change in the hotel values, they varied but I will give you the best I can.

Q The first year from the first of June, 1922, to the first of June, 1923? A First of June, 1922, to 1923, I would say that the property was worth approximately—that is four years ago—I would say somewhere in the neighborhood of about fourteen thousand dollars.

Q Per annum? A Per annum.

Q Now the next year from June first, 1923, to 1924? A 1923 to 1924, I should say about sixteen thousand dollars.

Q In 1924 to 1925, first of June of each year? A I would say approximately eighteen thousand. At the present time about approximately twenty.

Q So the first year you place at fourteen, second year sixteen, third year eighteen and present year twenty? A Yes, sir.

Q Now the first of June this year twenty thousand dollars? A Yes, sir.

Q Assuming that the property, hotel, was unfurnished and the hotel was for rent from year to year unfurnished what in your opinion would be the rental value of that property from the first of June, 1922 to 1923?

Mr. McCarter: Objected to as immaterial and not the situation.

A Difference would be, it would probably vary from two to three thousand a year less rental.

Q Would there be a ready market for that hotel unfurnished? A Not ready, no.

Q Why not? A Well, the custom of the hotel people in business in Atlantic City is that

ninety per cent of the time, ninety-nine per cent of the time, to get furnished properties. It is very difficult to lease unfurnished hotel.

Q What would a prospective tenant be obliged to do in order to operate the hotel if it were rented unfurnished? A They would be obliged to furnish the rooms and rest of the house, silver and many things of that sort.

Q Now in your experience in Atlantic City has that been the usual or unusual thing? A It has been unusual.

Q Do you know in the last four years of any instance in Atlantic City where there has been rented an unfurnished hotel of the character of the Princess? A Yes. You mean of the character of the Princess Hotel.

Q Yes. A No, not of the exact character of the Princess Hotel, a smaller hotel. I have known of smaller hotels being listed.

Q Do you know of any hotels of the size of the Princess being listed unfurnished? A You speaking on a yearly lease?

Q On a yearly lease.

Mr. McCarter: Objected to as immaterial and irrelevant, no requirement this should be a yearly lease I am sure.

A I can't answer that exactly because I am not a hundred per cent in touch with hotels that I could give you that absolutely, I couldn't answer that.

Q Would it be possible to get a satisfactory tenant in a house of that kind by the year—

Mr. McCarter: Don't appear the witness has any knowledge on that subject at all. Object to it as irrelevant.

Q —on the yearly lease unfurnished.

Mr. McCarter: Same objection.

A Most desirable tenants move into the properties, the leasing time from the hotels is December and January of every year and at that time people come down, most of them for furnished hotels and generally where you have an unfurnished hotel it is, well it is left over or some question of estate or something like that where it has gone over a period beyond the rental season and the result is that generally you don't, you have a hard time leasing it because most people don't want to go to the trouble —more desirable.

Cross examination by Mr. McCarter.

Q Has the rental value of a property, Mr. Bloom, any relation to the value of the property itself? A Yes, sir.

Q What relation as a rule, what rent should a man get? A Ordinarily I would say, of course it varies in the character of the property, when you are dealing in real estate, lots of times you only get two or three or four per cent and naturally real estate and your capital value, you are dealing in apartment houses you run as high as fifteen per cent, you are dealing in private homes you run around from ten to twelve per cent and when you are dealing in different types of properties it varies.

Q Isn't it generally recognized that a man should get about ten per cent upon his property? A I would say ordinarily it is.

Q What value do you put upon the Princess Hotel property as such?

Mr. Starr: I object to that as immaterial and irrelevant. That is not the inquiry.

The Master: I will take that.

A My personal opinion or I have just appraised it as a member of a certain committee?

Q I am asking your opinion, what now do you put upon this property? You claim to be an expert? A I would say $232,000.

Q $252,000? A $232,000.

Q $252,000? A Yes, sir.

Q When did you put that value on it, yesterday? A No, sir.

Q When? A That valuation was reached several months ago, I don't know the date, I couldn't tell you the date of the appraisal.

Q Do you know the size of the property? A I believe it to be one hundred feet front by one hundred and fifty feet deep, and represent a five story brick front and four story, I believe, rear, irregular shaped building.

Q You say some months ago you put a value of $230,000? A $232,000.

Q At whose suggestion? A As a member of the committee.

Q At whose suggestion? A Originally at the request of Mrs. Rosecrans.

Q Mrs. Rosecrans? A Originally, yes, sir.

Q What value do you put upon the building? A We placed upon the building about $122,000.

Q What value did you put upon the lot? A One hundred thousand dollars.

Q Are you aware that it is assessed for $115,000? A I am not.

Q Have you ever looked into that at all? A Never.

Q What basis do you give for the valuation of a hundred thousand dollars for the land? A Well, the opinion of three men who agreed on the value.

Q I didn't ask you three men; I am asking your opinion. A One thousand dollars per front foot.

Q Do you know of sales on South Carolina avenue located as this property is at that rate? A I know of sales on South Carolina avenue a thousand a foot but not that particular location. 109 I believe it to be—you have caught me unawares on that—but next to the Bartlett home on South Carolina avenue, near the Friends School corner there.

Q That is further away from the beach, is it not? A Yes.

Q How much further away? A I would say it was about four or five hundred feet, something like that.

Q It is a block distant from the property in question, isn't it? A It is in the same block but four or five hundred feet away.

Q Isn't property on South Carolina avenue or any of the avenues, particularly hotel property, more valuable the nearer to the ocean it is or the boardwalk? A I would think so.

Q What other sales do you know of on South Carolina avenue of property as near the—what sales do you know on South Carolina avenue of property as near to the Boardwalk as this? A I know of sales but not the same condition. I couldn't answer the question.

Q Then you can't tell? A No, sir.

Q When the only basis you have for a thousand dollars a foot for this land is the fact that some property four or five hundred feet away— A No, that didn't affect us in the least.

Q I am not asking "us," I am asking you. A Didn't affect me in the least. As a matter of fact that sale occurred after our appraisal.

Q Are you familiar with the fact that in 1925 property from two hundred to three hundred feet from the Princess sold at fifteen hundred dollars a foot—fifteen thousand dollars a foot? A Boardwalk property?

Q Yes. A Fifteen thousand dollars a front foot.

Q Are you aware of that? A When?

Q 1925? A In 1925, as I understand it that Childs Company bought the corner South Carolina avenue and Boardwalk, one hundred and some feet wide, I believe, I understood the consideration to be twelve thousand dollars per front foot.

Q Do you know of any hotel property on South—South Carolina avenue is a very centrally located street, isn't it? A Yes, sir.

Q Right on the line with the Pennsylvania Railroad? A Yes, sir.

Q Right in the center of things? A Yes, sir.

Q Do you know of any hotel on the avenue that is of the type, that is the type of building that the Princess is? A I don't think there is another like it on the street.

Q Has property increased in value in Atlantic City in the last two or three years? A Yes, it has.

Q Has South Carolina avenue increased as well as other places? A Naturally, yes, sympathetically the rest of the town.

Q When you speak of a thousand dollars a foot as of what time are you speaking? A As of what time?

Q Yes. A The date of the appraisal made by the board.

Q I wish you would eradicate other people's appraisals. I am talking about your opinion, Mr. Bloom. Have you an independent opinion on this matter? A Yes, sir.

Q Who were this committee that you speak of? A Who were the committee? Well, Walter Clark of the Phillips Company, and another gentleman by the name of Sasslaff and myself.

Q Who made the appraisal? A Three of us jointly, always do.

Q You all agreed in it? A Yes.

Q Who actually fixed the figures? A It was a compromise.

Q Compromise? A Always is a compromise.

Q I am not asking you what always is. A The committee as a committee fixed the figures.

Q You are giving your opinion here. I ask you if property has appreciated in Atlantic City since that appraisal was made? A No, I think not.

Q You think it has stood still? A I think it has stood still. There hasn't been any activity in Atlantic City real estate for almost a year.

Q Now what basis do you give for the rental values during the years 1922, 1923, 1924 and 1925 that you have given; what did you base that on? A I would base it on a property, value of the property at that time.

Q Had you personally dealt, rented or sold any hotels in 1922 and 1923? A In 1922 and 1923, yes, sir.

Q What? A Rented the St. James' Hotel on St. James' Place near the beach which was a property—well, that is not necessary—which is—well, that is a property I rented.

Q What? A The St. James' Hotel, St. James' Place near the Beach.

Q You mean to say that St. James' Place is comparable in location with South Carolina avenue? A No.

Q That is all the experience you have on that? A Yes, sir.

Q In that year? A In that year, yes, sir.

Q How about 1923 or 1924? A I haven't rented a hotel in those two years.

Q How about 1924 or 1925? A Not rented any.

Q How about 1925 or 1926? A Not rented any.

Q What then forms the basis for your opinions? A Why my opinions are based, Judge, on the appraisals which I make in the mortgage business. I happen to place a number of mortgages in Atlantic City and I am more or less consistently in touch with the values, at least I think I am, of the values in the center of the city everywhere from the land standpoint ordinarily and I have applications at the present time even in my pocket for hotels in the center of the city. I reach my values on a per foot basis for land plus the cubical contents of the building, that is the way I do it all, from my knowledge of it, in so far as my knowledge and acquaintance with values caused by my contact with the mortgage conditions, that is all.

Q What are the cubical contents of the Princess Hotel? A Couldn't answer that.

Q So that the only method that you have adopted in your business to reach the rental value or a hotel you haven't adopted in reaching these values? A It was adopted but I can't answer that question. That building cubed up to, as I remember, to $123,000, but I don't

carry the figures. I wasn't prepared to answer any question like that.

Q If it cubed up to $123,000 then on that property what would you give, ten per cent of that? A Ten per cent of what, Judge?

Q Of the cubical content value? A No, more than that. It would vary. You see that building is frame.

Q Which building? A The Princess Hotel is frame, or any hotel, it would depend upon the character of the structure.

Q You say the Princess Hotel is frame? A Part of it is frame.

Q What part? A The rear part on the south.

Q Don't you know that the large bulk of the building is brick? A Yes.

Q Then why do you say it is frame? A You asked me if I went on a ten per cent basis. I said no because we go on a basis in proportion, rather depending upon the structure of the building. Now you have frame buildings, you have part frame buildings and you have better constructed buildings. We go according to that, go in accordance to whatever the building is, you take a brick building go in accordance with the structure itself, everything is all figured up.

Q What is the age of the Princess Hotel? A I would say approximately—

Q Know anything about it? A A little bit.

Q What do you know about it? A I would say the Princess Hotel, some of it was between twenty and twenty-five years old, and the rest of it, the central portion around thirteen or fourteen years old, another section—these are approximate figures—I say approximately, on the north, I would say that was around twelve to thirteen years old.

Q What is the building constructed of? A Building constructed of brick and frame.

Q How much frame and how much brick? A I would say from sixty-five to seventy-five per cent was brick, about twenty-five to thirty-five per cent frame.

Q Again I ask you how you reach the figures fourteen thousand dollars? A Well, the street, South Carolina avenue four years ago, I would say wasn't worth, from four to five years ago wasn't worth over, even there, much over five hundred a foot. Now then I reach my figure by adding, we will say successively about approximately add a hundred or hundred and fifty dollars per foot during the period of four or five years, that is how I reach my value and the rental we may have, the building was always the same all the way through, the building was always at one cost.

Q If the increase of rental has been contemporaneous with the increase of the value of the ground what percentage do you allow? A Approximately on the value of the house, fourteen thousand dollars that would be on the assumption the property would be worth approximately one hundred and fifty thousand dollars.

Q In 1914-1922 I mean? A Let's see, I would say the lot at that time was worth about fifty thousand dollars in 1922 and I would say that building naturally would be worth, no, it would be worth—couldn't be worth less than the other amount whatever that was, fifty thousand dollars plus the cubical contents, whatever that was, can't be less than that.

Q I am asking you the best of your opinion. You have no opinion? A That is the best of my opinion.

Q What is the best of your opinion? A Increase in the value of the ground is the reason for the increase of the value of the rental.

Q What value do you put upon the land in 1922 and 1923? A In 1922 and 1923 I would say approximately five hundred dollars a foot. Then I would say six hundred a foot, seven hundred, eight hundred a foot, nine hundred a foot, and up to about approximately a thousand dollars today.

Q What value did you put upon the building in 1923? A In 1922, I would like to correct that because our appraisal wouldn't meet on the basis—

Q I am not asking "our" appraisal, I am asking you what value you put upon the building in 1922 and 1923? A I will give it to you in just a second. I would say about one hundred thousand dollars.

Q That is what, the value of the building? A The building.

Q Then the building was worth a hundred thousand dollars and the land was worth fifty thousand? A Yes, sir.

Q Now in 1923-1924 the land was worth how much? A In 1923-1924, let's see, I would say about six hundred a foot. Next year seven hundred a foot, nine hundred a foot and a thousand.

Q The building has remained all the time more valuable than the land? A The building? Yes, sir, up until the present—well, it has all the time remained.

Q That is quite a valuable building, isn't it? A Fairly valuable.

Q Have you ever been through it? A Yesterday.

Q All through? A I went on the various floors, around the back and through the alley and through the exchange and went through the lobby and entered a number of the rooms on each floor.

Q Now how have rents been for hotels of this character to your knowledge from, for five years, 1922 down to five years after 1922? A From five years before to five years after?

Q Yes. A I would say that the rental ten years ago started about fifty dollars a room, which would make this property worth about fifty—about nine or ten thousand dollars.

Q How much? A Nine or ten thousand dollars rent about ten years ago.

Q Are you surprised to learn that it rented in 1916, 1917, 1918 and 1919, twelve thousand dollars? A I said ten years ago it was worth nine or ten thousand dollars because gradually get more valuable.

Q 1916 how long ago? A Ten years ago. How much, twelve thousand dollars?

Q Are you surprised to learn that? A No, sir, because ten per cent variation in figures is easily possible in rental.

Q Now what basis do you give for the figures six hundred dollars a foot 1923 and 1924? A What basis?

Q Yes. A My own opinion, that is all.

Q Based on what? A Based on the values of property along both sides of that street in that area.

Q What sales do you know of property in this block during the years 1923 and 1924 at six hundred dollars a foot? A I don't know of any. I know there have been sales there. Judge, I am specializing in mortgage business, I don't

sell near as many properties as other men do, but I know the values. I think I know values.

Q I suppose after all values depend upon sales? A Yes, they do.

Q What sales do you know for the next year at seven hundred dollars a foot? A Which year was that?

Q That is, as I take it, 1923-1924. A I know quite a number of salesmen and naturally hear of them, I don't know what year it occurred, before I could state that, I couldn't state that honestly, I can't answer the question.

Q You have given the values for 1923-1924? A You have asked my opinion for the value of that year.

Q I am asking you for the basis of it? A I base my figures, values for that year on back references, on my values for mortgage purposes, because they always vary every year.

Q Then you don't know of any sales to justify your figures? A There must have been sales to justify my figures.

Q Then you don't know of any sales to justify your figures? A No, sir.

Q You don't? A No, sir.

Q Now the next year, 1924 and 1925, eight hundred dollars a foot; do you know of any sales that justify that? A You have heard me, Judge, I can't answer those questions because I am on oath, with definite properties.

Q Don't accent "I am on oath." Of course you are on oath. I suppose you are an honest man. I assume so; don't keep harping so much. A I know, I will tell you, Judge, if you will pardon my frankness, if you want to know the truth, there are sales there, I have to follow up those sales and I get my values as I go along

and I place them that way, but I don't remember any exact sales.

Q What sales do you know on property in this avenue during 1925 to 1926 for nine hundred dollars—for eight hundred dollars? A No, I said a thousand dollars at that time, in other words would be a two hundred dollar jump from that year.

Q What year, when? 1922 to 1923, 1923 to 1924, 1924 to 1925, 1925 to 1926. You seem to have gotten confused. I will take your values again. For 1922 to 1923 what values do you put? A 1922 to 1923, I would say approximately five hundred a foot.

Q From 1923 to 1924? A I would say approximately six hundred a foot.

Q 1924 to 1925? A Approximately we will say $750. We will have to revise it so it comes up to a thousand.

Q Revise this time; go on; 1925 to 1926? A Let it stay if you wish.

Q You are the witness and not I. A 1925 to 1926, that is to June first, 1926.

Q I am asking for the value of the property? A One thousand dollars.

Q Thousand dollars? A Yes, sir.

Q Nothwithstanding the fact that in your judgment the property only increased a hundred dollars a foot between the years 1922 and 1923, and 1923 and 1924, you would jump the rent two thousand dollars, didn't you? A What?

Q The rental value? A Yes, sir.

Q Why, because of the increase? A Because of the increased value of the lot and the increased demand for the property.

Q Increased demand for the property? A Yes.

Q Has there been any decrease in demand for hotel property in the last year? A There is considerable.

Q Decreased demand? A Yes indeed.

Q To what do you allude in that? A Well—

Q Hotels on South Carolina avenue now? A Well, in reference to that, in that reference to my conversation with the brokers who handle that line of business and my own experience and observation in seeing vacant hotels and knowing of them.

Q Do you know of any vacant hotels on South Carolina avenue? A Today, this minute I wouldn't know, no, sir.

Q Do you know of any? A No, sir.

By Mr. Starr.

Q Mr. Bloom, you speak about an appraisal made by you and two other gentlemen; at whose suggestion was that appraisal made? A Mrs. Rosecrans.

Q When did you make the appraisal? A Well, I can't say exactly; I would say six or seven or eight months ago, something like that.

WILLIAM M. POWELL, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Powell, where do you reside? A Margate, 4 North Haverford avenue, Atlantic City.

Q Are you in business in Atlantic City? A Yes, sir; I am secretary of the C. J. Adams Company.

Q What business do they conduct? A Real estate and insurance.

Q How long have you been in the real estate and insurance business? A I have been with Adams seven years and before that I was in the real estate business before the war, probably three or four years.

Q What has been the scope of your activities for Adams in the real estate business? A Well, I have been specializing on the sale of hotels.

Q What about renting hotels, have you had any experience with reference to that? A Yes, I didn't rent many; I rented a few.

Q Do you know the Princess Hotel on South Carolina avenue? A Yes, I do.

Q Have you gone through the hotel? A Yes.

Q When did you do that? A Probably three years ago when the house had been newly decorated, I think just about three years ago.

Q Assuming that that hotel was unfurnished, the inquiry is what would be the rental value of the hotel for year from June first 1922 to June first 1923 unfurnished?

Mr. McCarter: That is objected to. There is no foundation for the basis for the inquiry.

The Master: I will take it.

A I will tell you candidly, I have never rented a hotel unfurnished because it is very unusual for hotels to be unfurnished and I really do not feel that I could give a rental value for an unfurnished hotel.

Q Do you know whether or not it is the custom in Atlantic City to rent hotels furnished or unfurnished? A Yes, it is the custom to rent them furnished.

Q In your opinion would it be possible in 1922, June, to rent that hotel unfurnished?

Mr. McCarter: He says he doesn't know anything about unfurnished hotels. How does he know?

A It would be very difficult I should say.

Q Why? A For the simple reason the average person coming down to rent a hotel expects to have everything ready to move in and make money. They haven't got a sufficient capital to furnish it.

Cross examination by Mr. McCarter.

Q Mr. Powell, I suppose rental value of property bears some relation to its actual value? A Yes, sir.

Q You went through the Princess you said two or three years ago? A Yes.

Q It was all furnished? A Yes.

Q What in your judgment, what is the percentage of the real value of property that a landlord ought to get in rent?

Mr. Starr: Objected to, not proper cross examination.

The Master: I don't suppose it is proper cross examination.

Q Well, you told Mrs. Rosecrans in 1925, did you not, that you thought you could get from four hundred and fifty to four hundred and seventy-five dollars for that property?

Mr. Starr: Objected to, not cross examination.

The Master: I wouldn't consider that cross examination.

Mr. McCarter: I will make him my witness.

Q Is that a fact, Mr. Powell? A To be candid with you I don't recollect having made that but if Mrs. Rosecrans says I did I probably did.

Mr. Starr: Move that be stricken out.

The Master: Yes, the last part.

Q What value did you put upon the property in 1925 when you and Mrs. Rosecrans had the subject up? A I don't remember having put any price on it because I didn't know it was for sale.

Q Did you solicit her selling it? A Yes, I remember talking to her about it, but my recollection is that she did not want to sell it, either that or she couldn't sell it, I think she told me.

Q And don't you recall at that time putting to her a value of four hundred and fifty to four hundred and seventy-five thousand?

Mr. Starr: I object to that as not a proper method of proving the rental value.

Mr. McCarter: Trying to refresh his recollection.

Mr. Starr: Even if he did tell Mrs. Rosecrans that fact it wouldn't be evidential against us.

The Master: Take it for what it is worth.

Q Don't you remember that, Mr. Powell? A No, sir, I don't recollect that.

Q Still making the witness my witness, what would you say would be the fair rental value of

the Princess furnished? A I would say thirty-four thousand dollars a year. I understand there are one hundred and seventy bedrooms.

Q The fact is that there are about one hundred and seventy-five, I think, bed rooms. A Of course we don't count bed rooms below the exchange floor, anything on the exchange floor or above we consider a bed room.

Q Would the fact that the bed rooms on the office floor and on the ground floor are actually rented to guests add anything to the value you have given, if there were more bed rooms than 170 and they, either on the office floor or on the ground floor were in fact rented to guests and were used as bed rooms practically, would that have any effect upon your values as to the rental value of the property? A No. I told you as a rule the ground floor bed rooms are used for help's bed rooms and that is what they are considered. Of course occasionally they are rented to guests but as a rule a man renting that hotel wouldn't figure those bed rooms.

Q How about the office floor? A It is all right on the office floor but not on the ground floor.

Recess taken to 1:20 P. M.

AFTERNOON SESSION.

Hearing resumed at 1:20 P. M.

ROBERT B. LUDY, sworn for defendant.

Direct examination by Mr. Starr.

Q What is your full name? A Robert B. Ludy.

Q Where do you live, Mr. Ludy? A Atlantic City

Q How long have you lived here? A About thirty years.

Q Do you own any hotels? A I own four.

Q What are their names? A The Osborne, the Reading, the Iroquois and the Elberon.

Q Do you operate the hotels or rent them? A I operate two and rent two.

Q Which do you rent? A I rent the Osborne and the Reading.

Q How many rooms in the Iroquois? A About two hundred.

Q How many rooms in the Osborne? A About between one hundred and one hundred and ten I guess, far as I know. Seems to be some dispute about the number of rooms there and I never counted them.

Q What about the Reading? A Reading rented for a hundred room house; they say only got about ninety.

Q What is the name of the other hotel? A Elberon.

Q How many rooms in that? A That has got 128, that is for guests.

Q When I am speaking of rooms I mean sleeping rooms for guests. A Yes.

Q Do you know the Princess Hotel? A Yes.

Q Been in it? A Yes.

Q How long have you been acquainted with the Princess Hotel? A Well, I have owned the Osborne this is the fourth season I think and the Princess is right next door.

Q Did you know the Princess Hotel in 1922? A Yes.

Q Do you rent the Osborne and Reading? A Yes, sir.

Q Or through a broker? A No, I rent them myself. In other words, I might explain, that those hotels are all in the name of the Ludy Hotel Corporation, I guess you folks understand I am the president of the corporation and since I own practically a hundred per cent of the stock I guess it is about the same thing.

Q Do you personally arrange for the renting of the hotels? A Yes.

Q What in your judgment would be the rental value of the Princess or would have been the rental value of the Princess from the first of June 1922 to the first of June 1923 unfurnished?

Mr. McCarter: Object to the question. The witness has not shown any competency to answer the question in the first place and second place it was not unfurnished and it is not unfurnished, and with that limitation upon the question has no relevacy.

The Master: I will take it for what it is worth.

A I don't consider myself competent to answer. I don't know anything about an unfurnished house.

Q Why do you say that? A I have never had an unfurnished house, see, and I don't know whether it would be possible to rent an unfurnished house, I don't know but one, I know of one that has been rented unfurnished on the Boardwalk, so I really don't know.

Q In your knowledge of the renting conditions in Atlantic City do you know of any hotels in the last four or five years that have been rented unfurnished? A I know of one.

Q Where is that located? A That is the house Mr. Jagmetty has on the Boardwalk, New Belmont, that is the only house I know. Of course that is a beach front proposition, but I don't know of any other house in Atlantic City.

Q Where is the Reading hotel located? A On Pacific avenue right below Arkansas.

Q The Elberon? A The Elberon is on the corner of Tennessee and Pacific.

Q And the Osborne? A That is on the corner of Arkansas and Pacific.

Q The Iroquois? A The Iroquois adjoins the Princess Hotel on South Carolina avenue.

Q Now what in your judgment would be the rental value of the Princess furnished the year beginning June first 1922 to June first 1923?

Mr. McCarter: Objected to as the witness has shown no competency whatever to answer the question.

The Master: I will take it.

Q Rooms variously estimated from 170 to 185 guest rooms? A I should think twenty-five thousand dollars, top knotch terms.

Q And what for the year 1923 June first to 1924? A Same.

New Jersey State Library

Q And from June first 1924 to June first 1925? A Same.

Q And from June first 1925 to June first 1926? A Same.

Cross examination by Mr. McCarter.

Q Wasn't there an increase in value from June 1922 to 1925? A In rentals?

Q Yes, sir. A I didn't get any increase.

Q Beg pardon? A I didn't get any increase on my properties except—

Q Didn't property go up generally in Atlantic City during those times? A Property went up, yes. I got an increase on my properties because I put in running water in all the rooms, that is why I got an increase.

Q When did you get an increase on your properties? A Then I got an increase of a thousand dollars on each one.

Q When I say? A I think that was two years ago.

Q That is to say in 1924 you got a thousand dollars more rent for each of your hotels that you did rent than you did the previous year? A Yes. I might be mistaken about the year; it is two or three years.

Q Now it was true, was it not, that at about that time there was a decided advance in real estate in Atlantic City? A That is true, yes.

Q Have you found that there is any relation at all between the value of the property and the rental value? A How is that?

Q Have you found that there is any relation at all between the value of the property and the rental value? A They ask more rents when they get more money; they have to.

Q You consider the location of the Iroquois a very good location, don't you? A Yes.

Q Do you know of any better location for an avenue hotel than the Iroquois? A I don't know that I do.

Q And the Princess is right next door, a little alley between, is that right? A Yes.

Q Same side of the street? A Yes.

Q Same avenue, same block? A Yes.

Q Your hotel is a brick front, the Iroquois? A Has a fireproof addition to the front.

Q Of what material is that, doctor? A That is steel and concrete and brick, said to be as near fireproof as can be made, the joists are steel and the floors are concrete.

Q The front of the Princess is brick? A Brick.

Q The sides? A Brick, I think. I spent about three hundred thousand dollars on that Iroquois last year.

CHARLES E. WISE, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Wise, where do you live? A Audubon, New Jersey.

Q You are county clerk of Camden County at the present time, are you? A Yes, sir.

Q Before you were elected county clerk what was your business? A I was in the boiler making business in Philadelphia.

Q In business for yourself or in connection with somebody else? A With a corporation of which I was a part, a stockholder.

Q What was the name? A Henry Goldner Boiler and Tank Works.

Q What had you to do with the conduct of the business of that concern? A Well, my title was secretary and treasurer but I was rather the manager.

Q Did that concern do any work either by way of improvement or repair to the Princess Hotel? A Did some repairs to the boilers there on two occasions I believe.

Q Did you personally inspect the work? Were you down there while it was going on? A A I went there at the request of Mr. Rosecrans after the inspector had been there.

Q Did you examine the condition of the boilers? A Yes, sir.

Q What did you find the condition to be? A The original condition of the boiler, that is before we came on the job, some one else had been working on it and it was in very bad condition, as we term it, from the practical point of view.

Q What was the matter with it? A The boiler had listed, as we call it, which means that the material got hot and it sagged down. Of course if they kept on it would have caused further damage to the boiler.

Q Do you remember about when it was? A I would say 1920, probably about 1920, I couldn't say positive whether 1920 or 1921, I think 1920.

Q Were you there upon another occasion? A Yes, about two years ago I think it was.

Q What work did you do then? A We did some more extensive repairs there; we put what we call a new bottom on the boiler, new boiler tubes and new boiler head.

Q Were you personally on the job at that time? A Well, I went there first to look the

work over and then I made two or three visits there while the work was going on.

Q The first job which you did there you say whether or not there was any necessity for repairs or improvements?

Mr. McCarter: I think it is perfectly obvious to the master that whether the question of repairs during the period covered by the reference is germain or not, and I shall have something to say about that, surely repairs made in 1920 by a co-owner of this property can have no relation to this account.

Mr. Starr: We claim that it does and if the master wants to have any authorities on that question I will present them. My suggestion is that we take the testimony and let him pass upon that later.

Mr. McCarter: Well, I should be ordinarily quite agreeable to that course but it seems to me so fundamentally wrong that we ought not to take the time of taking evidence that on its face seems to be utterly irrelevant. I suppose there will be other evidence and probably consume quite a time. I am a long way from home. I am not anxious to cut this short on that account. I am not asking the master to pass on any sharp question now that is doubtful, therefore I assume that the master, when the question of repairs during the period comes up later will take it subject to the objection, but in 1920, unless counsel has some authority that can satisfy us we are all wrong, I would press my objection.

Mr. Starr: My claim is that the order of reference, so far as the accounting is concerned, that is the accounting for the rental value of the property, is limited from the first of June 1922 to the present time. The order of reference, however, is unlimited as to any deductions which the co-tenant is entitled to by reason of the expenses paid in the preservation of the property. That is upon the general theory "that the equitable rule is entirely settled when the tenant in common has in good faith put improvements upon the common property, when the improvements are honestly made, he is entitled in some way to be compensated in an equitable partition." That is held in a number of cases in New Jersey and same applies to encumbrances, taxes, water rents and things of that kind. Now our contention is that we are in this accounting entitled to a contribution from this co-tenant for all of the expenses of the upkeep of the property, regardless of the time for which the defendant may be liable to account as rent.

The Master: In other words from the date of the deed on up?

Mr. Starr: From the date of the deed on up, anything that enhanced the value of this property, long as the complainant has brought us in court for an accounting, we are entitled to be repaid for moneys which increased or enhanced the value of the property from the time it was owned until the present time. There is no limitation in the the order. The order provides we are entitled to a credit, to any credits which the defendant is entitled. The object of this

testimony is to show that these repairs were necessary, they antedate the time covered by the order so far as the accounting of rents is concerned, and in this proceeding we are entitled to a contribution from the co-tenant for the expenses and encumbrances paid or any other amounts necessarily expended for the improvement or restoration of the property to increase the value of the defendant's estate in the property.

Mr. McCarter: What was the legal phrase?

Mr. Starr: "The equitable rule is entirely settled that when a tenant in common has in good faith put improvements upon the common property, when the improvements are honestly made he is entitled in some way to be compensated." That has reference to the period from the time this property became the common property and has been through a preservation and maintenance of the property an increase in the value of the property, we are entitled to be compensated for it.

Mr. McCarter: I respectfully and firmly protest against the application of any such doctrine to this case. The contest in this case was a contest by Mrs. Rosecrans against her husband in which she said that she was joint owner with him in this property and that he was helping himself to all of its emoluments and that from the beginning she had had nothing and asked that the title be adjudged to belong to him and her in the entirety and that he be compelled to account for the proceeds of that property during the period covered. A counter-claim was filed

by Mr. Rosecrans in which he claimed that while it was true his wife had advanced some money on the purchase of this property under this deed, nevertheless that was under an agreement that her right should be a mortgage and asked that he be adjudged that she be a mortgagee only for the amount of such advancements and that when the total amount of these advancements was ascertained she was to be held to have an equitable lien upon the property for that amount only. That, of course, was answered in full and the contest came on before Vice-Chancellor Ingersoll and, as I stated before, by this decree he decided that she was with him an equitable co-owner of the property and that, contrary to the insistence of Mr. Starr, was entitled to an accounting from a certain date and he fixed that date the first of June, 1922. He fixed that date, I suppose, because he was satisfied from the evidence that from at least that time Mr. Rosecrans had excluded his wife from the co-enjoyment of the property that she as a co-owner was entitled to. Now he has directed, therefore, that Mr. Rosecrans do account to the complainant for the rental value of the premises from the first of June to the date of the accounting and that the master take the accounting which shall include any credits to which the defendant is entitled, plainly entitled, plainly I think. I never dreamed that it went, and I don't believe the Vice-Chancellor for a moment had any idea that it meant that there should be any allowance for any payments or credits except those that could properly be claimed

during the period covered by the accounting, otherwise it would be ridiculous because then this accounting, from the first of June 1922 to the time of the accounting, would resolve itself into an accounting since the first of December, 1919, because, of course, no allowance could be made to Mr. Rosecrans for payments made in connection with this joint ownership previous to the accounting period unless the same allowance were made to Mrs. Rosecrans. Now what money is advanced at any time by a co-owner in the protection or betterment, if you will, of their joint property is always a matter of considerable inquiry and discussion, when the question arises, but I challenge Judge Starr to produce to the master a single authority that will justify the idea that an accounting during a certain period between co-owners, which, under the authorities in the Court of Errors of this state can only be possible when one of the co-owners has been excluded from the possession and enjoyment of the common property, that that opens the door, with that language such as is used, which shall include any credits to which the defendant is entitled, means from the beginning of the world to the present time. I would be very glad, if the master has any question about that, to have you consult with the Vice-Chancellor, who drew that order. I am sure—I say I am sure—I have never talked to him about the order at all, but I feel very certain that he hadn't any such idea and to construe the language used in the way to mean that all moneys expended by either of these parties upon this property

between 1919 and June first 1922 is, I think, a perversion and exaggeration and should not be permitted. This is an accounting during a certain period and I never heard it before stated that you could offset or add to that account money that was due from either one of the parties to the other on their statements or their accounts or their theories, and you can't tell anything about how those advancements, if they were made, were made or on what theory they were made. It may be under an agreement he should pay them, they are utterly outside of the pale of this accounting and I respectfully protest against our taking the time or the master opening the door to let in credits to which this man claims he is entitled because he made payments, can't tell under what circumstances or under what conditions, for this property before the date of the accounting.

Mr. Starr: The theory upon which the Vice-Chancellor evidently fixed the time as the first of June 1922 was upon the basis that prior to that time there had been no exclusion of Mrs. Rosecrans from possession of the property, consequently as between the two joint tenants there could be no accounting for rents. But that does not in any way deprive either of the joint tenants as to a contribution from the other for any legitimate expenses put upon the property at any time. Now we will prove here that prior to 1922 there was three thousand dollars a year paid on account of a mortgage covering this property, paid by Mr. Rosecrans, which thereby increased the value of the equity

of Mrs. Rosecrans, and also the taxes, water rents and charges, of that kind were paid prior to that time. Now if there had been no accounting, if there had been no claim for rent and this was a plain, simple accounting between the parties, either on an equitable partition or any other way, there is no doubt about the right of one joint tenant having made payments for the care and preservation of the property or for the increase of the equities of the other in the property, to be entitled to a contribution and it is upon that theory that we contend that, while the accounting for the rents must be limited to the period specified by the Vice-Chancellor, upon the theory that prior to the first of June, 1922, there had been no exclusion, so far as the complainant is concerned, but so far as the expenses in the care and preservation of the joint property we are entitled to a credit for the moneys thus paid, upon the theory of the order that it is unlimited as to time and any legitimate payments made by Mr. Rosecrans in the care and preservation of that property from the time he became the owner of it jointly with his wife, we are entitled to a credit. Now if there was a sale under partition, in order to ascertain the respective interests of the parties, there is absolutely no doubt but what Mr. Rosecrans, and Mrs. Rosecrans as well, if she had made any payments, would be entitled to a contribution by the other. The fact it is limited, so far as the obligation to pay rent is concerned, does not prevent either of these parties from contribution from the other for moneys paid for care and

preservation of the property prior to June first, 1922.

Mr. McCarter: Is it your contention Mrs. Rosecrans owed her husband prior to June first 1919?

Mr. Starr: No.

The Master: I can't see how the expenses paid by Mr. Rosecrans prior to the first day of June 1922 can possibly be the subject matter of this account. It was not the subject matter of your litigation at all.

Mr. Starr: It wasn't in the litigation before, never been in litigation until this time.

The Master: It seems to me the plain refference is that I shall state an account between June first 1922 for the rents and I shall give you credits for all moneys from that date down. I at the present time won't take testimony back of that date and if I am in error then I will give an opportunity to put in that testimony later.

Mr. Starr: For the present then you decline to take any testimony of payments made by Mr. Rosecrans prior to the first of June 1922?

The Master: Yes.

Mr. Starr: That raises the question fairly on the record and that being the ruling, of course, I won't offer any testimony of payments prior to that time and we will reserve the right either to present that testimony to your Honor or subsequently.

The Master: If I find I am wrong I will give further time in that.

Q Now, Mr. Wise, with reference to the second job which you say was about two years ago,

will you say whether or not the work that was then done was necessary for the proper care and maintenance of the property. A Whether it was necessary to be done?

Q Yes. A Yes, sir; absolutely.

Q Why was it necessary? A Either the repairs either had to be made or discard the boiler.

Q And were any more repairs made than were necessary for the reasonable protection of the property? A No.

Mr. McCarter: I will state frankly to the master that my conception of this case is that repairs to the property pending this time are not germain on this account. I feel, after some consideration, that credits such as are alluded to in the order mean fixed charges like insurance, water, sewerage, under your local practice, and interest on mortgage and taxes, that the question of repairs is a conventional question depending upon the terms of a lease always and the landlord may or may not be entitled or required to make them as the leases require and that, in getting at the rental value of property during any given period, the credits only in this locality or elsewhere, apply to such matters as I have alluded to and which I think are fair credits. Each one may differ with the matter of repairs, a man may have an idea about doing this or doing that and it doesn't necessarily follow under the name of repairs money was spent upon property to suit the whim of a co-owner, that a credit should be advanced therefor, but I feel that that is a very important question and one that I ought not

to ask you to decide *in limiti,* as I did in the other case. I recognize the distinction and therefore I hope that the master will consider that the question having been asked already of the witness and will be asked of him and other witnesses about or touching repairs, since the accounting period commenced, will be subject to my objection and to be temporarily admitted subject to final ruling. If that is the understanding I won't object constantly.

The Master: That is the understanding and ruling.

Mr. McCarter: I don't understand that this witness has identified or can identify the visits.

Q I show you, Mr. Wise, some checks and ask you whether or not you have any knowledge of the fact those checks being given in payment of the work done about two years ago as you say? A Well, I don't know the total sum of this bill. I feel sure that those are the checks involved in the last repairs from the dates of them but I don't have any record of the total amount of the bill.

Mr. McCarter: I am perfectly willing to concede that those checks are to the order of the boiler company which the witness is secretary of and were endorsed and the money received by them, but when it comes to repairs I do not believe I can admit any more than he says.

Witness withdrawn.

FREDERICK C. HICKMAN, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Hickman, you live where? A Ventnor.

Q Are you in business in Atlantic City? A Yes.

Q What is your occupation? A Vice President of the C. J. Adams Company, real estate and insurance.

Q How long have you been connected with the C. J. Adams Company? A Eighteen years.

Q Do you buy and sell and rent real estate in Atlantic City? A Yes.

Q Covering what period of time? A Well, say in the last seven years. Before that I just interested myself in insurance matters.

Q Do you know the Princess Hotel owned by Mr. and Mrs. Rosecrans? A I do.

Q Ever been through it? A Yes.

Q How many times? A I would say about three times.

Q Have any knowledge of the rental value of that property from the first of June, 1922, to June first, 1923, unfurnished? A Unfurnished?

Q Yes.

Mr. McCarter: Objected to for the reasons given.

A All right to answer that?

Q Yes. A I have a little difficulty in answering that question, unfurnished, because it is a little unusual to have a hotel rented unfurnished. It would be a speculative proposi-

tion to name a figure. I should think it would make a difference of about five thousand dollars in the rental furnished and unfurnished.

Q Five thousand dollars a year you mean? A A year, yes, sir.

Q Assuming that the property is furnished from the first of June, 1922, to the first of June, 1923, what in your opinion would be a fair rental value per year? A Yes, sir, furnished?

Q Furnished, yes. A I would say twenty-five thousand dollars.

Q For the year from the first of June, 1923, to the first of June, 1924? A I don't think there would be any difference.

Q And from 1924 to 1925? A Same.

Q 1925 to 1926? A It is hard to determine just at what point that increase should be made, but there has been an increase in the value of real estate in that particular section and that would have an influence on the rental value.

Q Do you believe it would be possible to rent the hotel unfurnished? A It would be a very difficult thing to do except for a very long term, because the lessee would have to furnish the hotel at his own expense.

Q Could it be rented from year to year unfurnished? A I shouldn't think so.

Cross examination by Mr. McCarter.

Q Mr. Hickman, you recognize the fact that property in Atlantic City took a boom about two years ago? A Yes, sir.

Q And didn't rents feel the effect of that boom? A Yes.

Q Therefore wouldn't property in 1924 have rented for more than property in 1923? A

Well, as I stated before, it is rather hard to fix the exact time at which that increase would apply. I previously stated that there would be an increase and I named that in 1925 and 1926. It might be true that that increase would take effect a year earlier, but the exact time it is difficult to fix.

Q You recognize that at some period you don't want to say definitely exactly when, between 1922 and the present time there has been an increase in the value of property throughout Atlantic City, which has been reflected in the rents? A There has.

CHARLES F. WISE, resumed.

Direct examination by Mr. Starr.

Q All repairs that were made or changes that were made at the second period a couple of years ago, could the hotel have been used if those repairs had not been made? A Not in the season when they would have required heat because they couldn't have had any heat without these repairs being made.

Cross examination by Mr. McCarter.

Q Are you a practical boiler man, Mr. Wise? A Never did anything in my life until I was elected clerk from the time I was twelve years old.

Q Never did anything else? A No, only working at the boiler making business.

Q What? A Worked practically at the business.

Q I gathered from what you said that you were. What was the trouble with this boiler two years ago? A Well, it simply had practically outlived its usefulness until these repairs were made, so much so that they couldn't have used the boiler another hour.

Q What was the nature of the repairs that were required to be made? A We put what we call a new bottom, the boiler showed—we put a half a bottom in the boiler all the way through.

Q Half bottom all the way through? A Yes.

Q Anything else? A New boiler head at one end of it and new boiler tubes.

Q Was it done by contract? A No, sir.

Q How was it done, by days' work? A By day.

Q Did you superintend the work? A Did I superintend the work?

Q Yes. A Well, just how to answer that, the man in charge of the job, while I made three or four visits while the work was going on.

Q How long a time, if you recall, was concerned in the operation? A In the making of repairs?

Q Yes. A I wouldn't like to say just now, I don't know, three or four weeks probably, may be more than that.

Q Is it customary not to make contracts for work of this kind? A It is not, necessary.

Q It is not necessary? A To make contracts.

Q Why is that? A No one could have told, to be just to both the man that is making the repairs and the owner, just what it is going to cost, it wouldn't be fair to either one.

Q Do you know when the work was commenced and when finished? A Date? No, sir.

Q Who does know in your works? A Who does know when the work? I suppose—I would think Mr. Rosecrans.

Q But I mean in your works? A In my works? I suppose—I am not connected with the firm now, understand, so, therefore, I don't know who would know there now. This thing has changed hands altogether since, the plant has.

Q The plant kept books I suppose? A I guess it did.

Q Rendered bills? A How is that?

Q Rendered bills? A Yes, sir.

Q Have you got the time when this work was done? A Have I got the time?

Q Yes, you say about two years ago? A Well, that is as near as I can tell you here.

Q You mean in June, 1924? A I wouldn't like to say. I think, if you will pardon me, without putting it in the record, I think these checks will probably give us some idea of that or practically the date, if you will admit that, those checks there, when that first payment was made there that will tell the story.

Q I am asking your recollection? A I don't recollect.

Q It might have been three years ago? A Oh, no.

Q How do you fix it two years? A Well, how I fix it two years the mere fact this is how long I am out of the business.

Q How does that fix it? A Well, because the work was done about a year and a half, just about, before I went out of the business.

Q When did you go out of business? A When I went out of the business first of the year when I was elected to this job.

Q That is when you qualified as county clerk? A No, when I was elected, when I was sure of the job.

Q You were not elected first of the year, were you? A November.

Q Clerk, were you, the first of the year? A Well, I stayed on the job until the first of the year and quit.

Q And you think it was a year and a half preceding then? A Yes, I would say.

Q So that would be about June, 1924? A About, to emphasize that.

Q That is all.

ELWOOD B. HUCKEL, sworn for defendant.

Direct examination by Mr. Starr.

Q Where do you live, Mr. Huckel? A Pleasantville.

Q What is your business? A Roofing.

Q Connected with what concern? A Oliver H. Guttridge Company.

Q How long have you been with the Guttridge concern? A Since 1918.

Q Did the Oliver H. Guttridge Company do any work on the Princess Hotel? A Yes, sir.

Q Remember when it was? A Couldn't tell you the dates, no, sir.

Q How long ago was it? A I couldn't tell you that. I know it is about, I think it was four years ago, about, so far as I can just recall now.

Q Do work upon more than one occasion? A Oh, yes.

Q What sort of work did you do? A Put on a new slag roof on the hotel.

Q Any other kind of work? A Done some sheet copper work and galvanized iron work.

Q Did you personally have anything to do with the job? A Superintended it.

Q Were you on the job when the work was being done? A Yes, sir.

Q Did you see the condition of the work before any change was made? A Yes, sir.

Q What was the condition of the work? A Needed new work.

Q What was the trouble with it? A Worn out.

Q Will you say whether or not it was necessary for the preservation of the property? A Positively.

Q I show you some bills. Do you recognize those bills, Mr. Huckel? A Similar to these, yes, sir. Not these bills. These are the new ones. These are copies of our old bills.

Q Do you know what became of the old bills? A I don't know unless Mr. Rosecrans has them, couldn't tell you, but these are copies of our books.

Q Know whether Guttridge did any other work on the building except the new roof, copper and sheet metal work? A Yes, I think there were paper hanging done.

Q Do you remember when that was? A Just about the same time, I think that this was done.

Q You see the condition of the paper before the work was done? A That doesn't come under my head.

Mr. Starr: I believe we could save time on this if we were given an opportunity

to make up a schedule in accordance with your finding. You see our schedule covers all the work from the beginning.

Mr. McCarter: Isn't it chronologically arranged so you can get it right in two?

Mr. Starr: No, for instance Guttridge is from 1921 to 1926, total amount, 1919 to 1926, $1,955, no indication of the particular time.

Cross examination by Mr. McCarter.

Q Mr. Huckel, you worked for Mr. Scull, did you not? A Yes, I believe the order came through Mr. Scull.

Q Mr. Scull? A Yes, sir.

Q All the work that you did was of the character you have described? A Yes, sir.

Q And it was all one job, wasn't it? A No, there was two hitches of it, if I recall, we done one part of the main roof in the front along South Carolina avenue and we done the lower section down over the dining room, which was the worst, and I think that after a year gone by went back and put the other section over the other roof facing towards South Carolina avenue, it seems to me that it was, I wouldn't say positive.

Q Mr. Scull had charge of it and you were under him? A I was working under Mr. Scull's orders.

JUDSON POWELL, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Powell, where do you live and what is your business? A Painter and live 608 Arkansas avenue.

Q Did you do any work on the Princess Hotel? A Yes.

Q What kind of work was it? A Painting and glazing.

Q Is this a bill and receipt showing payment? A It is.

Q Is that your signature? A Yes.

Q I notice the items September, 1922, down at various times to July, 1926, did you do the work shown in that bill? A I did.

Q Did you get your money for it? A I did.

Q From whom? A Mr. Rosecrans.

Q Do you know what kind of work it was generally and whether or not it was necessary for the preservation of the property? A It was very necessary.

Q What was the trouble? A Well, the paint had all gone to pieces and the sash and the frames were without paint and whenever it rained the storms all through and rusted the nails in some instances and the casings had fallen to the ground, the window heads and sills had gone to pieces and glass fell out of the windows and didn't hold and we put, that is included in the bill, reglazed a lot of glass where the glass had fallen out from lack of attention, putty and sprigs had come out, the sprigs had rusted where the sash pinned together, that is the nails had rusted and fallen, bottom rails and the glass.

Q Did you personally work on the job? A I worked myself with a man or two, a few men I had working for me.

Q Did you see the condition of affairs? A I was obliged to be careful going around there to keep from getting struck with some of the flying glass.

Q You received the amount of this bill, $1,142.49, did you? A Yes, sir.

Cross examination by Mr. McCarter.

Q Mr. Powell, this isn't the original bill you rendered, is it? A That is not—let me see.

Q Look at it. A This is the bill as Mr. Rosecrans received them, yes, from my books.

Q Has that bill been made lately? A That bill has been made lately, yes.

Q That is what I said, that is not the original bill you have rendered? A No, these bills made at the dates or the time when the work was finished.

Q When did you make that paper? A This paper was made oh just recently, here the other day.

Q At whose suggestion did you make it? A Mr. Rosecrans.

Q Did you compare this with your books? A I copied it from my books.

Q Copied what? A Those figures and those dates.

Q Are the dates the dates that the bills were rendered? A Yes.

Q You don't know what are the dates that the work was done? A Well, prior to those dates.

Q How much prior? A Oh, well, of course, according to the amount of the work, the first

one there is a small item and didn't take long to do it and the others may be, perhaps, those bills were, oh, would be a month or three weeks.

Q Now what was the—for instance, I see you have a bill here July 6, 1926, for $98.29, what was that? A That was for repairing and painting the back of the hotel. That is the instance I spoke of where the frames and casing had fallen off and we put on new casings and renailed the back of the hotel and painted and glazed the sash, &c.

Q Well, do your books or the original bills indicate the character of the work that was done in each case? A Yes.

Q Can you produce your books here on Monday? A Yes, sir.

Q Well, what was the bill in November, 1925, for? A Bill November, 1925? For how much is that?

Q $405. A That was for painting 290 sash one coat and repairing them at seventy-five cents each and it was for painting 250 the second coat and glazing them at the same price.

Q What was the bill June, 1925, for $450? A That was going over the front, reglazing the front, painting it and fixing it up.

Q And you have your original books which you will produce here next Monday? A Copied that bill from my books, yes, sir.

Q Don't the books show the character of the work that was done more particularly? A Well, I just do that general business there that is all I do and the head of my books, the man's name, the date, and so forth, the contract for so much money and that is understood. With Mr. Rosecrans and other of my clients I don't exactly write out contracts for them, those that I know

and send to them, that I want to get the money, but those that I think are all right, I don't write any contract, he just shows me what he want done, I give him an estimate on the work, and I go do it, but that is the general business.

Q In each of these cases there was an estimate and contract or arrangement? A Excepting the last item of $98, isn't it?

Q Yes. A There was no contract on that because the work was of such a character that I didn't contract.

Q Who else worked with you on this work? A The men that I employed.

Q Who else worked with you on this work? A Well, now I would have to get my books.

Q Well, you bring your books here Monday and I will reserve further cross examination. A I have to get time books and see who they are. I don't know who they are.

Q I don't believe you do. You produce your books with you Monday and I will reserve further cross examination until you produce your books here. A All right.

Mr. Starr: I offer this in evidence.

Mr. McCarter: I would like to have that offer withheld or not finally admitted until we have this cross examination.

THOMAS LEWIS, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Lewis, where do you live and what is your occupation? A I am a locksmith and I live 26 North Georgia avenue.

Q Did you ever do any work on the Princess Hotel for Mr. Rosecrans? A I did.

Q Remember when it was? A From the time he took it over until about last year I guess.

Q From the time what? A From the time he took it over.

Q The time is limited from the first of June, 1922; have you ever done any work since then? A I have.

Q What sort of work have you done? A I put on Yale latches on all the floors from every room in the house and I have done repair work from time to time.

Q You keep books? A I have, yes, sir.

Q Any other kind of work to be done there? A Repair work, repairing locks, that is all I remember; we may have done other work.

Mr. McCarter: What is that?

A I say that is all I remember. We may have done other work.

Q Now I show you some bills, five, are those the bills that you rendered Mr. Rosecrans for the work? A Yes.

Q Were they paid? A They are.

Q Now looking over these can you tell us the kind of work you did? A Here is, we furnished him with lamps on this first bill.

Q What kind of lamps? A Well, they were electric lamps.

Q You mean globes? A Globes, surely.

Q All right, what are the rest? A The rest of this we—mostly under repair work, repairing locks, pass keys, here is the Yale latches put on, there is keys made.

Q Yale latches put on where? A 182 latches put on the room doors up there.

Q Have those bills been paid? A They have, yes.

Q What sort of latches were on the doors before you put the Yales on? A They were originally three tumbler locks but from long usage and abuse they were out of condition entirely and it was cheaper to put on the Yale latches than to try to repair them.

Q In your judgment was that work necessary for the proper maintenance of the hotel? A Positively.

Mr. Starr: Offer these bills.

Cross examination by Mr. McCarter.

Q I see this fourth of these bill is entitled "duplicate bill"? A That is right.

Q That has been recently made up? A Made up on December eleventh, 1924.

Q What? A Made up on December eleventh, 1924.

Q Sure about that? A Positively.

Q Are you your own bookkeeper? A My brother did the bookkeeping there.

Q I see also on this same fourth of these four sheets of paper are paid by notes? A That is right.

Q Have those notes been paid? A They have.

Q When were they paid? A When they matured, when they came due.

Q When was that? A One of them came due a month after it was made to us, the next two months after given to us.

Q When were they given to you? A They were given to us some time in June, if I remember right.

Q What year? A 1924.

Q Sure about that? A Positive.

Q Now can you produce your books on Monday to indicate this? A I cannot. The books, when we moved, have been lost.

Q When did you move? A June—this last June first.

Q June first? A Yes, sir.

Q And your books became lost when you moved? A Positively.

Q How did that happen? A Well, they are books from 1921 to 1922, 1923 and 1924, we don't carry them, that is we had to move in a hurry, we either moved them in storage or up to the other house, we had been to one or two stores, in the mixup they became lost or we can't find them.

Q You didn't personally make these bills out, did you? A I did not personally make these out.

Q You don't know when they were personally paid, do you? A Yes, sir.

Q How do you know that? A Because my brother and I just two in the partnership and we can know from one to the other and I may have sent him that and my brother made out the bill and sent it to him; I had the dealings with Mr. Rosecrans myself.

Q I don't quite understand, have all your books for the year 1924 been lost? A They have.

Q Can't show a thing of the business you did in 1924, eh? A I can't, no, sir.

Q Nor— A 1923 or 1922 or anything before that.

Q But these all appear to be done in 1924, do they? A They are all 1924 bills.

Q When was the work done? A Work was done here July 19, 1924, August 23, November 1924, you haven't the date the work was done on this claim.

Q You say this work was necessary for the preservation of the property? A It was necessary.

Q I see a charge "changed combination on the safe," was that necessary for preservation of the land? A No. I didn't look at that.

Q What are these lamps? A The lamps are probably used in the hotel.

Q They are lamps, aren't they? A Positively.

Q For electric lights? A Yes.

Q Used by him in the hotel business? A I suppose so, yes.

Q Key rings, what are they necessary for the preservation of the property? A If he is going to do business as a hotel they are, yes.

Q 14 blanks, what do you mean by that? A Blank keys.

Q Wouldn't you look up those books a little more? A If I can find them I certainly will, yes.

Q When did you discover they were lost? A Discovered they were lost after we moved.

Q When did you move? A June first.

Q This year? A This present year, yes, sir.

Q Have you looked for them? A Particularly? No.

Q You say these are the bills that were rendered at the time? A So far as I can say except this one where the bill was—

Q Duplicate? A Just a minute, please—bill was sent to him and no attention paid to it so we sent him duplicate bills.

Q Had the books then? A Positively.

Q You couldn't tell now whether these bills are right or wrong, could you? A No, except trusting to memory is all.

Q You have any workmen in your place besides your brother and yourself? A I did at that time, yes.

Q You and your brother didn't do all this work, did you? A I did, yes, sir.

Q You did this? A I did all this work.

Q Every bit of it? A Positively.

Q Any of this work done by contract? A Yes; not by written contract, 182 latches were put on by oral contract I believe.

Q Was it or wasn't it? A It was put on by oral contract.

Mr. Starr: I offer these in evidence.

Mr. McCarter: I suggest that be held under the same suggestion until this gentleman looks further for his books.

Mr. Starr: You look for your books of record and give us them here next Monday if you can find them.

Further testimony adjourned to July 26, 1926, at 9:00 A. M.

Atlantic City, N. J., July 26, 1926.

Hearing resumed pursuant to adjournment.

Mr. Starr: I issued a subpoena for Mr. Printz, who is the representative of the holder of the two mortgages on the property, to be here today to produce his books show-

ing the interest payments and he called me on the phone and said he could not get here today, that Mr. Prettyman was abroad and there was nobody in the office and he could not close the office today and he sent me an affidavit. I don't whether that is satisfactory to you or not. That shows the payment of the interest on the first mortgage and the reduction of principal.

Mr. McCarter: Probably we can agree to that.

Mr. Starr: Then I will introduce in evidence the affidavit in lieu of the testimony and it is agreed that this property was acquired in the first place subject to a mortgage of $75,000, the deed shows subject to a mortgage of $30,000, and I have here a certified copy of the mortgage for $75,000 which I desire to introduce in evidence.

(Affidavit admitted and marked Exhibit D. 1. Certified copy of mortgage admitted and marked Exhibit D. 2.)

Mr. Starr: With reference to the interest on the second mortgage, $75,000, and the installments on the $75,000 mortgage, the affidavit shows payments made prior to the first of June, 1922, as well as afterwards, but they can be eliminated by the master.

Looking over this testimony, I would like to have a formal objection entered on the record with reference to the ruling on repairs prior to the first of June, also with reference to payments by Mr. Rosecrans before that date.

FRED HICKMAN, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Hickman, did the firm of C. J. Adams Company write fire insurance and other sort of insurance on the Princess Hotel from the first of June 1922 to date? A Yes, sir.

Q Have you the books of the C. J. Adams Company showing all of the charges made against Mr. Rosecrans for insurance written in connection with that hotel from the first of June 1922? A I have. In fact that goes right back to the beginning up to the present time.

Q Just give us those after 1922, won't you please, from 1922 to date, June first, 1922 to date. A 1922 there is nothing between May and then September.

Q These are the books of the company? A Yes.

Q Rather loose leaf? A Yes.

Q Original entry? A They are original entry, yes, sir.

Mr. Starr: I offer in evidence pages number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

The Witness: Is it the purpose of the court to retain these? I have a compilation here. These books are still open, you see.

The Master: I don't want to keep these.

Mr. McCarter: I don't think you ought to keep them. This is all right, Mr. Hickman, anything you put in in the way of copies, perfectly satisfactory.

Q Can you give us the total amount of the premiums for insurance covering the policies that

you wrote for Mr. Rosecrans from the first of June 1922 to date? A I can give it to you year by year. 1922 from June to December $3,233.97 fire insurance. There are credits on that for $94.43, making a net charge for fire insurance $3,139.54.

Q What amount the next year, 1923? A Gross charge $3,248.54, credit $70.46, net charge $3,178.08.

Q The year 1924? A Gross charge $3,324.42, credit $1.70, net $3,322.72.

Q Now 1925? A Gross charge $7,879.83, credit $210.92, net charge $7,668.91.

Q Now for this year? A 1926, $448.98.

Q Now of these charges against Rosecrans how much has been paid by him? A All except $66. That is for the current account.

Q $66 covering what items? A 1926 an item of liability insurance. All the accounts I have mentioned have been paid either by cash or note and there are still some notes that have not been taken up.

Q Notes given by Mr. Rosecrans? A Yes.

Q To? A C. J. Adams Company.

Q Can you give us the schedule of those notes? A Yes. Note given for the 1926 insurance $448.98 and two other notes balance on the older accounts, $3,400 and $1,800. The $3,400 note is due July twenty-eighth and the $1,800 note August sixth, 1926.

Q Now I notice in this statement that you furnish you have an item of liability insurance. Is any liability insurance included in the amounts which you have given us? A No, sir. I have those here but I have just given the fire insurance.

(Loose leaves from books offered, admitted in evidence and marked Exhibit D. 10 and returned to witness.)

Cross examination by Mr. McCarter.

Q Mr. Hickman, how long has the note for $3,400 or its predecessor been in your hands, I mean in your bank or in your own hands? A January fourth, 1926, a note was given us of $5,552.02 and payments have been made on account of that leaving $3,400 now due.

Q And that $5,500 note was given in payment of a previous note or an account at that time due? A Open account.

Q Open account? A Yes, sir.

Q No previous note? A No, sir.

Q When was the $1,800 note given? A I don't know whether I can answer that offhand, Mr. McCarter without looking it up, but I can give you the information. It made up the balance of a note of July first for $2,444.47. I can get that information.

(The witness afterwards furnished the following: Note for $448.98 for 1926 insurance; note, $3,400, due July 28th, 1926, note for $1,800 due August 6, 1926, renewals of notes given December 28 for $3,603.04 and January fourth $2,057.99.)

Q This insurance was all ordered, I presume, by Mr. Rosecrans? A Yes, sir.

Q How do you account for the fact in 1925 the rate, the premiums raised more than double? A That was due to additional insurance that was put on after the Bothwell Hotel fire.

Q That was at his request? A Yes, sir.

Fred Hickman, for defendant, cross.

Mr. Starr: I offer in evidence a receipted bill from the Atlantic City Sewerage Company from July first, 1922, to July first, 1923, amounting to $387.05 paid April 16, 1923.

(Receipted bill admitted and marked Exhibit D. 40.)

Receipted sewerage bill July, 1923, to 1924, $399.90 paid November 16, 1923.

(Receipt admitted and marked Exhibit D. 41.)

Receipted sewerage bill July first, 1924, to July first, 1925, $572.50 paid September third, 1924.

(Receipt admitted and marked Exhibit D. 42.)

Receipted bill July first, 1925, to July first 1926 $572.50 paid July 30, 1925.

(Receipt admitted and marked Exhibit D. 43.)

July first, 1926 to July first, 1927 for $595.60, paid July 22, 1926.

(Receipt admitted and marked Exhibit D. 44.)

I offer in evidence a statement from the Water Department, which corresponds to your statement, and also checks showing the payment:

August 14, 1922, ...192.90
February 15, 1923 .....138.39
August 31, 1923 .....230.00
January 13, 1924 .....112.72
August 11, 1924 .....262.47
June 15, 1925 .....256.97
August 15, 1925 .....278.04
April 30, 1926 .....254.10

(Statement and checks admitted as one exhibit, and marked Exhibit D. 45.)

PAUL C. ROSECRANS, sworn.

Direct examination by Mr. Starr.

Q I show you a receipted bill dated April fifteenth, without giving the year, in favor of William Reed, against the Princess Hotel. Can you tell me in what year the materials and articles shown on that bill were furnished? A That was last year.

Q You mean what year? A 1925.

Cross examination by Mr. McCarter.

Q How do you fix that? A By that apartment number on there, Apartment A6. That dollar and a half doesn't belong on there. It belongs to my son's apartment down in the Neptune Apartment. He had that last year.

Q I don't quite understand what you say about this bill that enables you to identify it. There is some charge in there? A Apartment A6. You will see at the bottom there, "Lock fixed on Apartment A6, Neptune Apartments."

Q In the first place, that, you think, should come off? A That should come off.

Q How do you realize that eighteen keys on April 8th are for 1925? A Well, that was all done at the same time. That work was all done at the same time. It all came in the same bill, you know.

Q You say your son's apartment—where is that? A On Kentucky avenue.

Q Apartment hotel? A No. That is an apartment in this house, in this apartment house, Neptune Apartment.

Q It is not part of the hotel, then? A No.

Q Where is the garage? Where does your son keep his automobile? A The garage is under the house. That is, under the hotel.

Q How long has that been there? A It has been there since the hotel was there. Always stored cars under there.

Mr. Starr: You are entitled to a dollar and a half more off on that.

The Master: Which makes $11.90 on that item?

Mr. Starr: Yes.

The Master: It is admitted for $11.90.

(Paper marked Exhibit D. 148.)

Re-direct examination by Mr. Starr.

Q Do you know Alfred R. Smith? A Yes, I do.

Q What is his business? A Paper-hanging.

Q Where does he conduct his business? A In Ocean City.

Q Did he do any work on the Princess Hotel? A He did.

Q What was the character of the work? A Papering.

Q Did you pay him by check? A I did.

Q I show you three checks, one dated August 14, 1923, for $191.81. Did you give that check to Mr. Smith? A I did.

Q What did it cover? A It covered work which he did at the hotel.

Q What kind of work? A Papering.

Q You mean paper-hanging rooms? A Paper-hanging rooms.

Q When was it done? A In the spring of 1923.

(Check offered in evidence and marked Exhibit D. 149.)

Q I show you a check dated June 26, 1924, drawn to the order of Mr. Smith for $50.75. Did you give him that check? A I did.

Q What was the check given for? A Paper-hanging, done the same year; done in the spring of the same year.

Q Of 1924? A Yes.

(Check offered in evidence and marked Exhibit D. 150.)

Q I show you another check dated August 28, 1924, to the order of Smith for $40.86. Did you give that check to Mr. Smith? A I did.

Q What was it for? A The same work; paper-hanging.

Q When was that paper-hanging done? A In the spring of that year, 1924.

Q At what place was the work done? A Princess Hotel.

(Check offered in evidence and marked Exhibit D. 151.)

Q Did you have personal knowledge of this work being done? A In 1924 I did.

Q Was it necessary to have these rooms papered? A It was.

Re-cross examination by Mr. Starr.

Q How about 1923? Do you know about that personally? A 1923 I wrote to him from California about that.

Q What is that? A I ordered it done from California. I ordered the work done. I told him to go down there and do it, as I recollect it.

Q You were in California during 1923, weren't you? A I was up to the 1st of June; about the 27th of May; somewhere around there.

Q What knowledge, then, have you that Mr. Smith put up any paper, hung any paper, during the spring before you got back in the hotel? A Well, I had a fellow there looking after the hotel.

Q A man named Knox? A No; a fellow by the name of Devine.

Mr. McCarter: I submit Mr. Devine ought to be called.

By Mr. Starr.

Q When you came back from California did you check up and ascertain whether or not Mr. Smith had performed that papering? A Yes.

Mr. McCarter: That must be hearsay.

Q Did you know the rooms were papered? A Yes.

Q Whom did you pay for it? A Paid Mr. Smith.

PAUL C. ROSECRANS, recalled.

Direct examination by Mr. Starr.

Q Mr. Rosecrans, I show you the various invoices of Baker's paintshop marked Exhibit D. 152. I wish you would look those invoices over and tell me what were the articles referred to used for. A They were used to paint the woodwork in the kitchen and upstairs on this invoice here.

Q Look at them all and tell us generally what it was used for, whether it was used for anything else than painting the Princess? A This one here was on mirrors, this May 1, 1925, bill of $29. April 1, 1925. The bill is dated May 1st, and the job was done on the first of April.

Q What was that for? A That was for mirrors on the bureaus and dressers upstairs.

Q What does that bill amount to? A $29.

The Master: What is the total amount of the bill?

A $74.90.

The Master: Re-silvering mirrors, $29. That wants to come out, does it?

Mr. Starr: All of these items come out. All of the items on the subsequent page, amounting to $77.25, cover brushes and things like that, and they are all out.

The Master: They are to come out?

Mr. Starr: Well, re-silvering mirror comes out.

Q Well, go ahead and indicate any other things you can remember for which this paint was used? A On July 1, 1925, there are two mirrors re-silvered. That comes out. That is all.

Q I notice in this invoice there are a lot of brushes charged for. What were they used for? A Painting. To put the paint on with.

Q Were they all bought for that purpose? A Yes.

Q Were any of those articles used anywhere else except for doing the work of painting on the Princess Hotel? A No.

Cross examination by Mr. McCarter.

Q Was any of this paint or any of this stuff on this O used in the work applied to the change of the rooms in the basement from what they had formerly been to bed rooms? A That change was ordered by the City.

Mr. McCarter: I move the answer be stricken out.

Q Answer my questions, will you? A Yes. It was.

Q How much of it? A Oh, I suppose it didn't amount to over $25; $30.

Q Have you any idea? A About that much; approximately that.

Q Twenty-five or thirty dollars? A Yes.

Q How can you tell that? A Well, I know how much paint it takes to cover a room and I get it from that.

Q When was that work done, that change in those rooms A Some of it was done in—most of it was done in the spring of 1925.

Q All of it? A Some in 1926.

Q Which was it? A 1926. It was finished in 1926, the spring of 1926.

Q A large part of the lumber that was supplied by the Atlantic City Lumber Company and included in these schedules was for that same purpose, was it not? A Yes.

Q Can you designate how much? A Approximately about one-third of it.

Q And the other two-thirds was what? A It was used throughout the house in various jobs, various repairs.

Q Well, for instance what? A The plaster came down in a good many places. The rooms were never white-coated, and the plaster kept

falling down, and we had to buy a lot of this plaster board to replace the plaster, and the floors had to be repaired in a good many places.

(At this time Miss Keyser telephoned that the note referred to in her testimony was in the amount of $125.)

A The house was getting pretty old.

Re-direct examination by Mr. Starr.

Q You have spoken about the change in the basement into bed rooms. For what purpose was the basement used prior to the change? A It was used for bed rooms just the same as it is now, but the City inspectors came through there and the Board of Health, and they ordered the re-arrangement of those rooms changed because some of them had no outside air, and I had to clear the whole thing out and re-arrange it to comply with the City, with what they wanted.

Q Just explain what you did pursuant to those instructions or directions from the City? A I tore down all the old partitions. The rooms were in there. There always were rooms there. I tore down all the partitions and took out the partitions that shut off the light from one set of rooms, and re-arranged it so as to put another set of rooms in there so they would get air and light. I did it the way the City wanted it done.

Q Were there any more bed rooms after you made the change than there were before? A No more, no.

Q You had the same number of bed rooms? A The same number of bed rooms, and there was another change made where the linen room was. The fire inspectors objected to the linens

and a lot of stuff that had to be used upstairs, inflammable material, being kept back there near the kitchen, and I had to take the linen room and put it downstairs in the alley on the basement floor so I put a partition in there where the linen room was and made two rooms out of that. There was one room there before. It was often used as a bed room before.

Q On what floor were these rooms, basement or first floor? A That was on the dining room floor.

Q Your linen room was on the dining room floor? A It was on the dining room floor and I moved it downstairs in the basement.

Q Would you have made those changes if the City hadn't ordered it to be done? A No, I would not.

Q Did that necessitate any change in plumbing, gas fitting or electric lights? A Some, yes. The plumbing had to be re-arranged and the lighting had to be re-arranged.

Q I notice in some of the invoices of the Baker paint shop that there are items of sandpaper and steel wool. What were those items used for? A It is used in preparing the surface for the paint. Where the paint is peeled off they sandpaper it and use steel wool to make a surface for the paint.

Q And the work of painting, was that done by men employed by you or under contract? A It was done by men employed by me, the greater part of it. Powell did some of it.

Re-cross examination by Mr. McCarter.

Q You formerly had a linen room, didn't you? A I have yet.

Mr. McCarter: Will you instruct this witness to answer my questions, please?

The Master: Mr. Rosecrans, pay attention to the questions and answer them.

Q Didn't you formerly have a linen room? A I did.

Q And store room? A I did.

Q And packing rooms? A Not packing room. I had a big linen room that was used for packing and used for storing and everything else.

Q Weren't there three separate places? Besides the linen and the store room, there was another room, whether you call it linen room or not, which you did use for packing, wasn't there? A It was used for linens. It was all used for linens.

Q They were all turned into bed rooms, weren't they? A No.

Q What? Didn't they make about twenty bed rooms? A No.

Q How many did they make? A The linen room made two bed rooms.

Q The store room made how many? A The store room was used as a stairway to go down—

Q How many bed rooms did it make? A It didn't make any.

Q Not after the change? A It didn't make any; positively not.

Q Now the packing room? A There was no packing room. It was part of the linen room, and that didn't make any—

Q How many new bed rooms have you got where there were formerly not bed rooms on the dining room floor? A The linen room was used as a bed room during the summer—

Q Will you be kind enough to answer my question?

Mr. Starr: I think he is answering your question.

Q How many bed rooms have you got on the dining room floor, from any source, that were not formerly bed rooms, permanent bed rooms? Haven't you about twenty? A Two.

Q Two? A Two where the linen room was, and that linen room was used partly as a bed room also.

Q Then you only have two bed rooms that were not formerly bed rooms? A Really only one more, you might say. It was a big room and I put a partition in it. Like this room, just make two rooms out of this; put a partition in it.

Q You stand by that, do you? You say you haven't changed the old arrangement, whatever it was, into what are now about twenty new bed rooms by this arrangement that I am speaking of? A No, not on the dining room floor.

Q Well, all through the house. A In the basement I have bed rooms that were bed rooms before, but I couldn't use them because the City ordered me to close them up. I had to re-arrange them. They ordered me to re-arrange them.

Q They had no light or air, had they? A What is that?

Q Under the old arrangement a great many of them had no light or air? A They had light but didn't have any air.

Q How many bed rooms with light and air have you got in the basement that you didn't have before with light and air? A I suppose I have about three.

Q What? A I have about three or four now with light and air that didn't have light before under this arrangement.

Q Only three, then, you say? A That is all.

Q Then how many new bed rooms have you got with light and air that you didn't have before all through the house? A I don't figure we gained anything only the rooms are better arranged than what they were before, that is all. I don't figure I have gained anything.

Q That is the way you want to leave that? A Yes. I don't figure I have gained anything, only I can use the rooms to better advantage as they are now.

Q You say now you used to use the linen room as a bed room, put guests right in the linen room? A Well, Saturday nights, people that I knew that were all right, let them use the linen room for one night, yes. I couldn't use it as good as I can use it now.

Q Now it is a regular bed room, isn't it? A Yes.

Q With running water in it? A Yes. There was running water in it before.

Q How about what was the store room? The same thing, isn't it? A The store room, what you are referring to, was a room where the linen was dried. It was used for linen and for—it was used for a bed room, too. It had a sink in it. It was used as a bed room and store room and linen room, and that room I lost, so I didn't really gain much. I put a stairway in there to go downstairs. That space is all used up by this stairway to go downstairs to this other linen room.

Mr. McCarter: I want to examine Mr. Rosecrans on another matter. I will make him my witness or any other way.

Q Did you issue this document? A Yes.

Q I see it was copyrighted 1920? A Yes.

Q That is when the original was issued? A Yes.

(Pamphlet offered in evidence and marked Exhibit C. 2.)

Q Did you issue that document? A Yes, I did.

(Paper offered in evidence and marked Exhibit C. 3.)

Q Did you issue this document? A I did.

(Paper offered in evidence and marked Exhibit C. 4.)

Q You deducted from the income tax returns that you made for the years 1922, 1923 and 1924 the repairs you put on the hotel, did you not?

Mr. Starr: I object to that as irrelevant and immaterial.

Mr. McCarter: My view is that it bears a good deal on whether these repairs, so-called, should be divided, that he has claimed a deduction for them from his own income tax.

The Master: I will take it.

Q Is it not a fact, Mr. Rosecrans, that for the years 1922, 1923 and 1924 in your income tax returns you deducted repairs? A I couldn't tell you that. I didn't make the income tax up. I will have to see Mr. Hughes. I will have to go over that and refresh my memory on it. I don't know. I couldn't tell you offhand because I didn't make out the income tax.

Q You don't know anything about that? A I could not tell you what was taken off. Not offhand I couldn't.

Q Well, do you recognize that as being a photostat copy of your signature? A Yes.

(Paper marked C. 5 for identification.)

Q Do you recognize this as being a photostatic copy of your signature? A Yes.

(Paper marked C. 6 for identification.)

Q Do you recognize this document as being a photostatic copy of your signature and your tax return for the period for which it purports to be? A Yes.

(Paper marked C. 7 for identification.)

Q Do you remember that the gross receipts for the year 1924 from the use by you of the Princess Hotel were $132,275.76?

Mr. Starr: That is objected to as irrelevant, immaterial and improper.

Mr. McCarter: I think that bears upon the rental value of the property. If that property produced a gross income of $132,-275.76, it has a good deal to do with the rental value.

Mr. Starr: My objection to that statement is that the income derived from the operation of the business can have no possible bearing upon the rental value of the property.

The Master: It would seem to me to be remote. If you care to urge it, I will take it for what it may be worth.

Mr. McCarter: I think I do care to pursue it.

Q Now, Mr. Rosecrans, I ask you if you recall that the gross income of this hotel for the

year 1924 was $132,275.76? A I couldn't tell you the exact figures. I suppose if—

Q Isn't that about your recollection? A If the income tax report gives those figures, I suppose that is what it is.

Q And for the year 1923 do you recall that it was $112,783.50?

Mr. Starr: I make the same objection.

The Master: The same ruling.

A I suppose that is what it is if the report shows that.

Q And for 1922 it was $109,511.58?

Mr. Starr: I make the same objection.

The Master: The same ruling.

A I suppose that is right.

Q Do you recall that you included in your income tax return for the year 1922 repairs of $12,771.09 to the hotel?

Mr. Starr: I object to that as irrelevant and immaterial.

(Question allowed.)

A I don't recall that.

Q Do you recall that you were allowed a deduction from the amount of your taxable property and the amount that you should pay the government on your income tax, for such repairs?

Mr. Starr: I object to that as irrelevant and immaterial.

(Question allowed.)

A No, I don't. I don't know how much it was. I was allowed something. I don't know how much.

Q Who actually prepared the income tax returns which I have shown you for the years 1922, 1923 and 1924? A Mr. Clarence Hughes, of Trenton.

Q They were signed by you and sworn to? A They were.

Q You believe them to be correct? A Yes.

At this point an adjournment was taken, the date of the further hearing to be agreed upon later.

ROBERT A. SHEETS, sworn for defendant.

Direct examination by Mr. Starr.

Q Mr. Sheets, where do you reside? A Westmont, New Jersey.

Q Are you at the present time connected in any way with the Henry Goldner Boiler and Tank Works? A Yes, sir; bookkeeper.

Q How long have you been bookkeeper? A Past five years.

Q Were you bookkeeper in 1924? A Yes, sir.

Q Where is the location of the principal office of the Henry Goldner Boiler and Tank Works? A Warren and Mifflin streets.

Q Philadelphia? A Yes.

Q Are their books and records kept there? A Yes, sir.

Q Did you bring down with you your ledger account with Rosecrans for work done and materials furnished at the Princess Hotel in Atlantic City? A Yes, sir.

Q This is the original ledger account? A Original entries, yes, sir.

Q Taken from the ledger account of the Goldner Company in Philadelphia? A Yes, sir.

(Ledger sheet offered in evidence.)

Mr. McCarter: I think it should be accompanied by the book of original entry. I have no objection to that.

Mr. Starr: You are insisting on strict proof?

Mr. McCarter: Yes, sir; under the circumstances.

Mr. Starr: I propose to follow it up to show that is the ledger account and introduce the original invoices showing the original entries.

Mr. McCarter: I don't think the original invoices supply the deficiency. One is supposed to be the book and the other is something or other, I don't know.

Q Where is the original invoice book? Where is it, in Philadelphia? A In Philadelphia. They were taken right out of the original invoice book.

Q What is the method by which you keep a record of the invoices? A Why in a file, clamp file, each month.

Q Are the invoices inserted in a book? A In a file, numbered.

Q I show you five pieces of paper and ask you what those papers are? A These are invoices, original invoices.

Q And are those the papers you say are kept in a book? A Yes, sir, in a file, a clamp file.

Q Were these the papers that were removed from the file? A Yes, sir.

Mr. Starr: I offer the five papers in conjunction with the ledger sheet.

Robert A. Sheets, for defendant, direct.

By Mr. McCarter.

Q Under your system of bookkeeping you have, as I see, a so-called ledger? A Yes, sir.

Q What do you have in addition to that in your system? A Well, we have a journal.

Q Go on. A And that is the accounts receivable ledger, accounts payable ledger, general ledger.

Q What book of original entries do you have? A You have it right there in your hand, original entry; that is the sales book; that is the original entry in the sales book.

Q Do I understand that your books of original entry consist of a series of what you have called original invoices? A Yes, sir.

Q That is to say if you do some work for me today you enter it on an invoice and send one of the duplicates to me and keep the other? A That is it, yes, sir.

Q And the ones you keep are the so-called original book, is that the way? A The original sales book, yes.

Q What, if anything, do you know about these particular five pieces of paper that are shown to me and I show to you? A In what way?

Q What do you know about them? A I know these are the original sheets. I gave them to the auditor.

Q You what? A I gave these to the auditor the original sales sheets, or sales invoices. I gave them to the auditor.

Q What auditor? A Mr. Harris.

Q This gentleman? A Yes.

Q When? A Oh, I guess it has been about three or four months ago, four months ago.

Q That is all you know about it, and you found them among the invoices? A Yes, sir.

Q And you handed them to him? A Yes, sir.

Q Did you make them out originally? A Yes, sir.

Q Originally? A Yes.

Q From what? A From memorandums, from just memorandums, see.

Q Where did the memorandum come from? A Memorandum came from the shop, men that did the work.

Q Where are they? A Those memorandums are destroyed now.

Q And you know nothing about the work that was done other than those invoices? A Not now, no, I couldn't. You see the shop memorandum is destroyed after the invoice is made out and passed, the invoice has been passed after it is made out.

By Mr. Starr.

Q Are these invoices that you have produced, are they taken from the records of your company? A Yes.

Q Kept in the ordinary course of its business? A Yes, sir; from our shop records; yes, sir.

Q And they constitute, as I understood it, the original entries? A That is the original entry; yes, sir.

Q From the original entry? A Posted into our ledger, our sales ledger.

Q This sheet that you have here? A Original sheet; yes, sir.

Q So that the invoices and the ledger sheet, you have the original entry and the ultimate disposition in the ledger? A That is right; yes, sir.

Mr. Starr: I renew my offer of those papers.

The Master: Have any objection, Mr. McCarter?

Mr. McCarter: No, sir.

(Papers received in evidence and marked Exhibits D. 161 to D. 166, inclusive.)

Q Mr. Sheets, I notice on the ledger sheet, which is marked D. 161, there is an entry of $376.98 under date of August 27, 1926. Have you the original invoice for that? A I haven't that with me. I have it in the office.

Q You didn't bring that down? A No, sir. I didn't bring that.

Q You have that invoice, have you, for $376.98? A Yes, sir; I can mail that to you.

Q Will you mail that to us, please? A That will complete, then, this account.

Q Referring again to these five invoices marked D. 162 to 166, both inclusive, have those invoices been paid by Rosecrans? A They have all been paid; yes, sir.

Q Are they shown, are the payments shown on the ledger? A Yes, sir.

Q Now, with respect to the invoice of August 27, 1926, for $376.98, has that also been paid? A Part of it.

Q How much is still due? A $375—$350 is still due. That was renewed June 7th and due again August.

Q Just explain how that was. Is that on a note or open account? A Due on a note.

Q Explain how it came to be due on the note? A Well, he owed a note of $375, that is part of the $376.98.

Q Of the invoice about which I have been speaking? A Yes, sir. He paid some of that invoice, $1.98, and left a balance of $375. When it came due again he paid $25 on it, leaving a balance of $350.

Q And that is represented by a note which Goldner holds against Rosecrans? A Yes, sir.

Q With the exception of that $350 note which is still outstanding have all those invoices been paid? A All been paid; yes, sir; all settled.

Q I call your attention to some checks which have already been introduced in evidence; they are marked D. 130—there are six checks marked D. 130; can you tell me whether or not these checks were paid? A They were all paid; yes, sir; $523, 10/6/24, the other part was interest, $501.40, on account of this note and the other part was interest.

Q The check you have there is $523.20, isn't it? A Yes, sir.

Q And the part— A $501.40 on his note and the balance here is the interest.

Q Look at the next check? A And the next one there 7/8/25 $204—

Mr. McCarter: What number?

A Number 1856, was $200 on account of a note and four dollars interest. And that 6/23/26, number 3024, this included $1.20 on account and $2.50 interest. On the 8/10th, number check 2022, 8/10/25 that included taking up a note in full for $750; 6/8/25, number 1663, $105 a hundred dollars on account and five dollars interest Check 1166, 8/6/25, he paid $40 on account of note and $21.50 interest. That is all of them.

Q Was Rosecrans in the habit of giving notes for his account? A Yes, sir.

Q And have all those notes been paid with the exception of the $350? A Yes, sir.

Cross examination by Mr. McCarter.

Q Now, I understood, Mr. Sheets, that you are simply the accountant or bookkeeper and know nothing as to the character of the work or when or where it was done or anything except as it appears on these so-called invoices, is that correct? A Yes, sir.

Q Now, for instance, what is the business of the Henry Goldner Boiler and Tank Works? A Repairing boilers and manufacturing tanks.

Q I notice that one of these so-called invoices, marked D. 162, is sold to Princess Hotel at its address, "to expense auditing account as directed $15"? A That is our auditor we had come down there and go over the account to get this out for Mr. Harris, see.

Q Then, so far as that particular item is concerned, it is a charge that your concern has made to the Princess Hotel for services of your auditing department in coming down here with Mr. Harris here, the auditor— A No, not with Mr. Harris. He came to us on our instructions, not Mr. Harris, but our own auditor that audits our books every year, we had him come down and sift that out for Mr. Harris or Mr. Rosecrans.

Mr. Starr: I am going to put an admission on the record, we don't claim to recover the fifteen dollars. We waive that.

Q Now, what is, according to the ledger, the gross amount of the charges exclusive of the fifteen dollars? A $2,007.08.

Q Now you say that has been paid? A That has all been paid except $350 but that has been paid by a note; the note has not been paid yet.

Q What payments do you find to show that that has all been paid except three hundred dollars? A The payments are those checks you have there. All those checks you have there show those payments.

Q Well, according to Schedule L, which has been made up by the accountant, the payments aggregate $1,595.10 and the charges, aggregate, including the $15, $1,645.10? A Well, I guess he has got interest in those checks, but I didn't figure here, I give interest account credit for that. He paid interest, you know. I didn't credit him with the full amount of the check here. I only credited him what he paid on his sales.

Q Well, you can either tell whether it is paid or not paid, can't you? A It is paid. It is all paid except the $350.

Q When was the note for $350 given? A June 7th.

Q What year? A 1927.

Q There has been a note constantly outstanding, hasn't there, ever since these items were incurred? A No, only until this year. Everything was closed up in 1926.

Q When the original invoice, 9/25/24, was given, was that paid by check or note? A 9/25/24?

Q Yes. A There is no such invoice as that.

Q I can only tell by the schedule here. A Is that the check you have got there?

Q I show you invoice marked Exhibit D. 163, how was that paid? A That was paid by a note.

Q That is what I thought. A By a note.

Q How large a note? A $1,090 note and $501.40 cash.

Q There was a large arrearage due for previous work, wasn't there? A No, this invoice here, that was way back here in September, 1924, and he paid $501.40 in cash and the bills at that time in September amounted to $1,590.

Q That is what I say, there were money due at that time? A Yes, sir.

Q In order to pay for that he gave a new note, including the arrears that were already overdue? A This wasn't any new note. This was the original note he gave.

Q For how much? A For $1,090.

Q How much was due at that time? A $1,591.40 was due at that time. He paid $501.40 cash.

Q And a new note for a thousand-odd dollars? A Yes, sir.

Q Now, take the next invoice, which is— A Next invoice is September 25th—

Q —September 30, 1924, for $1,086? A That is included in that $1,591.40.

Q Please don't get confused. I am asking you about the invoices. There is an invoice of $1,086? A That is included, that is the settlement he made of the $1,090 and the $501.

Q In the previous settlement you referred to? A Yes, sir; that is included in that.

Q So that he paid the invoice for $125. and he paid the invoice for $1,086 by this note you refer to? A And $380 invoice, all is included in that.

Q Those three items then were included in the note? A In that settlement, note and cash.

Q Those three items apparently amount to about how much? A $1,591.40.

Q How much of a note was given? A $1,090.

Q And the rest cash? A Yes.

Q And that note was for what length of time? A That note was for about three months.

Q And interest at six per cent? A Yes, sir.

Q Now when that note matured was it paid? A No. He paid $40 on that and gave us a new note for $950.

Q That is the time when he paid $40 on account of principal and $20.53 on account of interest, is that right? A Gave us a new note $1,050 and the interest was included in that check, $40 on account of the old note was included in that check.

Q How much interest? A That was six months' interest—three months' interest—one month interest that would be, about $4.25.

Q Well now what was these payments that you spoke of a little while ago of principal $1.20 and interest $2.50? A That payment of $1.20 made up an old account he owed, the account of September 25th.

Q What year? A 1925. He owed a little bill of $38.70 and not having the bill with him he sent $37.50; he was $1.20 short, and then he sent us $2.50 interest.

Q You don't know anything about the work that was done, do you? A All I know is from my shop reports that I get to make out the bills.

Q You don't know when the work was done? A I know when it was done.

Q Were you there? A Sir?

Q Were you there? A I wasn't there but I know our men were there working.

Q Were you with them? A No, sir.

Robert A. Sheets, for defendant, cross.

Q You know that certain reports were made to you of work done? A Yes, sir.

Q That is all you know about it, the character of the work or what part of the building, if any, it was done, you don't know anything about it, do you? A Mostly—all boiler work.

Q How do you know? A From my memorandum.

Q Where is it? A The shop memorandum is destroyed now.

Q What? A Yes.

Q Who did this work? A Henry Goldner Boiler and Tank Works.

Q What men did the work? A I really couldn't tell you, sir.

Q Where is your plant, in Philadelphia? A Yes, sir. We have so many different men that come and go, impossible to keep track of them.

Q Did you have orders for each of these pieces of work? A Yes, sir.

Q Where are they? A We have them in writing, in contracts.

Q Where are they? A In our office.

Q You didn't bring them down, did you? A No, sir.

Q Why not? A I didn't think you required them.

Q Each one of these invoices says "your order number so and so," don't it? A Yes, sir, our order, and gives the date of the order, see.

By Mr. Starr.

Q Now, Mr. Sheets, you will send the invoice of August 27, 1926, will you, please? A Yes, sir; the original invoice. You want to keep my original sheet here?

Q Keep this for a little while and then I will see it gets back to you. A Yes.

By Mr. McCarter.

Q These orders, I suppose, were Mr. Rosecrans' orders? A Mr. Rosecrans, yes, sir. All our business was done with Mr. Rosecrans.

JAMES J. LONG, sworn for defendant.

Direct examination by Mr. Starr.

Q Are you connected in any way with S. Faith and Company, Incorporated? A Yes, sir.

Q What is your relation with them? A President.

Q President? A Yes, sir.

Q How long have you been president, Mr. Long? A About two years.

Q Did you have any position with them prior to the time you were president? A Secretary.

Q How long were you secretary? A About six months.

Q Before that time were you connected with the company? A I was a mechanic then.

Q Now did the Faith Company do any work and furnish material to the Hotel Princess in Atlantic City? A Yes, sir.

Q Do you know since, know of your personal knowledge, since the first of June 1922 what that work has been? A That was revamping the whole plant of the Princess Hotel.

Q I am speaking now since the first of June 1922, not any work that was done prior to that time, but since the first of June, 1922. This

inquiry is limited to the work done by you since the first of June, 1922. A I think that is about the time that this job was actually done there, so far as my knowledge goes of the job. Personally I wasn't here at that time.

Mr. McCarter: Of course this witness ought to be told to testify to his own knowledge.

Q Have you produced here what is a loose leaf ledger? A Loose leaf ledger.

Q Is that the ledger account between the Faith Company and Mr. Rosecrans? A Yes, sir; that is the original leaf.

Q Where did you bring it from? A The office, Philadelphia.

Q All the books and records kept in Philadelphia, are they? A Yes, sir.

Q You know this is one of the original records of the company? A That is the original record, yes, sir.

Q I notice an account here, merchandise, June 27, 1923, merchandise $123.47. From what book is taken this item on the ledger? You have a book of original entry? A Bill book.

Q Bill book? A That is a copy made of all bills that go out same as our stationery, letters.

Q Have you that book here? A No, I didn't bring that book. Of course, understand, I was out at the time the request came in for this and through my bookkeeper talking to the auditor he informed me the sheet was all that would be necessary, although he asked for the book at first.

Q I show you what purports to be a copy of an invoice of June 27, 1923; do you know

whether this is a copy of the invoice represented by the charge under date of June 27, 1923, for $147.47? A Yes, sir.

Q Has that bill been paid? A Yes, sir; that has been paid.

Q Now I show you another paper which purports to be a copy of an invoice under date of December 10, 1923, amounting to $138.75 and I ask you whether that copy there of the invoice corresponds with the ledger account of the same date amounting to the same amount of money? A Yes.

Q Now I show you another paper which purports to be a copy of an invoice dated November 14, 1924, amounting to $205.80 and I ask you whether that is a copy of the invoice corresponding with the ledger entry of that date for the same amount? A Yes, sir.

Q Has that bill been paid? A That has been paid.

Q Paid by Mr. Rosecrans? A Yes, sir.

Q And the bill which I exhibited to you a moment ago, the last one? A All been paid.

Q I show you what purports to be a duplication of or a copy of an invoice under date of October 2, 1925, amounting to $31.34, is that a copy of the invoice which corresponds with the ledger item of October 2, 1925, for $31.34? A Yes, sir.

Q Has that bill been paid? A Yes, sir.

Q I show you what purports to be a copy of an invoice dated December 14, 1925, amounting to $2.78, and ask you whether that is a copy of the invoice which is shown on the ledger? A Yes, sir.

Q I show you what purports to be a copy of an invoice dated June 30, 1926, amounting to

$127.41 and ask you whether or not that invoice is the same as the ledger entry of the same date and same amount? A I remember that. That was a personal favor for Mr. Rosecrans and I don't think that even went across the book.

Q Now there is an entry, $127.41? A Oh, that bill has been paid though?

Q Yes, I know, but that bill that I show you had reference to the ledger entry of that date and for that amount, is it not? A It is. I see that there. I didn't think that went over there because as a favor on my part for him.

Q What do you mean by that, Mr. Long? A Well, I happened to have a friend of mine in the hardware business and through my influence with him I thought I would save him a few cents by getting him the wire screening for the hotel, not in the business at all.

Q I see what you mean, the wire screen was bought by Rosecrans from some other concern and you made a charge against him? A That is it.

Q And that bill was paid? A That was paid.

Q Went out on one of your orders and you got paid for it? A Yes, sir.

Q Did Rosecrans pay you? A Yes, sir.

Q And you paid the other fellow? A I paid the other fellow.

Q All these bills you say have been paid? A Yes, sir, everything has been paid between Mr. Rosecrans and I.

Q I notice that in—Mr. Long, I have here an invoice of $28 under date of February 29, 1925, and it doesn't seem to be on the ledger—do you know about that—beg pardon, here it is there—I show you what purports to be a copy of an invoice for $28 under date of December

29, 1925; does that correspond with the ledger item of that date and amount? A Yes, sir.

Q Was that work done for Mr. Rosecrans at the hotel? A Yes, sir.

Q Been paid? A Been paid.

(Invoices offered, received in evidence and marked Exhibits D 170 to 176 inclusive.)

Q Mr. Long, do these invoices accurately state the various jobs and the kind of work done and materials furnished? A Yes, sir.

Q Do the bills show the dates at which the work was done? A Yes, sir.

Q The prices charged in those invoices, would you say they are reasonable or otherwise? A They are reasonable, they are reasonable.

Q Are they the same prices that you charge your other customers for the same character of work? A Yes, if anything a little in his favor.

Q They are not in excess of what you charge your other customers? A No, sir.

Cross examination by Mr. McCarter.

Q What is the general nature of this work, steam heating? A Steam heating, yes, sir.

Q For operating the hotel during the winter? A Yes, for the winter purposes.

Q That is to heat the hotel during the winter? A That is it, yes.

Q Is this all repair work? A Not all of it, no.

Q Some of it is installation? A Some of it is installation, changing.

Q Will you look at the bills and tell us which of them represent the new work or installation? A Well, December 29, 1925, for $28 was repair

work. Every fall we used to send a man down there to go over his plant to see if it was in condition for winter. The same applies to October 2, 1925, for $31.34. The same thing applies to December 10, 1923, for $138.75. These two bills November 14, 1924, for $205.80 and June 27, 1923, for $147.47 apply to actually installing new work there. Before he used to run a high pressure boiler there and the whole heating system was in and we had to rechange the whole things over to cut his expense to one-half.

Mr. Starr: Is there any more?

A December 14, 1925, I sent him a steam gauge for $2.78 through the mail.

Q What is a steam gauge? A That is a gauge, pounds of steam on the boiler.

Q Now the new work that you spoke of consisted of what? A Why rechanging the whole heating system.

Q Retesting? A Rechanged the whole heat-heating system.

Q Go on; what did you do? A Changing the valves on the radiators, changing the piping around and putting traps on the radiators, reducing it to a low pressure vacuum system from a high pressure steam job.

Q That was the heating system for the winter guests? A Yes, sir.

Q And you decided and he decided and you did the work and changed the method of doing the heating in the manner described? A Yes.

Q Were you accustomed to receipting your bills that were paid? A Well, we are accustomed to receipt the bills, yes.

Q I show you Exhibit D. 172 for $138.75; that doesn't seem to be receipted? A Well, there is

a possibility, that being a duplicate bill, slipped through without being receipted.

Q How do you know that it is paid? A I can tell from the ledger here.

Q How were those bills paid? A How were they paid?

Q Yes. A Well, they were paid at different intervals.

Q By cash or note? A Why practically all were paid by note.

Q Let me look at your ledger, please. Can you, by looking at the ledger account on the credit side tell which of the items in question were paid by cash? A No, I looked at that before and I find it all shows "by cash," but I think the bookkeeper was in our office at that time used this method of making cash in place of note.

Q In fact, most of them, if not all of them, were paid by note? A Yes, sir.

Q Practically all of them, were they not? A Yes, sir.

Q Aren't you mistaken, Mr. Long—and I am only saying this to kind of refresh your memory—about the year in which this change in the method of heating was done? A Not in accordance to the bills, the way they are dated there.

Q Well, do you notice there is nothing on here, says "8 hours mechanic, to labor furnished working under your instructions." I don't see anything about new system there or anything of that kind? A That may be one of those times when two of our men, one and two, used to go down in the fall of the year and go over the whole plant and put in condition for the winter; that only requires a day or so work.

Q That is what I am saying, aren't you mistaken in saying the two bills you referred to as being changed in the system? A That is a different time entirely. That is a difference of a year there since the system was changed over and the time that we were having a man go down and go over the system.

Q Again I ask you what these two bills, long bills, which you said were for installation, were done for? A I believe that is part of the revamping of that whole job. Both those bills apply to changing the whole system.

Q You are sure about that? A Yes, sir; because they wouldn't run as high as what they do if it were just a man for a day or so down there.

Q That is your only reason for saying so, is that right? A Well—

Q Would you be surprised to learn that the change that you refer to was made in 1920 and 1921? A Well, yes, I have a faint recollection of that in 1920. All this work was practically done from time to time as Mr. Rosecrans would so directed.

Q I am not saying anything about that. I have no doubt he directed it to be done. I am asking you the basis for your statement that the two bills which simply call for labor furnished under your instructions were for this revamping business, as you call it? I say I think you are mistaken. Now, let's get what you know about it and don't say what you don't know about it. A Being I haven't got those bills in 1920, I would like to get duplicate bills to see what it is.

Q Now, these are the regular charges, I see you say? A Yes, sir.

Q Double time Thanksgiving Day, and Saturday afternoon; do you know why that was necessary? A What, the double time?

Q Yes. A We always pay mechanics double time.

Q I understand, but why was it necessary? A Wanted to get the job done.

Q That was simply getting the heating system ready for winter, wasn't it? A Yes, sir.

Q You weren't down at the hotel at all during any of this work? A No, sir.

Q In fact, you really don't know whether or not these are the invoices or copies of the invoices for the work that is charged up in the ledger, do you, except as you see that the amount seems to be the same, that is all you know about it? A No, we have bills on the invoices applying to this work from our different creditors each month after a job is credited on the invoice book against that.

Q You haven't got that book here? A No; that is a big one.

Q What kind of a steam heating plant has this hotel got, radiator in each of the rooms? A Yes, what they call a low pressure vacuum job.

Q Boiler in the cellar? A Yes, sir.

Q Of course, that is not run in the hot weather? A No.

Q This whole steam heating system is to accommodate guests that are there during the winter months when the hotel is open in cold weather? A Yes, sir.

By Mr. Starr.

Q Was there a heating plant of any kind in the place before you revamped it? A Yes,

formerly there was an old-time rodoubt steam type with high pressure, used to carry high pressure steam on it, but now he carries a low pressure; he cut his coal bill about half.

Q That is what you mean by revamping the system? A That is what I mean by revamping, changing from high to low pressure.

Q You don't know when that revamping was done? A Not exactly, no.

Q Does Mr. Rosecrans owe Faith and Company any money, then, with respect to these invoices? A No, sir.

Q Have the notes that have been given all been paid? A Yes, sir.

Q So that he isn't in your debt at all? A Not at all.

By Mr. McCarter.

Q When was the last one paid, Mr. Long? A According to this here was July 8th—June 30th, 1925.

By Mr. Starr.

Q Aren't you mistaken about that? Isn't the invoice dated June 30, 1926, on that account paid in July 8, 1926? A That is right.

Q So that the bill is charged June 30, 1926, and the credit memorandum in the ledger is July 8, 1926? A Yes.

Mr. Starr: I offer the ledger in evidence.

(Ledger admitted and marked Exhibit D. 177, returned to witness.)

Harry M. Peck, for defendant, direct.

HARRY M. PECK, sworn.

Direct examination by Mr. Starr.

Q Now, Mr. Peck, what is your occupation? A My occupation now is paper hanger.

Q Where do you live? A Woodlyn, New Jersey.

Q Have you ever done any paper hanging at the Princess Hotel in Atlantic City? A Yes, three different seasons.

Q What were the seasons? A 1925, 1926 and 1927.

Q Were you paid from time to time for your work by Mr. Rosecrans? A Yes.

Q You keep any books of account at all? A No, I didn't, because I was on a weekly payroll. I did the work on a weekly basis.

Q I show you three checks, one dated May 31, 1927, for fifty dollars drawn by Mr. Rosecrans to your order; did you get the money for that? A Yes.

Q What did that money represent? A Wages.

Q For doing what? A Wages for hanging paper and repairing walls.

Q Covering what period, do you remember? A Covering from the 19th of April.

The Master: What year?

A 1927.

Q Did that one check cover it or did you receive other moneys? A I received other money, yes.

Q I show you check dated 17th of May, 1927, for fifty dollars; did you receive that? A Yes, I received that.

Q What did that represent? A That is for wages.

Q Here is a check for February 4, 1927, to the order of Emma M. Peck for $49, what was that for? A That was for material.

Q How is it the check happened to be drawn to the order of Emma M. Peck? A That is my wife and in order not to—we have a joint bank account and I asked it be drawn that way and I sent it to her and didn't have to have my endorsement on it.

Q Did you have any arrangement with Mr. Rosecrans with respect to the amount of compensation you were to receive? A Oh, yes.

Q What was that? A I was to receive $25 a week of forty-eight hours and my board and room.

Q That is twenty-five dollars a week? A Yes, sir.

Q And you had included in addition to your $25 your board and room during the same period? A Yes.

Q And the cash was paid to you by checks? A Cash, I was carried on the payroll, paid every week.

Q Now did you receive the moneys under these checks that I have handed to you? A Yes, I received that money.

Q And also the— A Material.

Q Also the check which was drawn to your wife? A Yes.

Q You received the money for that? A Yes.

Q Where was the material purchased that was represented by this check to your wife? A Al. Swanson, Camden, South Fifth street.

Q Do you know whether or not the price paid was the usual, ordinary price for paper of that character? A It was a cheap price.

Q Cheap price? A Yes, sir.

Q For those two checks of fifty dollars each what work did you do? A I hung paper and repaired the walls, down to the nineteenth, I came there in February and was carried on the payroll down until about the first of April. I went home then. I was settled up fully for to that date. Everything was paid up to that date. My wages and whatever material I purchased. Then on the 19th of April Mr. Rosecrans sent for me again and I came back there and I told him that I would extend him a certain amount of credit, that he needn't carry me on the weekly payroll, he could settle up when the job was finished, so he gave me those two checks there in the meantime.

Q For the work that you did there does Rosecrans owe you any money or has he paid you entirely? A No, there is a balance still due.

Q How much? A About ninety-two dollars.

Q About $92 still coming to you? A Yes, sir.

Q You have done the work and furnished the material representing that money? A Yes.

(Three checks offered, received in evidence and marked Exhibit D. 211.)

Mr. Starr: I will introduce a number of checks.

(Twelve checks offered, received in evidence and marked Exhibit D. 212.)

Q Now, Mr. Peck, will you please look at these various checks and vouchers and tell us whether

you received the moneys on them and what they were for? A I received the money on them. Those are receipts for weekly wages.

Q You mean the three papers at the bottom of the pile? The balance of them are what? A Balance of them are checks for wages.

Q And wages to you for what? A Hanging paper and repairing walls.

Q Is that work that you did necessary for the proper upkeep of the hotel? A Absolutely; yes, sir.

Q Now the amount that you charged here, is that the ordinary going price for services of that character? A That is a reasonable price.

Q What you charge other people for the same character of work? A I get more as a rule. I told Mr. Rosecrans, being in the winter time when he would really do the work, I could give him a better price than I could when the season came on.

Q All of these checks and vouchers represent your wages for hanging wall paper and repairing walls? A Yes, sir.

Q Any other items? A No others.

Q I notice in some of these checks that you have endorsed them for deposit to the credit of Mr. Rosecrans; do you remember how that came about? A I don't know anything about that.

Q Did you receive the moneys on these various checks? A Yes, I received the money on every one of these checks.

Q Is it possible that he cashed the checks for you and deposited to his credit? Do you recall that?

The Master: You received the money?

A I received the money, positively. 1925? These are three years ago.

Q Now I show you some eight vouchers and ask you whether you received the money on those vouchers from Mr. Rosecrans? A Yes.

Q If so, what was it for? A This was for hanging paper and repairing walls.

Q This year, was it? A Yes, the second day in February Mr. Rosecrans told me or sent word to me—

Q In 1927, you began the work for Mr. Rosecrans at what time? A Second day of February.

Q How long did you continue this year? A I worked down until the 1st of April, I believe it was, then I was gone for about between two or three weeks and then came back and did this other work of about eight weeks more.

Q That is represented by the checks, these two checks that you have already identified? A Yes.

Q That is this year? A Yes.

Q In 1926 when did you go there to work? A I was there three different times last year. I don't remember the dates.

Q About how long were you there altogether? A About three months.

Q In 1925 how long were you there? A I was there nearly seven months.

Q Did you do any work at all except hanging paper and repairing walls? A In 1927 I did two weeks of helping in the laundry and around the building for about two weeks, he had some other work that he wanted to have done and then the house got full and I couldn't do it, but outside of those two weeks it was all for repairing walls and hanging paper.

Harry M. Peck, for defendant, cross.

Q Any of those checks I have shown you represent your compensation for the two weeks as other work? A Yes, absolutely; it was put in as paper hanging.

Q About how much were you paid for it? A Same price.

Q Twenty-five dollars a week? A Yes.

Q With the exception of those two weeks, however, you did paperhanging and nothing else? A And repairing walls.

(Vouchers offered, received in evidence and marked Exhibit D. 213.)

Cross examination by Mr. McCarter.

Q Now you say that the work you did in the way of paperhanging and repairing walls, &c., was done at a lesser price because it was done in the winter when you weren't so busy? A Yes.

Q Is that right? A Yes.

Q Did you hang any paper in the summer months when the hotel was full? A Yes.

Q The work that you would do would be where the paper would get scratched or would be discolored from the weather or something of that kind and need to be renewed or repaired? A Most of the rooms had not been papered for ten or twelve years from the looks of them. They were so dirty they had to be done all over.

Q Well, they were new paper put on in place of old paper, that was dirty, is that right? A Yes.

Q To make the room more attractive? A Yes.

Q Now what kind of repair did you do to the wall? A Well, the plaster in places was all off down to the lath. That had to be plastered up.

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Q Other cases what was it? A Well, that was about all there was, to make a foundation to put the paper on.

Q Well, in how large a space would these holes be in the wall? A Some rooms were the entire side, some of them half a ceiling, some of them entire ceiling.

Q Been there how long? A Well, some of them the rooms were flooded; it was recent.

Q Beg pardon? A Some of them the rooms had been flooded.

Q Flooded? A Yes.

Q Roof leak? A No, guests would leave the basins run over.

Q Guests would leave the basins run over? A Yes.

Q And the flood from the basin would wet and break the walls? A Yes.

Q In that case you would make the repairs? A Yes.

Q Were most of the breakages in the walls due to that kind of trouble? A No.

Q What else? A Most of it was due to the building being cheaply built and as time went on they have been patched up until they got to the end where you couldn't patch any more, it was necessary to replaster it to put a foundation there.

Q Now where would you get these papers that would look more bright in the place of the dirty paper? A Well, the first year—you want the first year, at the beginning? The first year he bought his stuff from Guttridge up here, buying two or three rooms at a time and it was paid for by the hotel at the desk. I had nothing to do with it only to select it and measure up what I wanted. Also the second year, 1926. This year

I wrote to him if he would let me buy it I would save him some money if he would tell me how much he wanted to do because buying wholesale is cheaper than retail.

Q Do you remember any places where the paper was patched? A Oh, yes; I patched almost every room in the house at different times except the new rooms.

Q You put new paper on the sides of the walls where the paper had been hurt? A Sides and ceilings.

Q Paper had been hurt? A Yes.

Q What caused that? A Well, guests go in a room and they are not always particular how they shove the bed around or chair or use their feet.

Q Then it was the ordinary wear and tear on the walls due to the carelessness and indifference of guests in a hotel, wasn't it? A That is about the size of it, yes.

Q That is about the way you would explain it? A Yes.

Q Not what you would do with your own house, with your own walls, and guests come to a hotel they shove the beds around, trunks around, and they think the other fellow can pay for it? A That is right.

Q So you kept the hotel up that way? A I did.

Q If there hadn't been guests it would not have been necessary? A No.

Q Now won't you briefly describe the periods that you were there on the weekly payroll? A I can't give you the dates last year. I made a daily report every day that I worked in that building.

Q During 1925 you seem to have been there for a long time on a weekly payroll? A He had a daily report every day I was there.

Q I haven't got that here. I am asking you if you can remember? A I can't remember; no, sir.

Q Best of your ability? A Well, I went in 1925, first day of February and went out of there about the middle of August.

Q And were you there on the weekly payroll all the time? A Yes.

Q Had your board and your room? A Yes.

Q In addition to that you received a weekly stipend of twenty-five dollars? A Yes.

Q And you did this work you have described? A Yes.

Q Part of the time and you also did the work in the landry you also described? A Yes.

The Master: That was two weeks, Mr. Peck?

A Two weeks, yes.

Q Now with that exception of those two weeks were you busy all the time that you were there on a steady wage on doing this kind of work you have referred to on the walls? A Yes.

Q Now in 1927 you seem to have started in, if these receipts are right, about the 8th of February and remained there until the 28th of March this year? A Yes.

Q Doing the same character of work again to the walls? A Yes.

Q Occasioned by the same necessity that I referred to? A Yes.

Q You know where the checks are for these payments? A I don't know where they are now. That was paid in cash.

Q Now I show you these three checks in 1927, first three that Judge Starr showed you, one being dated February 4, 1927, the other May 17, 1927, and the other May 31, 1927, the latter two for fifty dollars and the first one for forty-nine dollars. Are they for the same character of work again? A Same character of work.

Q One of them I think you said was for material? A Yes.

Q You are not paid up in full, are you? A No.

Q How much does Mr. Rosecrans owe you? A About ninety-two dollars.

Q For work done when? A In May.

Q Of the present year? A Yes.

Q Nearly the entire month? A May and June of the present year, the latter part of May and the early part of June.

Q Are you working there now? A No.

Q During this year too did you have your board and lodging there thrown in? A Just the same.

By Mr. Starr.

Q Mr. Peck, will you say whether or not the work you did after the guests had moved the furniture and marred the paper, whether that work was necessary for the appearance of the house? A Oh, yes; there was many of the rooms that should have been done all over but they didn't have time; guests were in the rooms.

Q Did you say when it was that you worked in the laundry, what months and what year? A As near as I can remember first part of August,

1925; they can hunt it up down there at the hotel. They have got reports from every day.

Q 1925? A Yes.

Q You haven't done any work in the laundry or any other department of the hotel since that time? A No.

Q Except the paper hanging and fixing the walls? A That is all.

Mr. Starr: This is in relation to Henry Brown for materials furnished, Schedule K.

By Mr. Starr.

Q I show you seven invoices, Henry Brown, and ask you whether or not those invoices cover wall paper you purchased for Mr. Rosecrans that were subsequently placed on the walls of the Princess Hotel? A Yes.

Q You paid those bills, did you? A These bills were paid at the desk.

Q But you know that paper was purchased? A I ordered the paper and had put it on the wall.

Q What do you say as to the prices? A They are all right. I went to this man and told him I wanted to buy—

Q Never mind.

(Invoices offered, received in evidence and marked Exhibit D. 214.)

Cross examination by Mr. McCarter.

Q Mr. Peck, what is the average size of the rooms? A You mean the quantity of paper?

Q Yes, A What we call the ordinary 14 to 16 pieces, that is a single roll.

Q Fourteen to sixteen pieces? A Yes, run about nine by twelve, some of the smaller, some of them a foot or so larger.

Q Just glance through those invoices that have just been offered and tell us how many, if any of them were for sufficient paper to cover the entire walls of a room that was papered? A Yes, there is one or two here that are smaller items, that was where I ran out of a little border or a little paste or a little paper. These rooms are some that came up at the last minute. I didn't have them in the bunch when I bought the other stuff in quantity, that is the way they came to be bought in small quantities.

Q What is your statement about these invoices that they were portions of papering an entire room or only patches? A All of them were entire rooms with one or two exceptions.

Q Which are they? A This $1.50, that was for finishing a new room.

Q What do you mean by a new room? A Where I didn't have enough stuff. I would, as a rule order two rooms or three rooms together, just as I could get orders from Mr. Rosecrams. Some paper wastes more than others.

Q Now let me ask your attention to another thing. Do you remember while you were there any of the hotel was converted into bed rooms? A Yes.

Q Did the work that you did during any of the period include papering those new bed rooms? A Yes, all of them.

Q All of them? A All of them.

Q Can you tell us when that was done? A Yes, 1925.

Q 1925? A Yes.

Q So the work then that you charged for during 1925 includes rooms that had been converted from what? A From an open basement, store rooms.

Q From an open basement and store rooms into bed rooms? A Yes, sir.

Q All the work you did in 1925 was upon those rooms? A All of it? That was included in the work I did in 1925.

Q Did you do outside of those rooms in 1925 any work and if so can you pick it out? A Oh, yes, I did thirty or forty rooms besides in the old part of the house besides those rooms and halls.

Q Besides? A Besides those rooms and halls in the new part that had been finished off.

Q How many rooms were they that were converted and made new bed rooms that you papered if you can recall? A Well, the old linen room back of the kitchen, there was two new rooms and bath and big hall, and there was two old rooms there that I repapered, that is back of the kitchen on the kitchen floor, it is down on the ground floor, that would be the basement, there was a bath room and two bed rooms in one hallway that leads off to the right.

Q They were new, is that right, they were new? A Yes, they were entirely new. Then there was a long hallway and there was, I believe, six rooms leads out from the hallway.

Q They were new bed rooms? A They were all new, absolutely new.

Q Then, if you can, just count on your figers, not outloud because everything you say he takes down, but count on your fingers how many new rooms, where changes had been made in the structure of the hotel, conversion of halls or store rooms, linen closets, anything of that

kind into bed rooms, how many of them were papered by you and included in these bills? A There was about ten, two bath rooms and two big halls.

Q I don't suppose you are able to segregate the checks from one to the other? A No, I can't because the carpenters were in there and while they were getting the work ready I would go upstairs and do work in the upper part of the house.

Q This was during the year 1925? A 1925.

Q What months? A In June those rooms were done in the basement, some of them in July, possibly, the early part of July would be the last of them.

By Mr. Starr.

Q What use had the hotel of that area, that space of the hotel which was subsequently made into bed rooms been used for before that? A Rough storage.

Q Did you have anything to do with the papering of the rooms which were already constructed where the stores on the street had been? A No.

Q And the new rooms which you papered in the basement the space had prior to that time been used for storage? A Mostly.

Q You spoke of a large hall in connection with one of the rooms, what did you mean by that? A Well, there was a hall out, led out from the baggage room to get to those rooms on the north side of the basement, toward the bath houses, there was a hall ran down through there and six rooms off of it. There was no other way to get to it; there had to be a hall there.

Harry M. Peck, for defendant, direct.

Q How wide was the hall? A About eight feet high and four feet wide.

By Mr. McCarter.

Q Mr. Peck, was lumber brought there for that new work that was done? A I presume so. I had nothing to do with that.

Q They made new lumber, didn't they, put it up with new lumber? A Yes, there was new lumber brought there.

Q Do you know where that came from? A No, I don't.

HARRY M. PECK, recalled.

Direct examination by Mr. Starr.

Q I show you various sheets of paper and ask you whether or not they are in your handwriting? A Yes, those are mine.

Q What does it represent? A Paper hanging and repairing walls.

Q Made by whom? A By myself.

Q Record made by yourself? A Yes.

Q After they were prepared what disposition did you make of the papers? A I handed the papers in to Paul, Jr.

Q Did you make those yourself? A I made these out every day.

Q Do they show the time you devoted to the work? A Show the time alone.

Q Now, I ask you whether or not the two checks, May 31st and May 17th, 1927, fifty dollars each, were paid to you on account of the amount shown in these statements? A Yes.

Q And this balance of $92 that you speak of represents the difference between the items in the statement and the two checks? A Yes. There is one other check for $49.60, I believe.

Q That drawn to your wife? A That has been paid. There is one other check in this last statement that should go with those two checks; there was three weeks between that check.

Q Which check do you mean? A There was three weeks between the time this work was done and the work that that check represents. That begins with the 19th of April. These two checks go with that account. There is another check should go with that account for material.

Q Your wife's check? A No.

Q What is the amount of that check? A $48.60, that represents what I have been paid on that job there.

Q The three checks, you mean? A These three checks is what I have been paid on that. No, that forty-eight dollars was in this other account there.

Q Then the only two checks you have received on account of these items— A No, there is another check goes with that account.

Q How much is that? A $48.60. It isn't here. I haven't seen it.

Q Hasn't been handed to you? A No.

Q That was paid on account, was it? A That was paid on this account here that these papers represent; they evidently have lost that check.

Q Then the balance you say owing to you is some ninety-one dollars, the balance of the account represented by these papers? A Yes.

Mr. Starr: I offer the papers.

(Papers received and marked Exhibit D. 217.)

Cross examination by Mr. McCarter.

Q Now, a word or two, Mr. Peck. This last exhibit, D. 217, covers apparently reports of work done by you at the hotel from the 19th of last April up to and including Saturday, June 11th? A That is right.

Q And the character of work that you did, whether patching or otherwise, appears on the paper? A Yes, sir.

Q Now, when you say patched, for instance, "Tuesday, June 7th, finished work fire escape north wing, third floor rear, patched stairway to third story, north wing, patched four places on the fourth floor," what do you mean by that? A Well, up and down the halls, bell hops running trunks down on a truck very often run a nick into the wall and places that were very bad Mr. Knox asked me to put in shape and I did it with patching, matching in other paper of the same kind.

Q Of course, there would be a difference in the color of the paper? A Not necessarily, sometimes where the paper had been faded out in the dark places; it matched up very well.

Q Mr. Knox gave you these orders? A Well, he represented Mr. Rosecrans when he wasn't there.

Q I didn't ask you that. I say he gave you these orders? A Some of them Mr. Rosecrans gave me most of them.

Q The father or the son? A Both; the son generally.

Q How many of the orders on this particular D. 217 did Mr. Rosecrans, Sr., give you? Can you tell? A No. He gave me orders to do that one which you have just read off there, himself, personally. The others came through Paul, Jr., but they all came from Sr.

Q Now, I see "Saturday, May 7th, put new ceiling on No. 114. This room was flooded last summer." Flooded in the manner you have described in your earlier testimony? A Yes, I was there when it was flooded.

Q Carelessness of the guests? A Yes.

Q Is any work included in this schedule D. 217, work where there never had been paper before? A No.

The Master: I feel that I would be materially benefitted if I could have a valuation of the property beginning June 1, 1922. It is my understanding that all properties at that time began rising in value, the peak being reached in 1926 and, inasmuch as I have to fix the rental value of this property, I am inclined to think that that would be of great value to me in arriving at that valuation and, if it meets with the approval of respective counsel, I, by way of suggestion only, would like to have that appraisal made by the Real Estate Board of this city. I happen to know that they make such appraisals for the large insurance companies placing mortgages on the more valuable properties and for various other people, and it is my further understanding that their appraisals are quite accurate. Now, the complainant is interested in having a valuation that is not too low and the defendant,

of course, is equally interested in having one that is not too high. It is my thought that if we could get an entirely fair appraisal by a committee appointed by the Real Estate Board, who would be entirely disinterested in this proceeding and that the charge for that should be borne equally upon the complainant and defendant. I concede that the information which I will get would be of equal value to both complainant and defendant.

Mr. Starr: May I ask how much expense does this incur or entail?

The Master: I have a schedule here which I obtained during the noon recess. I don't know that these prices would include all of the work that I contemplate, but I am inclined to think that it would. Their fee is a dollar a thousand for the first hundred thousand and seventy-five cents per thousand from $100,000 to $300,000.

Mr. Starr: $200,000 would be $175.

The Master: Yes, if it ran to $300,000 it would mean $250.

Recess taken to 10:00 A. M., June 30, 1927.

HARRY M. PECK, recalled.

Direct examination by Mr. Starr.

Q Mr. Peck, when you were doing paperhanging at the Princess did you purchase any paper, wall paper, from A. Swanson for Mr. Rosecrans?
A Yes.

Q I show you an invoice and ask you whether that is correct with respect to the quantities and kinds of paper purchased by you for him? A Yes.

Q There are two of them? A Yes, they are all right.

Q And that paper was used where? A This paper here?

Q Which bill is that? A That is the first one, February, isn't it?

Q Marked April. A Marked April; yes, that is right; that is right.

Q Where was that paper used in the building? A That paper was used in the dining room and the four main halls, the four main halls in the front part of the house on South Carolina avenue.

Q I notice that the bill is made out in your name. Did you actually make the purchases? A Yes, sir; paid for it and Mr. Rosecrans paid me.

Q Now, are you sure about that? Didn't Mr. Rosecrans draw a check to the order of Mr. Swanson and give it to you? A Yes, sir; he gave it to me and I had to endorse it to get the money.

Q Now, what have you to say with reference to the prices shown on these invoices? Are they proper prices for the paper that was furnished? A Yes, it was a cheap price, very reasonable price.

Q The second bill in May, what was that paper used for? A This paper was used for—I was told to do fifteen rooms, about. I ordered this paper for those fifteen rooms, some to do some ceilings and patching. This paper was used for that purpose.

Q And which were the rooms, fifteen rooms; where were they located? A I could tell you from those daily reports. They were scattered around the house in various places.

Q Were they old rooms or new rooms? A They were all done new all over, entirely.

Q I know but were they— A Rooms that I never did before.

Q Did Mr. Rosecrans give you a check to pay that bill? A Yes.

Q Is that the check? A Yes.

Q I notice your signature on the back; you got the money on it? A Yes, got the money.

Mr. Starr: I offer the two invoices and the checks.

(Invoices received and marked Exhibits D. 218 and 219, check received and marked Exhibit D. 220.)

Cross examination by Mr. McCarter.

Q Now, with this testimony you have just given, Mr. Peck, you have been referring to transactions during the past year, haven't you? A Yes.

Q Well, taking the earlier of the two bills to which you have alluded, April, where you said halls were papered, the halls had been papered before? A Oh, yes.

Q And the paper had, in the use that had been made of the place, faded or become worn and scratched and torn? A Yes.

Q And this was to replace that? A Yes.

Q Now, the other account where you said covered a number of rooms, were any of them rooms that had been made new, I mean new

rooms, not paper now? A Oh, no, they were old rooms, newly done over.

Q And the situation with respect to them was the same as the halls, they had been papered before, but had been scratched or torn— A Yes.

Q —or what not by the use of the building in the meantime, so the paper was replaced, is that right? A That is right.

Q And part of the payments that were made to you and testified about yesterday for services as distinguished from materials were for the work you did on these very rooms and halls? A Yes.

Mr. Starr: If the Master pleases, may I ask what the plan is that you have suggested with respect to an appraisement of the property? So far as the personnel of the three men are concerned, we haven't any objection. I have submitted those names to Mr. Rosecrans and he hasn't any objection to the selection of Mr. Devine, Mr. Fisher and Mr. Cavileer. Those are the first three your Honor suggested. Now, your Honor wants, as I understand it, an appraisement made by those gentlemen with respect to the market value of the land and buildings on the first of June, 1922, and each succeeding year to the present time.

The Master: Yes, if there has been any change in the value.

Mr. Starr: Does not cover the personal property or furniture?

The Master: No. I think they wouldn't be qualified—I am quite sure that they wouldn't. I am also quite sure that they wouldn't undertake to.

Mr. Starr: Is it the plan for them to agree upon an appraisal or have the three submit individual views?

The Master: My thought was that they submit an appraisal on which they agree as a whole.

Mr. Starr: Of course, they may not be able to agree upon any definite sum.

The Master: I think they would. If you have them do that independently, I take it that there would be a triple charge in the matter and I don't want to load either side up with any expense or unwarranted expense.

Mr. Starr: As I understand, the appraisers selected by the Master and neither side, neither Mr. McCarter or myself are to be bound or controlled by that appraisement? That appraisement is made, as I understand it, for the benefit of your Honor in making the investigation?

The Master: Now, perhaps in that posture I better suggest to Mr. McCarter that I think that the burden of showing the value of that property may be upon him.

Mr. Starr: I don't think there is any doubt about that, showing the value of the property from which your Honor can determine what the rental value is for each year.

The Master: As the matter now stands there is nothing upon which I can base any estimate of the value of the property.

Mr. McCarter: Well, the curious thing about that is that Judge Starr up to this moment has steadily objected to the value of the property. He said that wasn't the

issue and that the issue was the rental value and seemed to think that there was no relation between the two and that accounts for the paucity of proof upon that particular subject. I don't know about any burden of proof or anything there. This man here has to account for the rental value less any charges or credits to which he is entitled. Now, I am very anxious to give the Master any such assistance as the Master desires in reaching that end and I would be perfectly willing to, and very glad to have these three gentlemen, or anyone of them, help the Master as chosen by him. I take it, after all, that the Master will listen to all the proof and be governed by such elements as he deems important and as for saying that these witnesses are the witnesses of either side, of course they are not. They are chosen by the Master and they are, therefore, more impartial, perhaps, than if they were chosen by one or the other of the litigants, but, after all, it will be for the Master to determine, from the evidence adduced, as to what is the value of this property. Now, the reason why there has not been more evidence upon the value of the property I have given you is because Mr. Starr objected to it and the previous Master held that was so.

Mr. Starr: I beg your pardon. He didn't hold it was so. My recollection is that I made the objection but the objection was not sustained.

Mr. McCarter: My recollection is contrary.

Mr. Starr: We will settle that right now.

The Master: I wouldn't be bound by Judge Sooy's ruling.

Mr. McCarter: Not at all. I was only accounting for the paucity of proof on the subject.

The Master: I would have the utmost respect for his ruling, but I may disagree with it. As I view the situation, I can't fix the rental value of this property unless I have something on which to base my finding and, as I have interpreted the testimony so far, there is nothing before me that would aid me except the more or less wild guesses which seem to have been made by some witnesses, the guesses being anywhere from $14,000 to $40,000 per year. After all, I suppose, what I find will be the shrewdest guess I can make.

Mr. McCarter: Anything that you suggest that will help you to reach a figure as to the rental value of that hotel property we are perfectly willing to abide by.

The Master: As I view it, the market value of the property at the times that I have indicated should aid me very materially in my finding. After all that is what I have got to find under this order, the rental value of that property.

Mr. Starr: On the cross examination of Mr. Bloom on page 18 of the record, Mr. McCarter asked him: "What value do you put upon the Princess Hotel property as such." I objected to that as "immaterial and irrelevant, that is not the inquiry," and the Master says "I will take that." So he did rule in favor of Mr. McCarter and that testimony is in, so far as Mr. Bloom is con-

cerned. Now my suggestion was that the market value of the property itself is not conclusive with respect to the rental value. But, however, I take the same position Mr. McCarter does, we are perfectly willing to have your Honor make the selection of these three experts to make the examination but in doing that I do not think either he or myself should be assumed to agree that is the true market value of the property as there is testimony in the case to the contrary.

The Master: Absolutely. I agree with you. Either side ought to be given an opportunity to rebut that testimony or that certificate. My thought in the matter is that the value of that property is undoubtedly an element which must be considered in arriving at the rental value.

Mr. Starr: We are willing to have your Honor select these three gentlemen, so far as we are concerned.

The Master: Now are they to be paid by both sides?

Mr. McCarter: I should think so if they are chosen by the master.

Mr. Starr: I suppose we will divide the expense.

The Master: That is what I would like to be assured of.

Mr. McCarter: Yes, sir.

Mr. Starr: So far as we are concerned.

Mr. McCarter: Satisfactory.

The Master: You understand, both of you, that it is not my desire to load up a lot of expense on either side and the cheaper

this can be done the better everybody will be pleased.

Mr. McCarter: You will then undertake it?

The Master: I will undertake it.

Mr. McCarter: If necessary we can give you the dimensions of the property.

Mr. Starr: They know the dimensions.

Mr. Starr: In the Goldner folder Mr. Sheets has furnished the missing invoice. He didn't have one of the invoices and promised to mail it. That will go in under Schedule W.

(Invoice offered, received in evidence and marked Exhibit D. 221, invoice dated August 27, 1926, order June 23, 1926, for $376.98.)

Mr. McCarter: All we will want, I think, for the sewerage and water rents is an analysis of the payments. Of course we don't think we should be attempted to be charged with penalties or bonus.

Mr. Starr: So far as the penalties are concerned, we will concede you are not obliged to pay that, but I want to produce some testimony with reference to the bonus.

The Master: Do I understand, Judge Starr, you are going to ask for a credit for the bonus which he paid?

Mr. McCarter: All I am trying to get at is this, an analysis of the payment made to Prettyman, the mortgagee, both mortgages, then, of course, we can determine later whether this figure or that figure will go. Undoubtedly interest was paid, a bonus was

paid and I think interest on interest. I may be wrong about that.

Mr. Starr: We are not making any claim on that.

Mr. McCarter: Of course you are not making any claim, but these figures go in unexplained, for instance, for instance all the Prettyman evidence, that was heard up until a year ago. This, of course is for the current year. We make a difference of $3,950 between what ought to have been paid and what was paid. I may be wrong about it, but that is our analysis of the figures. What we want to have clear is what payments were made.

The Master: Couldn't the amount due for interest be established by a simple computation?

Mr. McCarter: I should think so, but they are offering checks in here as payments and I want to know what these checks were for.

Mr. Starr: I offer in evidence a bill and receipt dated December 15, 1926 for $900 and a check for $900 dated January 1, 1927, in which it was recited that the $900 is to pay six months' interest on the $30,000 mortgage.

(Check admitted and marked Exhibit D. 222.)

I offer a bill dated November 24, 1926, against Mr. Rosecrans in favor of the Ormond Beach Bond, Mortgage and Guaranty Company for $1,650 and a check in the same amount dated December 17, 1926, upon which is recited interest to December 21, 1926, on $54,000 mortgage.

(Check and receipt admitted and marked Exhibit D. 223.)

I offer in evidence check dated August 23, 1926, Rosecrans to Prettyman for $3,000 marked "Installment on mortgage August 1, 1926."

(Check admitted and marked Exhibit D. 224.)

I also offer in evidence a check dated October 8, 1926, drawn by Rosecrans to the Ormond Beach Bond, Mortgage and Guaranty Company for $1,600, marked "Extension of the $30,000 mortgage for five years from June 30, 1927, to June 30, 1932."

(Check admitted and marked Exhibit D. 225.)

We will furnish an analysis.

Mr. McCarter: That is satisfactory.

(Schedule B, new.)

Mr. Starr: I offer in evidence bill dated August 1, 1926, of the Water Department of Atlantic City against the Princess Hotel for water used from February 1, 1926, to August 1, 1926, $200.34; minimum rate August 1, 1927, $75.00; total, $275.34, receipted. The date is obliterated and from that we claim $275.34.

(Bill admitted and marked Exhibit D. 226.)

Mr. McCarter: I may say incidentally that, of course, even assuming we are liable for something, which we deny, I don't see how we can be liable for the water bills paid for entertaining guests at the hotel when he was running the hotel. However, that will be a matter of argument hereafter.

The Master: Of course, if the hotel wasn't open and wasn't being occupied by Mr. Rosecrans, you wouldn't be entitled to any rental.

Mr. Starr: It is the usual practice of land owners to pay water rent, isn't it? That is my understanding of it.

The Master: The usual practice in large plants is that the landlord will agree upon a certain amount for water rent, some times the minimum and the tenant is obliged to pay for the excess.

Mr. Starr: I also offer another bill dated February 1, 1927, against the hotel in favor of the Water Department for water consumed from August 1, 1926, to February 1, 1927, $218.70. Credit by minimum rate paid August 1, 1926, $75—that was charged in the former bill—making net $143.70, penalty 10 per cent, $158.07. Receipted April 1927. We claim under this bill only $143.70 eliminating the penalty.

(Receipt admitted in evidence and marked Exhibit D. 227.)

PAUL C. ROSECRANS, recalled.

Direct examination by Mr. Starr.

Q Mr. Rosecrans, I show you Exhibit D. 233, consisting of three bills for the National Fire Protection Company; were those bills rendered to you for fire service at the Princess Hotel? A Yes.

Q Were they paid by you? A They were, yes, paid by me.

Q What was the character of the service that was furnished by that concern to the hotel? A Well, they came through the house once or twice a year and inspected all extinguishers and recharge them, if it is necessary to recharge them they recharge them.

Mr. McCarter: Recharge what?

A Recharge the fire extinguishers.

Q Do you know whether or not the supply of the extinguishers has any effect on the insurance rate? A Yes, ten cents on a hundred, if I didn't have them it will cost ten cents a hundred more insurance, that would make a difference a hundred dollars a year on a hundred thousand of insurance.

Q Did you make any inquiry as to the effect of having the extinguishers in the house? A I did.

Q Of whom? A Mr. Hickman.

Q Has that service been furnished to the house in accordance with these bills? A Yes, it has.

Cross examination by Mr. McCarter.

Q How many fire extinguishers have you, Mr. Rosecrans? A I judge around thirty or thirty-two.

Q Don't you know? A The bill should show that.

Q Your recollection is that there are thirty; is that right? A Thirty altogether. They recharge a good many of them that don't belong to them. They recharged the others that are in the house, too, the ones that belong to me.

Q And these bills are all for recharging, are they? A They are all for recharging and taking care of the whole thing.

Q Have you looked at these bills? A Yes, I looked them over.

Q I show you one of them; is that for recharging? A It says, "balance due."

Q Please answer the question. Doesn't it say, "rent of"? A Oh, yes, that is rental. That includes the rental, too; I forgot that.

Q So, that is not for recharging, is it? A Rental and recharging.

Q I show you another one; is that for recharging? A That is the same thing, rental.

Q Rental? Why did you say these were recharging? A Why, because they recharge them, that is in the contract, with authority to recharge them at least once a year, that is twelve, and the other ones that I own, about thirty altogether in the building.

Q As a matter of fact, then, two out of the three bills are for rental and not for recharging, are they? A Yes.

Q What? A That is so.

Q How many fire extinguishers have you got in the hotel? A I said about thirty or thirty-two.

Q Don't you know? A I didn't count them; no, somewhere around that.

Q How many do you own and how many do you rent? A There are twelve that I rent. It says here on the bill, I rent twelve, the others I own, but if I didn't have that service I will have to pay a hundred dollars more fire insurance.

Q I understand that. Now, I call your attention, "for inspection service and recharge of

New Jersey State Library

fourteen fire extinguishers." Have you got more than fourteen? A I have. Sometimes they don't all have to be recharged, see. I suppose only fourteen—

Q Do you know how many you have got? A I say about thirty or thirty-two as near as I can recollect.

Q Well, one of these bills isn't paid, is it? A It should be paid.

Q Well, it isn't paid, is it? A If I recollect I paid it.

Q Will you say whether it is paid or not? A I couldn't say.

Q You swore at first it was, didn't you? A What is that?

Q You told Judge Starr that they had all been paid? A I don't know as I did.

Q Now, look at the bills, the one for the recharge is forty-two dollars, isn't it? A Yes.

Q And the one for rental is thirty dollars? A Yes.

Q That makes seventy-two dollars, doesn't it? A Yes.

Q And the check you produce is for seventy-two dollars? A Yes.

Q Now, the other one for sixty dollars, there is no check and it isn't paid, is it? A If there is no check there, I don't suppose it is paid.

Q Now, when did Mr. Hickman tell you that—exactly what did Mr. Hickman tell you with reference to fire extinguishers? A Well, he said that if I didn't have that protection I would have to pay a hundred dollars more in my insurance.

Q For what protection? A The fire extinguishers.

Q How many? A The number I have there scattered through the house at convenient places.

Q Did he see them? A He did. He has been through the house, I suppose he saw them.

Q Did he see them? A He has been through the house; I suppose he saw them.

By Mr. Starr.

Q Now, Mr. Rosecrans, here are some checks and bills that were introduced in the old schedules and identified as D. 132 and D. 131. I ask you whether or not these checks have been paid for the same sort of service? A They are.

Q What? A They are paid according to those checks.

Q And the checks are dated 1925 and 1926 and those checks were paid for the bills that are attached to them? A They were. I generally mark on the checks what they are for.

Cross examination by Mr. McCarter.

Q Now, these are bills, December 14, 1924, for rental of 12 fire extinguishers, aren't they? A Yes.

Q And the next one is December 1, 1925, for rental of twelve fire extinguishers? A Yes.

Q I want again to ask you how many fire extinguishers you had? A Well, this is only for the rental of the twelve.

The Master: Please answer the question. He wants to know.

A I have about thirty or thirty-two in the house.

Q Don't you ever recharge them? A Only twelve belonged to the—that I rent; the others belong to me, but these people recharge them all.

That is what they give me the charge, that is included in the rental.

Q That is what you say now, eh? Is that what you say now? A It must be.

Q Well, is it? Don't say what it must be. The question is, is it included in the rental? A Well, that is all they ever charged me and they recharge them all; they recharge every one of them, if it is necessary and don't send me any other bills.

Q If you are in California, you don't know whether they recharge them or not, do you? A They usually recharge them in the spring. I have always been there when they recharged them.

Q You are always there when they do that? A I am all except once or twice I have been there, but they mark them when they charge them, they put a tag on them, mark on the tag when they recharge them.

Direct examination by Mr. Starr.

Q Was there an installment of interest due on the Prettyman mortgage, I think, thirty-thousand-dollar mortgage on the 30th of June of this year? A 30th of June.

Q Have you got that bill? A There is an installment due on the 30th of June, yes.

Q You have how many days to pay it? A Thirty days.

Q Since June 1, 1922, what changes have been made in the hotel which would constitute new work independently of repairs? A There have been new partitions put all through the basement where the old partitions were. The building inspectors came through there—

Mr. McCarter: One moment; I don't suppose that question calls for what the building inspectors did.

Q Just answer the question. A There have been new partitions put in the basement.

Q And when was that done? A That was done in 1924 and 1925, as I recollect it, spring of 1925 and summer and spring of 1924.

Q Why was that done? A The building inspectors, the Board of Health came through there one time and told me about part of the rooms not—

Mr. McCarter: I object to conversations between the building inspectors.

The Master: Yes, as the result of that.

Mr. Starr: I don't care particularly about the conversation.

Q What induced you to make any changes in those rooms? That is what I am trying to find out? A Part of those rooms had no outside light, no windows, and they told me I couldn't use them unless I changed the whole arrangement of that partition.

Q As the result of that, did you make the changes? A As the result of that, I made the changes.

Q Just go into more detail with reference to the changes that were made so the master can understand? A I took down the old partitions and replaced them with new partitions arranged in such a way that every room had light and air and the space that I couldn't use for rooms I turned into a store room where I didn't need any light and air.

Q Now is there any other work that has been done since June 1, 1922, in the nature of new work as distinguished from repairs, replacement of old? A There was several baths put in.

Q How many baths were put in? A Two.

Q Baths? A Yes.

Q In what rooms? A In the basement rooms.

Q That is the rooms that were rearranged? A Yes.

Q Any other new work except down in the basement as distinguished from repairs? A Not as I can recollect. A few basins might have been, a few basins put in.

Mr. McCarter: What is that?

A Might have been a few wash basins.

Q Where were they put in? A In the basement, and there was some toilets back of the kitchen. I couldn't use the toilets in the basement and they were in bad shape and the board of health told me I ought to have new toilets.

Mr. McCarter: I object to what he was told by the Board of Health.

The Master: Yes, don't relate conversations with other people.

Q With whom did you have the conversation before you made the change? A One of the Board of Health.

Q As the result of that conversation what did you do? A I put in the new toilets where they wanted them for the employees.

Q How many new toilets did you put in? A About four.

Q Were they entirely new or did they take the place of some that were there? A They were entirely new.

Q Now all of this work you have described has been incidental to the change of the rooms in the basement, is that right? A Yes.

Q Independently of that have you done any new work around the house since June 1, 1922, as distinguished from repair work? A No, that is all, just minor changes and the toilets in the basement, that is the basins.

Q Were those changes made in the upper floors? A No, in the lower floor.

Q In the basement? A In the basement.

Q My question was independently of what you did in the basement was there anything done in the other part of the house? A Back of the kitchen, that is the second floor.

Q What was done there? A That is where these toilets are that I have just mentioned.

Q They were entirely new and had not been there before? A Yes.

Q Where had the toilets been before you made these new ones? A In the back part of the basement.

Q And were they discarded or are they still in use? A No, they were later fixed up and used.

Q Have there been any changes made, as distinquished from repairs, prior to the 1st of June, 1922? A Yes.

Q Generally what were they? A We made bed rooms out of the stores in the front part of the house and put running water in sixty or seventy rooms all through the house where they had wooden wash stands before, put in five more baths, private baths. That was all done prior to 1922.

Q Now what conversation, if any, did you have with Mrs. Rosecrans with reference to that new work? A She and I agreed to that.

Q Agreed to all that new work prior to 1922? A We did. In order to put a garden in front of the place, to make it more attractive, the stores had all kinds of signs hanging out and made the place look very unattractive.

Q Now was there any other new work done prior to 1922 with her consent? A No, that is about all.

Q Now this hotel is furnished, is it? A Yes.

Q When it was bought were there any rooms in the house that were unfurnished? A One hundred.

Q Unfurnished? A Practically one hundred rooms.

Q Who supplied the furniture for those? A I did.

Q Out of your own means? A Yes.

Q Who supplied the replenishment and refurnishing since that time? A I have. All the new work—I forgot to say, when the property was bought all the new work was put in there by me, whole house had to be replumbed and repiped and I paid for all that as testified at the other trial.

Q That you say was as the result of a conversation between you and your wife? A Yes, it had to be done or house couldn't be used.

Q I mean was it the result of talk between you and she that these improvements were made? A Yes, sir; she agreed to it and I paid for it.

Witness withdrawn.

Paul C. Rosecrans, for defendant, direct.

PAUL C. ROSECRANS, resumed.

Direct examination by Mr. Starr.

Q Now, Mr. Rosecrans, were you in California the winter of 1926 and 1927? A Yes, I was.

Q When did you go to California? A About the middle of December, returned about the middle of April.

Mr. McCarter: What year is that?

Mr. Starr: 1926-1927.

A 1926-1927.

Q Now in the winter of 1925 and 1926 were you abroad? A I was.

Q I don't mean abroad, in California? A California.

Q When did you go away and when did you come back? A About the same time; middle of December to middle of April.

Q Now I show you the exhibits in the Faith case, first one being D. 170 and last one D. 176. I wish you would look those over and tell us what Faith Company did represented by those bills with reference to the hotel, Princess Hotel? Take each bill, if you can, and state generally what they did and then the particular items. A They went over the heating apparatus, the radiators, they get clogged up with dirt, the little traps that regulate the steam. They went all over them and they went over the boiler, general overhauling, that is as near as I can get to it, what you can call it, general overhauling, that is what I told them to do.

Q That general overhauling was what? A Of the whole plant, putting it in shape for use.

Q I show you Exhibit D. 173, covering labor bill, can you tell us what that was for? A That was the same thing.

Q Will you say whether or not that work was necessary? A It was.

Q I notice bill Exhibit D. 176 for copper wire; do you know what that was for? A That was for the screens, window screens.

Q Tell us about that if you can? A We made about 160 frames for the windows for mosquito netting.

Q Did you get the wiring or netting? A That was the wire netting for that job.

Q Who made the screens, those screens? A Paul, Jr.

Q Did you pay him for that work? A I did.

Q Where did you get the lumber from? A Atlantic City Lumber Company.

Q Had there been any screens in the hotel before these new ones were put in? A No.

Q Why was it necessary to make screens, new screens? A Well, to keep out flies and mosquitoes. Made for the full size of the window.

Q In your judgment as a hotel keeper was that necessary for the operation of the hotel? A Yes.

Mr. McCarter: Of course that is utterly immaterial.

By the Master.

Q Did you consult Mrs. Rosecrans about that? A No, I didn't.

Paul C. Rosecrans, for defendant, cross.

Cross examination by Mr. McCarter.

Q When did you first open the hotel in winter? A First year I had the hotel.

Q Keep it open all winter? A Yes.

Q And all the following winters? A Yes. Closed the second winter I think.

Q Then when did you reopen—that would be 19—you opened it in the winter of 1919? A It was—I couldn't open it until I made all repairs took all winter to make the repairs that year.

Q What was the first winter you were open? A 1920-1921.

Q Then you weren't open 1922, were you? A 1921-1922 I closed.

Q 1923 you were closed, weren't you? A 1922 winter 1922—1923 I was closed and from that time on, from the spring 1923 it has been open continuously.

Q Now those heating apparatus bills were paid, including these exhibits, for getting it in shape to re-open when you did re-open after your very first winter, wasn't it? A These bills are for work in November 1925; the house was open continuously.

Q They are not all 1925, are they? A December 1923—the house was open that winter; 1924 the house was open that winter; 1923 the house was open that winter.

Q Before you opened the winter of 1923 you had the whole heating system thoroughly overhauled, didn't you? A I do that every winter.

Q Will you answer my question.

(Question repeated.)

A I don't know whether the whole heating system was overhauled. What was necessary was done.

Paul C. Rosecrans, for defendant, direct.

By Mr. Starr.

Q About this heating system; when you bought the hotel was there a heating plant in it? A There was a heating plant couldn't be used.

Q Was there a heating plant in it? A There was, yes.

Q When was it rebuilt or remodeled? A During the winter 1919-1920, 1921, 1922.

Q Was Mrs. Rosecrans living at the hotel at that time? A She was; we were living at the Amsterdam, taking her meals there and we agreed on all the work.

Q Did you have any conversation with her with reference to rebuilding the heating system? A I did.

Mr. McCarter: That is anterior to the season, I can't see it is material.

The Master: That was prior to June, 1922, wasn't it?

Mr. Starr: I understand that, if the Master please, but the suggestion of Mr. McCarter is that this heating plant after 1922 was put in shape in anticipation of the opening of the hotel for winter. I expect to show that while the hotel may not have been open in the extreme winter months, the heating plant in the fall and spring was always used, around Easter.

The Master: Oh, yes; no doubt about that.

Mr. Starr: That is what I want to get. The heating plant was remodelled in accordance with an arrangement made between he and his wife.

Mr. McCarter: My thought is whether she did or did not consent is directly immaterial previous to June, 1922.

Q What was the arrangement made between you and her with reference to rebuilding?

Mr. McCarter: I object as immaterial.

The Master: I will admit it for whatever it may be worth.

A It was to be done. It was to be remodelled, was to have a decent heating system for the house.

Q Who did the work for you? A Faith Company.

Q Are you sure about that? A Faith Company and Yeutter and the different concerns.

Q Who did the boiler work? A Goldner did the boiler work.

Mr. McCarter: Who?

A Goldner.

Mr. McCarter: He has named three people. Does he mean all three did it?

A Took all three to do the work, complete the heating system.

Q What use had been made of that heating system before you established the practice of keeping the hotel open the entire year? A There wasn't much use of it.

Q Was it used at all in the fall and spring months? A It was used for a little while that fall.

Q What about next spring? A And in the spring.

By the Master.

Q What time did you open the hotel in the spring, Mr. Rosecrans? A Usually opened around March.

Q For the Easter season? A Yes, for the Easter season.

By Mr. Starr.

Q Did you have the heating system in operation then? A I did.

Q Now I show you Exhibits D. 163, 164, 165, 166 in relation to the Goldner claim. After examining those exhibits please tell me whether or not Henry Goldner and Sons did any work and what it was and how it came to be done? A They put the boiler in shape and the brick work underneath the boiler, so the boiler could be used for the winter.

Q What was the trouble with the boiler? A The bottom of it, was a blister on the bottom of it.

Q Did you have any contract with them in reference to doing the work, any arrangement with them? A Sort of a contract, time and material.

Q Do you know the amount of the contract? A It says here $1,086.

Q What was that for? A That was for repairing the boiler and I think they put a new sheet in the bottom of it; they rebuilt the brick work underneath it, put in new grates and generally overhauled it so it could be used.

Q Will you say whether or not that work was necessary? A It was.

Mr. Starr: I might say, if the Master please, included in that schedule Goldner there is an item $15 to expense in auditing account as directed; that, of course, cannot be collected or cannot be credited.

Cross examination by Mr. McCarter.

Q Were you in California in the fall of 1924? A No.

Q How long previous to September 1924 had this boiler, whose brick work had all fallen down and whose bottom was all out, been used? A It had been used all the previous winter.

Q Sure about that? A Yes.

Q When had all this brick work fallen down then and the bottom gotten in the condition it was? A During the previous winter.

Q While it was being used? A While it was being used.

Q What? A Yes.

Q Although just been put in shape? A No, it had not been put in shape the previous winter.

Q When had it been put in shape? A About a year before that, as near as I can recall.

Q So you think the whole thing fell down, the brick work, after two years' use? A That work generally has to be done—

Q I didn't say generally; I am asking you of this particular thing, if the whole thing fell down after two years' use? A About two years I suppose.

Q Now what was it, if you can remember? If you don't remember, don't pretend to. A Might have been only a year.

Paul C. Rosecrans, for defendant, cross.

By Mr. Starr.

Q I show you another invoice Exhibit D. 221 and ask you whether you recognize that as a statement of work and material furnished by the Goldner people? A Yes.

Q Was that work done as shown by the bill? A Yes.

Q Was that necessary? A It was.

Cross examination by Mr. McCarter.

Q When was that work done? A Spring of 1926. Just previous to the date of that bill. The bill seems to be dated.

Q August 1927? A It might have been.

Q If you don't know, say so, Mr. Rosecrans. It is very gratifying to have you guessing around here. When was that work done? A A short time before that bill was rendered.

Q When was that? A It may have been a month or might have been two months.

Q You were here all the time? A I was.

Q During the warm weather? A During the warm weather. They had more time during the warm weather to do that kind of work.

Q Brick work again had to be repaired, eh? A Yes.

Q What? A Yes, burns out, the brick burn out.

By Mr. Starr.

Q I show you Exhibit D. 208, it is an invoice submitted by Eshner? A Yes.

Q Do you remember that work being done? A I do.

Q What was it and when was it done? A It was done in June 1925.

Q What was the character of the work? A Putting in metal mesh to strengthen the cage. The work there was very light, the grill work was very light.

Q On the elevator cage you mean? A Yes, elevator cage.

Q Was or was that not necessary? A It was necessary.

Q Why was it necessary? A To strengthen the whole cage, to keep me from buying a new elevator cage.

Q I notice silk there, what was that used for?

Mr. McCarter: That strengthens it, too?

A That was stripped in back of it to hide the sheet metal in back, the black metal.

Q How long had the elevator been in use there, do you know? A For about twenty years.

Q The elevator in the house when it was purchased? A It was an old elevator then when it was put in there.

Q What had the elevator originally, before these changes had been made, on the sides and back as a protection? A There is some grill work, just a thin metal pieces, sort of a grill work.

Q How did this change, did this work change it? A It made it more rigid and more solid.

Cross examination by Mr. McCarter.

Q How long have you known the Princess Hotel, the inside of it? A About since 1904.

Q 1904? Been familiar with it ever since that date? A Well, I have been in there on occasions; I knew about the hotel.

Q Was it built in its present situation in full? A Present condition?

Q Present material? A The front building was put here in 1904 or 1905, where the elevator is.

Q And you say that the elevator was an old elevator when it was put in? A The man that does my work told me that he put it in.

Q Told you that? A He said he put it in. He said it was an old machine, then.

Q Your information, then, is based upon what somebody told you? A Yes.

Q Now, do you remember asking Mr. Eshner to go to see some elevator in some hotel in Philadelphia and telling him that you wanted an elevator like that elevator, sides and grill, do you remember that? A I do.

Q And that had silk, too, didn't it? A That did.

Q You were very much pleased with that elevator, weren't you? A Well, I thought that the way mine ought to be arranged.

Q What hotel was that? A The Adelphia.

Q What? A Adelphia Hotel.

By Mr. Starr.

Q I show you a check dated July 26, 1923, drawn by Paul C. Rosecrans to the order of John Sykes for $300. Did you give that check to Sykes? A I did.

Q Was the check paid? A It was.

(Check offered, received in evidence and marked Exhibit D. 251.)

Q I show you another check which is marked Exhibit D. 85. Now, do you recall what those

checks were given for to Sykes? A The roofing and he put in a metal ceiling in the garage at that time. I think that $300 check was for the metal ceiling.

Q Why was that metal ceiling put there? A We were using it for a garage and the building inspector told us we would have to put that ceiling in.

Q Where was the new roof put on? A The front part of the house as near as I can remember.

Q What was the trouble with the roof? A It leaked so bad, rain.

Q And Mr. Sykes did that work, did he? A He did.

Q For which you gave him those checks? A Yes.

Mr. McCarter: I don't think that is right. The Witness has pointed out one of these checks as being given for the metal ceiling in the garage now and counsel gets him to say that those checks, there being two, one of which is the $300 for the ceiling of the garage, now says those are the checks for the roof.

The Master: I don't believe Judge Starr meant to mislead.

Q The work that you detailed, did Mr. Sykes do the work for the roof and ceiling? A Roof and ceiling.

Q And the checks that you have in your hands were given to pay for that work? A For that work.

Q When was the new ceiling put in the garage? A About that time, 1923.

Q What sort of a ceiling had there been in the garage before? A No ceiling at all, just rafters.

Q Rafters? A Just rafters.

Q What was the garage used for? The automobile that was stored in the garage, what was that used for? A We stored some of the guests' automobiles there, four or five cars in there.

Q Was that used in conjunction with the hotel? A Yes.

Q Get a rental for that? A We did.

Q How many cars could be placed in the garage? A About six, sometimes we put in more than that, seven or eight.

Q This roof that you speak of or rather the ceiling, was the roof of that place used for the storage of the cars? A Yes.

Q Did you have a car that you used in conjunction with the hotel? A Not at that time, no.

Cross examination by Mr. McCarter.

Q When was this roof repaired? A About same time in the spring, 1923.

Q 1923? A Yes.

Q The roof was repaired about the same time? A Yes.

Q As the ceiling of the garage? A Whatever the date of that check is, that year just previous to that.

Q Mr. Rosecrans, what is the fact now, was the roof repaired the same year that the ceiling in the garage was repaired? A It was.

Q It was? A Yes.

Q Well, I show you a check, which is the other check that counsel showed you which is

a year ahead, now did that pay for the roofing? A That was the fall, 1922, that was for roofing work.

Q How do you know it was? A Because I know he did work on the roof at that time.

Q Fall of 1922? A Yes.

Q What work did he do on the roof in the fall of 1922? A Just general repair work. It was an old roof and it would go to pieces and damage a lot of the rooms.

Q And for fifty-one dollars he made an old roof all new? A No, not the whole roof, no.

Q What did he do? A Part of it; he replaced a part of it where it was necessary.

Q Then he didn't do it the year the garage ceiling was fixed? A As I recollect it there was some roofing work done there, too.

By Mr. Starr.

Q Was that roofing work done before or after the 1st of June, 1922? A Some done afterwards, after June 1, 1922.

Q I am speaking about this work for which you have a bill here, $51.65, was that before or after the first of June, 1922? A I think that was done afterwards, after the 1st of June.

By Mr. McCarter.

Q M'm. A I think it was done afterwards.

Q What makes you think so? A Because I know I had some roofing work done there that spring. I am not quite sure of that. I am not quite sure of that, no. I know he was working there pretty near all the time.

By the Master.

Q Did you consult Mrs. Rosecrans with respect to putting that ceiling on the garage? A I did, yes.

Q Did she consent to it? A She did.

Q Did the storage of these cars affect the insurance rate? A No, because I paid so much per thousand excess on each policy to cover the cars.

Q Then it did affect the insurance? A I had to pay a higher rate, yes.

Mr. Starr: I might say that we had the Sykes books here and the items show that the work was done in September, 1922. It is in the testimony.

By Mr. Starr.

Q Now did you get any paints or materials from the Bakers Paint Shop since 1922? A I did.

Q For what were those paints, oils and materials used? A Painting the floors and the woodwork of the hotel.

Q Who did the work of painting? A Most of it was done by the bell boys and Mr. Knox and I supervised it and Paul, Jr.

Q Was that work necessary in the preservation of the hotel? A It was.

Q Were any of these paints used with reference to any of the new rooms in the basement as contradistinguished from the repairs? A Yes.

Q Can you tell us when these new rooms downstairs were painted? A In the spring of 1925.

Q Was or was not all of the materials that were purchased before the spring of 1925 used

around the hotel for the old work as distinguished from the new?

Mr. McCarter: He wasn't there both winters; was away; how does he know, Judge Starr?

Mr. Starr: I don't know whether he does or not.

(Question repeated.)

Mr. McCarter: During the winter 1925 he was out West. How does he know what the stuff was used for?

The Master: Let's see whether he knows.

A I was here until—

The Master: Just answer the question if you can, Mr. Rosecrans.

A As distinguished from the old work?

Q Yes.

The Master: As distinguished from the new work was the question, wasn't it, Judge Starr?

Mr. Starr: Yes.

A It was used for all of the work.

Q All right, now you were in California you say in the winter 1924 and 1925, were you? A No, I was here.

Q But you were there the winter of 1925 and 1926? A I went to California in the middle of December, 1925.

Q When had you been to California before? A Hadn't been there since the spring 1923.

Q And you had gotten home what part of the spring 1923? A Got home the 27th of May, 1923.

Q Now I ask you this question whether all of the materials that were furnished by the Baker Paint Shop prior to the spring of 1925, when you say this new work was done, what was that material used for? A To repaint the building, floors and woodwork generally.

Q Did that have any reference to the new carpenter work of the new rooms? A Some of it might have been, some of it, of the new work, some of the new work I gave out contract, as near as I can recall it.

Q When did you say that new work was done? A In the spring of 1925.

Q If you will listen to my question, I say prior to the spring of 1925, when you started in new work rearranging rooms downstairs, for what purpose was the materials purchased from the Bakers Paint Shop used, prior to that time? A Used all through the house.

Q For what? A For repainting the woodwork.

Q Was any of it used for new work as distinguished from repair work prior to the spring of 1925? A No.

Q Have you gone over these bills of the Baker Paint Shop? Look at them and tell us, if you can, for what purpose those materials were used? A This was used in the kitchen. The yellow paint was used in the kitchen.

Q Now give us the date of that bill? A Eighth, twenty-sixth, I don't know what year. What is that year? 1924.

Q Looks like 1924 to me. What was that used for? A That was used in the kitchen, repainting the kitchen.

Q All right; go along with the rest of them. A This bill dated 8/26/24, some aluminum on there for the radiators, bronzing powder.

Q What was that used for, repainting the radiators or not? A Repaint the radiators and pipes, bronzing powder for the radiators and pipes; Valspar varnish for the floors; white lead was used in the paints, to mix the paints; that was all used on the floors and on the general woodwork.

Q Now the next bill? A Bill dated 8/26/24, Valspar varnish, used for the floors. Bronzing liquid—

Q What? A Bronzing liquid was used on the radiators. Bronzing liquid again. Cover-floor mahogany, that is used on the floor. Most everything here is used on the floor and on the radiators. On the other bill 8/26/24 bananna oil for the radiators. Outside white paint for the outside work. Turpentine was used to mix in with that. Turpentine again. Mahogany varnish stain and glass, twelve pounds plaster, one item mirror, 75c, that was, I suppose that was a mirror in one of the bureaus; that don't go in there.

Q We have eliminated that. A Bill dated November 1, 1924, fifty pounds white lead, turpentine, zinc, dryber, brush, cleaners, all this was used in painting the inside of the house. December 1, 1924, same. January 1, 1925—

Mr. McCarter: Remember, you were out West now.

A No, I wasn't. I was home that year. Fifty pounds lead, turpentine and cover-floor; all this was used on the floors and on the woodwork.

Q Answer this question. You say you started that new work downstairs in the basement in the

spring of 1925. Can you be more accurate as to the time? A To be more accurate about it, I started in the fall of 1924 and worked at it all winter, but most of it was done in the spring, 1925, was completed.

Q When was it painted? A It was painted in the spring 1925.

Q What months? A May and June, as near as I can remember, some in July, some was not finished until July.

Q Now if you can give us the date when the first lot of paint was used on those rooms down in the basement? A About April and May, 1925.

Q All right. Go ahead with those bills. A Here is another bill January 1, 1925, fifty pounds white lead, cover floor, turpentine.

Q What was that used for? A Used on the floors and inside of the house. February 1, 1925, bill one gallon varnish, balance due January 1st, that is on this other bill here.

Q I don't care anything about the balance due; just the materials. A March 1, 1925, patching plaster, window glass, all for the—

Q What was that used for? A For the inside of the house.

Q Was any of that used for the new work in the basement? A No.

Q All right; go ahead. A April 1, 1925, glass, putty; there was none of that for the new work.

Q All for the old work? A All for the old work, as near as I can recall.

Q Now take the next one? A May 1, 1925, resilvering mirrors, $29 that comes out.

Q That goes out. We have eliminated that. A The rest of it was glass and mahogany,

glass for the windows, varnish, that was all used on the old work.

Q Go the next bill. A June 1, 1925, that was used on the floors, cover-floor, mahogony, cover-floor, that is for the floors.

Q Any portion of that used in the new work in the basement? If so state how much? A No. Not so far as I can see.

Q Go on with the next one. A July 1, 1925, some ochre there for staining new work. That looks as though it may be on the new work. There is aluminum there for the radiators.

Q Is that old or new work? A Old work, that is all. There are two mirrors resilvered here, five dollars, don't belong in there.

Q This bill that you have in your hand dated July 1st, tell us whether any portion of the materials there specified was used in the new work in the basement? If so, how much? A It don't specify but there is some ochre here and amber, that is usually used on new work.

Q What is the amount of that? A That is $1.25 and ninety cents; that might have been on the new work.

Q How about the balance of it? A The balance was aluminum and gold paint, that indicates it was used on the radiators, on the old work. There is an item here underbody paint; that might have been used on new work, $2.50.

Q I want you to examine it carefully and tell us which are old and which are new? A That is all I can pick out of here that might have been used on new work.

Q All right; go to the next bill. A August 1st, that is old work.

Q All of it? A All of it, as near as I can tell.

Q Go the next one. A September 1, 1925, that is old work.

Q All of it? A All of it.

Mr. McCarter: Old work?

A Yes.

Q Go the next. A November 1, 1925; that is all old work.

Mr. McCarter: All what?

A Old work.

Mr. McCarter: Sure.

A December 1st, is glass, window glass, old work. January 1, 1926, that is all old work.

Q Now you were in California the winter of 1926 and 1927? A 1925 and 1926, but I was here up to the 17th of December when this was bought.

Q Go ahead. While you were in California to your knowledge was there any new work done? A No. February 1, 1926, I was away. This was bought in January.

Q Have you any personal knowledge of that? A I ordered the work done and I knew they needed this.

Q Did you ever give any instructions as to where the paints were to come from? A I did.

Q Where? A I told them to go to Bakers.

Q When you came back in the spring did you observe whether or not the work had been done as you directed it should be done? A Yes, it was. March 1, 1926, that is all old work.

Q Was there any new work done or any new rooms built or changes made in the basement in the spring of 1925? A No.

Q Go ahead. A April 1, 1926, old work. June 1, 1926—

Q When did you get back from California in 1926? A I got back in April, 1926.

Q Tell us about that bill there. A June 1, 1926, this is June, not May, this was bought in May. That is all old work. July 1, 1926, old work. August 1, 1926, old work.

Q Now, Mr. Rosecrans, did you have done or direct to be done any painting that was unnecessary in the hotel? A No.

Cross examination by Mr. McCarter.

Q How many new bed rooms were made down stairs in 1925, about twenty, weren't there? A No, about eight.

Q Eight? A Yes.

Q Is that all? A There were eight rooms there but I had to rearrange the whole thing.

Q How many new rooms did you add? A Eight.

Q That is all, eight new bed rooms? A Eight new bed rooms.

Q They had to be painted, didn't they? A Yes.

Q They had to have wood work in them? A Yes.

Q They were painted? A Yes.

Q They have windows in them? A No, the windows were there.

Q Windows were there? A Yes.

Q Well now I am going to ask you if it isn't a fact, Mr. Rosecrans, that in 1925 the changes that were made there included and involved the making or creation of about eight or ten rooms for the help and ten or twelve rooms for guests? A No, they were, the rooms that I made there

are used for guests in the summer time and early and late season they are used for the help.

Q You say they are not in excess of eight in number? A Eight rooms in the basement.

Q You say they are not in excess of eight rooms that were made or created out of something else in 1925? A Might have been—there is two more but they were—

Q I am trying to find out. I have never been in your old house. I want to again ask you the question, how many new bed rooms were created by the changes and alterations that were made there in the year 1925? A Ten in the basement. They replaced ten that were there. The old rooms there, some of them had no light. There is eight or ten; I am not quite sure which.

Q You can't tell whether eight or ten? A Whatever I built there that year was just replacing the old.

Q I am not asking what was there before. There were no bed rooms there before, were there? They weren't used as bed rooms? A Yes.

Q They were? A Yes.

Q I thought you said the Board of Health or somebody came along? A They stopped me from using them.

Q They stopped you from using them? A Yes.

Q When was that? A That was in 1924, fall 1924 some time.

Q Now had they all been used for bed rooms before? A Yes.

Q Every one of them? A Yes.

Q And then in 1925 what did you do so as to comply with the request of the Board of Health? A I tore out all those partitions and replaced them with new partitions arranged in

such a way that each room would have outside light.

Q Well, you didn't have any new outside windows then? A No.

Q Those rooms all had to be painted, didn't they? A One small window for the bath room, that is all.

Q Those rooms all had to be painted, didn't they? A Yes, but I gave that out to Powell, as I remember. As I recall it now I gave that out to a fellow named Powell on contract.

Q And the floors had to be fixed? A No, the floors were stone and covered with carpet.

Q Covered with carpet? A Yes.

Q How about the walls? A The walls were papered.

By Mr. Starr.

Q Now how many bed rooms were used as such in the basement before you made the changes? A Ten.

Q When you made the changes how many bed rooms did you have? A I think I got the same number.

Q This is with relation to the Baker Paint Shop, the new schedule H. Look over these invoices, Mr. Rosecrans, and tell us whether or not the materials shown on those invoices were furnished to the Princess Hotel and, if so, for what they were used? A They were used on the old work.

Q Any of it used in the new work A Some of it here was used on the screens and on the metal, on the mesh, on the window screen.

Q That is shown by the bill itself? A It is marked "screen enamel."

Q That is painting the screens? A Yes.

Q Go over the bills and tell us what they were used for. A Presto, was used in the kitchen, repainting the kitchen and radiators and the floors and sides.

Q Go on with the rest of the bills? A August 1, 1927,—it is marked August 1, 1927, must be 1926.

Q What is the amount of that bill? A It is only $1.55; that is old work.

Q What is it for, old work? A Old work, yes.

Q Go to the rest of them? A October 1, 1926, six lights, glass, $4.50.

Q What is that used for? A Windows, window lights.

Q You mean new to replace old or not? A To replace broken window glass. November 1, 1926, $8.20, old work. December 1, 1926, old work, and some screen enamel in this.

Q For the screens? A For the window screens. April 1, 1927, old work.

Q What is it for? A For the kitchen, one gallon mahogany, I think that belongs on, I believe that belongs on furnishings.

Mr. McCarter: On what?

A On furniture, mahogany.

Q What is the amount of that? That goes out then. A $3.25. March 1, 1927, bronzing liquid enamel $4.00 that is for the radiators.

Q To repaint them you mean? A Repainting radiators. One window light eighty-five cents. January 1, 1926, bronzing liquid, aluminum.

Q What is that for? A For radiator work. One item here mirror don't belong there $10.30.

Q That is to be eliminated. A The rest of it is for floors, dining room floor and side walls. September 1, 1926, glass and black enamel eighty-five cents.

Q What is the black enamel for? A Must be used on the pipe in the engine room. That is the only place where I know they use that.

Cross examination by Mr. McCarter.

Q You remember each one of these items, do you, Mr. Rosecrans? A Oh, I don't remember each one but I know when I see the name of the paint or the enamel, I know where that is used.

Q How do you know that? A Because that is what I told them to get. I told them to get that kind of material for the particular work. There is—

Q Told whom? A Told the boys that did this work or Paul, Jr. or Mr. Knox. If I went away I told them to get this kind of stuff, paint, there, and can family yellow, that is used in the kitchen exclusively, we use that in the kitchen and basement.

Mr. Starr: For what purpose?

A For painting the wood work.

Q You were away a good deal during the time you mentioned covered by this last series of bills, weren't you? A Yes, part of that time, but I told them to get that kind of stuff.

Q You told them to get certain stuff before you went away? A Yes.

Q And you assume that they got it and used it? A Yes.

Q That is all.

Recess taken to July 7, 1927, 11 A. M.

PAUL C. ROSECRANS, resumed.

Direct examination by Mr. Starr.

Q Since the adjournment last evening have you made a count of the rooms in the basement which were installed as the result of changes that were made there as you say at the suggestion of the municipal authorities? A Yes, eight.

Q Actually counted them and there are eight? A Eight.

Q How many rooms were there before the change was made? A Eight.

Q There are the same number of rooms? A Same number.

Q You have said something about the placing of the linen room or linen closet in the basement. When was that change made? A In the fall of 1924 and during the winter of 1925.

Q Where was the linen kept? Where was the linen kept prior to that time? A Next to the kitchen.

Q Now, when this hotel was purchased, how many rooms did it contain, bedrooms, I mean? A 170.

Q And there were certain changes made? A Upstairs 170.

Q How many in the basement? A In the basement about around twenty, counting all the helps' rooms.

Mr. McCarter: I can't hear you, Mr. Rosecrans.

Q At the present time how many bedrooms are there upstairs and how many in the basement? A There is the same number upstairs and about twenty-five downstairs. The stores made up five rooms.

Q The stores were five rooms? A Yes.

Q Now, when was the change of the bedrooms from the stores made? A In the spring, 1922, they were made around March. I came home from California sometime in April that year or May and I made the change right away.

Q I show you Exhibit D. 206, which is a bill against the Princess Hotel, Joseph Soltz Paint Shop, and after examining that I wish you would tell me for what purpose the material shown by that invoice was used at the hotel? A It was used on repainting the woodwork inside and floors.

Q I show you a check, which is dated July 23, 1923, Soltz Paint Shop, and ask you if you can recall what sort of material that was purchased for which that check paid and what it was used for? A It was the same material as this bill calls for all same kind of goods.

Q You mean the same kind of goods? A Same kind of goods, paints and oils.

Q And what was it used for? A To paint the interior of the house.

Q Would you say whether that was necessary? A Some on the outside. It was.

Q Was there any material that was purchased from the Soltz store used anywhere else except in the hotel? A No.

Cross examination by Mr. McCarter.

Q In 1925 when did you go to California? A About the middle of December.

Q Is that as accurate as you can come? A About the middle of December, yes. I know it was right before Christmas, one week or so before Christmas.

Q You mean that you have a specific recollection of the receipt of the items in this duplicate bill marked Exhibit D. 206, a specific recollection of those particular items? A Well, I know—

Q Answer my question, please.

Mr. Starr: He is answering it, it seems to me. You have asked him if he has a recollection.

A I have no specific recollection of any bill that far back, but I know that I did work at that time where I used this sort of material and I ordered it and told them to go down to this fellow and buy it, don't you see?

Q Told whom? A The men that I employed about the work.

Q Whom did you employ? Whom did you tell? A Some of the bell boys that were working there did this work.

Q You can't remember who you told? A I can get the names.

Q Never mind what you can get. You can't remember who you told? A I can't.

Q Who is it? A Bell boy there by the name of McConnell.

Q You now recall it was McConnell, eh? A I wouldn't say for sure. I say I had a bell boy there by that name.

Q I am asking you whom you told? A As near as I can remember, I told him.

Q In 1925, eh? A Yes.

Q Now, what is there about the check that is marked D. 207 that enables you to say what

it was for and what the material was used for? A Well, I didn't pay this fellow anything except—didn't pay him for anything except materials used in the hotel, paints. I wouldn't give him any money for anything else. That is how I know that was paid for paints, had no other dealings with him, didn't owe him any money.

Q You have no recollection at all of giving him that check as a matter of fact, do you? A Oh, yes.

Q What? A I remember giving him the check, yes. Surely, I wouldn't have signed it. I signed it.

Q I have no doubt you signed it. Do you remember giving him that individual check? A I don't know whether I give it to him or sent it to him.

Q You don't remember the occasion, do you? A I remember making out the check, yes. I don't remember whether I give it to him or mailed it to him.

Q What year was that? A Tells you on the check there, 1923.

By Mr. Starr.

Q Do you know Joseph J. Schultz? A I do.

Q What was his business? A Paper hanger.

Q Did he do any papering at the Hotel Princess? A He did.

Q And did he render any bills for it? A He did.

Q I show you a bill dated June 14, 1922, another one dated June 30, 1922, and another one dated May 20, 1922—of course, that will have to be omitted; that is, before the 1st of June—showing you the two dated 14th of June and 30th of June, 1922, and ask you whether you

have any recollection of Schultz doing any paper hanging at the hotel on the dates indicated by those bills? A Yes, sir; I do.

Q And were those bills rendered? A Yes.

Q Paid by you? A They were paid.

Q Would you say whether or not the work shown by those bills was done by him? A The work was done.

Q What kind of work was it? A General paper hanging and fixing up the walls as he went along, sizing and one thing another.

Q Was that work necessary for the preservation of the hotel or not? A It was.

Mr. Starr: I offer these bills in evidence.

(Bills admitted and marked Exhibits D. 254 and 255.)

Cross examination by Mr. McCarter.

Q Remember this work distinctly? A Fairly well.

Q Well, here is a bill dated June 14, 1922; when was that work done? A It was done about the same time. He generally rendered his bill when he had the job finished.

Q I asked you when the work was done? A Done just previous to that.

Q Well, was a balance due at the time, wasn't there, for previous work according to this bill? A Small balance, yes.

Q I ask you when the work on that bill was done, if you can tell. You don't know whether it was done after the first of June, do you? A No; that was done, the balance of that was done in 1921.

Q I know, but I mean the work on that bill, will you say everything positively that was done

between the 1st and 14th of June? A This was done on the 15th here, it says 6/15/—

Q What? A It says here 6/15 some work done, and I know this was done just previous to the rendering of the bill.

Q You haven't answered my question. You don't know it was done just— A No, I would have to see him and verify it.

Q Yes, exactly. Now, what work was done or what is this bill for that you say was done and necessary for the protection of the hotel? What was it? A Just general paper hanging.

Q What was it? A Papering some rooms and sizing some walls, put side wall on, there is put ceiling on that room, just generally.

Q What was the next two items you say were necessary in the preservation of this hotel? What were they? Can't read them, can you? A Sizing.

Q What? A That looks like sizing.

Q Mr. Rosecrans, will you tell me if you can't tell what the items are how you can say it was necessary for the preservation of the hotel? A I see sizing, that is necessary.

Q What is sizing? A That is what that means.

Q I know, but the third and fourth items on that bill, what are they? A This side wall, see.

Q Third and fourth items on the bill? A There is the third, that is side wall.

Q No, it isn't. A Yes.

Q One, two, three, four. A Here is the third here.

Q All right; take those two, then, there are two in brackets now, what are they? A That is oatmeal.

Q Oatmeal? A That means oatmeal paper, stands for oatmeal paper, it is a heavy paper; use it on the halls; and this here is—

The Master: Is that binder?

A Looks like binder.

Q Now, will you tell me how the paper and the accessories were necessary for the preservation of the building? A Well, the way the walls are there it takes paper to hold the plaster on because it was never whitecoated and it falls off in places, a lot of sand; you can rub it off with your hand, if it wouldn't be for paper there the whole thing would fall down.

Q I show you bill 6/30/22, marked D. 255, when was that work done? A I suppose—

Q You just suppose? A Just previous to the rendering of that bill.

Q That is all you can say? A He always rendered his bill right after he done the work.

Q Well, go ahead. A He wouldn't render that bill until the work was finished, so it must have been completed just about the time the bill was rendered.

Q Now, I refer you to the previous bill which is dated June 14th, isn't it? A Yes.

Q And it has an item June 15th on, so he did render the bill before the work was finished? A I noticed that; must be a mistake; couldn't have done it.

Q Then what basis is there for the remark that he couldn't render the bill before he did the work? A How can he?

Q He seems to have done it. You don't know, do you, Mr. Rosecrans? Do you remember now distinctly each of these? A Not distinctly, no. I couldn't.

Q You don't remember anything about it? A I remember the bills. I remember getting the bills from him and I remember he always rendered his bills as soon as he had the work finished. That 6/15 must be an error. Some of the bills I had here yesterday had 1927 marked on them, August, 1927; it is an error.

By Mr. Starr.

Q You say you remember receiving these bills? A Yes.

Q Now, will you say whether or not before you paid the bills you checked up to see whether the work was done? A Oh, yes; I inspected the work.

Q Do you know Edwin Smith, or, rather, Edwin Smith, incorporated? A I do.

Q Did they furnish any material? A They did.

Q To the Hotel Princess? A Yes.

Q What was that for, do you remember? A Lime and mortar.

Q For general repairs? A And sand for mixing the mortar.

Q I show you invoice marked D. 137 and I wish you would look this over and tell us for what purpose they were used? A The lime was used for mixing the mortar and the bags fifteen cents here for the bags, I suppose we got credit for that when we returned the bags, and the next bill was February 21st.

Q What year? A 1924. One bag tiger cement, that is the name for the patent cement.

Q What was that used for? A Cementing for the garage, garage floor. Two hundred pounds of sand, one bag cement, one dollar.

Mr. McCarter: We are not questioning, Judge, having him read them. Speak for themselves, I suppose.

A They are all for the same general thing, in patching up cement walks and driveway and general repair work throughout the house.

Q Was there any new work done with the materials as shown by the bills? A No, no new work. Fire brick here on this bill of September 12, 1925, was for the furnace.

Q What about the furnace, what was done to it? A The bricks were burned out and replaced.

Q I have a check here of $64.93 in payment of that bill referred to; is that the check by which it was paid? A Yes.

Q I notice a notation 700 fire brick— A Three bags fire clay.

Q Was that what was purchased? A Yes, that is right.

Q Will you say whether or not the work that was done and materials furnished by this concern, Smith, was necessary necessary around the place? A It was.

Cross examination by Mr. McCarter.

Q Now, you remember this all distinctly, do you? A Not distinctly. I remember the work being done. I remember I ordered it.

Q Ordered what? A I ordered the material.

Q You yourself ordered it? A I ordered some of it.

Q What is the fact about it? Did you order this material? A I called them on the phone and ordered most of it myself.

Q Now "1 bus. lime $1 and one bag 15c." A Bushel.

Q What was that used for? A Used in mixing mortar.

Q For what? A Making mortar to patch walls, walls fall down every once in a while, whole ceilings fall down sometimes.

By Mr. Starr.

Q Mr. Rosecrans,I show you Exhibit D. 3, under date of July 26, 1926, and ask you to examine those bills and tell us what portion of the items shown were used for repairs or new work? A There were keys, four key rings there that don't belong in there.

Mr. McCarter: Please answer the question.

Q What bill are you looking at now? A December 11, 1924.

Q What portion of that bill was used for the general repair work around the hotel, if any? A All except item here of twenty cents.

Q What is it for? A Four key rings. Another item four brass tags twenty cents.

Q What was the general character of the work for which this material was used? A Repairing keys and locks.

Q Was it used at the hotel? A Used on the hotel doors.

Q Go to the next bill if you have finished with that and give the date? A The tags that go on the keys, brass tags, some of those.

Q What is the date of the next bill? A Next bill is December 11, 1924, same date.

Q Indicate what portion was used for repairs to the hotel? A All except the keys for the drawers, cash register, for the cash drawer and changed combination of the safe, you know, combination of safe $1.50 and three items of electric lamps, that comes out.

Next bill is August 5, 1924, two keys for drawer locks comes out of that one, cash drawer. Four items of lamps comes out.

December 6, 1924, is all work on the rooms. Bill rendered on eleventh there are two trunk keys come out and two keys to Paul Jr. comes out of that. The rest goes on the roms, the bed rooms.

Q Why was it necessary to get these keys for the rooms? A The locks were worn out, keys and locks were worn out.

Q And did you have Mr. Lewis do any work other than that which was necessary? A No.

Mr. McCarter: I don't think that is a proper way to put it. That is a mere conclusion.

The Master: Mr. Rosecrans was there and in possession of the property; he ought to know whether it was necessary or not.

Q In other words did you do anything merely for the purpose of having Mr. Lewis work there? A No.

Q Why did you have him come there? A To fix the locks and the keys so people could use them.

Cross examination by Mr. McCarter.

Q Did guests ever carry keys away? A Some times.

Q And one dozen keys first floor, dozen keys second floor, dozen keys fourth floor, there is nothing about locks in them, how do you know they were not to supply keys that had been carried away or lost? A They were subsequent—

Q How do you know? A I know because I told them to make them in dozen lots that way so we would have keys in case they were broken or the locks went bad, so we wouldn't have to send for the man every time to put in, save time, it would save time to get the keys made in advance, don't you see.

Q That is what you say? A Yes.

Q Not that the keys were lost and taken by guests? A Once in a while.

Q So on June 10th— A Pardon me, I put sharp prongs on the brass tags so they can't, so that they know they can't carry them away.

Q For instance on this one, D. 4, a dozen keys fourth floor, dozen keys second floor, dozen keys first floor, you now say were ordered by you so when the locks did break, if they ever did break, you would have keys for the broken locks, is that right? Is that what you mean? A If they broke the keys or the locks we would have some keys to fall back on, wouldn't have to send for the man and have him to waste a lot of time. He charges three or four dollars just to come there without doing any work practically.

Q There is no charge for repairing locks on the 10th of June, is there, on that bill? A No, must have been all trouble with the keys, broken keys.

Q Or lost? A Might have been some lost. Wasn't many lost because sharp prongs on the brass tags, so they couldn't carry them away.

Paul C. Rosecrans, for defendant, direct.

By Mr. Starr.

Q Were the keys different at that time for each room or one key would unlock all the rooms on one floor? A At that time he was just changing, way the old keys, some times one key would open four or five or six other doors, but I had him put on different locks about that time. I think some of these bills are for that, to put on yale locks, so there was a different key for each lock.

Recess taken to 1:45 P. M.

Atlantic City, N. J., July 7, 1927.

Hearing resumed at 1:45 P. M.

PAUL C. ROSECRANS, resumed.

By Mr. Starr.

Q Do you know William Read, Mr. Rosecrans? A I do.

Q What is his business? A Repairing locks, lock smith.

Q Did he do any work at the hotel? A He did.

Q I show you certain exhibits; I wish you would look those exhibits over Mr. Rosecrans, they are from D. 139 to D. 148, and tell us what work shown on the invoices were by way of repairs to the hotel? A This one has no year on it. I guess the same year though.

Q If you know tell us when it was. A Keys, padlock, one latch and four keys, closet hooks, that doesn't belong there.

Q Which invoice have you there now? A I have April 15th.

Q What number, D. 148? A D. 148.

Q You are testifying from that are you? A Yes.

Q Tell which were used for repairs, which of the materials were used for repairs? A All except—

Mr. McCarter: I want to suggest to the Master that perhaps misunderstandings may arise from that. Those bills I should think would speak for themselves, padlock, keys, and things of that kind, counsel has the witness state that they are all for repairs That is one of the questions that will be at issue, I suppose. I am wondering if the more correct line of examination of this witness would not be whether or not the articles designated on the invoices were or were not used in the hotel. For instance, to call eighteen keys repairs is to beg the question.

Mr. Starr: I am perfectly willing to adopt the suggestion and let the witness describe what they were used for. That is the purport of the question.

The Master: It would perhaps shorten things up.

Q Take that first bill and indicate. A This is all repairs except that part.

Q Repairs to what? A Repairs to locks and replacing keys, eighteen keys, replacing keys that were worn out. A padlock there that doesn't belong there.

By the Master.

Q I understand you to say keys worn out? A Or broken or else were old locks on there and

they became worn out and then the keys couldn't be used, had a lot of trouble there.

Q I can understand how a lock could be worn out but hardly how a key could be worn out. For instance there is one I think I have used for seventeen years.

By Mr. Starr.

Q What do you mean by that, Mr. Rosecrans? The Master wants to know, wants to ascertain what the facts are? A We had these old rim locks on there, they were old when the house was bought and gradually became worse and the keys wouldn't fit these locks. I don't know whether the keys became worn out or whether it was the lock but there was something wrong with either one that the keys couldn't be used.

Q Go ahead now, take each one of the bills and explain. A There are some items on there that don't belong there, like padlock, hooks. I explained them.

Q Go to the next. A Bill, June 1, 1925, is the same thing, three keys to the pantry, key for the drawer, that doesn't belong there, key to room 128, 162, 203, 214, 327.

Q What are they used for? A They were the keys for these rooms that didn't fit or worn out.

By Mr. McCarter.

Q Keys worn out? A Or the locks worn out, either one. 34 key tags.

By Mr. Starr.

Q What were they? A Tags that fasten on to the keys so the guests can't carry them away, have right sharp prongs on them so they can't carry them away. The locksmith could explain in a few minutes what they are.

The Master: I know what those tags are used for.

A I mean about the keys wouldn't fit, whether it was the locks or the keys.

Q He has already testified. A July 28, 1925, 50 key tags, four pass keys, master keys to Yale locks, putting on two Yale locks.

Q These Yale locks were put on where? A On some of the maids' lockers or linen rooms. That is where we have them. Yale lock on store room in basement, the watchman, opening the watchmen boxes. Yale locks on closets, repairing locks on 246 and 162.

The Master: Is it necessary that all of these items be read off, Judge Starr?

Mr. Starr: My suggestion is that he eliminate, subject to the Master's approval, those items for which he makes no claim. That will simplify matters.

The Master: I should think that would shorten things. I have got to examine these vouchers anyway and eliminate what I think are not proper credits.

Q You eliminate from those bills, giving the date, those matters for which you make no claims. A September 1, 1925, is all locks and repairs to locks and keys. November 1, 1925, is the same thing. October 1, 1925, same thing except one item I have crossed off. August 1, 1926, is all repairs and new keys. Fifteen foot chain there comes out. July 1, 1925, keys and latches, three items to come off of this one.

Q Amounting to how much? A Amounting to three dollars. June, 1926, same thing, all repairs on locks store room. July 1, 1926, all on the same class, all repairs. That is all.

Cross examination by Mr. McCarter.

Q I notice almost every one of these invoices has charges, separate charges for keys. I don't suppose you have any personal recollection whether they were for locks or in connection with locks that were broken or whether the keys had been lost, do you? A A certain percentage of those keys were lost.

Q You have no idea which is which? A There is about, I judge, half of them were lost, but the locks were in bad shape.

Q Well, we have had about a dozen men fix those locks. Were they constantly in bad shape? A They were in bad shape when I took the house over.

Q This is about five years after the house was taken over; how long did the locks continue in bad shape? A Until we replaced them with new locks.

Q Did you replace them? A We did replace them in 1925.

Q In 1925 put on some yale locks, didn't you? A Put on yale locks.

Q Yale lock Paul Jr., what does that mean? A That was for his apartment.

Q His apartment? A I think I checked that. That doesn't belong in there.

Q Doesn't seem to be checked. Key to safe, what is that? A Key to one of the drawers in the safe. The safe belongs to the property, was there when I bought the hotel.

By Mr. Starr.

Q I suppose, Mr. Rosecrans, you can tell us whether or not, from your experience in the hotel business, it is necessary to have keys that work in a hotel, is that right? A Yes.

Q I show you a check dated August 7, 1926 for $59.50 drawn to the order of N. O. Read; do you know N. O. Read? Can you recall? A M. C. Read.

Q What was his business? A I made a mistake in the initials. This is the same man that fixed the locks for me.

Q Look at the notation on there. A No. That is the man that I bought the doors from, bought some doors from, some second hand doors.

Q What were the doors used for? A They were used for the rooms in the basement. We had a lot of doors on there on the old rooms that wouldn't fit when we put the new partitions in and I got these doors from him.

Q Now M. C. Read, where does he live? A He has a store house down at Arkansas and the railroad on the west side. He deals in second hand stuff, second hand material.

Q You bought some doors you say? A I bought some doors from him.

Q Do you remember the amount you paid him for those doors? A I paid him, I think it came to eighty some dollars, some other material I bought from him at the same time and he gave me credit for some bath tubs that were taken out of the hotel, some bath tubs that the tenants they had in there painted them when they became discolored, they painted the tubs where the lining was broken off, they painted them and they were unsightly and couldn't be used and I had to take them out and they lay around down in the basement and he bought them from me and gave me credit on the bill. I think there were five or six tubs.

Q When were those tubs removed, do you remember before 1922 or afterwards? A They

were removed in 1922 and 1923 and 1924 and I stored them in the basement as I removed them and replaced them with new tubs.

Q These doors that you bought from Mr. Read, were used for what purpose? A For the basement rooms and some other rooms upstairs where the doors had worn out, used to be a bar in connection with the place and used to go down in the bar and get drunk and one fellow would get in the room and he would lock the other fellow out and he would bang on the panels with his fist and about twenty-five doors where the panels were broken and several of them had to be replaced, that is what I bought these doors for and the basement rooms.

Q And used for that purpose? A Used for that purpose.

Q Tell me whether or not these rooms in the basement the doors that were used in the basement had reference to the change in the location of the rooms as you have testified to? A Yes, I had to change the partitions and the old doors wouldn't fit.

Q And you paid the difference between the entire bill and the bath tubs which he purchased how much? A $59.50.

Q Is that the check you have here? A That is the check I have here.

Cross examination by Mr. McCarter.

Q When was this tea party down in this so-called bar room that you refer to? A Well, that was previous to my time there.

Q I thought so. You respected Volstead, didn't you? A Sir?

Q You respected Volstead in your place? A I did.

Q Were you present when this altercation took place and their fists went through the panels and all that? A I was in there one night before I bought the place to look it over, you know, and I saw some of this going on and one thing.

Q Didn't you have to steal your way in that hotel in order to look at it? A No, I just got a room.

Q What? A I hired a room. I didn't steal myself in. I hired a room and paid for it.

Q It was while you were there on this occasion that this fracas occurred? A I saw some of it.

Q Is that so, while you were there on that very occasion when you hired a room and pretended to be a guest in order that you might inspect the hotel that you intended to buy that this fracas took place? A I saw a fellow smash in a panel.

Q No doubt about that, is there? A No doubt about that.

Q That was in 1919, wasn't it? A That was in the fall of 1919.

Q Was the liquor law in vogue then? A Sir?

Q Did your predecessor violate the liquor law? A Did my predecessor violate the liquor law?

Q He would be selling liquor at that time in 1919 there? A I don't know whether they were selling it but they were getting it down stairs, seemed to come up there loaded.

Mr. Starr: Note on the record that the Schedule "O" in the new list is eliminated and we will substitute for that M. C. Read represented by this check. There is a Wil-

liam Read in the new which is O. and M. C. Read will have to be a new schedule.

(Schedule W, Robert Robertson.)

Q I show you invoices marked Exhibits 4D. 120 to 124 and ask you to look over those invoices and tell us for what purpose the materials were furnished and labor performed as shown thereon? A This bill April 19, 1923 is repairs to old work, replacing a lead bend under toilet in the bath room. April 19, 1923 turning on water on the heating plant and plumbing fixtures and repairing same throughout the hotel. That is all in connection with the old work turning on the water in part of the house, getting it ready for use. All the same thing.

Mr. McCarter: What is all the same thing?

A All these bills are the same types, same work.

Q Be more explicit about what. What do you mean by turning on the water? A The water had been shut off in 1922 and we are turning it on here in April 1923 and these repairs had to be made to different pipes where they occurred and where some of the fixtures were worn out and this all had to be done to get the house ready to use. And this, it is all one job.

Q What is the date of that? A April 19.

Q What year? A 1923. Here is one bill in June 8, June 18 and June 5.

Q What are they for? A All repair work, toilets and wash stands, water tanks, &c. gives the room numbers here, &c.

Q Was that work done by Mr. Robertson? A It was done by Mr. Robertson, yes, sir.

Q At whose direction? A Under Mrs. Rosecrans gave the directions for some of this and I gave the directions for some of it.

Q The bill amounting to $373.41; had the heating plant been in operation that winter? A We started in the spring when opened the hotel up.

Q Were you there when that work was done or were you in Californai in 1923? A I came back from California May 27, 1923 and this work here in June I know something about. The other work Mrs. Rosecrans had done.

Q She was at the hotel—

Mr. McCarter: When you say you were in California how do you know about that?

I object to him saying what occurred at this place when he is in California. He is mistaken about it. I don't want the record, which is so cumbersome, to be filled with stuff that must be necessarily improper. What does he know what Mrs. Rosecrans did when he was in California?

A When I came back I talked to this man and asked him what he did and he showed me what he did and I inspected that work and saw that it was done.

Q Did you have any talk with Mrs. Rosecrans about it? A Well—

Q Did she say anything to you about the work being done? A She said she had it done. She said the house was in bad shape when she came back there and her and this fellow Devine, that the work was necessary, and I looked it over and I asked this man Robertson and he told me what shape it was in and I knew from my experience that it was necessary to be done.

Cross examination by Mr. McCarter.

Q Now how much of the work on these bills was done when you were in California? A All

this April 19th, all this work done in April and before April, March and April was all done when I was away.

Q What was done then on these bills at all when you were there? A When I returned—

Q What was done on these bills when you were there? A Wasn't anything done on these bills when I was there.

Q So that these bills you have just been speaking about, Robert Robertson, there wasn't a stroke of work done for which these charges are made while you were there? A No.

Q Now don't you know as a matter of fact that Mr. Scull ordered Robertson to do some work? A I only know what the man told me.

Q Who told you? A The plumber, Mr. Robertson.

Q What the plumber told you, is that right? A I gave him directions about some other work and he told me—

Q One moment, the plumber told you what you know about it, spoke of it, is that right? A He told me that she ordered it.

Q That is your information? A Yes, sir.

Q All right; very good. Now the bills include charges for both turning on and turning off the water, don't it, turning it off in the fall and turning it on in the spring? A Yes, some was turning it off.

Q And some turning it on again? A Yes.

Q That means to say the plumber has to spend some time in getting ready to turn on water and then actually does turn it on? A Yes.

Q And in the fall when you close up he reserves the operations and gets ready to close if off and closes it off, blows out the pipes and things of that kind? A Yes.

Q Those bills include that? A Yes.

Q They also include some repairs that were made at or about the same time, is that right? A Yes, always a lot of repairs in connection with turning the water on.

Q Sure. Now— A But these bills, I remember distinctly in June, I remember going up in the room with him and examining that work and I ordered that myself, some of that myself,

Q What? A I ordered some of that work in June when I was home.

Q Then there are some more in here, are there? A June 18. I remember this job here in the bath room, June 5, I was home then.

Q Do you remember that, too? A June 8?

Q Remember that? A June 8.

Q Remember all this, do you, every detail there? A I don't remember every detail, no.

Q By the way, didn't you tell us yesterday that the only times you were in Calfiornia were in the winter of 1924 and 1925 and winter of 1925 and 1926? A No, not 1924 and 1925. In 1925 and 1926 and 1926 and 1927.

Q You didn't say anything about 1923, did you? Don't you remember testifying yesterday, sir, and I said you were in California and Judge Starr said no, it was only 1925 and 1926 and 1926 and 1927 you were in California and I corrected myself when I went and saw the testimony? Don't you remember that? A Well, that is all in the other testimony.

Q I don't care anything about any other testimony. I want to know whether you don't remember that yesterday your saying that the only two years you were in California were 1925 and 1926 and 1926 and 1927? A I thought that referred to a certain period of time. I think you mentioned a certain period of time there.

Q Now as a matter of fact then what years before those two years were you in California? A 1921 and 1922 with Mrs. Rosecrans and 1922 and 1923 with Mrs. Rosecrans, she joined me there later. 1923 and 1924 I wasn't there. 1924 and 1925 I wasn't there.

Q How late in 1923 were you there? A Until May 27, I returned here May 27.

By Mr. Starr.

Q Now, Mr. Rosecrans, you were asked generally about these bills and you stated to Mr. McCarter that they had reference to work that was done while you were in California; did you mean that or not? A This work—that work?

Q Indicate the dates of the bills that were done when you were back here and did supervise the work and knew about it personally? A These bills here June 5, June 8 and June 18, some of that work was done when I was here.

Q Now the bill of April 19, 1923, which is D-121. A That was ordered by Mrs. Rosecrans; done before I came back.

Q What talk, if any, did you have with Mrs. Rosecrans with reference to the items on that bill or incurring that bill after you came back from California if you had any, tell us what it was? A I just asked her what she, why this had to be done and she told me that it was necessary, the house was in a terrible condition and the work had to be done.

Q When did you have that conversation with her? A After I came back.

Mr. Starr: In the schedule, if the master please, is included a bill of October 27 amounting to $69. We have since discovered that Mrs. Rosecrans paid that by check dated

November 7, 1922 and, of course, we don't make any claim under that. The bill is here, also the check signed by Mrs. Rosecrans.

(Schedule Y. old.)

Q Mr. Rosecrans, I show you Exhibit D-9 under date of,—that is the exhibit date, 7/26/26, the bill dated July—1926, and ask you if you know the work which Mr. Powell did for which he makes that charge in the bill? A That was repainting the window frames and refitting the window sash, and general painting throughout the house on the outside. I think the whole front was painted. The whole front of the house is included in that too.

Q Do you remember when the window frames were painted? A During the winter of 1925 and 1926.

Q And when was the other work done? A Some of it was done June 10, May and June, 1925, April, May and June, and some here in September, 1925.

Mr. McCarter: I think this is directly hopeless. We are not gaining a thing by this.

The Master: I agree with you.

Mr. McCarter: Not a thing. We can read these bills just as well as he.

Q I am trying to get your recollection as to when the various items of work were done independently of the bills, if you can give it to us? If you can't say so. A It was done three or four months pervious to the dates on these items.

Q You say he painted the front of the house? A He painted the entire front of the house.

Q And the window sash? A He painted all the window sash.

Q What else did he do? A Reglazed the glass, put fresh putty in on all the sash, the lights were falling out.

Q What else did he do? A Repainted the windows, the frames, that held the glass, that is all.

Q These are the four items of work that he did? A Yes, painted all the outside timbers that held the window frames in, that is the kind of work he did all over the house.

Q Will you say whether or not that work was necessary? A It was.

Q Why was it necessary? A Frames were rotting away. The woodwork was going to pieces and lights were falling out. The wind would come along and blow the lights out, lights of glass.

Cross examination by Mr. McCarter.

Q Now in February 19, 1926 you were abroad, weren't you, you were in California? A Yes.

Q So you were not here when that work was done, were you? A I left word—

Q Were you here when that work was done? A No.

Q Some of this work was on that new work, wasn't it, that Powell did? A Not on that bill, no.

Q Sure about that? A I don't think so.

Q There was a lot of new work done in 1925, wasn't there? A In the spring of 1925. Some of that may be in that.

Q Now you don't know, do you? A Well, I know he did that work.

Q He did what work? A He did that work on this—when I re-arranged the partitions there.

Q He did all that new work? A He did that, yes.

Q Now how on a bill do you know what is included in these bills? Will you please separate these certain amounts—I ask the master to look at that exhibit and realize that this witness is pretending to say what the work was and part of the time he was in California. A I know the work was done when I came back, the work was done, and I know that he had been working there, and I had my boy to look after the work when I was away and I know the work was done.

Q You telegraphed to have it done, didn't you? A I did. I gave him the work before I left. I told him to go ahead with the work before I left.

Q And you now say that part of it, at least, on the 1925 bill was for the new work, don't you? A I am not sure of that. I don't know whether that is included in this bill. I know there was new work done there in the spring 1925.

Q Yes, exactly. Now when the property was first bought, Mr. Rosecrans, and before you opened for business wasn't it entirely repainted? A No, not entirely, no, couldn't afford that.

Q How much repainting was done? A The front rooms had been stained a dark—

Q How much work was done? Please answer my question. Not had been done.

Mr. Starr: He is trying to answer it.

Mr. McCarter: He was saying what had been done.

A I guess in over sixty rooms in front of the house.

Q How about the painting on the outside? A Paint off and we painted, the front was painted, peeled off the next fall, used a poor paint and it peeled off and was unsightly.

Q How about any glazing being done? A There was some glazing done, had to be done when the window lights were out entirely, about twenty lights out entirely, had to be glazed.

Q That is the first year? A That is the first year.

Q Had all the window lights gotten out at this time all of the work was done for which this charge was made in Exhibit D. 9? A All lights?

Q All lights? A A good many of them lights you can shake them and the windows rattle.

Q All lights? A Biggest majority of them, yes.

Q Gotten so between the first year and when? A Oh, no, they were loose when I bought the place, they were in bad condition.

Q They were tightened up, weren't they? A They were in bad condition then.

Q They were fixed up? A No, not all of them.

Q Why did you fix some and not others? A I just did what I had to do.

Q Then you don't say you put it all in condition in 1920? A Not the entire house, no, I couldn't put it all in condition.

Q Had window panes open? A No, they wasn't open. I put it in a livable condition so the house could be used, that is all.

Q All right; very good.

By Mr. Starr.

Q Now, Mr. Rosecrans, before you went to California during the time you were there that this work was done as you have testified did you examine the work before you left? A I did.

Q And what was its condition? A It was in bad shape.

Q In what way? A The window lights were loose and the paint was all peeled off from the outside and was weather beaten, wood was rotting away in a good many places, and something had to be done.

Mr. McCarter: Can you tell us when that was now?

Q You are speaking of what year? A That was in the fall of the year.

Q What year? A 1925 as near as I can recollect, fall 1925.

Q When you came back did you make an examination to ascertain whether there had been any changes made? A I did.

Q And what did you find its condition then? A I found out he had done the work as he agreed to do, the windows were repainted and reglazed and in fairly good shape.

Q Tell the master whether or not you had any work done there that wasn't necessary for the preservation of the hotel? A No. I could do a whole lot more if I could afford it.

Q Now the re-arrangement of the rooms in the basement, you have said that was in the spring of 1925? A Spring of 1925.

Q And do you know what portion of the painting was done by Powell in the re-arrangement of those rooms? A He painted the inside,

that is all there was, the inside, just the window frames and doors and woodwork around the base.

Q The baseboards? A The baseboards.

Q And window trim? A And window trim.

Q And what else? A And door trim.

Q What about the doors? A And doors.

Q There are how many rooms he did? A Eight rooms and the linen room, we did the linen room.

Q What is the size of that room? A About eight by twenty. It is irregular in shape.

Q How many doors or windows in that; windows in that? A Two windows in the linen room.

Q And one door or how many doors? A Two windows and one door and he did the two rooms that replaced the linen room, put a partition in where the linen room used to be upstairs next to the kitchen and he did that.

Q Was or was that not done at the same time? A About the same time, within a month or two.

Q Spring of 1925? A Yes.

(Johns-Manville.)

Q I show you check marked D. 133 drawn by you to the order of Johns-Manville, Incorporated, for $45. What did you pay that out for? A For pipe covering, asbestos covering.

Mr. McCarter: I didn't hear you.

A Pipe covering, steam pipe covering.

Q And the pipes were located where? A In the basement.

Q Why was that done? A Te protect them from the cold, conserving the system.

Q When was the work done? A Done in the fall of 1924.

Cross examination by Mr. McCarter.

Q What had been there before? A The same thing but had rotted away.

By the Master.

Q You say that was pipe covering, Mr. Rosecrans? A Pipe covering, asbestos pipe covering.

Q It rotted away? A It had disintegrated, sort of rotted away in places, so we had to remove it.

By Mr. Starr.

Q Did you personally inspect it before the work was done? A I did. In some places wagons coming in the driver had knocked some of it off.

Q Where were those pipes? You say they were in the basement? A In the basement, some went through the driveway, some were back of the engine room.

Q You spoke about driveway, is that an open driveway or does a part of the hotel extend over it? A The driveway, the largest part of the driveway is under the hotel, right directly under the hotel, about twenty feet outside of the hotel and remainder is under the hotel.

Q The part that is in under the hotel is that the rear or the front? A The front as you go in from South Carolina avenue.

Q Then you have twenty feet clear space, you say? A Twenty feet clear space.

Q Balance goes underneath the hotel? A Balance goes under the hotel.

Q That driveway is used for what purpose? A For bringing in supplies, materials and coal. All the trucks drive in there.

(Scott.)

Q I show you exhibit D. 138, which is a check with bill attached to the order of L. Scott; did Scott do any work at the hotel? A He did.

Q Will you say whether or not the work he did is shown by the invoice? A Yes.

Q What was the general character of that work and when was it done? A It was done in the fall of 1924 and consisted of stripping the windows with weather strips, some of the doors of the cold rooms, so the cold air wouldn't go through the house.

Q Why was it done? A To keep out the cold.

Q What part of the house was it? A Both front and rear.

Cross examination by Mr. McCarter.

Q The weather stripping was done on the windows and also on the doors of rooms where there was no heat, wasn't it? A Not on the windows where there was no heat but on the doors.

Q That is what I said, on the windows and also on the doors of the rooms where there was no heat? A No, it was done on the windows where there was heat and on the doors

on the outside of the doors where there was no heat.

Q That is just exactly what I said twice. Now that was to make it more comfortable for the winter guests, wasn't it? A Well, it made it more comfortable for the whole house. It was done to keep the house warm.

By Mr. Starr.

Q Where were those doors, outside doors or interior doors? A Interior doors. The doors where you enter the room. There is a big space underneath and the windows in those rooms were not stripped so whenever there was a wind from that direction the cold air came through this one room, under the door and through the house.

(Phillips, L., new.)

Q Do you know James J. Phillips, Jr.? A Yes.

Q Did he do any work at the hotel? A He did.

Q Under your direction? A He was.

Q What was the general character of the work? A Repairing locks and keys, making new keys.

Q Why was that work necessary if it was necessary? A A lot of the keys wouldn't fit some of the locks, some of them had been carried away.

The Master: Same thing apply to this bill as applied to the other locksmith bill?

A Yes.

Paul C. Rosecrans, for defendant, cross.

Q Substantially the same character of work? A Yes, he made a lot of duplicate keys, too.

Q You say some of the doors had the Yale locks installed on them? A All of them.

Q After the Yale locks were installed what happened to the old locks, were they discarded? A They are still on the doors, still there.

Q Are they used? A Not used now, no.

By the Master.

Q Aren't those locks used for the purpose of catching the door as it is closed or turn the handle of the door? A The handle is fastened on the old locks.

Q And the latch that catches the door? A Dead latch is on there, yes.

By Mr. Starr.

Q You mean the knob is on the old lock? A Yes.

Q Was there any knob installed in connection with the Yale locks? A No, they were put right above the knob.

Cross examination by Mr. McCarter.

Q Can you open the Yale locks by a handle as well as by the key? A No. You have to open them both at the same time.

Q Then the old lock is not superseded, is it? It is part of the knob and you have simply put in an additional Yale lock? A The old lock is useless, except for the knob that is on it.

The Master: Mr. Rosecrans, if you will answer the questions yes or no we will get along a whole lot faster.

Q The brass tags were for the keys, weren't they? A Yes, sir.

Q Paper tags, what were they? A For the keys.

Q Assorting keys, what does he mean by that? A Sorting them out in rotation, to get them—I don't know just—

Q Don't know what he means, do you? A I don't know what kind of a system he had arranging keys.

Q Bending tag, what did he mean by that? A They were cut in on the sides and then he bent the edges up so that—

Q Tags were for the keys? A For the tags for the keys, yes, he bent the points up so people would know that they got them in their hand and wouldn't take them away.

(A. R. Smith, miscellaneous, old.)

By Mr. Starr.

Q Do you know Alfred R. Smith? A Yes.

Q What is his business? A Paperhanger.

Q I show you checks that have been introduced in evidence marked Exhibits D. 149, 150 and 151, and I ask you whether or not Mr. Smith did any work of paperhanging in the hotel? A Yes, they were paid for paperhanging.

The Master: Won't you please answer yes or no, Mr. Rosecrans? You are wasting a lot of time.

A Yes.

Q What do the checks represent? A $191.70.

Q For what were they given? A For paper hanging.

Q What part of the house? A As I recall it the front section of the house mostly.

Q Why was the paper hanging done? A It was necessary. That paper had become loose, some of the walls were cracked and the walls were in bad shape and the paper came off.

Q I notice, Mr. Rosecrans, that there are quite a number of items with respect to papering not only Smith but one or two others, what have you to say as to whether or not you did any papering that was unnecessary? A I did not.

Q Why was all this papering done? A To preserve the property; to preserve the rooms and the appearance of the place; had to be done.

Q Did you or did you not personally inspect the rooms before the work was done? A I did.

Q Did you inspect the rooms after the work was finished? A I did.

Q Was the work for which Mr. Smith was paid done by him? A It was.

Q You spoke this morning with reference to there being no white coat on the house, I mean white coat of plaster; did that apply to the entire house or only a portion of it? A Entire house.

Q Just simply had the brown coat of plaster and that is all? A That is all. There were a few rooms in the front part of the house that looked as though they might have been white coated but all the rest of them had not.

Q How many of those? A Probably about a dozen.

Q Did or did not the paper in the various rooms become discolored by use by the guests? A Well, in some places it was, the beds, moving the beds would knock a hole in the wall.

The Master: He didn't ask you that, Mr. Rosecrans.

Q I asked you about discolored? A No.

Q Was this new papering done because the paper was discolored or because the walls were damaged? A Because the walls were damaged, the plaster was a very thin coat of plaster on there and it would come out in patches and bulge out and crack.

Cross examination by Mr. McCarter.

Q Some times you would have patches put on, wouldn't you? A Yes, where—

Q Your answer is yes? A Yes.

Q Well, was Smith putting on paper when Peck was there? A No; he came before Peck.

Q He came before Peck? A Yes.

Q Have you any idea for what work these three checks were given? A They were for work that I ordered him to do.

Q Well, what work was it, Mr. Rosecrans? A Papering rooms in the, mostly in the front part of the house.

Q Where else? A Some few rooms in the rear of the house.

Q What year? A It was done just previous—

Q What year? A As near as I can recall 1923 and 1924.

Q Done in the month of August, month of June and month of August again while the guests were there, busy season? A No, they were done in the spring of the year up to, I judge about, all finished by July 15.

Paul C. Rosecrans, for defendant, direct.

By Mr. Starr.

Q Do you remember whether there was any paperhanging done with respect to the eight rooms in the basement which were built by rearranging the rooms which were there before that time? A Yes.

Q Who did that papering, do you know? A Mr. Peck.

By Mr. McCarter.

Q Who do you say came first Peck or this other fellow? A Smith came first.

By Mr. Starr.

(Schedule N. Birkheimer.)

Q Do you know John R. Birkheimer? A I do.

Q Did he do any work at the hotel? A He did.

Q What kind of work? A Painting.

Q What portion of the hotel did he paint? A He painted the front of the house on South Carolina avenue and the porch, porth railing and sun parlor and the floors, sun parlor floors.

Q Why was that painting necessary, if it was necessary? A The old paint had worn off.

Q Did you personally examine the condition of the painting before he did the work? A I did.

Q What have you to say as to whether or not it was necessary? A Well, it was a question if, how the water was getting in on the woodwork.

Cross examination by Mr. McCarter.

Q What is Birkheimer's business? A Painter.

Q He board with you? A No; he had a room.

Q Well, he had a room? A Yes.

Q For how long? A For several years.

Q Was he one of your guests? A Yes.

Q And you took out his room rent in paint? A Some. He would owe me for room rent and whenever I had any work to do I would give him the work and deduct it from his bill.

By Mr. Starr.

(Murtland, T., new.)

Q Did you buy any materials from John Murtland Company that went into the hotel? A I did.

Q I show you invoices marked D. 202, 203 and 204, tell us for what purposes the materials were used? A The sheet rock was used to replace plaster on the walls that came off, back of—

The Master: Won't you please tell us what all of the material was used for, Mr. Rosecrans?

A Two items on here, one bag cement, I can't make out, looks like cement and one four pieces of sheet rock, they were used for different jobs.

The Master: Look at all the bills. I think that is what Judge Starr wanted you to do.

Mr. Starr: He is taking the first one and explaining the first one and I suppose he will go to the others later.

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A It was all used in general repairs replacing plaster on the wall and patching up where it was necessary the walls.

Q Have anything to do with any new work? A No.

Q Did you personally examine the conditions that existed before the repairs were made? A I did.

Q Will you say whether or not the materials that were furnished were necessary for the preservation of the property? A Yes.

By Mr. McCarter.

Q What was it you bought of Murtland? A Cement and sheet rock, sand and lime.

Q Well, you are speaking now of these three invoices? A No. I bought at different other times.

Q I supposed you were testifying about these. Is there any sand or lime or cement in these three bills? A No, just sheet rock and cement on there.

Q What? A Just sheet rock and cement on there.

Q Where do you find sheet rock? A Here (indicating) "4 pieces sheet rock."

Q What is that next thing? A I can't make that out.

Q Don't know what that was even, do you? A As I said before it looks like—

Q Yet you don't know what it was and yet you said—

Mr. Starr: Please let him answer the question.

Q Look at it long as you want to.

Q It looks like some sort of a name they have for cement that comes in bags.

Q How do you know? Can you tell what it is? A I can't tell from the name, think it is some kind of cement.

Q You do, eh? A I have seen that name before.

Q Who ordered it, you personally? A Paul Jr. ordered that.

Q What? A My boy ordered that.

Q Your boy ordered that, so you didn't order it, how do you know where it was used? A I told him to order it.

Q How do you know where it was used? A I saw it used.

Q Well— A On the walls.

Q What was it used on the walls? A This sheet rock.

Q How about the cyanide of potassium, whatever it is there? A If that is cement—

Q If it is, yes, if it is cement, go on. A If that is cement it was used in patching some holes in the walls.

Q Suppose it isn't cement? A Then I don't know what it is for.

Q Then don't know what it is? A No.

By Mr. Starr.

Q It is syanize. Can you say this, Mr. Rosecrans, whether or not any materials which were purchased from the Murtland company were used anywhere else except in the hotel? A All used in the hotel.

Q Do you know Charles Rooney? A I do.

Q Did he do any work at the hotel? A Yes.

Q What character of work did he do? A General repair work, fixing transoms and doors.

Q His business was what or trade? A Carpenter. Took out window sash, put in new window sash, new window frames, when necessary.

Q You have spoken about transoms; were there any transoms in the hotel when you purchased it? A There were.

Q Did Rooney put in any new transoms or repair the old ones? A He put in new ones where there were none when I got the hotel and he repaired the other ones.

Q What did he do in the way of repairs? A They became swollen and didn't work right. There is a handle there supposed to raise them up and down and that becomes jammed so people can't use them and he has to overhaul the whole thing, plane it off and take it all apart so people can use it.

Q How many new transoms did he build? A I suppose might have been in the neighborhood of twenty or twenty-five.

Q What did he do with reference to the door to build the new transom? A Oh, the opening was there for the transoms but there was no transom there, the opening was there.

Q What was there? A Just an opening over the door without any glass in it, without any light, without any frame.

Q What he did was to fill the opening? A Filled the opening.

Q With a transom sash? A With a transom sash and rod to open it.

Q And that you say, were how many of those? A I judge in the neighborhood of twenty or twenty-five.

Q Now, Mr. Peck, you know him? A Yes.

Q He did some paperhanging? A Yes.

Q Did you pay him for any paperhanging that he didn't do at the hotel? A No. Haven't paid him all what I owe him yet.

Q Do you know what papering he did? A I do.

Q What have you to say as to whether that was necessary or not? A Yes, I know it was necessary. I inspected the rooms before I went away and I told them at the hotel what rooms I wanted done.

Q When you came back what did you observe with reference to the rooms? A When I came back they were done.

By Mr. McCarter.

Q Peck said much of his work was done in papering new rooms; do you stand by that? A I didn't get that.

Q Peck said that much of the work that he did was for papering the new rooms, do you stand by that? A He did paper the new rooms, yes, sir.

Q He said also much was for patching halls and rooms where boarders had injured the walls or torn the paper; do you stand by that? A Well, the walls had been injured. I don't know whether it was done by the boarders or the plaster was very loose—some times just—

Q Sure fall itself, fall right out? A The whole ceiling fell down last week just from the rain getting in.

Q He also said much was where careless boarders had flooded the rooms; do you stand by that? A I don't know as they had flooded the rooms.

Q Don't know about that? All right.

Paul C. Rosecrans, for defendant, direct.

By Mr. Starr.

Q Now you say Peck papered the new rooms; which new rooms do you refer to? A In the basement.

Q Those that were installed by the rearrangement of the old rooms? A Yes.

Q Did Peck put on the original paper in those rooms or did he replace the old paper with new? A He put all new paper on.

By Mr. McCarter.

Q Those were not bed rooms originally, were they? A In the basement?

Q Yes. A Yes.

Q Same rooms were bed rooms? A Same rooms were bed rooms or had beds in them; that is the reason I had to tear them out. The flooding as I call it was done by bursted pipes. The guests said they didn't do it. I never could find out. I never could get any damages from them.

The Master: No question, Mr. Rosecrans.

By Mr. Starr.

(Yeutter.)

Q Now, Mr. Rosecrans, have you recently examined the invoices of Mr. Yeutter which were marked, those shown in the old schedule? I hand you those invoices. You have gone over those, have you not? A I have gone over these, yes, sir.

Q Will you say whether or not the work and labor which is referred to in the schedules in the invoices which you have were actually fur-

nished and performed at the Hotel Princess at the times indicated? A They were.

Q And generally what work did Mr. Yeutter do? A General repair work, supplying materials for the work.

Q He is a plumber, isn't he? A New toilets, new bath tubs. He is a plumber.

Q Were there any new work installed by him after June 1, 1922? A Yes.

Q What was the new work that he did? A Put in some new toilets and new tubs, new basins, basins and urinals.

Q Any new work? A Some sinks in the kitchen that had worn out.

Q My question has reference to new work which didn't take the place of anything that existed before. Limit your answers to that character of work as distinguished from replacements or repairs. A He put basins in the rooms in the basement where there were no basins before.

Q What else? A And he also put four or five toilets in there where there were none before. We had no toilets, only one toilet in bad shape down there and the health inspectors told me I would have to have more toilet facilities and better toilets.

Q What about bath tubs, put in any bath tubs? A Put in two tubs, three bath tubs where there were none before.

Q There were three bath tubs installed where there had not been any before? A Yes.

Q What part of the house were they placed? A In the basement and on the first floor, one on the first floor where the linen room was.

Q That was converted into a bed room you say? A Yes.

Q So there were three tubs? A Yes.

Q Why were those new tubs installed? A We needed more baths.

Q Were they private baths or public baths? A Private baths.

Q They were private baths? A Yes.

Q Were the baths in the basement private baths? A Yes.

Q Now with reference to the toilets, how many were there where were they located? A There were two put in the basement and there were three or four, four on the first floor where the kitchen is located, where the linen room, in the linen room, there were no toilets there at all and I had to provide toilet facilities for the people on that floor.

Q Were there two toilets in the basement in connection with the private baths rooms? A No. One in connection with the private bath and the other not.

Q One is a public toilet? A One is a public toilet, two were public toilets, that makes three downstairs, three toilets downstairs.

Q How many in the first floor? A Three or four upstairs.

Q In the second floor, when you say upstairs you mean the second floor or first floor? A The kitchen floor where the linen room was.

Q It is not a sleeping room, is it? A That is a sleeping floor floor too, there are ten or twelve bed rooms on that floor.

Q Is it the same floor on which the lobby is located? A Same floor as the upper lobby, upper parlor.

Q Now these toilets on that floor that you have been speaking about, were they installed

in connection with private baths or public toilets? A Public toilets.

Q Why was it necessary to install basins in public toilets? A Because there were no public toilets on that floor and two of them were for the employees and the kitchen and dining room, they had no toilets at all, and those were for the guests, the other two were for the guests.

Q Why was it necessary to have the additional toilets on the first floor? A Because there were no toilets on that floor.

Q Now the basins, how many new basins did Yeutter install? A About ten or twelve.

Q What say? A Ten or twelve.

Q Where were they located? A In the basement and on the first floor.

Q How many in the basement, how many on the first floor? A Probably eight on the first floor, eight in the basement and about four or five on the kitchen floor, lobby floor.

Q That would be twelve or thirteen, is that right? A Yes.

Q Were those basins installed I suppose to have running water? A Hot and cold running water.

Q Were they installed in connection with the rooms which were made by rearranging the old rooms? A Yes.

Q Where were the basins in the upper floor located? A Three of them were in the rooms, one in the bath room, two in the room—no, there is one basin replaced an old basin up there, two of them were located in the rooms.

Q Why was it necessary to build new basins? A The rooms had to have running water.

Q Had you installed basins in the upper part of the house before 1922? A Yes, sixty of them, sixty-five.

Q What, if anything, did Mrs. Rosecrans have to do with reference to the installation of those basins?

Mr. McCarter: Object to as immaterial; she agreed to that.

Q Now going over the bills which you have there of Mr. Yeutter, with the exception of the new work that you have indicated, was all of the other work done by him? A Yes.

Q Was that work necessary or not? A It was necessary.

Q Why was it necessary to have the other work done? I am speaking now of the work that was done with reference to old work, old installations as distinguished from the new? A Well, the pipes were corroded and worn out, in some places some of them would burst, and the traps underneath the stands would wear out and the pipes underneath the toilets the toilets would get out of order, the waste pipes become stopped up.

Q Do you know of your own knowledge that the work as indicated in these invoices was actually done by Mr. Yeutter? Did you check them up or not? A I looked over them and it was done by his employees.

Cross examination by Mr. McCarter.

Q You looked over these invoices carefully, have you? A I have.

Q Since when, Mr. Rosecrans? A Well, I have looked them over recently in the last week or so.

Q And with the exception of what you call the new work you would say now that they

are all necessary for the proper repair of the house? A All with the exception of some that are marked here work that doesn't connect, work that doesn't belong with the house like fixing an ice cooler in dining room and things like that, coffee urn—

Q For instance there is work there for turning on water, isn't there? A Yes.

Q There is work there for turning off water? A Yes.

Q There is work there for clearing dishwater waste repair, isn't there? A Yes.

Q There is work there repairing range grate, isn't there? A I didn't notice that, but the range belongs to the house. It was there when I came.

Q That is there, isn't it? A Yes.

Q There is work there in connection with a plate warmer, connecting the plate warmer and making a table, that is there, isn't there? A There is a charge there for lining the table, the large slab table in the kitchen and the old lining had worn off. That table belongs to the hotel. It was there when I came.

Q And the plate warmer? A Plate warmer was there when I came.

Q About the charge in there repair to the plate warmer is taking care of the hotel for you? A Well, the—

Q For you?

The Master: Just answer yes or no.

A Yes.

Q Cleaning the potato parer, got that in there, haven't you? A That doesn't belong there.

Q It is in there, isn't it? A That is in there, yes.

Q Repairing the dish water drain? A Yes.

Q Repairing the coffee urns? A Yes. The large coffee urns belong to the house. They were there when I came.

Q Clearing the refrigerator drain?

The Master: Mr. Rosecrans, won't you please answer yes or no. If your counsel feels that you should qualify anything he will take care of you all right.

Q You have got charged for clearing the refrigerator drain, haven't you? A Yes.

By Mr. Starr.

Q Was the refrigerator in the hotel at the time it was bought? A Yes, sir.

Q Part of the equipment which you bought? A Part of the equipment I bought, fastened in there.

Q What? A It is fastened on to the floor of the kitchen.

Yuetter, E., new.)

Q I show you Exhibit D. 181, which has reference to work and labor performed by Mr. Yeutter from July 26, 1926, to June 28, 1927, and ask you whether you examined the same with the idea of telling us whether or not the work and labor there set forth was furnished by Mr. Yuetter? A Yes.

Q Furnished to the hotel? A Yes.

Q Now as distinguished from repair work, was there any new work that he did as shown by that invoice? A No new work.

Q Do you know of your own knowledge that the work and labor shown by those invoices were actually furnished and performed by Mr. Yeutter or some of his men? A I do.

Q And what have you to say as to whether or not the work and labor was necessary? A It was necessary, some of it was done when I was away but Paul Jr. ordered it done and I inspected it when I came back.

Q Part of it had been done? A Found out it had been done.

Q Will you look over that bill and tell me whether there are any items there that have nothing to do with the repair of the hotel or any of its equipment? A Yes. There is an item here for potato parer that doesn't belong there. Connecting gas oven, that doesn't belong there. Repair dough mixer for baker, that doesn't belong there. Repairing gas mangle in linen room, that doesn't belong there. Making spigot on ice water cooler, I think that pipe was there, the pipe and spigot was there when I took the hotel over.

Q What repair did he make to the spigot? A Replaced it with a new spigot.

Q Was the old spigot there? A The old spigot was worn out, I suppose.

Mr. McCarter: You suppose?

A It was in pretty bad shape, I guess he couldn't do anything with it. Clear water pipe to coffee urns, that is marked out, but the coffee urns belonged to the property. They were there when I came, at least I replaced them with new ones since.

Q Was there a coffee urn there? A Three coffee urns there when I came, two coffee urns and a hot water boiler.

Q What did you do with respect to those? A When they wore out I replaced them.

Q Connecting water pipes to the dishwasher? A It is crossed off here but the dishwasher was there, part of the equipment when I came.

Q Was that a new or old pipe used in that connection? A Oh, he renewed that old pipe connecting the dishwasher.

Q Part of the equipment when you got the hotel? A Yes, dishwasher was there when I came and belonged to the hotel. That is all.

Cross examination by Mr. McCarter.

Q Were the coffee urns and some of these other items that you referred to included in the personal property which was included in the deed that was given to yourself and Mrs. Rosecrans? A I suppose they are listed on the inventory.

Q Will you answer my question. A They were part—

Q Do you recall that there were personal property conveyed? A Yes.

Q Now I ask if those articles, coffee urns and other things, were included in that list of personal property that was conveyed? A Yes.

Q With the deed, part of the deed? A I don't know as they are part of the deed.

Q You don't? Will you let me see the deed? (Deed produced.) Let's see whether you do or not. Have you ever read this deed to Mrs. Rosecrans and yourself from Mr. Prettyman? A Yes.

Q Are you aware of the fact that annexed to it is a schedule of chattels and goods in the Princess Hotel, Atlantic City, that were conveyed by the deed to you and her? A Yes.

Q What did you mean by saying a moment ago you didn't know about that? A I didn't say I didn't know about that.

Mr. Starr: He didn't say he didn't know. He said he didn't know whether they were in the inventory or not.

Mr. McCarter: I beg pardon.

A That is what I said.

Q That is what you said, what Judge Starr said, is it? A I said I didn't know whether it was included.

The Master: What difference does it make whether he said it or not? There is the evidence it was conveyed.

Mr. McCarter: I think the truth, the veracity of this man has something to do with his claim, whether we can rely on what he is saying. That is my idea of it, Mr. Master.

A There is a good many articles went with the hotel that is not in the—

The Master: No question pending, Mr. Rosecrans.

Q How much of the work that is included in these schedules was done while you were away? A All the work in January, February, March and half of April, half of December.

Q That is to say you were in California during what part of the year from June 1, 1926, to June 1, 1927? A From about the middle of December to the middle of April.

Q And any work that was done during that period was ordered by young Paul? A Yes.

Q All you know about that work is that when you came back you found some new work had been done? A I looked over the bills and I inspected it, saw that it was done.

By Mr. Starr.

(National Machine Works.)

Q Mr. Rosecrans, did you have any business dealings with the National Machine Works? A I did.

Q Of which Mr. Zippler, George Zippler, Jr., was president? A Yes, sir.

Q What work generally did they do for you in the Princess Hotel from the first of June, 1922, to date? A They repaired all the machinery, the elevator, and did some electrical work, boiler work, and took care of the Menlo heater for heating water.

Q Of the heater? A Some times when the heater would break down they would put that in order.

Q Well, anything else in the way of repair work? A That is about all, made regular inspections every week.

Q Did they ever do any new work as distinguished from repairs to the old work? A No.

Q Did they supply any new machinery? A No.

Q That is I mean machinery that was new contra to the fact that it was used to replace something that was there before? A They put in a dynamo for an ice cutting machine, a small dynamo, but I think that is crossed out on the bill.

Q Anything else that was new that you can recall? A That is all I can recall.

Q Have you gone over these various invoices? A I have looked them over, yes.

Q What arrangement did you have with them with respect to inspecting the elevator? A We had some expensive breakdowns that would cost from a hundred to two hundred dollars some times and I thought it would be a good idea to inspect the elevator regular, only a dollar and a half a week charge, and since that time I haven't had any expensive breakdowns in the elevator.

Q Was that inspection limited to the elevator or include all the machinery in the house? A That included the other machinery as well.

Q General inspection of both you say? A Yes, pumps, &c.

Q In going over these invoices will you state whether or not there is any charge for labor or material except with respect to repairs to the machinery and also excepting a dollar and a half a week inspection fee? If you know of any items in there that are not directly chargable by way of repairs I wish you would indicate what they are? A There is a charge for repairing the coffee urn, but, as I said before, that was on the premises when I came there and whether it was included in the inventory attached to the deed or not, I didn't pay anything for it, a good many articles was not listed on that were in the hotel when I bought it.

Q The best of your recollection was there any work performed and materials furnished for anything else except repairs? A Oil, lubricating oil and grease on here. Making repairs to the ice crusher, that doesn't belong in there. Running wires for the mangle, and lights on the

mangle, that doesn't belong in there. Repairing mangle that doesn't belong there. Repairing coffee urn. Repairing dish washing machine. The dish washing machine was with the property. It isn't listed on the schedule with the deed but it went with the property. Repairing vacuum cleaners shouldn't be here. Repairing potato parer shouldn't be there.

The Master: Judge Starr, can these items—

Mr. Starr: I was going to make these suggestions, rather than to have the witness go over each one, the master will finally be obliged to go over them.

Mr. McCarter: I was going to say, it was an awkward plan to have the witness turn himself into master and court. It is a matter of law whether they are going in, it is a matter for your Honor to go in.

The Master: It seems to me it is a great waste of time to have him go over all of these invoices. However, I want to sit here until both sides have finished in your own way.

Mr. Starr: Well, I am perfectly willing to have the master by the examination of the invoices determine. Of course there are some charges in these invoices that are not properly subject to credit in favor of Mr. Rosecrans, but we couldn't, it seems to me, make a distinction with reference to those which were properly credited on this which should not be, in so far as the exhibit was concerned. We were obliged to present all the invoices. That is what we have at-

tempted to do. We concede that some of the items can't be properly credited.

The Master: Can't we save time by having Mr. Rosecrans tonight go over these invoices and make a memorandum of such charges as he feels he is not entitled to credit for?

Mr. Starr: Now there is the Guttridge, The Electrical Equipment Company, this one of the Atlantic City Lumber Company, those are the only ones we haven't proven. My suggestion is let him take these invoices and go over and make a memorandum of those things we are willing to concede.

The Master: Yes, let him make that on a separate piece of paper, not check them on the bills.

Q So far as these invoices are concerned, do you know of your own knowledge, either acquired at the time the goods were delivered or by a subsequent inspection that the work referred to in the invoices and materials were actually performed and furnished by Mr. Zippler and his company? A Yes, I do.

The Master: Can't the same question be asked with respect to the others and then let him—

Mr. Starr: I think the best way, it seems to me, would be to take them up separately and ask the same question.

By Mr. McCarter.

Q Were you here all the time this work covered by these invoices was done? A No.

Q Who ordered it done then when you were away? A Paul, Jr.

Q He is with you yet, isn't he? A Yes.

PAUL C. ROSECRANS, resumed.

Direct examination by Mr. Starr.

Q Mr. Rosecrans, with respect to the invoices which have been introduced in evidence showing the material furnished and labor performed by the National Machine Works have you made, since last night, an examination of those invoices for the purpose of ascertaining those matters which you are willing to concede are not properly chargeable against Mrs. Rosecrans in this accounting? A Yes.

Q Is this paper which I now show you those invoices and memorandum of those invoices? A Yes.

(Paper offered, received in evidence and marked Exhibit D. 256.)

Mr. McCarter: These are the dates, number of the voucher and amount, is that it?

Mr. Starr: Yes.

Mr. McCarter: I think that will help. That, as I understand it, you don't make any claim for?

Mr. Starr: We don't make any claim for.

I have here, if the master please, a list of these repairs to the dishwasher and coffee urn. They were not originally included, as I understand it, in the amount which we claimed. Now, in view of the fact

that it was developed yesterday that both of these appliances were part of the equipment of the hotel and purchased with the hotel, it seems to me that we are entitled to the repairs on those as part of the hotel equipment same as any other article of machinery and I have a list of those taken from the invoices showing the numbers of the invoices and the dates and the amounts.

(List offered, received in evidence and marked Exhibit D. 257.)

Q Mr. Rosecrans, have you also examined the invoices which were furnished with reference to what we have called the new schedule, work from 1926 until the present time? A Yes.

Q And have you also made a list of those, of the material and labor mentioned in the invoices which you concede to be eliminated? A Yes.

Q Is that the list? A Yes.

Mr. Starr: I offer this paper in evidence, having reference to the last schedule showing work and labor performed and furnished from June, 1926, until the present time.

(Paper received and marked Exhibit D. 258.)

I also offer in evidence an exhibit showing the repairs to the equipment in the hotel which were not included in our original schedule, which we now claim.

(Paper admitted and marked Exhibit D. 259.)

Q Now, Mr. Rosecrans, a general question with reference to the National Machine Works.

In going over these various invoices will you say whether or not the materials referred to therein and the labor alleged to have been performed were furnished and performed by Mr. Zippler's concern? A Yes, they were.

Cross examination by Mr. McCarter.

Q Some of that work was done while you were West, wasn't it? A Yes.

Q In fact a large part of it was done while you were West, wasn't it? A A considerable part of it.

Q Will you please explain to Judge Shinn and me how you can look at invoices of this character and say that the items that are included in these invoices were actually used on work upon the hotel when at a time when all or certainly a large part of the work was done you were in California? If you will just explain that I will be glad to have that understood. A Well, when I came back I looked over the bills and I had Paul Jr. show me where the work was done and I was formerly in the machine business—I learned my trade building locomotives. I can build a locomotive from the ground up—and I pretty near know from my own practical experience of ten years or more in that business, in that line of business, whether that work was done or not.

Q How old are you, Mr. Rosecrans? A I am forty-eight.

Q Been twenty-four years in the hotel business? A Yes.

Q And you were ten years with the locomotive business before that? A Yes.

Q You must have started quite young? A Started to work when I was thirteen years old.

Q That is all.

By Mr. Starr.

Q Before these bills were paid, Mr. Rosecrans, when you returned from California did you do anything to ascertain whether or not the bills were proper, check them up or anything of that kind before you paid them? A I checked them up and went over them with the girl in the office there and kept the figures altogether and totaled them up and saw that they were correct.

(Guttridge Co., H old, F new.)

Q The Guttridge concern is in what business in Atlantic City? A General supplies, machinery supplies, general supplies, paper hanging, paper, wall paper, sizing, paste.

Q And did that concern furnish any materials to the Princess Hotel since 1922? A They have.

Q Generally what was it? A Hardware, nails, such as nails, hammers, paper, paste, materials used in the paperhanging, materials used by the carpenters and other mechanics around the place.

Q Now for what purpose were the materials which you obtained from the Guttridge Company used, speaking now from June 1, 1922, to the latter part of June, 1926. We will talk about the old schedule first. A They were used by the carpenters, the house men, general repairmen around the place, electrician, electric supplies, the paperhangers got his supplies there, kitchen got their supplies there—of course that doesn't enter into this—but all the different mechanics

around the place got there supplies from Guttridges.

Q Were any of those supplies used for new work as distinguished from general repair work? A They were used in the partitions in the basement, some of it, the nails and locks.

Q And in what years and what months were the materials used for that new work obtained from Guttridge? A In the spring of 1925 mostly in the spring of 1925 beginning in the fall of 1924.

Q What time in the fall? A About November.

Q And continued until when in the spring of 1925? A Until about June, 1925.

Q Now have you gone over these invoices which were introduced in evidence and can you say whether or not, from your personal knowledge, with the investigation that you made after you came back from California, that the materials charged for were actually furnished? A Yes.

Q Now have you also examined those invoices with the idea of eliminating those matters for which you make no claim in this accounting? A Yes.

Q I show you paper which is marked "Guttridge elimination," is that the list of it? A That is the list.

(List offered, received in evidence and marked Exhibit D. 260.)

Cross examination by Mr. McCarter.

Q Mr. Rosecrans, these repairs, as you call them, and work of that character, were ordinarily

done in the dull months or winter months, were they not? A Fall, winter and spring.

Q Now as I understand it, with the single exception of the fall and winter of 1924-25, every winter since, in the period covered by this accounting, you were in California, weren't you? A Two winters I was here.

Q What? A Winter 1923-1924 and winter 1924-1925 I was home.

Q You mean to say you were not in California in 1923? A In the spring of 1923, yes.

Q Now please pay attention to my question.

Mr. Starr: I object to the comment. The witness has answered that question perfectly plain. He says the winter of 1923-1924.

Mr. McCarter: I don't think you have a right to interrupt this witness in my examination of him. I have asked for an answer and he hasn't given it to me.

Mr. Starr: He has given you the answer.

The Master: I understood him to say, Mr. McCarter, the winter of 1923-1924, that would be say from December, 1923, until the spring of 1924 and from December of 1924 to the spring of 1925 he was in Atlantic City; he didn't go to California those two years.

Mr. McCarter: I would like to get from witness' own mouth now exactly when he was in California during the period of this accounting.

A The winter of 1922 and 1923 I was in California but not the winter of 1923 and 1924.

Q You were there every other year, were you not, except those, except what you have now said? A Except those two winters.

Q Two winters? A Two winters I was home.

Q Say it again. When were you in California? This accounting commences in June, 1922. A I understand that.

Q When after that were you in California? That is a simple question. A From the fall of 1922 to the spring of 1923 I was in California. From the fall of 1925, December 1925, to April, 1926, I was in California. From December, 1926, to April, 1927, I was in California. The other winters I was home.

Q Were you here all winter the other winters? A All winter.

Q All winter? A With the exception of a few days.

Q You were not in Philadelphia? A I was in Philadelphia a few days at a time, maybe a day and come down again in the evening, and I was in New York and different nearby places on business but I was back and forward to the hotel all the time.

Q Now so that with the exception of the period which you have shown you were not in California all the repairs that were made and for which you claim allowances were made practically in your absence and your knowledge about it is dependent entirely upon what you were told or what you saw after you came back, is that right?

Mr. Starr: That question I don't think is intelligible.

The Master: I think we have that question and I think we have had an affirmative

answer at least a half dozen times with respect to the other accounts.

Mr. McCarter: Then if I can have an answer generally covering all of the repairs.

Mr. Starr: I confess I don't understand the question yet.

Mr. McCarter: It says except for the time when you were not in California.

The Master: Do you understand the question, Mr. Rosecrans?

A It isn't quite clear. I suppose it means with the exception of the time that I was here, except for the time I wasn't in California I don't know anything about the work.

The Master: Except with respect to what you were told or what you observed after you got home.

A I answered before, I think, and said that I examined all the bills and went over them.

Q Won't you answer my question? Your information with reference to the so-called repairs that were made while you were in California depends upon what you were told and what you saw after you got back, does it not? A What I examined myself and saw was done when I came back.

Q I included that. A I saw that the work was done. I am a mechanic.

Q Are you a carpenter? A No, I am not a carpenter.

Q Are you a painter? A I can do painting. I have done painting and I can do carpenter work in a general way.

Q Who was there during these periods that you were in California running things, your son? A Paul, Jr.

Q Assistant manager of the hotel? A He was my assistant, yes.

Q Was Knox there? A Mr. Knox was there, too.

Q And what is his position? A He is my assistant.

Q That is all.

By Mr. Starr.

Q Now, Mr. Rosecrans, with respect to the invoices which have been introduced relative to the Schedule F, which shows materials furnished by the Guttridge Company from July, 1926, to the present time, have you gone over those invoices? A I have.

Q Have you made a schedule or a list of those which you conceive are not properly chargeable in this accounting? If so, is that the schedule? A I have.

(Paper offered, received in evidence and marked Exhibit D. 261.)

Q From an examination of those invoices and your knowledge of the material tell the Master for what purpose those materials were used.

Mr. McCarter: That I don't think is the issue. The question is—may have had all sorts of purposes but the question is what they were used for. He was in California.

The Master: I suppose if he saw the work after he came home he is qualified. I

think he has already said—I understood your question to have been with reference to all of the work that was done.

Mr. McCarter: Yes, this particular question your Honor is this, for what purpose were they used. I don't know what purpose permeated his mind. If you think it amounts to anything he can say how they were used, not what the purpose of the person was.

Mr. Starr: I don't think it makes any difference whether I use the word purpose or use, to what use they were put.

The Master: You may answer the question, Mr. Rosecrans.

(Question repeated.)

A They were used for general repair work throughout the hotel, papering, the paperhanger got his paper there, and his paste there and everything he needed for the papering and the carpenters got their nails there and locks, if the locks went bad, and all general repairs were supplied from Guttridge.

Q Was there any new work done in the building, I mean improvements made which were not in existence before and during that period from July, 1926, to June, 1927? A No, only the—from 1926 to 1927? No.

(K. Old, R. new, Electrical Equipment Co.)

Q The Electrical Equipment Company is located where? A On North Ohio avenue, 16 North Ohio avenue.

Q Did they furnish any materials or do any labor with respect to the Princess Hotel? A They did.

Q Generally what was it? A General repair work, repairing the wires, taking out the old wires and putting in new ones, fixing the annunciator and the wiring about the elevator and machinery, and general electrical work all through the house.

Q They furnish any materials, too? A They did.

Q Have you gone over the invoices showing the labor performed and materials furnished as indicated in the original schedule marked K? A Yes.

Q Did you find any items there which are to be eliminated or did they all apply to work of repairs? A They all applied to work of repairs.

Q Was this hotel wired when you bought it? A Yes.

Q It was illuminated by electricity, was it? A Yes, but the wires were in bad shape mostly.

Q Now, was there any new electric wiring put in there as distinguished from repairs to existing wire? A When the partitions were torn down the old wires had to be removed, when the new partitions were put in there was all new wires put in place of the old wires that were there.

Q You mean the partitions in the basement? A Yes.

Q Was there any other new electrical work in the house? A In the linen room, where the linen room was that was new.

Q Any that you can recall? A That is all I can recall, all new work.

Q Now from an examination of these invoices, will you tell the Master whether or not the work as charged for was done and materials furnished? A It was.

Q What have you to say with respect to the necessity for that work? A Well, I depended on Mr. Wright, he is an expert electrician. I had him send his men down there and go over the house. I was always afraid of a short circuit and I knew there was, the greatest danger of fire was from wires and I had him examine the house every once in a while and go over it and whatever he recommended I did. He would show me where the wires were corroded and where it was dangerous to leave them as they were and I would have the work done.

Cross examination by Mr. McCarter.

Q I understand then you make no eliminations in the Electrical Equipment Company matter? A No.

Q What is the answer, no? A No, not to my knowledge; no.

Q Are you aware that that includes extra lights, wiring the additional rooms in 1925, installing new service, batteries required for the annunciator, renewals of batterials, repairing the water pump, repairing the potato parer; are you aware of that? A I didn't notice the potato parer. If that is in there that should come out.

Q Did you in fact go through the paper yourself last night? Did you or did Mr. Harris? What do you mean when you say you went through it? Did you go through it personally? A I looked over it with Mr. Harris.

Q With Mr. Harris? A Yes.

By Mr. Starr.

Q I show you an invoice marked D. 84 with reference to the Electrical Equipment Company

in the account showing the new schedule; did you also examine that last night with the idea of ascertaining whether there was anything to be eliminated and whether the materials were actually furnished by the Electrical Equipment Company? A I did.

Q What did you ascertain with respect to the goods being furnished? A There is nothing there should be eliminated.

Q Were they furnished? A They were furnished.

Q Used where about the hotel? A Some of it was used in the front part of the house and some in the basement.

Q Had to do with what character of equipment in the hotel? A The general lighting system and the machinery.

Cross examination by Mr. McCarter.

Q What is the name of the bookkeeper you speak of? A Miss Killmeyer.

Q She has been there all the time, hasn't she? A Been there about four years.

By Mr. Starr.

Atlantic City Lumber Co., Schedule N, old.)

Q The Atlantic City Lumber Company is a concern in Atlantic City that sells lumber? A Yes, sir.

Q Did the company furnish any lumber that was used in the hotel? A They did.

Q What was it used for? A For general repair work. They furnished plaster board for the walls to take place of the plaster which fell down and general partition work, when the new

rooms were built we got the lumber from them to replace those partitions, got doors from them, got window sash from them, some of the window sash was rotted and some of the frames were rotted. The carpenters working there got their lumber from the mill as they needed it.

Q Now know what lumber used for the new work as distinguished from repair work? A Yes, sir.

Q And what new work do you refer to? A The work in the basement replacing the old partitions.

Q Did the Atlantic City Lumber Company furnish all the lumber that was used in that operation? A Practically all. I don't think there was anybody else; may have been a few orders from the West Side, anything that they were out of, we would get it from the West Side Lumber Company.

Q With the exception of that relocation of the rooms any of the material furnished by the Atlantic City Lumber Company used for anything except repair work? A That is all, and the new linen room, that lumber for the new linen room and stairway from the old linen room to the new location, that was bought there.

Q Anything else? A That is all.

Q In going over these invoices, will you say whether or not the materials as shown on the invoices were used at the hotel? A They were.

Q Why was it necessary to put in new window frames and new sash? A They were rotted away, the rain and the wind beating on them rots them away every once in a while, one of them falls out.

Q Now I show you the invoices with respect to the new schedule G, materials furnished by

the Atlantic City Lumber Company; have you examined those also? A I have.

Q To what use or purpose were those materials put in the hotel? A General repair work, sash, replacing of sash, doors for floors.

Q Were they used for any new work as distinguished from repair work? A No.

Q Will you say whether or not that material was necessary for the preservation of the property? A It was.

Cross examination by Mr. McCarter.

Q A great deal of this lumber was delivered, and material was delivered while you were away, wasn't it? A Some of it was, yes.

Q And paid for C. O. D.? A Yes.

Q Who really knows what it was used for? A Well I know what it was used for.

Q Who really knows? Who was here at the time? A Paul, Jr.

By Mr. Starr.

Q Now when did Mrs. Rosecrans leave the Hotel Princess Hotel? A Sevententh of March, 1924.

Q Prior to that time did she have an apartment at the hotel? A She did.

Q What part of the house? A On the first sleeping floor on the ocean side of the house, corner rooms, two rooms and bath.

Q Did she occupy that room from the 1st of June, 1922, until you say the 17th of March, 1924? A Yes.

Mr. McCarter: Occupied it all the time?

A With the exception of two or three weeks in the summer she gave up one room, she was away, went to the mountains for a while.

Q Did you or did you not retain an apartment for Mrs. Rosecrans after she left on the 17th of March, 1924? A I did.

Q If so, for how long? A I kept the same apartment all through the following summer.

Q You mean the summer of 1924? A Yes, and the following winter and whenever I was using some of the rooms on that floor and I had to use one of those rooms in connection with it, I reserved another apartment in place of it so there was always an apartment there for her at any time she would come back.

Q Do you mean by that that the apartments which you reserved for her were not used by any of the guests? A It was used for several weeks in the summer one room.

Q The other room was that ever filled by a guest? A No, not to my knowledge.

Q How long did you retain that apartment for her or reserve it for her? A Until about the fall of 1925, somewheres along there.

Q What rates or rate did you charge for the apartment which she occupied or had reserved for her when she had the two rooms?

Mr. McCarter: What is the materiality of of that?

Mr. Starr: We are going to make a claim, if the master please, that there can be no charge against Mr. Rosecrans for the part of the house or the rooms which she occupied during that period from the first of June 1922 and that there must of necessity be a deduction from the rental value for the value

of the rooms which were reserved for her and which she occupied.

The Master: Didn't the court determine that there was an eviction in June 1, 1922?

Mr. Starr: May have been an eviction, but as a matter of fact she occupied a portion of this hotel, physically occupied it, and it is our purpose to prove that after the first of June 1922 she physically occupied an apartment in this hotel and that subsequent to the time that she actually vacated that apartment on the seventeenth of March, 1924 an apartment was reserved for her, for her benefit and that, as to the reasonable value of that apartment, we are entitled to a credit as against the rental value.

The Master: As the husband of Mrs. Rosecrans wasn't he obliged to provide her with it?

Mr. Starr: That may be so, if the master please, but, if Mr. Rosecrans is to be charged with the rental value of the entire hotel, it seems to us that he is entitled to a credit for the reasonable value of the part which she occupied.

The Master: You may go ahead with your proof.

Mr. Starr: I think there is a case. Unfortunately I didn't bring my other book here, but there is a case which holds that as between husband and wife, question of accounting for rental value of the property, the one having possession is not chargeable or rather is entitled to a credit as against the rental value for the portion occupied by the other co-tenant.

Mr. McCarter: I think the quickest way is to let it in and let the master solve it afterwards, objected to, of course.

(Question repeated.)

A The two rooms would bring in the summer about $150 a week, with the meals included.

Q $150 a week in the summer time? A In the summer time.

Q Now were there different rates at different periods of the year? A During the winter the rates would be about, I wouldn't get probably over a hundred.

Q Now what would be the reasonable rate for those rooms, eliminating the meals, just the room rent first, give us the summer time and winter time? A The meals when I am feeding four or five hundred people the meals practically wouldn't amount to very much, say take a party of five in those rooms, $150 the meals wouldn't come to over $25 a week.

Q Do you or did you have a rate at that time for the rooms with and without meals? A Not in the summer season, I rent them them all on the American plan with meals.

Q And you say that the reduction for meals is taken on the basis of $25 a week in the summer time? A I wouldn't rent them without meals in the summer time.

Q I didn't ask you what you did, but what would be the reasonable value or rate for those rooms without meals in the summer time? A $125.

Q A week? A Yes.

Q What in the winter time? A In the winter time about $75.

Q Now that has reference to two rooms and bath? A Two rooms and bath.

Q You say a portion of the time she only occupied one room? A About three weeks in the summer she gave up one room.

Q And that was in the summer of what years? A 1922 as I recall it and 1923 also.

Q Now what would be a fair rental value for that one room during the summer time, what would be a fair rate for it? A It would amount to about fifty dollars a week one room, fifty to sixty.

Q Without meals or with meals? A That is with meals, without meals about forty.

Q In the winter time what would the price be without meals? A About twenty.

Q Now you spoke of summer and winter months; which months do you include in the summer season and which in the winter? A June, July, August and September I included in the summer season and the two others in the winter.

Q Is there any advance of price in the Easter season? A During Easter week, yes.

Q That is the only advance, otherwise the rate is the same all during the winter months? A Yes, and the holidays in February, Washington's birthday, couple of days, two or three days.

By the Master.

Q Mr. Rosecrans, were the peak prices obtained during June and September? A The peak prices?

Q Yes. A No.

Q The difference between your rates say from the middle of July until we will say after the

pageant week? A The peak prices run from the middle of June to the middle of September, about three months.

Q Not from the middle of July? A No.

By Mr. Starr.

Q Then you speak of the summer months as three months, middle of June to middle of September? A I get my best rates during those three months.

Q Now since June 1922 have any of your employees at the hotel, who were on the pay roll, done any repair work around the hotel? A They have.

Q Did you have any mechanics of any kind that you carried on the payroll? A I did.

Q Do you remember who they were? A A fellow name of Smith.

Q Just give the names and we will get the schedule. Do you remember a man named Berry that you had there? A Yes.

Q What was his trade? A He done general carpenter work, general repair work.

Mr. Starr: If the master please, in order that you may understand the method of proof, so you can pass on it in advance to save a lot of time, there are two methods by which we offer to prove payment of wages to these mechanics, first is by vouchers signed by the mechanic—we have those here, some of them, others we have no vouchers—but we have the payroll book that was used at the hotel for various times which shows the payment.

The Master: I am familiar with that type of book.

Mr. Starr: Unfortunately the person who made these entries is not in the employ of Mr. Rosecrans at the present time and is not available but, as I understand it, this book was kept under his supervision and he will be able to testify from the entries in the books that those payments were made from time to time. That is the evidence that we have with respect to a number of these items. Of course we have the vouchers also as to some of them.

Mr. McCarter: With reference to them all I say they have absolutely nothing to do with this case, just the ordinary keeping up of the wear and tear, regular employees, to call them repairs in any sense is ridiculous; in the second place how this man can be keeping books under his supervision when he is west a large part of the time, I fail to see, and we want strict proof of any payments made to these people, people that know about it are not brought, a man comes here and understakes to substantiate these things is a man that wasn't here when it was done.

Mr. Starr: That is not exactly a truthful statement; it may apply to some of them but not all of them.

Q I show you a book; tell me what that book is? A This is the time book for the employees.

Q Covering what period of time? A From June 1922.

Q Who made the entries in this book? A The girl I had in the office at the time.

Q What was her name? A Miss Killmeyer's sister.

Q Where is she now? A Somewhere in the west, Pittsburgh, I think. Looks like her writing; it may have been one of the other girls.

Q Don't you know who made the entries? A Miss Killmeyer.

Q Now was that one of the books that were kept at the hotel under your supervision? A Yes.

Q Are you able to identify the entries in that book with handwriting or not? A I am.

Q Now I call your attention to an item here of George Berry as a carpenter. Was George Berry employed by you in 1922? A He was.

Q What work did he do? A He did general carpenter work, general repair work.

Q What sort of repair work? What was it? A Some floors went out at the time and he replaced them as near as I can recall it and he did some work in the kitchen.

Q What kind of work in the kitchen? A On the floors and partitions.

Q Didn't do any kitchen work as distinct from carpenter work? A No, carpenter work.

Q Did he do anything except carpenter work? A Only carpenter work.

Mr. Starr: I offer the book in evidence.

By the Master.

Q Whose penmanship is that part in there? A This girl was working for me at that time. She is a sister of the girl that is there now.

Q Is that her penmanship? This is here, is that her penmanship? A I am positive it is her penmanship.

Q This is different.

By Mr. Starr.

Q Whose handwriting is this down here, "Berry Carpenter" do you know that handwriting? A Several in the office there at that time and it may have been one of the others entered that up. I know the book was kept in the office.

Q Are you able to identify the entry there with respect to Berry as to handwriting? A I couldn't say positive it was her writing. It seems as though there are two different hands there.

Q Now do you know that is one of the books kept at the establishment? A I know it was the book we kept in the office and I supervised that work.

Mr. Starr: I offer the book in evidence for the purpose of showing this entry with reference to George Berry.

Mr. McCarter: I object to it.

The Master: I don't see how that can be admissible, Judge Starr.

Mr. Starr: That is the best I can do for that.

A Pretty hard to remember handwriting four or five years back.

The Master: No question pending, Mr. Rosecrans.

Q Do you know Joseph Culver? A I do.

Q Was he employed in around the hotel? A He was.

Q In what capacity? A The same line, carpenter.

Q Carpenter? A Carpenter, yes.

Q Did you pay him any money for carpenter work in that hotel? A I did.

Q What about a man by the name of Ewald, was he also a carpenter? A Yes.

Q Was he employed? A Yes.

Q In what capacity? A Carpenter work.

Q What kind of work did he do? A The same as the other men, general repairs, whatever was needed.

Q What about Edward Ogden? A He did the same; he was a carpenter.

Q Was he a carpenter and do the same work? A Yes; they worked at different times, not altogether.

Q Do you remember making any payments to these gentlemen for services performed as carpenter? A I do. Money was paid at the desk.

Mr. McCarter: What is that?

A The money was paid at the desk when I was there.

Q I didn't ask you that. I asked you whether you remember of your own knowledge any payments made to this gentlemen? A I do.

Q What record was kept of the payments that were made? A They sign a voucher for the money.

Q Was any record kept in any book? A Only in the book like that.

Q This payroll book? A In that payroll book.

Q Is that the only record that was made independent of the voucher that was signed? A Some times when they only worked for a

New Jersey State Library

day or two or a few days I don't believe they were entered in the payroll book, just got the money and signed a voucher.

Q Was there any book kept by you showing the payments to these various carpenters you have enumerated except this payroll book which I have shown you? A No.

Mr. Starr: I renew my offer, if your Honor please.

Mr. McCarter: I object to it.

Mr. Starr: It seems to me this is the record of the disbursements.

Mr. McCarter: An easy way to make evidence.

Mr. Starr: If the book is genuine there is no making of evidence at all. No suggestion this book is not genuine and it accurately records payments made to these gentlemen in the months indicated, June, 1922, giving the names and amounts and Mr. Rosecrans has testified that these men worked there and did that character of work. It seems to me this is the best evidence. However, it is the best evidence we can produce.

The Master: I think you fail in your proof, however, judge; there is a failure to prove the book. Mr. Rosecrans says that that is a book which was part of his system but he can't identify the penmanship and does not produce the person who made the entries. Now it seems to me that I must decline to admit it.

Mr. Starr: The book is identified as one of the books. There is no difficulty about

that and he is unable to indicate the handwriting of these various entries. We may be able to supply that; I don't know.

The Master: At this time I will overrule the offer.

Q You say Edward Ogden did some carpenter work? A He did.

Q Now I show you a voucher dated October 13, 1923, received of Rosecrans $27 signed Edward Ogden; what do you know about that voucher? A He signed that. That is his signature.

Q And it covered what work? A Covered general repairs, carpenter work.

Q Done at that time? A Done at that time.

Q Have you personal knowledge of the fact that he worked on general carpenter work, repair work at that time? A Year I was there, yes.

Q And do you know that that money was paid to him? A I do.

(Voucher offered in evidence.)

Cross examination by Mr. McCarter.

Q Do I understand that you recall the particular character of work for which Ogden was paid by this particular voucher? A I do.

Q You do? What was the work that he was paid for by this particular voucher? A He did work in the basement closing up a lot of windows. That was some of the work he did, to protect the pipes from freezing and getting ready—it was near the fall of the year and we were getting ready to close everything up in the basement to keep pipes from freezing.

Q You were getting ready for closing up the hotel? A No, we were getting ready to tighten up everything in the basement to keep the pipes from freezing in the basement where there is not much heat. The hotel was kept open that winter.

Q What did he do towards protecting the pipes? A We nailed up a lot of the windows and repaired a lot of window frames and windows in the basement and some of the sash had fallen out on the Ocean avenue side. I remember distinctly the work he did.

Q You didn't pay the men yourself, did you, as a rule? A Some times I do.

Q Did you pay the men yourself during 1923? A Mr. Knox paid him that particular item

Q Your answer is "no" isn't it? A No.

Q This is Knox's writing on here, isn't it, $27? A No, that is Miss Kilmeyer's writing, the bookkeeper.

Q She probably paid him, didn't she? A She may have paid him, yes.

Q You say you know Ogden's signature? A I supplied the money. Yes, I do.

Q When did you ever see Ogden write? A I have seen him sign these vouchers lots of times.

Q What? A He worked there a long time.

Q I don't care whether he worked there a long time or not. I want to know when you saw him sign or write his name, one particular time when you ever saw him sign his name. A I can recall this.

Q Recall what? A This signature here.

Q You saw him sign that voucher? A I did.

Q You did. All right. Now, no doubt about that, you saw him sign that voucher? A As near as I can recall, I did.

Q What is the fact, Mr. Rosecrans? A I saw him sign most of them. It was my money being paid out.

Q Of course, but you had hundreds of employees there; you had lots to do. I am asking you if you now say you saw him sign that voucher. A I wouldn't say positively, no, but I know it is his writing.

Mr. McCarter: I want it to appear we object to it because it don't appear it was for carpenter work and the witness don't know anything about it.

The Master: I will admit it for whatever it may be worth.

(Voucher admitted and marked Exhibit D. 262.)

By Mr. Starr.

Q I show you a voucher signed Edward Ogden, October 17, 1923, $13.50; will you tell us what you know about that voucher, if anything? A That was done on the same character of work, general repairs. Miss Killmeyer made that voucher out. It is her writing. The man got the money.

Q Do you recall the particular kind of work he did with respect to this voucher? A The same work that is included in the other one, in the basement, sealing up the windows to protect the pipes against the cold and repairing, general repair work on the window frames, most of it.

(Voucher offered in evidence.)

Cross examination by Mr. McCarter.

Q Now, there appears on this voucher that is just being offered in evidence, which you have identified, in ink, some handwriting, that is Miss Killmeyer? A Yes.

Q She is still in your employ, isn't she? A Yes.

Q What is the ink at the top there, Monday, "Mon"? A Looks like "Monday 8 hours, Tuesday"—

Q "Tuesday 2 hours, Wednesday 2 hours"? A Wednesday, two hours.

Q "On Book"? What does that mean, "On Book E"? A Must have had a time book at that time.

Q Must have had a time book? Now, whoever— A Or cash book.

Q You don't know what that Book E is, do you? A That E must have been put there.

The Master: That "E" mean entered.

Q Is that in Miss Killmeyer's handwriting? A No.

Q I beg pardon? A Must have been put in after.

Q The figures 10/27/23 are in her handwriting? A Yes.

Q Do you remember that particular voucher being paid and seeing Ogden sign it, do you? A I couldn't say I remember that. I know it is his signature, thousands of employees, while I may stand right there and see it I wouldn't recall it.

Q How long was Ogden in your employ? A Off and on for several years.

Q Come and go? A Yes, I would go down there, he lived in the rear of 1904 Pacific avenue; I used to go down there and get him when I needed him.

Q Did he ever do any other work beside carpenter work? A That is all. That is his line.

Q And you sure he didn't do any other work beside carpenter work? A He may have done some other repair work probably, if we couldn't get the plumber in time, might have done some plumbing work, something like that, for an hour or two, he might have, but I don't know as he did.

Q According to this voucher, he worked "Monday 8 hours, Tuesday 2 hours, Wednesday 2 hours," you don't know what he worked on, do you? A I say this was done in the fall of the year—

The Master: Mr. Rosecrans, won't you please answer yes or no?

(Question repeated.)

A I do.

Q You do? A Yes.

Q What? A The same as the work on the other voucher.

Q Then, why didn't he work steadily all the time? A He had other work to do. I said I would get him whenever he had spare time, I would get him whenever I could.

Q That is your answer, is it? A Yes.

Mr. McCarter: I object to it.

(Voucher admitted and marked Exhibit D. 263.)

Paul C. Rosecrans, for defendant, cross.

By Mr. Starr.

Q Did you have other time books covering the period subsequent to the one which I showed you before? A No. The cash book. There was a cash book. There were some weekly time books.

Q What is this book I show you? A That is the large time book.

Q Covering what period was that used? A During 1923.

Q Here is another one; is this a time book? A Yes.

Mr. McCarter: Well—

(First time book marked D. 264 for identification.)

Q Do you know a man by the name of Dwyer? I show you a check dated May 26, 1925; do you remember giving that check? A I do.

Q What work did Dwyer do? A He was a carpenter's helper.

Q What work did he do? A General repair work around the place.

Q Did you pay him that money? A I did.

Q Do you know whether or not he did the work? A He did.

Mr. Starr: I offer the check in evidence.

Cross examination by Mr. McCarter.

Q Who filled in the body of that check, for instance gave the date "May 26, 1925," the name "Francis Dwyer," the word "four" and the other manuscript except the signature? A Looks like Paul, Jr.'s handwriting.

Q You know it, don't you? A Yes.

Q It is Paul, Jr.'s? A Yes.

Q Now, down in the near left-hand corner, lower corner, are the words "Carpenter's helper." It is that fact that those words were up there, "Carpenter's helper," that enables you to say that the work for which this check is drawn was carpenter work, isn't it? A No. He was employed there. He wasn't the regular carpenter and he was employed there, helped carpenters, and I know that he did the work.

Q What work did he do now that the check was covered for? Your own knowledge now, what work did Dwyer do in May, 1925 for which he was paid $4.61, which you say you know he did? What did he do? A As I recall it was just general repairs.

Q He was a bellboy, wasn't he? Was he a bellboy?

The Master: You can answer that yes or no.

A Yes, as I recall it.

Q Can't you recall whether he was a bellboy or not? What is your answer to that question? A He wasn't a bellboy when he was doing that work.

Q He was a bellboy in your employ, wasn't he? A He was a bellboy sometime previous to that, as I recall it.

Q And he got his board and was paid wages? A Got his board.

Q And was paid wages? A Yes.

Q And did the regular duties that were assigned to bellboys? A Not when he was doing this work.

Q Wasn't he a bellboy in May, 1925? A He was a bellboy when he was doing that work.

Q Will you answer my question? A He was.

Q He was? A As near as I can recall.

Mr. McCarter: I object to it.

(Voucher admitted and marked Exhibit D. 265.)

Mr. McCarter: I would be perfectly willing all these checks that can be collected together, to be undertaken to be proven by him in that manner, should go in and speak for themselves.

The Master: Together with the signed vouchers?

Mr. McCarter: Yes, sir, on the assumption he proves just what he has proved about one and knows nothing more about it.

Mr. Starr: Also that the schedule shows that in that particular instance, at least, maybe, there is Dwyer, for instance, was also a bellboy.

Mr. McCarter: We have got that down already.

Mr. Starr: May be some others in that situation. The schedule shows that fact.

The Master: My unfortunate job will be to check those up with the schedule.

Mr. McCarter: I am going to contend that this man don't know anything about it and practically I don't want him to demonstrate time and again. Let the checks go in. I certainly am anxious to get back and get through this.

The Master: I will undertake to check up from these schedules and if they may go

in that way it is going to save us a lot of time.

By Mr. Starr.

Q Did you carry any locksmith on your payroll? A I did, locksmith and general electrician, general house man. He did locksmith work.

Q Do you remember the name of the locksmith? A Fellow by the name of Smith did that kind of work, Ben Smith.

Q Did you have anybody else? I noticed on this schedule a man by the name of Edelman; remember him? A Edelman, yes. He did repair work.

Q What kind of repair work? A General repairs on electric work and lock work. I don't know as he was a regular locksmith.

Q Where did you get hold of him? A Through an advertisement.

Q Now, in this schedule you have general repair man; what do you mean by that? A Men that understand how to fix breakdowns.

Q Breakdowns of what kind? A Do a little of everything, a little locksmith work, a little electric work.

Q Principally a man by the name of Smith? A Ben Smith he was there a long time.

Q What kind of work did he do? A He could do boiler work; he fired the boiler and did all the repairs to the boiler that could be done in a short time, fixed locks, sockets, electric light sockets.

Q What about a man by the name of Brady; what kind of work did he do? A Same kind of work.

Q Why was it that you had these men who did carpenter work and general repair work

carried on the payroll? A Well, could keep the time better that way.

Q Were they living at the hotel or did they live outside? A No, they lived outside, the carpenters; the general housemen lived in the hotel; Ben Smith and one of the others lived in the hotel; Edelman, he lived in the hotel, had his board there; Ogden lived outside.

By the Master.

Q Mr. Rosecrans, don't all hotels carry what is known as houseman? A Most hotels do.

Q And doesn't the houseman make repairs of all sorts, minor repairs? A Minor repairs, something that can be done in a short time.

Q He can put in a window light or he can fix up a socket? A Yes.

Q Or he can fit a key or fix up a lock? A Yes.

By Mr. Starr.

Q Was it any cheaper, for instance, the paperhanger, cheaper to have the man in the house or to have it done on the outside?

Mr. McCarter: I object to that as directly immaterial.

A Very little difference, sometimes; very little difference.

Q Did you carry on your payroll an electrician, too? A Not electrician. Not a regular electrician. He had to do other work besides.

Mr. Starr: I am trying to simplify this matter if I can. My suggestion is that these schedules be marked as exhibits and we will

present all the vouchers we have supporting the various payments and that indicates the general character of the work, whether carpenter, electrician,, paperhangers, &c., and after the Master examines these, if he desires any further explanation we can furnish it to him and leave it go in as if the payments had been made and you will have to determine whether they are properly to be credited. That suggestion is made to avoid the necessity of proving each particular voucher.

The Master: Now, then, Mr. McCarter, will you consent to that with the understanding that you say that all of this has no place in the accounting?

Mr. McCarter: I think so. I am very anxious to expedite the matter and I could sympathize with the Master's feeling about the thing and I certainly want to co-operate. Now, I suppose, Judge Starr, that those schedules were made out by Mr. Harris here? I like Mr. Harris and I think he has been very helpful. I am assuming, of course, it was honestly done and I will say to the Master my general view is that work done by general utility men about the place, driving a nail here or carrying down slops there or putting in a pane of glass here or things of that kind are not and can't possibly be twisted into repairs, and with that understanding and on the further theory that the other vouchers in the the other departments are like this carpenter work, painting work or what not—I have never seen them, of course—I would be glad to accelerate the thing any way. Your Honor has my view about the thing generally.

The Master: I think that will save us perhaps a week.

Mr. McCarter: I think so. No use to have him go over and read off what is on the document.

The Master: As I stated yesterday, I am perfectly willing to give all the time to this matter that is necessary, but I would like to get back to my office.

Mr. McCarter: I will consent to that, Judge Starr.

Mr. Starr: I am going to prove by Paul, Jr. what these various people do, whether carpenters, electricians, &c.

(Schedule V new, offered, admitted in evidence and marked Exhibit D. 265.)

(Schedule V old, offered, admitted in evidence and marked Exhibit D. 266.)

Cross examination by Mr. McCarter.

Q You have presented a schedule here for water department bills and claim credit for payments made from 1922 down to 1926, do you not, amounting to $1,725? A Yes.

Q And you paid that, did you? A I did.

Q You also have presented an exhibit for the sewerage paid from 1923, 4/6/23 to 7/22/26 and presented vouchers, did you not? A Yes.

Q You paid all of them? A Yes.

Q Sure about that? A Yes, I did.

Q I show you a check dated April 16, 1923, to the Atlantic City Sewerage Company, for $387.05 signed by Mrs. Rosecrans which is the first item on your credits which you claim to have paid yourself. Isn't that a mistake of

yours? A She paid them and I reimbursed her for it when I returned.

Q That is what you say now, eh? You said before you paid it yourself. Now when confronted with the check of hers now, when you are confronted with a check of hers for the exact amount of the first item, you say you paid her back, and where is the check? A I know we made a settlement of the things that she paid out in my absence when I returned and I considered that I paid it. I consider that I paid it.

Q When did you pay her the $387.05 that was included in that sewerage bill? When did you pay her? A I paid her some money when I came back.

Q Won't you answer my question— A Sure I can—

Q Won't you answer my question, when do you say you paid or refunded her that payment? A I paid her through the income from the hotel. I was away March, April and May and she collected all the money from that hotel, her and this fellow Devine, and I either charged it to her on the money that she collected or I paid her a sum of money after I came back. I will have to look up my books to ascertain just how it was paid.

Q Now you say that she collected money from the hotel while you were away? A She did.

Q You say that? A She did.

Q Were you here? A There were receipts. She said she did.

Q Were you here? A She said she did.

Q Oh, she said she did? A Yes.

Q How long was the hotel open while you were away? A It was open from March, about

the middle of March until the twenty seventh of May, March, April and May the hotel was open that she was in charge, she and this fellow Devine, collected that money.

Q You were not here, were you?

The Master: Are you charging him or is any charge being made or any credit being asked for moneys received?

Mr. McCarter: Not the slightest, your Honor.

The Master: What materiality has this then?

Mr. Carter: I am testing the credibility of the witness. First he said he paid this himself. Now he says he made it up afterwards.

A I didn't say I paid it—I paid it—

Q All right, you paid it? Very good. Now you remember testifying yesterday that the hotel was open, that the turning on of the water in the season of 1923 and the work that accompanied it was done at the direction of Mrs. Rosecrans? Remember testifying to that yesterday? A She—

Q Do you remember testifying to that?

The Master: You can answer that yes or no.

A Yes.

Q I show you a telegram dated Los Angeles, California, March 1, 1923; look at it and see if you sent that telegram? Can't you tell? A I say—

The Master: You can answer that yes or no, Mr. Rosecrans.

A What was the question?

The Master: Whether you sent that telegram?

A I sent that telegram.

(Telegram offered, received in evidence, marked Exhibit C. 2, reading:

"Los Angeles, California, March 7, 1923.

"Charles W. Devine.

Received register. Start in at Princess on eigth. Will have plumber to turn on water Sam Rosebanks address Y. M. C. A. Philadelphia. Sending certified check for expenses. Have arranged with Lewis for coal. Will advise Mrs. Thompson. Paul C. Rosecrans."

Mr. McCarter: I would like to have this check that I offered the witness before marked as an exhibit.

(Check admitted and marked Exhibit C. 3.)

Q Haven't during this period of 1922 to the present time some bath houses been built near the hotel? A To my recollection they were built before that time.

Q What? A To my recollection they were built before 1922.

Q You say they were built before June 1922? A As I recollect it, yes.

Q Is that positive? A I am not positive, no.

Q Not positive? A There may have been some built since, too.

Q Don't you know, as a matter of fact, that several were built since 1922? A May have been.

Q Can't you tell? You remember when a man did four and a half dollars worth of repairs in 1923, but you can't remember whether you built any bath houses since 1922? A I say there were some built some additional ones, yes.

Q Additional ones? How many? A Might have been two or three.

Q How many? A Two or three, something like that.

Q Can't you remember how many? A Not exactly, no.

Q Lumber went into them, didn't there? A Some lumber, yes.

Q Anything else go into them? A Some hardware.

Q Weren't there as many as ten? A No, not as I recall.

Q What? A No, there wasn't that many.

Q Haven't you any definite idea, Mr. Rosecrans, as to how many new bath houses you have erected since 1922? A I would have to look up my—

Q Have to look that up? A I would have to look that up.

Q Now how many—it seems that there have been permits for two automobiles and that the garage will only hold two automobiles. The automobiles that are stored there for which these extra insurance rates have been paid have been Paul's automobile and the cook's automobile, haven't they? A Yes.

Q Now you have stated, as I understand you, that during all this period from June 1, 1922, un-

til March, 1924, Mr. Rosecrans has occupied a room at the hotel did you say that? A Yes.

Q That is true, is it? A With the exception of a short time she was away up in the Water Gap, two or three weeks in the summer.

Q Now there is no mistake about it? A She wasn't there, if she wasn't there the room was kept for her.

Q I am not asking you that; I give you a chance again to answer the question. Did you or did you not mean what you said when you testified on your direct examination that Mrs. Rosecrans occupied a room or rooms constantly from June 1, 1922, until March, 1924? A She was—I didn't go near her room after I found that love letter from this fellow with the gonorrhea, I didn't go near her room, see.

Q Did you or did you not mean what you said on your direct examination when you said that Mrs. Rosecrans occupied a room or rooms— A She had her belongings there.

Q —one moment—constantly from June 1, 1922, to March, 1924? A She had her belongings there.

Q Had her belongings there? A Yes.

Q That is what you now mean? A A person's belongings are in a room I consider they are occupying that room.

Q That is what you mean to say? A Yes.

Q Now the fact is, is it not, Mr. Rosecrans, that possession was taken of this hotel about November, 1919? A Yes.

Q Neither one of you lived down at the hotel but had an apartment until 1922, is that not right, had an apartment at the— A We gave up the apartment—

Paul C. Rosecrans, for defendant, cross.

Q One moment please—Amsterdam apartment and you lived there constantly from the time the hotel was purchased down until 1922, is that right or not? A We had an apartment and we gave that up in the fall of 1922.

Q Very good? A But she—

Q That answers that question, fall of 1922? A Yes.

Q So that in June, 1922, she was not living at the hotel, was she? A She took her meals there and she had—

Q Will you answer my question; she had an apartment? A Yes.

Q Now the hotel was closed by your direction during the winter of 1922 and 1923, wasn't it? A It was closed from November to March.

Q Very good. You sent a telegram to Devine from California on the 22nd of October, 1922, which I show you, in which you say "Have Yeutter turn off water?" That was preparatory to closing the hotel, wasn't it? A Yes.

(Telegram offered, received in evidence and marked Exhibit C. 4.)

Q Will you tell me how, when by your direction from California the water was turned off and the hotel closed, you can say that Mrs. Rosecrans was occupying a room or rooms in the hotel? A As I said before, she had her belongings there.

Q Is that what you mean? A I consider—

Q Is that what you mean? A I consider the rooms occupied when the belongings are there.

Q That is what you mean by your testimony? A Yes.

Q Are you able to recall the gross receipts at this hotel during the years 1923, 1924, 1925 and 1926? A Not offhand, no.

Q I show you a copy of your affidavit to the receivership motion to refresh your recollection, and tell us what were the gross receipts for the year 1923?

Mr. Starr: I object as immaterial.

The Master: What materiality has it?

Mr. McCarter: Suppose a hotel were built at Brigantine—I saw that hotel the other night—I don't know anything about the Brigantine Hotel, but I should think it was so far from the activities to live, while it may be a beautiful hotel and cost a pile of money, its rental value would be very little because there was no economy. Now I think there is, with considerable deference to your Honor's suggestion, a relation. It may be more or less remote, but if the business that was done at this hotel during these years manifested a large gross receipt, that would show that there was a franchise, a valuability for return. People would pay for a hotel in a neighborhood where people come and there is a large patronage, more rent than they would where there is no patronage. A hotel on South Carolina avenue, therefore, that has a gross receipt, I think one of the first questions a tenant would ask, well, was there business last year or not? Of course a good deal of the business depends upon the landlord, I realize that—I mean the landlord of the hotel—but I think there is a relation between the fact that a large business is done and the rental value of the property.

The Master: That may be true if you follow that up with the disbursements.

Mr. McCarter: He has put in disbursements here.

The Master: No, he hasn't put in any of the disbursements. He hasn't told us what it costs for food, what he considered the legitimate employees of the hotel—I don't mean just legitimate—the necessary employees of the hotel. Now if we had that and could get the net income from the property that would aid me, I would think, in establishing a rental value.

Mr. McCarter: Mr. Master, my thought is this, we are not, of course, concerned with the character or the shrewdness or the ability of this man in operating the hotel. All we are getting at is the rental value of that hotel. He may have been a very imprudent, incautious man. He may have paid for things and hurt his credit. He may have done a hundred things. That is not the inquiry here. But I do think the fact a gross receipt was obtained from this hotel during those four years of over a hundred thousand dollars has some relation to the rental value and that it indicates that a large business is done there. Now if no business was done there, if it was a farce, down would go its value, but, if a large business is done there then that property is a property that would be—

The Master: How can I determine? Assume that he did fifty thousand dollars a year, how can I determine whether or not that is an adequate amount of business to have been done in that particular hotel?

Wouldn't I have to have the testimony with respect to other properties in that vicinity? I can't see that the gross receipts will aid me in the slightest in arriving at a rental value. I can readily see how the net receipts or profits would be material.

Mr. McCarter: The only thought I have—

Mr. Starr: It was Rosecrans' business.

Mr. McCarter: I am not intending, of course, to show by this, offer, your Honor, that a successful business was carried on there or unsuccessful business was carried on there, either one of those things. I am endeavoring to bring such facts before your Honor as will enable you, I think, to reach a conclusion as to what is the fair rental value and I think that an element that will help in reaching a conclusion as to that particular fact would be the fact that a large business has been done there.

The Master: How am I to determine from those figures whether it is a large business?

Mr. McCarter: It is a business of 123, 130, 140 or 150 thousand dollars, certainly there is business there.

The Master: Yes, and might have been a poor business. It seems to me that you have to have some comparison.

Mr. McCarter: I make the offer to prove by this witness—

The Master: I overrule the offer.

By Mr. Starr.

Q Mr. Rosecrans, with reference to the bath houses about which Mr. McCarter asked you,

where are the bath houses located? A At the side of the hotel; in the side yard.

Q How many bath houses are there there now? A There is a total of about thirty.

Q Were there any bath houses there when the hotel was purchased? A No.

Q Now can you give us any definite information as to when those bath houses were built? A I built them. I always had bath houses with my hotel.

Q I didn't ask you that. A They were built right after I bought the hotel.

Q How many of them were built? A A short time afterwards.

Q Were there any built at all since June, 1922? A Just as I said before, maybe three or four now.

Q What are the sizes of those bath houses? A They are small, about four by four, three by three.

Q Made out of what material? A Made out of wood and plaster board, plaster board partitions.

Q By whom were they built? A One of these carpenters.

Q Who furnished the material, do you know that? A I think the Atlantic City Lumber Company.

Q You have spoken about a couple of automobiles. How long have they been there? How long has this garage been used for the storage of the two automobiles? A Ever since we bought the house it has been used to store cars. That is these particular cars about two years.

Q Now when Mrs. Rosecrans was living there were there any automobiles stored in this garage? A Yes.

Mr. McCarter: We admit that, Judge Starr, but the changes were made, the size of the garage was reduced. Previous to the changes the guests stored cars there and paid for them and since then there is only room for two and those two are the cook and Paul, Jr., and the insurance rate has increased.

Q When was the change made to lessen the size of the garage so that two could be stored? A Sometime in 1922 or 1923, as I recall it. The fire chief has a record. He came over there and forbid us to store any more cars under there account of the danger. Some of the neighbors complained about it.

Q Now, coming back to the occupancy by Mrs. Rosecrans of this apartment in the hotel, you say that you occupied the Amsterdam Apartment until the fall of 1922? A The rent expired in October.

Q I didn't ask you that. I asked you when you stopped living there in the Amsterdam Apartment? A October 1st, 1922.

Q Before October 1st, 1922, did Mrs. Rosecrans have an apartment in the hotel? A She had a room there and had some of her belongings there.

Q What do you mean by that? Did she sleep there and occupy it? A She usually slept at the Amsterdam.

Q To what use did she put this apartment you say that she had in the summer of 1922, for instance? A I don't recall, just changing her clothes there. It wasn't the same apartment.

Q Did you rent the apartment to anybody else or was it reserved for her in the summer of 1922?

Mr. McCarter: Judge Starr, they were both living up at the apartment house.

A In the summer of 1922 we rented that apartment in the hotel.

Q In October, 1922, the house was closed? A No, not until latter part of November.

Q Fall, 1922? A Yes.

Q Now, in the winter of 1922 and 1923 the house was unoccupied and Mrs. Rosecrans had no apartment in the hotel at that time, had she? A She had the apartment and had her belongings there, but we were in California; she came to California with me.

Q After she left the Amsterdam in October and before the hotel was closed did she have an apartment there? A She did in the hotel.

Q And that was a matter of how many weeks? A That was a matter of about two months.

Q Now, when she came back in the spring of 1923 did she have the apartment then? A She did.

Q How long did she occupy the apartment? A She was at the Strand for some time; she said the apartment was too cold.

The Master: Won't you tell us how long, Mr. Rosecrans? You are making it extremely difficult for your counsel and a whole lot more so for me.

Q When did she again occupy the apartment that spring? A In March, 1923.

Q Did she occupy the apartment in the summer of 1923? A She did.

Q In the fall of 1923? A She did.

Q Did she occupy it in the winter of 1923? A Winter of 1923, yes.

Q Up to the 17th of March, is that right? A Up to the 17th of March, 1924.

Q She had the apartment there at that time? A Yes.

Q Did you have any conversation with Mrs. Rosecrans in relation to the payment by her of the sewer rent as indicated in Exhibit # C. 3? A I did when I returned, yes.

Q What was that conversation? A Well, I told—she had collected the money from the hotel—

Mr. McCarter: I would like the answer to the question.

Q The conversation you had with her; that is what I want to know? A Well, I told her that—I gave her the money for that, that is about all the conversation I had.

The Master: You told her you gave her the money, is that your answer?

A I don't recall what conversation I had. I know that—

The Master: Then that answers the question, doesn't it?

A I don't recall the conversation.

Q Did you talk with her about the payment? A Yes, I did.

Q But you can't remember what was said? A No.

Q I ask you whether or not she was ever reimbursed by you for the money which she paid the Sewer Company, if so how? A I reimbursed her either with a check or cash or told her to

retain the money that she collected from the hotel to pay for it.

Q Which was it, do you know? A I don't recall which. I will have to look my books up.

Recess taken to 1:45 P. M.

CHARLES W. DEVINE, sworn for complainant.

Direct examination by Mr. McCarter.

Q In October, 1922, were you left by Mr. Rosecrans in charge of the Princess Hotel? A Yes, sir.

Q Before he left did he give you any directions about closing that hotel? A Yes, sir; he did.

Q What did he say? A He told me to close up when the business got bad enough that didn't warrant keeping open.

Q Did he speak to you with reference to Mrs. Rosecrans? A Yes, sir.

Q What did he say? A I wasn't taking any instructions from her, but I would probably get instructions from him through telegrams or letters.

Q Now, I show you Exhibit C. 4, which is one of these telegrams offered this morning; did you receive that telegram from him after he had left for California? A Yes.

Q That is, "Have Yeutter turn off water." Did Mr. Yeutter turn off the water? A No, sir; he didn't. I went and saw him but he didn't turn it off.

Q Who did turn it off? A A man by the name of Robertson. I did see Yeutter about

shutting it off. He wanted to take two weeks for shutting it off.

Q Do you remember when you did, in fact, close the hotel? A I started closing about the 15th of October.

Q When was the dining room closed? A The dining room was closed about somewheres around the fifth of October.

Q When did you complete your closing? A About the first of November.

Q Do you know how long the hotel remained closed? A Yes, I do.

Q How long? A Until about—we opened up for Easter season, I couldn't give you the exact date, 1923.

Q Up until Easter the following spring? A Yes, sir.

Cross examination by Mr. Starr.

Q Before Rosecrans went away in October, 1922, what was your employment around the hotel? A Directly before he went I was a clerk there.

Q In the office? A In the office; yes, sir; I was both night and day clerk.

Q What say? A I was both night and day clerk at the time.

Q When he went away what became of the proceeds of the sale, the proceeds of the operation of the hotel, how was it deposited? A Why, there weren't any there.

Q Didn't have any proceeds at all? A Very little.

Q Did you have any? A What I did have I had to use as expenses.

Q Did you turn the proceeds over to Mrs. Rosecrans? A There weren't any money left there.

Q You turned them over to her? A There weren't any money left there.

Q Any money that came in from the operation of the hotel did you turn it over to Mrs. Rosecrans? A No.

Q What did you do with it? A I kept it in the drawer.

Q Made no deposit in any bank? A No, sir.

Q Now, in the following spring before Mr. Rosecrans came back from California how long was it after the hotel was opened before he returned? A Why, that was somewheres around the 30th of May, 29th or 30th of May.

Q When did you open the hotel? A I opened the hotel, I should say, about the 25th of March.

Q That was about two months, then? A Something like that.

Q What did you do with the proceeds of the operation of the hotel during those two months? A Used most of it for expenses, if I had used all of it.

Q Did you have a bank account? A No, sir; I didn't.

Q Didn't deposit any money in bank at all? A No, sir.

Q Did you give it to Mrs. Rosecrans? A No, I didn't.

Mr. Starr: I offer in evidence, if your Honor please, tax bill for 1927 to show what the taxes are and we will argue that we are entitled to a credit; these taxes have accrued, at least one-half of them.

Mr. McCarter: Let me understand this, what was the paper you just put in?

Mr. Starr: That was 1926, up to the first of January, 1927. This is the current year, 1927.

Mr. McCarter: What is it offered for? It isn't paid.

Mr. Starr: It isn't paid. It is offered for the purpose of showing the taxes have accrued and the amount of them.

Mr. McCarter: No objection to it but it seems to me utterly immaterial.

(Tax bill admitted and marked Exhibit D. 268.)

Mr. McCarter: This receipt for the $1,600 bonus, of course we object to it, if you want to offer it you can offer it.

(Receipt for $1,600 offered, received and marked Exhibit D. 269.)

Mr. Starr: We also offer bill for the interest on the 30,000 mortgage which fell due on the 30th of June.

Mr. McCarter: That, I think, is utterly immaterial. Of course, interest speaks for itself. What is the use putting in a bill that is unpaid?

Mr. Starr: It has not been paid.

Mr. McCarter: What can be gained by it?

The Master: I suppose the purpose is to show the carrying charges on this property.

Mr. McCarter: The mortgage calls for 6%, your Honor.

Mr. Starr: This shows the date and time when it will have to be paid.

(Bill for interest admitted and marked Exhibit D. 270.)

JOHN FETTER, recalled.

Direct examination by Mr. McCarter.

Q How long have you kept a hotel in Atlantic City? A Since 1915.

Q And you are familiar with the business as it is conducted here generally as well as your own business? A Yes, sir.

Q What is the function of a houseman in a hotel, as you understand it?

Mr. Starr: Wait a moment. I object to that, if your Honor please. We have made no claim here with respect to a houseman. We say that the people who are employed were carpenters and they were electricians and they were painters and so on and it seems to me that this is not relevant at all.

The Master: I take it, Judge Starr, that the purpose of offering this witness is to show, if possible, that some of this work for which you are seeking credit was properly the work of the houseman.

A A houseman usually does general utility work around the house, such as fixing window cords, electric light sockets, a little plumbing, if he can do it, vacuum cleaners, bed springs, run the vacuum if he can, gets time, fix carpets, etc., change furniture.

Q General utility man? A General utility man around the house.

Q Doing such repairs as occur from day to day that he can do? A Yes.

Q How many hotels do you keep? A Four.

Q What are they? A Grand Atlantic, Devonshire, Monticello and Jefferson.

Q Now, I call your attention to some evidence that you previously gave us with reference to the custom in Atlantic City, so far as you are aware of, as between the owner and the leasing landlord in hotels the character of repairs that are ordinarily assumed by the landlord, ordinary charges, I won't put it repairs, ordinary charges. A We usually lease a hotel—

Mr. Starr: I object to that. Question finished?

Mr. McCarter: Yes.

Mr. Starr: I object as immaterial and irrelevant. The relation between Mrs. Rosecrans and her husband with respect to this property is co-tenants, it seems to me and cannot be controlled by any custom in other hotels in Atlantic City.

The Master: Isn't the relationship entriely different here, Mr. McCarter? Here we have co-tenants—it may be that the tenant in possession is obliged to do more or less, I am not passing upon that question at this time, but it does seem to me that the relationship is entirely different—

Mr. McCarter: That may be.

The Master: —between co-tenants where one tenant is in possession than would exist between a regular landlord and tenants.

Mr. McCarter: I think I can convince the Master that my view is perhaps right about this. While it is true that the relation be-

tween this husband and wife, so far as ownership of this property is concerned, is that of co-tenants, nevertheless, under the ruling of Vice-Chancellor Ingersoll it is up to the husband to account for the rental value of the property during the four years that have intervened. Now, what is that rental value? And in addition to that he is to be credited with such proper charges or whatever the nature of the order is. Now, to that extent, that he is chargeable with the rental value, and can claim credit for some proper charges, he then, I think, is turned into a tenant for the purpose of ascertaining those facts and, while there is no lease, the law constitutes him such. Vice Chancellor Ingersoll has held that he is such and the question is what proper so-called repairs does a tenant under ordinary conditions here assume and what proper charges does the landlord assume? For the purposes of this inquiry Mr. Rosecrans is the tenant of his wife, as far as one-half interest in that property is concerned and what a tenant would pay for the property is the inquiry here and what a tenant's ordinary duties are with reference to repairs is an inquiry and the relation is a different one altogether, sir, I think from that established by the deed, which is neither one is chargeable to the other; they are supposed to be there, but, by reason of the separation that has taken place here the Court has held that Mr. Rosecrans must account for the reasonable rental value of that property, that is the value as a tenant in the technical sense of that term. Now, if that has with it certain credits, all

right, but we must look into the neighborhood to find out what the custom is to ascertain what are the charges that a landlord assumes as against a tenant ordinarily under the ordinary situation. Are they every little funny lamp that burns out, every pane of glass that breaks out or are there certain fundamental charges customarily assumed by the landlord and the tenant of a going concern assumes the other and I think it very material for your Honor, passing upon these questions, to find out what the custom here is. I don't think because they call a thing repairs, fixing a lock that is broken in the course of the use of the property as a hotel, that is a thing that the landlord must bear. You see their relation during these three or four years that have intervened is a dual relation. It is a relation of co-tenants, to be sure, but that is not what we are bothering with. We are bothering with a superaddition to that, namely, a relation of tenancy that the law creates by reason of the conduct Mr. Rosecrans manifested toward his wife which resulted in her expulsion. That being then the position, what are the responsibilities of such a person? In the first place, to pay rent. There would be no rent payable by one tenant to another tenant if there wasn't this new relation. I mean cotenant. So what credits is he entitled to? The Vice-Chancellor leaves that entirely open, such as they are properly entitled to. Now, it is Judge Starr's contention here if a key has become lost or the lock has become rusty or a window pane has gone out or a sign has broken or a floor become a little worn or anything of that kind, that is

repairs for which the tenant under the circumstances is entitled to reimbursement. Now I say that is not the fact and that is not the law and we ought to be able to show what customarily are the charges that a tenant and a landlord respectively assume with reference to the property that the one enjoys and the other is out of possession of.

Mr. Starr: I can say nothing more, if your Honor please, than what I said a moment ago that the relation here is not of landlord and tenant. It is a relation of co-tenants and the Court has simply to ascertain the rental value of the property, not based upon the fact that there is a tenancy and a landlord and tenancy between the parties, but because they bear the relation to each other as cotenants. Now a custom here with reference to a landlord and a tenant under a lease or a tenancy of any kind, it seems to me is not at all relevant and will be of no assistance whatever to your Honor in determining this question.

The Master: I am inclined to that view and especially in view of the fact that the repairs to be made by one or the other of the parties is usually the subject of a lease. I have drawn quite a number of leases for hotels and the terms vary quite materially and for the added reason that I think there is an entirely different relationship existing here than would exist between a landlord and tenant under a lease. I have, however, quite well defined notions as to what constitutes repairs. They are subject to change, of course, and I will overrule the offer.

H. RAE SCULL ROSECRANS, recalled.

Direct examination by Mr. McCarter.

Q Now in order to clear up this question of occupation, I understand that your title passed to this property under the deed that is in evidence about November, 1919. At and after that time where did you and Mr. Rosecrans live? A Amsterdam Apartments.

Q Where was that? A South Virginia avenue.

Q Virginia avenue? Who paid the rent for that? A He paid the first year.

Q How long did you continue to live there? A I lived there until October 2, 1922.

Q October 2, 1922? A Yes.

Q When did Mr. Rosecrans move away from the Amsterdam Apartments? A Latter part of May or the 1st of June, 1922.

Q What, if anything, did he prepare or have prepared for himself at the hotel? A An apartment.

Q Did he have a special lock on that apartment? A He did.

Q And who occupied that apartment when he was there? A Himself I suppose.

Q Were you ever permitted in that apartment? A No, I wasn't.

Q Beg pardon? A No, I wasn't.

Q How long did you continue to stay at the Amsterdam Apartment after he left there and had this personal apartment in the hotel? A October 2, 1922.

Q Who was in charge of the hotel at that time when you went down there October 2, 1922, when you left the apartment? A He put a young man in charge by the name of Devine.

Q How soon after that was the hotel closed? A Around about the middle of October, I just don't know the exact date. I wasn't there.

Q Was any statement made to you by Devine as having been directed to be told you by Mr. Rosecrans?

Mr. Starr: Objected to as improper and incompetent.

Mr. McCarter: Mr. Devine has testified Rosecrans told him that he was not to let Mrs. Rosecrans have anything to do with the place at all. I want to see if Mr. Devine delivered that message.

The Master: I suppose under that theory it will be admissible.

Mr. Starr: If Rosecrans made that statement to Devine he is bound by it, but doesn't add anything to it to say Devine told her.

Mr. McCarter: Justifies her conduct.

The Master: That has not been denied, Mr. McCarter.

Mr. McCarter: No, but brought to her attention.

The Master: So that if it isn't denied it must be admitted.

Mr. McCarter: But I want to bring it to her attention now. The evidence heretofore was—

The Master: Very well; I will admit it.

Q Did Mr. Devine give you any statement that he said Mr. Rosecrans had given him about you and your treatment? A He said that—

The Master: The answer to that is yes or no first.

Q Yes or no first. A Yes.

Q What did he say?

Mr. Starr: I object on the same grounds as stated before.

Q Speak distinctly; what did he say? A He said he was in charge of the hotel and he was taking no instructions from me whatsoever.

Q Do you recall when it was that hotel was closed up? A Around the middle of October, 1922, as I recall it.

Q Where did Mr. Rosecrans go? A He went to California October 1, 1922.

Q Where in October did you go to stay, so long as you remained in Atlantic City? A Hotel Strand.

Q How long did you remain there? A Until November 6th.

Q Then where did you go? A I went to California.

Q Who paid your board at the Strand while you were there from October 18th to November 6th? A I did.

Q Did you join Mr. Rosecrans in California? A He met me in San Francisco, yes.

Q Now when did you come back to Atlantic City from California? A About the middle of March, 1923.

Q When was the hotel opened in the spring of 1923? A I don't know whether that was open when I came back.

Q And did you return later to the Princess? A Yes.

Q When? A Latter part of March.

Q Of 1923? A Yes.

Q And remained there until how long? A Until the following spring, March 17th.

Q When you left? A Yes.

Q Now while you were there just tell us very briefly what occurred, how you lived and what the situation was? I mean now between the time when you went there again in March, 1923, and stayed there until March, 1924.

Mr. Starr: If that question is limited to the co-tenancy of this apartment, I have no objection to it but I don't think we ought to have a general statement by this witness as to what happened during that year.

The Master: No.

Mr. McCarter: I mean with her.

The Master: If it is in repudiation of what Mr. Rosecrans said with respect to her occupying the apartment, I think it is relevant. Otherwise I can't see that it concerns us.

Mr. McCarter: Suppose they made existence intolerable for her so that she had to leave?

The Master: Wasn't that properly part of her case with respect to the eviction?

Mr. McCarter: If your Honor has before you the evidence in the main case, of course, then it is. If you haven't, you haven't. Mr. Rosecrans has said that she continued to live there during this period and I want to say, while it is true she lived there, her existence was intolerable, the treatment was such that she finally had to leave.

The Master: If she lived there up until a certain time I can't see that I am con-

cerned about the treatment accorded to her by Mr. Rosecrans or anyone else.

Mr. McCarter: Isn't she entitled to live there peaceably and decently and if she is insulted and watched by detectives and what not?

The Master: I would say so, but how is that going to aid me in establishing the rental value of this property and allowing Mr. Rosecrans' credit?

Mr. McCarter: I offer in evidence then, so there may be no mistake about it if the question should come up, the evidence in the main cause upon which the Vice-Chancellor based his decree, so that your Honor will have that before you. I don't care to repeat, of course, but I don't want it to go unchallenged that she was living there and legitimately not entitled to rental value because she was living there when she was living there under such conditions it became intolerable and she finally quit again. That is what I want.

Now I offer in evidence certain photostatic copies of the income tax reports of Mr. Rosecrans which have already been marked for identification.

Mr. Starr: I object as immaterial and irrelevant.

Mr. McCarter: They show very contrary facts with reference to the repairs from what he has given on the stand. They have already been marked for identification. He has identified them.

Mr. Starr: We make formal objection, they are immaterial, irrelevant and incompetent for any purpose whatever.

(Copies admitted and marked respectively Exhibits C. 5 to C. 9 inclusive.)

Q Now, Mrs. Rosecrans, some testimony has been given with reference to the furniture. Of course this deed was taken in your joint names and contained a schedule of furniture. Was the furniture that is included in the schedule in the hotel at the time that you and your husband received the deed? A Yes.

Q Now what other furniture went into the hotel besides that that was mentioned in the schedule? A Some furniture was bought from the old Savoy Hotel and Yarmouth Hotel.

Q Did you pay for any of that? A I gave Mr. Rosecrans money. He went down and bought it at auction, an auction sale there.

Q After that was obtained where was it stored? A In the Iroquois basement next door.

Q I show you a check dated November 26, 1919, for $103.15; look at that check and see if you know—that is your check, I believe? Do you know what that was given for? A This check was given to the Union National Bank to take place of a check that Mr. Rosecrans had given Dan Bell the auctioneer and the check had gone to protest and I had made it good to the Union National Bank.

Q Dan Bell, auctioneer of what? A Of this auction sale where the furniture was bought.

Q Is that the stuff that was at these two hotels you have just named? A Yes.

Q After it was bought it was stored at the Iroquois? A Yes.

Q You paid on that account how much? A $103.47.

Q Now was there any furniture that came into the hotel from the Hotel Osborne? A Yes, there was.

Q Had you paid for any of that? A Yes.

Q Can you tell us how much? A Well, linen, silver, various amounts.

Q Have you any idea how much you paid? A Around about seven hundred.

Q About $700? A Yes.

Q Do you remember how much was paid for the furniture that came from the Osborne and that went into the Princess? A That was about a thousand, I think. I am not quite clear on that.

(Check offered, received in evidence and marked Exhibit C. 10.)

Q Now how soon was the furniture that had been stored at the Iroquois and was purchased at auction and also the furniture and fittings that had been brought from the Osborne installed in the hotel? A After December 1st.

Q After December 1st? A Then we got possession.

Q Now I show you another check for a hundred dollars to the order of Paul C. Rosecrans dated December 15, 1920; please look at it and see if you can tell us if you signed and gave Mr. Rosecrans that check and, if so, what was done by him with the proceeds? A Yes, I gave him this check.

Q What was done with the proceeds by him? A Used to get furniture and pictures and linen for the Hotel Princess, Princess account I have it marked.

Q Do you know where they came from? A No, I don't.

The Master: Mr. McCarter, are we interested with respect to the furniture?

Mr. McCarter: I understood Mr. Rosecrans the other day to make the statement that he paid for all of the furniture, except when I confronted him with the deed, such as was there.

Mr. Starr: No, he didn't say, he said he paid for the new furniture was in there.

Mr. McCarter: Moreover, I think, in view of the fact that this hotel was furnished. has been furnished during all this period, the fact that Mrs. Rosecrans was largely interested in it by virtue of her contributions to it is material and I wish to show the fact that she was tolerated there, making contributions, but not only the original installation but two later supplemental installations of furniture which is there today.

The Master: I note that you say in your opening "this proceeding, as I apprehend it, does not include an inquiry with reference to the furniture or personal property described in the deed, but is entirely confined, as I read the order, to an ascertainment of the rental value of the real estate subject to such credits"—you will find that on page three.

Mr. McCarter: Yes, and turn over to page 7. I further find that I said, "I take it the value of the furniture is not covered by the proceedings, properly enough, perhaps, because that would require too much detail going into the value of this furniture, some of which is old and some of which is new, but that the hotel is furnished appears from the

record and also appears from the deed itself, which is offered in evidence." In other words I want to show that the value of this hotel, as is, as was furnished, is the rental value that we are looking for and I want it further to appear that she was a co-owner with him of that furniture, so it is not so much value as is accrued by the fact of its being furnished, it is not an accretion that comes from him alone, it is their joint venture. That is the point I have.

Mr. Starr: The difficulty with that situation is that the order is the rental value of the real estate.

The Master: My understanding was that this inquiry related to the property unfurnished.

Mr. McCarter: I don't think it does. It is a going concern.

The Master: There is a difference in the rental value between that property furnished and unfurnished, there is a vast difference.

Mr. McCarter: I haven't any doubt that the order was intended to cover the rental value of that hotel.

The Master: I think we better settle right at this time what the inquiry really is because I have been under the impression that I wasn't to be concerned with the personal property. Now if I am mistaken about that I want to know it.

Mr. McCarter: I think you are.

Mr. Starr: The way—

Mr. McCarter: Of course, your Honor, the order describes the property but the property was furnished, was a furnished

place, and can't we show that fact and can't we show that if it was furnished that property had a higher value than it had if it were naked?

The Master: Yes, if the subject of my inquiry includes the furniture. I will hear you, Mr. Starr.

Mr. Starr: The way it is, in fact the bill of complaint is predicted entirely upon the theory that the parties are entitled to a joint tenancy in the real estate, lands and premises, no reference made to personal property and when Mr. McCarter came to draw the interlocutory decree he recited that: "The complainant having filed her bill of complaint in this Court setting up that she was the co-tenant by the entirety with her husband, Paul C. Rosecrans, the defendant, of certain lands and premises in said bill particularly described, and alleging that she had been excluded from the possession and enjoyment of said premises and praying that her said husband account for the rental value thereof, and the value of his use and occupancy from the first day of December, 1919." Now the decretal part of the order provides that the parties are stated as co-tenants in the lands and premises which are specifically described, no mention made of the furniture. The next provision of the order is that the defendant account for the rental value of said premises from the first day of June, 1922.

Now there is nothing whatever in the order which would justify any inquiry whatever as to the rental value of that property and the furniture contained therein.

Mr. McCarter: I take the position that if that property was furnished, as it has been and of which he has had the benefit and for the care and protection of which he is claiming compensation against us, coffee urns, and all that kind of thing, claiming the right to replace them and claiming compensation for them, that we can show that it was furnished and land and premises had a rental value increased by that fact, that she was co-owner with him of that furniture as well as himself, so that he could not say "yes, it was my furniture that gave it this additional value." It is her furniture just as much as his. They are co-owners of that just as much as they are of the other. Now while your Honor will remember that the deed which created this co-tenancy included the personal property as well in their joint names, your Honor will recall the fact that since then both have added to it, to the furniture. Now if the rental value of that property is to be ascertained it is putting on horse blinders and looking down a blind alley to suppose that the Court must shut his eyes to the fact that that property is furnished and that, therefore, its rental value is increased by the fact that whoever rents it will have the enjoyment of the furniture. You can't call it four naked walls when they have had the use of the furniture and while I am not asking him to account for the furniture, we are asking him to account for the rental value as is of the property described in the bill of complaint and in the order and we say therefore that it is important to show that we are co-owners of that and not, as he insists, his furniture, so that he could claim, "ah, but

the accretion that comes by this is my contribution." That is not the fact.

We offer this to show that we were cotenants not only with the original installation but with the subsequent installations of the furniture and that that furniture has been there all this time and, as the evidence already proves, has increased the rental value and, therefore, we are entitled to our share of that increase, and I am sure Vice-Chancellor Ingersoll never intended to exclude that feature. We do not ask for compensation for the furniture itself. That is not it. We are asking for the rental value of that property as is and whatever and is attached to that property is an inherent element in its value we are entitled to. Now that furniture is placed there and she is a part owner of it and to rob her of that, I say, would be wrong and I think, upon reflection, your Honor will agree with me about that and I certainly want to show, if I may, that she has contributed to it from time to time down to date, so the facts will appear.

The Master: I will let Mrs. Rosecrans testify with respect to the furniture upon the understanding that I may or may not subsequently strike it out.

Mr. McCarter: I don't ask your Honor to settle that now.

The Master: It would seem to me, however, inasmuch as there is such a wide difference of opinion with respect to this inquiry, perhaps there ought to be some instructions given to me with respect to the furniture by the Court.

Mr. McCarter: Is there any way of reaching the Vice-Chancellor?

Mr. Starr: That can only be done by a supplemental order of some kind.

The Master: I would think that would have to be done on notice of motion and subsequent order.

Mr. Starr: I have contended from the first, objection was made at the first hearing this inquiry was limited to the rental value of the real estate unfurnished.

The Master: Of course the deed includes the personal property, but it has been my understanding up to the present time that I was not concerned with the personal property and I confess that I got that impression from your opening.

Mr. McCarter: Your Honor didn't read as far as I went. I said that. Now I don't want to be held by the narrow language. I was trying to narrow the issue down to testimony. I don't think testimony concerning the character of the furniture and all that is of any great importance. I think the fact that this is a furnished hotel is the point.

The Master: It is true that the property unfurnished would have one value and furnished would have an entirely different value.

Mr. McCarter: No question about that.

The Master: What I am concerned about at the present time is what my job is.

Mr. McCarter: If I can't convince you by what I say that you ought to consider it, then I will ask leave to get the Vice-Chancellor's instructions on that. I feel very sure what

he meant about it, but in the meantime I think we can go on and finish up the case.

The Master: Yes, I think we ought to do that and then, if I may have further instructions from the Court, I would be glad to have that.

(Check dated December 15, 1920, for $100 offer, received in evidence and marked Exhibit C. 11.)

Mr. McCarter: In thinking about it I want you to remember specifically today, for instance, Judge Starr put in evidence the cost of renewals of coffee urns and things of that kind which he had stated he had found were there at the time that they were started that they started and these were renewals, therefore he should be allowed for those renewals.

Mr. Starr: They were attached to the freehold became part of the real estate.

The Master: I assumed Judge Starr was proceeding on the theory that they were fixtures.

Mr. McCarter: There is no proof they are at all.

The Master: That may be true. Another thing that made me feel that I wasn't concerned with the furniture is the fact that they make no claim for the insurance premiums on the contents.

Mr. McCarter. They couldn't very well do that and make the claim they do now. I haven't taken the position that they are not entitled to the insurance on the furniture that has been there.

Mr. Starr: We haven't made any claim for renewals or reparation of any of the furniture there.

Mr. McCarter: Put in the evidence they have paid twenty-five hundred dollars for some new carpets, put that in.

The Master: I feel under the circumstances, I should hear anything that you have to offer that can be at all pertinent and then, either on my own application or by the application of either yourself or Judge Starr find out where I am.

Mr. Starr: Of course the testimony is taken subject to my objection.

The Master: Yes, I understand that.

Mr. Starr: Because I have contended from the start that this order wasn't broad enough to warrant the inquiry as to the furniture.

The Master: And I have been proceeding on that theory.

Q Now, Mrs. Rosecrans, I show you ten more checks in one package dated respectively, January 17, 1920, January 17, 1920, January 11, 1920, April 21, 1922, June 30, 1922, June 2, 1922, April 12, 1922, May 3, 1920, May 24, 1922, March 15, 1922, please look at those checks and see if you can tell us what the proceeds were applied to?

Mr. Starr: I object to that on the ground stated before.

The Master: Yes.

Mr. Starr: Checks are drawn to whose order, Mr. McCarter?

Mr. McCarter: The first one $250 drawn to the order of Paul C. Rosecrans; second one $300, drawn to the order of Paul C. Rosecrans; third one $300, drawn to the order of Paul C. Rosecrans; fourth one $106.38, drawn to the order of Ernest A. Ruegg; next one is for $37.50 to the order of Strawbridge and Clothier, next is to Ruegg for $61.25, next to Strawbridge and Clothier for $122.25, next is to Tillie Boese, $2.50; next is to Anna Fletcher, $40 next is to Anna Fletcher for $2.80.

Q Can you tell us what became of the proceeds of those checks? These that went to Mr. Rosecrans first, what about them? A These checks January 17, 1920, $250 and $300 and $300 were for furniture for some part of the lobby and the writing room and the lobby downstairs.

Q And they amount to how much? A $650.

Q $850, isn't it? A Yes, $850.

Q And those other later ones that I mentioned, Ruegg and Strawbridge and Clothier? A Ernest Ruegg for $106.50 was for seventy lace panels for the Princess Hotel lobby, still down there; Strawbridge and Clothier, $37.50 was for framing California views of pictures. They are still down at the hotel lobby. Another check E. A. Ruegg, $61.25 is for panels for curtains.

Q What do you mean by panels? A Lace panels, lace window panels, single; they are still there. They are for the writing room.

Q They are curtains, are they? A Yes.

Q Put up in the hotel? A Yes.

Q Still there? A Yes.

Q Go on? A Strawbridge and Clothier, $122.25 was for linens for the Hotel Princess

bought from the contract department, Strawbridge.

Q For what? A Linens.

Q Linens for the hotel? A Yes.

Q Go on. A Check $2.50 for Tillie Boese, it is for making pink silk lamp shade, still there; I looked at it the other day. Check here, $40 for Alice Fletcher was for preparing curtains and towels and hemming table cloths, napkins, things of that sort.

Q Used in the hotel? A Yes. Also $2.50 Alice Fletcher also for meals; dining room wasn't open. I paid $32 for—

Q Is that here? A No, that was a cash item I paid to Snellenberg for the furniture.

Q Wait a minute. All through with the checks? A Yes.

(Ten checks offered, received in evidence and marked Exhibit C. 12.)

Q Now can you remember some more contributions to furniture that you made? A I brought from the house in May's Landing—

Q No, you spoke of Snellenberg. A Snellenbergs was for framing California views same as Strawbridge's.

Q How much was that? A That was $32.

Q Do you remember buying some curtains? A That was in the check, that is from Ruegg's.

Q Do you remember buying some rugs, washable rugs? A Yes.

Q About how much did you pay for them? A They came around forty dollars. I got those from Wanamaker's on my account.

Q On your Wanamaker account? A Yes.

Q Paid for them yourself and they went into the hotel? A Yes.

Q Do you remember getting any other bed room curtains that have not been spoken of? A I have a check for these. They are samples. These are parlor curtains here.

Q Do you have any check? I don't seem to have it here. I am speaking now of curtains in the bed room, $61.25. A That has been entered.

Q What? A That has been entered, Ruegg.

Q We have? A Yes.

Q Was any furniture and rugs brought down from the apartment and used in the hotel that you owned personally? A That was all brought down.

Q That is what we are talking about? A Yes.

Q What was it? A Rugs, pictures, all the linen that was there.

Q Who owned that? A Who paid for it? A I bought most of that.

Q Bought most of it? A Yes.

Q Now was there anything brought from May's Landing at your home there and put in the hotel and used? A Three rugs, sewing machine, some curtains and linen, some linen.

The Master: Mrs. Rosecrans, won't you please speak so I can hear you.

A And two large mirrors.

Q Now I show you two checks dated respectively April 2, 1923, to the order of Lawrence M. Lear, $25, and May 23, 1923 to the order of Lawrence M. Lear for $42.50, each of them being your checks, which seem to have gone through

the bank. Will you tell me what they are? A This $25 was for curtain work, making drops out of curtains, check for $42.50 was for making valance for the sun parlor.

Q And used in the hotel? A Yes.

Q These two checks paid for it? A Yes.

(Two checks offered, received in evidence and marked Exhibit C. 13.)

Q Now I show you two more checks of yours dated respectively June 22, 1923, order of Ernest Ruegg, $75.46, and June 29, 1923, drawn by you to the order of Ernest Ruegg for $9.30. Look at them and see if you can tell what they paid for? A Curtains.

Q What became of the curtains? A Bed room curtains these were.

Q In the hotel? A Yes.

(Checks offered, received in evidence and marked Exhibit C. 14.)

Q Now I show you check dated November 23, 1920, to the order of Paul C. Rosecrans and signed by you on the Atlantic Safe Deposit and Trust Company for $2,500 and bearing apparently Mr. Rosecrans' endorsement; do you remember about that? A This was for furniture, some of it bought at Snellenberg's, parlor furniture, some parlor furniture, some writing room furniture and lower lobby, and for other improvements that he had to have money to make.

Q What is that? A For other furniture scattered through the house that he bought, he didn't have any money to buy the furniture.

(Check offered, received in evidence and marked Exhibit C. 15.)

Q I show you another check dated December 15, 1920, drawn by you on the Atlantic City National Bank to the order of Paul C. Rosecrans for $500 apparently endorsed by him; can you remember what that was for? A That was used for the same purpose.

Q As the $2,500? A Yes.

(Check offered, received in evidence and marked Exhibit C. 16.)

Q Now, Mrs. Rosecrans, a great deal has been said with reference to the character of the improvements that were made in the basement in the year, 1925. Won't you tell the Master what the situation was originally and what change was made? There is a little drawing you made the other night which will enable you to refresh your recollection. Before the changes were made in 1925 with respect to the basement, wasn't that? A Yes, when he took possession.

Q In 1925, now before then, I am not going back to the improvements of 1922; I am talking about the improvements that were made in 1925 when certain bed rooms were made down there. Now what was the situation in 1925 or the end of 1924 before the improvements that were made in 1925 were made? A Beginning 1925 there was helps rooms, about ten I should suppose, made out of compo board built in and a large store room covering about one-third of the basement and the rest was in a garage.

Q What? A The rest was in a garage.

Q Now what change was made? A The helps rooms facing outside, facing Pacific avenue were turned into guest rooms.

Q What had they been before? A Helps rooms.

Q Helps rooms? A Yes.

Q All right, changed into guests bed rooms? A Guest bed rooms.

Q Go on? A Then the five rooms facing inside the doors were taken off of that side and put on this side so the help rooms would come out towards the kitchen away from the guest rooms.

Q How many new bed rooms were made for guests by this change that occurred in 1925? A About ten.

Q Ten? A Yes, sir.

Q Some testimony has been given by one of the witnesses, I think it was Mr. Rosecrans and possibly another witness, Mr. Hickman, with reference to the linen room being next to the kitchen. Was the linen room next to the kitchen? A It never was, never.

Q What was the arrangement with reference to that? A The kitchen was on the extreme, this side of the hotel and the linen room was on the—

Q Hold on a minute; what side is that, west? A Yes.

Q West side, where was the linen room? A On the extreme east side.

Q Ocean side of the building? A Yes.

Q Always was there? A Yes.

Q What was between the linen room and the kitchen? A There was a freight elevator, steps and two rooms and a half.

Q Now I want to call your attention to Exhibit C. 1 of yesterday, 7/7/27, which is the paper that Mr. Hickman stated was in his handwriting. Do you remember the facts and circumstances in connection therewith? A I do.

Q Did you have any conversation with Mr. Rosecrans before the making of that paper? A Yes.

Q What was that conversation? A He said he thought it would be a good idea to get an outsider to determine, if possible, what the rental value would be of the property and what the sale price would be.

Q When was this, about? A That was the latter part of 1923, I should say December, 1923, around Christmas time, 1923, and he asked me who I would suggest and I said I hadn't anyone to suggest, anyone he said. Well, he said "I would like to have Mr. Hickman and Mr. Carlton Adams" and I said "they are two very fine fair men and agreeable to me," so that ended it at that conversation.

Q Did these men later come to the room? A A day or so later they came, the three.

Q Who came? A Mr. Adams, Mr. Hickman and Mr. Rosecrans.

Q What occurred? What was said? A Mr. Rosecrans said "Here is Mr. Hickman and Mr. Adams and they are going to look through the property see if possible they can determine the rental value and sale price, the rental value was to start from 1919.

Q Did they leave? A And then I stayed in the room and the three gentlemen went out and went through the house.

Q That is they told you they had? You didn't go with them, did you? A No, I stayed in the room.

Q Did they then come back? A They did then come back.

Q The three of them? A The three.

Q Did they make any statement to you in the presence of Mr. Rosecrans? A They did.

Q What did they say? A They said they had gone through the house, and examined it thoroughly from top to bottom and they said they had found figures and they would submit them to me, and that is exactly what they did, Mr. Hickman took this memorandum off of his memorandum book and he and Carlton, Carlton in fact told him, so the two of them, this was their decision.

Q And this was written then in your presence? A Yes, in 106 room.

Q That is referring to Exhibit C. 1 of yesterday? Now after that had occurred did Mr. Rosecrans make any calculation? A He did.

Q I show you a paper and ask you if the figures under the words "rental value" were made by him? A They were.

Q And whose handwriting is the word "rental value"? A Mr. Rosecrans.

Q Whose figures are down below there? A Mr. Rosecrans.

Mr. McCarter: I offer that in evidence.

Mr. Starr: I would like to cross examine this witness with reference to that.

Cross examination by Mr. Starr.

Q Mrs. Rosecrans, this paper that you have identified was made when, do you remember? A When Mr. Rosecrans brought it to me was the last—

Q When did he bring it to you? A I am telling you that, the last Monday in December, 1923, I should say.

Q Wasn't this prepared as a result of a conference between you and he respecting a compromise and adjustment of this litigation? A Nothing was said so much about compromise, he thought it was about time I was getting something back on my investment and that is what that was for.

Q Didn't he make an offer to you to buy you out? A I never heard of any offer, never at any time.

Q Didn't you sign an agreement to settle this litigation? A Not at this time.

Q Pardon me, didn't you sign an agreement to settle this litigation?

Mr. McCarter: When?

Mr. Starr: I don't care when it was.

Mr. McCarter: I object as immaterial.

Q Didn't you sign an agreement?

Mr. McCarter: I object.

The Master: Mr. McCarter, it may be that it relates to this very paper.

Mr. McCarter: I think we ought to—

The Master: Of course, if he doesn't connect it up, then I will discard it.

Mr. McCarter: I think we ought to have the time specified. There was a compromise effected by Judge Starr and me in this other room two years after this, if that is what he is referring to. Of course that has nothing to do.

The Master: It may be that it refers to this very paper—

Mr. Starr: Have you a copy of that compromise agreement here, Mr. McCarter?

Mr. McCarter: I haven't. I don't think that was long after that.

Q Now, Mrs. Rosecrans, isn't it a fact that this paper which you have produced was submitted to you by Rosecrans during the negotiation between you and he in relation to a settlement of the litigation? A No negotiation at all. He came and brought that in.

Q Can't you answer my question. Was there any talk between you and he about settling the litigation? A No.

Q None at all? A No.

Q Between you and Rosecrans? A Only when he brought me that paper. There was no talk then; he just showed it to me.

Q This paper was produced to you as the result of conferences or talks or negotiations in relation to a compromise, isn't that a fact? A No.

Q What was said when this was brought to you? A He brought me that memorandum based on the appraisal I just spoke of and he said he thought it was time I was getting back something for my investment.

Q And that was after this suit was brought, wasn't it? A Yes, after it was filed.

Q Wasn't there any discussion at all about an adjustment of the litigation? A Not with me at that time.

Q Either before or immediately after this paper was prepared? A What did you say?

(Question repeated.)

A Was no discussion of litigation. He thought it was time I was getting something back for my investment.

Q Is that all he said? A That is the summary of it. I don't know just all he said.

Q Didn't he express a desire to adjust the matter in some way with you? A He said he thought he would be willing to pay me something to get something back on my investment.

Q And you were anxious to have the adjustment made? A No, I wasn't specially anxious.

Q Didn't care anything about the settlement? A I wanted to get something back on my investment.

Q Did you care anything about the settlement? Couldn't you answer that yes or no? A What do you mean about settlement?

Q You know what I mean about settling the litigation? A There hadn't been any litigation except filing the suit.

Q You had brought a suit against him which was the foundation of this action, didn't you? A Yes.

Q And this paper you say was presented to you by him after that suit had been brought. That is right, isn't it? A Yes.

Q And before it was tried? A Yes.

Mr. Starr: I object, if you Honor please, to the introduction of that paper on the ground it had to do with negotiation with reference to compromise.

The Master: I will admit the paper.

(Paper admitted and marked Exhibit C. 17.)

Q Don't you remember a conference in the fall of 1924, in Trenton in the office of Attorney General Katzenbach with reference to an adjustment? A Yes.

Q Weren't you up there? A Yes.

Q Wasn't it before this paper was presented? A Oh, no, long time after, I believe. You were there.

By Mr. McCarter.

Q Then, Mrs. Rosecrans, it is a fact, isn't it also—was I in the litigation at the time this paper was given to you by Mr. Rosecrans? A Absolutely no.

Q Who was your lawyer? A Judge Schimpf, Theodore Schimpf.

Q Then later Mr. Katzenbach got in, now Mr. Justice Katzenbach? A Yes.

Q And that was long after this? A Yes.

Q Then after Mr. Katzenbach became Attorney General I got into it, did I? A Yes.

Q After I got into it also there were some negotiations for settlement in this room? A Yes.

Q And Judge Starr and I took part in that? A Yes.

Q We had nothing to do with that? A Absolutely none; two years later.

Q Now the Master has handed me this check Exhibit C. 3, 7/8/27 to the order of the Atlantic City Sewerage Company for $387.05 signed by you. Do you remember paying that? A Yes, I did pay it.

Q Under what circumstances? A The sewerage connection would have been discontinued if I hadn't paid it.

Q Was Mr. Rosecrans here at that time? A No, he was in California.

Q With that exception did you have anything to do with any of the payments that are claimed

here to have been made either for repairs or otherwise by Mr. Rosecrans? A Yes, I did.

Q What? A The checks are there.

Q I mean since 1922? A Oh, since 1923?

Q Since June 1, 1922, have you had anything to do with any of the repairs, payments that he has made since June 1, 1922, except that one payment? A Yes, I paid William Haughey around three hundred dollars for painting and cleaning all through the house. Checks are all over on the desk.

Q He hasn't claimed credit for that, has he? A I don't know.

By the Master.

Q Mrs. Rosecrans, I notice on the end of this check, "Princess Hotel Account." What does that mean? A Well, I just did that for my own, it means that it was used for that purpose.

Q I didn't notice the same notation on any of the other checks? A It is on some of them and some it isn't.

By Mr. McCarter.

Q Now, Mrs. Rosecrans, I am asking you to pay attention to my question that I put to you. Were you consulted by Mr. Rosecrans with reference to any part of the payments that he claims to have made for any purpose upon this property since June 1, 1922? A Absolutely none.

Q Except the sewerage payment, Exhibit C. 3 of 7/8/27, and you say some rug or some other checks that you have got here which he hasn't produced or claimed credit for, did you have anything to do with any of these payments that he has claimed credit for? A No.

Q Now, Mr. Rosecrans said when he was in California you received some of the proceeds of the hotel in the years 1922 or 1923, is that a fact? A It is not.

Q It is not? A No.

Q Never had a cent? A No.

Q I show you a package of letters that are in the main case—I will say again but I think they are very material to this controversy and indicate the point of view—they are written by Mr. Rosecrans and refer frequently throughout to Mrs. Rosecrans—

The Master: Aren't they a part of the record on the main case?

Mr. McCarter: Yes.

The Master: Of the files of the main case?

Mr. McCarter: If it may be considered that is in, that is all I need.

Mr. Starr: I object to the introduction of the letters, being immaterial and irrelevant.

The Master: You have offered the files.

Mr. Starr: Well, the offer was the testimony.

Mr. Starr: I object to the introduction of the letters, being immaterial and irrelevant.

The Master. They are a part of the record as I take it and offered in evidence.

Mr. McCarter: They are exhibits in the main case. All right, then I won't have to offer them; can use them on the argument.

The Master: I want to state at this time, Judge Starr, that if it develops that I am to take into consideration this property furnished and there are any other items for which you desire credit that you haven't al-

ready proven, you will be given an opportunity to do that. I don't want to foreclose you.

Mr. Starr: Of course if you are going to include in this accounting the account of this property furnished it will be necessary, beyond a doubt, to produce testimony to show what we have put in the building in the way of replacements and additions and I suppose I could defer cross examination with reference to these various checks as to the furniture until you determine that matter. If that furniture is to be excluded I don't care anything about cross examining this witness as to these checks.

The Master: It is only fair to you that you be given an opportunity to prove your case fully.

Mr. Starr: If you determine the personal property is not in this issue then I have no desire whatever to cross examine Mrs. Rosecrans with reference to these various checks. If you determine it is, I will not only cross examine her but produce some testimony with reference to what we have done.

The Master: You will have some additional proofs?

Mr. Starr: Then I won't cross examine her at all about these checks.

The Master: That I know you will be entitled to have an opportunity to produce.

Mr. McCarter: I don't want to cut off anything. I want to get the case finished as soon as I can.

Cross examination by Mr. Starr.

Q Mrs. Rosecrans, while you and Mr. Rosecrans were occupying the apartment at the Amsterdam were any of the rooms of that apartment used for guests of the Princess? A Yes.

Q Before the second of October, I think it was, or the first of October, 1921, did you occupy any apartment in the hotel at any time? A What was the question?

Q Before the second of October, I think it was, or the first of October, 1921, did you occupy any apartment in the hotel at any time? When did you give up the Amsterdam apartment? A October 1, 1922.

Q And then did you then go to the hotel and live? A All the furniture was taken down there, yes, I went down there, yes.

Q You went to the hotel to live and you remained there until March, 1923, is that right—1924? A No.

Mr. McCarter: Not at all.

The Master: She said so, March 17, 1924.

Mr. McCarter: Didn't remain there, then she went to California, went to the Strand Hotel.

The Master: She testified she left the hotel March 17, 1924.

Q How long before March 17, 1924 had you been residing at the hotel? A Two weeks in October, 1922, and from around about April, 1923, until the following March.

Q March 1924? A Yes.

Q Practically a year, is that right? A Yes.

Q And did you have an apartment there consisting of two rooms and bath? A No.

Q What did you have? A One room and bath.

Q Did you ever at any time have two rooms and a bath? A No.

Q Did Rosecrans continue to occupy the Amsterdam apartment after he came back from California in 1923? A Wasn't in the Amsterdam apartment in 1923.

Q Gave that up in October, 1922, didn't he? A Yes.

Q When did he leave the Amsterdam apartment? A He left in the latter part of May or early in June, 1922.

Q And left you with the apartment? A Yes.

Q Did you have any of your clothing at the hotel during that period? A No, not a thing.

Q Did you eat at the hotel? A No.

Q Where did you eat? A Outside and at the apartment.

Q Have any meals at the hotel? A I don't recall any that year.

Q Did you have anything to do with the operation of the hotel in 1922, after Mr. Rosecrans went to California? A 1922? No.

Q At any time while he was in California did you have anything to do with the operation of the hotel? A Only to pay these bills.

Q What? A Only to pay these bills.

Q Did you get any of the proceeds of the hotel? A No.

Q Made no collections at all? A Haven't yet, no.

Q Did you take any money out of the safe from time to time? A No, I didn't. None in there to take out.

Q What? A There was none in there to take out.

Mr. McCarter: Never mind that. Answer the question.

Q Did you have a bank account in any of the banks in Atlantic City called "The Princess Hotel Account"? A No.

Q How many bank accounts did you have say in 1922, and 1923? 1923 in April did you have more than one bank account? A Yes.

Q Where was it? A Second National and Safe Deposit; also been my banks.

Q Isn't it a fact that in the Atlantic Safe Deposit and Trust Company you deposited moneys that came from the operation of the hotel? A I did not.

Q No moneys whatever? A No.

Q Did Mr. Rosecrans ever return to you the money represented by Exhibit C. 3? A I don't recall any ever being returned.

Q What do you mean by that? Will you say positively no money was ever returned? A I don't recall any ever being returned.

Q I am entitled to an answer.

The Master: Answer yes or no.

Q Will you answer yes or no to that? A No.

Q He did give you checks from time to time, didn't he? A Not after that check.

Q Never gave you any check after April 1923? A I don't recall any.

Q Didn't you testify in the former suit that Mr. Rosecrans from time to time gave you checks or returned moneys which you advanced for the hotel? A Oh, that was prior.

Q Please answer my question. Didn't you testify to that? A I think I did.

Q And it is a fact, isn't it? A But not after that check.

Q Won't you answer my question, please? It is a fact that he did return to you from time to time moneys which you advanced for the purpose of operating the hotel? A Yes.

Q Were there any changes made in the hotel prior to March 14, 1924? A Some time in the spring of 1922.

Q What were those changes? A Stores were turned into bed rooms.

Q You were there at that time, weren't you? A No.

Q Where were you living at that time? A Amsterdam.

Q Amsterdam? A Amsterdam apartment.

Q Did you take your meals at the hotel then? A No.

Q In 1922? A No.

Q What other improvements were made prior to March 17, 1924? A Well, the rooms or stores were turned into bed rooms; that was all as I recall it now.

Q No other changes? A Well, that was about ten rooms.

Q Were you there when they made the rearrangement of rooms in the basement? A No.

Q When was that done? A 1925, I presume, according to the testimony.

Q You wern't there at that time? A No.

Q You knew that Mr. Rosecrans had paid Mr. Prettyman a bonus for the renewal of the mortgage in 1922? A No, I didn't.

Q Did you ever know it? A Mr. Prince told me, 1926, that is Prettyman's secretary, that he had charged him a bonus.

Q That is the first time you ever knew anything about it? A Yes.

Q And you didn't know that there had been a bonus paid in 1922, when the mortgage was renewed for another five years? A No, I did not.

Q Didn't Mr. Rosecrans tell you that he had paid the money? A No, he didn't.

Q Never had any conversation with you about it? A No.

The Master: Judge Starr, how can that possibly be a credit? That is prohibited by statute, isn't it, that sort of thing?

Mr. Starr: The receipt which we introduced in evidence shows that the compensation was for commission, for appraisal fee and drawing contract.

The Master: A rose is just as sweet, isn't it?

Mr. Starr: I don't think the fact that it was an illegal arrangement between Prettyman and Rosecrans would have any bearing whatever if it was necessary for him to renew that mortgage. The offer was in the cross examination to show that she had known of some arrangement when it was renewed originally.

By Mr. McCarter.

Q You have been to the hotel two or three times in the past two or three years, haven't you? A Yes.

Q Have you noticed any additional bath rooms there, bath houses? A Yes.

Q How many over what were there formerly? A There were always bath houses, but additional ones, about twelve I should say.

Q How many? A About twelve additional.
Q Twelve additional bath houses? A Yes.
Q New since when? A Since 1922.

By Mr. Starr.

Q Do you know when those twelve were put in? A No, I don't. It was in that intervening time.

Q Between 1922 and the present time? Now are you sure that there were twelve? A Well I would say offhand twelve, I couldn't just say.

Q Did you ever count them? A I have.

Q How many did you count? A I will bring the memorandum.

Q How many did you count? A Around thirty or forty.

Q I am speaking of the new ones. Have you made a record of the new ones and counted them? Can you tell us how many there were? A About twelve or fifteen I should say.

Q That is as near as you can tell us? A Yes.

Mr. McCarter: I feel quite deeply about this question of furniture and I want to have anything further done that either the Master or Judge Starr wants done. I don't want to catch anybody unawares and if it is necessary to wait for the Vice-Chancellor to come back we will have to wait, unless I have convinced you or your Honor would like further argument upon that subject and I am perfectly willing any opportunity to put in any further testimony that may be required on the other side should be accorded. I don't want to do anything to shut out anything on that, but my view is quite firm in my own mind

and I think I can convince your Honor, and believe and think that the Vice-Chancellor will guide us—that it would be very narrow to not look at that hotel, whose rental value was a matter of moment,—as a furnished place, and whatever your Honor wants about that I am perfectly willing to conform to your Honor's views.

The Master: It is perfectly apparent to me Judge Starr was proceeding on the theory that the personal property, the furniture, was not the subject of this inquiry.

Mr. Starr: No doubt about that because I raised that question the first day. Have you any further testimony, Mr. McCarter?

Mr. McCarter: No, that is our case.

PAUL C. ROSECRANS, recalled.

Direct examination by Mr. Starr.

Q I show you Exhibit C. 17, Mr. Rosecrans, and I wish you would examine that and tell us what you know about the preparation of it and whether or not you had any conversation at all with Mrs. Rosecrans in relation to it? A That was made at the time when Mr. Hickman and Mr. Adams were over there after they had left. I counted up the taxes and water rent, mortgage interest and these figures were just a memorandum, nothing—just a general memorandum; there was no appraisal made as to the value, no real appraisal, it was just a memorandum.

Mr. McCarter: I don't think that answers the question. The question is what was said?

Q What was the object of preparing that paper? A She was talking about making a settlement at the time.

Q That was after suit was brought, was it? A After suit was brought, suit was brought that fall of that year.

Q Now I want to know what occurred between you and her as the result of which you made this memorandum? What did she say to you and what did you say to her? A She wanted me to buy her out, talking about buying me out, and I made these figures here about expenses on the property and we didn't come to any agreement at that time.

Q As the result of the fact of your not coming to any agreement was the case tried before Vice-Chancellor Ingersoll? A The case was tried the next week after that, a week or two later.

Q Did you tell her at that time that you brought the paper to her and handed it to her because you thought it was about time she had something for her investment? A No, I never did.

Q Or anything like it? A Nothing like it, no.

Q I show you Exhibit C. 1 did you ever see that before? A Mr. Hickman made that when he was over here, he and Mr. Adams, and they fixed or they didn't fix any value, they just made a tentative—

Q Was it at the hotel? A At the hotel, yes.

Q Was Mrs. Rosecrans there? A She was there, yes.

Q Will you say whether or not it was about or at the same time that you produced Exhibit C. 17? A Yes.

Q Both at the same meeting? A Both at the same meeting.

Q Did you ask Mr. Hickman and Mr. Adams to go there? A I did.

Q Now you say whether or not— A She agreed to it.

Q Will you say whether or not that was the result of any conversation you had with her? A Yes.

Q What was that conversation A Well, we talked about keeping this thing out of Court and making some kind of settlement.

Q That is all.

No cross examination.

Mr. Starr: When we adjourned at the last sitting, it was for the purpose of making application to the Vice-Chancellor for the modification of the original interlocutory decree, and there was a modification made on the 10th of April, 1928, which gave the complainant the privilege of taking additional testimony with reference to her treatment in the hotel previous to the 17th of March, 1924. Do you expect to take any additional testimony?

Mr. McCarter: No, we don't. I haven't read every page of this long record yet, but I had a conversation with my father, and I understand from him that since—I don't see how it can be since the making of that order because there hasn't been a hearing since then, but I understood from him he has made plain to Judge Starr, if not to the Master, that no further testimony of that is going to be taken, and if that is not on the

record before, I will put it on the record now.

Mr. Starr: I don't think it is on the record.

Mr. McCarter: It is on the record now.

Mr. Starr: I saw him one day and he intimated that would be the result.

Mr. McCarter: Evidently by correspondence, then. At any rate, it is on the record now.

Mr. Starr: I offer in evidence check of Paul C. Rosecrans dated August 27, 1927, drawn to the order of the Ormond Beach Bond and Mortgage Company for $3,000, eighth installment on $75,000 mortgage.

(Check received in evidence and marked Exhibit D. 274.)

I offer another check, Rosecrans to the order of Ormand Beach Bond and Mortgage Company for $1,560, interest on $54,000, $540, interest on $51,000, $1,020, making a total of $1,560.

(Check received in evidence and marked Exhibit D. 275.)

Mr. McCarter: Judge Starr, I don't want to interfere with the progress of this, but is it your plan to put on Mr. Rosecrans to testify?

Mr. Starr: I had expected to do so if you desired.

Mr. McCarter: Then we better let it go this way and if there is anything I want to question him on we will put him on.

Mr. Starr: We will give you information on anything you desire.

I offer in evidence check dated January 25, 1928, to the order of Ormond Beach Bond and Mortgage Company for $900, covering interest on $30,000 mortgage from June 30, 1927, to December 30, 1927, signed by Paul C. Rosecrans.

(Check received in evidence and marked Exhibit D. 276.)

I offer two checks, one dated December 27, 1927, to the order of Ormond Beach Bond and Mortgage Company for $8, signed by Rosecrans, being interest from December 1st to December 30th, on $1,560, and the other $4.50, interest on $900 from December 30th to January 30th.

Mr. McCarter: I wish to note an objection to those two checks on the ground that interest on deferred payments, delay in which was made by the tenant in possession, can't by any possible attitude be a credit in his favor.

The Master: What have you to say to that?

Mr. Starr: I think that is so, if that is what they were. Well, we won't offer them.

I offer in evidence receipt from the Atlantic City Sewerage Company for $585.70, which was paid August 15, 1927, by check of Rosecrans, dated August 14, 1927, for the same amount.

(Receipt and check offered, received in evidence and marked Exhibit D. 277 and D. 277a.)

I offer in evidence seven invoices as shown in Schedule C presented, showing the payment of fire insurance premiums to C. J.

Adams Company first of August 25, 1927, for $267; October 3, 1927, for $20; November 25, 1927, for $1,255.16; December 30, 1927, for $66.36; March 15, 1928, for $1,245.50; March 28, 1928, $353.26; May 25, 1928, for $1,296.79, making a total of $4,504.07. We admit a credit on account of the Adams claim as shown in Schedule C. of $603.96, making total claim of $3,900.11.

The Master: I notice here some interest items. Are you asking those?

Mr. Starr: No, we are not entitled to credit for interest. You remember this question arose before in the accounting, whether or not we were obliged to show payment of all these accounts, if we had incurred the indebtedness, held we were entitled to the credit whether paid or not.

Mr. McCarter: The point I was about to make on these bills there, that they do show incurring an indebtedness, but they don't show payment, in other words, I do not believe it is a credit.

The Master: I may have made such a ruling.

Mr. McCarter: In order that the point may be raised, I want to object to the admission in evidence of these several bills of C. J. Adams Company in that it appears by them that they are not receipts but mere charges against Paul C. Rosecrans.

The Master: I understand that they have checks here covering?

Mr. Starr: The difficulty with the situation is that the checks were not of the same amount, paid on account of interest and

principal, and it is going to be a very difficult matter—

The Master: Isn't that all tabulated here?

Mr. Starr: It is tabulated on Schedule C.

The Master: Seem to be $2,693.64 and $89.83, that would apply to principal.

Mr. McCarter: That I would concede is a proper—

(Invoices admitted in evidence for whatever they may be worth, and marked Exhibit D. 278.)

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q Mr. Rosecrans, look at the invoices from C. J. Adams Company markd D. 278, and tell us what they represent. A They represent bills for fire insurance.

Q Did you obtain the policies represented by those invoices from C. J. Adams Company? A Yes, I did.

Q And you incurred the indebtedness shown by those invoices? A Yes, I gave them notes.

Q What say? A They are paid by notes.

Q I show you a bunch of checks beginning June 30, 1927, and ending December 28, 1927, and ask you whether or not these checks were given by you to Adams Company on account of your indebtedness for insurance premiums? A Yes, they were all paid.

Mr. Starr: I offer them.

Paul C. Rosecrans, for defendant, cross.

Cross examination by Mr. McCarter.

Q Mr. Rosecrans, are any portion of those checks for the payment of interest due on the notes with which you paid the premiums in the first interest? A Yes, the interest is included in these.

Q And does that amount of interest total $354.03? A Yes.

Mr. Starr: If there is any question about the accuracy of these invoices we will have to call Mr. Hickman. Do you want us to do that? Undoubtedly there is a part of these checks represent interest. We are not entitled to that, but we are entitled to the amount of the invoices, it seems to me. If you want us to have Mr. Hickman here we will do it.

Mr. McCarter: I would like you to bring a statement from Mr. Hickman, he is a reputable business man here, if you would get a statement showing what is due. I want to get what is due on account.

The Master: I want to get that ruling you say I made straightened out. I can't see how Mr. Rosecrans would be entitled to credit of a bill which he has incurred which he has not paid.

Mr. Starr: That is what you ruled.

The Master: Was there some special thing under consideration?

Mr. Starr: I don't recollect just where it arose, but you held where the indebtedness had been incurred in good faith and had not actually been paid at the time of the hearing,

represented by outstanding notes, he would be entitled to the benefit of that credit.

Mr. McCarter: Might I say in case of repair bills or he merely sits by and incurs the obligation, if it is not paid, the mortgagee can foreclose and go against the interest of the complainant well as the defendant.

The Master: I think if I made such a ruling, I must reverse myself, but I can't conceive of his being entitled to it.

Mr. Starr: There is no doubt of the ruling being made, but why not do this, let these bills come in and if you feel the items which were incurred and unpaid ought not to be included we will have to accept that construction.

We will get from Mr. Hickman a statement showing the payment of all of these invoices.

(Checks admitted in evidence and marked Exhibit D. 279.)

Mr. Starr: I offer invoices of the National Machine Works from July 2, 1927, to May 21, 1928.

Mr. McCarter: I object to those on the ground that they do not appear to be paid.

Mr. Starr: I have the checks for some of them, the same situation. I offer them in evidence.

(Invoices received in evidence and marked Exhibit D. 280.)

Q Mr. Rosecrans, I show you checks and ask you whether or not those checks were paid to the National Machine Works on account of the invoices which you have there? A Yes, they were.

Q Was that work shown by those invoices done at the Princess Hotel? A Yes.

(Checks offered, received in evidence and marked Exhibit D. 281.)

By Mr. McCarter.

Q Do they total $684.20, Mr. Rosecrans, those checks? A I didn't see the figures.

Mr. Starr: There is no doubt about that.

The Master: Mr. McCarter, that should be $746.47.

Mr. McCarter: I see, your Honor, $684 is after the interest has been deducted.

Mr. Starr: $684.20 is the credit to which we are entitled.

Mr. Master, Mr. Harris tells me that when he was here before you made the ruling that we were entitled to credit for bills incurred, regardless whether or not they had been paid, these various accounts are made on that basis, that was the understanding that that would be the ruling, simply a question of figuring the indebtedness. If there is to be any change in that situation, we will have to get something in addition to the checks we have here to show the fact that the indebtedness has been incurred and not paid.

The Master: I am sorry if I was so understood. I don't believe I ever intended to make such a ruling.

Mr. Starr: I don't remember the date, but the question came up on some of these bills, and Mr. McCarter objected because it appeared they had not been paid.

The Master: I may have suggested that they be admitted and marked. I may have gone the whole way and said what you said I did.

Mr. Starr: We will go on with what we have, and if we find we are embarrassed we will have to have additional time.

We claim on this account of the National Machine Works that the checks only total $684.20.

Mr. McCarter: I think it can be made perfectly clear as we go along how much has been actually paid, and then you can deal with that on the end.

Mr. Starr: I offer in evidence receipted water bill dated August 1, 1927, for $255.35. Included in that is an item of $23.21 penalty, for which we make no claim, and I show you check for $255.35.

Mr. McCarter: My only objection to that is based upon this, possibly there has been a ruling before, it does seem to me that the water bill is no more a proper credit in this case than a food bill would be, something used in the operation of the business. The rental value of the premises has to be something separate and distinct, of course, from the business therein conducted, and the water is used in the operation of the hotel and not in the enjoyment of the land and buildings thereon, even though furnished.

The Master: I think that point was raised by Mr. Robert McCarter, and I think that is one of the matters that I am holding under advisement.

Mr. Starr: The thought we had was that the landlord usually pays the water rent, the tenant does not, and that was the way in which the matter was left.

Mr. McCarter: Long as it is understood, that is all right.

(Check and receipt offered, received in evidence and marked Exhibits D. 282 and D. 282a.)

By Mr. Starr.

Q I show you some invoices from Edward W. Yeutter, beginning July 8th, 1927, and ending June 1, 1928, and I ask you whether or not those invoices represent work done and material furnished to the Princess Hotel during that period of time by Mr. Yeutter? A Yes, they do.

Q I show you checks beginning July 18, 1927, and ending April 26, 1928, and ask you whether or not those checks were paid by you on account of Mr. Yeutter's bills? A Yes.

(Invoices and checks offered, received in evidence and marked Exhibits D. 283 and D. 284.)

The Master: The amount paid is $875?

Mr. Starr: $875 and $750 open account. The checks included the amount due on the notes, and open account, and interest, and we will produce all of them and eliminate the interest.

The Master: That would be $1,625?

Mr. Starr: Yes.

Q Mr. Rosecrans, I show you some invoices from Oliver H. Guttridge Company, look at those,

please, and tell us whether they represent labor performed and material furnished with reference to the Princess? A Yes, they do.

Q I show you some checks beginning July 12, 1927, and ending March 29, 1928, and ask you whether those checks were paid by you on account of the moneys due under the invoices? A Yes.

(Invoices and checks offered, received in evidence and marked Exhibits D. 285 and D. 286.)

Mr. McCarter: I ask the Master to look at the invoices, apparently a great many of the items in here had to do with the business rather than the premises. For instance, padlock, Yankee screw driver, upholstery nails, carpenters' knives, butcher's saw blade, some papering items, of course, tinner's time and material making new copper drain for pan under water cooler, some brushes, cans of lime, brushes, stain, chisels and articles like that.

Mr. Starr: They will have to be eliminated.

The Master: Will you separate the wheat from the chaff?

Mr. Starr: They are all together and we have got to produce them.

Q I show you invoice with respect to materials furnished by the Baker Paint Shop to the Princess Hotel and ask you to look at those and tell me wether those materials were furnished by that convern?

The Master: Is it necessary, Mr. Rosecrans, to devote so much time? These all

came from your possession. Don't you know whether or not?

A Yes, they are all bills from that concern. Mr. Harris put them all together.

Q I show you some checks commencing under date of June 27, 1927, and ending June 17, 1928, and ask you whether or not those checks were paid by you on account of the invoices which I have just shown you for the Princess? A Yes, they were.

(Invoices and checks offered, received in evidence and marked Exhibits D. 287 and D. 288.)

Mr. McCarter: These paints, if the Court please, it is impossible to tell from just reading the description of the various items whether they are applicable to the building or to some of the conduct of the business therein.

The Master: Suppose you interrogate Mr. Rosecrans.

By Mr. McCarter.

Q Now, Mr. Rosecrans, please look at the earliest of the vouchers, that of September 1st, 1927, what was the article charged there? A That is glass, Florentine glass, 24 by 24.

Q Installed in the building? A Yes.

Q What do you mean by Florentine glass? A Glass like that, that you can't see through.

Q Bill of October 31st, that is glazing? A Yes, glass.

Q Installed in the building? A Installed in the building, yes, sir.

Q What are the items on— A This is all for glass, and for points to go in the glass.

Q What does this "To Merchandise" mean, do you know? A That is the balance carried over.

Q From the former bill? A Yes.

Q And turn to the long item of March 19, 1928, go through those items, what is the first thing? A This is mahogany varnish that is used on the floors.

Q Next item is a brush? A Brush.

Q How much was that, fifty cents, wasn't it? A Fifty cents.

Q What is the next item? A Next is glue.

Q What was that used for? A Pound of glue, gluing furniture and tables.

Q Twenty-five cents, wasn't it? A Twenty-five cents.

Q What is the next item? A That is two gallons flat white paint used for painting.

Q Now I see various items of glass, they were installed in the premises, wern't they? A Yes, sir.

Q There is an item of brushes, a dollar and a half? A Yes.

Q What is the next item? A Sandpaper.

Q What was that for? A Sandpapering the surface before the paint is put on, some places where it is rough.

Q More glue? A More glue, yes.

Q What is the quart of oil following the sandpaper for? A That is used in mixing the paints.

Q Two gallons of something I find hard to read, what is that do you know, right after the pound of glue, totaling seven dollars, what is that, I. G. W. looks like, or two quarts. A Two

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gallons I. G. W., a name I think he has for varnish.

Q Used in the building? A Yes.

Q Turpentine I suppose used in the building too? A Mixing paint.

Q There is some entries under voucher number 20,186, what are they? A That is all glass. Lacquer, that is used to put a polish on the surface, water enamel, oil and glass.

Q Look over the rest of this bill here and tell me below item number 20,399, whether there is anything that was not installed in or used in connection with the repairs on the building? A That is all used in connection with the building.

Q Now, turn over to the next page of that same voucher and tell me if there is anything on there that is not used in connection with the building? A It is all used on the building.

Q All right, now turn to the April voucher, and read that over and tell me anything there that is not used in connection with the building? A It is all used in connection with the building.

By Mr. Starr.

Q You knew Harry M. Peck, did you? A Yes.

Q Did he do any work for you at the hotel? A Yes.

Q What kind of work? A Papering and painting.

Q Did he render any bills or just pay him by check? A I paid him by check.

Q I show you checks dated beginning July 9, 1927, and ending April 30, 1928, and ask you whether or not those are the checks which are paid to Mr. Peck for the work that he did painting and papering at the hotel? A Yes.

(Bundle of checks offered, received in evidence and marked Exhibit 289.)

By Mr. McCarter.

Q This man was on your regular pay roll, wasn't he? A No.

Q Didn't he live in the hotel? A Lived in the hotel.

Q Did he do any other work for you besides the work for which these checks were paid to him, I mean during the period from June 29, 1927, to May 31, 1928? A No, he did nothing but papering and painting.

Q During all that time he lived in the hotel? A He lived in the hotel.

Q For that whole year? A Yes. Not the whole, part of the year, whatever part of the year he worked there. He was away in the summer.

Q But while he was doing work he lived there? A Yes.

Q And was in your employ steadily during that time? A Yes.

Q What was the work for which you claim these checks were paid to him for totalling $349.29? A Papering and painting.

Q The hotel? A Yes.

By Mr. Starr.

Q Who was John Berkheimer? A Painter.

Q Did he do any work painting at the hotel for you? A Yes.

Q Did you pay him by check? A Yes.

Q I show you four checks, first one December 16, 1927, and the last one March 2, 1928, and ask you whether those checks represent moneys

which you paid to Mr. Berkheimer for painting at the hotel? A Yes, they do.

(Checks offered, received in evidence and marked Exhibit D. 290.)

By Mr. McCarter.

Q Wasn't this man a bell boy in the hotel? A No, sir.

Q What was he? A Painter, mechanic.

Q Was he on your regular pay roll? Did he live in the hotel at the time he did this work? A He lived there part of the time, most of the time.

Q Most of the time he lived there? A Yes.

Q What work did he do besides this painting? A That is all.

Q All he did? A That is all he could do.

Q Sure of that? A Yes.

By Mr. Starr.

Q Did William Reid furnish any materials and perform any labor with respect to the hotel? A Yes, he did.

Q What did he do? A Repaired locks and keys.

Q I show you invoices July 15, 1927, to May 1, 1928, and ask you whether those invoices represent the work which was performed by Mr. Reid as locksmith? A Yes, they do. There is one item on here of a suitcase, which should come off.

Q Those that are eliminated are checked? A Yes.

Q I show you four checks beginning July 15, 1927, and ending April 30, 1928, and ask you

whether or not those checks were paid by you or given by you in payment of bills rendered by Mr. Reid? A Yes.

(Invoices and checks offered, received in evidence, and marked Exhibits D. 291 and D. 292.)

By Mr. McCarter.

Q Mr. Rosecrans, as I recall it, going over the record of the earlier hearings, there was testimony at the last time, or one of the prior hearing, in which you claim credit for a substantial locksmith bill for putting many new sets of locks throughout the hotel. Can you tell me why this locksmith work for which you have just now offered bills was needed? A There is always a lot of wear and tear on the locks, have to be kept up and repaired all the time. The new locks have been on for three years.

Mr. Starr: I notice in the invoice July 15, 1927, lock on suitcase, 25 cents. That is to be eliminated.

I offer in evidence, if your Honor please, some invoices of the Electrical Equipment Company with the statement that those that are checked are the only ones for which we make any claim.

By Mr. Starr.

Q Mr. Rosecrans, look over these invoices beginning August 31, 1927, and ending May 31, 1928, and tell us whether or not those items which are checked represent work performed or materials furnished by the Electrical Equipment

Company respecting the Princess Hotel? A Yes, they do.

(Invoices offered, received in evidence and marked Exhibit D. 293.)

Q Did you give a note to the Electrical Equipment Company in November, 1927, for $200? A Yes.

Q Has that note been paid? A Yes.

Q I show you check, $26.80, dated May 15, 1928, and ask you whether or not that money was applied toward the payment of the Electrical Equipment Company account? A Yes, it was.

(Check offered, received in evidence and marked Exhibit D. 294.)

By Mr. McCarter.

Q Haven't you got a check showing the payment of that $200 note, Mr. Rosecrans? A The note was paid in installments, a portion at a time. I suppose Mr. Harris has all the checks.

By Mr. Starr.

Q Is there any doubt about the fact the note was paid? A No, everything is paid.

Q Did the Henry Goldner Boiler and Tank Works do any work for you and furnish material in connection with the boiler at the hotel? A Yes.

Q Is that the invoice for the work that was done? A Yes, it is.

(Invoice offered, received in evidence and marked Exhibit D. 295.)

Q Has that bill been paid? A Yes, it has.

(Check offered, received in evidence and marked Exhibit D. 296.)

By Mr. McCarter.

Q Mr. Rosecrans, this Schedule N shows on account of the amount due Henry Goldner Boiler and Tank Works totalling $350, eliminating the interest? A Yes.

Q Are you sure that there was not a balance of at least $350 due on the old account? A I know the bill was all paid.

Q That is not my question.

The Master: Answer the question.

A I am not sure of that. Mr. Harris would know.

Q Did you, in addition to these two checks totalling $350 in August and September, 1927, make any other payments to Henry Goldner Boiler and Tank Works during the period after June 29, 1927, to May 31, 1928? A Not as I can recall.

Q And those checks do not specifically show that they are applied on the bill of September 30, 1927, rather than on the balance of note due on the older account, do they? A I think they do.

Q Checks themselves show that? A Checks show what they were paid for.

Mr. Starr: There are the checks there. Look at them and tell us.

A These checks paid that entire bill so far as I can see from the checks.

Q Isn't it a fact that there was a balance of $396.98, at least due from you to Henry Goldner Boiler and Tank Works prior to June 28, 1927? A No, there was nothing due him. I had him all paid up up to that time.

Q Then how is it your checks amount to $350 whereas the invoice is only $151.70, some of these checks must have been on the back balance? A I will have to go over my books to make sure of that.

Q Then you cannot be positive and sure that the checks totalling $350 did not merely pay the balance due prior to June 29, 1927? A No, I will have to verify that by my books.

By Mr. Starr.

Q Do you remember whether or not you owe Henry Goldner Boiler and Tank Works any money at the present time, either owe them on an open account or indebted to them on notes that you have given in settlement of the account? A All I owe them now is for the work they did last September, on a note, everything else is paid.

Q September, 1928? A Yes, that is all I owe them.

Q The September, 1927, bill was paid? A That is all paid and everything previous to that.

Mr. Starr: I offer in evidence the tax bill for the year 1927 amounting to $6,293.

Mr. McCarter: I certainly object to the tax bill unless paid, how a man can claim credit for not paying taxes.

Mr. Starr: I have got the checks to show it is paid.

The Master: Is the tax bill marked paid?

Mr. McCarter: It is not apparently.

Mr. Starr: We have a photostatic copy here marked paid—we will offer the original bill and also offer a photostatic copy which shows payments of the two installments and checks to support the payments.

(Tax bill, photostatic copy and checks offered, received in evidence and marked Exhibits D. 297, D. 298, D. 299, and D. 300.)

By Mr. Starr.

Q I show you a check dated January 31, 1928, to the National Fire Protection Company for $60, drawn by you and paid. What was that check given for? A For the recharging of the fire extinguishers.

Q Fire extinguishers in the hotel? A In the hotel, yes.

(Check offered, received in evidence and marked Exhibit D. 301.)

By Mr. McCarter.

Q I show you again, Mr. Rosecrans, Exhibit D. 301, and ask you whether that paid the bill of $60, the invoice December 1, 1926, listed in Schedule M of your account for the period of July 26, 1926, to June 28, 1927? I just want to be sure there is no possible duplication. A I would have to check up with my books to verify that.

By Mr. Starr.

Q What is the date of the check? A Jan. 31, 1928.

Mr. McCarter: For your information, Judge Starr, I will show you this particular schedule of the former account shows unpaid bills totalling $132, and a payment of $72, leaving just $60 unpaid. Now we come along with a check just $60, and it is highly suggestive it is a duplication of credits here.

Mr. Harris: If we use his method, if we take the payment method in our case we are looming at invoice, if we are going to go back to the old method and take credit for payment, either time—

Mr. McCarter: Just want to get on the record what it is, either one way or the other, not both ways.

The Master: I can't allow credits for unpaid bills.

Mr. McCarter: Long as the record is straight, D. 301 is the same item as the schedule M for the prior period, we will know where we stand.

By Mr. Starr.

Q I show you some vouchers, Atlantic Paint Company, beginning December 31, 1927, I don't mean vouchers, but invoices, running to May 31, 1928, some of the items being checked as not being claimed for, and ask you to look at the invoices and tell me what they represent and whether the materials were furnished to you for use and repairs at the hotel? A Yes, they were.

Mr. Starr: I notice on the invoice of February 15, 1928, Mr. Harris has eliminated two items for mirrors amounting to

$27. Of course we are entitled to credit for the money paid with respect to the furniture, and that would naturally be included in the furniture.

The Master: The amended order includes the furniture.

Mr. Starr: There is another item of a mirror of $1.00, February 29th, invoice. That, of course, was eliminated before we knew that the order was to be amended.

The Master: Of course I am not ruling. I will allow all those things you are undertaking to prove.

Mr. Starr: I know.

(Invoice offered, received in evidence and marked Exhibit D. 302.)

By Mr. McCarter.

Q Mr. Rosecrans, generally speaking, comparing this Atlantic Paint Company bill with Baker Paint Store, what did you get from Atlantic Paint Company and what did you get from Baker's? A That is all the same kind of material.

Q You just dealt with two men instead of one, is that all? A That is all, some of their stuff is better than Baker's, and Baker has some stuff better than his.

By Mr. Starr.

Q I show you a check dated April 9, 1928, for $27.65, twenty-five of which applied on account of notes, and $2.65 for interest. Did you pay that check on account of the moneys due under these invoices? A I did, yes.

(Check offered, received in evidence and marked Exhibit D. 303.)

Q I notice in the schedule it shows a claim of $35.20 on open account. Have you the check for that? (Check produced.)

Q Was that paid on account of the open account? A Yes, it was.

(Check offered, received in evidence and marked Exhibit D. 304.)

Q I show you a couple of vouchers, Somers Lumber Company, one dated March 31, 1928, and the other April 30, 1928, and ask you what they represent? A They represent material used throughout the hotel for repairs and replacements, fireproof ceiling.

(Voucher offered, received in evidence and marked Exhibit D. 305.)

Mr. Starr: I state for the information of the Master and counsel that the checks in reference to these items will be produced with the supplemental account from the first of May to the present time.

Q Did Leonard Scott do any work on the Princess by way of repairs? A Yes.

Q What did he do? A The windows, he made the windows air-tight, doors and windows.

Q Andrew Brine, what did he do? A I didn't get that name, Brine?

Q Andrew Brine, you have it on the schedule, Andrew Brine, carpenter. A He did some repair work.

Q William Houck, bricklayer, did he do any work and if so what kind? A He did some bricking up in the kitchen.

Q James Cordell, what work did he do? A Carpenter work, as near as I recall it.

Q I show you four checks. Look at those checks and tell us whether or not you paid those checks to these gentlemen for repairs to the hotel? A Yes, Cordell was paid for painting.

Mr. Starr: I offer them in evidence.

(Checks offered, received in evidence and marked Exhibits D. 306, D. 307, D. 308 and D. 309.)

By Mr. McCarter.

Q Were those men in your regular employ, Mr. Rosecrans? A No.

Q What was the bricklaying work that W. F. Houck performed? A Was in bricking up a refrigerator in the kitchen, as near as I recall it. That was part of it.

Q What else was there? A Then he did some cement work, I believe, in the garage.

Q How long did he work, how many days? A Several days. The checks will show the time.

Q What rate did you pay him? A The checks will show that, too, 75 cents an hour, I think. Checks will show the number of hours and what the work was.

Q James Cordell, the painter, work with the man Peck, apparently? A Yes, Peck did the papering and he painted.

By Mr. Starr.

Q Referring to Schedule S, did a man named Allen. Fink do any work for you as an electrician and painter? A Yes.

Q Did you pay him by check? A Yes.

Q And is this the check by which the payment was made? A Yes.

Q What was the work he did? A General electric work, repairs.

Q At the hotel? A At the hotel, yes.

(Check offered, received in evidence and marked Exhibit D. 310.)

Q Did Allen Y. Thorpe do any work for you, and if so what kind? There is a check dated May 28, 1928, maybe that will refresh your recollection. A Yes, he did.

Q What was it? A Carpenter.

Q What kind of carpenter work did he do? A Repairing on the building.

Q Was that the check by which he was paid? A Yes, it was.

(Check offered, received in evidence and marked Exhibit D. 311.)

Q Did William Roll do any work for you and if so what kind? A I will have to see the check to recall what he did. Yes, he did.

Q Where? A Carpenter work.

Q At the hotel? A Yes.

Q And is that the check by which he was paid? A Yes.

(Check offered, received in evidence and marked Exhibit D. 312.)

Q Now, did William Magee do any painting work for you? A Yes, he did.

Q How was that paid? A By check.

Q Or was he carried on the payroll? A I paid him by check.

Q I show you a book and ask you what is it? A His time was kept in this book.

Q What? A His time was kept in this book.

The Master: Then that is a time book.

Q That is a time book, is it? A Yes.

Q The check don't seem to be here, do you know whether that man was paid $53.25? A Yes, he was paid.

By Mr. McCarter.

Q Who kept this little book, Mr. Rosecrans, do you know? A Mr. Grookett.

Q Who? A Mr. Grookett. He was here this morning.

Q Will he be here this afternoon? A Yes, he will be right back.

(Book offered, received in evidence and marked Exhibit D. 313.)

By Mr. Starr.

Q What kind of work did he do? A Painting.

Q Albert Brown, what sort of work did he do? A Carpenter.

Q I notice in this book which has just been marked, the time book, an account with Albert Brown, February, March, April and May,

amounting to $612.25. This book keep his time? A Yes.

Q And have those items been paid? A Yes, they have.

Q All paid by you to Brown? A Yes. Mr. Grookett can explain just how he kept that.

Q The next is Charles Roberts; what kind of work did he do for you? A Carpenter.

Q Is his account also in this little book? A And painting, he did painting, too. I am not sure whether it is in that book or not.

Q Charles Roberts apparently in this book, there is the account, kept in the time book also. A Yes, kept in the time book. I am not sure if it was or not.

Q Seems to be an account $91. And Mr. Grookett can explain that. The next is Charles Roberts, what sort of work did he do for you? A Furniture repair.

Mr. Starr: That ought not to be in this account.

Q He is marked here as a carpenter. Did he do any work except repairs to furniture? A Yes, furniture repairing and upholstering. He was a carpenter. He could do anything that I paid him to.

Q Did he do any carpenter work in the way of repairs to the hotel itself, hotel building? A Not on the building, on the furniture, at times he helped the other carpenters when it was necessary.

Q Has he been paid the amount shown in this account? A Yes.

Paul C. Rosecrans, for defendant, cross.

By Mr. McCarter.

Q All these men were your employees, weren't they, this last group you have been discussing? A Yes.

Q They do any other work besides the work you are charging for in this particular schedule? A No, they did not.

Q Did not? A No, not until later in the summer when they were taken off the repair work.

Q They kept on, they were in your employ for a longer period than the several periods claimed by these particular charges? A Some were, two Roberts was, and Brown.

Q And they lived in the hotel? A Yes.

Q Were just as much regularly on your payroll as any of the other employees? A No, I can't say that, because I took care of them separate, and they were kept there with the understanding that the work was only temporary, that they would be just kept there while the repair work was necessary, they wasn't given steady employment.

Q Speaking by and large, they were men who made rather a lot of minor repairs, weren't they? A All kinds of repairs that were necessary, broken furniture and all kinds of repairs through the house.

Q During those repairs to the furniture, what they had to do was minor repairs such as would be made in the course of running a hotel, isn't that so? A No. They made repairs only when necessary. If a piece of furniture broke they made it, and if there was a drawer broken, they made it, fixed it.

Q They attended to such incidental repairs as became necessary in the course of the run-

ning of the hotel, didn't they? A No, the house man did that. When anything came up that he couldn't handle, like a broken window sash or something like that, then the carpenter or the painter had to do it or the repair man.

Q These men were there right along and when a repair was needed they made it? A No, they were not there right along. They came for the purpose of doing repair work in the hotel, and when that was done they were to be discharged, never had been there before.

Q Weren't these sort of incidental repairs that had to be made in any hotel business? A No, they were made by the, incidental repairs were made by the house man, engineer, small repairs, trifle repairs.

Q Don't you call repairing a door a small repair? A Sometimes it is a small repair and sometimes it is quite a job, have to take a panel out, sometimes, and it is a carpenter's job to fix it, if a hinge comes loose, something like that, a knob is loose, it is a thing can be taken care of by the house man, engineer, anybody around the place.

Q How is it you didn't produce checks for such of these men as you didn't produce checks for? Were they paid by check or paid by cash? A They were paid both ways, some by checks and some by cash.

Q When you paid them by cash, did you or did you not take receipts? A Yes, Mr. Crockett got receipts.

Q You never just paid a man and had nothing to show for it, did you? A No, must be receipts around for that somewhere, because they were all paid.

Q This man Roberts you say worked on the furniture? A Yes.

Q Any of the others of these men work on the furniture as distinguished from the building? A No.

Q Roberts then is the only man that worked on furniture? A He is the only one worked on furniture, yes. That is all he understood. That was his line, had the tools for that.

Q These men got their living, got their rooms in the hotel while they were working for you, didn't they? A Yes.

Q Now you say they boarded at the hotel, were they charged for the rooms or were they furnished rooms free? A No, that was included in their check. It was understood that they were to be charged so much for their room and board and that was included in their checks.

Q Then did they repay you the amount due for room and board? A No, I just took that.

Q Or did you make a deduction for that? A I made a deduction for that.

Q Now this work these men did, seven of the men, was that work necessary to keep the hotel in proper repair? A Yes.

Q And after they finished working for the period for which you claimed a credit, did they leave your employ or they still employed around the hotel in another capacity? A They all left except two Robertsons worked there during the summer in the kitchen, and so did Brown.

Q Robertson and Brown worked in the kitchen? A Yes.

Q Now have you claimed any credit for the work they did in the kitchen? A No. They didn't start there until the carpenter was all finished, repair work was all finished.

Q Did they work for you prior to the period covered by this schedule? A No, they did not.

Q Came there specially? A Came there specially for that.

Q With the exception of two, they left your employ? A They all left when the work was finished.

Mr. McCarter: Of course, I submit except as to these cancelled checks and all, there has not yet been any proper proof of payment.

The Master: No, I understand that was to be proved by Mr. Crockett.

By Mr. Starr.

Q Mr. Rosecrans, I show you a book and ask you if you know what that is? A This is a cash book.

Q Petit cash? A Petit cash.

Q One of your books kept at the hotel? A Yes.

Mr. Starr: I offer it in evidence.

By Mr. McCarter.

Q Did you keep it? A My daughter-in-law kept it, clerk. I checked it up.

Q The clerk was your daughter-in-law; is that right? A Most of the time, or my daughter, my youngest daughter.

The Master: Book kept under your supervision? A Under my supervision, yes.

(Book received in evidence and marked Exhibit D. 314.)

Paul C. Rosecrans, for defendant, cross.

By Mr. McCarter.

Q I want to ask you something about this group of vouchers. What are these little slips like this amount on top? A That is the cash register receipt.

Q Does that mean the cash has been paid out, $9.60? A Yes.

Q Who kept the cash register? A My daughter and daughter-in-law.

Q Same person who kept this book, is that the idea? A Yes.

Q Are you sure that this first item, Atlantic City Lumber Company, does not bear on any of the other charges you made here today? A Oh, no.

Q These are all cash payments? A These are all cash payments.

Q And these are little incidental things that would come up from time to time during the running of the hotel which was not worth while to do anything but pay cash for, is that the idea? A Some things we had to get from dealers whom we didn't have an account with.

Q They are all comparatively small items? A Yes.

Q And they occurred? A The carpenter needed some things that a man didn't have, I carried an account with, he would go out and buy it and pay cash for it.

Q And they occurred from time to time in the course of the running of the hotel; isn't that so? A Yes, while the work was going on, repair work was going on, not during the summer.

Q None of these during the summer? A Very few of them during the summer.

Q You were open in July, weren't you? A Yes.

Q And you call July summer, don't you? A Yes.

Q Well, I happen to notice that this first bill on top, $9.60, is on July 5th; isn't that correct? A Yes. Still repair work going on up to the middle of July.

Q You were still running your hotel, weren't you? A Yes.

Q I notice this bill of Guttridge, second one, $3.92, is dated July 6th, 1927. Are you sure that Guttridge's bill is not among the items included in the Guttridge charge you have already put in this morning? A No, none of that is in the other charges, because they were cash payments.

Q What was that Guttridge item for? A That is papering, for papering the rooms, side wall paper for the sides of the wall, and this is the binder.

Q I notice on this cash register slip with the Guttridge bill, July 6, 1927, $3.92, it says, "Supplies by P. C. R., Jr.;" that means your son actually attended to the purchase of that, doesn't it? A He ordered it. He did most all of the ordering for the carpenters. He had charge of that.

Q That is his handwriting, isn't it, there? A That is not his handwriting.

Q Not his handwriting? A No.

Q What is this little bill in July, 22nd, 1927, for Hoffman & Weiner. doesn't the cash register receipt tell you what it is hardware company, tell you what it is for or anything? A Have to get my son over here to tell you what that is.

Mr. Starr: Who?

The Witness: Paul, Junior.

Mr. Starr: What is the amount of it, Mr. McCarter.

Mr. McCarter: Wasn't very much, $2.10.

Q This item for $3.75, in July 8th, 1927, what is that and what was it for? A That is material for painting, paint store, Soltz paint store. That is ordered by him, too. He can tell you what that is.

Q Here is a little item, forty cents, July 20th, brackets for house man, that means brackets that he needed in repairing around the building, such repairs as he would make? Doesn't it? A Yes.

Q All of these petit cash items that we are now considering are the little incidentals that you found necessary in the course of running that hotel, aren't they? A No, some few might be.

Q Didn't you find little incidental repairs necessary to be made in the course of running this hotel? A Yes.

Q How did you make those purchases, how did you pay for them, and things like that? A Some were charged on the account and some were paid for in cash.

Q And they were all entered in this little cash book, weren't they? A No, only the cash things were paid for in cash were entered in here.

Q Such of them as were paid for in cash were entered in here? A Yes.

Q If those items we are now considering are not those items, what are they? A I didn't understand that.

Q Will you please point out to me from the cash book any of these minor repair items such as I have asked you about? A This lumber for kitchen, $9.60.

Q That is one of the items which you are now seeking credit for, isn't it? A Yes, we had to do that repairs in the kitchen, repairs to the house.

Q All of these various items in this group of vouchers which I have been examining you on and which are all stamped paid under Schedule T of the account under consideration, are the vouchers for the cash payments for purchases for material necessary to make the incidental repairs which were required in the course of running that hotel, are they not? A I wouldn't call them incidental repairs.

Q What kind of repairs would you call them? A Repairs had to be made to keep the house going.

Q And which would have to be made in any hotel? A I suppose so, would have to be made, if a door is loose it has to be fixed, if a window is broken it has to be repaired, and looks the same, as the bills for the locks.

Q But a good hotel man attends to these things right away, doesn't he? A Yes.

Q And you attended to them right away, as quickly as possible, did you not? A Yes, I had the men working there on the repairs and sent them to do it.

Q And if you had held this hotel under lease from Tom, Dick or Harry, somebody else you would have made these repairs in just the same way, wouldn't you? A No, I don't think I would.

Q You would have left the door go unrepaired, for example? A Some minor repairs I might make, but I wouldn't make any more than I had to make.

Q You wouldn't make any more than you had to make to keep the hotel running properly so you would be able to make as much money out of it as you could, isn't that right?

The Master: Judge Starr, I think these items are, to say the least, the proof as to what they are is somewhat indefinite.

Mr. Starr: I am going to find out in a moment.

Q You have operated hotels under lease, haven't you? A Yes.

Q And repairs of this nature you have made right along? A Then I charged them up to the landlord.

Q I am asking, you have made them right along, haven't you? A Made them when they were necessary, yes, and charged them to the landlord.

Q I didn't ask you that, what you did with them, but you did make them right along? A Yes.

Q And whether you charged them to the landlord depends upon the terms of your lease with your landlord, doesn't it, as to what he assumes the obligation of doing? A Well, my lease didn't include making these repairs, and I charged them up to him.

Q When your lease didn't include making these repairs, you charged them up to him, is that correct? A Yes.

By Mr. Starr.

Q Now were these moneys paid out by you? A Yes.

Q What was the method by which the payments were made? A They were paid from the cash register.

Q And do these little slips that are marked here, the date and amount— A Of the cash register.

Q Are they receipts that come from the cash register? A Yes.

Q Can you say whether or not these repairs were necessary to keep the building in proper repair? A Yes, they were.

Mr. Starr: We submit these for consideration.

(A bundle of vouchers admitted in evidence and marked Exhibit D. 315.)

Q I show you two invoices, both dated April 26, 1928, in favor of Schwartz Brothers, and ask you what do they represent? A They are two chemical engines, twenty-gallon chemical engines.

Q Were they purchased for use in the hotel? A Yes.

Q And they have been there ever since, for use? A Yes.

Q As part of the equipment of the hotel? A Yes.

Mr. Starr: I suppose they are properly furniture and not real estate.

Q Do you know whether or not having extinguishers on the premises has any effect on the insurance premium? A Not much.

Q Have they been paid for yet? A Paid by note.

Q You have given a note, but the note has not been paid? A Yes.

Q Has the note been paid? A Partly, I think half was paid by note and half by check.

Q Where is the check? A Mr. Harris, you have that?

Mr. McCarter: I don't think that is a proper credit, anyway, and I certainly do not think what has not been paid for should be allowed.

(Invoices offered, received in evidence, and marked Exhibit D. 316.)

(Recess taken until 2 o'clock P. M.)

AFTERNOON SESSION.

Hearing resumed at 2 o'clock P. M.

Judge Starr: I have found your Honor's ruling with reference to the non-payment. It appears on page 509 and reads as follows:

"The Master: Judge Starr, I don't believe you need bother about the actual payment. I feel that if Mr. Rosecrans has incurred these obligations, that that will be sufficient, unless, for the purpose of the record, you want to put the proof in.

"Mr. Starr: I don't want to encumber the record, but Mr. McCarter has always insisted he wanted the amount paid.

"Mr. McCarter: Certainly I shall except to any such ruling as that. He can pile up ten million dollars indebtedness.

"The Master: Of course my ruling in that respect will be within the line of reason. I am assuming all the items which are being proved here were necessary for the conduct or the preservation of the hotel or the conduct of the business. I have got to select such items as I believe to be for the upkeep of the hotel or its permanent repair and so on. However, that is the way I feel about it.

"Mr. Starr: I don't want to encumber the record.

"Mr. McCarter: I shall on cross examination, if counsel doesn't on direct, certainly bring out the fact that these alleged payments are simply notes from a man that has been through bankruptcy once and liable to go, I think, any moment again. So I don't know that there will be much economy in not proving it. I will have to prove it on cross."

My thought is this, unless you are satisfied there has been some padding by improper expenditures which have not been paid, I think if a man incurs a plumbing bill in a situation of this kind that is not paid at the time of the accounting, he is entitled to credit for it, and the particular item on which there was a question was with respect to the testimony of Mr. Hickman, showing that Mr. Rosecrans had given notes for the insurance premiums, and you came to the conclusion if the insurance premiums were incurred, he was entitled to credit regardless

whether or not the notes had been paid. It is on that theory we have gone ahead and stated these accounts. Now if there is going to be a reversal of that ruling, it may be that we will have to restate the accounts in such a way as to meet with your Honor's opinion.

The Master: These accounts that were under consideration at that time I guess had been paid.

Mr. Starr: There were quite a number of items that were not paid at that time.

The Master: They had been paid in the interim.

Mr. Starr: I presume so, because there was no question raised as to the bona fides of the indebtedness, no suggestion the amount of indebtedness had been padded in any way, so as to show a fictitious credit, and I think that was the only reason that induced your Honor to come to the conclusion, regardless of the actual payment, if the indebtedness had been incurred in good faith.

The Master: If the insurance just had to be—

Mr. Starr: The principle is the same, it seems to me, with reference to the other items.

The Master: Yes, but perhaps that is what induced me to say what I did say, and I have no doubt I said it. If the insurance were not placed, then the mortgages would probably be—

Mr. Starr: Same principle would be involved, if the property was not kept in re-

pair, would be a depreciation in value, so I don't think the subject of the testimony at that time has any material effect whether or not your Honor was right in making that decision.

The Master: I am inclined to think that I was wrong about it, and I will do some serious thinking.

Mr. Starr: If your Honor comes to the conclusion that there can be no credit unless the bills have been paid, it may be we will have to revamp some of these accounts.

The Master: Can't we determine by Mr. Harris whether the amounts that were unpaid in July, 1927, have since been paid?

Mr. Harris: I couldn't tell definitely without sending a man around to each one of them again to determine from their books. Of course I have submitted every cancelled check that Mr. Rosecrans had, and every invoice he had.

Mr. Starr: All the checks and all the invoices we could find were presented.

Mr. Harris: Of course under our other method of procedure, that would have automatically taken care of itself, in other words, if we had had his bookkeeper on the stand we would have compared his sheets with our sheets, and our sheets with her record books, and that would be one of the questions asked her if anything was unpaid.

The Master: Isn't it reasonable to assume that those accounts which are now more than a year and a half past due have been by this time paid?

Mr. McCarter: I am not willing to admit it, if the Court pleases.

The Master: No, I am just fishing now, Mr. McCarter.

Mr. Starr: We will have to investigate, because we stopped at once as soon as your Honor made that ruling.

The Master: I can understand why you did stop.

Mr. Harris: Just one other point, if you take any definite point to chop off and stop the accounting, for instance, we will say we stopped the accounting now, then it seems to me any payment subsequent to this on account of purchases made prior to this period were proper credits in this accounting.

The Master: Absolutely.

Mr. Starr: Unless you did fix a time, there would never be any completion of accounting, because a man in the ordinary course of business is not paying cash for everything, he may buy a bill of goods and pay it in sixty days, I think the only logical and proper method, if the indebtedness is incurred in good faith.

Supposing the first of June, 1922, is the period in which there was to be an accounting, in that spring of 1922 there had been an expenditure of several thousand dollars in improvements to the real estate, also refurnishing the hotel, now the rental value of 1922 must necessarily be based upon the condition as it existed the first of June, 1922, made possible by the expenditures which this co-tenant made prior to that time.

Discussion.

The Master: I can conceive how the moneys expended for improvements or refurnishing within a space of time shortly prior to this date, first of June, 1922, and might effect the rental value, would be credits.

Mr. Starr: Your Honor will have to determine what should be the period of time.

The Master: Yes, that is one of the guesses I will have to make.

Mr. Starr: We are going to make the claim, we say in the lapse of three years from 1919 to 1922, that any permanent improvement made to that house or any expenditures made for the furniture which augmented the value of the plant for which we are obliged to charge rent, must necessarily be taken into consideration.

Now that is one of the things Judge Sooy refused to pass on.

The question was raised at the first bill we put in, bill for rebuilding a boiler that had gone to pieces, and we put testimony in to show that that money was expended prior to the first of June, 1922, and Mr. McCarter objected. The Judge said well he would pass upon it later.

The Master: How long prior?

Mr. Starr: I don't remember the date, but it was within two years, the new plumbing was absolutely necessary to make the property tenantable.

Mr. Harris: I stopped on the other at May 31st, about the time that we were going to hold the accounting previously.

That was postponed, but those papers had been prepared, so it was necessary—

The Master: Now you are going on from May 31st to November 30th?

Mr. Harris: Yes. The recap sheets you have there shows both on there, you notice there is an amount total, 6/29/27 to 5/31/28, those schedules which we have already submitted this morning, then the next series of schedules, 6/1/1928, to 11/30/1928, are right alongside of it, and they are the ones we are going to submit now.

Mr. McCarter: For the information of the Master, I will advert to page 58 of the record, and this question of credits was discussed, commencing at page 49, the following colloquy took place:

"The Master: I can't see how the acceptance—"

Mr. Starr: He said he wouldn't take the testimony.

The Master: As I read the order, that is the way I would have ruled. Otherwise, the accounting would have to go back to such time as credits were asked for.

Mr. Starr: That was my contention.

Mr. Starr: I offer in evidence check dated June 30th, 1928, given by Mr. Rosecrans to the order of Ormond Beach Bond and Mortgage Company, for $1,530, showing the payment of interest on $51,000 mortgage from December 1, 1927 to June 1, 1928.

(Check admitted in evidence and marked Exhibit D. 317.)

There are two or three checks here with reference to the payment of interest on

the installment of interest for which we will not make any claim for credit, and I offer check of Mr. Rosecrans to the order of Ormond Beach Bond and Mortgage Company for $900, dated July 30, 1928, interest on $30,000 from December 30, 1927, to June 30, 1928.

(Check admitted in evidence and marked Exhibit D. 318.)

Mr. Starr: I offer in evidence receipted bill dated July 1st, 1928, in favor of the Atlantic City Sewerage Company, payment for $585.70, and check dated September 4th, 1928, for that amount.

(Receipted bill and check received in evidence and marked Exhibits D. 319 and D. 320.)

Mr. McCarter: I have in mind that the sewerage charge is analogous to the water rent, but that is a matter to be decided at the end of the case.

Mr. Starr: I offer in evidence invoices beginning June 7, 1928, continuing to December 1, 1928, for insurance amounting to the total of $2,454.82, there being a credit for various premiums not covering the real estate or personal property of $718.64, making a net of $1,736.18.

Mr. McCarter: Of course these are all right so far as they go. It is the same situation as this morning. I want to have a statement from C. J. Adams Company showing what has been paid on that.

The Master: Your credits seem to be very much in excess.

Discussion.

Mr. Starr: The credits are in excess, $3,719.58 credits.

The Master: More than sufficient to take care of the discrepancy.

Mr. McCarter: It is more than sufficient to take care. I haven't got this morning's figures in mind, it is more than enough to take care of this morning, thirty-nine hundred.

The Master: Only showed payments of $2,783.47 this morning, and that left about $1,100, now then, what they are asking credit for now is $1,736.18, and show payments of $3,719, practically two thousand dollars more.

Mr. Starr: Some of that is probably on the prior account where we stopped proving.

Mr. McCarter: I don't want to have Mr. Hickman produced again, as I said this morning, I am trying to cooperate and shorten this, but I do not see why we can't have furnished to us a statement from the company showing what that was.

(Invoices admitted in evidence and marked Exhibit D. 321.)

Mr. Starr: I produce a package of checks drawn by Rosecrans to the order of C. J. Adams Company, beginning June 22, 1928, and ending November 26, 1928, and offer them in evidence.

(Checks received in evidence and marked Exhibit D. 322.)

I offer in evidence the invoices of the National Machine Works, the statements are attached, but the invoices follow.

Discussion.

The Master: There is again a surplus.

Mr. Starr: Overpayment, yes.

(Invoices received in evidence and marked Exhibit D. 323.)

I offer in evidence a package of checks beginning July 2nd, 1928, and ending November 22, 1928, by Rosecrans to the order of the National Machine Works.

(Checks received in evidence and marked Exhibit D. 324.)

Mr. Starr: I offer in evidence receipted water bill to February 1st, 1928, showing a charge of $197.43 together with penalty of $19.74. We claim credit for the net, without taking into consideration the penalty, and the check for $217.17.

Mr. McCarter: The Master will bear in mind what I said this morning about water rents.

(Receipt and check received in evidence and marked Exhibits D. 325 and D. 326.)

Mr. Starr: I offer in evidence invoices of Edward W. Yeutter, beginning July 1st, 1928, and ending December 1st, 1928, and there are certain notations on the invoices showing the matters for which we do not make any claim.

The Master: And again there is an overpayment?

Mr. Starr: Yes.

(Invoices received in evidence and marked Exhibit D. 327.)

I offer in evidence a bundle of checks beginning under date of June 19, 1928, and ending November 26, 1928.

Discussion.

(Checks received in evidence and marked Exhibit D. 328.)

Mr. Starr: I offer in evidence invoice of Oliver H. Guttridge Company beginning under date of June 15, 1928, and continuing to September 10, 1928.

(Invoices received in evidence and marked Exhibit D. 329.)

Also offer a bundle of checks, first date being June 27, 1928, the last one September 4th, 1928, to the order of Guttridge.

(Checks received in evidence and marked Exhibit D. 330.)

The Master: There is an overpayment of $409.40, both accounts, taking this morning's account and the other.

Mr. Starr: That probably covers the back.

The Master: That goes way back.

Mr. Starr: I offer in evidence invoices of Baker Paint Shop beginning June 11, 1928, and continuing to October 31, 1928.

(Invoices received in evidence and marked Exhibit D. 331.)

The Master: Those two accounts are all square, all but $11.54.

Mr. Starr: I offer in evidence a bundle of checks to the order of Baker's Paint Shop, beginning June 19, 1928, and ending November 5, 1928.

(Checks received in evidence and marked Exhibit D. 332.)

I offer in evidence a package of checks beginning May 15, 1928, and ending August 20, 1928, to the order of Harry M. Peck.

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q Mr. Rosecrans, calling your attention to the checks that are presented beginning May 15, 1928, to the order of Harry M. Peck, and ending August 20, 1928, I notice check given on the 30th of July, 1928, for $505.60, marked thirty-seven weeks at fifteen dollars a week. Will you please explain that item, that charge? A That says salary. He was to get that, $15 a week.

Q For doing what? A For papering, and painting.

Q He didn't do anything else except that? A That is all he did, yes.

Q Was or was not that the arrangement you made with him with reference to his compensation? A That is the arrangement I made with him.

Q He was to get $15 a week? A $15 a week, yes.

By Mr. McCarter.

Q What fifteen weeks did that cover, the fifteen weeks ending July 20th, 1928, the date of the check? A Thirty-seven weeks, isn't it?

Q Thirty-seven, I beg pardon, yes. A Thirty-seven week, I don't know just when that time ended, whether it was ended at that time. I would have to look back on the books.

Q Well, I notice that a lot of these other checks that are made out to his order covering a period well within thirty-seven weeks prior to July 30, 1928, which is the date of the check marked for thirty-seven weeks at $15, then tell

me what these other checks were for? A Mr. Grookett can explain that.

Q Don't you know what the check number 2416, dated 7/24/1928, to the order of Harry M. Peck for $150 is for? A He was given checks for his room and board, same arrangements we had made with him. Mr. Grookett can explain that better than I can. He paid for his room and board and then he gave us those checks in addition to the $15 a week.

Q There are no checks from him to you here, but there are a number of checks from you to him. A Yes.

Q So then these thirty-seven weeks at $15 a week, I want to know what these other checks were for, why did you pay him the additional money? A They are all for work done, all of these checks were for work that he did.

Q Do these checks have on them the period within which the work was done? A They should.

Q I ask you to look down the lower left-hand corner of each of the checks. A These are the periods here.

Q In other words, these numerals down in the lower left-hand corner of the other checks state the date on which or the days between which he performed certain services? A This says "Room and Board" check, he was to get either $25 or $30, and that was to include his room and board, fifteen in cash and the rest was to pay his room and board check.

Q I don't understand that. You were to pay him $15 a week in cash? A In cash.

Q And then you were to supply him with a room in the hotel and food in the hotel? A

He was getting $30 a week, including his room and board.

Q And you paid him $15 a week in cash? A In cash.

Q In addition to that $15 in cash you supplied him with a room and supplied him with food; isn't that correct? A Yes.

Q Now, then, what are the other checks for, other than the check which the thirty-seven weeks at $15? A That makes up the difference between the fifteen cash and fifteen room and board, $15 a week, thirty-seven weeks.

Q You were supplying him with room in the hotel, weren't you? A Yes.

Q And you were supplying him with food, isn't that correct? A He paid me his room and board and then I charged him $15 for that, he was getting $30 a week, that is the best explanation I can give you.

Q That is the best explanation you can give? A He was getting $30 a week, fifteen in cash, that is what it will amount to, thirty dollars a week.

Q Will you please explain what check number 7220, $11.70, has to do with any weekly payment, salary or stipend? A He drew a dollar on account, he used to come in and draw money, a dollar or two dollars, and here I marked 3/20 on account, one dollar, and 7/24, $10.70 was all that was coming to him, because he had drawn some money on account.

Q Can you explain to me why you paid him this check? A There was some odd days in there, sometimes he would go away for a week-end and I would deduct that, that would make the figures vary from the regular stipend.

Q You want us to understand that this man Peck paid the Princess Hotel in cash for his room and board here, out of his pocket, paid the Princess Hotel some weekly rate for his room and board? A No, I charged him $15 and kept fifteen.

Q All right, then what did these checks for other than the check number 2419, which is thirty-seven weeks at $15, what are these other checks for? A These are for the cash payments that I made him, the dates are on here.

Q What did you make the cash payments for? A That was the understanding, he was to get fifteen in cash.

Q Isn't this the check that gave him fifteen in cash, showing you 2419? A No, that was room and board.

Q You weren't paying him for room and board, were you? You were not living in his hotel, he was living in yours? A Yes.

Q Why should you pay him anything for room and board, then? A I paid him and he turned it back to me.

Q You paid him? A Mr. Grookett can explain it better than I can.

Q You can't explain it any better than that, is that right? A He is the one dealt with him, I didn't. Mr. Grookett dealt with him. All I did was to make up the check, what was owed. Mr. Grookett made the arrangements with him and he can explain it better than I can. He made the checks out according to what Mr. Grookett was doing, he was handling it, keeping his time.

Q Except what was told by Mr. Grookett, you didn't know what was going or what he did? A Yes, I knew he was there all the time, I

knew he was working. I followed him up on his work. Mr. Grookett can explain it.

Q But you can make no other explanation, other than that which you have made, can you? A No, he was to get $30 a week.

PAUL C. ROSECRANS, resumed.

Mr. Starr: I offer in evidence invoices beginning July 1st, 1928, and ending August 27, 1928, William Reid.

(Invoices received in evidence and marked Exhibit D. 334.)

Mr. Starr: And I offer in evidence three checks, first one July 21, 1928, and last one October 13, 1928.

(Checks received in evidence and marked Exhibit D. 335.)

I offer in evidence bundle of checks, first one dated July 16, 1928, and the last one November 15, 1928, drawn by Rosecrans, to the order of the Electrical Equipment Company.

(Checks received in evidence and marked Exhibit D. 336.)

I offer in evidence four invoices of the Electrical Equipment Company, beginning July 31, 1928, and ending September 30, 1928.

(Invoices received in evidence and marked Exhibit D. 337.)

By Mr. McCarter.

Q I show you these invoices of July 31st; what sign is this that is referred to under the

heading of the temporary connection of sign? A That is the new sign we had to put up in front over the marquis.

Q Sign of the hotel? A Sign of the hotel, yes.

Q And this is just the same sign referred to on page 2, August 16, 1928, which says "Connecting sign" there? A Yes, that is the same sign.

Q On the September 30th bill, repairing annunciator, that is the annunciator of the bell system in the hotel, isn't it? A That is right.

Q And that bell bill totalled $5.88, didn't it? A Yes.

Mr. Starr: I offer in evidence invoice dated September 10, 1928, in favor of Henry Goldner Boiler and Tank Works for $276.65.

(Invoice received in evidence and marked Exhibit D. 338.)

I offer in evidence a check dated August 13, 1928, for $150, to the order of Goldner, marked "Note due August 13th paid off."

(Check received in evidence and marked Exhibit D. 339.)

By Mr. Starr.

Q Mr. Rosecrans, I notice the invoice in favor of the Goldner Company is $276.65, and the indebtedness was incurred September 10, 1928. A Yes.

Q Marked on the bill, "Paid by four months' note." A That is right.

Q Has that note come due yet? A No, won't be due until next month.

Q So you owe that entire amount on a four months' note? A Yes.

By Mr. McCarter.

Q Mr. Rosecrans, was the note which the check just marked in evidence paid, a note made by you to take care of the bill of Henry Goldner Boiler and Tank Works for work done on the boiler in the Princess? A Yes.

Q And do you recall—when was the work done? A 1927.

Mr. Starr: I offer in evidence tax bill for 1928, receipted as having been paid August 30, 1928.

By Mr. Starr.

Q Taxes for 1928 paid, are they, Mr. Rosecrans? A Yes.

(Photostatic copy of tax bill offered, received in evidence and marked Exhibit D. 340.)

Q These invoices of the National Fire Protection Company were paid by notes? A Partly, yes.

Q Do you know how much? A One note was given, only one note on the whole amount, $100 note.

Q You mean only one note remaining unpaid? A Yes.

Q There are three invoices, one $120, one for $30, one for $42. How much of those accounts is unpaid in cash? A Either a hundred or a hundred and twenty dollars. Mr. Grookett would know. I am not familiar with it.

PAUL C. ROSECRANS, recalled.

Mr. Starr: I offer in evidence invoices, one dated June 15, 1928, the other July 15, 1928, Atlantic Paint Company.

(Invoices received in evidence and marked Exhibit D. 342.)

By Mr. McCarter.

Q What were those invoices for, Mr. Rosecrans? A That was all paint used about the house, and oils and turpentines.

Mr. Starr: I offer in evidence a bundle of checks, Rosecrans to the order of Berkowitz, beginning July 15, 1928, and ending October 22, 1928.

(Checks received in evidence and marked Exhibit D. 343.)

By Mr. McCarter.

Q Can you tell me which of these checks, which are the checks your counsel has just offered in evidence, paid the two invoices which have just been marked? A No, I didn't take notice of the amount of those invoices.

Q There is a statement that shows the invoices. A I couldn't tell without referring to my books on that.

Q Do you note on your books which particular invoice a particular check is a payment of? A No, I would have to refer to the books and the bills together to get that straight.

Mr. Starr: I offer in evidence three invoices dated respectively June 30, 1928, June

30, 1928, July 31st, 1928, to Somers Lumber Company.

(Invoices received in evidence and marked Exhibit D. 344.)

By Mr. McCarter.

Q What is all this lumber and material needed for, Mr. Rosecrans? A After the fire they made us put in a fireproof ceiling in the kitchen and downstairs, that is where most of that stuff went.

Q Fireproof ceiling in the kitchen? A Kitchen and basement.

Q Kitchen and basement? A Yes.

Q So that was really— A That was the bulk of it.

Q That was really an improvement rather than a repair? A We didn't want to make it, but the Fire Inspector came there and compelled us to.

Q I don't care whether you wanted to make it or not, I am asking you whether an improvement rather than a repair, isn't it? A The ceiling was gone, a fire hazard there, plaster was gone, lath was standing open, and fire could shoot right up through there from the kitchen. That is where most of the fires start, in your kitchen.

Q There was a better ceiling when this was done than it had been done before, the old ceiling had deteriorated, hadn't it? A Oh, yes.

The Master: Do I understand the ceiling was damaged as the result of the fire next door?

A No, the plaster was gone.

By Mr. Starr.

Q Was that the fire at the Iroquois you are talking about? A Yes.

The Master: Did that damage your kitchen ceiling?

A Not the kitchen, damaged the roof, not the ceiling.

Mr. Starr: I offer in evidence thirty checks, first one dated July 10, 1928, August 10, 1928, and the last one August 20th, 1928.

(Checks admitted in evidence and marked Exhibit D. 435.)

By Mr. McCarter.

Q Mr. Rosecrans, that kitchen ceiling, that was not damaged at all by the Iroquois Hotel fire, was it? A No. But it was on account of that fire, the inspectors came in there and made me put a fireproof ceiling in there.

By Mr. Starr.

Q What do you mean by a fireproof ceiling? A A ceiling that, if a fire starts in the kitchen, a fat fire, it can't spread up into the house like it did the Iroquois, and cause a fire like the Iroquois.

Q It was a wood ceiling, wasn't it? A It was a lath and plaster ceiling, and the plaster had fallen off in a good many places.

Q What was the character of the ceiling after the repairs had been made? A Used this sheet rock, a fireproof material to cover right over the top, right over the plaster.

Mr. Starr: I offer in evidence an invoice dated April 14, 1928, in favor of Thomas S. Gasner & Company, for $1.25, and check for that amount.

(Invoice and check received in evidence and marked Exhibits D. 436 and D. 437.)

I offer in evidence an invoice dated November 3rd, 1928, against the Princess in favor of Carman Electric Company amounting to $13.90.

(Invoice received in evidence and marked Exhibit D. 348.)

By Mr. McCarter.

Q What was this for, Mr. Rosecrans, Carman Electric Company work? A General repairs on some wiring. I will have to see the bill. Just general repairs.

By Mr. Starr.

Q I notice there is no check here with that invoice, but I also notice a notation on the bill itself, is that in your handwriting? A Yes.

Q Has that bill been paid? A That has been paid.

Q When was it paid? A First of December.

Q Last year? A This year, last year, yes.

Q You don't know where the check is; was it paid by check or cash, or don't you know? A It was paid by check.

Q I show you an invoice dated May 31, 1928, against you, Princess Hotel, $12.50, Somers Brick Company, and check for $12.50 to Somers Brick Company. What did that invoice cover? A Bricks for an ice box in the kitchen, refrigerator, large ice box.

Q Why were bricks used for an ice box, inside, outside foundation or what? A Inside. It is lined with bricks.

Q Is the refrigerator built in the house? A Built in the house, yes.

(Invoice and check received in evidence and marked Exhibits D. 349 and D. 350.)

Mr. Starr: I offer in evidence an invoice in favor of Caywood Brothers, dated July 7, 1927, against the Princess Hotel, for $44.59.

(Invoice received in evidence and marked Exhibit D. 351.)

By Mr. Starr.

Q Look at that invoice, Mr. Rosecrans, and tell us what the work was that was covered by the bill. A That is for scraping and refinishing the floor.

Q What floor, where? A And it is not paid. The floor in the sun parlor, used for dancing.

The Master: You say it is not paid?

A It is not paid, no.

Q You owe it? A Yes.

Q Going to pay it, are you? A I think I give a note for it.

PAUL C. ROSECRANS, recalled.

By Mr. McCarter.

Q Mr. Rosecrans, what were the materials set forth in that invoice for? A Wire for the window screens.

Q For the window screens? A Yes, made five hundred screens for the windows.

Q Were they replacing old screens or something you hadn't had before? A No, we had been tacking the netting in the windows every year, and the woodwork around the windows was getting split up, so we made frames and copper wire that will last for years.

Q When were they furnished, when were the materials furnished? A In June, 1928.

Q Beside the copper wire, what is on that bill? A Electric fittings.

Q What were they, in detail? A He furnished wire and switches, and whatever fittings for the electricians that were working there.

Q Why were they needed? A To replace work that was unsafe.

Q That was ruled out? A Ruled out.

Q Anything else? A There are some knobs on here, plugs and knobs.

Q What was that for? A For doors, I think these are for the bath houses.

Q For what? A For bath houses.

Q Bath houses? A Yes, twenty-five; that is on here for bath houses.

Q Whereabouts were the bath houses? A Adjoining the hotel.

Q Are they part of the hotel property? A Yes, some are, and some are on the lot adjoining, where I pay them a hundred dollars a year.

Q That lot is not involved in this accounting, is it? A No.

Q Do you know whether or not the material for the bath houses on that bill were entirely for the bath houses on the lot which is involved in this suit, or not? A No, I think they were baths on the other side.

Q What does that item amount to? A $25.

Q Anything else on that bill? A Latches and hasps.

Q For the doors in the houses? A For the doors in the houses, yes.

Q Anything else? A That is all.

By Mr. Starr.

Q These bath houses on the adjoining property, were they used in conjunction with the hotel? A Yes, I had to build them there because the people going through the house and carrying sand, and wet suits, ruined the carpets, and ruined the walls, and ruined the furniture.

Q Used by guests of the hotel? A Yes, I don't charge them anything for them.

By the Master.

Q Were those bath houses built of the materials and on part of the time for which you have charged, for which you ask credit? A Yes, the last row was built of that material.

The Master: Judge Starr, I don't believe that can be allowed.

Q When were they built? A Last spring.

Q How much time was devoted in building them? A About seven days.

Q How many bath houses were there, and what was the size? A They were about, I judge, three by three, by six feet high.

Q How many were there? A About thirty, I think.

Q Who worked on them? A Brown.

Q What? A This fellow Brown worked on them.

Q Anybody else? A And the helper.

Q Brown and the helper? A Yes.

Q Do you know the helper's name? A No, I don't. They were built to save the wear and tear on the house, on the building, to cut down the plumbing bills and papering bills.

The Master: No, but Mrs. Rosecrans couldn't claim any interest or title in those bath houses.

Mr. Starr: I agree with you on that.

The Master: Do you concede that the window screens were a proper charge, Mr. McCarter?

Mr. McCarter: I don't know.

The Master: Let me know in the morning.

Mr. Starr: It seems to me if they used cotton netting and this was a substitution for that, I think they would be allowable.

Mr. McCarter: I wasn't prepared to concede whether this item was or was not a proper charge until we get the facts in. I will be ready to concede they are as proper as anything else, I believe.

Mr. Starr: I offer in evidence invoices now exhibited to Mr. McCarter, as shown by the schedule, and I also offer in evidence the three checks referred to in Schedule W, Bell and Thomas, Inc.

The Master: This Schedule W, Judge Starr, totals $148.95, and on this recapitulation there is $256.35.

Mr. Starr: The cash purchases are excluded, you will notice there are $148.95

there in cash purchases, and we have the receipts, cash register receipts.

By Mr. McCarter.

Q Look at this invoice of Bell & Thomas, Inc., Mr. Rosecrans, and tell me if you can what part of the hotel those materials were used in? A They were used in every part.

Q Every part? A Every part, basement and kitchen.

Q Why was so much wire mould required at this time? A Some of the wires were exposed and dangerous.

Q Had the old wire mould worn out or were you just putting wire mould where none had been before? A Both. Some would come loose and some wires were exposed and dangerous, and we concealed them.

Q What are these Jefferson shades, do you know, June 1st invoice? A I think they were used in the office, I am not sure.

Q What are they? What is a Jefferson shade as distinguished from a Hamilton shade or a Washington shade? A I couldn't explain that.

Q You don't know what they are exactly? A No.

Q What is a Terco receptacle, do you know? A No. I can't explain that, either.

Q What is S. B. R. C. solid, do you know? A I think that is wiring, name for the wire.

Q Do you know where it went? A It was used in the various jobs that they did.

Q What are Mission Tell shades, aren't they lamp shades for different electric lamps? A I think that is what they are. We had a lot of shades and lights in the various rooms and I

suppose they are the different names they have for the different shades.

(Invoices received in evidence and marked Exhibit D. 358.)

Mr. Starr: I offer in evidence three checks to Bell & Thomas, aggregating $148.95.

(Checks received in evidence and marked Exhibit D. 359.)

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q When did you enter into possession of the Hotel Princess after it was purchased? A December, 1919, about the first of December, 1919.

Q Now, tell the Master generally without going into too great detail what the condition of the premises was, that is, the real estate, and also the furniture, the contents. A Well, the pipes were all corroded, all had to be torn out, the water pipes, the heating system had to be replaced, the boiler had to be replaced, and one hundred rooms and the lobby had to be furnished with furniture.

Q And what was the condition of the furniture in the other rooms in the house? A It was in poor condition. It was old furniture had been in there for years.

Q Did you make any improvements in the way of replenishing the furniture or refurnishing the vacant rooms, and also changing the heating system or plumbing throughout the house?

A Well, I had furniture bought in October before the house was bought.

Q Yes. A I had enough furniture to take care of the hundred rooms and the lobby, the lobbies and the parlors, and then I got a firm in Philadelphia to tear out all the pipes in the house and put in new jobs, new fixtures, at a cost of about $50,000 to put it in shape.

Q What was the trouble with the plumbing in the house generally? A Well, the pipes were all gone, they were wrapped up with tape. The tenants had been in there about ten years, and instead of making repairs, they would take tape and wrap around the pipes. The pipes would corrode and leak, and were all wrapped up with tape and all that stuff.

Q Do you know how old the building was when you purchased it? A It was built in 1905, the front part, and the rear was built in about 1912.

Q Now these improvements were made, and will you say whether or not Mrs. Rosecrans knew that they were being made? A She did; yes.

Q Offer any objection? A No.

Q To the changes that were made and the replenishing of the plumbing? A No, sir.

Q What about the furnishing of the extra rooms? Did she know about that? A Yes, she knew about that.

Q Offer any objection? A Yes—she was with me all the time.

Q During the period from the time you purchased until the first of June, 1922, did you pay the taxes and the interest on the mortgage? A I did.

Discussion.

Q Was the principal of the mortgage reduced by installments being paid? A Three thousand each year.

Q And you kept up the insurance, sewerage? A Insurance, sewerage.

Q She knew you were doing those things? A Yes.

Q And was it necessary to make these various improvements and changes before the hotel could be operated? A Yes, because you couldn't get any water. Couldn't use the hotel. Couldn't use it at all.

Mr. Starr: In order that we have upon the record—I make the offer to show the expenditures for these various matters, of the same general character that we have since June, 1922, for the period before June, 1922, and also from the time the property was purchased.

Mr. McCarter: I object; not proper.

The Master: I feel that I am limited by the order.

Mr. Starr: I want the record to show that I make the offer.

The Master: Yes.

Mr. Starr: So we may take advantage of that situation if the case arises hereafter.

The Master: Yes, perfectly all right. As I say, I feel that I am bound.

Mr. Starr: All right; that is perfectly satisfactory. In other words, you will adhere to the opinion of Judge Sooy with reference to the expenditures in relation to

real estate and make the same ruling with respect to personal property.

The Master: Yes.

Mr. Starr: Now, Mr. Harris, we will start in on these schedules. Schedule A, please.

You better stay on the stand, Mr. Rosecrans. Mr. McCarter may want to ask you some questions.

Mr. Harris: Now in this case we thought, to simplify things, we put the supplementary schedule right after the main schedule so that you could do the whole thing at once.

Mr. Starr: Well, we will have each particular batch of bills not only shown on the original schedule up to the 31st of May, 1928, but we will carry it from the first of June, 1922, right down to the 30th of November, 1928.

The Master: That will save a lot of time.

Mr. Starr: Now I offer in evidence two invoices, both of which are dated August 2, 1926, and show them to Mr. McCarter.

Mr. McCarter: I don't know as I quite understand we are properly to go to the full extent apparently from the nature of that invoice Judge Starr is intending to go. I am not in any way quarreling with the amendment to the order of reference which has been made, was made on our motion, but I read the record before, and as I read the motion papers on the extention—that the question arose in the hearing in this way: That some evidence was given as to the rental value of a furnished hotel, and the Master thought that under the order as it

was then drawn, all we were entitled to consider was the rental value of an unfurnished hotel, and in order that we might consider the rental value of a furnished hotel we had the order amended. The reason for the—the justification for the amendment being that the original conveyance included not only the real estate but also a substantial schedule of furniture. So that we were originally seized and possessed of furniture as well as real estate, so the order was amended so as to contain the words "including the furniture, fittings and hotel equipment therein contained." But I do not understand we are to go through this thing and take up every purchase of furniture which the operator of the hotel may have made throughout the years from 1922 to date that he has made in this thing. It does not seem to me that is within the issues of the pleadings at all. We are concerned here with the rights of the parties in the property they furnished and we are dealing with a furnished hotel. I would consider it to be quite proper for Judge Starr to show that Mr. Rosecrans and Mrs. Rosecrans, as the case may be, added furniture to the going concern, but that we are to go into every purchase of furniture from June 1st, 1922, to date, and every furniture repair in that time, I submit, is going beyond the pleadings in the cause.

This invoice is a bill for a mattress, and, as I read the not very excellent penmanship—

Mr. Starr: Two box springs and bed.

Mr. McCarter: Two box springs. I don't think that is evidential. We will be here for as much time as we have been here already if we go into every mattress and everything that has been put into that place.

The Master: The difficulty is I am required to give credit for moneys expended by the defendant, or to determine what credits he is entitled to. Now I don't see how I can do that unless I find out what he has spent and what he has spent it for.

Mr. McCarter: If he came here offering to show some bills for food, you certainly would exclude that, to make an extreme case.

The Master: Oh, yes.

Mr. McCarter: Now, then, until the amendment of the order of reference, you would have excluded this item.

The Master: Yes, we all were proceeding, as I understood, on the theory that we were not dealing with the personal property at all.

Mr. McCarter: Yes.

The Master: Exclusively with the real estate.

Mr. McCarter: Now the order has been amended including furniture, fittings and hotel equipment therein contained. That is the condition which we have before us which we did not have prior to the second day of April or fourth of April, 1928, but I submit that is simply for the purpose of showing—this is what the Vice-Chancellor said in his opinion:

Discussion.

"Application is made to modify and enlarge the order of reference to a Special Master. The substance of the enlargement of the order is to include the consideration of the rental value of the hotel, the furniture therein contained.

"The original purchase was of the real estate and certain furniture mentioned in the schedule of said deed, and the consideration was not only for the real estate, but also the furniture schedule.

"The hotel at the time of the purchase was, and continued to be, a furnished hotel, and the reference must refer to and be of a furnished hotel.

"This order will be so advised."

Now I do not feel under that we are—the Master is required to go into every furniture expenditure made by either of these parties from June 1st, 1922, down. It seems to me you are—you now simply have the right to consider this as a furnished hotel.

The Master: Yes, that is quite true, Mr. McCarter. I am obliged under the terms of the order to fix the rental value, and I am further obliged to ascertain what credits Mr. Rosecrans is entitled to. I don't see how I can do that unless—

Mr. McCarter: If that is your Honor's ruling, there is no need to go further.

The Master: I regret that I have to so rule. I think I ought at this time to announce that I feel that I was mistaken in my ruling yesterday—reversed myself on the former occasion. I gave the same thought

and consideration last night, and I am convinced that even though the bills are not paid, fully paid, that Mr. Rosecrans is, notwithstanding, entitled to credit for the full amount, on the theory that it is his obligation and that the money was expended for the betterment of the property repaired, and so on, and if he is entitled to credit by reason of those improvements, repairs, and so on, then Mrs. Rosecrans should bear half of the expense, notwithstanding—I don't mean expense—charge—notwithstanding the bills may not have been fully paid.

Mr. McCarter: Do you apply that ruling to such things as taxes and interest on due installments on prior liens?

The Master: Oh, no. Any interest charge—

Mr. McCarter: I guess they are all paid, anyway. That would be a different situation. A prior lien would not be entitled to credit.

Mr. Starr: That situation does not exist.

The Master: For instance, taxes were—I think it was last year's taxes, I think a penalty something like five hundred dollars for non-payment, and that penalty is chargeable to Mr. Rosecrans and not Mrs. Rosecrans.

Mr. Starr: If you want to ask Mr. Rosecrans any questions about those invoices, Mr. McCarter, he is there for that purpose.

By Mr. McCarter.

Q Where was this box spring for, Mr. Rosecrans? A I will have to see the bill. (Paper

shown witness.) For one of the rooms in the front of the house, replacement of the spring that had been broken—worn out.

Q Yes. Have you paid for it? A Yes, that is paid for.

Mr. Starr: Mark them both as one exhibit.

(Two invoices offered, received in evidence and marked Exhibits D. 362.)

By Mr. Starr.

Q I show you another invoice, $921. It is in favor of the Benson Bedding Company.

Mr. McCarter: I don't think it is up to me to examine him directly on these. I think he ought to explain them on direct examination.

Mr. Starr: We can do that.

Q Mr. Rosecrans, I show you an invoice dated August 10, 1928, of the Benson Bedding Company. Please examine the same and tell what articles are included in that, and where put in the hotel, and the necessity for them. A They were all springs and mattresses that were used in the hotel to replace those that had worn out.

Mr. Starr: I offer the invoice in evidence.

By Mr. McCarter.

Q What is the date of it, Mr. Rosecrans? A August 10.

Q What year? A Last year, 1928.

Q 1928. Have you paid that all, that $921? A In part.

Q In part. A Part note and part cash. That was the agreement I had with them.

Mr. McCarter: I want to note on the record my objection to so much of the invoice as not paid.

I also want to note on the record my objection to either of these invoices for the reason stated to the Master before.

The Master: Yes.

(Invoice offered, received in evidence and marked Exhibit D. 363.)

Mr. Starr: I offer in evidence bundle of checks given by Rosecrans to the Benson Bedding Company, the first one being dated August 8, 1928, and the last one September 29, 1928, the checks being shown in Schedule A, which is produced.

By Mr. Starr.

Q Were these checks, Mr. Rosecrans, paid by you—given by you to the Benson Bedding Company for the invoices just offered in evidence? A Yes; they were.

The Master: Seven checks in all, are there?

Q Count them. A Seven checks.

Mr. Starr: Will you have those marked, please?

(Seven checks received in evidence and marked Exhibit D. 364.)

By Mr. McCarter.

Q Mr. Rosecrans, I notice on Schedule A, which is the schedule which covers the period from June 1, 1922, to May 31, 1928, they were invoices totalling $47.25, and that on that same schedule there are three checks which total $104. Can you explain to me why you overpaid the amount of the invoice? A Not without referring to my books, I guess.

Mr. McCarter: I object to so much of the checks, then, as exceeds the amount of the invoice.

The Master: Well, he won't be allowed to credit, if he is allowed to credit at all, for more than the amount of the invoice.

Mr. McCarter: No claim for anything in addition.

By Mr. Starr.

Q I notice in this invoice which is marked D. 363, the total amount of the invoice is $119.50 —$1,119.50, and that is the correct amount as shown by the addition of the various items. Somebody has written "Paid by notes, $198.50." A Apparently.

Mr. Starr: If we are entitled to anything at all we are entitled to the $1,119.50.

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q I show you invoices of Frank McNamara —there are four of them; there are three of them. Look at those, please, Mr. Rosecrans, and tell me what they cover and for what purpose the moneys were expended. A Repairing the watchman's clock, time clock in the hotel.

Q Anything else? A Regulating and winding clock.

Mr. Starr: I offer those in evidence.

By Mr. McCarter.

Q Regulating and winding clock, you say? A The time clock. There is a time clock in the lower floor of the hotel where the employees ring in and out.

Q And you say part of the charge is for winding that clock, you say? A Re-winding, I guess. Something the matter with the spring, it seems, from the bill.

Q Well, which is it? We don't know. A He says winding and regulating and winding.

Mr. McCarter: Well, I certainly object to any payment for winding a clock—any more than I consent to payment for running a vacuum cleaner.

The Master: It may have been that kind of a clock.

Mr. Starr: Well, I will offer them in evidence for what they are worth.

The Master: They may be admitted.

(Invoices received in evidence and marked Exhibit D. 365.)

Mr. Starr: I offer in evidence three checks totalling—aggregating $52, drawn by Rosecrans to the order of Frank McNamara.

By Mr. Starr.

Q I ask you whether those checks paid the invoices which have been produced?

Mr. McCarter: I would like to call attention to these. It is weekly winding, periodic—not a repair matter. Winding and regulating clocks in hotel from January 1st, to March 30th, $12. Weekly winding and regulating, adjusting all clocks five times per months. Might as well ask credit for a head waiter.

By Mr. Starr.

Q Why was it necessary, Rosecrans, to have these clocks wound by somebody that knew something about it? A Well, to avoid them getting out of order. There was a large hall clock up there in the parlor worth seven or eight hundred dollars, and then this other chime clock, and it was cheaper to have the man inspect them regularly than to send them to Bailey, Banks & Bidde to be repaired. It cost too much.

The Master: I think I will have to disallow that, Judge Starr.

Mr. Starr: Well, for the winding I think you are right. The rest of the bill seems to

be all right, repairing clocks and adjusting keys, etc.

The Master: How much is the charge for repairing?

Mr. Starr: First bill is $4; second bill is $11; third bill is $1.

The Master: $16.

Mr. Starr: Yes.

The Master: Certainly if any allowance is made, there can only be an allowance of $16.

A These are the checks paid.

Mr. Starr: Have the checks marked, please.

(Three checks received in evidence and marked Exhibit D. 366.)

Q Now, Mr. Rosecrans, I will show you a bundle of invoices of Preis' store, beginning July 22, 1922, and continuing to April 7, 1928. Please look at those invoices and tell us what articles are covered and why it was necessary to have them purchased, and where they were put in the hotel. A The nettings for the window screens that had not been replaced by the metal screens. The other articles were towels and spreads for the beds, sheets, scarves for the bureaus, napkins for the dining room, shades for the windows, blankets for the beds, carpets.

By the Master.

Q Mr. Rosecrans, was there anything of that character in the hotel when you bought it? Didn't you just get the standing furniture? A

Yes, but we bought this—we furnished the hotel as soon as we bought it with this material, to get it going, to make it a going concern.

The Master: Mr. Starr, I don't think that is a proper charge, for bed linens and things of that character. Hotels, as I understand it, are rented with the standing furniture.

Mr. Starr: That is not the question here. The question is of having a complete hotel for which we are charged the rental value. And the credit is claimed for the moneys which were expended by a co-tenant for the purpose of making a complete and going hotel upon which he is obliged under the terms of this order to pay a rental value. It seems to me as against his co-tenant, anything that will make that plant complete and for which he is charged for rent would be a proper credit.

The Master: I will take the proof. I have very serious doubt as to whether any allowance at all can be made for anything except the replenishment of the—what I would call the standing furniture or the kitchen equipment and things of that character.

Mr. Starr: Well, now—

The Master: Linens and silver and glassware and crockery and so on should not enter into this inquiry.

By Mr. Starr.

Q When you went into the possession of the hotel, were there any bed linens and napkins or anything of that kind? A No.

Q And there were replenishments after you entered into possession? A When we bought the house, as soon as we went into possession, to make it a going concern.

Q These bills, as I understand, begin in July, 1922. Hadn't articles of a similar nature been purchased before that time? A Yes, as soon as we purchased the hotel.

Q Why was it necessary to make these purchases shown by the invoices? A To replenish the goods that had been worn out.

Q That is, the goods that were furnished between— A Yes.

Q —December, 1919, and the first of June, 1922? A Yes.

Q And they all went into the hotel for that purpose? A Yes. When I rented the Osborne I rented it with everything in it.

The Master: We are not inquiring about—

Mr. Starr: No.

Q Now, with reference to these particular articles as shown by those invoices, did Mrs. Rosecrans ever object to the purchase of these articles? A No, she did not. She helped to select them; went to Philadelphia and bought them.

Mr. Starr: I offer the invoices in evidence.

Mr. McCarter: Let me ask a question or two.

By Mr. McCarter.

Q You referred to the lease of the Osborne. Mrs. Rosecrans had that lease, not you, didn't she? A No; I had the lease.

Q You had the lease on the Osborne? A She was given it for security on the loan, that is all.

The Master: I cannot see—

Mr. McCarter: I am only leading up.

Q And you say the lease on the Osborne, Mr. Rosecrans, included as part of the leasor's property, the table linen and crockery and such things? A Owner's property was linens and dishes.

Q Isn't it a fact when you took possession of the Princess and started to operate, you brought up there linens and crockery and things that you had been using at the Osborne? A Some, yes.

Q Then they were your property down there, not the landlord's? A No, I left what belonged to the landlord, but there was some that I had bought on my own account that was brought up. A few pieces, that is all; very little.

Mr. Starr: I don't know we are particularly interested in the transaction of the Osborne.

Mr. McCarter: I wouldn't have mentioned it if he hadn't brought it up.

Mr. Starr: Mark those, please, as one bundle.

Mr. McCarter: The Master having expressed a doubt on the subject, I didn't make any objection. I want my objection to be understood.

(Invoices received in evidence and marked Exhibit D. 367.)

Mr. McCarter: Are there any of the items of these bills that you eliminated, Mr. Harris? I see such things as blouses, sweater, pants and hat—the first one I happened to turn to; gowns, romper, etc.

The Master: I don't think you need concern yourself very much about that account.

Mr. Harris: We will eliminate blouses, etc.

By Mr. Starr.

Q Now I show you bundle of checks given to the Preis store by Rosecrans, beginning May 19, 1928, and continuing to November 12, 1928, and ask you whether those checks were paid by you on account of the Preis claim (handing bundle of checks to witness). A Yes, they were.

(Checks received in evidence and marked Exhibit D. 368.)

Mr. McCarter: Same objection to the checks that I make to the invoices.

Q Mr. Rosecrans, I show you an invoice for cash register, dated December 19, 1924, and ask you whether or not that cash register was purchased and where it was put. A Yes, it was put in the lobby on the desk.

By Mr. McCarter.

Q For use in the conduct of the business of the hotel, wasn't it? A Yes.

Mr. McCarter: I object.

The Master: How can that be a charge, Judge Starr?

Mr. Starr: Part of the furniture of the hotel, the equipment of the hotel.

The Witness: It is fastened to the property.

Mr. Starr: For the purpose of making the hotel complete in all its parts for which we are liable for the rental value.

Mr. McCarter: If this were an accounting between partners and we were entitled on the credit side to the profits earned, this kind of thing would be a good charge, but we are only interested in the bare rental value of the furnished hotel.

The Master: That is what is in my mind. I cannot conceive of that being a proper charge.

Mr. Starr: Just the same as if it was necessary to put additional beds, additional furniture, to make the hotel complete, for which we are charged a rental value.

Mr. McCarter: It should be as it was, as it was purchased.

Mr. Starr: We are obliged to pay the rental value for the entire period from 1921 up to the present time.

The Master: That is not even in replenishment of something already there.

Mr. Starr: It is to make the plant complete.

The Master: I am going to disallow that item.

Mr. Starr: I offer in evidence—no, it is not necessary.

The Master: I will permit you to.

Mr. Starr: Won't you mark the invoice as an exhibit?

The Master: Have everything marked, so that if I am wrong, you are entitled to the benefit of my error.

(National Cash Register invoice received in evidence and marked Exhibit D. 369.)

(Five checks to the National Cash Register Company received in evidence and marked Exhibit D. 370.)

Q Was there any cash register in the hotel at the time of your purchase? A No.

Mr. Starr: Let me have Schedule E, please.

The Witness: There was a small register there, but it wasn't any use; had not been used for some time.

Q Was it necessary to have a register for the operating of the hotel? A Yes.

Mr. Starr: He says there was a small register in the hotel, but not of any use; in order to operate the hotel it was necessary to have a new one.

Q I show you invoice of the Fuller Brush Company—there are three of them—and ask you to look at those and tell me what they covered, and what use was made of the articles mentioned in the invoice. A Brushes and mops we used to clean the hotel, furniture and floors.

Q Were there any brushes and mops there at the time the hotel was purchased? A Some few, yes.

Q And these were used for what purpose, these that are shown in the invoices? A Polish the floors, clean the furniture.

Q Do brushes wear out from time to time? A Yes; replacement.

Q And did any of these brushes replace those that were there at the time the hotel was bought? A Yes.

(Three invoices received in evidence and marked Exhibit D. 371.)

By Mr. McCarter.

Q These brushes and mops and things that are listed on Exhibit D. 371 were a great deal more than those that you say were in the hotel when you bought it, weren't they? A Cost more, you mean?

Q No. More of them. A Oh, yes.

Q Many more? A Yes.

Q These were not replacements of existing brushes? A Part, yes.

Q Well, they weren't entirely so? A Not entirely so; no.

Mr. McCarter: Well, replacement or not, I certainly object to mops and brushes, on the same principle as the bed linen.

The Master: No. I was waiting for you to offer the checks.

Mr. Starr: I offer three checks, first one dated August 15, 1926, for $52.14; second, November 15, 1926, for $21; and third, June 18, 1928, for $38.

The Witness: Yes; these are the checks that paid for them.

(The three checks offered are received in evidence and marked Exhibit D. 372.)

By Mr. Starr.

Q The next is the Guarantee Electric Company.

The Master: Wasn't there a supplementary—

Mr. Starr: They are all in there.

The Master: Those will be disallowed.

Mr. Starr: I don't want to take up the time of the Master, but I suppose I will have to prove these accounts, if there is a possibility of your Honor being incorrect in the conclusion. We can go through them hurriedly.

The Master: It would save time by going through these schedules and making a general offer of those I feel I should not allow—

Mr. Starr: I think we will have to take the testimony in reference to each one, it seems to me. I don't see how you can avoid it, if I am going to get the benefit.

The Master: I think I can go through this schedule, and indicate at least a number of them or a few of them that—however, maybe your course is the best. Make it short and snappy.

Mr. Starr: Yes, I will.

Q Guarantee Electric, $2.35. Look at those invoices, will you please, Mr. Rosecrans, and tell me what they represent and what use was made of the articles purchased? A Electric coils and plugs.

Q What? A Electric coils and plugs used in the electric system in the hotel.

(Invoices offered received in evidence and marked Exhibit D. 373.)

Q And the bills were paid? A The bills were paid.

Q $2.35.

The Master: Are you going to allow that?

Mr. McCarter: I will even pay that myself. You said to make it short and snappy; but don't use it as a precedent against me.

Q I show you an invoice dated July 14, 1922, in favor of J. F. Scanlon, and ask you what it covers and why it was necessary to have an electric sign? A These were signs placed on top of the building. Mrs. Rosecrans and I agreed on putting them up there.

Q And they were used for what purpose? A To show the name of the hotel up and down the street.

Q You mean for advertising purposes or otherwise? A To—well, to show people where the hotel is.

Q And you say that was agreed to by Mrs. Rosecrans? A Yes.

By Mr. McCarter.

Q Do you mean to say, Mr. Rosecrans, that in the summer of 1922 Mrs. Rosecrans and you agreed on anything? A Yes. She was there—and she argued with the fellow about the price; I distinctly recall that.

Mr. Starr: I offer it in evidence.

(Invoice received in evidence and marked Exhibit D. 374.)

By Mr. Starr.

Q I show you a bunch of checks and ask you whether or not that sign has been paid for by those checks? A Yes, it was.

Mr. Starr: I offer those checks in evidence.

(Checks received in evidence and marked Exhibit D. 375.)

Q Now turn to the next one: radio set. I show you an invoice dated September 16, 1928, covering a radio set. Why was that put in and what use was made of it? A It was put in the house to entertain the guests, I guess.

Q Paid for? A Paid for, yes.

Mr. Starr: I offer it in evidence.

Mr. McCarter: I object to that.

The Master: Yes; that will be disallowed.

Mr. Starr: That will be marked.

(Invoice received in evidence and marked Exhibit D. 376.)

Q Now the next is "I;" Silver. Now I show you invoices in favor of D. W. Haber, and I wish you would look at those and tell me what they cover and whether they went into the hotel and for what purpose they were required. A They were silver knives and spoons and forks used in the hotel.

Q Were there any silver knives and forks in the hotel at the time it was purchased? A Some. Not much.

Q These were used—these shown on the invoice were used for what purpose, increase the number or to take the place of those that were there? A Increase the number and replace those that were there.

Q Was it necessary for the operation of the hotel? A Yes.

Mr. Starr: I offer them in evidence.

By Mr. McCarter.

Q Do you mean to tell me when you purchased this hotel there was silverware in it?

The Master: You need not—

Mr. McCarter: I object to this.

(Received in evidence and marked Exhibit D. 377.)

Mr. Starr: Have the checks marked.

(Two checks received in evidence and marked Exhibit D. 378.)

By Mr. Starr.

Q Now the next, J. I notice this covers some artificial flowers, this claim. Explain about the necessity for requiring artificial flowers and the use to which they were put. A They were used in the lobbies, dining room; decoration of the hotel.

Mr. McCarter: I object to that.

Mr. Starr: I don't think that is a proper credit, but, however, I will put it in evidence so Mr. Rosecrans won't be prejudiced.

The Master: Let them be marked; and also the checks.

(Invoices received in evidence and marked Exhibit D. 379.)

The Master: That applies, of course, to the supplementary.

Mr. Starr: It applies to the whole item.

(The checks offered are received in evidence and marked Exhibit D. 380.)

The Master: I think I might just as well at this time disallow the Preis store.

Mr. Starr: I understood you had disallowed it.

The Master: Well, I marked it with a question mark.

Mr. McCarter: Which is this you are disallowing?

The Master: Schedule C.

Q I show you an invoice of Hosberg. I wish you would look at those and tell us what they cover and what use was made in the hotel of the articles shown. A Those are the watchman's clock, used in watching the hotel, ringing up different stations; to take care of the property.

Q Was there a watchman's clock there at the time the purchase was made? A No.

Q This was a new clock furnished? A Yes.

Q This bill covers the repairs to that clock? A Yes.

Q What, if any, arrangement did you have with Mrs. Rosecrans about the installation of the watchman's clock? A She agreed to that for the protection of property in case of fire.

Mr. Starr: I offer it in evidence.

By Mr. McCarter.

Q What is the difference between this bill and the McNamara bill, which had to do with this clock, I understand? A No. This was the watchman's clock that he carries with him, and the stations are in different parts of the hotel, and he uses a key to ring on this clock.

Mr. McCarter: I object to this. It seems to me absolutely clearly, something for use in the conduct of the business rather than a part of the furnishing of the hotel.

Mr. Starr: It is for the protection of the property, and use in connection with the operation of the hotel. It is for the protection of the property against loss. It seems to me part of the equipment of the hotel.

The Witness: The fire insurance is affected.

The Master: And also a check-up on his employees, to see whether they are awake.

Mr. Starr: It would only be a check-up on the watchman himself.

The Master: That is what I say, on the employee.

Mr. Starr: But that is merely incidental. The purpose is for fire protection, and I imagine it decreases the amount of premium.

The Master: We will see whether it does. Did that have any effect on the fire insurance premium?

The Witness: No, but they suggested that I use the clock.

By Mr. Starr.

Q That clock was installed?

The Witness: I don't recall that I got a reduction for it, but they suggested it.

Q That clock was installed after you went into possession? A Yes.

Q I notice that the first invoice is June 29, 1922. That is when the clock was installed? A Yes.

Mr. McCarter: June 8, isn't it?

Mr. Starr: This is Schedule I. No—

The Master: It is July 8.

Mr. Starr: Yes— That claim will be disallowed.

(Invoices and checks received in evidence and marked Exhibit D. 381.)

Q The next one is Ruegg. I show you a bundle of invoices in favor of Ernest A. Ruegg, the first one dated June 2, 1922, and the last one September 24, 1928, and ask you what those invoices cover generally and what use was made of the articles purchased by the invoices. A They were all curtains for the windows.

By the Master.

Q Lace curtains? A Lace and linen curtains.

By Mr. Starr.

Q Were there any lace or linen curtains in the hotel at the time of purchase? A No.

Q These were additions, then, to make the hotel attractive? A Yes.

Q And what do you say as to whether or not Mrs. Rosecrans knew of the acquisition of these purchases? A Yes, she did.

Q Any objection made? A No. She agreed to everything to get more money out of the hotel; whatever I suggested.

The Master: This is after the disagreement with her, wasn't it?

The Witness: Yes, but she was in the house there.

Q The first one is June 2, 1922. Now as a hotel man, Mr. Rosecrans, hotel of the character of the Princess—is it necessary to have curtains at the windows, curtains of these character to make it attractive for guests? A Yes.

Q In order that the hotel can be rented for a proper amount and the business conducted properly? A Yes, it was.

By the Master.

Q Landlord furnish such things as that, Mr. Rosecrans? A In some cases. Dr. Ludy leased me the hotel, the Osborne, with curtains, linens and silver, and also leased his other hotel, the Iroquois, the same way.

Q What other hotel do you know where that has been done? A Well, there is quite a few around town. Mr. Hickman would know, of C. J. Adams. They lease quite a good many of them that way.

(Ernest A. Ruegg invoices received in evidence and marked Exhibit D. 382.)

By Mr. Starr.

Q I show you a bundle of checks and ask you whether those checks paid the Ruegg bill? A Yes, they did.

Mr. Starr: Let them be marked, please.

(Checks offered received in evidence and marked Exhibit D. 383.)

By Mr. McCarter.

Q Mr. Rosecrans, these invoices, Ruegg invoices, they are the curtains for the new rooms, aren't they? A New and old; all over the house.

Q Well, the curtains for the old rooms were bought before that? A Which new rooms do you refer to?

Q Well, the rooms which were not in the hotel originally, rooms that you added by making some changes in the hotel. A No; the rooms were there. They were just simply changed in the basement.

Q Changed in use; the four walls were there, but I mean— A There were wooden partitions there that the fire company made me tear down.

Q Yes, and these curtains, the curtains on these invoices, D. 382, were those rooms I call the new rooms, weren't they? A No; the only new rooms we had were those that replaced the bar on the front, on South Carolina avenue.

The Master: Answer the question, yes or no.

The Witness: No, there was no curtains on those new rooms.

Q Then why did you say a moment ago in answer to my first question up here that these curtains in these invoices were for the old and the new rooms? A I have forgotten just which rooms I had constructed. Some new rooms I rebuilt later that I used some curtains on. That was in 1924 and 1925.

Q You know that Mrs. Rosecrans paid for some curtains at Ruegg's in 1922? A She might have paid for some and then I repaid her later.

Q You know she paid Ruegg for some curtains? A I don't recall if she did. If she did I repaid her.

Mr. McCarter: I move we strike that out as not responsive.

The Master: Yes. Mr. Rosecrans, Judge Starr will give you ample opportunity to explain and exemplify anything that he thinks is necessary.

The Witness: Yes.

Q I show you one of Exhibit C. 12 in this proceeding, which you will observe is a check by the complainant to E. A. Ruegg, dated June 2, 1922, and I show you another check of the complainant to E. A. Ruegg, dated April 21, 1922, for $106. Now do those two checks refresh your recollection that Mrs. Rosecrans paid Ruegg for curtains? A Yes.

Q Yes. And are they any of these curtains that are on these invoices here? A That I could not say.

Mr. McCarter: I object to the curtains for several reasons: First, they are not part of the equipment with which the hotel was

supplied, and secondly it does not—it now appears that as far as the evidence goes it is not clear he paid for these things.

Mr. Starr: We have the checks here showing nearly $1,400 of our checks—no, $561.

Mr. McCarter: And $829 on the invoices.

Mr. Starr: Yes. Well, it seems to me we are entitled to a credit.

The Master: I will disallow those items.

Mr. Starr: All right. Let me have the Cooper.

By Mr. Starr.

Q Now I show you a bundle of invoices in favor of E. Cooper & Sons, the first one being August 18, 1922, and the last May 15, 1928. I wish you would examine those, please, and tell us what they cover and the purpose for which the articles were purchased and what use was made of them. A They were pots and pans, bake oven, hot water and coffee urns.

The Master: Kitchen equipment?

The Witness: Dish washers. Kitchen equipment. General kitchen equipment to replace what was there when we bought the hotel, and to increase it.

Q It was necessary to make those purchases in order to have the hotel a going concern? A Yes, it was.

Mr. Starr: I offer the invoices in evidence.

By Mr. McCarter.

Q You say those were to replace equipment that was in the hotel when you bought it? A Yes.

Q Well, now, I want to show you a certified copy of the deed from Charles B. Prettyman and wife to Paul C. Rosecrans and Rae C. Rosecrans, which is the deed for the property in question, and invite your attention to the schedule of goods and chattels, and see if you can find in there any mention of any kitchen equipment. A There were a good many things in there that were not mentioned.

Q I ask you to tell me if you can see any mention of any kitchen equipment. A No.

Q No. And yet you say that this mass of invoices was replacement of kitchen equipment in the property when you bought it? A Yes, sir. A great many things not on that were in that property and still there that was there when we bought it; weren't enumerated there at all.

Q Can you give me any reason why they enumerated such things as tables and chairs and a typewriter and safe and a key rack and mirror, and kitchen equipment was not enumerated? A A good bit of the kitchen equipment was useless, it was worn out, wasn't worth anything. Pots and pans, had to retin them, had to resolder them, and use them for a year, and then I had to replace them. There was a kitchen range there that is not enumerated there, too.

Mr. McCarter: I object to these items as not replacement.

By Mr. Starr.

Q As a matter of fact, regardless of whether they are enumerated in the deed or not, were any articles of kitchen equipment in the hotel at the time it was purchased? A Yes.

The Master: There must have been, Judge Starr. I happen to know that the hotel must be equipped with those utensils and it is my notion that this would be a proper charge, if he is entitled to credit. Of course I am not passing on a number of these things now, and that—this item I think is proper—or these items.

(Cooper invoices received in evidence and marked Exhibit D. 384.)

Mr. Starr: I want to introduce in evidence the checks, bundle of checks, the first dated June 15, 1928—pardon me, July 23, 1924, and the last one May 7, 1928, and ask they be marked.

(Checks offered received in evidence and marked Exhibit D. 385.)

Q Now, look at those checks, will you, please, and tell us whether those checks paid the invoice—invoices that you just identified? A Yes, they did.

Q Now I show you another bundle of invoices, E. Cooper & Sons, the first dated June 3, 1928, and the last one August 4, 1928, and ask you if they represent the same class of articles referred to in the other invoices, and the same use was made of them? A Yes, they do.

Mr. Starr: I ask they be marked.

(Invoices offered received in evidence and marked Exhibit D. 386.)

Q I show you a bundle of checks, the first one dated the 15th of June, 1928, and the last one the 22nd of November, 1928, and ask you whether or not those checks paid the invoices last identified? A Yes, they do.

(Checks offered received in evidence and marked Exhibit D. 387.)

Q I notice that the invoices total about $3,500 and the checks total $2,121.81. Do you owe Cooper any money on these? A Yes, I owe him a sum on notes.

Q On notes? A Yes.

Q Notes been given for the difference? A Yes.

The Master: Now your proof is complete as to that?

Mr. Starr: Yes.

The Master: I think if he is entitled to any of these credits that would be a proper allowance.

Q Jerome S. Haas is the next one. I show you invoices in favor of Haas and ask you what articles are represented by those invoices and why it was necessary to purchase them and what use was made of them. A That is replacements on the radio.

Q On the radio. It says sockets. A Fuses; red lamps.

Q Where were the red lamps used in the hotel? A Fire exits.

Q Bill been paid? A Yes, it has.

(Invoices offered received in evidence and marked Exhibit D. 388.)

Q The next is William Akers, Jr. Mr. Rosecrans, I show you invoices in favor of Akers, William Akers, Jr., Company, and ask you what they cover and what use was made of the articles and what was the necessity of purchasing them. This is another linen— A They were linens and blankets for the hotel.

Q And to replace? A Replace the worn-out.

Q Yes.

Mr. McCarter: I object to that.

Mr. Starr: I suppose your Honor will disallow those?

The Master: Yes. Did you mark the checks yet?

(Akers invoices offered received in evidence and marked Exhibit D. 389.)

(Checks to Akers offered, received in evidence and marked Exhibit D. 390.)

Q Now I show you a check dated September 12, 1922, to the order of the Eastern Hardware Company, for $25.20. Can you tell what that check was paid out for? A No, I don't recall what that was paid for.

Q Well, you cannot get credit for it unless you can tell us what it is. Do you know what it was paid out for? A No. Usually mark the checks, but there is nothing on there.

Q All right. Guess we will have to abandon that. There is no invoice with it. A I could probably look back on the books and find out.

Q If you can do that. Now "Q." I show you an invoice in favor of the U. S. Slicing Machine Company, and ask you what that represents, and please tell us its purpose and the

use for which it was purchased. A That is a slicing machine used in the kitchen to cut meats.

Q Part of the kitchen equipment? A Yes.

Q Was there any slicing machine at the time the hotel was acquired? A No.

Q This was— A An addition.

Q This was an addition? A Yes.

Q What have you to say as to the necessity for it in the reasonable operation of the hotel? A Well, it is really necessary to have it. It saves time. Run the hotel better with it than without it.

Q Now I show you checks aggregating $206.70. Were those checks used for the purpose of paying the amount due for the slicing machine? A Yes, they were.

(Invoices offered received in evidence and marked Exhibit D. 391.)

(Checks received in evidence and marked Exhibit D. 392.)

By Mr. McCarter.

Q This was the first slicing machine you bought, wasn't it? A Yes.

Q You had run the hotel without a slicing machine until you got this one, hadn't you? A Yes.

Mr. McCarter: I object as not part of the necessary equipment and furniture of the hotel.

The Master: Well, it is not a replacement. I think I will disallow that.

By Mr. Starr.

Q I show you some invoices in favor of M. Blatt, M. E. Blatt Company. I wish you would

examine them and tell us what they cover and the character of the articles furnished and why it was necessary and whether they were new or replacements of old that had been there before. A They were replacements of rugs and carpets that were there when the house was purchased. Some additions, like mats, cocoa mats, draperies.

Q Were there any carpets on the floor when you purchased the hotel? A Yes.

Q Any rugs? A Rugs in about a hundred rooms—about eighty rooms.

Q And this bill, then— A Window shades.

Q Were there any window shades in the hotel when it was purchased? A Yes.

Q And these were— A Replacements.

Q —purchases made from Blatt for replacement? A Yes. Some things don't belong on here. Needles, victrola needles don't belong on here.

Q We will eliminate those things. I show you a bunch of checks and ask you whether or not they were used for the purpose of paying Blatt Company. A Yes, they were.

Mr. Starr: I offer the invoices and the checks in evidence.

(Blatt invoices offered received in evidence and marked Exhibit D. 393.)

Mr. McCarter: Well, I object, unless it appears that all the admittedly improper items are eliminated.

Mr. Starr: We will eliminate those.

The Master: I think that is a proper claim. Of course, I am referring—

Mr. Starr: Here is a record—

The Master: Mr. Harris can go over them.

(The checks offered were received in evidence and marked Exhibit D. 394.)

Q Now I notice, Mr. Rosecrans, that the invoices and the checks presented are not exactly in the same amount. Do you still owe the Blatt people some money? A No, I don't owe them anything.

Mr. McCarter: No; the total of the checks is more than the total of the invoices.

The Master: That probably means—

Mr. McCarter: Have eliminated some items already?

The Master: Yes.

Q I show you invoices in favor of the Atlantic City Brass Bed Company and I will ask you to explain those items for the benefit of the Master. A These were charges for reburnishing chandeliers and brass beds and brass rods on the beds that were in the hotel.

Q Did you have any brass beds in the hotel at the time they were purchased? A Yes.

Q And the chandeliers— A Chandeliers.

Q And the chandeliers were there at the time? A Yes.

Q This is work for reburnishing? A Yes.

(Invoices of Atlantic City Brass Bed Co. offered were received in evidence and marked Exhibit D. 395.)

Mr. Starr: I offer check for $20, dated March 18, 1924.

(Check offered received in evidence and marked Exhibit D. 396.)

By Mr. McCarter.

Q Are all of these Atlantic City Brass Bed Company invoices paid? A Yes.

By Mr. Starr.

Q Mr. Rosecrans, I notice that the invoices total $141.50, and receipted bills and checks are only sixty-two. Well, then—do you owe the Brass Bed Company any money? A No.

Q I show you invoices in favor of Judson C. Burns, Inc., and please explain those items to the Master and indicate the purpose for which the article was used and why it was necessary to buy it. A For iron—for mangles in the laundry, ironing machines, mangles.

Q Was there any equipment of that kind in the hotel at the time you purchased it? A No.

Q No laundry material—articles at all? A Some laundry tubs, but no—

Q Mangle? A No mangle, no.

Q And why was it necessary to have the articles? A To finish the linen, dry the linen and iron it.

Q The linen used in the hotel? A Yes.

Q And that bill been paid? A Yes.

Mr. Starr: I offer the invoices in evidence.

Mr. McCarter: I object as not replacement.

Mr. Starr: It is part of the equipment.

(Invoices of Judson C. Burns, Inc., offered were received in evidence and marked Exhibit D. 397.)

Q There is one check paid showing repairs to mangler that is $30. The other bills are all receipted. The $30 check you notice is repairs to the mangle? A Yes.

Mr. Starr: I think they are allowable as equipment to the hotel.

The Master: I am inclined to disallow it.

(The checks offered were received in evidence and marked Exhibit D. 398.)

Q I show you receipts, one for $50, dated June 26, 1922; one for $65, dated July 24, 1922, and ask you what they cover. Apparently they cover phonograph. Why was a phonograph purchased and where was it put? A For use in the parlor of the hotel.

Q And what have you to say as to whether or not Mrs. Rosecrans knew of that purchase and whether she objected? A Yes, she and I agreed on it.

Q You paid $115 for it? A Yes.

Q Still there, is it? A It has been replaced by another one since.

Mr. McCarter: I object to that. I think that is like the radio.

The Master: Is the proof all in?

Mr. Starr: Yes.

The Master: That claim not allowed.

(Bills offered received in evidence and marked Exhibit D. 399.)

(Check received in evidence and marked Exhibit D. 400.)

Mr. Starr: The next one is a mail bag. I don't think we will take that.

Q I show you four invoices in favor of Bailey, Banks & Biddle, and ask you whether those repairs of the clock mentioned had reference to the clock which was purchased at the time the hotel was acquired? A Yes.

Q Repairs to that clock? A Yes.

Q And the bills been paid? A The bills have been paid.

(Invoices of Bailey, Banks & Biddle Co. offered were received in evidence and marked Exhibit D. 401.)

Mr. Starr: I would like to have the checks marked also.

(The checks were received in evidence and marked Exhibit D. 402.)

Q I show you an invoice of A. R. Justice & Company, two invoices, rather, and ask you to explain those, please. A They are repairs for silverware, coffee pots, coffee pots used in the dining room.

Q Are they coffee pots that came with the hotel when purchased? A No.

Q New ones? A New ones.

Q Were there any coffee pots? A Yes.

Q With the hotel when it was purchased? A There were a few cheap ones.

Q And the new ones were acquired when? What I want to know is whether the new ones were acquired to take the place of the ones that were in the hotel? A Yes, to add to them.

Q And these bills were repairs to the new ones that replaced the old ones; is that right? A Yes; that is right.

Q Has the bill been paid? A Yes.

(The vouchers offered were received in evidence and marked Exhibit D. 403.)

(Check offered, received in evidence and marked Exhibit D. 404.)

The Master: Allow that.

Q Now the next one is Clad. Mr. Rosecrans, please look at these invoices and explain them to the Master, and tell us why it was necessary they should be purchased? A Some of this is kitchen equipment and other china for the dining room. Coffee urns. Gas griddle.

Q For what? A Gas range. Ice cutter to be used in the kitchen; cube the ice. New copper bottom in the steam table. Roast pans, and so forth, in the kitchen.

Q Tell us whether they were replacements to the equipment that was there at the time you purchased or whether it was new. A Replacements and additions.

Q Which were additions and which were replacements? Tell us. A The ice cutter was a replacement.

Q What? A The ice cuber was an addition, cubing ice with the machine to cube the ice for the dining room. That was an addition. The others were replacements.

Q When was the ice cuber purchased; can you tell us from the bill? A In June, 1923.

The Master: What was the cost of that?

The Witness: $175—no; $75. Ice crusher —no, cuber.

Mr. McCarter: Cuber.

The Witness: Yes. $75 for the cost of that. And the dishes on these bills were

additions to what was there, and replacements.

Q Were there any dishes in the hotel at the time it was purchased? A A few dishes.

Q A few? A A few.

Q And then the articles shown on that invoice represented replacements as well as new ones? A Replacements and additions.

Q Was it necessary to have the new ones in order to properly conduct the hotel? A Yes, sir.

Q What have you to say as to whether or not Mrs. Rosecrans knew of the acquisition of the new dishes, whether she ever objected or not? A She did.

Q Did what? A She knew about it; agreed to it.

(The invoices offered were received in evidence and marked Exhibit D. 405.)

By Mr. McCarter.

Q I noticed a lot of chinaware on here, Mr. Rosecrans. That is correct, isn't it? A Yes.

Q You don't say that the chinaware was replacement of what was purchased in the hotel, do you? A Yes, there was some china there.

Q I invite your attention to the certified copy of a deed, and particularly to page 2 thereof, where you see the words, "excepting therefrom linen, silver and chinaware." Do you still say you bought some chinaware when the Princess hotel was purchased? A Yes, I did. There was chinaware there and kitchen equipment; a lot of stuff not mentioned in here that was there.

Q Yes, but I notice the chinaware is specifically excepted along with linen and silverware. A Well, what was there didn't amount to a whole lot. It was—been cheap and broken, and it was left there because it was no good to anybody.

Q Abandoned by the former owner, in other words? A Wasn't much good to start with—had to be replaced.

Q Probably left there by the prior tenant, not the property of Mr. Prettyman? A Probably so, yes.

Mr. McCarter: I object to this item.

Mr. Starr: You don't object to anything except the china, do you?

Mr. McCarter: I object to the most of the items. I can't see there is—I object to the ice cuber as not a replacement, and I object—

The Witness: It replaced a chopper that was there, an ice chopper.

By Mr. Starr.

Q Now, explain the difference between the two. A Well, an ice chopper is nothing more than a tool to chop the ice with in the big pan, square pan.

Q Then the cuber did what? A The cuber made the ice into cubes.

Q Well, was the ice chopper there at the time— A Yes.

Q —it was purchased? A Yes.

Q I notice on the invoice there is a gas range, $207. Was that a replacement or a new one? A That was a replacement of an old one that had been there.

Q Had been there when you purchased? A Yes.

Q I notice an item of $51 for copper bottom in a copper steam table. Had the steam table been there before? A Yes.

Q That was a repair? A Yes.

Q I notice a gas cake griddle. A That was with the property that was bought.

Q And this was a new one to take its place? A Yes.

Q I notice a coffee urn. Was there a coffee urn there at the time you purchased? A Yes, three.

Q What? A Three coffee urns.

Q And was this one purchased from Clad to replace one of the others? A Yes.

The Master: I think all of those items are proper except the crockery and the ice cuber.

Mr. Starr: Of course the bills themselves will show which is which.

The Master: Will Mr. Harris separate them?

Mr. Starr: Yes, we will separate them. Let me know what your Honor's ruling is; we will—

Mr. McCarter: Know what it means in dollars and cents?

Mr. Starr: —endeavor to abide by it.

I offer in evidence a bundle of checks to the Clad Company.

(Checks offered, received in evidence and marked Exhibit D. 406.)

Mr. Starr: The checks exceed the invoices, but I suppose that is on account of some prior indebtedness.

Q I show you the Dougherty invoices and ask you to explain to the Master what they cover and whether they are replacements or new equipment and why it was necessary to have the latter put in.

The Master: Can't you state generally what they were?

A Yes, they were all replacements and repairs for the kitchen equipment.

Q That was there at the time they were purchased? A Yes.

Q Well, now, I think you are mistaken with reference to one of those items. Look at the $41 item. I may be mistaken about it. It covers orange squeezer. Was that a new piece of equipment? A Orange squeezer was new.

Q That is new. What is the amount of that, $41? A I haven't found that yet.

Q The last one, I think. A I haven't located it. But that was new. Here it is. $47.

Q $47? A Yes.

The Master: $41 on the schedule.

The Witness: $47.50.

Q It is under date of August 5, 1925. Now you say that was a new piece? A That was a new piece, yes.

Q The rest of them were all replacements and repairs? A Yes.

(Dougherty invoices offered, received in evidence and marked Exhibit D. 407.)

Mr. Starr: I offer in evidence the checks to go with those invoices.

The Master: That seems to be all right, except as to the item of $47.50.

(Checks offered, received in evidence and marked Exhibit D. 408.)

By Mr. McCarter.

Q I note, Mr. Rosecrans, that the total of the checks to Dougherty is $574.15; is that correct? A Yes.

By Mr. Starr.

Q Then you owe Dougherty some money? A No.

Q Well, how do you explain the fact, then, that the invoices total $621.75, plus the $41? A I am not so sure of that. I might owe him a small amount, forty or fifty dollars.

Q Now the vacuum cleaner.

Mr. McCarter: It is a Eureka vacuum cleaner.

Q Yes. Now, was there a vacuum cleaner in the hotel at the time you bought it? A Yes, there was.

Q What became of that one? A Sent it away to get it repaired once, and then they didn't make a good job of it, and had to get a new one. I got small ones instead of this big one. This was one of the large ones that you use in the big hotels.

Q There was a vacuum cleaner? A Yes.

Q And the vacuum cleaner purchased, the Eureka, was that a replacement? A Yes, of the cleaner that was there.

Mr. Starr: I will offer in evidence the invoices and receipt, a hundred and thirty-seven.

By Mr. McCarter.

Q You are positive a vacuum cleaner was in the hotel when you bought it? A Yes.

Q And it was a very large one? A It was one that was pulled around the floor, and the hose was attached to it. I sent it away to St. Louis to try to get it fixed.

Q Can you give me any reason why, if it was there, it was not enumerated in the list of goods and chattels scheduled in the deed from Charles B. Prettyman and wife to you and Mrs. Rosecrans? A Well, I suppose it was not enumerated because it was practically useless, like a lot more of the stuff that was there. I tried to get it fixed, and didn't last long after that; couldn't do much with it.

Q For how long a time were you without a vacuum cleaner; without one that would work, I mean? A Oh, not very long. You cannot go without it very long.

(Invoices and checks received in evidence and marked Exhibit D. 409.)

By Mr. Starr.

Q I am asking now whether there was a vacuum cleaner at the time you purchased the hotel from Prettyman? A Yes.

Q And that was the one that was abandoned, and these news ones were purchased to replace it? A To replace that one, yes.

By Mr. McCarter.

Q Let me ask you another question. I note according to Schedule AA the total of the checks paid to the Eureka Vacuum Cleaner Company is $102. Is that correct? A I think so.

By Mr. Starr.

Q Now Rope Fire Escape Company. I show you a couple of invoices from the Rope Fire Escape Company, and ask you what they cover and whether or not they were replacements or new equipment. A These were replacements of the old boxes and repairs to them.

Q Were there any fire escape ropes or fire escape boxes in the hotel at the time it was acquired in 1919? A No. They were ordered put in by the Fire Department. I think there was a law passed. We all had to put them in shortly after that.

The Master: I know there was a statute requiring the hotel to be equipped.

Q They were put in subsequently to the passage of that statute? A Yes.

Q And you put them in to be used in the hotel? A Yes.

Mr. Starr: I will offer the check in evidence for $47.15.

(Invoices of Rope Fire Escape Company received in evidence and marked Exhibit D. 410.)

(Check offered received in evidence and marked Exhibit D. 411.)

By Mr. McCarter.

Q I note, Mr. Rosecrans, that the total check payments amount to $74.15; is that correct? A I suppose so.

Q So that there is a balance of $17.76 for the 1928 invoices still unpaid? A I think I owe them a small bill.

By Mr. Starr.

Q Now was there a dishwashing machine in the hotel as part of the kitchen equipment when you purchased it? A Yes.

Q What became of that and was it necessary to replace it with another one or buy a new one? A Had to replace it a couple years ago.

Q I show you some invoices, five in number, and ask you to explain to the Master what they cover and why it was necessary to have the work done. A They were repairs to the old dishwasher that was there and new baskets for it, to replace the old baskets.

Q Then is the dishwashing machine that is there now the same one? A No, it is a different type.

Q Different type? A Yes.

Q What do you mean by that? A Well, it is operated easier. The old one was one that you had to put the dishes in the baskets and dip them up and down, raise them up and down like that. The new one, you just put the dishes in the basket and slide them right through.

Q What became of the old one? A The old one was scrapped, I guess.

Q Was it any good? Did it wear out? A Wore out.

Q And the new one was acquired as a substitute for the old one? A As a substitute for the old one, yes.

Mr. Starr: I offer in evidence the checks amounting to $231.13, in conjunction with those invoices.

(Invoices offered, received in evidence and marked Exhibit D. 412.)

(Checks offered, received in evidence and marked Exhibit D. 413.)

Mr. Starr: There is a question on this claim that I don't know—it just occurs to me here is a claim of purchases during the period covered by the accounting, $156.14, and payments during that period $231. Now the inference is that the checks covered anteceding bills.

The Master: We will have to be bound by the invoices on the theory the inquiry is from a certain specific date.

Q I show you invoices in favor of the Eureka Sanitary Brush Company, and ask you to read them and explain to the Master. A These were brooms and mops and buckets that were used.

Q Were they new or replacements? A They were replacement of what was there.

Q There were buckets and mops at the time you bought the hotel? A Yes.

Mr. McCarter: I object to mops and brushes, whether they were replacements or what they are. There is a ruling on them already.

Mr. Starr: For new ones, yes, but these were replacements. Mark the check, please.

(Vouchers referred to received in evidence and marked Exhibit D. 414.)

(Checks referred to received in evidence and marked Exhibit D. 415.)

Q I show you some invoices in favor of the F. W. Hoffman Company. Now what do they cover generally? I wish you would explain to the Master. I notice some mops there. Of course they will have to come out. What are the other things that are either replacements or repairs to the existing equipment? A Cedar oil for polishing the floors.

Q What? A Cedar oil for polishing the floors.

Q I think we are entitled to that. A Floor dressing. Fumigating material, exterminating roaches, roach powder.

Mr. McCarter: Might just as well try to charge pepper and salt.

The Witness: Exterminating rats. They did a lot of that in fumigating.

Q Well, I don't think that is proper. A There was rats there and there was bugs there, and roaches, and Mrs.—

Q All right. Anything there on that bill in the way of replacement? If there is, why—

Mr. McCarter: To prevent replacement.

A No. There is paper towels and paper napkins.

The Master: I guess we better forget that one.

Mr. Starr: May save a dollar or two out of it.

The Witness: Paper cups. The house had to be fumigated to make it livable.

Q I want to find if there is anything in the way of replacements in those bills. A Only mops and brushes; that is all.

Mr. Starr: Well, I suppose in accordance with your Honor's prior ruling, then that will be disallowed.

The Witness: Exterminating was $400.

Q What? A Fumigating was $400.

Q When was the fumigating made? A It was in November, 1924. Has to be done continuously to keep the house—

Mr. Starr: I don't think we are entitled to allow that. Have them marked, and the checks also.

(The vouchers referred to were received in evidence and marked Exhibit D. 416.)

(The checks referred to were received in evidence and marked Exhibit D. 417.)

Q Mr. Rosecrans, please look at the Blisard invoices. Tell us generally what they cover, if there were any replacements or repairs to existing equipment. A They were replacements and additions to what was there.

Q Replacements to what? A Silver, knives and forks.

Q Well, was it the replacement to silver that was in the hotel at the time you purchased it?

A There was some silver there; not much. The rest is additions to what was there.

Q You say not much. What do you mean by that? A Maybe a few dozen old pieces that had been replated.

Q They were inconsequential so far as the value of the hotel was concerned? A Yes.

Q Then the rest of it was new silverware? A New silverware.

Mr. Starr: That has already been ruled on. Have those marked, please, with these checks.

(Invoices marked Exhibit D. 418.)

(Checks marked Exhibit D. 419.)

Q I show you some invoices in favor of the Chelsea Hardware Company. Please examine them and explain to the Master what they cover, whether they are replacement or new equipment or repairs to old equipment. A With the exception of the lamps, electric bulbs, they are repairs to the property and materials used to keep up the property, such as nails and hardware, and so forth.

The Master: Have the bulbs been eliminated from the amount or deducted from the amount?

The Witness: I don't think they have.

Q Now electric light bulbs; were there any there at the time the hotel was purchased? A No, not many. There might have been a few.

Q So that the bulbs were all additions? A Yes.

Q The rest of it was for repairs to the hotel? A Yes.

Mr. Starr: Well, in accordance to his Honor's ruling we are not entitled to the bulbs. Now I offer in evidence the checks that are produced in connection with that.

Mr. McCarter: Don't look to me as if any of this was material. All seems to consist of what the political economists term consumption things, things put in there to use up.

Q Bulbs, nails—I notice here a steel medicine closet, 1922. What was that? A That was used to replace an old one that was there.

The Master: In the bathroom?

The Witness: Yes.

Q I notice in one of these invoices oil cloth, four yards and a half of oil cloth. A That is a replacement. That was a replacement.

The Master: Where do you use that?

The Witness: In the bathrooms.

Q Another one, a stepladder, four-foot stepladder, two of them. Was that a replacement or addition? A Addition.

Q Notice a meat saw blade. A That is—should come out.

Q Some dry batteries. What were those used for? A Elevator, annunciator.

Mr. Starr: We will have to go over this, and a lot will have to be eliminated.

The Master: I think pretty much all of it will have to be eliminated.

Mr. Starr: Pretty much all of it will have to be eliminated. I don't want to be bound by that, but—

The Master: No, I won't hold you to that, Judge Starr.

Q Here is an item, sandpaper, hinges, brackets. A That was used by the carpenters and mechanics working on the house; same as the nails.

Q Screws, sockets, door knobs. They all used in the hotel? A Yes.

Mr. McCarter: Door knobs would be all right.

The Master: It may be the nails and screws also.

Q I notice some netting here. A For the windows, mosquito netting.

Q Linen; that was tacked on, was it? A Yes, linen netting.

Mr. Starr: There were a good many electric light bulbs. Well, we will have that marked, and then—hardware is in, and electric light bulbs out.

(Chelsea Hardware Co. invoices offered are received in evidence and marked Exhibit D. 420.)

(Checks offered are received in evidence and marked Exhibit D. 421.)

Q Now Lear. I show you the invoices in favor of Lawrence M. Lear. Look them over,

please, and explain to the Master what they cover and whether they are replacements or new equipment or repairs. A They were for hanging awnings—making awnings.

Q You mean outside awnings? A Yes, sir.

Q For the windows? A Porch and the windows.

Q What was the situation with respect to the awnings when you bought the hotel? A There were none there.

Q Then these were all additions, so far as awnings are concerned? A No, we put awnings up the first year we had the hotel, and these were replacements of these same awnings that were put up when we bought the hotel.

Q Were there any awnings on the hotel when you bought it? A No.

Q Then the year you bought it you put the awnings there new? A Yes.

Q Well, now, did Mrs. Rosecrans know that was being done and consent to it? A Yes.

Q Now this work shown by these invoices were the replacements of the new awnings that had been installed? A Yes.

Q Do those invoices cover anything else? A Some work on the velour draperies.

Q That is interior draperies? A Yes, cloth and cord draperies. Hangings and draperies in the parlor, $88. Replacing some that had been there, and additions to what had been there.

Q What? A Some replaced the draperies that had been there. Mrs. Rosecrans and I agreed on these draperies when we first bought the hotel.

Q These particular items, the invoices which you now have, are they the replacements of

the ones at the hotel when you bought them? A Yes.

Q Or replacements of the ones that were substituted for the ones at the hotel when you bought it? A These were replacements, as far as I can recall.

Q Of the ones that were at the hotel when you bought them? A Yes.

Q Cover anything else? A No; that is all. Awnings and draperies.

Q Why was it necessary to put awnings there? A On account of sun on that side of the street in the morning.

Q Necessary for the— A Beats in there.

Q —proper conduct of the hotel? A Yes.

Q As a going concern? A Yes.

Mr. Starr: I offer the checks in evidence to accompany this.

(Invoices offered were received in evidence and marked Exhibit D. 422.)

(Checks offered were received in evidence and marked Exhibit D. 423.)

By Mr. McCarter.

Q What room do the indoor draperies go in? A Parlor. The upstairs parlor, yes, and the writing room. Parlor and writing room.

Q I show you a picture; do you recognize that as a picture of the upstairs parlor? A Yes.

Q As it was fixed up in 1920 isn't that so? A Yes. 1921.

Q Yes. And the draperies shown around the windows in that room are still there, aren't they? A No, they have been replaced; some of them have been replaced since then.

Q Which ones? A Several in there.

Q Replaced with the same kind of material so that they would match the old ones? A Yes.

Q And when were they so replaced? A I don't recall the exact date.

Q Well, were they replaced on the dates shown on these Lear invoices? A I think so.

Q Well, if these Lear invoices do not refer to those draperies, what do they refer to? I am not talking to the awnings now. A Well, the draperies in the—he put draperies in the dining room, in the writing room and in the parlor at different times.

Q Well, the parlor is what is shown on that picture, isn't it? A Yes.

Q I noticed some of these Lear bills, one in June 18, 1923, and one June 10, 1924; each contain a charge to labor hanging awnings. These awnings were put up and taken down with the season, weren't they? A Yes.

Q And you are charging in this set of vouchers for the labor of Lawrence M. Lear in hanging awnings at the opening of the awning season? A Yes.

Q And taking down awnings at the close of the awning season? A Yes.

Q Yes. A It was necessary.

Q I notice one of these vouchers is also for interest on a note for four months. Do you see that? A That is not marked, though. I think that is excluded.

By Mr. Starr.

Q Do those vouchers, or those invoices, rather, indicate the charge with respect to hanging and taking down the awnings as distinguished

from the construction of the awnings themselves?
A Yes.

Mr. Starr: Now I think—

Mr. McCarter: I think the labor of hanging and taking down is not a proper charge.

Mr. Starr: I quite agree with you.

The Master: I was thinking just the reverse. They are taken down during the winter to preserve them.

Mr. McCarter: Well, but that is part of running the hotel.

The Master: No, I am not so sure about that.

Mr. Starr: I withdraw my statement.

The Master: It would mean that they would have to be replaced by new material.

Mr. Starr: Every year.

The Master: Practically, yes, every year.

Mr. Starr: I guess you are right.

The Master: Winds and storms.

Mr. McCarter: I will concede, of course, awnings are always taken down in the winter, but I think a man that is occupying the hotel and enjoying it, that is part of the business. He might just as well charge for a head waiter.

The Master: I think we can allow it. I am reserving decision on a very great number of them. It may also be that I won't have to resort to any of this in arriving at the rental value.

By Mr. Starr.

Q Now Wanamaker. Now, Mr. Rosecrans, please look at the Wanamaker invoice and tell us—explain it to the Master. A This were rugs and carpets bought from June 20, 1922, for the hotel.

Q Were they replacements or new? A The rugs were new to put over the parlor carpet to preserve it; and carpet was replacing the old carpet.

Q Well, were there rugs there at the time the hotel was acquired? A No.

Q And these rugs, you say, were used for putting over the parlor carpet? A To preserve it.

Q Would it have been necessary to buy a new carpet unless the rugs were used? A Yes; and preserved it for several years that way, by cutting out the carpet underneath these rugs and patching up the worn places in different parts of the room.

By Mr. McCarter.

Q I notice that this John Wanamaker voucher is not made out to you, it is made out to Miss H. Rae Scull. Wasn't this account at John Wanamaker's in Mrs. Rosecrans' name? A It was in her name.

Q Didn't she pay it? A No, I paid it.

Q What evidence have you that you paid this voucher made out to H. Rae Scull? A I should have checks for that.

Mr. Starr: Here are a bunch of checks. I don't know—

Q You remember testifying in the divorce case, of course, don't you? A Yes.

New Jersey State Library

Q And you remember testifying that you paid these checks to Wanamaker for Mrs. Rosecrans' support, didn't you? A I paid the articles of clothing and one thing another that were included in some of them.

Q Yes. Well, now, which are these checks which I hold before me for? Are they in payment of Mrs. Rosecrans' support as you said before Vice-Chancellor Backes, or in payment of furnishings for the Princess Hotel? A Well, I paid the whole bill regardless of what was on it, clothing, furniture and carpets. I paid the whole bill, and I suppose the articles of clothing have been eliminated.

Q You say you paid the whole bill? A Yes, as I recall it.

Q Now let's see what these checks amount to.

Mr. Starr: The checks are $1,081, according to this.

(Wanamaker invoices offered were received in evidence and marked Exhibit D. 424.)

Mr. McCarter: I won't take any more time on that. Maybe I will come back to it.

Mr. Starr: Have the checks marked, please.

(Checks offered were received in evidence and marked Exhibit D. 425.)

By Mr. Starr.

Q I notice some carpets on that invoice. Were they new carpets or replacements? A Replacements.

By Mr. McCarter.

Q On that invoice at Wanamaker's, Mr. Rosecrans, under date of June 24, there is some lining. What was that lining for? A Carpets.

By Mr. Starr.

Q Now the next is Strawbridge & Clothier.

The Master: The next Strawbridge & Clothier is for towels.

Mr. Starr: And that is in accordance with your ruling?

The Master: Yes.

Mr. Starr: I will make the proof.

Q I show you invoices, Mr. Rosecrans, from Strawbridge & Clothier. Can you tell us what they represent? A Napkins and towels; linens; spreads.

Mr. Starr. I asked they be marked, with the checks. I suppose your Honor will disallow them.

The Master: Disallowed; yes.

(The invoices offered were received in evidence and marked Exhibit D. 426.)

(The checks offered were received in evidance and marked Exhibit D. 427.)

Q I show you the invoices for Litt Brothers and ask you to explain to the Master whether they are replacements or repairs or new equipment. A The pictures were new. The carpets were replacements.

Q In the rooms of the hotel which were unfurnished when you acquired them, were there

carpets on those rooms? A Nothing in there at all.

Mr. McCarter: I submit the pictures which were new should be excluded.

The Master: I think that is correct.

Q They were pictures to put where, Mr. Rosecrans? A Parlor and in the rooms.

Q For refurnishing? A Yes.

Q I suppose to make it more attractive to guests? A Yes.

Q And the carpets were to replace the ones that were in the hotel when you bought them? A Yes.

(The invoices offered were received in evidence and marked Exhibit D. 428.)

(The checks offered were received in evidence and marked Exhibit D. 429.)

Mr. Starr: One invoice was carpets and one pictures. We can stipulate on the record which is which.

Mr. McCarter: There were three different invoices.

The Master: The payments exceed the invoices, anyway.

Mr. Starr: The pictures amount to $15.69, and the balance are carpets.

Q Mr. Rosecrans, look at the slip that is marked at the head "Hats trimmed free of charge," and tell us what that slip refers to. It is under date of June 7, 1923. A I think that was something for Mrs. Rosecrans.

Q All right. I don't want to include it here. It is apparently an item of $219.38, under date

of the 6th of June, 1923. A The books will show—bills note it is from the contract department.

Q Well— A That would be furnishings. It says on here "Contract Department."

Q What kind of furnishings? A Carpets and whatever I bought there. Everything came C. O. D. from there.

Q Do you know what you bought? A I bought a lot of stuff there, carpets and furniture. This came from the contract department. That is where the carpets and furniture comes from.

Q I understand that, but you are asking credit $219.38. You will have to know before you can have that credit also what it covers, whether it covers carpets or furnishings. A Have to call them up and find out what that was.

Q It is evidently receipted; it is a receipt for a C. O. D. bill? A Yes.

Mr. McCarter: What is the date?

Mr. Starr: June 6, 1923.

The Witness: June 7, isn't it?

Q Well, it is June 8, here. A Looks like carpet on the back.

Q Marked "carpet" on the back. I want to know whether you have any recollection of it or not? A No; I will call them up.

Q Well, you will have to find out about that before you can ask for any credit. Find out about that, Mr. Rosecrans.

Now, Mr. Rosecrans, look at the invoices, Ernest Beyer, and explain to the Master what they cover and all about them. Tell us about the Ernest Beyer account. A These are steel files and desks for the office. Desk tray. Steel file.

Mr. McCarter: I think that is quite evidently for use in conducting the business.

Q Is that replacements or new equipment? A That is new equipment, in part. The desk replaces an old desk that was there. The steel files are new.

Q What was the amount paid for the old desk, for the desk that replaced the old one? A $85.

Q And the other is new equipment? A The other is new; yes.

Q Why did you buy it? A Needed it in the office. Had to buy a couple for this accounting.

Q What? A Had to buy a couple for this accounting.

Q Is that included here? A Yes.

Q You mean to say you have included in this accounting the two new steel cases? A Looks like it.

Q I don't think we are entitled to that. A They are all filled up with this accounting.

Q Well, now, were those Beyer accounts paid? A Yes.

Q And the $85 is the replacement of the old desk? A Yes.

Q Balance is for the files? A Yes.

Q Some of which was purchased recently? A Yes.

Q In anticipation of this accounting? A Well, we needed it for the accounting, to file the papers away.

Q All right.

(Beyer invoices offered were received in evidence and marked Exhibit D. 430.)

(Recess until 2:30 o'clock P. M.)

AFTER RECESS, 2:30 P. M.

PAUL C. ROSECRANS, resumed the stand.

By Mr. Starr.

Q Schedule MM, S. H. Quintz Son & Comapny, is abandoned. Can't prove that.

Now, Mr. Rosecrans, I show you the invoices in favor of the Atlantic Interior Decorator, beginning October, 1926, which is the date of the first one, and ending July 13, 1928, and ask you to explain those items to the Master, please. A They are draperies for the parlor and the living room. Sofa and chair.

Q Were they new articles or to replace those that had been there before? A Went to replace some old ones that had been there.

Q What say? A Went to replace some old ones that had been there.

Q Were the old ones there at the time they were purchased—the property was purchased from Prettyman? A No, we put them in the first year.

Q And then this— A These replaced them.

Q —replaced those? A Yes.

Q What about the chair? Was that a new chair or one that had been purchased to take the place of one that had been there at the time it was purchased? A Replacing chairs. It was replacing chairs or re-upholstering chairs. I have forgotten just what that was. And hanging lace curtains; ten hours.

Q It was all 1928? Unless— A 1926.

Q What say? A 1926 this is. From 1926 to 1928.

Q Yes. Well, now unless you can indicate by the testimony that the chair was a replacement

of one that was there at the time you purchased, I don't see how you can claim at all under that invoice.

The Master: He has already said that, but he said there were ten hours hanging lace curtains. That, of course, under my ruling, would have to be eliminated.

A This is replacing an old chair or remaking an old chair. There were some of the chairs we had to do over.

Q Was that chair in the hotel when you bought it? A Yes.

Q What is the amount of that item, repairing that chair? A $21.

Q Has that been paid? A Yes.

Mr. Starr: Please mark those invoices.

The Witness: Some of this furniture was put in the hotel when—in that half of the hotel that was unfurnished, the stuff that I bought, when I brought it in after the purchase; I had it stored outside and brought it in to furnish up those hundred rooms, and some of this stuff is to replace some of that.

Q Mrs. Rosecrans know that was being done, and did she object to it? A Yes; she knew about it.

Q Did she object? A No.

Mr. Starr: Have it marked, please.

(Invoices offered were received in evidence and marked Exhibit D. 431.)

By Mr. McCarter.

Q What part of the hotel were these draperies and portieres mentioned in this set of invoices put in? A In the parlor, living room.

Q In what? A In the living room and upstairs, the parlor.

Q The same one that I showed you a picture of this morning? A Either that or the one downstairs. We used them in both rooms.

Q Well, now which? A The lobby downstairs or the parlor upstairs; one of the—

Q Isn't it a fact the drapes that were furnished by Lear, about whom we had some testimony this morning, are still there in the hotel? A Yes; some of them are still there.

By Mr. Starr.

Q Well, what did you need these for, then, these Atlantic Interior Decorator hangings for? A They are replacements; they replaced some—

By Mr. McCarter.

Q Replaced which ones, Mr. Rosecrans? A Some that Lear put in, some of the old ones that Lear had put in.

Q That Lear had not put in or had put in? A Had put in.

Q What year did Lear put his in? A 1921 and 1922.

Q I want to see those Lear bills, please, we had this morning. They are the awning man. A I don't think they are in this accounting, the individual draperies put in.

Q These are all awnings. Making and hanging draperies for twenty-six windows. A Yes.

Q Here is one of the Lear invoices which you swore to this morning; it is dated December, 1924, that is one of D. 422; reads for material and labor of making and hanging draperies for twenty-six windows, $88; and you claimed for that this morning, and that seems to have been done in 1924? A That must have been in the dining room, then. He put them up in the dining room.

Q Why did you tell me this morning they were the draperies on that picture of the lobby I showed you? A I told you in both rooms. I cannot tell exactly, dining room and the parlor; I can't tell exactly.

Q You now say this morning you mentioned dining room? A Yes, I did.

Q And you say these draperies for which the bills of Atlantic Interior Decorator, D. 431, are, are to replace the Lear draperies put in in 1924? A Some, yes. Some portieres there. That got the most wear going in the dining room.

Q They wore out in four years, eh? A Yes, where they got the most wear; in the doors and the entrance to the doors.

Q What color were the portieres that Lear put up? A Old rose.

Q Old rose? A Yes.

Q Where were the green draperies? A They were down, as I recall it, down in the lobby on the first floor.

Q Any of these paid, these Atlantic Interior Decorators? A They are all paid except one. One bill there is not paid.

Q I don't see any checks for them. That is why I ask. Why haven't you any checks here for them? A They should be there.

Q Which one is unpaid? A There is one item of $60 I think is unpaid.

Q Look at these invoices and tell me which is unpaid. A June 3 to July 13, this one here, is not paid.

The Master: For what amount?

The Witness: $67.

Mr. McCarter: And fifty cents.

The Witness: Yes. I think the others are all paid. I will have to get the vouchers or get the checks.

Mr. McCarter: Let the record show, please, that the hanging lace curtains item is $15.

The Master: That item will be deducted from the total.

Mr. Starr: $15 deducted.

The Master: $15. I don't think that is a proper charge.

By Mr. Starr.

Q Now, Mr. Rosecrans, with the exception of that one item of $67.50, are you sure that these bills have been paid? A Yes.

Q The checks are not here. Are you sure they are paid? A I am sure they are paid; yes. I will see tonight and get the receipted bills.

Q Well, do that, then. A We abandon 00; that is Daniel Wolf, bell men's uniforms.

Q The next is Sears Roebuck. I show you invoice Sears Roebuck & Company, and ask you to explain those items to the Master? A They were window shades.

Q Anything else excepting window shades? A That is all.

Q Were they new or replacements? A Replacements.

Mr. Starr: And I offer in evidence that invoice and also the three checks.

Mr. McCarter: The checks are substantially more than the invoice.

Mr. Starr: Very much more. I don't know—

The Master: If there is any allowance, it can only be for the invoice.

Mr. Starr: Unquestionably.

(Invoice offered was received in evidence and marked Exhibit D. 432.)

(Checks offered were received in evidence and marked Exhibit D. 433.)

Q Now referring to claim for credit, Schedule QQ, repairs to furniture and laying carpet. I show you two checks, one to the order of Charles Robertson, for $67.51, and the other to the order of Fred A. Rickson, for $321.50, and ask you to explain those items to the Master? A Robertson was for repairing furniture, and Rickson was for laying carpets, cement—he did some cementing on the kitchen floor to keep the water from running into the basement, and work like that.

Q What other character of work besides the cementing and the— A That is all.

Q Now the furniture and repairs to the furniture. Was or was not the furniture repaired by him purchased with the hotel? A Some was and some was put in the hotel by me when we bought the hotel.

Q And the work was done on both? A On both, yes.

Q And was it necessary to have that work done in order to preserve the furniture? A It was.

Q What kind of repairing did you do? A Built new rungs in the chairs, and re-upholstered chairs, re-varnished, re?painted. General repairs on the furniture.

Q So far as Rickson is concerned, he laid the carpet? A He laid the carpets. Relaid carpets, and we had—we tried to save a lot of old carpets, keep from buying new ones, and he would cut out pieces in front of the bureaus and chiffoniers and put them underneath the bed where they would not show. He did most of that work.

Q He did that work, did he? A Yes, and he had to re-sew and relay the carpet, and we would get a couple of more years' wear out of it.

Q And were the carpets which he worked on those which were in the hotel at the time it was purchased, or replacements? A They were in the hotel at the time it was purchased and put in by me in the empty rooms that were empty at the time the hotel was purchased.

Q And that money was paid to him on that check? A Yes.

Mr. Starr: Mark them.

(Checks offered were received in evidence and marked Exhibit D. 434.)

By Mr. McCarter.

Q Charles Robertson is the same man we heard about yesterday, isn't he? A Yes.

Q The time book got his work for this period as well as for the period we had him in for yesterday? A Yes.

Q Payment at the same rate? A Same rate, yes.

Q What other work did he do besides what you have told us about here? A Robertson?

Q Yes. A That is all he did.

Q He did the work you told us about yesterday? A Yes, what I told you yesterday, repaired furniture; that is all he knew. That is all he could do, upholstery, re-upholstery, repainting, re-varnishing.

Q Rickson do anything besides lay carpets? A No; that is all he knew how to do.

Q How long did he work for you? A He was there three or four months, I guess.

Q What rate did you pay him? A A dollar an hour. He was an expert carpet layer. He stretched the carpets on the halls, the halls and the carpets—the carpets in the halls. They get baggy and people stumble over them. He would stretch them, cut pieces out of them, and take the worn pieces and put them in the side halls where they wouldn't show, and he would—as he went along he would nail down the boards that were loose, loose boards in the hall. And he would pad the carpets so as to save them. He worked for the Kensington people a good many years, for quite some time.

Mr. McCarter: I think that is all.

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q The next is E. J. Wing Manufacturing Company. Mr. Rosecrans, I show you invoices from Wing Manufacturing Company. Please look at those and explain to the Master what they are all about? A Ventilating fans for the basement. There was one for the kitchen. I don't know which is which. That is where they were used, in the basement and in the kitchen.

Q There are three invoices there, aren't there? A Yes.

Q Do they all cover the electric fans? A I think one was an ordinary fan for the rooms.

Q And had they anything to do with ventilating the kitchen? A Yes. The big one had, the one for the kitchen. The one for the basement ventilated the basement and office.

Q Why was the big one installed, do you know? A To prevent the fumes from going through the house.

Q Do you know whether or not that was required by any municipal action? A They do require it. They told me to put something up there one time, so I put in the fan.

Q Now is the fan attached to the building; that is, the ventilating fan? A Yes, built right in the building.

Q And is it arranged so that it revolves to take the odor out into the atmosphere? A Yes.

Q Is that the kind of a fan it is? A Yes, fumes and odors.

Q And the fan in the basement is used for what purpose? A To ventilate the office. There was no air down there and no windows.

Mr. McCarter: No what?

The Witness: No air and no windows down there.

Q That is an ordinary electric fan? A Yes, suction fan.

Q What say? A What they call a suction fan, draws the bad air out.

Q Is that attached to the building? A Attached to the building, yes, built right in. It is built right in a box, in a tube, in a square tube. It runs out to the open air.

Q Now those three invoices amount to $213.86, and you have checks here for $156. Do you know whether or not the other checks were given or the bills were paid? A I think I owe them one bill.

Q Oh, you owe them one bill? A Yes.

(The invoices offered were received in evidence and marked Exhibit D. 435.)

(The checks offered were received in evidence and marked Exhibit D. 436.)

Q Well, were the two fans, the ventilating fan and the other one in the basement, were they necessary for the conduct of the business and the operation of the hotel? A They were.

By Mr. McCarter.

Q You got on without these fans until 1925, didn't you? A Yes.

Q What made you change your policy and install them that year? A Well, there is—inspectors used to come in there regularly, health inspectors, and they called my attention to the

condition in the kitchen, the fumes, several times.

Q I notice one of the vouchers is not dated until May 3, 1928, for one 13-inch, 18-wing screw plex fan. A That was put in over the range, additional fan in the kitchen, over the range; put that in after the Iroquois fire.

Q What was it about the fire in the hotel next door that induced you to install this extra fan over the range? A They make a lot of smoke there when they start the fire, and people up in the rooms think the house is on fire; so put that fan right over the range to take that smoke outside.

Q Doesn't the smoke from the range go up the chimney? A Well, yes, but when they start a fresh fire, it don't go up the chimney, it goes out in the kitchen. Can't avoid that.

The Master: Mr. Starr, I don't know—that kitchen equipment is perhaps a proper charge, if there should be any amount at all. It seems to be a convenience for him.

Mr. Starr: I suppose if he had a tenant there he would have to have the same thing. Matter of convenience for the operation of the hotel.

The Master: I am inclined to think that the kitchen equipment—

Mr. Starr: Yes—I want to supplement the testimony.

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q Were there any carpet sweepers in the hotel as part of the equipment when you bought it? A No sweepers. There was a vacuum cleaner.

Q Now I show you an invoice of Snellenberg's carpet sweepers, $20. Explain to the Master how they came to be purchased. A They were necessary to take care of—clean the carpets, keep them from wearing out. Sand gets in them and the cleaner they are kept the longer they wear.

Mr. McCarter: I submit they are in the same situation as brushes and mops.

The Master: I think so.

Q Were they necessary in order to take care of the carpet? A Yes.

Mr. Starr: You are going to disallow that, then, are you?

The Master: Yes.

Mr. Starr: All right.

(Invoices offered were received in evidence and marked Exhibit D. 437.)

Q I show you an invoice of B. C. Poston Manufacturing Company. Tell the Master what that is all about? A That is a baler for baling paper. The health inspectors have gotten after me about the paper strewing around in the back, under the kitchen, and I ordered—it came there just on the day of the fire, on the 16th of April, to bale up the paper.

Q You mean refuse paper that gathers around the place, you would put it in a bale and sell it? A Would put it in a bale and sell it, yes.

Q Was there any baler there— A Instead of carting it away.

Q Was there any baler there at the time you bought the hotel? A No.

Q Independently of the orders of the inspector, was it a convenient appliance to have around to take care of the refuse paper? A Yes.

The Master: A source of revenue, too, wasn't it?

The Witness: Source of revenue, too, yes.

Mr. McCarter: I object.

The Master: I don't see now—

Q How much revenue would you get from a bale? A Well, you have to pay a man to clean the paper up. I never figured it up. I don't suppose there is much revenue to it. You have to pay a man to gather the paper and put it in there.

Mr. Starr: You are going to disallow that?

The Master: Yes.

Mr. Starr: Have it marked, please.

(B. C. Poston Manufacturing Co. invoice offered was received in evidence and marked Exhibit D. 438.)

Q I show you an invoice, William H. Laughlin, dated June 7, 1928, and ask you to explain that to the Master. A They were chairs bought from Iroquois dining room, chairs to replace chairs that had been there.

Q Replacement of chairs that were there at the time of the purchase? A Yes.

Q What kind of chairs were they? A Bentwood chairs.

By the Master.

Q Dining room chairs? A Dining room chairs.

Q And they were all replacements, were they? A They were all replacements, yes.

Mr. Starr: I offer that in evidence.

(Invoice offered was received in evidence and marked Exhibit D. 439.)

Q I show you two checks to the order of the National Retinning Company, one for $15 and the other for $8. Will you explain why those checks were given? A Retinning kitchen utensils, pots and pans; spoons. Some were there when the hotel was bought and some were bought later.

Q Do you know whether or not those that were placed in the hotel after it was bought replaced equipment that was there at the time? A I could not tell you exactly.

Q But it was all kitchen equipment, was it? A All kitchen equipment, yes.

Q Was it necessary to preserve the utensils? A Yes; has to be done every year.

(The checks offered were received in evidence and marked Exhibit D. 440.)

Q I show you an invoice in favor of Joseph H. Josephson, and ask you to explain that. A That is a sign over the cashier's desk in the of-

fice, in the lower lobby. An electric sign, letters on it "Cashier."

Q Was that new or a replacement of something that was there at the time you purchased it? A That was a new one.

Q Why was it placed there? A Well, to show—the lobby is usually a little dark, and it shows—this is lit all the time and shows where the cashier is located.

Q Indicates the location of the cashier's office? A Right over the cashier's desk. There is a cage there for the cashier, and this sign is same as in the banks.

Mr. Starr: Well, I suppose in view of your other rulings, that will have to go out, too.

(Invoice offered was received in evidence and marked Exhibit D. 441.)

Mr. Starr: Now the next is a check for $45 to the order of N. Plate, which apparently was for radio, and under your Honor's ruling, that will be disallowed. Please mark it.

(Same received in evidence and marked Exhibit D. 442.)

Mr. Starr: The next is a claim for $106.50, a loud speaker and batteries.

The Master: And also electric fans.

Q I ask you about the electric fans, Mr. Rosecrans, in relation to that claim, and where they were used and the purpose of their use, and when they were installed. A These fans were for the dining room, ventilate the dining room.

Q And they were new or replacements? A New.

Mr. Starr: New. Well, I suppose under your Honor's ruling, that will be disallowed?

The Master: Yes.

(Invoices David Park Co., and check, received in evidence and marked Exhibit D. 443.)

Q I show you an invoice of F. M. Herrick & Company, which seems to be for a telechron lock. A Clock.

Q Telechron clock? A Yes.

Q I ask you to explain to the Master what that claim is for. A That is a new clock in the lobby; replaced an old one that had been there.

Q Well, the old clock, was that there at the time you purchased the hotel? A It was purchased with the furniture and put in there, in the other half that was not furnished.

Q It was not in the hotel when you bought it? A No.

Q And did Mrs. Rosecrans know that clock was being purchased and installed? A Yes.

Q And this claim is for one that replaced that? A Yes.

Q That is in the lobby? A In the lobby.

(F. M. Herrick invoices and check received in evidence and marked Exhibit D. 444.)

Q Is that the only clock that was there for the benefit of the guests? A No; one upstairs.

Q I mean in the lobby? A Yes.

Q That is the only one in the lobby? A Yes.

By the Master.

Q And the clock that was replaced was purchased prior to May or June, 1922? A Yes, purchased with the furniture that went in the hotel.

Q And that was about 19— A 1919.

Mr. Starr: I think we are entitled to that.

The Master: I am inclined to think so.

By Mr. Starr.

Q There is a check here for $30, August 22, 1928, for Marie C. Kressler, marked in the corner "couch." Will you please explain that? A That is the couch I purchased from my daughter.

Q What? A A couch I purchased from my married daughter to replace some chairs that were broken in the parlor.

Q Well, now, the chairs originally came from where? A Were in the hotel when we bought it.

Q These chairs went by and you purchased the couch to take its place? A Yes.

Q And gave her the money for it? A Yes.

Q What have you to say as to the price paid? A Well, it was a second-hand couch; she paid $60 for it, and used a couple of years; I paid her $30 for it.

Q Was it advisable to replace the broken chairs with the couch? A Had to fill in some place.

Mr. Starr: Mark it, please.

(Check to Marie C. Kressler, received in evidence and marked Exhibit D. 445.)

Q There is another check here dated the 27th of August, 1928, Atlantic Glass Company, for butter chips. Is that crockery? A Yes, that is for the dining room.

Mr. Starr: Under your former ruling that will have to be disallowed, I guess.

The Master: You may make your proof, however.

Q Were these butter chips purchased as shown by this check? A Yes.

Q And paid for by the check? A Yes.

Mr. Starr: Mark it, please.

(Check offered, was received in evidence and marked Exhibit D. 446.)

Q Was there a time stamp in the hotel when you bought it? A No.

Q And the time stamp that you bought from the Ajax Time Stamp Company was entirely new equipment, was it? A Yes.

Mr. Starr: That will have to be disallowed.

The Master: You abandon that?

Mr. Starr: I think I will make the proof of it.

The Master: All right.

Mr. Starr: I ask that the voucher be marked as an exhibit. And under the previous ruling of the Master it will be disallowed without prejudice to us.

(Invoices of Ajax Time Stamp Company received in evidence and marked Exhibit D. 447.)

Q There is a voucher here—an invoice here from Hoskins. I suppose that a sectional book case? A Filing cabinet.

Q Filing cabinet? A Yes.

Q Was there a filing cabinet in the hotel at the time it was purchased? A No.

Q This is new equipment? A Yes.

Q Necessary for the operation of the hotel? A Yes.

Mr. Starr: I ask it be marked.

Mr. McCarter: I ask it be excluded.

Mr. Starr: And that will be the order.

The Master: Motion granted.

(Hoskins' voucher offered, was received in evidence and marked Exhibit D. 448.)

Mr. Starr: We abandon the item in favor of A. B. Dick Company, roller for mimeograph.

Q Was there a mimeograph in the hotel at the time it was purchased? A No.

Q So this roller was for the new equipment? A Yes.

Mr. Starr: We abandon that.

The next is for Cafe Tire & Battery Company, for radio equipment. I will have that check marked, and under your Honor's order it will be disallowed.

(Check offered was received in evidence and marked Exhibit D. 449.)

Q Now, Mr. Rosecrans, was there any typewriting machines in the hotel at the time you bought it? A There was one old one, yes.

Q Do you know what kind of a machine it was? A I think it was an Underwood. I am not sure.

Q Well, how long did you continue to use that? A Oh, perhaps a year.

Q And how many typewriting machines have you purchased since you went into possession of the hotel? A About two or three.

Q How many typewriting machines have you there now? A Two.

Q So that there is one additional one? A One additional one, yes.

Q And the other one is to replace the old one that was in the hotel at the time of the purchase? A Yes.

Q Now we have here six checks aggregating $120. Can you tell us from those checks which represent payment for the machine that replaced the old one and which paid for the new one? A No, I cannot tell from the checks.

Q Do you know what the allowance was on the old machine? A No, I don't recall that, either. It has been a good while ago.

By the Master.

Q What was the cost of this Underwood machine; about $120, wasn't it? A About $120, yes. I don't believe I was allowed anything for the old machine. I think I used the old machine as a—just to help out with occasionally, and gradually abandoned it.

By Mr. Starr.

Q It is not there now; it has been abandoned? A It has been discarded, yes. Not there now; no.

By the Master.

Q But there is another machine in replacement of that one that you did have? A Yes.

By Mr. Starr.

Q Then you had to pay for the new machine with no allowance on the old one? A No allowance on the old one.

Mr. Starr: I think the price is $120.

The Master: He says he has two machines there.

Mr. Starr: That is a new one and the other is a replacement for the old one.

The Master: Which is this bill for?

Mr. Starr: I don't know.

The Master: He doesn't know?

The Master: No. We will have to find out. These checks were in 1928.

The Witness: These checks were in payment on account of both of those machines.

Q Do you owe any money on the machines? A Yes, still owe some on each one, I guess.

Q I see. Apparently you paid $20 a month, according to the dates of the checks? A I still owe about $60 on the two machines, $60 or $65.

Mr. Starr: I suppose we can agree on $90.

Mr. McCarter: I don't agree—$90 would be the payment for one.

Mr. Starr: For one.

Mr. McCarter: I don't agree any typewriter even if it was there at the time—

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Mr. Starr: In these modern days—

Mr. McCarter: It is the business end of it.

The Master: I think it is a proper equipment of the hotel itself, but the difficulty is they don't know whether these payments apply to one.

Mr. Starr: He says he owes $60 and has paid $120.

The Witness: There has enough money been paid to pay for one machine.

By Mr. Starr.

Q But you can't give us any more definite information? We will have to leave it that way. A Mr. Grookett would know about that.

T. WISTER GROOKETT, recalled.

By Mr. Starr.

Q You know the purchase price of these typewriting machines? A $110 each.

Q They were purchased outright or on lease? A Purchased on lease.

Q And you have only taken credit for the amount that has been paid? A Under the lease.

Q And how much paid on each machine? A I would have to refer to the invoices to tell that.

Q Well, the checks are there. If purchased on lease there is no title, is there—purchased on lease? When you pay the last instalment you get the title.

Mr. McCarter: Until the last payment there is no title.

A I would have to refer to the invoices. The checks don't give me that information.

Mr. Starr: We will leave the matter. Mark the checks, please.

(Checks for Underwood Typewriter Company received in evidence and marked Exhibit D. 450.)

PAUL C. ROSECRANS, recalled.

By Mr. McCarter.

Q Mr. Rosecrans, didn't Mrs. Rosecrans bring a typewriter of her own to the hotel in 1919 and leave it there? A No, I think she took it away again.

Q Sure of that? A Yes.

Q Now, Mr. Rosecrans, I show you a batch of invoices, Kensington Carpet Company, and take each one of those invoices and tell us—explain the circumstances under which the articles were purchased and why they were purchased, whether they were replacements or new carpets? A July—

Q They begin in July, 1922, and continue up until July, 1928.

The Master: Kensington Carpet Company not only sells carpets, but furniture as well.

The Witness: Furniture, yes.

Q Take each one of those invoices and explain the various items; tell us, as I have indicated, whether replacement, new, and why they were acquired? A Enumerate each item?

Q Yes. The date, because we will have to go into some particularity. A July 3, 1922, 39 yards of velvet carpet, $87.75. Four bed springs and mattresses, $66. One single bed spring and mattress, $16.50. One three-quarter bed spring and mattress, $16.50. Three dressers, $20 each, $60. Thirty yards of velvet carpet, two and a quarter a yard, $72. One three-fold screen, green screen, $4.50. Making $323.23.

Q Well, now, hereafter when you read those invoices, won't you explain each item, so we can save time? You will have to repeat it. A They were all replacements of what was in the hotel when I purchased it.

Q And they were placed there with or without the knowledge of Mrs. Rosecrans? A She was there. She knew about it and consented to it.

Q No objection? A No objection; no.

Q And I understand all of them were replacements? A All of them were replacements.

Q And none of them were new articles? A No.

Q Now, go to the next. A July 5, 1922. One four-foot-six white bed spring and mattress, $33. Replacement of an old bed.

Q And will you say as you go along whether they were acquired with the knowledge and consent of Mrs. Rosecrans? A Yes, they were.

Q Now the next. A 39 yards of velvet carpet, 7/19/22, $97.50. Replacing old carpet.

Q With her knowledge and consent? A With her knowledge and consent.

Q Well, now, the next? A 7/12/28.

Q Not '28? A 1922. 41 yards of velvet carpet, $92.85. Replacing the old carpet; with Mrs. Rosecrans' knowledge and consent. 7/13/22, six yards of linoleum, $1.10 a yard, $6.60. Used to replace old linoleum. There is a dollar and a half item there I can't make out.

Q When you speak of the old linoleum and old carpets, do you refer to articles which were in the hotel at the time it was purchased? A Yes.

Q You don't know what the other item is? A The dollar and a half item I can't make out.

Q Let me look at it. Maybe I can. Laying. Laying something. A It is for laying the linoleum, I guess.

Mr. McCarter: Is the item for that laying given?

Q A dollar and a half? A A dollar and a half.

Q Now the next? A July 17, 1922. Taking up bathroom linoleum, 75 cents.

Q Now tell us about that. A When we put the new stuff we had to take up the old, and he made an extra charge for that.

Q Now the next item? A On the 19th of July, 1922, two and one-half yards linoleum, $2.75. Laying, a dollar and a half.

Q Is that—molding? A Linoleum.

Q Explain about that. A That is used in the bathroom to replace old linoleum that had been there. 23½ yards of carpet, $64.63. Used to replace old carpet that had been there. Looks like August 1, 1922.

The Court: 7/19.

Q There is an invoice of $231; have you got it there? A $231, yes.

Q What is the date of that? A Looks like 8/1 here.

Q We have it July 19th. Explain the various items. A Four bed springs and mattresses, $66, and one bed, $16.50. Another bed, $16.50. One —no, three dressers, $60. 32 yards carpet, $72. Making a total of $231. It was all used in replacing old worn-out carpet.

Q What about the furniture? A And the furniture the same way? Three dressers.

Q Replacing old furniture that was in the hotel at the time you bought it? A Yes.

Q Now the next one? A Sixteen yards of rubber laying on the stairs to protect the carpet on the stairs. Replacing old rubber that had been there.

Q Next? A Three white bed springs and mattresses, $18.50. Three-quarter bed, I guess it is. One three-quarter bed, $16.50. July 24, 1922. Used to replace an old one that had been there.

Q Isn't there a two-dollar item there? We have on the schedule $18.50. A $18.50, yes.

Q Is that replacing old furniture? A That is replacing old furniture, yes.

Q Next one? A Thirty-nine yards of linoleum, $42.91. Laying four rooms, $1.50 each, $6. Fourteen and one-half yards of—looks like oil cloth, $25.38. Date of the invoice is 7/24/22. All used to replace old.

The Master: The total of that is what?

A The total is $74.28.

Q Next? A Six small rugs, $2.50 each, $15.

Q What is the date? A June 4, 1923.

Q Now what was the object of getting that—those rugs? A They were put in the bedrooms to replace rugs that had been there.

Q Next. A July 19, 1923, five beds and springs and mattresses, $19.50 each, a $97.50 total. Used to replace old furnishings.

Q Was the old furniture at the hotel at the time you bought it? A Yes.

Q Next. A Three white bed springs and mattresses, $19.50, $78.

Q And what is the date? A July 23, 1923.

Q And tell us about the object,— A Used to replace old furnishings that had been there.

Q Next. A One hundred and fifty-three yards of carpet, $362.50, August 17, 1923. Two white bed springs and mattresses, $39. Total, $421.50. All used to replace old furnishings that had been in the hotel at the time of purchase.

Q Next. A Thirty-four yards of carpet at $2.50 a yard, $85. August 23, 1923. Used to replace old carpet. March 27, 1924, 72 yards velvet carpet, $144. Ninety yards velvet carpet, $225. Total, $369.

Q What was that carpet used for? A Used to replace old carpet that was there when we purchased the hotel.

Q Next. A Four and three-quarters velvet carpet, $33.25. Sixty yards linoleum, $120. $153 total.

The Master: $153.25.

The Witness: $153.25. March 29, 1924.

The Master: Is that a replacement?

The Witness: That is in replacement of furnishings that had been there.

Q When you say the furniture that had been there—if it is a fact it was there at the time you purchased it? A All this was there at the time we purchased the hotel.

Q All right; say so. A One hundred thirty yards velvet carpet, $2, $260 total. April 8, 1924. Used in replacing old carpet that was there when we purchased the hotel. Twelve velvet rugs, $24. Thirty yards velvet carpet, $60. April 15, 1924. Used to replace old carpet that was there when we purchased the hotel. June 13, 1924, 102 yards velvet carpet, $204. Used to replace carpet that had been there when we purchased the hotel. Twelve special pillows, $10.68, July 3, 1924. Used to replace pillows that had been there.

Q To replace what? A Used to replace pillows that had been there when we purchased the hotel. Six pillows, $5.23. Twelve pillows, $12. Total, $17.34. July 5, 1924. Used to replace pillows that were there when we purchased the hotel. Twenty-four pillows, $21.36, August 2, 1924. Used to replace pillows that were there when we purchased the hotel. Twelve cot pads, $36.

Q Twelve what? A Cot pads. Mattresses for cots, single beds or cots, $36, August 16, 1924. Used to replace pads that had been there. Twelve cot pads, $36. Twenty-four pillows, $21.36. Total, $57.56.

The Master: Thirty-six.

The Witness: Thirty-six. August 21, 1924. Used to replace the mattresses and pillows that had been there. July 2, 1926, two walnut dressers, $40; ten walnut beds, $100; ten springs, $52; ten cotton mattresses,

$87.50. Seven yards Congoleum, $6.55. Forty-one yards velvet carpet, $98. One hundred twenty-seven yards velvet carpet, $254. Twenty square yards linoleum, $30. And four yards of Congoleum, $2.60. Four and three-quarter yards Congoleum, $3.10. Six and three-quarter yards Congoleum, $4.10. Laying three baths—laying this linoleum in the three bath rooms, $6. Makes a total of $685.05. And have the July 3, item, $236; April 8, $30, makes a total of $951.05. All in replacement of dressers and mattresses and linoleum that had been there in the hotel when we purchased it.

July 3, 1925, one dresser, $20. Two beds, $20. Two springs, $10.50. Two mattresses, $17.50. Two walnut beds, $20, and two springs, $10.50. Two mattresses, $17.50. Seventy-two feather pillows, $72. Twelve single cot mattresses, $39. Total of $87—total of $227. Two velvet rugs, $4. Two velvet rugs, $5. Makes a total of $256. All used in replacement.

The Master: $256?

Mr. Starr: That is right—$236.

The Master: He gave an item of $685.05, and $236, totalling hundred, hundred and something, nought five. Seems to be a duplication.

Mr. Starr: Yes, I see how it is. Here it is. This $236 is an itemization of that item. It is apparent, Mr. Rosecrans, that the $236, that item on the bill July 2 is a duplicate of the one of July 3. There is only one item of $236.

The Witness: Oh.

Q What is it all for? A All this to replace furniture that had been there.

The Master: Judge Starr, do you think it is necessary to load the record up with all of these items and their prices?

Mr. Starr: Well, I don't know. It depends altogether on what Mr. McCarter wants.

Mr. McCarter: It is a pretty substantial list of credits here.

Mr. Starr: I suppose he will want the testimony as to each item. That is the reason I did it.

Mr. McCarter: Might as well go through it. I don't enjoy it, but—

Q What is the next one? A I had the one of July 2nd, didn't I? July 2nd and July 3rd.

Q What is the amount of that? A July 2nd is $951.

The Master: That is the total.

The Witness: Total, adding in the other bills. I guess I have got both of these now.

Mr. Starr: They go together. (Fastens papers together.) Now they are all right. Next is $416.

A July 16, 1925. Twenty-three yards velvet carpet, $55. Twenty-four yards carpet, $48. Twenty-one yards carpet, $42. Twenty-seven yards carpet, $54. Twenty-one yards carpet, $42. Twenty-three yards carpet, $46. Ten yards of velvet carpet, $10. Five Axminster rugs, $15. Ten rag rugs, $6.50. Ten mattresses, $87.50. Making a total of $416.20. All used in replace-

ment of carpets and furnishings that had been there.

Q You still don't say whether they were there when you bought them or not. A The time of the purchase of the hotel.

Q All right. A July 20, 1925, two twin bed springs and mattresses, $45. Used to replace bed springs and mattresses that were there at the time it was purchased. July 25, 1925, two Simmons beds.

Q Two what? A Two Simmons walnut beds, spring and mattresses, $48.

The Master: There is no such item here. There is a three-dollar item.

A July 25, 1925, $48.

Q There is a credit of $45. The net of the bill is $3. A Yes; credit of $45 returned.

Q Now, what is it for? A Used in replacing bed that had been there at the time of the purchase of the hotel.

Q Next. A Next is 7/29/1925, 33½ yards carpet, $83.75. Thirty-three and one-half yards carpet, $83.75. Twenty-two and one-half yards carpet, $45. Twenty-two and one-half yards carpet, $45. Twenty-six yards carpet, $52. 24 yards carpet, $48. Twenty-two and one-half yards carpet, $45. Twenty-two and one-half yards carpet $45. Thirty yards of carpet, $60. Total, $507.50. $507.50. All used to replace old carpet that was there at the time of the purchase of the hotel.

August 6, 1925. Twenty-two yards velvet carpet, $44. Twenty-two yards of carpet, $40. Five yards of carpet, $10. Twenty-four yards carpet, $46. Fifteen yards of carpet, $37.50. Four and one-half yards rubber, $6.75. Total of $186.25.

All used to replace carpets that were there when the hotel was purchased.

August 7, 1925. Fifteen yards of carpet, $37.50. Fifteen yards of carpet, $30. Two yards of carpet, $13. Total of $80.50. Credit of $37.50. Makes $43. All used to replace.

The Master: That is $43 instead of $80.50?

The Witness: Yes. Credit there of $37.

Mr. Starr: That is right, I guess. There is thirty-seven dollars and some cents charged in the invoice, then it is credited, making a balance of $43. Change that, Mr. McCarter.

The Witness: All used to replace carpet that was there at the time the hotel was purchased.

Next is September 4, 1925. Thirty-four yards—

Q What is the date of that, September 4 or September 9? A September 4, 1925.

Q Yes. A Thirty-four yards Wilton carpet, $127.50. Used to replace old carpet that was there at the time of the purchase.

September 11, 1925, one rug, $25. Twenty-four yards carpet lining, $2.40. Total of $27.40. Used to replace carpet there when the hotel was purchased.

Forty square yards of felt base.

Q Of what? A Forty square yards of felt base. That is a felt linoleum, what they call a felt linoleum, used in the lavatories. $26. $10 for laying. Makes $36. Used to replace old linoleum that was there when the hotel was purchased.

July 3—looks like 1926. Ten cot mattresses, $32.50. Used to replace old mattresses that were there when the hotel was purchased.

8/22/1928.

Q Well, 1928 can't— A No— '26.

The Master: 12/19/26.

The Witness: Starts with '26. Runs into '27.

Q What is the date? A 12/18/26. That is the first item.

Q That is right. A Two hundred and five yards velvet carpet, $462.25. 12/22, 10 yards velvet carpet, $22.50. 1/8/27, two floor lamps and shapes, $25. 3/15/27, 15 yards linoleum, $11.25.

Q As you go along these various items, indicate what they are for. Commence with the item of $462.25 first. A 12/18, 205 yards velvet carpet; used to replace carpet that was there when the hotel was purchased. 12/22, 10 yards velvet carpet, $22.50. Used to replace carpet there when the hotel was purchased. 1927, January 8. Two floor lamps and shades, $25. They were new. They were—the lamps were purchased after we had bought the house, about a year afterwards. Then they were replaced with these lamps. 3/15/27, 15 yards linoleum, $11.25. 4/29/27—

Q Tell us what that is for. A Linoleum for the bathrooms; replaced old linoleum that was there.

4/19/27, 228 yards velvet carpet.

Q Is that 4/19 or 4/29? A 4/29. 228 yards velvet carpet, $512. Used to replace old carpet that was there when the hotel was purchased.

4/30/1927, two 27 by 54 rugs, $12—$9. One floor lamp complete, $12. Two mahogany smokers, $4. That was new. Comes to—nine and sixteen—$25 altogether. Used—the rugs were to replace rugs that were there when the hotel was purchased. There was—lamp, new.

5/11/27, 100 yards of lining, $10.60. Used for the carpets.

The Master: $10.60 or $10?

The Witness: Looks like a "6" here. May be ten. Lining used in the carpets.

5/17/27, 380 yards velvet carpet, $855. Replacing carpet that was there when the hotel was purchased.

Q Well, do you have a 5/11/27, $10? A 5/11, $10, was lining for the carpet. 5/21.

The Master: 6/21, isn't it?

The Witness: 5/21 here.

The Master: All right.

The Witness: 5/21/1927, three 9 by 12 grass rugs, $30.

Q What is that? A Three 9 by 12 grass rugs.

Q What is the date of that? A 5/21/27.

The Master: 6/11/27.

Mr. Starr: The date here is 5/21.

The Master: Well, the amount is the same. What were the grass rugs used for?

The Witness: They were used in the sun parlor. Replaced some rugs that had been there, old rugs that were there when the hotel was purchased.

The Master: Proceed.

The Witness: 6/14/27, two three-piece wicker suites, $200. Used to replace some chairs on the porch, that were there when the hotel was purchased.

Q You mean the chairs were on the porch? A Yes, got this wicker set to replace the rocking chairs that were on the porch when the hotel was purchased.

Q What became of the rocking chairs? A They broke them up, They broke up a lot of them in the summer.

By the Master.

Q How many chairs were these in replacement of? A About five or six chairs.

Q Do they cost $200, those five or six chairs, those porch rockers? A They were there when the hotel was purchased.

Q That is not what I asked you. A No, they wouldn't cost that much.

Q Go ahead. A July 2, 1927. Twelve cots, $3.25 each, $39. Twelve cot pads, $39. Makes a total of $78. They were new.

Q Well, now, with respect to those cots, where were they used? A Used in the bedrooms—bed rooms that were large enough for double bed and a cot.

Q Yes. Go ahead. A Some were used in the parlor and lobbies during the rush. 7/13/27, 30 yards linoleum, $25.50. Five baths laid—laying the linoleum, $10. Total of $35.50. Used to replace linoleum that was there when the hotel was purchased.

The Master: I don't find that item.

The Witness: 7/13, 30 yards linoleum.

Q That is not on this statement. Go ahead. A 7/18—

Q What have you got, $35.50? A That is $35.50, yes. Used to replace old linoleum that was there when the hotel was purchased.

Q All right. A 7/18/27. Two beds, mattress and springs, $47. Used to replace beds that were there at the time of purchase.

7/26/27, four three-quarter mattresses, five walnut beds, five springs, five mattresses, five walnut beds.

Q What kind of beds? A Walnut. Five springs, five mattresses. That came to $35. $102.50, $102.50 and $15.50. No, the $15.50 is another item.

The Master: Have you an item of $186.67?

The Witness: No.

Q That is below. It is there but it is below. The $102.50 and $15.50, what were they for? A The $15.50 was a separate item on a separate date. The mattresses and walnut beds and springs were all used in replacement of furnishings that were there when the hotel was purchased.

7/30/27, ten and one-third yards of rubber, $1.50, makes $15.50. That was used to replace rubber that was there at the time of purchase.

8/12/27—no, 8/10. Two walnut beds. Two springs. Two mattresses, $41. Used to replace furnishings there at the time of purchase.

8/11/27, one Venetian dresser, $19.75. Used to replace a dresser that had been there when the hotel was purchased.

8/12/27, one rug, $56.50. One rug, $22.50. One rug, $10.50. Twelve cot pads, $97.17. That can't be right for twelve cot pads. No, that is for the carpet.

The Master: Proceed.

A Twelve cot pads, $39.

The Master: What does that total?

A That makes a total of $186.67, and $39.

The Master: Yes.

A All used to replace furnishings that had been there when the hotel was purchased, with the exception of the cot pads. They were new.

By the Master.

Q How much were the cot pads? A $39.

Q Yes. A 8/15/27, 22½ yards velvet carpet, $60.50. One chiffonier, $18.50. One mirror, $5. Total of $23.50. The 22½ yards of carpet were $60.50, and the mirror was $23.50. All used in replacement of furnishings that had been there.

The Master: I find the $23.50, but I don't find the other.

A The 8/15—

Mr. Starr: Wait. $186.50, Judge, is up here; it is the sixth from the top.

The Master: He gave us that $186.67.

Mr. Starr: Yes, now—I had that checked. Yes, that is $39.

The Master: And there is an item of $23.50, the third from the $39 item.

Mr. Starr: Mr. Harris, will you explain that? Straighten it out; I can't.

The Master: We are short the $41 item here.

Mr. Harris: What item are you in doubt about?

The Witness: $41 is marked O. K. That is just two items for $20.50.

Mr. Harris: What items are you in doubt about?

Mr. Starr: I don't know.

Mr. Harris: $41?

Mr. Starr: No. $60.50, where is that?

(Mr. Harris and Mr. Rosecrans look over accounts and bills.)

The Master: Suppose we go on.

Mr. Starr: How late are you going to sit?

The Master: I think we can dispose of two of these rather quickly.

Mr. McCarter: Schedules DD and CC he means.

Mr. Starr: Mr. Harris, we will have to straighten that out over night.

Mr. Harris: All right.

Mr. Starr: We will abandon that for the moment. Now get the Fisher item; flowers.

By Mr. Starr.

Q Mr. Rosecrans, look at those invoices in favor of Charles L. Fisher. Tell us about them.

Put the other vouchers one side. What was the question about the invoices of Fisher? A We built a garden in front of the hotel to do away with the stores, to give it a better appearance. Mrs. Rosecrans agreed on that. And Fisher took care of the garden, put in the flowers as they were needed, and that is what these bills are for, most of them.

Q As I understand, they were bills from Mr. Fisher as a florist for furnishing plants in this little garden? A Yes.

Q And taking care of the garden? A And taking care of the garden. Well, he didn't take much care of it after he planted them. Occasionally he would come around, a few times during the summer. We had to take care of them.

The Master: How large was that garden?

A About eighty feet long by three feet wide. Iron railing.

Q It was furnished with what? What sort of plants? A Well, whatever plants were in season. A Geraniums, red sage, green bushes set in there.

Q Shrubbery? A Shrubbery, they are all named here. Petunias geraniums. Most geraniums. The most hardy, they are.

Q As I understand, there were stores in the first floor or basement when you bought the hotel? A Yes.

Q Those stores were converted into rooms? A Into rooms; yes.

Q And after that time you and Mrs. Rosecrans made an arrangement to have a garden out there? A Yes, we built a garden.

Q This is the expense for the garden? A This is the expense for the garden.

Q Did she agree to it? A Cement curb and iron rail. She agreed to it, yes.

Q Who put in the cement curb and railing? A Balestrieri, the cement man.

Q That was prior to June 1, 1922? A That was prior to June 1st.

The Master: The first item here is the first of August.

Mr. Starr: No, the Balestrieri item was prior.

The Master: No charge for that.

Mr. Starr: That was during the period for which we are not entitled.

Q And then this expense that you presented here in these invoices cover the care of that grass plot or garden plot, flower plot in front of the hotel? A Yes.

Q I don't think that is—I don't see how we could possibly get a credit as to that. A Once the garden was there it had to be kept up.

Q I know that, but I don't think it is a proper charge against the hotel.

The Master: I think I will disallow that.

Mr. Starr: You disallow it on the testimony if you will.

The Master: Yes.

Mr. McCarter: The petit cash we can almost take care of on the statement here, on the exhibit here.

(Fisher bills received in evidence and marked Exhibit D. 451.)

Mr. Starr: And the checks.

(Checks received in evidence and marked Exhibit D. 452.)

Q Now, referring to the petit cash items, Mr. Rosecrans. There appear two items aggregating $5.20 for curtain rods. What were they, if you know? A Curtain rods for the lace curtains.

Q Were those rods new or replacements? A They were replacements.

The Master: We ruled on the lace curtains.

Mr. Starr: I don't know whether that would apply to the rods or not.

Q Were there old curtain rods there when you bought the hotel? A No, we bought some about that time.

Q Then of course if they were not replacements they go out under the ruling. Now the repairing shades, $26.91, 1926. What do you know about that? A That was for general repair work on shades all over the house. They tear and have to be turned around.

Q Were the shades there at the time of the purchase? A Yes.

Q This is repair for those shades? A Yes.

Mr. Starr: I think we are entitled to those.

The Master: Yes.

Q Then come down to the cretonne, $3.16. What was that for? A Used for curtains.

Q Replace old curtains? A Yes.

Mr. McCarter: Sash curtains?

A Has nothing to do with what was there when we came in there.

Q Then that goes out. Now chairs, $40. 1926. Petit cash. A They were bought to replace old chairs.

Q Replacements; all right. Electrical supplies, $8.20. A That is wiring, switches, repair; repair to the electric system.

Q Now the next is steam table, $20. A That is a small steam table we bought for the kitchen to use when the crowd was small, when we couldn't use the large one.

Q Well, is that new epuipment? A That was new, yes.

Q It was equipment used for the operation of the hotel, was it? A Yes.

The Master: I think that is a proper charge.

Mr. Starr: That is in accordance with your ruling, then.

Q Now, the Kensington Carpet Company. Cash $5. Do you know what that is for? A No.

Q We will leave that with a query. There is a number of items here of canes for chairs. I suppose that is caning of seats. A Roberts used that in his charge, caning of chairs.

Mr. Starr: I think we are entitled to those. Another cane for chair, $10.40, just below. That takes care of all of them.

The Master: Yes.

Mr. Starr: That leaves the only thing open to finish up the Kensington Carpet.

The Master: No, the—yes, Kensington Carpet Company.

Mr. Starr: And then Stein.

Mr. Harris: Stein we will get you in a moment.

The Master: Could you get some testimony respecting the value of the hotel relating to percentage of the receipts?

Mr. Starr: We can furnish—if your Honor wants it, we can furnish the gross receipts, but that don't seem to me to be a proper method of computation. If you want we will put it in.

The Master: There are a number of hotels that are rented on that basis in Atlantic City.

Mr. Starr: We expect to produce testimony tomorrow morning of real estate people to show a material decrease in the value of real estate since 1925 and 1926, on account of the boom.

The Master: Yes.

Mr. Starr: And with one or two other witnesses we will close.

The Master: My suggestion in respect to the percentage basis was addressed to both of you.

Mr. Starr: If you want it we will give it to you. It is given to you without prejudice because I don't think that is the proper way.

Mr. Harris. The more attractive you make the hotel the greater your rentals are.

The Master: That would not follow. My thought was take care of the lean years and—

Mr. Starr: We will have it for you.

Mr. McCarter: We think it might be very helpful to the Master to view the hotel, inspect it. I don't mean put your head in every closet in the hotel, but while we are here just go and look it over and look in some of the rooms and see what it is. There has been a tremendous amount of supplies bought for this hotel. I don't know anything about the hotel business, but it looks to me as if we might fill the Marlborough-Blenheim with the stuff that has been bought here.

(Discussion off the record.)

The Master: I will go if it is heated. If it is not I will not take a chance.

The Witness: A good heating system there now.

(Whereupon an adjournment was taken until Friday, January 4, 1929, at 10 o'clock A. M.)

Atlantic City, New Jersey,
January 4, 1929.

Hearing resumed at 10 o'clock A. M.

PAUL C. ROSECRANS, recalled.

Direct examination by Mr. Starr.

Q Now, Mr. Rosecrans, when we adjourned last night, so far as the Kensington Carpet Company account was concerned, I think the last invoice examined was August 17, 1927. Resuming your testimony and beginning on August

18th, 1927, continue the explanation of those invoices as you started yesterday. A Name each item?

Q Yes, name each item, the date and the articles covered, and used for. A August 14, 1927, five walnut beds, five springs, five mattresses, four walnut beds, four springs, four mattresses, three mattresses, two mattresses, a total of $223.25.

Q Is it twenty-three or twenty-eight? A Looks like twenty-three here.

Q The addition makes it twenty-eight. That was used for what? A To replace the old furnishings in the hotel when the hotel was bought.

Q Now the next is what date? A Next is 8/19/1927, sixteen yards of carpet, $37.13, laying and renovating $5, $42.13 altogether.

The Master: I don't find that item. A 8/19/1927.

Q Tell us about it and if necessary we will have to add to the schedule. What is it for? A To replace the old furnishings.

Q Go ahead with the next one, Mr. Rosecrans. Apparently the next one is August 29th, 1927, $37. A 8/29/1927.

Q What is it for? A Six by nine rug, $32.50, 27 inch by 54 inch rug, $4.50, total $37.00.

Q What was that for? A Used to replace furnishings in the hotel.

Q Now the next one. A September 3rd, 1927, one ivory wood cot, one cot and mattress, $16.

Q Was that used for replacement or new? A That is new.

Q Go to the next.

The Master: That will have to be deducted.

Mr. Starr: Yes.

A October 8th, one rug, 36 inch by 70 inch, $9. That was used to replace an old rug.

Q Next. A One carpet mattress—

Q What is the date? A The date is 1/30/1928, $5.75, four yards—I can't make this out.

Q Some kind of carpet? A $11.40.

Q What was that used for? A Have to find out what that is. The carpet was a new one.

The Master: It seems to me we have got to eliminate the whole item.

Q Get the next one, 2/9/1928. A Six bath mats, $1.25.

Q $1.25 apiece? A $1.25 each, makes $7.50.

The Master: Were they new?

A They were new, yes.

Q What is the next? A Eight mahogany mirrors, $2.75 each.

Q What is the total? A $22.

Q New or replacements? A Replacements of old mirrors.

Q March 31st, 1928, got that invoice there? A March the 13th.

Q The last item is March the 31st, several items there. Read those, please, and tell us what those are for. A 904 yards velvet carpet, $804. That is wrong—42 yards linoleum,

$2.50, $105, laying four baths, linoleum in four baths, $2.50 each, $10; total $1,974.63. 3/22/1928, one Sykes wall rocker, $3.75. $1,978.40. 3/28/-1928, 272 yards velvet carpet, $544.66. Fifty yards Axminister, $2.25 per yard, $112; six 27 by 54 rugs, $21; 200 yards linoleum—I don't understand these figures here, carried out here.

Q How much is it? A Must be 200 yards lining, $41.

Mr. McCarter: Not linoleum lining.

A Just says "lin." 3/29/1928, 35 yards velvet carpet, $2. Total of $70. 3/31/1928, extra charge for cementing four baths, $6. Total of $2,696.25.

Q What were they used for, look over each one and tell us about it. A 904 yards of carpet were used in the section of the house that I furnished when I came in the hotel.

Q You mean the extra rooms that were vacant at the time that you took title to the property? A Yes, it was better furniture than the other furniture that was in the hotel and it lasted longer, and it is in addition to that.

Q What about the other articles, were they replacements or new? A Those are all replacements on the same side of the house.

The Master: And that first item was a replacement?

A That first item was a replacement.

Mr. McCarter: What do you mean by the first item, 904 yards velvet carpet?

A Yes.

Mr. Starr: The velvet carpet he says is a replacement of furniture that was put there when he bought the property, the first item is the lining, isn't it?

A No, velvet carpet.

Q Now straighten it out, is that velvet carpet to replace the carpet that was in the hotel when you bought it or that that you refurnished? A That I refurnished on that side of the house.

The Master: That was done in 1919, as I understand?

A In 1919, yes. There was nothing in that half of the house.

By Mr. McCarter.

Q These other items on these invoices that you are reading from other than the 904 yards of carpet, were any of them replacements for the furniture that you say was put in these unfurnished rooms? A Yes, 272 yards of velvet was the same, and the lining and the rugs.

By Mr. Starr.

Q You made an explanation with reference to all of those items? A The 35 yards of velvet went in that side of the house, $70. The cementing was in the bathroom in the old section of the house.

Q Turn to the next one, April 30th, 1928. A 32 yards velvet carpet, $62.

Q What is that? A 31 yards velvet carpet, $62. 14 yards lining, $12.60. 25 pound tacks, $6. Five gallon cement, $4.50. One spool thread, $1. Twenty yards remade carpet—"Rem," I sup-

pose that is what the means, 20 yards remade carpet, $20. Piece of velvet carpet, $8. 24 Sykes —I don't know what that means—walnut chairs, $90, four card tables, $3.

Q Go over those items and tell which were replacements of the original. A Three dollars each, that is $12. Three rag rugs, $4.50 each, three rag rugs, $3 each, one medicine cabinet, $3.50, six 27 by 52 Axminister rugs, $21; 36 yards of velvet carpet, $72; 42½ yards velvet, $42.50; 22 yards linoleum cemented, $44; total of $406.60.

Q Tell us of each of those items, whether they were replacements of the original furniture or replacements of that which you put in the hotel after it was bought. A No, this was replacements of the furniture I put in there at the time of the purchase.

Q All of it? A Yes.

Q So it is all— A On that side of the house.

Q And that is all new, then? A Yes, the furniture was put in as soon as the house was bought.

Q It was not part of the original purchase from your grantor? A No.

Q Go to the next one. A Laying linoleum, cementing.

Q What is the date? A 5/12/1928, $18.

Q As you go along can you tell us whether it was replacements of the old or replacement of what you installed in the hotel, so we won't have to go back and ask you? A This whole bill is replacement of the furniture I put in there.

Mr. McCarter: By this whole bill, does this mean this whole item, $26.90?

Mr. Starr: No, several items.

A When I did—

Q You say all of the bill amounting to $187 was replacements of what we speak of as the new furniture and not as contradistinguished from that which was in the hotel at the time you bought it? A That is right.

Q Go ahead. A 5/17, white steel chest, $15; 67 yards velvet carpet, $134. 200 yards lining, $20. Total, $187.

Q Go to the next one. A Two cotton mattresses, $17, on the 5th of June, 1928.

Q What were they used for? A They went with the replacements of the new furniture put in there.

Q Give us the next. A July 9th, 12 pieces, 73 yards rubber, $19. 28 yards linoleum, $70. Eight yards Battleship linoleum, $20. 20 yards linoleum, $30. 28 yeards felt lining, $2.80. 9 by 12 Axminister rugs, $50. Twenty yards linoleum, $3.75. 28 yards linoleum, $70. 32 yards velvet, $72. 32 yards M. L. & L.—I don't know what that is—17½ medicine cabinet, $3.50. Total of $209.05.

Q Tell us about those items, what they were used for. A That was used for to replace furnishings that were in the house when I bought it.

Q Now, Mr. Rosecrans, I call your attention to another invoice under date of December 22, 1926, 10 yards velvet carpet, $22.50. Can you tell us whether those articles were purchased and what use was made of them? A 10 yards velvet carpet, $22.50, that was replacement of the old carpet that was in the house when the hotel was purchased.

Q Calling your attention to invoice July 13th, amounting to $35.50, tell us whether those articles were furnished and what they were used for. A 30 yards linoleum, $25.50; five baths, labor on five baths, $10. $35.50. That was in the old section of the house, replacing the old stuff was there when I bought it.

Q July 26th, 1926, on the same invoice, amounting to $35, explain whether those articles were received and what they were used for? A Four mattresses, five walnut beds, five springs, five mattresses, five walnut beds, five springs, five mattresses, and they were used to replace in the old section of the house.

Q The next is August 15, 1927. A Didn't I name this before?

Q You have read all those excepting the one I call your attention to. This is August 15, 1927, amounting to $60.50. Tell us about those items and whether they were articles received and what use was made of them. A They were used the same in the old section of the hotel, 22½ yards velvet carpet, $60.

Mr. Starr: I offer these various invoices that have been examined by the witness in evidence, marked as one exhibit.

(Invoices admitted in evidence and marked Exhibit D. 453.)

Mr. Starr: I offer in evidence a bundle of checks, first one beginning July 10, 1922, and the last one August 13, 1928, drawn by Rosecrans to the order of the Kensington Carpet Company.

(Checks received in evidence and marked Exhibit D. 454.)

Q You still owe money to the Kensington Carpet Company? A Yes, I do.

Q Your account has not been entirely settled, as shown by these various invoices? A No.

By Mr. McCarter.

Q The total that you have paid the Kensington Carpet, that is, the total of these two sums shown at the bottom of columns in the check page of Schedule UU, isn't it, that is the total of $2,633.25 paid on open account, and $5,985.45 paid on account of notes? A Yes.

Q That is correct, is it not? A Yes.

Q Whatever that total is is the total that you paid? A Yes.

Q During this morning you have told us that some of the purchases represented by this long list of invoices from the Kensington Carpet Company were for the part of the house that did not have furniture in it bought from Mr. Prettyman. As I recall yesterday, everything that you told us about was said to be replacements. By that did you mean that everything that you told about yesterday in these Kensington Carpet Company invoices were replacements of furniture that had been bought from Mr. Prettyman? A What I mentioned yesterday was, yes.

Q You didn't mean to replace the furniture that was placed in the rooms that did not have furniture supplied by Mr. Prettyman until you came down to the time you are telling us about this morning; is that correct? A Until early 1928, that was better furniture what I put in there, a good part of it was practically new and I didn't have to replace on that side of the house until the beginning of last year.

Q Now you mentioned yesterday from time to time such things as cot pads. They are the mattresses for cots, aren't they? A Yes.

Q And you told us, I think, that those various cot pads that were mentioned in the invoices yesterday— A I mentioned some of those were new yesterday.

Q Some of those were new? A Yes.

Q How many cots were included in the furniture bought from Mr. Prettyman? A There were several dozen there.

Q Several dozen? A Yes.

Q Are they enumerated in the schedule annexed to the deed, do you remember? A I don't think they are. A good many not enumerated that was there.

Q Look at the first item enumerated on the schedule— A Some of the cot pads are used on the single beds, too.

Q —of the Prettyman deed, and tell me whether you see any cots scheduled there, the first three items particularly. A Cot pads, also given on these three foot beds.

The Master: Won't you answer his question?

A No, I don't see any.

Q You don't see any cots mentioned there at all? A No.

Q And yet you say that there were some cots? A There were several dozen in there because I had them to work with beds I brought in, that is how I know.

Q These items, these things that you call cot pads you say went also on the three-foot white iron beds? A Yes, sir.

Q How many bedrooms were furnished with beds by the furniture bought from Mr. Prettyman? A Approximately eighty or ninety rooms.

Q How long did these cot pads last before they wore out, on an average? A Well, they are not made very strong, they don't last very long.

Q What do you mean by very long, how many years? A A couple of seasons.

Q A couple of seasons? A Yes.

Q Why is it they don't last as long as the mattresses on the larger beds? A Well, they are cheaper material, they are cheaply made, as a rule, people don't want to pay much for them.

Q Do you know how many yards of velvet carpet are required to fully furnish the hotel, I mean to lay down at one time if you were making one complete job of it? A No, I don't. I never counted it up.

Q What part of the hotel does the velvet carpet go in? A Well, the velvet carpet is used in practically all the rooms, doesn't pay to buy much cheaper carpet. There is very little carpet in there that is not velvet.

Q Used in all of the rooms, you say? A Rooms and halls, too.

Q And the halls? A Yes.

Q How long does it last before it wears out? A Well, it varies according to the season, I guess.

Q What? A It varies according to the number of people, what kind of a season it is, how many people are in the house.

Q Well, it lasts more than a fraction of a season, doesn't it? A Yes, some lasts a couple of years, some lasts longer than that, some is worn out in one year.

Q Of course, in your hotel, the Princess Hotel, there are certain seasons of the year when there are more guests than others? A Yes.

Q In the public rooms of the hotel what is the condition of the carpet at present, pretty badly worn, isn't it? A You mean in the—

Q In the public rooms or lobby? A The lobby? Yes, the lobby is pretty well worn, but the writing room has had a new carpet.

Q When was the carpet in the lobby laid? A That was laid before 1922, but I put down two large rugs there and cut out the carpet from underneath and replaced the worn places and made it last that long.

Q Now today there are the same chairs and tables in the front parlor that there were in 1922, aren't there? A No. There was a new wicker set in there and there is new porch rockers, there has been new porch rockers bought since then.

Q Bought since June 1st, 1922? A Yes.

Q And the chairs and tables in the lower lobby are the same as on June 1st, 1922, aren't they? A No.

Q They are new? A There has been some chairs bought from that since, and some of them have been remade.

Q How many? A About six or seven.

Q What proportion is that of the hotel, roughly? A You mean in the lower lobby?

Q Lower lobby? A There is only about a dozen chairs in there, I bought three new ones last summer.

Q Were those three new ones replacements or three additional chairs? A They were replacements, had cheaper chairs in there that came with the house, but they were getting worn and I replaced them.

Q So you say approximately half the chairs in the lower lobby are not the same as those that were there June 1st, 1922? A Yes.

Q What about the dining room? A The dining room chairs we are at all the time, they get extra heavy wear.

Q How many rooms were there, Mr. Rosecrans, that were unfurnished by Mr. Prettyman? A You mean had no furniture in at all?

Q Yes. A About a hundred rooms.

Q And there was an allowance made in the purchase price to Prettyman for that, wasn't there? A There was a small allowance.

Q $2,500? A Yes.

Q Isn't it a fact that since this period, June I, 1922, you have furnished at least two other apartments, one for Mr. Knox in 1924, and one for yourself in the Neptune Apartments? A No.

Q Haven't done that, eh? A No.

Q Sure of that? A That is my boy. My boy bought that furniture on his account.

Q You bought it for Mr. Knox, too? A No, I bought nothing for Mr. Knox, not a thing.

Q Where did the Axminister carpet go? A Axminister?

Q Yes. A On what date?

Q I will show you the invoice. I show you the invoice of, one of the Kensington Carpet statements in which the last entry is March 31st, 1928, and ask you where that item of 50 yards Axminister carpet went? A That went in the hotel.

Q I know it went in the hotel, but what part of the hotel? A That went in the new section.

Q In the new section? In other words— A As I recall it.

Q —that carpet did not replace any carpet that was bought from Mr. Prettyman? A As I recall it, yes.

Q And the same is true, I believe you have already told us, of the first item, 904 yards of velvet carpet? A Yes, that went in the new section.

Q Any other items on this section that went in the new section, to use that phraseology? A Everything except this cementing here, that was in the old section.

Q And that totalled six dollars? A Yes.

Q All the rest of the bill except the six dollars went in the so-called new section? A Yes.

Q When you are talking about what you have just called the new part of the hotel, you mean, do you not, the existing rooms in the hotel at the time you bought it from Mr. Prettyman which, however, did not contain furniture bought from Mr. Prettyman? A That is right.

Q Now after that, Mr. Rosecrans, you made some alterations in the hotel and made some additional rooms, didn't you? A No additional rooms, I put heavy partitions where there were cheaper partitions in the basement, on account of the inspectors from the City Hall.

Q All right, now when you moved there you found some stores on the ground floor, didn't you? A Yes.

Q They were not there to use as a part of the hotel at all? A Yes, that was when Mrs. Rosecrans was there, with her consent.

Q And those stores were changed into hotel rooms, weren't they? A Yes.

Q And they were changed into, there were two stores on the one side which were changed into ten rooms with two baths and public toilets,

weren't they? A No, there was no public toilets put in, toilets were there, and they were changed into five rooms.

Q Now we will just go over this thing carefully, then weren't those two stores— A Six rooms.

Q —changed into room 78, 79, 100, 111, 115, 116, 122 and 124? A No, 16 is back in the cabaret, where the cabaret was. There were some partitions back there that were used for the help, six rooms in the front, number 12 room is only a closet, end of the hall, without a door on it.

Q It was near enough to a bedroom to be given the number 12, wasn't it? A Yes.

Q Then the barber shop, writing room and cloak room were turned into rooms 345 and 6, weren't they? A The cloak room is only used in an emergency.

Q I don't care whether you use it.

The Master: Mr. Rosecrans, won't you please answer his questions?

A Yes.

Q And the linen room, store room, were changed into rooms H, I and J, we will say? A Yes.

Q And the stores on the Pacific avenue side were changed into rooms 17, 18, 19, 20 and 21? Weren't they? A They were rooms there, and the building inspectors made us change them on account of the location, didn't have enough air, and I just put new partitions there in place of the old ones, that is all.

Q And they became rooms 17, 18, 19, 20 and 21, didn't they? A Yes, there were rooms there before, had the same numbers before.

Q You say these were not a storeroom on the Pacific avenue side? A No, they were rooms.

Q Had they been used as hotel bedrooms before? A Yes, those basement rooms can only be used in the summer.

Q They were not furnished when you took the hotel over from Mr. Prettyman, these last rooms, 13 to 21, inclusive? A Yes, there was some furniture in there.

Q Then wasn't the store room turned into rooms 154 and 5? A No, 154 was there when I bought the hotel, and the bath, too.

Q As a matter of fact, didn't you make, after you took over the hotel, didn't you make twenty-four guest rooms where there had not been hotel bedrooms before, by rooms I mean bedrooms? A No, there were rooms there, with the exception where the stairs were, there were rooms in the back that were used for the employees.

Q Of course, Mr. Rosecrans, there would have to be something, some cubic space in there before, but I am asking didn't you make the twenty-four new rooms thereafter furnished and used as hotel bedrooms where they had not been used and furnished and used when you took over the hotel?

The Master: Answer that yes or no.

A Yes.

Q And of course you supplied furniture for those rooms? A No, there was furniture in there, they were not used as guest rooms, but there was furniture in those rooms.

Q Was the furniture suitable for the guest rooms? A With the exception of the front rooms on the street where the bar and stores were.

Q You say it was in every one of these rooms with the exception of the rooms made out of the bar and the store? A That is right.

Q Furniture suitable for hotel guest rooms? A Yes.

Q And you include in them carpet of rooms which did contain furniture suitable for hotel bedrooms, or rooms which were made out of the barber shop, writing room and the cabaret? A Yes.

Q Now just tell me just exactly what furniture suitable for hotel bedroom had been in the barber shop. A I say with the exception of those rooms on the front, the back rooms had furniture in, but those on the front, the newly made rooms out of the stores did not.

Q You call the cabaret a store? A No, the bar was a store, on the street, the cabaret was at the back.

Q The cabaret didn't have any guest room furniture in it, did it? A Yes, I say there was furniture in the basement that was used for the help.

Q I am trying to get straight on this. You say you turned the cabaret into guest rooms or a guest room, as the case may be? A Yes.

Q Now the cabaret, while it was a cabaret, did not have any guest room furniture in it, did it? A Well, it had a lot of these cots in there, and bed there they had been using, yes, as helps' quarters. The cabaret had not been used for a couple of years since prohibition came, and they had cots in there and they had beds in there, and chairs in there, and it had been used as sort of a dormitory.

Q But you turned that into actual guest rooms? A Yes, that was done with Mrs. Rose-

crans' consent, turned into helps' quarters, and later into guest rooms.

Q When you turned it into guests' rooms, you furnished it with furniture suitable for guest rooms, which was something other than the furniture that was there before? A We replaced, yes, furniture that was there.

Q And it was a different kind of furniture? A It was—no, there were iron beds, but they were good enough for guest use as they were, but I replaced it along with the rest of the furniture in the house.

Q Now did the cabaret contain furniture that was supplied by Mr. Prettyman? A It did.

Q Now what part of the furniture bought from this Kensington Carpet Company that you told us about yesterday and today went into the twenty-four new rooms you have just told us about? A Well, that is some of the furniture that I testified to yesterday here, some of the bills in 1925, 1926 and 1927.

Q Was put into these twenty-four new rooms? A Yes.

Q I suppose you are not able to recall now just what part of that group of items you testified to yesterday went into the twenty-four new rooms? A I called those old rooms with the exception of the rooms on the street, old rooms that were supplied when the house was bought.

Q Don't want to quarrel about what we call the rooms, I wanted to ask you if you can tell me now what part of the items you have testified to as to Kensington yesterday went into these twenty-four rooms, being the twenty-four rooms

I have been asking you about this morning. A The furniture I testified to yesterday went into the cabaret, what I call old rooms, where the partitions were put, where the old furniture, where I found the old furniture when I bought the hotel, and in some of those, as I testified to this morning, that went into the new rooms in the front.

Q You mean to say that the rest of these Kensington Carpet Company invoices all went into these twenty-four rooms that we have been talking about this morning? A No, it went all over the house, and those rooms that you have on your inventory.

Q Are you able to tell me, then, what part of the house all these Kensington Carpet Company items to which you have testified yesterday and this morning went into these twenty-four rooms? A I couldn't say what part, I know how much went into the old part and how much in the new part, I call the front rooms on the street the new part.

Q Can you tell me how much the Kensington Carpet Company goods which you testified to yesterday and today went into the rooms which you call the front rooms, by that I don't mean the rooms that were not furnished by Mr. Prettyman, I mean the rooms which were apart from the stores and the bar and things like that. A What I call the new rooms are the rooms upstairs that were unfurnished—

The Master: Mr. Rosecrans.

(Question repeated.)

A Yes.

Q You mean— A Yes.

Q How much?

Mr. Starr: You don't mean the rooms in the upper floors, you know, rooms that were unfurnished, is that right?

Mr. McCarter: That is right, sure.

A I can tell approximately how much.

Q All right, what is it? A I would have to see those bills of this year that I testified to this morning.

Q Before you look at the bills, let me ask you, did you for the first time furnish these rooms made over from the stores and the bar in 1928? A No, for the first time I furnished them, replaced the stuff that I put there when I came in there.

Q Is any of the long list of items which you testified to yesterday bought from Kensington articles of furniture which went into the rooms made from the store and the bar in the basement? A Can I explain what I call old rooms and what I call new rooms?

The Master: You have already done that.

A I didn't include these rooms in the basement, some were new and some old had been there, too.

The Master: But you have told us the rooms that were made from the space formerly occupied by the stores and the bar were the new rooms.

A No, I call those old rooms because there was bedroom furniture in there that had been used as dormitories.

Q The bar and the stores? A In the bar, the cabaret, the bar I call a new room.

Q Now, Mr. Rosecrans, in order to get ourselves perfectly straight, I am going to ask you about the basement and the basement only, now. Tell me what rooms in the basement you say did not have any furniture suitable for guest rooms when you took over the hotel? A Six rooms where the bar and the store and the barber shop were.

Q Did any of the various items you testified to yesterday as coming from Kensington go into any of those six rooms? A No.

Q Did any of the items which you testified to yesterday go into any of the other rooms in the basement? A In the back rooms where the dormitory was, where the cabaret was.

Q Can you now tell us which of the items testified to yesterday went into any of the basement rooms? A Part of the carpet and part of the beds, about six beds, about a couple of hundred yards of carpet, I suppose.

Q Any mattresses and springs? A Mattresses and springs with them.

Q With the beds? A Complete.

Q You mean the beds complete? A Yes.

Q Ready to lie on except for bed linen? A Yes.

Q And about 200 yards of carpet? A Yes. Those rooms—

Q No question now.

By Mr. Starr.

Q What were you going to say a moment ago when interrupted by the Master and counsel, make some explanation with reference to those

rooms? A Something about whether that small room could be called a bedroom.

Q The carpet that went into those rooms down in the basement all what you call velvet, Axminister, or what? A Velvet.

Q Was there a sign there at the time? A A large swinging sign, yes, and that was replaced this year.

Q Is it in any of these items? A I haven't come across it. I haven't been questioned on that.

Q From whom did you buy it? A Josephson.

Q Josephson's sign is in here. A No, only a small repair job of Josephson's in there. Sign cost four hundred dollars or five hundred dollars.

Q You say there was a sign purchased? A A large—with the hotel a large swinging sign with the name "Princess" on with electric lights all around it, swung over the sidewalk.

Q At the time the hotel was bought it was there? A Yes, it was there.

Q What happened to it afterwards? A Well, we couldn't use it any more.

Q Why not? A It was an old style sign, and the wiring became corroded and the whole thing started to fall to pieces and had to take it off.

Q You replaced the old one with a new one? A Then I put the Marquise up and the Marquise had the name of the hotel in small letters, like the sign on the court rooms, and you couldn't see it until you got right up to the hotel, so this year I replaced this large swinging sign that was there.

Q What did it cost you? A Somewheres around four hundred dollars.

Q Can you be any more accurate than that? A Mr. Grookett can.

Mr. Grookett: I can get the exact figures on that in the next half hour.

Q I show you some invoices in favor of William Stein, and I wish you would look those over, please, and explain to the Master what they cover and the uses that were made with respect to the articles. A June 3rd, 1925, three rolls netting, $13.20, was netting for the windows.

Q What kind of netting was it? A It was linen netting.

Q Was that used, was it new or to replace the old? A To replace the old, we put it up every year to replace the old.

Q Go ahead with the next? A July 25, 1925, retinning pots in the kitchen, $42.

Q Is there five and a half there, too? A I have got $47.50 here.

Q Tell us what that was. A That was retinning the pots in the kitchen.

Q Kitchen utensils? A Kitchen utensils, yes.

Q Give us the next? A May 9, 1927, three yards oilcloth, $1.95.

Q What is that for? A Used in the bathrooms.

Q New or to replace the old? A To replace the old in the old section of the house.

Q Next? A One can opener, five dollars, $6.95.

Q That can opener isn't on there? A Just the oilcloth. May 29, 1928, 12 yards of cloth.

Q You have gotten these out of chronological order. Turn to the one March 25, 1928. They

were all in order when I handed them to you —May 25, 1927. A May 25, 1927?

Q What is that one? A They are plates and saucers, 12 yards oil cloth, $4.80.

Q Of course plates and saucers are out. Tell us about the oilcloth. A $4.80.

Q Was it new or to replace the old? A That is to replace the old.

Q Now the next one is March 15, 1928. A Retinning seven pots, $35.

Q Kitchen equipment? A Retinning the kitchen equipment.

Q Now the next. A 19¼ yards of linoleum.

Q What is the date? A 3/26/1928, 19¼ yards of linoleum, $17.86.

Q What was that for? A That was used to replace the old linoleum. One bottle brush is on here, that should come off.

The Master: That doesn't appear here at all.

Q The next. A Next is 3/29/1928, retinning pots, $37.

Q Is that kitchen equipment? A That is kitchen equipment.

Q The old or any that you may have purchased, both? A We had to buy some right along to replace the old, and had to be retinned every year.

Q Next is? A 5/29/1928, I think I read that off, 12 yards oilcloth, $9.

Q Oilcloth was used for what, Mr. Rosecrans? A To replace the old.

Paul C. Rosecrans, for defendant, direct.

By Mr. McCarter.

Q This retinning of the pots, that was something that was done every year? A Had to be done every year to preserve them.

Mr. Starr: I offer in evidence batch of checks, first one dated August 21, 1922, and the last one November 19, 1928, as shown on the schedule attached to VV.

(Checks received in evidence and marked Exhibit D. 455.)

(Vouchers received in evidence and marked Exhibit D. 456.)

Mr. Starr: Your Honor will remember in the accounts that were offered as credits originally, there were some articles which we agreed to eliminate because they were personal property and not repairs to the real estate. Now I think that they ought to be considered as being in now so that we can claim credit for those items of personal property if we are entitled to them without going into the proof again. They are already in the case in the vouchers.

The Master: Do you have a memorandum of them there?

Mr. Starr: No. I want to have an opportunity to claim credit because they were voluntarily eliminated at that time.

Mr. McCarter: Was testimony given as to that as cross examination on all of that?

Mr. Starr: Yes, and your father developed the fact personal property.

Mr. McCarter: Long as they were fully covered, might as well put them in.

Mr. Starr: Also in the insurance bills of the Adams Company the bills and invoices covered insurance on personal property. That was voluntarily eliminated and I think we ought to have the benefit of this phase being in the case, if your Honor determines that is a proper item of credit, insurance on personal property.

By Mr. Starr.

Q With reference to all of these articles that have been enumerated and which were referred to in your testimony for materials furnished, and labor performed, were they in your judgment, as the operator of that hotel, necessary for the preservation of the property and the conduct of the business? A Absolutely.

Q In other words, did you contract any obligations or buy any materials other than that which was necessary for the protection of the property? A Absolutely necessary.

Mr. Starr: I am furnishing the gross receipts, but I don't think it has any materiality as to the rental value, but I am furnishing it at the present time.

Q Mr. Rosecrans, can you give us the information as to the gross receipts?

Mr. Starr: Covering what period do you want?

The Master: I think it ought to be the period within the order.

Q Can you furnish the information for the benefit of the Master? A Yes.

Q Is your business carried on the calendar year or do you have a fiscal year? A Calendar year.

Q For 1922 what were your gross receipts? A $109,882.08.

Q 1923? A $114,563.23; 1924, $132,275.58; 1925, $151,272.13; 1926, $153,727.03; 1927, $140,-192.36; 1928, $156,316.74.

Q That is the gross, is it, without making any deduction for carrying charges or salaries? A That is the gross, yes.

Q Or the expense of operation? A Yes.

Q And out of that all those items were paid, and I suppose you also paid out of the gross receipts various items which have been proven here for new furniture, replacement of old furniture, repairs, and all the expenses connected with the operation? A Yes.

The Master: Under the order I am obliged to fix the rental value and I ought to have some proof on which to work.

Mr. Starr: There is some testimony in the case. Mr. McCarter produced a witness, and we produced a witness, so that is in the case, but my interpretation of this order is that I think the Master can ignore all testimony.

Mr. McCarter: He has got to make it on testimony.

The Master: I was about to inquire whether you wanted me to make an independent inquiry on my own part, or whether you wanted to submit proof. I think the rental values now may be somewhat different than they were.

Mr. Starr: Mr. Carleton Adams has promised to be here, and I am simply going to ask him one or two questions.

Mr. McCarter: Are we to consider that there is before the Master not only the testimony taken before Judge Sooy, but also the testimony taken before Vice-Chancellor Ingersoll?

Mr. Starr: Your father made the offer and I didn't object to it, so that is in the case.

By the Master.

Q How many bedrooms are there in the hotel, by that I mean the guest rooms? A 170 upstairs.

Q You are equivocating again. A 170 guest rooms that can be called guest rooms.

Q How many rooms are used as guest rooms? A Approximately 195 only in the summer, for some rooms can be used only for a few weeks in the summer.

Mr. Starr: I have managed to get a receipt from a man named Brown, show a receipt for one of the Brown items, and I offer that in evidence.

(Receipt admitted in evidence and marked Exhibit D. 457.)

I have the bill for the sign, $340.

(Bill offered, received in evidence and marked Exhibit D. 458.)

By Mr. Starr.

Q I ask Mr. Rosecrans, this bill of $340, has it been paid? A Part in cash and part note.

Q How much is paid in cash, how much note is outstanding? A About half and half.

Q Well, you don't know, then? A I don't know the exact amount.

PAUL C. ROSECRANS, recalled.

By Mr. Starr.

Q Did you ever make it so uncomfortable for Mrs. Rosecrans in the hotel as to induce her to leave? A I did not, no.

Q Did you ever ask her to get out of the hotel? A No, I did not.

Q Did you ever insult her before the help? A No, I did not.

Q Did you ever say to her, Mrs. Rosecrans, either alone or in the presence, that you did not want to have anything to do with her? A No, I did not.

Q That you were a man of the world and you wanted a young wife? A I did not.

Q Did you ever tell her that you did not want her to eat in the dining room? A I did not. I made provision for her to eat upstairs.

Q Did you ever say to her that she was to eat in the kitchen with the negroes? A I did not.

Q Did you ever discharge a waitress because she served Mrs. Rosecrans? A Positively not.

Q Did Mrs. Rosecrans ever strike you? A She did.

Q When was it, and tell the circumstances. A In August, 1923, she beat me up in the kitchen in front of witnesses, and then she beat

me several times, very often, and the last time was in the lobby on Easter Sunday, 1924.

Q Did she have anything in her hand at that time? A When she beat me up with a dog leash across the face. Those were the two beatings in front of witnesses, and then she beat me a good many times when I had no witnesses.

Q Did you ever say to Mr. Charles W. Devine that he was not to take any instructions from your wife with reference to the operation of the hotel? A I do not recall whether I did or not. I think when I was in California, there was some argument going on there, I didn't know what it was, and I sent him word—I sent him word to take instructions from her, to settle the argument. No, I did not tell him not to take any instructions.

By Mr. McCarter.

Q You say Mrs. Rosecrans beat you more than two separate occasions? A Several times, yes.

Q You sued her for divorce alleging among other grounds of divorce, cruelty, did you not? A Yes.

Q And you testified having witnesses and the case was tried before Vice-Chancellor Backes, at Trenton, for four days, I think it was? A Yes.

Q Did you at any time in the course of that testimony, testify that Mrs. Rosecrans beat you except on the two occasions in the summer, and once Easter Sunday of 1924? A Yes, it is in that book.

Q You so testified, eh? A I did. I said she beat me several times, but I had no witnesses, and it is in that book.

Q You say she beat you Easter Sunday, 1924? A Yes, April 20th.

Q And she had previously beaten you in the summer of 1923, you say? A Yes.

Q I show you a check dated January 19, 1924, to the order of Paul C. Rosecrans, signed H. Rae Scull, for $3,500, and also a recepit on the letterhead of the Princess Hotel, and ask you if that receipt is in your handwriting, and if the check is endorsed by you? A Yes, that was for notes endorsed by Carleton Adams and George Zippler, that was for notes to that amount endorsed by Carleton Adams and George Zippler.

Q You took the money from Mrs. Rosecrans on or about the date of that receipt? A Yes.

(Receipt offered, received in evidence and marked Exhibit C. 1 of this date.)

Q You say you never told Charles Devine not to let her have anything to do with the hotel or to take any orders from her, is that correct? A I don't recall that I did, no. They were there together, I was in California, and they were there together opening the hotel, and he wrote me or wired me about something was going on there, some quarrel among the help, and he had some argument with Mrs. Rosecrans, and I told him to take orders from her, as I recall it, so that she would be the head of it until I got back so there wouldn't be any disturbance of the business.

Q Didn't you, as a matter of fact, do everything you could to prevent Mrs. Rosecrans from,

as you said, interfering in the business? A I tried to stop her from interfering in the business.

Q That is all I want to know. One more question, you remember, of course, a number of letters sent by you to Mr. Knox, which have been put in evidence? A Yes.

Q What was the general purpose and meaning of the references to Mrs. Rosecrans in those letters?

Mr. Starr: The letters speak for themselves.

Mr. McCarter: They do, far as language is concerned, but I want his characterization of them.

A I told him to treat her as courteously as was possible so he could run that business, and if she started to interfere he should get help, he should get detectives. That was the general purport of those letters.

Q Let me ask you this, Mr. Rosecrans, isn't it a fact that what you meant by those letters was that she should be prevented at all costs from interfering in any way with the running of the hotel? A No, that she shouldn't interfere in the business, that is all.

Q She shouldn't interfere in the business? A Because she had a violent temper, she argued with different people through the house, she tried to destroy that business, she was trying to destroy that business. I had a love letter there from that fellow to prove relations were going on, and I knew from the detectives that they were running around together, and he had this veneral disease, and I didn't want this fellow in the house there, when several times

I wrote in the letter to see that Knox kept this fellow out of the house.

Mr. McCarter: I move to strike out as not responsive all except the first sentence of that answer.

The Master: Motion will be granted.

MRS RAE SCULL ROSECRANS, recalled:

Direct examination by Mr. McCarter.

Q Mrs. Rosecrans, did you ever beat Mr. Rosecrans? A I did not.

Cross examination by Mr. Starr.

Q Did you ever lay your hands on him at all in violence? A No.

Q Don't you remember testifying that you did not know whether you did or not in the case before Vice-Chancellor Ingersoll? A I don't know what I testified there, but I never touched him.

Q Didn't you testify you didn't know whether you ever struck him? A I don't recall the testimony.

FRANK J. BLOOM, sworn.

Direct examination by Mr. Starr.

Q Mr. Bloom, you already qualified in this case as a real estate agent in Atlantic City.

What we are endeavoring to ascertain is whether or not there has been any change in real estate values in Atlantic City and rental values of real estate, particularly hotel properties, in the last three or four years? A There has been a change.

Q Will you tell us your experience with reference to that situation, will you, please? A My thought about values, which is also reflected in rentals directly, has been that there is a deflation or rather has occurred during the past several years a deflation or shrinkage of between twenty-five to thirty-five per cent.

Q When did that begin? A I should say that shrinkage began about the fall of 1926.

Q I notice you testified in this case in July of 1926. The deflation, you think, occurred after that? A About that time, around that time.

Q Does that change in values apply to real estate of the character of the Princess Hotel? A Yes, as a matter of fact, it applies to all real estate in general, that is the general economic condition.

Q There has been a change from twenty-five to thirty-five per cent. in real estate values and also rental values since the fall of 1926? A Rental values would follow that generally, but not always, I mean to say the rental values, while the rental values, while the deflation in the real value of the property may be from twenty-five to thirty-five per cent., the rental value would approximate an equal deflation, but it wouldn't naturally run right along those lines.

Frank J. Bloom, for defendant, cross.

Cross examination by Mr. McCarter.

Q Can you give me any instance since you last testified here of the sale of a property located substantially like the Princess Hotel, of that type of property, which has demonstrated this shrinking in values you have told us of? A My answer to that would be that I sell very little real estate. I principally finance mortgages and my values are acquired through, you might say, conversation, contacts and what not, naturally keeping in touch with the values so that I personally do not sell much real estate, I am really not in a position to give you facts on the sale prices of parcels excepting in one case I can. I represented the owner of a property which was known as the Kenepac Apartments at Kentucky and Pacific avenues. This used to be a hotel, it was remodeled into apartments, at the northeast corner of Kentucky and Pacific avenues. That property I am quite sure was sold in excess of $500,000 about three years ago, purchased by William West from Frank Gravatt. At that time there was placed on that property a first mortgage of $225,000, in back of which I placed the second mortgage for my client of $150,000, which made a total encumbrance on that property of $375,000. Lack of payment of interest and principal necessitated the foreclosure of the second mortgage by my client, who today cannot realize $375,00 for that property, cannot get it.

Q I noticed walking down here from the Boardwalk a new structure going up right across the street from the Chalfonte. Hasn't there been a change in title there very recently? A Opposite the Chalfonte Hotel?

Q Across North Carolina from the Chalfonte. A No, there hasn't been any change in title of that property, belongs to the Leeds and Lippincott Corporation. There has been no change in title there that I know of.

Q Do you know what the Leeds Company paid for the Cuthbert property on the Boardwalk? A The newspaper said $13,000 per front foot, but I doubt it.

Q You doubt it? A Yes, sir.

Q But that was the reported value? A Yes.

Q Now the rental value of a hotel depends very largely on what the tenant can make out of it, doesn't it? A The rental varies in different properties, some properties only bring one and two per cent. on their valuation, others bring ten, twelve or fifteen per cent., depending upon the character of the property and the expenses of administration.

Q Now, of course, you know the Princess Hotel property? A Yes.

Q What percentage of the valuation do you think the rental value of that would be? A I should think that the Princess Hotel would be worth in round figures—I haven't been in the hotel for two years, sir, so I am not familiar with the exact condition—I would say approximately from one hundred to one hundred and fifty dollars per room, depending upon the condition of the property. That is my only answer to that. Hotels are rated according to the rooms, the rentals run anywhere from, I should say, about fifty dollars up per room, depending upon the structure.

Q Now, is there anything in the experience of Atlantic City since July of 1926 by way of people coming here and the ability of hotel men

to rent their rooms and that sort of thing, which would make the rental value less today? A Absolutely.

Q Fewer people are coming here than they used to? A No, but the hotel business is less remunerative, a less satisfactory business than it was three years ago, very much so.

Q In what way? A I will give you a guess of my own. Yesterday I was obliged to buy under foreclosure myself a property known as the Caverly Hotel on Maryland avenue near the Boardwalk, which that hotel in 1925 the owners were offered ninety thousand by William Powell of the C. J. Adams Company, I am informed. I had to take the property in myself on top of a thirty-one thousand with an eighteen thousand second, for $41,000. I couldn't get a buyer at the sale. That is my own experience within the past twenty-four hours.

Q I know, that experience like the experience with the apartment house you just testified to recently has to do with ability to find a buyer and nothing at all— A The values are based on ability to find buyers.

Q —and nothing at all with respect to willingness to pay a rent. Have you any experience of your own with respect to lower rental prices paid for or obtained since you last testified, of hotels like the Princess? A 1925 I am informed and believe I know that S. P. Morris, who was a local real estate and mortgage man, offered ten thousand dollars for this same Caverly Hotel which I took over yesterday, but offers on this hotel which have been received in the past thirty days have been anywhere from five to six thousand dollars, for the same property for rent per annum.

Q But you don't know of any actually consummated rentals since you last testified, any actual leases drawn, made offers or refusals of offers, what I mean, do you know of any actual leases since you last testified of hotel properties similar to the Princess in which there has been a decrease in the amount of rent over and above —under and below that which it was when you testified before? A I know that within the past ninety days the Bell and Cope Corporation have leased from a very close friend of mine a hotel known as the Walton Hotel at 165 South Virginia avenue, approximately which corresponds in a small way, I mean a smaller hotel, but the condition would be very much the same, the income to be expected per room would be very much the same, was leased to Bell & Cope within the past ninety days by the Phillips Company in this building, at a rental, that building contains approximately fifty-seven bedrooms, the rental derived for that property was in the neighborhood of twenty-two thousand dollars for a three-year lease. That same property had a mortgage.

The Master: Number of rooms?

A About fifty-five rooms.

Q That is a little over seven thousand dollars a year? A A little over seven thousand dollars, a little over a hundred dollars a room, $115 per bedroom, it may be less than that, I doubt if it is more. That hotel had a rental value in 1925, I believe, of a minimum of $150 per room.

Q In your opinion, Mr. Bloom, when you give a rental value of a certain property in dollars per room for the same type of hotel, isn't it a

fact that the larger the hotel the higher the rental value per room? A The larger the hotel?

Q Yes, higher rental value per room? A Smaller, that is up to, say, a hundred rooms, or so far as, when you get that small type hotel, for instance, I would explain that in this way—

Q I don't care about hotels less than a hundred rooms. A I would say the rental became less as you increase up to a hundred rooms or thereabouts.

Q When you go up to a hotel between 175 and 200 rooms, isn't the rental value per room more than with a hotel of the number of rooms of this one you just gave, seven thousand a year? A No, sir, it is not. My reason is this, I want to give you, the ground is bigger naturally. You can have, it depends entirely upon the amount of ground that you have under your structure. You may have a hundred foot lot with only fifty rooms on it with the same lot value, when you could construct a 200-room hotel, but you may have a hundred-foot lot with 200-room hotel, in which case the ground value is the same in both cases, in which the cost per room would be increased to that extent.

Q You don't want us to understand, do you, that the only basis for rental is the ground value? A By no means.

Q And when you say that there has been a decided shrinkage in the value of property in Atlantic City since you last testified, you don't want us to understand, do you, that there has been necessarily an equivalent shrinkage in rental value? A Approximately, yes, there would be approximately. I want you to understand that there would be approximately a pro-

portionate decrease in rental value in proportion to the decrease in the sale value.

Q How do you account for this decrease in sale value? A The decrease in sale value, markets are created by demand, where you have no market you have a reduced demand and reduced prices occasioned by the desire of the seller to sell, in which case he takes less money.

Q But that would have no bearing at all on the ability of the hotel man to operate the hotel profitably and make money out of it? A No, that wouldn't necessarily apply to the management, that would only apply to the earning power, selling power of the property, through a tenant or a purchaser.

Q The ability of the tenant to employ the property profitably to him has a very large bearing on the rental value of the property, hasn't it? A Well, that wouldn't enter into it at all, if you rent, because you would have another party entirely.

Q I don't think you understood me. The rent to be obtained by a piece of property depends not only upon what the landlord wants for it, but what a tenant will give for it, doesn't it? A Oh, yes.

Q Now, then, the factor of what the tenant will give depends very largely upon what he reasonably can expect to make out of it? A Yes.

Q And that factor is not at all dependent upon the sale value of the property? A Not at all, no, indeed.

Q And isn't the location of the Princess in a more favorable location than the Caverly which you just told us about? A Yes.

Q Down in what you call the high rent district, the Princess, by reason among other things

its proximity to the station and proximity to the Boardwalk? A No, Pennsylvania and North Carolina avenue are desirable avenues for hotels, Virginia avenue, the Walton Hotel, which I cite, is superior to South Carolina avenue.

Q You do consider, though, South Carolina avenue, a favorable and high rent neighborhood, where the Princess is I am talking about? A I consider the Princess Hotel a nice hotel, and within the location where a fair income should be expected from the property.

Q This depreciation in the value of land in Atlantic City, can you tell me whether or not that has been reflected in the assessments? A Assessments?

Q Tax assessments? A No, it has not.

By the Master.

Q Mr. Bloom, you say that basing your opinion on the Princess Hotel as it was two years ago, that the rental value would be somewhere between $100 and $150 per room, by that you mean guest bedroom? A Per guest bedroom, yes, sir.

Q Assuming the hotel to be in as good condition now with respect to repairs and furnishing as it was two years ago, what in your judgment is the rental value per room? I don't want it a hundred to a hundred and fifty, that is not the job that I have before me, I have to fix the rental value of this property, and if you can I would like you to be a little more specific than that. A The only thing I can say, only way I can answer that would be to say the income would be approximately—we might say this—we might say that instead of a hundred to a hundred and fifty, you might say a hundred and

fifty some time back and a hundred and twenty now or a hundred and thirty, or somewhere around that, Judge. I would say that the income would be about twenty-five per cent. less, anyhow. say that twenty-five per cent. less than say a figure of a hundred and fifty dollars rent, that would be thirty-seven and a half, the rent today would be worth about $115 per room, $110 to $115 a room rent, that is approximately. I have to see it and different things to go into rental values, furnishings and conditions and so forth.

Q What would be the fair and average rental value from 1922 to 1928, both inclusive? A From 1922 to 1928, inclusive, per room?

Q Both dates inclusive. A Oh, the dates you mention, mentioning one date and mentioning the other date in each successive year?

Q The average rental? A The average rental during that period?

Q Yearly value of rental. A There was a decided increase in rental values in hotels in 1924 and 1925, thereabouts, there was a big demand for hotels in Atlantic City around that time, with the result that they did increase in value materially, both from the standpoint of value and income. Then the prices seemed to have gotten so high that there was no market because of the fact that no money could be made at the prices to which the cost of the hotels had reached. There is an irregular scale in there, your scale would be higher in value, rental, in 1924 and 1925 that it would be the rest of the period. I would say your scale would run approximately $100 a room in 1922, '3 and '4, and thereabouts, and then it might have gotten up as high as $150 a room or even more in 1924 and 1925, I would say might have gotten to $200

a room in 1924 and 1925, and then down again. That would be my thought. It was irregular. We have had the most irregular scale of rentals of hotels in the past seven years that I think we have ever had in the history of the town, because of that spurt in 1924 and 1925, we had a big demand for hotels, and then it dropped. It is pretty hard to say, Judge, more than an average of a hundred and twenty-five, all the way through from 1922 to 1928, you might strike an average of $125 per room.

Q Do you give that as your best judgment? A I would give that as an average rental, as my best judgment, I would give an average rental of about $125 per room.

By Mr. McCarter.

Q When in your opinion—you recall that you testified before in 1926? A Yes.

Q How soon after that did the rental values you gave then diminish? A Very quickly, what happened was this, there arose considerable demand for hotels, if my memory serves me right, about the year 1924, in the year 1924 there was quite a lot of activity in the sale of hotels, then that continued for very near to two years, and there was a sudden drop because of the fact, you see our seasons here are purely summer, practically, and the second season at the high prices and the high rentals proved their uneconomy, in other words, it wouldn't work, that was all, so we plodded back again, that is I mean dropped back again in rental values.

Q That dropped again for the 1927 season? A Yes, that dropped again, now I would say about 1926 somewhere, I don't know just when.

Q You testified here in 1926? A Yes.

Frank J. Bloom, for defendant, cross.

Q And without going back to your testimony, you gave your best opinion then? A Best opinion, yes, sir.

Q And the purpose of having you here today is to bring it down to date, so having given then what the figures were for 1926 season, you would say for the 1927 season it is the reduction you have given us? A Lower.

Q How did the 1928 season measure up with respect to 1927? A About the same as 1927 and 1928, about the same.

By Mr. Starr.

Q Mr. Bloom, when you refer to annual rental per room, I suppose you mean furnished rooms which can be used for guests? A Well, it is customary to rent hotels furnished, very rarely unfurnished, they are rented both ways, but the majority of the cases furnished.

Q Would the amount of rent to be paid depend upon whether the rooms were furnished or unfurnished? A That would affect the rental, yes.

Q And I suppose the situation in Atlantic City is about the same as everywhere else, the value is based on the income largely or the rent that you get from the property? A Yes.

By Mr. McCarter.

Q Of course the figures you have given us, the rental values per room include also the assumption that the public rooms of the hotel are adequately and properly furnished? A It does.

Q And it is based on the assumption that the hotel as a hotel is properly kept up to date as to furnishings and equipment? A Plumbing

and heating in good shape, papering and so forth, yes, sir.

By the Master.

Q Did I understand you to say, Mr. Bloom, that you based your opinion on the fact that in 1927 and 1928 there had been a reduced income? A Yes, sir, 1927 and 1928 the rental values were less on hotels and all properties in general.

By Mr. McCarter.

Q You are not a hotel man? A No, sir.

Q You don't of your own experience and knowledge therefore know anything about the hotel income of these last two years? A I would assume that they would be less because of the lack of demand and desire to pay a higher rental.

PAUL C. ROSECRANS, recalled.

By the Master.

Q Mr. Rosecrans, perhaps I led you into some testimony that I shouldn't. How many desirable rooms are there in the Princess? A 170.

Q 170? A Yes.

Q And the balance of the rooms are available only during the warm weather? A Yes.

Q They are not heated, adequately heated? A Only, there is a hundred rooms that are not heated, 125 are not heated. C. J. Adams only counted rooms upstairs, didn't count the basement rooms, can only be used a day or a night, and I got to take them out of there, just used for transient purposes.

By Mr. Starr.

Q How many rooms above the basement? A 170.

Q Of those how many are heated? A Eighty rooms that are heated, eighty or ninety.

Q Those are available in the winter time and the rest of them not? A Yes, sir.

Q You run your hotel European or American plan? A On the American plan only in the summer, and European and American in the winter.

By Mr. McCarter.

Q During the season, Mr. Rosecrans, in which it is necessary to have heat in the rooms, would you be able to rent more than the eighty rooms if they were heated? A I could rent them in February, I could rent them in, over Easter and Washington's Birthday.

Q Mr. Rosecrans, isn't it a fact that you have shut off the heat in those rooms that are unheated, not that they have no heating facilities, but that you have disconnected them? A No, they have no heating facilities.

TESTIMONY CLOSED.

Depositions.

Further depositions taken this seventeenth day of October, 1930, at 10 o'clock in the forenoon, before Clifton C. Shinn, Esq., one of the Special Masters in Chancery of New Jersey, at his office, Guarantee Trust Building, Atlantic City, New Jersey, pursuant to order of reference dated.

Present, George McCarter, Esq., solicitor for complainant.

Lewis Starr, Esq., solicitor for defendant.

Mr. Starr: I offer in evidence four checks of Rosecrans, the first dated December 29, 1928, to the order of the Ormond Beach Bond and Mortgage Company for $1,530, endorsed "Interest on $51,000 mortgage from June 1, 1928, to December 1, 1928,"

(Check received in evidence and marked Exhibit D. 1 of this date.)

I offer in evidence check dated January 26, 1929, of Rosecrans to the order of the Ormond Beach Mortgage Bond and Guaranty Company for $900 marked "Mortgage interest on $30,000 first mortgage from June 30, 1928, to December 30, 1928."

(Check received and marked Exhibit D. 2 of this date.)

I also offer in evidence check of Rosecrans dated June 28, 1929, to the order of the Ormond Beach Bond and Mortgage Guaranty Company for $1,530 endorsed "interest on $51,000 mortgage from 12/1 to 6/1."

(Check received and marked Exhibit D. 3 of this date.)

I also offer in evidence check dated July 30, 1929, to the order of the Ormond Beach Bond

and Mortgage Company for $900 endorsed "interest on $30,000 mortgage from 12/30 to 6/30."

(Check received and marked Exhibit D. 4 of this date.)

PAUL C. ROSECRANS, recalled.

Cross examination by Mr. McCarter.

Q Referring, Mr. Rosecrans, to Exhibit D. 1 of this date, that covers interest on the second mortgage, does it not? A That is what it is marked.

Q Now had there not been an overpayment of interest on that mortgage, Mr. Rosecrans, an advance payment, rather? A Not as I recall.

Q Now I ask you to look at Schedule CC of the Master's report, a copy of which I have before me and show you down toward the bottom of page 2 a number of items labelled "Second Mortgage reduction" going lower down that sheet some which are not so marked and I refer particularly to an item of October 8, 1926, $1,600, what was that for, do you recall? A I couldn't tell without referring back.

Q What were all these additional items down here? A I would have to refer to Mr. Harris.

Q Were they bonuses for extensions or what were they? A No, no bonus on that sheet that I know of for extensions.

Q You think you would be able to identify the payments better if I showed you the schedules that were made up by you at the former accounting? A Mr. Harris would know that better than I would.

Q Are you able to identify that particular item when I tell you that it appears to be

Exhibit D. 225 identified at page 519 of the testimony? Does that mean anything to you? A I can't recall that payment.

Q Do you recall this Exhibit D. 225 which I show you as representing this item of $1,600 to which I have called your attention? A Yes.

Q What was that for? A That was for the extension of the mortgage, as it is marked on the check, $30,000 for five years.

Q Payment for the extension of the $30,000 mortgage for five years? A Yes.

Mr. Starr: I want to call attention to the fact the Exhibit D. 4, which is a check for $900 dated July 30, 1929, paid interest to the thirtieth of June of that year and, of course, will have to be a reduction prorating that, only ask for five-sixth or $750.

By Mr. Starr.

Q Mr. Rosecrans, I show you two water bills, one dated August first, 1928, showing the payment of $222.78 and $22.27 penalty and I ask you if that bill was paid by you? A Yes, sir; it was.

(Receipt offered, received in evidence and marked Exhibit D. 5.)

Mr. McCarter: It was paid March something, 1929, was paid within the period. I object to this that it covers a period prior to December first, 1928, to June first, 1929.

The Master: Objection will be overruled for the reason that, as I read the order of re-reference any disbursements made between January first and June first, 1929, are proper credits.

Mr. McCarter: This last, August first, 1928, to February first, 1929, and paid for, of course I can't object to that. My theory has been all along that is the right time.

Mr. Starr: I offer in evidence water receipt.

(Receipt admitted and marked Exhibit D. 6.)

By Mr. Starr.

Q Mr. Rosecrans, I show you bill from Adams and Company dated March 15, 1929, showing the writing of insurance policies and charging of premiums, etc. Were those policies obtained by you from Adams? A Yes, they were.

Q Were the premiums paid in cash or otherwise? A I don't recall whether they were paid in cash or by note, but, if they were paid by note, the notes were paid.

Q Has that bill been paid? A That has been paid.

Q And the insurance has been written? A Yes.

(Bill offered, received in evidence and marked Exhibit D. 7.)

Q I show you another invoice dated March 29, 1929, from C. J. Adams Company and ask you whether you obtained the insurance referred to in that bill? A Yes, I did.

Q Were those insurance policies issued? A Issued and premiums paid.

(Bill offered, received in evidence and marked Exhibit D. 8.)

Paul C. Rosecrans, for defendant, cross.

Q I show you another invoice dated May 16, 1929, showing a list of insurance policies issued by C. J. Adams Company. Were those policies issued? A They were, yes.

Q Premiums paid by you? A Yes.

Q You obtained the insurance referred to in this list? A Yes.

(Bill offered, received in evidence and marked Exhibit D. 9.)

By Mr. McCarter.

Q Mr. Rosecrans, I note that these three exhibits 7, 8 and 9, were all for periods commencing in the early months of 1929, is that correct? A Yes.

Q And running one year thereafter? A That is the way they read, yes.

Q So that, to begin with Exhibit D. 7, all of the premiums paid for the policies mentioned on that bill were to carry the insurance from March 21, 1928, to March 21, 1930, isn't that correct? A Appears that way, yes.

Q And on D. 8 the premiums on that were, as to the last item of $110 to cover the year commencing April 23, 1929, and running to April 23, 1930, isn't that correct? A That is the way it appears, yes.

Q And all of the other four items are to run from the period commencing April 3, 1929, to April 3, 1930, isn't that correct? A That is the way it appears, yes.

Q And on D. 9, the first twelve paid premiums on insurance for the period from May 12, 1929, until May 12, 1930, isn't that correct? A That is the way it appears there, yes.

Q And the last six items cover the period from May 31, 1929, to May 31, 1930, isn't that correct? A That is the way it appears on the bill, yes.

Mr. McCarter: I submit that there should be a prorating of those. While you can pay back you can't pay forward.

By Mr. Starr.

Q These policies that are referred to in the three exhibits as having been written for one year on the dates as shown by the bills, were they continued in full force for the expiration of the entire year? Were any of them cancelled? A No—

Q They were all continued in force for the year? A Not as I can recall.

The Master: I think we may assume that the mortgages required the carrying of fire insurance and if those policies were not written there would have been a foreclosure. Under those circumstances I think these should be allowed.

FINAL DECREE.

Filed November 25, 1930.

IN CHANCERY OF NEW JERSEY.

54/319

Between H. Rae Scull Rosecrans, *Complainant,* *and* Paul C. Rosecrans, *Defendant.*	*On Bill, &c.* *Final Decree.*

This cause coming on to be heard in the presence of Messrs. McCarter and English, of counsel with the complainant, and Lewis Starr, Esquire, of counsel with the defendant, and the Cour having by interlocutory decree made in this cause on the 16th day of April, 1926, adjudged that the complainant is and from the date of the acquisition of the lands and premises in the bill of complaint described had been a co-tenant with the defendant of the lands and premises in the City of Atlantic City in the County of Atlantic and State of New Jersey, in the bill of complaint and in the said interlocutory decree more particularly described, and having further adjudged therein that the defendant do account to the complainant for the rental value of the said premises from the first day of June, 1922, to the date of the said accounting, and referring it to William Frank Sooy, Esquire, one of the Special Masters of this Court, to take and state the said accounting; and the Court having there-

after, by order made in this cause on the 27th day of December, 1926, relieved the said William Frank Sooy, Esquire, of further duty in the premises, and referring the said accounting to Clifton C. Shinn, Esquire, one of the Special Masters of this Court; and an order having thereafter been made on the 5th day of April, 1928, amending the above mentioned reference and re-reference, and the said Clifton C. Shinn, Esquire having heretofore filed his report, and exceptions thereto having been filed by the complainant and by the defendant, and said exceptions having come on for argument before the Court, and the Court having by its order made on the 18th day of September, 1930, overruled each and all of the said exceptions and referred it back to the said Master to take certain additional testimony, and the said Master having pursuant to the said last mentioned order filed his further report, dated the 17th day of October, 1930, from which it appears that there is due to the complainant from the defendant on the said accounting the sum of $22,077.32, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleading, proofs and arguments, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by her in her bill of complaint: It is, on this 25th day of November, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED as follows:

1. Each of the said Masters' reports, that is to say, the report dated the 24th day of July, 1929, and the further report dated the 17th day

of October, 1930, be and they are hereby confirmed.

2. There is due to the complainant from the defendant the sum of twenty-two thousand seventy-seven dollars and thirty-two cents ($22,077.32) together with interest thereon from the first day of June, 1929, and that the defendant do pay the same to the complainant.

3. The said sum so adjudged to be due to the complainant from the defendant, together with interest thereon as aforesaid, is hereby declared to be a lien upon all the right, title and interest of the defendant in and to the lands and premises in the bill of complaint described.

4. There is allowed to the solicitors of the complainant a counsel fee of twenty-five hundred dollars ($2,500) which shall be included in the taxed bill of costs and collected with other items in the said bill.

5. The defendant do pay the complainant her costs of this suit to be taxed; and the said costs are hereby declared to be a lien against the said premises in the said bill of complaint described.

6. Unless the defendant within ten days from the date hereof pay to the complainant or her solicitors the several sums hereinabove decreed to be paid by the defendant, all of the right, title and interest of the defendant in and to the land and premises in the said bill of complaint described be sold to raise and satisfy the several sums of money due to the complainant as aforesaid; and that a writ of fieri facias do issue out of this Court, directed to the Sheriff of the County of Atlantic, commanding him to make sale according to law of the whole right, title

and interest of the defendant in and to the said lands and premises in the said bill of complaint described, and that out of the money arising from such sale he pay to the complainant or her solicitor the sums hereinabove adjudged to be due to the complainant, together with interest and costs.

7. It be referred to Clifton C. Shinn, Esquire, one of the Masters of this Court, to continue the accounting heretofore referred to him from the first day of June, 1929, until the date of such continued accounting, and jurisdiction of this cause is retained for the purpose of such accounting and of the making of an appropriate supplemental decree thereon until the coming in of the said Master's report.

E. R. WALKER,
C.

Respectfully advised,

R. H. INGERSOLL,
V. C.

Motion to Open Case—11/24/25.

TESTIMONY AT HEARING BEFORE VICE-CHANCELLOR, NOVEMBER 24, 1925.

IN CHANCERY OF NEW JERSEY.

Between	
RAE SCULL ROSECRANS, *Complainant,*	*On Bill, &c.*
and	*Final Hearing.*
PAUL C. ROSECRANS, *Defendant.*	

Atlantic City, N. J., November 24, 1925.

Testimony before Hon. R. H. Ingersoll, Vice-Chancellor.

APPEARANCES.

For complainant, Robert H. McCarter, Esq.

For defendant, Lewis Starr, Esq.

Mr. McCarter: I don't know how much of this case your Honor remembers. It was tried before you by Judge Schimpf representing Mrs. Rosecrans some time ago and Judge Starr on the other side, the bill being filed by Mrs. Rosecrans alleging that she and her husband were tenants by the entirety of the Princess Hotel here in town and that her husband had conducted the business that really belonged to them both for some time and asking for an accounting of the rents and profits of that business. Mr. Rosecrans answered that bill denying that they were in fact tenants by the entirety, claiming that while the deed from a man by the name of Prettyman of the property was taken in the joint names of

New Jersey State Library

the husband and wife, that in fact it was simply given as a mortgage to secure a loan made by Mrs. Rosecrans to her husband and that Mr. Rosecrans was the real owner in equity of the hotel and held the title equitably subject to a charge thereon for the loan that his wife had made at the time of the purchase or otherwise and asking that he be permitted to redeem the loan when he ascertained the amount of it and title be declared to be his. That bill was answered or counter claim was answered and, as I said before, your Honor took considerable proof here in the cause and both sides rested. Then Judge Schimpf went on the bench and later I came into the case representing Mrs. Rosecrans and we were down here perhaps six months ago, as your Honor probably recalls, Judge Starr and I, to argue the case but it looked as if the parties had made an adjustment of the situation, but apparently that was ineffectual so we are here today, I suppose, finally to dispose of the case.

The object of this little opening is to apprise your Honor of the facts so that you may see exactly the purport of what I now am going to file. I have given notice to Judge Starr, informally by a letter, that I would, before we proceeded to the argument today, apply to open the proof for the purpose of showing deeds. The proofs in the main case included, of course, the deed to the husband and wife, making them tenants by the entirety of the locus but it did not include the preliminary agreement forming the basis of that deed and reading over the case it occurred to me, who up to the time I did read it over was an entire stranger to the situation, that it would be proper and beneficial to our case if the agreement itself, leading up to

the deed, which is also in the name of both parties, husband and wife, should be offered, so I would like the opportunity to introduce that agreement.

Then the next thing I would like an opportunity to do would be to offer some letters that Mr. Rosecrans has written to a man named Knox, who has been the manager of this hotel for several years, I think, which go to contradict his evidence given in the case that he has been at the hotel all the time attending to the business of it, which he seemed to think was of importance, and I think it was, to show that he is entirely wrong about that and that during all this period, as these letters indicate, written to his man Knox, who was here, he was away in Philadelphia or elsewhere.

The third thing I would like to prove is the fact that for the year 1923, which is an important year, the agreement for the sale being made the first of October, 1919, the deed following some time in December, the bill being filed in or the subpoena being dated the thirteenth of September, 1923, testimony taken on January third, 1924, we desire to show that in June, 1924, Mr. Rosecrans filed with the Collector of Internal Revenue a joint return for himself and wife, income tax, stating the facts as they seem to bear us out with reference to this very property in question. I have a photostatic copy of it and I would like the opportunity to prove those three things. I don't know what position Judge Starr is going to take upon it.

Mr. Starr: May I see that income tax?

Mr. McCarter: Surely.

Mr. Starr: If your Honor please, my position with reference to this situation is this: This

bill was filed some time in 1923, I don't remember the date—

Mr. McCarter: Subpoena seems to be dated thirteenth of September.

Mr. Starr: Early part of September, 1923. The case came on for final hearing in January, 1924. Testimony was taken on the third day of January, 1924. Nothing further was done, so far as the complainant was concerned, until in the early part of September when Judge Schimpf was appointed Judge and Attorney General Katzenbach succeeded him as solicitor for Mrs. Rosecrans, he and Mr. Ridgeway. They continued in the case for a few months and finally Mr. McCarter arrived. Then after he came in the case we came down here one day for the purpose of arguing the matter and there was a proposition of settlement made and we came to an agreement and I don't think I am violating any confidence, Mr. McCarter, in saying the reason that agreement did not go through was because Mrs. Rosecrans refused to abide by the terms of the arrangement.

Now, in view of that situation, I think your Honor is not justified in exercising a discretion to open the proofs in this case. The mere introduction of these papers may not be significant, but after they are in it may be necessary for me to take testimony to meet the allegations or statements contained and it seems to me there ought to be a time when the testimony reaches a finality and there has been nearly two years from January, 1924, until the present time, November, 1925. No application has been made to re-open this case so additional proofs can be introduced. I think it comes with pretty poor grace, under the circumstances, under the delay

and all that has occurred since that time to ask that the case be re-opened and any testimony whatever put in.

Mr. McCarter: I confess that there has been a great delay. It has been owing to the fact that Judge Schimpf was allied with the case, retired, then other counsel came in, then I came in, then I thought we had it adjusted and before the day we were down here, when we did think it was adjusted, I had given notice to Judge Starr, just as I have given today, of an application to open the proof, not for all the purposes, but for one or two of the reasons I have indicated.

Now if we were going to launch out upon a sea of verbal testimony I would hesitate, perhaps, to ask the favor, because I concede it is a favor, of having the proofs opened, but, if your Honor is going to decide the case, and it looks now as if you were to have that duty and privilege, you ought to have all the facts before you touching upon the controversy.

Now I deem it of the greatest significance, in view of the evidence that was given by Mr. Rosecrans here, that the agreement for the sale of this property, which antedates the deed by several months, is in the same joint name and provides for the deed to be to husband and wife, that the deed itself is, and it bears very materially upon the accuracy and correctness of Mr. Rosecrans' evidence as to what occurred at the time. That speaks for itself. It is there. I will say to counsel frankly that Mr. Prince, who holds the original agreement, Prettyman's secretary, for some reason could not come down today but he sends a certified copy of the agreement and swears it is a copy. I haven't got the original. Then this question of the effect

of a joint return to the income tax officers during the year 1923, when this matter was ripe, sworn to in June, 1924, after the evidence had been given by Mr. Rosecrans, which, as Judge Starr tells you, was in January of the same year, 1924, I consider of great moment and I do not think your Honor wants, simply because there has been some delay that they have not been able to agree about the thing, anything but the full cogency of any proof that may exist.

The third thing is the letters. They are written by Mr. Rosecrans himself and they are written from Philadelphia to Knox the janitor or manager of the hotel here in Atlantic City during several months in 1923 and they speak for themselves, indicating, to put it mildly, that Mr. Rosecrans was entirely mistaken when he testified before your Honor, as he did by the proofs, that during all this time he was living here, operating this hotel, away up there now and then at night but practically here all the time. Those three things; no great excitement about that, either wrote the letters or didn't. I guess he won't deny his own handwriting. He either made the return or didn't make it. I don't know how he can add any testimony to meet that. I don't want to delay this thing. I don't want to come down here again on this thing and the third thing is the agreement, and I do hope your Honor will exercise your discretion and let the proof be completed and we will go right on and argue the case.

Mr. Starr: I don't know whether it is quite so easy to be disposed of as my friend suggests. I haven't seen the letters. I don't know what is in the letters. The probability is there will have to be some testimony heard to explain those

letters. They are from Mr. Knox or from Mr. Rosecrans. So far as the agreement itself is concerned, wouldn't have been any dispute in the case, if your Honor please, that this agreement was made in the joint names of Mr. and Mrs. Rosecrans. It is in the record. Judge Schimpf did not introduce the paper itself but he asked the question, I think of Mrs. Rosecrans and Mr. Rosecrans whether or not the agreement was in the joint names of husband and wife and he said yes. Now I don't know anything about this income tax return. It seems to have been made up by a gentleman by the name of Harris, who is an expert. With respect to that it may be that some explanation will be necessary from him as to why the return for 1923 was made in the joint names of husband and wife. I don't want to let this come in without explanation and it seems to me all of those things have been in the hands of complainant for nearly two years and I say it is not the proper—

Mr. McCarter: You are mistaken there, Judge. I only got the income tax return recently.

Mr. Starr: The opportunity has been there since June, 1924, with reference to that. So far as the letters are concerned, they are admittedly in the possession of Mrs. Rosecrans a number of months and all of those things could have been produced at the hearing, if you are going to permit a case, after the lapse of two years, to be opened to permit additional proofs to be put in—

The Court: Under the act isn't the husband and wife permitted to file a joint return when their property is entirely separate and distinct? It doesn't require a joint property to make a joint return by husband and wife? Is there

anything to indicate that there is property by its entirety in these joint tenants?

Mr. Starr: I suppose we will have to disclose to your Honor the contents of the paper. The only thing I see about it, in answer to this question, "Is this a joint return of husband and wife?" Answer, "yes." Now it is sworn to by Rosecrans. He says he runs the Princess Hotel. He is a hotel proprietor and he is Paul C. Rosecrans, Atlantic City, and the schedule represents the following depreciation and repairs, assets, receipts and expenses. Now I don't know whether that has any significance or not, but I don't want to let it come in the case generally without an opportunity to have Mr. Harris here to determine why he did it. This was prepared by Mr. Harris.

Mr. McCarter: This man is of age. He makes his return. He is responsible for it. I don't suppose he can hide behind Harris.

Mr. Starr: If he is to be discredited in his testimony by reason of anything contained in that income report he is entitled to have an explanation.

The Court: I don't see how there can be any advantage in offering the original agreement if the record shows, as stated by Judge Starr, that it is in the record that the agreement was made between Prettyman and Mr. and Mrs. Rosecrans and that the conveyance was to be made to them.

Mr. Starr: I read that this morning. I think it is there.

The Court: My present thought is that if the only part of the income tax return suggested is the one statement that it is a joint return, that that of itself would not be proof of joint owner-

ship in any specific property unless there is something otherwise in the return. I would hesitate to delay a final argument upon the case upon that.

I am inclined to believe, however, that the complainant should be permitted to introduce letters written by Mr. Rosecrans which pretend to affect the testimony which he has given before. Mr. Rosecrans being present he could, if he desired, explain those letters. I am inclined, under the circumstances, to refuse to open the case for the purpose of the two exhibits referred to, but to open it to permit these letters to go in, saying, however, if it becomes necessary, upon the part of the defendant, to take testimony of others than Mr. Rosecrans that they be permitted to do so.

PAUL C. ROSECRANS, Sworn.

Direct examination by Mr. McCarter.

Q I show you a letter written on the letter head of the Princess Hotel, Atlantic City, New Jersey, dated 11/5/23 and addressed "Dear Knox" and ask you if you wrote that letter? A I did.

Q Where from? A I was in Philadelphia going over some—

Q Never mind; Philadelphia? A Yes.

(Letter offered, received in evidence and marked Exhibit C. 1 of this date.)

Mr. McCarter: I have a copy of all these letters, Judge, easier for all hands to read. You can look at them.

Mr. Starr: I don't want to take the time reading each one, if you say there is nothing in them excepting showing he was in Philadelphia, if that is the only object.

Mr. McCarter: It is the only object I have, showing he was inaccurate on his statement.

Mr. Starr: If your Honor please, I think I ought to make an objection. Of course that letter is in, but my objection is that it seems to me that is a contradiction on an absolutely immaterial point in this litigation.

Mr. McCarter: A great deal of time was spent and witness seemed to think it was very important for him to show he was right on the ground running this hotel.

Mr. Starr: Pardon me. This is cross examination. This is the particular part, I assume the gentleman desires to contract, this testimony that was brought out on cross examination: "How many nights have you spent at the Princess Hotel since Labor Day? A Practically the biggest part of the time. Q Biggest part of the time? A Yes. I am away on business different times of the year but I advertise the hotel, see people to make arangements and get conventions." Is that the particular part, Mr. McCarter?

Mr. McCarter: I don't remember, Judge, but several times he stated in there he was there all the time and I think it appears very material on the question whether he was or was not there all the time.

Mr. Starr: I make the objection it is a contradiction on an immaterial matter.

The Court: I will permit it to show he was in Philadelphia 11/5/23.

Q I show you another letter dated 11/5/23, 11:45 A. M. on the letter head of the Princess Hotel, "Dear Knox" and ask you if you wrote that letter? A Yes.

Q Where were you when you wrote it? A I might have written that on the train; I was back and forward all the time, as I said.

Q Where were you when you wrote it? A On the train.

Q You are sure about that? A Yes.

(Letter offered, received in evidence and marked Exhibit C. 2.)

Mr. Starr: May I have the same objection?

The Court: Same objection to all, simply admitted for that purpose.

Q I show you another letter dated 6:30 P. M., Philadelphia, Pa., 11/9/23; did you write that letter? A That was written on the train you can tell.

Q Did you write that letter, Mr. Rosecrans? A On the train.

Q On the train although it is dated Philadelphia? A Mailed them in Philadelphia, yes.

Q It is dated Philadelphia. A That may be dated Philadelphia.

Q You remember writing that on the train too, do you? A Yes.

Q Sure about that? A I can tell by the handwriting, can tell by the way I write.

(Letter offered, received and marked Exhibit C. 3.)

Q I show you another letter written on the letter head of the Princess Hotel, Monday, 2 P. M., 11/12/23; did you write that letter to "Dear Knox?" Did you write that letter? A I did. I wrote that letter.

Q Who is Knox? A He is my assistant at the hotel.

(Letter offered, received in evidence and marked Exhibit C. 4.)

Q I show you another letter dated 11/21/23, "Dear Knox," did you write that letter? A I did.

(Letter offered, received in evidence and marked Exhibit C. 5.)

Q I show you another one dated 11/25/23, "Dear Knox;" did you write that letter? Is that your writing, Mr. Rosecrans? A Yes, sir.

(Letter offered, received in evidence and marked Exhibit C. 6.)

Q I show you another letter "Monday Evening, 8 P. M., 11/26/23;" did you write that letter? A I did.

(Letter offered, received in evidence and marked Exhibit C. 7.)

Q Another letter dated 12/2/23, did you write that letter? A Yes.

(Letter offered, received in evidence and marked Exhibit C. 8.)

Q Another letter 12/4/23, Tuesday, 9 P. M., did you write that letter? A Yes, sir.

(Letter offered, received in evidence and marked Exhibit C. 9.)

Q Another letter 12/8/23, Saturday, 9 P. M., did you write that letter? A Yes, sir.

(Letter offered, received in evidence and marked Exhibit C. 10.)

Q Another letter, Sunday 11 P. M. 12/9/23, did you write that letter? A I did.

(Letter offered, received in evidence and marked Exhibit C. 11.)

Q Another one 9 P. M., Wednesday, 12/13/23, did you write that? A Yes, sir.

(Letter offered, received in evidence and marked Exhibit C. 12.)

Q Another one Saturday 12/22/23, Hotel, what is that? A Sylvania.
Q That is in Philadelphia, isn't it? A Sylvania in Philadelphia.
Q You wrote that? A I did.

(Letter offered, received in evidence and marked Exhibit C. 13.)

Cross examination by Mr. Starr.

Q Mrs. Rosecrans, take each one of these letters and tell us where they were written, whether in Philadelphia or on the train or where,

if you can remember? A This one was written in Philadelphia.

Q What is the number? A Twenty-second of December.

Mr. McCarter: Where did you say that was written? A In Philadelphia (referring to C. 13) . C. 12 was—I wrote most of these letters on the train as I went back and forward to Philadelphia.

Q Can you tell us about this particular one? A This particular one I remember was written in Philadelphia (referring to C. 13.)

Q Written in Philadelphia? A C. 13 was written in Philadelphia.

Q C. 12? A C. 12 that was written on the train.

The Court: Between where?

A Between here and Camden. C. 11 was written on the train.

Q Between Atlantic City and Camden? A Yes. C. 10 was written in Philadelphia. C. 9 was written in Philadelphia. C. 8 I don't recall whether it was written in Philadelphia or on the train. C. 7 I don't recall. C. 6 I don't recall. It is a steady hand, though; it looks as though it was written in Philadelphia.

Mr. McCarter: Beg pardon?

A It is written with a steadier hand here, tell that was written in Philadelphia. I can say that was written in Philadelphia. C. 5 was written in Philadelphia. C. 4 written in Philadelphia.

I am not absolutely sure of some of them I wrote on the train and finished after I got up there. C. 3 I don't recall. C. 2 was written in Philadelphia. C. 1 I think was written on the train but I am not absolutely sure of just exactly where any of them were written. Some of them were written partly on the train and partly after I got up there. When I had time, whenever I had time I jotted down a few lines.

Q That is all.

By Mr. McCarter.

Q I omitted to show Mr. Rosecrans one more. I show you another paper apparently without date, is that your writing? A That is my writing.

Q Sent to Knox? A That was sent to Knox.

(Letter offered, received in evidence and marked Exhibit C. 14.)

Testimony closed.

Exhibit Offered at Hearing 11/24/25.

EXHIBITS OFFERED AT HEARING NOVEMBER 24, 1925.

Exhibit C. 1.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

11/5/23 5 P. M.

Dear Knox:

On October report I paid Nepley these bills also $29 to Felix Spatala on Oct. 25th Size $43.59 on Oct. 25th

Loose leaf ledger $7.20 on 10/27

10/24 Townsend—25 lbs coffee $7.50. Star Fish $35.60 on 10/23

Lewis (coal) 137.25 Part old bill

Segal 203.00 old bill

Felix Spatala 124.10 " "

Lorch Bros 17.26 10/31 bill

	10/16	10/9	10/27
Nepley	$22.44—	$29.09—	$37.25

Katherine can pick out what was actually used during October—Phone bookkeepers Lewis Coal & Star Fish etc Fill out enclosed card and send to Brittain also mail adv. to Rochester Herald with cards folders etc. It might help some.

Tell Kath. not to enter those items on cash book until it is ready to send up here, so Mrs. does not see it. She is not to see anything more pertaining to the business. Make nothing on room book except rate in block and if she studies that too much we will stop that. Did you try shutting off steam in wing and what difference it made on coal? Having basement and kitchen

airtight is a good thing. Will use the rest of that compo board for making rooms in basement for guests where chef & steward

Exhibit C. 2.

11/24/25.

(LETTERHEAD)

PRINCESS HOTEL
Atlantic City, N. J.

11/5/23
Monday 10.45 A. M.

Dear Knox:
When I did not get letter yesterday thought perhaps she had had you arrested on some fake charge or other. Give Katherine, Paul and Bessie Stinson's day and night numbers and Kauffman's day and night numbers—Walnut 1131 is his office and 628W Sharon Hill is his home number at Glenolden, Pa. near here. I phone Kauffman on Sundays so if there is any message to Stinson he has it for me.
A letter every 2 days is sufficient now with report for each day enclosed unless something special occurs. I guess her lawyer has told her she can't do anything and even if she owns a half interest which is impossible under the deed she would have to pay me $60000 cash. As it is now I can't raise any money on property without her signature altho I have nearly $100,000 tied up there. Of course she can't either but if I die she gets it all and I can't prevent it and if she does she can't prevent it coming to me. Thats' why I am trying to set deed aside and lawyers say I can do it as her money was a loan in the

transaction. Told Judge Starr I was going to Calif. but won't get away before December I guess.

Send me a half dozen sheets of that old Osborne stationery. It is in storeroom on shelves or in box back of door or the Lexington stationery. A few envelopes too.

Just run the adv. for chef once—yesterday ( ) Glad you have good chef. That was good to get that wedding party. Continue adv. in Press-Union.

If you can handle that business for me I'll never come back there as long as she is there Tell Katherine that too and as soon as season starts again will rate you both at a good figure for with you and Katherine and Paul and Joe in back and Eleanor in the dining room and Howard up-stairs with me at a distance directing the adv. etc. the business will go right on and you can all get together and owe her for any interference. Tell Kath. to keep track of Eleanor during winter if she leaves Atlantic City. Do not show party any more figures of business transacted but hide the loose sheets to mail to me. Say it is Mr. Stevenson's orders. Will have Kath come up here to work on big book some day soon. Light will run about that figure on acc't of vaccumm pump which does not run in summer Light in front is good thing. If the business pays this winter it will be quite a victory. Have Katherine send out a lot of cards to Jewish business people in New York The Jews come to A. City strong from Christmas to New Years (2 or 3000 cards will pay). They fill up the beach fronts that week. They all take them then and we might as well too. Just say

Exhibit Offered at Hearing 11/24/25.

Important Notice Special Christmas week rates
$22.50 to $45 each person American Plan
3 persons in room
$12 to $25 each person European Plan
2 persons in room
Rooms with bath
$30 to 45 each person A. P. (2 persons in room
$18 to 25 each person E P (2 persons in room
Rates for single rooms on request. French chef. Excellent table. Orchestra
For booklets & auto road map address Paul C. Rosecrans, owner & Proprietor
(Get Piano & violin for week if business warrants
Did not order mail sent there Got some here to-day. They get careless occasionally ~~will~~ Better call their attention to it at Inquiry window. Say it has happened several times before. Look over my letters when writing so as to answer all questions. Discontinue 6240 entirely. Pay October bills. Call cashier for the amounts, say bills were mislaid. I have them somewhere. The Sewage Co. will send a notice shortly, so let me have it. Tell Kath. to tell her she has orders from Mr. Stinson to say nothing to anyone about the business. She is getting around Kath. now so she wont testify against her in case you owe for interference, slander, malicious mischief etc. Her lawyer warned her. She has a nerve after the way she talked to Kath. Even told me in front of her if I had to keep her there to be a sport and keep her at a beachfront hotel, ridiculing her about her religion etc Tried to scare and bluff her in every way and came crawling back. She is a contemptible coward. When is Mrs. Thompson going? Has she (Mrs. R.) said anything about leaving for Calif. or in her car.

Exhibit Offered at Hearing 11/24/25.

How are rooms now with weather strips in cold weather? Glad Paul is doing so good in kitchen. Best regards to all

P C R.

Exhibit C. 3.

11/24/25.

6.30 P. M.
Phila. Pa.
11/9/23

Dear Knox:
Glad the wedding came off O. K. and everybody was satisfied and that Kath. is going to stay. You can do a lot of other things as she understands the rooms and rates. Tell her to let nobody go out. I am addressing some envelopes here for Thanksgiving cards. Try to locate some Osborne stationery, Paul might have some among his papers he got out of my room tied in sheet. Watch out for window in woodshed and little gates at side of big gate so she don't have him sneak in there at night after she comes in Mark down when she comes in every night. If Mrs. T. don't get out get old Mr. Powell #608 N. Arkansas Ave to talk to her, we hired her five years ago. I'll write him and have him talk to you too. He is good and knows more about law than lots of lawyers. He will be over and I'll have him phone you when he is coming and you can talk to him back in #11 room. He will come around the side and you can leave small gate open. I think if he has a good talk with her she will go.

Get that sofa under mirror fixed if they don't want too much and get a few new records occasionally. I will take care of those old bills—Henig—Ferris and the excess furniture as soon as I know they are O. K., so tell them as soon as you hear from Bing they will get checks. I paid the Aug. & Sept. phone bills. They should have them listed each month as one is apt to forget a lot of things I guess they trim me in the summer for a lot of stuff. Was talking to Lorch to-day. He has not been down since. He says to save that torn laundry. That is all good stuff. If we can keep place open and on paying basis there will be no trouble about renewing notes in February for they will all see that she is losing out. If they ask when case is coming up say that it may take a long time as nearly all my bills, papers, cancelled checks etc are in my trunks in my room at L. A. Athletic Club and some are as far away as Manila in a safe deposit box there in a bank where I have been carrying an account since I served there in the army during Spanish War. Tell them even if she is given a ½ interest she will owe me ½ of all I spent, on repairs, int. on Mtges, $12000 on account of mtge, taxes water rents etc or about ½ of $100,000. If I pay her rent for her half she must pay half the taxes etc and repairs and the more repairs the less her income and some years she would probably owe me money by the time all the repairs were made. The house rented for $12000 before my improvements made it worth more so she could only get $6000 at the most. I furnished all rooms in wing and parlor, lobby and sun-parlor and put in $10,000 worth plumbing so house could be used for Easter that year. Worked from December to April to get it in

Exhibit Offered at Hearing 11/24/25.

shape and the plumbers had to work day and night to get thru. How much is due Harry L. Pay him another $100 next week. If she ever talks settlement to you or Kath. tell her and tell Kath. to tell her to make it in writing and leave it with her attorney and it will be forwarded to me promptly. Mr. Stinson had told you that.

Does anyone follow you out to the Apt. houses? If you are sure someone is following you, go up to him and ask him to explain himself, Make sure a cop is around first. There is a law against that and the one following another must explain himself and identify himself. Just tell the cop, this man is following me and has been for some time then you will find out who he is and who told him to follow you. The back of house being tight makes front worm for there was a constant draft thru from back. How much was paid for carpenters and for material altogether? Closing up those holes in wall back of boiler must have made a big difference too.

Tell Paul to get all his mothers' furniture out of house and send to Marie, his married sister. They are going to housekeeping and I promised it to them. The piano in #6 room is part of it A leather chair is in #8 room, another in lobby and one in #11 and the arm chair in office where 4514 phone is. The buffet in dining room and china closet in silver room. He knows where dishes are in barrells in store room. He can wrap all pieces in newspapers and put in #11 room and some morning take it all over to some barn where those trucks that go to Phila. store their stuff. I'll write him out an order to take the stuff when he is ready and she can go to h— She has been trying to hold those things all these years. That shade in Parlor over table is an-

other piece and sofa by elevator another. Am not sure where dining room table is.
Get your letter files and locks on doors so you can work better. She is not entitled to know anything according to law. Just eat and sleep there that's all

Yours Etc

P. C. R.

Tell Ferris I did not get all the way to coast but only as fas as Denver that's why letter came back.

Exhibit C. 4.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

Monday 2 P. M.
11/12/23

Dear Knox:

Just got letter. Had hard time to get it as Postal Co. would not sign for it. Kauffman had to go to Post Office, Supt. office to get it for me and they gave him h— for having it sent to Postal Co. so on Sundays and holidays after this send mail to H. C. Brown, Hotel Vendig 10th & Fillburt for I was there for 2 weeks and they know me.

This is the worst month but think we can make it pay if it don't get too cold. Did Kath. get October report done? That is important and I need it to show the different creditors that I was right to keep house open.

Exhibit Offered at Hearing 11/24/25.

Make about 6 copies. The bell boy can take Typewriter to Kath room where she can work undisturbed in the evening. Am anxious to see her get car. Keep track of time she comes in at night and better leave window open so Paul can watch some night, then we'll get the detectives busy.

Had talk with Bell Tel. Co. attorney and he said it was a fine legal point to decide but in my favor.

We are gradually winning the game. It is a case of wait, like Kipling says—If you can wait and not be tired by waiting or being lied about don't deal in lies, or being hated don't give way to hating and yet don't look too good or talk too wise—

Hate and vengeance are consumming her soul and making her life miserable but it all comes back to her.

Are you dealing with Schwartz & Garfinkle? Order from them right along. They are very good. See Mr. Garfinkle too. Tell him it is best for me not to be there and I am going to California in a few days. I promised to see him before I left.

Was there but he was out on vacation.

What is Harry's bill outside of note? Want to clean him up before I go.

Best regards

P. C. R.

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 5.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

9 P. M.
11/21/23

Dear Knox:

Was over in New York to-day to attend the Hotel News Exposition at the Grand Central Palace and some demonstrators for dish washers and dough mixers will be in to see you. Get size of space required for Crescent Machine E E or F F size of tables that go with it etc. Have to get new machine in spring as old one breaks too many dishes. Twice a week have Kath. get out a letter to all the Phila. Papers running Princess Adv. and give a list of arrivals at Princess to publish in A. C. news. That all helps to advertise house. Have been neglecting that lately. Just write and say— Enclosed find list of arrivals at Princess which kindly publish in your At C. news columns. In 1st letter to-day give names for about a week back. It don't matter if they are still at hotel or are gone, just so they were registered.

Hang one of my coats on back of office chair with enclosed badge fastened on it also lay cap on desk. When laundry returns from Forrest send it up. Laundries are bum up here.

Yours truly

Paul C. Rosecrans

Let me know about curtains & draperies.

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 6.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

11/25/23

Dear Knox:

Glad you won another battle. Well, thats about her last effort. That deed don't amount to anything, I have another one here. They are recorded at Mays Landing and when lost another one is made. Think best to keep Marie there and have Bruce come down every day or two. It helps to humiliate her for she has always barred the children from home and hotel and has begrudged them any money I gave them or even a bite to eat. To have the four of them there is an awful bitter bill for her and on some week ends I'll have Dorothy down too. Maries' wages don't count on your expense but we'll put her on pay roll. Whether I get her off deed or not I don't intend to bother much with hotel anymore for the business is there and you and Kath. and her mother & sister and Paul & Bessie and Marie and Bruce can run it. Bruce is a good mechanic and will be a good help, around there. With your experience this winter you can easily handle the house in summer with a detective to stay right with her all the time to keep her in her place if she stays there.

Have Kath. count those (19) blank sheets I signed as she does them and get name and address of each person you give them too. Keep them locked up. Let me know about them in next mail. Show them to business men too so they

Exhibit Offered at Hearing 11/24/25.

know how we keep her in line. Send me about six.

Glad up-stairs looks so good. Her and Mrs. T. would like to go in court and shout about house being dirty etc. She kicked about table but we have dealers to prove we buy good stuff so that's nothing to worry about. Everything is O. K. now and Marie can take charge upstairs and overlook rooms, parlor etc. That will put a kink in her for fair. We'll hold the fort.

Will have Faith's men down to get heating and hot water in shape on Monday.

No hurry to see Hickman Harry L. or Gormley but show them that notice and October report 9 A. M. is a good time to see them. See Harry L. about those notes

1000—9/18—11/19—$10 int

1200—9/18—12/18—$18 int

They had $54 or $45 int charged up. Give Oct. report to Alex. Hamilton to show Mr. Jeppler his boss. Tell them all she insisted on closing Oct. 1st and that proves I was right to keep open.

See Ernest Beyer the stationer. He handles little safes called Neilink Safe. They cost about $30 and up. Get one for front office to lock up papers etc I had one for years. Show report to Nepla girl too and Lorch when he comes but I think I'll see him I guess up here.

Next time I meet her I'll cross street but of course if she only sees me she can make up all kinds of lies, that I should have said etc.

Judge Haight was right about what he wrote her in that letter but this hiding away was my idea and that's what heat her.

See if that victrola from Apt is among furniture in that room. I want to get it up here.

There should be a lot of records with it. Let Paul look in there.

Ernest Ruegg 185 Madison Ave New York makes those curtains and will send you samples and prices. Write and sign your name saying I am away for the winter etc We'll have to get some new ones anyway and they are cheap and show the rooms up. Get rugs in sun parlor and get Faith's men to put in new steam pipes there for radiators and cover them good in back of glass so no cold can get to them also have them look at pipes on porch in box. Those front pipes used to freeze and effect whole front of house. Order vestibule and piece gas steam radiators at Gas Co. Marie can do a lot of that work for you, look over Harrys' books etc, check up advertising bills etc. She can go up in Gormleys' office. He knows her. There is lots of work she can do for she knows the town and the people and understands the situation etc. See if there are any address books down there. Think November will show up good and from now on we'll go ahead all the time. First part of Dec. is slow.

Phone Parsons and have him come over and talk to Mrs. T. I'll try to get him too.

Yours Truly

P. C. R.

Send me copy of letter I sent to Brittain.

Get Bruce to put radio in hotel. Get cost of wires etc from Wright

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 7.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

Monday Eve 8 P. M.
11/26/23

Dear Knox:

Did not send that letter special for I know what a mistake that would be. I just put on enough stamps to carry it. Did not mark it special either. They are same dubs at P. O. That might have been bad had you not caught it. Be sure someone is always there when you are away to head anything like that off. Glad you did so well over week end. This week will be good too. Nov. will show up good and during cold months it will depend on how cold it gets. Faith's men will get down Tues. Could not get started to-day. Glad weather is warm. Did you get mirror at Strauss? Marie can get that. She knows them well. She can help Paul with buying too.

What did party say about coat and button and laundry. Well send laundry every week and you return it when clean. Send to Forrest. She will probably claim I deserted her where as a matter of fact Ive lived at hotel all the time and have my clothes there. That's why she's so furious She thought I'd go to Calif. and she'd have things her own way, claim desertion etc. The way it is now the judge will ask where she lives, she'll say Princess I'll say Princess and her suit is thrown out for whether house has three rooms or 300 it makes no difference. They would have to have a court in every block for all the women who

want more money from their husbands. She will be a laughing stock for the town. Then I'll start my suit to get her off the deed. Nearly all smaller properties are held by deed same as Princess but I made mistake by letting her on such a large property as security for so small an amount, without getting a written agreement from her.

Glad Marie is doing so good. Her husband can do a lot of that electric work that Wright does.

Made rates on cards I sent $16 Wed. to Sunday with all meals or $7 Wed to Friday. Make it Wed. P. M. to Fri. before left. Of course if they came in before lunch on these rates you have to give them that for cards say Wed to Fri. and Wed to Fri.

Sent 1000 to nearby cities. Be sure and send list of arrivals to Resort Adv. Department of newspapers. Did not see Princess arrivals in yesterdays Inquirer. Ask them to let you know if they will publish them. Deposit $140 in bank again as soon as you have enough ahead and later put in amounts I paid Lorch, Wexley, Salz etc. Will get them all together. Get Gomleys' advertising bill for October.

When business starts in will have a big detective to stay there all the time and when she starts any noise take and set her out in the street or put her under bonds to keep the peace.

You can Kath. can sure sue her for an awful pile. She'll be like a clown in a circus and amount to nothing around there. Everybody she insults can haul her right into court.

I'll make her pay later in dollars and cents for the blows she struck me. To close house

Exhibit Offered at Hearing 11/24/25.

would have been a big thing for her. Howard saw Mr. Stinson Saturday and can come anytime we need him, so that's one we can depend on to help hold the fort, but I think the worst is over.

Yours Truly

P. C. R.

Exhibit C. 8.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

12/2/23

Dear Knox:

Glad the heat is fixed. That will help some and keep coal bills down. I'll have those men come down every once in a while during winter. Try to get those notices back, say you want to make copy and will return them soon as you get them from printer.

Have not got them worded right. She tore one up didnt she. It is not important but it is best to get them back and make sure she has none. The least said under the conditions is best. I am living there in my room and have clothing etc there that makes it a private home same as any other home, whether 2 or 200 rooms does not matter in law. If I can't get her off deed things stay as they are and I am master of situation anyway and if she wants more support she must go to domestic relations court.

Exhibit Offered at Hearing 11/24/25.

Be sure to have bell-boy go to her room with menu each meal to ask her what she wants as long as she is not eating in dining room. That is best. Forgot to tell you time & again. In case of any accident notify Dr. Stewart and Mr. Hickman at once or it will cause trouble. Bill forgot one case last summer. Am trying to get Mr. Gesell the steward from Ritz Carlton over to teach Paul about stewarding. He was steward in 1922 and a good one. Mrs. roasted him something awful and wrote Lily in N. Y. who sent him. They have her down as a nut for a year past.

Mr. Gesell can show him how to buy and cut his meat. That saves a lot. Send all those bills you can find. Did Stein come around? He was going to kid her some. Take care of registers I sent so she don't get them. 1921-1922.

Send up my clean laundry. Kauffman has moved to #137 S. 16th St. now so send everything there but laundry etc send to 411 Lincoln Bldg care of Mr. Sam Ross.

If Marie has time she can help checking up ads.

Did not see our arrivals in Inquirer to-day.

Are names being sent in? Phone resort Adv. department "Inquirer" about that and see or phone Mr. Gormley about the others. Am writing Gormley too

Yours Truly

P. C. Rosecrans

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 9.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

9 P. M. Tues.
12/4/23

Dear Knox:

Got letter at Vendig O. K. It was post marked A. City 9 A. M. Sunday morning I guess late mail Sat. night is held over.

Have mailed check to Hotel Association. Send 1000 envelopes no cards. Tell her you have not got Power of attorney letter you mislaid it etc. Got the personal letters in letter before Sunday. Best to phone for appointments to various parties It will save lots of time Phone Stein I am in N. Y. but you were talking to me and told you the bank took the check for the interest on the note, for four months and I think note is O. K. if they took interest in October. I will seem in a few days. Send 1919 bills first. Send to me care main office Am. Ry Express 18th & Market St. mark—Hold—Will Call and send me receipt.

I have to get all bills for expense on property etc 1918 bills are not needed. Take up with Gomley and Dilg about publishing names in papers. Will see Inquirer myself. Send the names to all papers with ads. in Gormley will tell you the ones I place Inquirer myself. Get a lot of plain sheets like enclosed for Kath. reports etc. How about Victrola? Is it in that room? As Mr. Deety at Western Union about those copies of Devines telegrams to L. Angeles and mine to him during Feb. March April and May this year. Tell him case is in court now and

only reason I have not needed them was I have been away most of time. Tell him I have not goen to Calif. yet on acct of case with Mrs. R. Judge Starr want to see me to-morrow Wed at 2 P. M. If she comes up here phone Mr. Stinson and I'll see him before I go to Camden Be sure and phone or see Mr. Deitz. He is manager there. Did Faith's men ask for me? How about draperies? Get Wyandotte Powder at Burries for Lobby floor Get electric vaccum cleaner fixed by Mr. Wright.

Phone bookkeeper at Peoples to send note over I gave him Nov. 19th and get exact dates of notes he has and amounts. I must fix this on my books. Tell him to send it with next order. Are you getting butter, eggs from S. & G.? Is that N. Y. butter bill paid? (Balfour Bros). How many Nepleys bills have I paid and total? How much coal does it take now? Phone Fisher to get some winter stuff in garden. Better have talk with him at his green house at 1516 Artic Ave. He is always there in morning. It is right where Electric trains come in. Tell him about Mrs. etc and say I go out early and get home late so I don't meet Mrs. Am in N. Y. & Phila. & up state getting winter business.

Tell him about her tearing up my clothes etc. He is an old friend of mine and just a little puzzled that's all. Needs a little light.

Look at all Sunday papers. See if Princess arrivals are put in. Am running ads and they should be.

Keep close track of Gilmores time. Get time clock fixed by Friedbergs man. He lives across street at Oak Apts opp. Manhattan or house above. Friedberg the jeweler is on Atlantic Ave opp. Colonial Theater. It needs some nice

palms and green stuff to set lobby off good. Send old or dried up palms to Fisher to rejuvenate in green house for they cost $25 each. Send Burns with them right away. Forget all about it. How is sun parlor? Did you put in rugs? That can be made a nice place. Did you put floor lamps in there. Make notes of everything. Send receipt to Elec. Co. Just found it

Yours truly

P. C. R.

What time are these letter post-marked Phila. I write them between 8 and 9 P. M.

Exhibit C. 10.

11/24/25.

Sat. 9 P. M.
Phila. Pa., 12/8/23

Ernest Ruegg 185 Madison Ave N. Y.

Dear Knox:

Enclosed letter to Sewett with check. Did you hear anything more from Henry or Brown or Ferris or lawyer represent those guests who got no room last Labor Day. Write Ruegg I am Traveling in west and you have sent me bill. Ask Fisher if he discounted note for $200 to pay that bill he sent. Tell him check for interest came thru ($4) Note what he says. Package came at Kauffmans. Will get it Monday.

When you talk to her tell her I said she must have an awful guilty conscience to want to see me all the time or want to talk to me.

Exhibit Offered at Hearing 11/24/25.

Is heat started early now 5 A. M. as I suggested? When cold nights come will have to get a night man on I guess. Wrote Guttridge for guarantee on roof. Was to see Mr. Long to-day of S. Faith Co. Will have them go over everything in week or two.

Yours truly,

P. C. R.

Exhibit C. 11.

11/24/25.

Thursday
11 P. M.
12/9/23

Dear Knox:

Do not say anything to her when she returns. Wait until you hear from me again.

Say you only saw me once and I just came in for a few minutes.

Will send an overcoat and cap down. Do they hold big packages or send them over to hotel?

Yours truly,

Paul C. Rosecrans

Are lamps in sun parlor? Is vacuum cleaner fixed?

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 12.

11/24/25.

Atlantic City, N. J. 9 P. M.
Wed. 12/13/23

Dear Knox:

Got all books O. K. Just what I needed. Send 1921 room book too same way. Tell Mrs. and also tell Parsons to advise her that she can have a maid of her own employ but not a discharged employee of the hotel as that is bad for the moral of other employees and interferes with the conduct of the business. Nov. was good business. There is so much had to be spent this year to put house in shape for winter. Tell Kathe to work on Adv. bills and Bessie can help her. Try a woman cook one who can bake that gives Paul time to work in dining room. Advertise for good woman cook and you can get plenty and they are good bakers. You have to watch so they don't carry a lot of stuff out. Make them go thru lobby. Pay about $15. to $20. a week. I think that is your solution for kitchen and cuts down expenses. Buy from S. & G. right along. Watch out for that. Don't see much on Nov. report for S. & G. Did Guttridge send guarantee or fix roof? Have written Parsons so you need not phone him.

Exhibit Offered at Hearing 11/24/25.

Exhibit C. 13.

11/24/25.

PRINCESS HOTEL
Atlantic City, N. J.

Hotel Sylvania
1.30 P. M.
Sat. 12/22/23

Dear Knox:

Just got letter at Sylvania Hotel. Sure glad to get it. Send them here always on Saturday—Mark (Hold until called for)

Put no return address. This is a nice hotel too. Mail letter to Hickman right away and if you get this late, put on a special delivery stamp.

Enclosed $50

There ought (copy torn off)

good week end.

Get that $3000 cancelled check from my savings account. It is dated Oct. 2d 1919. I need it. Wire me if anything important care Sylvania Ho. Mark "Hold will call" Send Western Union from Bdwlk office.

Use my own name. This warm weather should save coal. Watch that fireman so he don't carry anything out. Keep calling Postal Tel. on Bdwlk

Yours Truly,

P. C. R.

COMPLAINANT'S EXCEPTIONS TO MASTER'S REPORT.

Filed August 24, 1929.

IN CHANCERY OF NEW JERSEY.

54/319

Between	*On Bill, &c.*
RAE SCULL ROSECRANS, *Complainant,*	*Complainant's Exceptions to Master's Report.*
and	
PAUL C. ROSECRANS, *Defendant.*	

The complainant excepts to the report of Clifton C. Shinn, Esquire, Master in Chancery, dated the 24th day of July, 1929, in the following respects, that is to say:

FIRST EXCEPTION.

Because the Master allowed the defendant as a credit the sum of $56,150.00 for interest on the first and second mortgages, payments on account of principal of mortgage, and payments for extension of the first mortgage; for that none of the sums so paid by the defendant should have been allowed as a credit.

SECOND EXCEPTION.

Because the Master allowed the defendant as a credit the sum of $33,767.64 for taxes paid on the premises in question; for that none of the sums so paid by the defendant should have been allowed as a credit.

THIRD EXCEPTION.

Because the Master allowed the defendant as a credit $26,177.92 for premiums for insurance on the building on the premises in question and on the furniture therein; for that none of the sums so paid by the defendant should have been *been* allowed as a credit.

FOURTH EXCEPTION.

Because the Master allowed the defendant as a credit certain sums set forth in Schedule 8 of the Master's report for premiums paid for fire insurance on the furniture in the building on the premises in question; for that none of the sums so paid by the defendant should have been allowed as a credit.

FIFTH EXCEPTION.

Because the Master allowed the defendant as a credit the sum of $2,574.20 for water rent for water used in the operation of the hotel on the premises in question; for that the sum so paid by the defendant should not have been allowed as a credit.

SIXTH EXCEPTION.

Because the Master allowed the defendant as a credit the sum of $3,698.95, for sewer rental for the sewer used in the conduct of the hotel *buisness* carried on in the building on the premises in question; for that the sum so paid by the defendant should not have been allowed as a credit.

SEVENTH EXCEPTION.

Because the sum of $25,000.00 per year found by the Master to be the rental value of the premises is inadequate, and the Master should have found a larger sum.

EIGHTH EXCEPTION.

Because the net amount of $26,315.65 found to be due from the defendant to the complainant is insufficient.

The complainant therefore prays that the Master's report be corrected so far as hereinabove excepted to.

McCARTER & ENGLISH,
Solicitors of Complainant.

Service admitted Aug. 19, 1929.

STARR, SUMMERILL & LLOYD,
Solrs. of Defendant.

NOTICE OF APPEAL.

Filed March 5, 1931.

IN CHANCERY OF NEW JERSEY.

54/319

Between	
H. Rae Scull Rosecrans, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
Paul C. Rosecrans, *Defendant.*	

The complainant appeals from so much of the final decree made in the above-entitled cause on the 25th day of November, 1930, upon the advice of the Honorable Robert H. Ingersoll, *V.-C.,* as confirms the Master's report dated the 24th day of July, 1929, to the Court of Errors and Appeals.

McCARTER & ENGLISH,
Solicitors of Complainant.

G. W. C. McCARTER,
Of Counsel.

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

G. W. C. McCARTER,
Of Counsel.

PETITION OF APPEAL.

Filed March 18, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between H. Rae Scull Rosecrans, *Complainant-Appellant,* *and* Paul C. Rosecrans, *Defendant-Respondent.*	*On Appeal from Chancery.* *Petition of Appeal.*

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of H. Rae Scull Rosecrans, appellant in the above-entitled cause, respectfully shows:

Your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Robert H. Ingersoll, Vice-Chancellor, bearing date the 25th day of November, 1930, in a cause pending therein, wherein your petitioner was complainant and Paul C. Rosecrans was defendant, in this respect, that the said decree ordered, adjudged and decreed that the Master's report dated the 24th day of July, 1929, be confirmed; and your petitioner further shows that by virtue of an interlocutory decree made in said cause, dated the 18th day of September, 1930, the exceptions filed by your petitioner to the report of C. C. Shinn, Master, were overruled; and your

petitioner further shows that the terms of the said interlocutory decree were and are erroneous, for that the said Court of Chancery, instead of overruling the same should have sustained each and all of the exceptions presented by your petitioner to the said Master's report; and in like manner the final decree should not have confirmed the said Master's report, but should have modified the same in accordance with the exceptions thereto filed by your petitioner.

Your petitioner therefore prays that the final decree of the Chancellor in the respects in which it is appealed from, as well as the interlocutory decree above referred to in the respect in which it is complained of, may, in the particulars aforesaid, be reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as shall seem meet.

McCARTER & ENGLISH,
Solicitors of Appellant.

G. W. C. McCARTER,
Of Counsel.

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New Jersey Court of Errors and Appeals.

Between

H. Rae Scull Rosecrans,
Complainant-Respondent
Appellant,

and

Paul C. Rosecrans,
Defendant-Appellant
Respondent.

On Appeal from Chancery.

BRIEF FOR COMPLAINANT.

Both parties have appealed from the final decree of the Chancellor. They will therefore be referred to in this brief simply as complainant and defendant respectively.

Statement.

The bill of complaint in this cause was filed by the complainant, then the wife of the defendant, to obtain from her husband, the defendant, an accounting of the rents, issues and profits derived from the defendant from the possession of a hotel property in Atlantic City, particularly described in the bill of complaint; and for the value of the defendant's use and occupation of the said premises from December 1, 1919, when, by deed of that date, complainant and defendant became owners of the property, real and personal, as tenants by the entirety.

New Jersey State Library

To this bill the defendant filed his answer, denying that the complainant was co-owner with himself of the property, and by counterclaim alleging that the deed by which the complainant, as well as he, acquired an interest in the property was in fact intended by the grantees to be a mortgage only, so far as the interest of the complainant was concerned.

The prayer of the counterclaim is that the deed, insofar as the wife's interest is concerned, be declared to be a mortgage, and that the husband be enabled to redeem his wife's interest in the property by paying her the amount he alleges he owes.

The case came on for hearing before Vice Chancellor Ingersoll, who advised an interlocutory decree (Case, 156) which adjudged that the complainant was tenant by the entirety with the defendant of the property therein more particularly described, and ordered the defendant to account to the complainant for the rental value thereof from June 1, 1922; and referred it to a Master to take and state the account, allowing all just credits. All further equity was reserved until the coming in of the Master's report. No appeal was taken by the defendant from this interlocutory decree. The accounting before the Master was proceeded with. Thereafter the order of reference was modified to direct the defendant to account for the furniture, fittings and hotel equipment, as well as the bar real estate (Case, 159). Testimony before the Master was taken. He filed his report (Case, 161) finding that the complainant was entitled to a net amount of $26,315.65. Exceptions to this report were filed by the defendant (Case, 170) and complainant (Case, 775). These exceptions were argued before the Vice Chancellor, who advised an order over-ruling all exceptions, and re-referring it to the Master to bring the disbursements down to June 1, 1929, the ending date from which the rental

value had been computed, the original report having allowed disbursements only down to January 1, 1929 (Case, 179).

Pursuant to this re-reference testimony was taken and a supplemental report made, which reduced the net amount due the complainant to $22,077.32. On November 25, 1930, a final decree was advised, which recited the foregoing proceedings, confirmed the Master's report as modified, adjudged that there was due to the complainant the net amount found due by the modified report, ordered that the defendant do pay it, declared it to be a lien on the defendant's interest in the premises, and allowed counsel fee and costs; ordered a *fi fa* to collect the amount adjudged due the complainant, and referred it to the Master to continue the accounting from June 1, 1929 forward. This decree has been appealed from by both parties. Neither appeal was from the whole of the final decree. These appeals will be considered separately in this brief.

A.

THE DEFENDANT'S APPEAL.

I.

The interlocutory decree of April 16, 1926, adjudging the complainant's interest in the property to be as alleged in her bill of complaint is right and should be affirmed.

This decree was not appealed from when made, but its making is now complained of (Case, 7, line 20) by the defendant in his petition of appeal from the final decree, as we concede he has a right to do.

We shall first endeavor to review the undisputed facts shown to have existed between the parties, husband and wife, previous to the making of the deed in question. Mrs. Rosecrans became acquainted with the defendant in 1914 when she was placed in charge of the financial affairs of the Hotel Lexington at Atlantic City, of which Mr. Rosecrans was the lessee, by a creditors' committee, after his bankruptcy (Case, 91). Mrs. Rosecrans' evidence shows that she has been industriously at work for years, and had acquired sufficient confidence in the community as to justify her being placed in positions of responsibility and trust in hotels. Mr. Rosecrans, although engaged in the hotel business for upwards of twenty years, had not made a success of it, and, although previously married, and having three children whom, with his wife, he was compelled to support, his salary had not exceeded $150. a month, and, as before stated, he had finally been forced into bankruptcy (Case, 92). The proofs

show that from a period in 1918, and during the time the parties occupied the respective positions above noted in the Hotel Lexington, and the Hotel Osborne, Mrs. Rosecrans had loaned Mr. Rosecrans the sum of $12,948.29, without any security whatsoever, these loans being made from time to time as Mr. Rosecrans needed the money. They were married in September, 1918, and much of this money was loaned before the marriage. Mr. Rosecrans' efforts at operating the Hotel Osborne were no more successful than his previous efforts. On March 1, 1918, six months before his marriage to Mrs. Rosecrans, the lease that Powell, a friend of Rosecrans, had of the Hotel Osborne, was assigned to the complainant (Ex. C-31), who was then Miss Scull. In September, 1919, the parties complainant and defendant were in a position where they might be forced out of the hotel business. The lease on the property had expired and the prospects were that they could not obtain a new lease except at exorbitant rentals (Case, 44). Mrs. Rosecrans testifies (Case, 44) that on September 10, 1919, the first anniversary of her marriage, she returned late in the afternoon to the hotel, and found her husband in tears; that he told her he was tired of renting hotels, and wanted to own one, but that he had no money, and suggested to her that they go in the hotel business together, she being experienced in the business end of the hotel business, and he being experienced in the advertising and management end thereof. She further testifies that the following conversation occurred (Case, 44-46):

> "Paul, we are both smart and we are both young, we don't have to take anything off of anybody, and we will buy a property of our own."

His reply was

> "That is right, we will go into business together; you have a business education and I

> have a knowledge of advertising, and we will show these Atlantic City people we can get along without a rented property."

Mrs. Rosecrans further shows that she thereupon called up Miss Margaret L. Farley, the secretary of Mr. Prettyman, who owned the Princess Hotel, and suggested a conference (Case, 45). Mr. Rosecrans admits (Case, 79) that his wife took the initiative in the purchase of the hotel property by getting in touch with Miss Farley. He further admits (*ibid.*):

> "She (Miss Farley said that they had the Princess for sale and it would be a good proposition for *us* to take it over. There was no terms mentioned. She wasn't quite sure what the terms were."

He likewise concedes (Case, 79) that the negotiations for the purchase of the premises were conducted by both his wife and himself, and Mr. Iszard, a practicing attorney, testified (Case, 113) that Mrs. Rosecrans brought her husband to his office, and asked Iszard to represent them at the settlement of the property. The result of these negotiations was the making of a contract dated October 1, 1919 between Mr. Prettyman, of the first part and "Paul C. Rosecrans and Rae Scull Rosecrans, his wife, of Atlantic City, New Jersey, parties of the second part". This paper is under the seals of the three parties signatory, and provides for the sale to and purchase by the parties of the second part of the property in question, known as the New Princess Hotel "together with all machinery, gas fixtures, heaters, standing furniture, carpets, shades, rope fire escapes and in fact all furniture mentioned in a certain inventory hereunto attached and made a part of this agreement, on terms and conditions as follows, Full Consideration, $125,000. payable as follows, $5,000. to be paid

upon the signing of this agreement, receipt whereof is hereby acknowledged, $15,000. more in cash to be paid on or before December First 1919 when Deed and Title are to be passed and possession given. A $30,000. first mortgage now on said property held by Mrs. Kunkle of #315 S. Broad St. Phila. to remain, the balance, $75,000. to be accepted by the party of the first part from the parties of the second part being a purchase money mortgage, this mortgage to cover all furniture, etc." It is conceded that the $5,000 paid at the time of the execution of this document was paid by Mr. Rosecrans. Early in December, 1919, Mr. and Mrs. Prettyman, as parties of the first part, executed to Paul C. Rosecrans and Rae Scull Rosecrans, his wife, parties of the second part, in consideration of $125,000 a deed for the premises in question. Included in that deed is a schedule of the goods and chattels located therein. The deed recites that the property is sold subject to the operation of a mortgage of $30,000. The deed is dated the first of December, acknowledged the second, and recorded the eighth of December, 1919. Both Mr. and Mrs. Rosecrans were present at the settlement, and it also appears uncontradicted in the case that the sum of $8,758, the only cash that passed at the time to Mr. Prettyman from either of the grantees was paid wholly by Mrs. Rosecrans. The purchase money mortgage provided for in the agreement was made by both husband and wife, the grantees in the deed, and the bond for which the mortgage was security, amounting to $75,000, was executed by both of them.

Immediately after the passing of the deed, the husband and wife both entered upon the premises, and after putting it in shape commenced operating it as a hotel. They lived for three or four years in an apartment separate from the hotel, but took their meals there, and, while the hotel business was con-

ducted in the name of Mr. Rosecrans, to which Mrs. Rosecrans objected, she, herself, participated in the conduct thereof (Case, 115).

> "Q. When you took the Hotel Princess after your marriage did you do any work in the Princess? A. Yes.
>
> Q. What work did you do there? A. I worked all through the house. Bought the supplies. He wasn't there and I was always around the house. Worked late at night. Kept the books."

Mr. Rosecrans (Case, 94), being asked about this matter says:

> "She did some work voluntarily. Not at my request.
>
> Q. Did she do any? A. She helped some with the books, yes.
>
> Q. Did she do anything else? A. When she would go to Philadelphia she would do some buying, but it was all optional with her whether she wanted to do it or not."

It is further admitted (Case, 96) that she paid the bills of Wanamaker, and others, for furnishings, linen, etc. for the hotel, and when bills that were incurred and not paid she, with her husband's knowledge, was frequently sued jointly (Case, 98) with her husband therefor.

Things ran on in this way until both parties in the latter part of 1921 went to California, from whence Mrs. Rosecrans returned in February, 1922; she returned West in the fall of 1922; came back in the spring of 1923, and in her husband's absence, took entire charge of the hotel. On March 22, 1923 (Ex. C-28) her husband telegraphed her as follows:

> "COULD NOT HEAR OVER PHONE ACCOUNT STORMS MIDDLE WEST TAKE FULL CHARGE HAVE ADVISED CHARLES TODAY TRY TO GET LOUNSBURY FOR OVER EASTER DO NOT CARE ABOUT MONEY DO NOT WANT OTHERS TO GET THE BUSINESS FAITH COMPANY WILL HAVE THINGS OK TWENTY FIVE THOUSAND CARDS MAILED."

After her return, and while Mr. Rosecrans was still in California, he entered into some business speculation which was unprofitable, and his associates endeavored to make him respond for the loss out of his interest in the hotel. He took pride in showing them a copy of the deed by which his wife was a joint owner with himself, and was thereby able to prevent them from pursuing their claim against him by getting this property. Mr. Rosecrans (Case, 106) speaks of this circumstance as follows:

> "A. There was a crowd of fellows there in Los Angeles that tried to get me to put up my deed for some property out there, and they tried to hold me to a verbal agreement, and I explained the situation to them, that the property was held jointly by my wife and myself, and that they could not hold me for it.
>
> Q. You say something about a blackmailing scheme. What was that? A. Well, it looked to me as though they were blackmailers. They tried to blackmail me, from their conversation and their attitude. I mentioned in this letter that I had asked her before we left for California to sign off on that deed. That is what made me leave for California when I did, because I was discouraged, because I couldn't get any credit."

He wrote his wife (Ex. C-29) under date of 5/7/23, in which he said:

> "That's why I said it's best the property stood the way it did. I told you New Years Eve I would get out of it. I could not say much for they were blackmailers too. * * * I got copy of deed and proved it was not my property and you could lay claim to all of it if anything was put over. * * * I knew you knew something when you left the way you spoke to me on the train, but I am safe from that crowd now. They would blackmail me if they could."

On page 95, he admits that he had spoken to his wife, while in California, of his satisfaction that the deed was drawn as it was.

> "Did you ever tell your wife that half of the property was hers and that you were glad it was that way? A. I said, 'Perhaps it is well'.
> Q. 'Perhaps it is well'? A. Perhaps.
> Q. I show you what purports to be your letter of May seventh 1923, and ask you if you wrote that letter? A. Yes."

It will be observed that down to this time not a suggestion has been made by any one that the deed did not mean exactly what it said. On the contrary, Rosecrans was taking pride and satisfaction in it, and was defeating creditors (he calls them blackmailers) by flaunting it before them.

A man who puts or keeps property out of his name for the purpose of avoiding creditors cannot later seek to have the deed put in his own name. *Ostheimer* v. *Single,* 73 N. J. Equity 539; *Sayre* v. *Lemberger,* 92 N. J. Equity 656.

After the return of Mr. Rosecrans from California, there was a change in his habits and in his demeanor to his wife. In Exhibit C-29, written 5/7/23, he had said:

> "Down in my heart I realized you was my best friend."

and sent her his love and best wishes, after having said:

> "God has been good to me in lots of ways and guided my footsteps thru a lot of snares and traps and guided me to you and The Princess."

He evidently forgot all of this, and told her (Case, 116, 117) to get out of the hotel, and apparently lost all affection for her, and she suffered all sorts of humiliation because of his treatment of her in the presence of the servants and others. Finally,

like a thunder-bolt from a clear sky, she received a letter from Wall, Haight, Carey & Hartpence, dated August 17, 1923 (Ex. D-22), reading as follows:

> "We beg to inform you that we represent Mr. Rosencrans and have been authorized by him to tender to you the unpaid balance of your loan to him, and to request you to release your interest in the Princess Hotel property which you hold as security therefor. Should you refuse, we will have no alternative but to start suit to have the deed declared a mortgage as to your interest.
>
> Mr. Rosencrans informs us that you have been constantly interfering in one way or another with his conduct of his business. You must know that in so doing you are exceeding your rights. For although you may have an interest of some sort in the property itself, you have no interest whatever in the business which Mr. Rosencrans has developed over a period of years. Consequently it is no concern of yours what servants or employees Mr. Rosencrans chooses to employ or what policies he adopts in the general operation of the hotel.
>
> We warn you that you will be held financially accountable for any injury to the business which your attitude might cause and further warn you that unless you immediately stop your efforts to embarrass Mr. Rosencrans, appropriate legal methods to force you to do so will be taken."

On page 120 Mrs. Rosecrans swears that this letter was the first intimation she ever had of the claim the defendant there and now makes that her interest was simply that of a mortgagee in the hotel property. There is no contradiction of this statement, and no pretence that any previous claim had been made. Evidently, it took the subtle and ingenious mind of that distinguished law firm to invent the idea. Mr. Rosecrans concedes in his evidence he did not see the letter before it was sent,

and that some of the language therein used was perhaps stronger than the facts fully justified (Case, 109).

This suit followed, and, before discussing a little more at length the evidence that has been adduced by Mr. Rosecrans in support of this claim made for the first time almost four years after the fact, let us refresh our minds with reference to the law governing efforts of this character.

The rule is that when parties by solemn deed and writings under their hands and seals, have knowingly specified their respective relations, and designated one as grantee, evidence to overcome these solemn acts must be of the strongest character. The burden of proof lies upon the party whose claim or defense is founded upon the theory that the real character of the transaction is different from that which is imported by the language of the instrument.

In *Cake* v. *Shull,* 45 N. J. Equity 208, the Court of Errors, through Dixon, *J.,* unanimously reversed the decree advised by Vice Chancellor Bird. The opinion says:

> "The right of a court of equity to declare a deed or bill of sale, which is absolute on its face, to be a mortgage, is clear, as is also the competency of parol evidence to prove the fact. The question turns upon the actual intention of the parties at the time of the transaction. *Crane* v. *Decamp,* 6 C. E. Gr. 414. If that intention was that the instrument should constitute security for the payment of money or the performance or non-performance of any other act, then it is deemed a mortgage; but if a real sale was intended, then it takes effect according to its terms, even though a contemporaneous right or privilege to purchase back the property sold was contracted for by the vendor. *Gassert* v. *Bogk,* 7 Mont. 585; *Conway* v. *Alexander,* 7 Cranch. 218; *Notes to*

> *Thornborough* v. *Baker,* 2 Lead. Cas. Eq. 1030. *An obligation* to repurchase, or any other *duty* resting on the vendor, by the performance of which the property was to revert to him, would ordinarily be conclusive evidence of a mortgage, while the absence of such obligation or duty, either expressed or implied, would be indicative of a sale. *Murray* v. *Riley,* 140 Mass. 490; *Horn* v. *Keteltas,* 46 N. Y. 605. In searching for evidence of intent, the strong probability that parties, who have reduced at least some portion of their bargain to writing, have fully and intelligently expressed their whole bargain in that writing, must not be lost sight of; and therefore it has been rightly said, that, where the writing is in form an absolute conveyance, the parol evidence that it was designed to operate as a mortgage only must be clear, unequivocal and convincing, or the presumption that the instrument is what it purports to be must prevail. *Coyle* v. *Davis,* 116 U. S. 108."

Judge Dixon then turned to the evidence and pointed out the fact that the contemporaneous writing (*i. e.* the deed) shows an absolute sale, and nothing suggestive of a mortgage. In our case, we have not only the deed but the agreement as well.

See also, in support of the rule as above stated, *Winters* v. *Earl,* 52 N. J. Equity 52 and 588; *Read* v. *Huff,* 40 N. J. Equity 220; *Down* v. *Down,* 40 *Id.* 68, and *O'Connell* v. *O'Connell,* 93 *Id.* 603.

We have then the strong natural and legal presumption arising from the papers themselves and the action and conduct of the parties thereunder for about four years, that such papers represented the true situation. We have too, the positive denial (Case, 69) of Mrs. Rosecrans that she ever made any agreement with her husband to the effect that the deed should be a mortgage, and we have the undisputed fact that Mr. Prettyman (who was first introduced to Mr. Rosecrans by Mrs. Rosecrans), the grantor, insisted that the deed should go to both

husband and wife, and procured from them both a mortgage and bond to secure the purchase money that was not paid in cash. On page 47, Mrs. Rosecrans testified:

> "Mr. Prettyman said he positively would not convey the property unless I joined in the deed. He said he was not selling it to Mr. Rosecrans, he was selling it to me because he had known me a good many years and I had worked hard and he wanted to see me get along, and he said, 'I am going to help you,' and with that understanding he deducted five thousand from the purchase price. He said, 'I am allowing you that to see you get started, because you have worked hard.'
>
> Q. Your purchase price was what? A. One hundred and twenty-five thousand.
>
> Q. And you say at the settlement he deducted five thousand as a present? A. Yes, through his friendship for me and trying to see me get started.
>
> Q. Did Mr. Rosecrans say anything at that time about the deed being made in his name? A. Not a thing that I ever heard."

Mr. Rosecrans, concerning this phase of the matter, testifies, page 102, as follows:

> "What did Mr. Prettyman say when he made this deed to you and Mrs. Rosecrans? A. I don't recall just what the conversation was.
>
> Q. Did he say anything about where the title must reside so far as he, the grantor, was concerned? A. About what? (Question repeated.) A. He insisted that the title be placed in our joint names for at least one year, and my wife seemed to know that before the settlement was made. She told me about it.
>
> Q. And that is all Mr. Prettyman said about it, that it must be there for at least one year? A. As I recall it, yes."

And on page 103, he testifies:

> "Q. And that agreement of sale was made when? A. October second 1919.

Q. So that from October second 1919 until the actual time of settlement, the agreement was in your joint names and the deed was made in accordance with the agreement? A. Yes.

Q. And Prettyman wouldn't have it any other way, would he? A. No. He told me the day of settlement that he wouldn't have it any other way."

It, therefore, evidently was the purpose of the grantor, as well as the grantees, that this deed should be just as it was made, and while Mr. Prettyman seems to have jollied both grantees with the idea that he was doing them an especial favor in taking $5,000 off the purchase price because of his friendship for them, he was obviously quite selfish in insisting upon a joint purchase and a joint bond and mortgage so as to secure dual responsibility.

The purchase of this hotel was, so far as the evidence shows, the most important financial transaction in which either of these parties grantee, had, up to that time engaged, and it is extraordinary that if the arrangement had been as Mr. Rosecrans now insists, that some scrap of paper was not made to evidence it.

Let us examine now the proofs adduced by Mr. Rosecrans upon whom, as we have seen, a very considerable burden is cast by the law, in support of his contention. He presents, first, a series of checks paid by him to his wife, between the 9th of March, 1920, and the 8th of August, 1923 (Exs. D-1 to D-14, inclusive), many of which speak of "on account of loan." Before speaking specifically of some of these checks, it will be well for the Court to have in its mind an analysis of the evidence concerning the financial relations of these parties, both before and after the purchase. The uncontradicted proofs show that Mrs. Rosecrans advanced and loaned to Mr. Rosecrans or paid

out for the purchase and operation of the Hotel Princess, the following sums of money: Period prior to marriage and up to the purchase of Hotel Princess (1918-1919), $12,948.29 (Ex. C-18); amount advanced to purchase hotel, $8,758 (p. 31); furniture for Hotel Princess, 1920, paid to Snellenburg's, $3,300 (Ex. C-19); miscellaneous amounts advanced from May 12, 1923 to May 29, 1923, $1,454.10 (Ex. C-20); amount advanced in conduct of hotel business while Mr. Rosecrans was in California, $3,133.37 (Ex. C-17); sums advanced to Mr. Rosecrans after the purchase of the Hotel, January 17, 1920, $300 (Ex. C-8); February, 1922, $300 (p. 37); November 7, 1921, $500 (Ex. C-9); November 24, 1921, $2,000 for interest on Hotel Princess mortgage (Ex. C-10); February 26, 1922, $500 (Ex. C-11); May 10, 1922, $500 (Ex. C-12); May 15, 1922, $600 (Ex. C-13); November 29, 1921, $300 (Ex. C-14); December 12, 1921, $300 (Ex. C-15); October 27, 1921, $1,300 (Ex. C-16); October 1921 for train tickets to California, $645 (p. 42)—a total of $7,245; miscellaneous sums as follows: December 1, 1919, $900 (Ex. C-21); July 24, 1919, $700 (Ex. C-22); April 12, 1920, $1,350 (Ex. C-23); June 24, 1919, $800 (Ex. C-24); December 2, 1919, $900 (Ex. C-25), and Bond for $1,000, 1923 (p. 121). The total amount of these loans is $39,191.76.

The payments made by Mr. Rosecrans on account of these loans were as follows: March 9, 1920, amount not given (Ex. D-1); June 25, 1920, amount not given (Ex. D-2); August 2, 1920, amount not given (Ex. D-3); September 7, 1920, $2,500 (Ex. D-4); September 7, 1920, $250 (Ex. D-5); November 5, 1920, $200 (Ex. D-6); July 1, 1921, $1,000 (Ex. D-7); July 25, 1921, $1,500 (Ex. D-8); August 2, 1921, $2,000 (Ex. D-9); August 17, 1921, $1,500 (Ex. D-10); September 10, 1921, $550 (Ex. D-11); August 5, 1922, $1,000 (Ex. D-12); September 16, 1922, $750 (Ex. D-13); September 20,

1922, $500 (p. 15), and August 8, 1923, $500 (Ex. D-14). The total of the amounts herein set forth is $12,250, although it is to be noted that in the case of Exhibits D-1, D-2, and D-3, no amounts are given.

Mrs. Rosecrans testified, at the bottom of page 51, that the payments evidenced by Exhibits D-1 to D-14, *supra,* represent every dollar her husband has ever paid her. These, as we have seen, amount, so far as the evidence shows, to $12,250, plus the amount of Exhibits D-1, D-2, and D-3. It is not, however, pretended that the payments in any degree begin to balance the loans amounting to $39,191.76. Mr. Rosecrans nowhere denies the evidence that these are the only payments. Therefore, while the loans commenced even before September, 1918, when the parties were married, not a cent had been paid in payment thereof until March, 1920. It therefore is perfectly obvious that after the hotel was acquired and Mr. Rosecrans was thereby put on his financial feet, he commenced from time to time to make some payments to his wife, who at the same time was making advances or further loans to him, and the checks, Exhibits D-1 to D-14, are no evidence whatever bearing upon the specific question as to what was the nature of the transaction of December 1st, 1919, when the deed was made. In fact, on page 125, Rosecrans was asked:

> "Q. Then all of those checks you paid her were just on account of loans generally? A. On account of loans generally sometimes, and on account of the original loan other times."

And while there is written across the face of Exhibit D-1, the words "on account of loan 12-1-19", Mrs. Rosecrans denies that that is in her handwriting, or that it was on the check when she received it. In this she is corroborated by the facts, for the transaction was not as of 12-1-19. The deed

was not acknowledged until the second, nor recorded until the eighth, and it appears there is no contradiction of this. On page 70, Mrs. Rosecrans testifies:

> "At the time of the settlement we didn't anticipate taking into consideration taxes in the settlement at all, and Mr. Prettyman wouldn't turn over the deed until a certain amount of money was raised.
>
> Q. You got your deed on the first of December, didn't you? A. No, we didn't get it that day. It was dated that day, but we didn't get it until a couple of weeks later, because we couldn't raise all of the money.
>
> Q. Well, it was recorded, apparently, on the eighth of December. That is seven days later. What I am trying to find out—I don't want to confuse you; what I want to know is the actual amount of money you loaned your husband up to the time that deed was delivered which he used for the purpose of purchasing the property. A. You have it right before you.
>
> Q. Is this the amount, $8758? A. Yes.
>
> Q. Well now, if there are any checks for some of these items dated after the eighth of December, 1919, do they represent moneys that were paid to Mr. Prettyman? A. No. I gave them to Mr. Rosecrans. We didn't get the deed.
>
> Q. Loaned to Mr. Rosecrans and he used it for the purpose of paying Prettyman? A. Yes.
>
> Q. If there are any checks dated after the eighth of December, is it a fact that that money was used to buy the hotel? A. I don't know just what the dates were. We didn't have enough money.
>
> Q. I am trying to get your best recollection if there are any checks dated after the eighth of December—— A. I don't know. They are all here.
>
> Q. ——you still say they were used for the purpose of buying this property? A. We didn't get the deed on the first of December because we didn't have enough money, and I went out and raised more money.

Q. If there are any checks after the eighth of December you still say that is money you loaned Mr. Rosecrans to buy this property? A. Yes, right around that time."

There is no contradiction of this.

Turn now to the evidence of Mr. Rosecrans. He testifies as follows (p. 79):

"Q. I wish you would state in your own way when and how it was brought to your attention that the Hotel Princess was for sale. A. Miss Farley came to the Hotel——

Q. Who is Miss Farley? A. Miss Farley was Mr. Prettyman's secretary. Mrs. Rosecrans called her on the phone and she came to the hotel and she said that they had the Princess for sale and it would be a good proposition for us to take it over, but there was no terms mentioned. She wasn't quite sure what the terms were. So Mr. Prettyman came down a few days later and he saw both Mrs. Rosecrans and I, and he gave us the terms; he was to allow us five thousand dollars off of the original price if I would take it over. He said he knew I could make it go from the experience I had had. He said he wasn't able to get in the hotel, because the people that had it, the tenants, were trying to pull something over on him, they wasn't living up to an agreement they had made and they were trying to pull something over on him and every time he would take people down there they would put him out, so he said, 'I will tell you the best plan to do to get in the hotel; you go down there and rent a room.' I went down the first of October 1919 and rented a room, room No. 200, and after twelve o'clock at night I took my shoes off——

Q. I don't care anything about the details. A. Well, I went through the hotel.

Q. That is the way you got in there? A. That is the way I got in, I registered and they didn't know me, and I got through the hotel

and got an idea of the shape it was in and how much I had to spend on it.

Q. When did you come to an agreement with Prettyman as to the terms of the sale? A. About the last week in September of that year.

Q. September 1919? A. Yes.

Q. When did you first talk with Mrs. Rosecrans about your buying the hotel? A. When Mr. Prettyman was there. Mr. Prettyman came to make the terms.

Q. What conversation did you have with her in relation the hotel, buying the hotel? A. I told her I was not in a position to finance it, I didn't have enough money, and she says, 'Well, you have always repaid me the money I have loaned you before, and I will trust you with the—I will advance you the money you need at the time of settlement, and you can pay the money as you make it; you ought to make that much money in one year's time in a hotel like that to repay me what I am putting in.'

Q. What was said about taking the title, if anything? A. The title was to be placed—I told her that the only security I could give her would be to let her name appear on the deed, and when I would pay the money, she should release me.

Q. Was that the conversation you had with her? A. That was the conversation.

Q. When was that conversation? A. That was right after Mr. Prettyman left, about the last week in September."

Two comments may in passing be made concerning this evidence. It concedes that Mrs. Rosecrans had brought in Miss Farley, and Miss Farley acquiesced in the idea that both of the Rosecrans should take over the hotel, and yet he claims he had not discussed with his wife the proposition to buy the hotel, until after Mr. Prettyman came down to make the terms.

But more important than this, is the inherent untruthfulness of his statement of the reason that

Mrs. Rosecrans gave for acquiescing in his suggestion for a mortgage. We repeat the evidence.

> "I told her I was not in a position to finance it, I didn't have enough money, and she says, *'Well, you have always repaid me the money I have loaned you before,* and I will trust you with the—I will advance you the money you need at the time of settlement, and you can pay the money as you make it."

As we have already seen, it is uncontradicted, that the first payment ever made by Rosecrans to his wife on account of any loans, was on the ninth of March, 1920, the date of Exhibit D-1, five months after the last week in September, when the conversation is supposed to have occurred.

It is further uncontradicted that prior to the purchase of the hotel, Mrs. Rosecrans had made loans to her husband aggregating $12,948.29 (p. 45) on account of which not one cent had been paid. In view of the evidence with reference to the wedding ring which he bought, but did not pay for, and of these uncontradicted facts, can you place any confidence in Mr. Rosecran's testimony, uncorroborated as it is by any one or anything else, and the fulcrum upon which it is based, being shown to be false? As an evidence of the careless way he testified, attention is directed to his evidence (p. 97):

> "Q. You even went so far as to buy your wife an engagement ring and charge it to her, didn't you. A. No. She had no engagement ring.
>
> Q. After you were married? A. No.
>
> Q. I show you an item purchased under December twenty-third, ring $240, and I ask you whether or not you didn't buy that ring for your wife and charge it to her account? A. Yes, but I paid the bill.
>
> Q. 'Yes' answers it. A. I paid the bill.
>
> Q. You paid the bill for that ring, did you? A. I paid the bill.
>
> Q. Did you pay the bill for that ring? A. I did.

Q. Don't you know as a matter of fact when your wife found that out, she returned it to Wanamaker's and it is credited on this bill, 'Returned?' A. That may be, but I offered to pay it, or I did pay it.

Q. On the twenty-third you bought it and charged it to her, and on the twenty-fourth she returned it and credited on the bill. Isn't that a fact? A. It may be, but I did that because I couldn't raise any money on the hotel."

The Court's attention is also called to the evidence of Rosecrans, pages 125 to 128, with reference to the Liberty Bond. We must conclude from these recitals that he is a most careless swearer. Again, on page 95, he testifies that he has been at the hotel constantly since 1922, and on page 100, he was asked:

"You are not living with your wife, are you"

and he answers "I am." The testimony continues:

"Q. You are? A. I am providing for her; I am providing a home for her and I live there, and I live in one room and she lives in another. I have very good private reasons for not living with her in the same room, not occupying the same room.

Q. Then you are living with her, but not with her, at the same time? A. Living under the same roof, yes.

Q. You haven't been there all winter, have you? A. I have.

Q. When did you leave Atlantic City this fall? A. I didn't leave Atlantic City. I have been back and forward. I have been to Philadelphia, I have been to New York, advertising the hotel open for the season, but I have been here.

Q. How many nights have you spent in the Princess Hotel since Labor Day? A. Practically the biggest part of the time.

Q. The biggest part of the time? A. Yes. I am away on business at different times of the

year that I have to advertise the hotel, see people and make arrangements to get conventions.

Q. You don't support your wife, do you? A. I do.

Q. How? A. I am conducting the hotel, I am providing a living there for her, her bills are paid at the desk."

Compare this with the facts disclosed by the letters to Knox Exhibit C-1 to C-13 (Case, 752-774). Can one place any reliance upon the evidence of such a man?

No wonder it was felt that corroboration was necessary and so a Mr. Powell was referred to as being able to help out. He was not, however, produced.

The only other thing presented by Rosecrans in support of his contention is his claim that it was agreed by Mr. Prettyman at the time the transaction was closed out that Mrs. Rosecrans was to be released from the bond and mortgage in one year from the date thereof. Mr. Prettyman is not called to support this claim. Surely, so important a matter would have been inserted in the papers if it were true. It is not corroborated by Mr. Iszard, the attorney who sat throughout the settlement. He swears, page 111, that Prettyman then stated he would not convey at the proposed figure unless the title was taken in both names; that Mrs. Rosecrans had worked for him; that he was interested in her, and it was through consideration for her that he was selling at that figure. He further heard nothing about the claim or release from the bond at the end of the year (p. 112).

The only thing that Rosecrans has in support of his claim is a letter written by Mrs. Rosecrans to Mr. Prettyman, while they were in California, some time after the transaction, urging him to make the proposed release, in the course of which there is a

statement to the effect that that had been the understanding at the time the transaction occurred. Mrs. Rosecrans admits writing this letter, but says it was done at the time her husband was in great distress with his creditors in California, and she was endeavoring to help him out, he being unable to secure credit because the title was in their joint names. The letter is dated April 2, 1922. She positively, however, denies, under oath, that there was any such discussion at the time the transaction was closed (p. 48).

The conclusion is inevitable that this letter was wheedled out of this pliant wife by an insistent husband, in the hope of getting something out of Mr. Prettyman, who, however, seems shrewdly to have stood pat on the original proposition. It is curious that if the present claim as to the real relation to the effect that Mrs. Rosecrans was merely a mortgagee, and not a co-owner, nothing was said about that in this letter.

All that is left then, is some loose statements made by Mrs. Rosecrans on cross-examination in response to leading questions by counsel. It is true that she testified on page 40 (note the form of the question):

> "Mrs. Rosecrans, when did you agree with your husband to loan him the money so that he could make this purchase, the purchase of the Princess? A. September tenth, 1918, was the first time we talked about it,"

but she followed this with the following:

> "Was that the time you agreed to loan him the money so he could make the purchase? A. I didn't agree. Didn't make any agreement whatever.
>
> Q. Did you tell him you would loan him the money, whether you agreed to it or not? A. No. * * *

I am asking you what the conversation was when you agreed to loan him the money so he could make the purchase. A. I didn't agree to loan him the money."

Again on page 44, she was asked:

"Q. I want to know was that a loan or was that money handed to him to pay on account of the purchase price? A. That money was loaned for the purchase of the Hotel.

Q. It was loaned for the purchase of the hotel by you to your husband? A. Yes, it was,"

but on the same page she testified as follows:

"Q. What was your agreement with your husband concerning the purchase of this hotel? A. The lease had expired at the Hotel Osborne and he wasn't—the owner of the property was going to raise the rent and he had gone down to take account of stock, and on September tenth 1919 I came back with the expectation of having some guests for dinner, because it was our first wedding anniversary. He was in the back office crying, and he told me he was afraid he would have to get out of that hotel because the property had increased so and the owner was going to raise the rent, and he stopped in to see him only that night on his way up to the apartment, and he came up very much discouraged and he said he didn't know what to do, because he didn't have money to buy a hotel and rents were so high, and I said to him, 'Paul, we are both smart and we are both young, we don't have to take anything off of anybody, and we will buy a property of our own.' He said he didn't know of any. He spoke of several, but he said, 'I haven't money enough to even attempt to think of those,' and he said, 'The small ones I don't want, because in the summertime when the business comes, they will be too small, and there will be carrying charges' so he sat there all night, and between three and four o'clock in the morning in

the parlor, and I said, 'Go on to bed and forget it. We are as smart as the owner of that property and we will have a property of our own.' He said, 'That is right, we will go into business together; you have a business education and I have a knowledge of advertising, and we will show these Atlantic City people we can get along without a rented property,' and I said, 'Yes, provided we can get a hotel,' and about seven o'clock in the morning I called up the New Merion and asked for Miss Farley, and the clerk told me she wasn't up at that time.

Mr. Starr: That is objected to.

Q. I want to know what agreement you had with your husband respecting the purchase of this hotel?

Mr. Starr: She has already stated it, it seems to me, in response to the questions already asked.

A. No agreement. I loaned him the money to get started in business and he was to take charge of one part of the house and I was to take charge of the other, and we were to share the receipts.

Q. What was said between you and him with respect to the title itself? A. At the time of the purchase?

Q. At any time? A. Well, he owned half and I owned half.

Q. I am talking about when you bought the property what was said? A. We were to take it together.

Q. Who said so? A. Mr. Rosecrans.

Q. And did you? A. He said, 'We will buy the property together.'

Q. Who conducted the negotiations for the property? A. Before the settlement was made?

Q. You had to see somebody to buy the property first, didn't you? A. I saw Miss Farley.

Q. And Miss Farley was who? A. Miss Farley represented Mr. Prettyman, the owner of the Hotel Princess.

Q. And did you conduct the negotiations for the purchase of the hotel, or did Mr. Rosecrans? A. We both together.

Q. Finally you purchased the hotel, didn't you? A. Yes.

Q. You made a settlement? A. We did together."

and on page 71:

"Q. You expected to get this $8758 back, did you not? A. I gave it to him to purchase the property.

Q. Answer the question. Did you expect to get it back? A. There was no promise of getting it back.

Q. Didn't you expect to get it back? A. It was money I advanced him for the purchase of the property.

The Court: You can answer that yes or no.

(Question repeated.)

A. It was money I advanced for the purchase of the property, and——

Mr. Starr: I insist on an answer.

The Court: You can answer that, Mrs. Rosecrans. You can answer it yes or no.

A. Yes, I expected to get it back.

Q. You expected to get it back from your husband, did you not? A. When the money came in from the hotel."

In this state of the record, can it be possible that this Court can for a moment entertain the idea that the proof, which concededly must be clear, unequivocal and convincing in order to overcome the strong legal presumption that the parties to the deed held as tenants by the entirety, comes up to this required standard? The party who alleges that the transaction under discussion was a mortgage must establish these facts.

Another principle comes to the aid of the complainant in this case. That is the well established

presumption that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and while such presumption may be rebutted, the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties. This principle is established by a long line of cases, both in this Court and in the Court of Chancery, among which are: *McGee* v. *McGee,* 81 Eq. 190; *Hood* v. *Hood,* 83 Eq. 695. As the Vice Chancellor said in his opinion (Case, 154) surely this rule is not weakened by the wife furnishing a portion of the consideration.

It is respectfully submitted, therefore, that the defendant has not sustained the burden of proof:— on the contrary, that the complainant has by a great preponderance of evidence sustained her position by her maintained; nor has the defendant by independent evidence, which is clear, unequivocal and convincing, overcome the strong presumption in favor of the complainant, both as grantee and as wife. The interlocutory decree, therefore, adjudging the rights of the parties to be in conformity with the deed, was correct and should be affirmed.

II.

The court was right in commencing the accounting period from June 1, 1922.

It is uncontradicted in the case that from the time of the purchase in December, 1919, until June 1, 1922, the date at which the accounting commences, the parties slept at an apartment in the New Amsterdam, and took their meals in the hotel. Down to that time it may be conceded that the parties cooperated in the running of the hotel, and we do not claim any exclusion by the defendant of the complainant. On June 1, 1922, the parties seemed to have quarrel, and it is a fact that the husband left the apartment on that date and took for himself a room in the hotel. From that date forward the wife was not permitted to have anything to say with respect to the conduct of the hotel. It is true that on October 2, 1922, when the husband, in the absence of the wife, had moved all furniture out of the apartment, the wife was permitted to occupy a room in the hotel until October 15, 1922, when by direction of the husband the hotel was closed. The complainant then went to California, returning to the hotel about the middle of March, 1923, from which time she continued to occupy a room until the 17th of March, 1924, when she left, and has never lived in the hotel since. Although she did occupy that room in the hotel as above stated, and received her meals from the hotel kitchen, the facts are plain that she was effectively excluded from any enjoyment of the rest of the hotel, or from any participation in the conduct of the hotel business, or the receipt of the profits therefrom, from and after June 1, 1922.

The complainant testified (Case, 27) that the defendant conducted the business from the beginning, got all the proceeds of the hotel, and that the complainant has never received a cent. This not denied. The complainant testified that the exclusion of herself from the hotel commenced in the Spring of 1922, when she, the defendant, came back from California (Case, 116). The agreement between the parties had been that she should take charge of part of the running of the hotel, and he another part (Case, 46). As a matter of fact, she did, at the beginning, until excluded as above stated, work in and about the hotel (Case, 150). The actual date of the commencement of the exclusion was not fixed more definitely by the complainant than the return from California in the Spring of 1922. It appeared from the case, however, that the parties were back in Atlantic City at least since June 1, 1922, so that date was fixed by the Vice Chancellor as the commencement of the accounting period. The complainant's testimony with respect to the exclusion is supported by Exhibit D-22, letter of defendant's solicitors, Messrs. Wall, Haight, Carey & Hartpence, to Mrs. Rosecrans (Case, 142) in which that firm expressly warned Mrs. Rosecrans no longer to continue "to interfere" in the business. Further very material corroboration is found in the Knox letters, written by the defendant to his manager, Knox. They are Exhibits C-1 to C-13, pages 613, 774.

The contention of counsel for the defendant is that because from time to time until March 17, 1924, the complainant was permitted to occupy a room at the hotel, she was not excluded from enjoyment until that date, and that therefore the accounting should not antedate her giving up her room. Our reply to this is that in the first place an occupancy of one room in a hotel, coupled with

the undoubted exclusion from the business conducted therein by the defendant, and the undoubted fact that the complainant has never received a penny of the proceeds of the business, could, at most, go no further than to require a reduction in the rental value of the whole hotel, with which the defendant is charged, by the rental value of the room occupied by the defendant for the period she was permitted to occupy the same. This is not the contention of the defendant, either here or in the Court below, and not being contended for by the defendant below was very properly disregarded by the Court below, both because of such lack of contention on the part of the defendant, and on the principle of *de minimis*. The authorities fully met the defendant's contention that the occupancy of this room by the complainant relieves the defendant from the duty of accounting for the whole premises. We do not quarrel with anything in the case of *O'Connell* v. *O'Connell,* 93 Eq. 603, cited on page 16 of the defendant's brief. Indeed, we rely on that case, particularly the following excerpts from the opinion (p. 605):

> "Reaching this conclusion, we also concur in his view that the wife is entitled to an accounting from her husband of the rents actually collected by him and to share in such rents as may accrue in the future. In the case of *Buttlar* v. *Rosenblath,* 42 N. J. Eq., 651, this court declared that, where the title to land rests in a husband and wife as tenants by the entirety, the wife holds in her possession during their joint lives one-half of the estate in common with her husband; and in the later case of *Schulz* v. *Ziegler,* 80 N. J. Eq., 199, we held that the respective rights of the parties as between themselves during their joint lives were those of tenants in common; and one of the rights of a tenant in common as against his cotenant, who has collected rents from lessees in possession of the premises, is to have an ac-

counting of the rents so collected. This right is so thoroughly established that a citation of authorities is hardly necessary. Among the cases in which it has been recognized and enforced are *Hanneman* v. *Richter,* 63 N. J. Eq., 753; *Cole* v. *Cole,* 69 N. J. Eq., 3; *Lloyd* v. *Turner,* 70 N. J. Eq., 425.

"The principle upon which the rule rests is that a tenant in common, in leasing the common property and in collecting the rents from the lessee, acts not only in his own right but as the representative of his co-tenants, and that, consequently, to the extent that the moneys so collected represent the rental value of the interest of his co-tenants, it is held in trust by him for their use."

We also rely on the following New Jersey case: *Izard* v. *Bodine,* 11 Eq. 403 (1857). That was a factory property, which one tenant in common wished to let to a tenant, and the other refused. The other, the refusing, tenant in common, occupied exclusive possession of a portion of the property, as the result of which no use could be made by either co-tenant of the remainder, for which the occupying tenant was held liable to account. The Chancellor said, page 404:

"2. Where one tenant in common actually receives the rents, issues, and profits, then he may be compelled to account for such profits actually received;"

and, again, on page 406:

"But as a tenant in common, while he was entitled to a possession in common of the whole with his co-tenant, he had no right to the *exclusive* possession of any particular portion; and if he exercised such a right, and excluded his co-tenant from a participation in the possession, he must account to his co-tenant for his interest in the part from which he was ousted of his possession."

Buckelew v. *Snedecker,* 27 Eq. 82 (1876). The importance of this case for our purposes appears from the following quotation from the opinion of the Chancellor, page 83:

> "The defendant is not chargeable with rent for the half of the house. The complainant left the premises of her own accord, and there is no evidence of any exclusion of her by the defendant from any part of the property. On the contrary, the evidence is, that the complainant voluntarily left the premises on account of some disagreement between her and the defendant, but there is no evidence as to the cause of her departure. The defendant is only chargeable with the rents, issues or profits of the land, because she cultivated the land and received the benefit of its entire product."

See also*Wickoff* v. *Wickoff,* 18 Atl. 74 (Bird, *V. C.,* 1889), and *Lloyd* v. *Turner,* 70 Eq. 425.

In the last mentioned case part of the premises were used as a dwelling house and part were stores. It did not appear that the tenant in common, occupying the dwelling house portion, had refused to permit co-tenants to live there, and she was not held liable to account for the rental value of that portion. As to the stores, however, the Court held differently, saying, at page 428:

> "It is quite evident to me that the use made of the other portions of the premises stands on an entirely different basis. Mrs. Lloyd ought to account for those rents and profits which she collected after her mother's death in January, 1900, for the occupation by various lessees of the store part of the dwelling-house, and also for the rents and profits which she received and collected for the use of the shop in the rear of the lot. The rentals thus collected by Mrs. Lloyd should constitute the left side of the account, showing what should be charged against her."

The rule was very well stated by Van Vleet, *V. C.*, in *Edsall* v. *Merrill*, 37 Eq. 114, at page 116:

> "This court has adopted a construction rather more liberal to the tenants out of possession. We hold, as the English courts do, that where one of several tenants occupies simply as tenant in common, and not to the exclusion of the others, he is not liable to account. But we also hold that an exclusion may occur where there is no express refusal, by the tenant in possession, to allow the others to occupy, as where one of several tenants takes possession of premises which are not capable of joint occupancy; in that case his occupation is an exclusion of the others. *Davidson* v. *Thompson*, 7 C. E. Gr. 83. So, too, this court holds that if the tenant in possession refuses to join his cotenants in an advantageous lease, and thus deprives them of all income from the premises, he is chargeable with a reasonable rent. *Izard* v. *Bodine*, 3 Stock. 403. And on like principle it has been held that where one of several tenants in common cultivates the whole of the lands held in common, and takes the entire product to himself and makes a profit, he must account to his cotenants for their share of the profit. *Barrell* v. *Barrell*, 10 C. E. Gr., 173; *Buckelew* vs. *Snedeker*, 12 C. E. Gr., 82. The principle adopted may be stated as follows: Where the tenant in possession has prevented his cotenants from obtaining from the premises such profits as they were capable of yielding, or has taken possession of the whole, and used them as his own, and thereby made a profit, he must account either for their fair rental value, or the profits."

It has more recently been applied by Fielder, *V. C.*, in *Platt* v. *Platt*, 93 Eq. 395, at 399:

> "By *Comp. Stat.* p. 8, § 3, a tenant in common out of possession may have an action of account against his co-tenants for receiving more than their share of the profits from the property jointly owned, where the tenant out of

> possession is excluded by the others and an exclusion may occur where there is no express refusal by the tenants in possession to allow the co-tenant to occupy, as, for instance, if possession of the whole has been taken by one of the co-tenants and used by him as his own, or for his exclusive profit."

In *Maxwell* v. *Eckert,* 109 Atl. 730 (not officially reported), Fielder, *V. C.,* held:

> "By *Compiled Statutes,* p. 8, § 3, a tenant in common out of possession may have an action of account against his cotenants for receiving more than their share of the profits from the property jointly owned, where the tenant out of possession is excluded by the others. And an exclusion may occur where there is no express refusal by the tenant in possession to allow the co-tenant to occupy, as, for instance, if possession of the whole has been taken by some of the cotenants and used by them as their own, or for their exclusive profit. *Edsall* v. *Merrill,* 37 N. J. Eq. 114. In this case the relations between the cotenants had become so strained and bitter that they could not continue to reside together in peace and concord, and upon the complainant leaving October 1, 1917, the defendants remained in possession, occupying part of the property and collecting for their exclusive use and benefit the rent arising from the balance. This amounted to an exclusion of the complainant, Annette E. Maxwell, and the defendants should therefore account from that date to the complainant for one-third of the rent collected and one-third of the rental value of the part occupied by the defendants."

Applying these opinions to the case at bar, the defendant has enjoyed an income from the use of this hotel of some two hundred odd rooms—that is, in the first place, equivalent to the cultivation of a farm, or, indeed, the renting out of a store. The various guests in the hotel have paid room rent

for their rooms, and board for their meals, which the defendant has received and for which under the principles of the cases above cited he must account. Liability to account therefore is not diminished by the fact that for a portion of the period covered the complainant was permitted to occupy one room in the hotel. The situation is entirely different from what it would be if the property in question were only a dwelling house, and had been used by the defendant only for purposes of his own occupancy and enjoyment.

III.

The supplemental order of reference of April 10, 1928, was right and should be affirmed.

The deed by which the parties obtained title to the premises (Ex. C-1, Case, 142) conveyed personal property, that is to say, furniture, fittings and hotel equipment, as well as the real estate. The original interlocutory decree and order of reference of April 16, 1926, directed the defendant to account for the rental value of the premises. The word "premises" not being a word of art, might be properly construed to include the furniture, fittings and hotel equipment—on the other hand, it might not. In any event, the parties, being co-tenants of the furniture, fittings and hotel equipment, as well as of the real estate, the defendant should not be relieved from accounting for the use of the personal property. The making of the amendatory order of reference which added the words "including the furniture, fittings and hotel equipment therein contained" was eminently proper. The defendant's complaint, if he has any, which we deny, is not with the amendatory order, but with the Master under it.

IV.

None of the defendant's exceptions to the Master's report have merit.

The defendant's exceptions all have to do with matters of discharge. The complainant on her appeal raises the point that the Master did not allow a sufficient sum for the rental value, and also the point that because the parties are husband and wife there should under the circumstances be no allowance to the defendant for credits. Those two points, however, will be taken up below; and we shall now proceed to consider the defendant's exceptions.

1.

The Master was right in limiting the defendant's credits to the accounting period.

The order of reference charged the defendant with the rental value for a period commencing June 1, 1922. The Master's report took in the period commencing with that date and ending June 1, 1929. That is the period for which the defendant is charged with the rental value, and it is for that period and for all of it that the Master allowed the defendant credits for certain disbursements. We are at a loss to understand, notwithstanding the brief of counsel for the defendant, on what theory credits for disbursements antedating the accounting period should be allowed.

This is not a partition suit. Without conceding that the defendant would be allowed on such a proceeding any disbursements other than those allowed by the Master in this case, suffice it to say

that a rule on a partition is not now before the Court. It would be strange indeed if the defendant were allowed to set off against the rental value of the premises during the period for which he must account therefor improvements and carrying charges made by him, at a time when he and the complainant were jointly in possession. No authority for such a proposition is cited, and we submit that its unsoundness is self-evident.

2.

The Master has allowed all proper credits and disbursements made by the defendant during the accounting period.

In this connection the Master's report reads (Case, 163):

> "And I further report that defendant is not entitled to credit for moneys expended for repairs, replacements, etc. He has been in possession and dictated the policy and conduct of the business of the hotel since June 1, 1922. There is nothing in the record tending to show any agreement between the parties, complainant and defendant, respecting repairs, and, in the absence of any obligation on the part of the landlord to make repairs, some must be made at the expense of the tenant.
>
> "When the hotel was purchased by complainant and defendant, it contained some furniture, as evidenced by the schedule attached to the deed of conveyance. The schedule, however, does not contain a complete inventory, and the amount, kind and quality is left largely to imagination. The proof is that a major portion of the furniture has been discarded, and new and more modern furniture substituted, some at the joint cost and expense of complainant and defendant prior to June 1, 1922, and the balance at the cost and expense of defendant since that date. The proof does not dis-

close what portion of the furniture now in the hotel is by way of replacement and replenishment. Such as was installed by defendant by way of replacement and replenishment must be at his own expense and for which he is not entitled to credit. When he entered into possession to the exclusion of complainant, the hotel was a going concern, and such of the fixtures and furniture as he thereafter considered as unfit or undesirable for the purposes and use of the hotel, he replaced on his own initiative and without consulting complainant."

The position taken by the Master is amply sustained by the testimony.

In the first place, the Master is entirely correct in saying that there is no evidence as to what portion of the original furniture has been discharded and replaced, and what portion still remains. It certainly is incumbent on the defendant to prove and to bear the burden of proving all items of discharge.

In the second place, it must be remembered that the complainant herself spent large sums of money in paying for replacements or furnishings in the hotel after its purchase. The defendant's argument that the improvements in the earning power of the hotel by reason of the furniture replacements are all due to the defendant and are something for which he should have credit is not therefore borne out by the proofs. Furthermore, we must bear in mind that the defendant was in possession of the hotel, conducting a business therein. He was the proprietor and sole manager of the hotel business, at least from and after the commencement of the accounting period, June 1, 1922. He has not been charged by the Master with the proceeds of the hotel business, but only with the rental value. What he is seeking by the evidence disregarded and complained of in the exceptions now under

consideration is a series of disbursements in the conduct of the business for which, of course, in an accounting for the rental value of the furnished hotel he should not be allowed credit.

Although the defendant in his notice of appeal and petition of appeal complains of the allowance of a counsel fee, this is not argued in his brief and we take it, therefore, that it is abandoned.

For the reasons above given, the defendant's appeal is wholly without merit and the decree, so far as appealed from by the defendant, must be affirmed.

B.

THE COMPLAINANT'S APPEAL.

The complainant's appeal is an appeal from the overruling of her exceptions to the Master's report (Case, 775). It is, in other words, the continued prosecution of those exceptions. They are eight in number, but they present only two points. The first point is the contention that by reason of the marital relation existing between the parties the defendant should not be allowed the credits for the carrying charges during the accounting period, which were allowed by the Master. The second point is that too small a sum was found by the Master to be the annual rental value of the property in question.

I.

The Master should not have allowed any of the carrying charges as credits.

We concede that all of the carrying charges allowed by the Master as credits would be proper credits were it not for the fact that the parties were at that time husband and wife. The law with respect to the allowance of credits for carrying charges paid by a husband on property owned by his wife and him as tenants by the entirety is clearly laid down in the following cases:

In *Selover* v. *Selover, supra,* 62 N. J. Equity 761, Chief Justice Gummere, speaking for the Court of Errors, held that the same reasons which support the presumption that by purchasing property and taking title thereto in the name of his wife, a husband intends making a settlement, apply with equal force to expenditures made by him in the improvement or preservation of her estate therein.

In *Ringold* v. *Ringold,* 93 N. J. Equity 358, certain lands in Asbury Park were conveyed to the parties—husband and wife—as tenants by the entirety. In January, 1920, the wife obtained a final decree of divorce from the husband. She then filed her bill for the partition of the property mentioned. The husband in his answer set up that he made certain payments on the property for which he should be allowed a credit, and thereupon reference was made to a Master to ascertain the nature and amount of these payments, and to report what allowance, if any, should be made therefor. The Master in his report refused to allow the husband credit for moneys paid by him during coverture, for taxes, insurance premiums and monthly dues to the building and loan association in reduction

of the amount of two mortgages held by the association upon the premises. The Vice Chancellor said:

> "Because the *title to the property was in the parties as tenants by the entirety,* the bonds and mortgages to the building and loan association were executed by them jointly, and the shares of stock in the association on which the loans were based were in their joint names. By the terms of the loan the parties were required to pay $57. monthly as dues in reduction of the amount of the loans until the mortgages were paid in full under the rules of the association.
>
> Defendant is a Pullman porter, and until they separated his wife kept their home and rented some of the rooms therein to lodgers. From the income thus received she paid part of the household expenses, and also paid some of the taxes, insurance premiums and building and loan association monthly dues. Defendant to a much larger extent contributed to these expenses, and particularly to the payment of the monthly dues, and these payments made by him amount to about $3,000.
>
> Defendant's contention is that the payments made by him during coverture for dues, &c. in reduction of the mortgage debts, were paid on their joint and several obligations, and that as they were both under the common burden and liability to pay these dues, he is entitled to contribution from complainant of all moneys necessarily paid by him on her behalf.
>
> This doctrine of contribution does not apply, however, as between husband and wife, in a situation like the present one, as it is well settled that the expenditure by a husband of his own moneys in the purchase of lands in the name of his wife, or in the improvement of her property, is presumed to be a gift to her, in the absence of proof of a contrary intent. *Peer* v. *Peer,* 11 N. J. Eq. 432; *Persons* v. *Persons,* 25 N. J. Eq. 250; *Black* v. *Black,* 30 N. J. Eq. 215; *Lister* v. *Lister,* 35 N. J. Eq. 49; affirmed

37 N. J. Eq. 331; *Read* v. *Huff,* 40 N. J. Eq. 229; *Selover* v. *Selover,* 62 N. J. Eq. 761; *McGee* v. *McGee,* 81 N. J. Eq. 100; *Prisco* v. *Prisco,* 110 Atl. Rep. 111.

The reasons supporting the presumption of a gift as indicating an intention to make an advancement or settlement upon a wife, apply whether the gift be made in one sum, or if, as here, the gift be made in monthly installments, in the form of monthly dues, paid by defendant, in reduction of the mortgage debt upon the property in their joint names, as these installment payments were in fact and effect payments on the purchase price of the property. In fact, in the present situation, these reasons apply with greater force, for, by the nature of their estate in the property, the defendant in making such payments was not only making advancements or settlements upon his wife, he was also reducing his own liability upon the bonds and mortgages and was thereby completing the payment of the purchase price of the property, and he would, if he survived her, obtain the exclusive benefits of the payments thus made. And it is not unreasonable to assume that he had this possibility in mind when he made these payments. The presumption that these payments were intended as gifts may of course be rebutted by proof that they were made with the intention and understanding or agreement that they should not be presumed or considered as gifts.

The nature and extent of the proof required to 'rebut the presumption of a gift or settlement to a child or wife must be of facts antecedent to, or cotemporaneous with, the purchase, or else immediately afterwards, so as to be in fact part of the same transaction' (*Reed* v. *Huff, supra*), and this proof 'must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties.' *McGee* v. *McGee, supra.* There is no such proof in this case relating to the time when any or all of the dues in question were paid, nor to any other time, and I will advise that the exceptions be overruled."

In *O'Keefe* v. *O'Keefe,* Court of Errors and Appeals, 96 N. J. Equity 617, the wife, a tenant by the entirety with her husband of certain lands, sued for rents collected by the husband of the premises. The husband defended, and by counterclaim set up, among other things, payments he had made in connection with four buildings erected upon the premises. The Court of Chancery struck out the counterclaim, and on appeal this action of the Court was unanimously sustained. Parker, *J.,* says:

> "We are now brought to the part of the counterclaim already abstracted and held to disclose no cause of action. The ruling we consider was correct. On the face of the counterclaim not a fact is stated that is inconsistent with the general rule that when a husband puts real estate in his wife's name, or builds on her land, equity presumes that it was by way of settlement or gift. *Hood* v. *Hood,* 83 N. J. Equity 695; *Ringold* v. *Ringold* (Chancery), 116 Atl. Rep. 690, and cases cited."

Of course it may well be that the intention of the husband changed between December 19, 1919, when title was taken, and June 1, 1922, the commencement of the accounting period. Nevertheless, we feel that the defendant has not discharged the heavy burden of proof upon him necessary to rebut the presumption laid down by the cases just cited. The Court must remember that what must now be ascertained is the defendant's true intention at the time, not merely what he now contends was his intention. The Court should also bear in mind, as was said by the Court in *Ringgold* v. *Ringgold, supra,* that the defendant in making the payments was reducing his own liability as a co-tenant of the property, the exclusive benefit of which he would obtain if he survived the complainant.

II.

The rental value found by the Master was too small.

The Princess Hotel is situated on South Carolina Avenue, directly in the rear of the beach front property, and has a frontage of 100 feet and a depth of 150 feet. The front part of the structure is built of brick and stone—in the rear it is built of wood. It has one hundred and eighty-five guest rooms (Case, 187) and forty baths. All of the witnesses agreed that the location of the Princess was more desirable than that of any other hotel with which they compared it; and, indeed, the defendant's witness Ludy, who owns the Hotel Iroquois, which adjoins the Princess on the side toward the Boardwalk, testified that he knows of no better location than that of the Iroquois. Of course it must be understood throughout all the testimony that the beachfront property is not being considered. We have, then, a hotel property exceeded in favorableness of location only by beachfront properties.

The testimony as to the rental value of the Princess Hotel is widely divergent. An examination of the testimony, however, would bring out that the low figures testified to by some of the defendant's witnesses are based on nothing more nor less than guesswork. For the complainant, John H. Fetter, in the hotel business in Atlantic City since 1915, testified he leases four hotels, the Avoca, Monticello, Devonshire and Grand Atlantic. He testified on July 20, 1926, that at any time from June 1, 1922, until then he would pay for the Princess an annual rental of $40,000 a year (Case, 190), and this was on the basis of the hotel being

furnished as it was when Mr. and Mrs. Rosecrans bought it. He went through the hotel at that time, being in the market (Case, 190). He would be willing to pay this sum for any time from one year to ten (Case, 192). This witness, in the business of renting hotels, knows exactly what he is talking about, and gives testimony of the highest degree of value.

For the defendant three witnesses testified—William M. Powell, in the real estate and insurance business at Atlantic City for seven years since the war and four years before it, specializing in the sale of hotels (Case, 209) said that in his opinion the fair rental value of the Princess would be $34,000 a year. This was on the basis of one hundred and seventy bedrooms (Case, 212). He did not count any bedrooms below the exchange floor. Robert B. Ludy, the owner of four hotels, the Osborne, Reading, Elberon and Iriquois, leases the Osborne and Reading, and operates the Iriquois and Elberon. The Osborne has 100 to 110 rooms and is on the corner of Arkansas and Pacific; the Reading has 90 to 100 rooms and is on Pacific Avenue below Arkansas; the Elberon has 128 rooms and is on the corner of Tennessee and Pacific. The Iriquois has 200 rooms and adjoins the Princess (Case, 213-215). His opinion as to the rental value of the Princess is $25,000 a year for all the period from June 1, 1922 to June 1, 1926.

Then comes the defendant's witness, Frank J. Bloom, who testified at greater length and more favorably to the defendant than any other of these witnesses. His testimony as to the rental values of the Princess is as follows:

From June 1,	1922	to June 1,	1923..	$14,000
" "	"	1923 to " "	1924..	16,000
" "	"	1924 to " "	1925..	18,000
" "	"	1925 to " "	1926..	20,000

Mr. Bloom is in the mortgage business. He never rented a hotel, except in the year 1922 he rented the St. James, which he himself said was not comparable in location with the Princess (Case, 201). This was his only experience in renting.

He bases his opinion as to the rental value of the Princess solely upon the value of the property itself, that is to say, its sale value. When he testified in 1926 he valued the hotel at $232,000 (Case, 197)—the building at $132,000 and the land at $100,000, being at the rate of $1,000 a front foot (Case, 198). Although he made no sales, he said he heard of sales on South Carolina Avenue at $1,000 a front foot; that the property he referred to was between four and five hundred feet further from the beach (Case, 198) and he admitted that property on South Carolina Avenue is more valuable the nearer it is to the boardwalk (Case, 198). He was continually changing his testimony. On page 203 he said that the land in 1922 was worth $500 a front foot and increased in value until the date of his testimony approximately $150 per front foot per year. This, of course, would make the values as follows:

1922–23.....	$500	per	front	foot
23–24.....	650	"	"	"
24–25.....	800	"	"	"
25–26.....	950	"	"	"

Then, again, on page 204 he testified as follows: "In 1922 and 1923 I would say approximately $500. a foot, but I would say $600, $700., $800 a foot, $900. a foot and up to about approximately $1,000. today." On page 205 he testified "In 1923 to 1924, let's see, I would say about $600. a foot, next year $700. a foot, $900. a foot, and a thousand." On page 32, however, when asked what sales he knew of on the avenue in question in 1925-26 for $900 a

front foot, he said, "No, I said $1,000. at that time in other words would be a $200. jump from that year." Then, when counsel said the witness seemed to have become confused, and asked him for the values again, he began with $500 in 1922 to 1923, said $600 for 1923 to 1924, and on page 33 said:

> "Q. 1924 to 25? A. Approximately we will say $750.00. We will have to revise it so it comes up to a thousand.
> Q. Revise this time—go on—1925 to 1926. A. Let it stay as you wish.
> Q. You are the witness, not I. A. 1925 to 1926, that is, to June 1, 1926.
> Q. I am asking for the value of the property. A. $1,000."

The foregoing changes in the witnesses opinion as to the front foot values of the property over the period in question shows that he does not know what he is talking about and is only guessing. Indeed, he admitted on page 31 that he did not know of any specific sales to justify his figures.

Bear in mind that all his testimony so far has to do only with the sale value of the property. When he comes to explain his rental figures he says that he bases the rental value solely on the value of the property itself. He testified that generally speaking the rental value of this property should be ten per cent. of its sale value (Case, 196). On this basis of course his rental figures are too low, because his minimum value of the hotel is $150,000, which on this basis should produce a rental of $15,000; and his maximum value of the hotel is $232,000, which should produce on this basis a rental value of $23,200. On page 207 he said that the increase in value of the ground was the only reason for the increase in the rental value of the property. Directly on the subject of rentals, he testified (Case, 205) that in his opinion (based on what experience or knowledge we do not know)

the Princess ten years ago, *i. e.,* 1916, had a rental value of $50 a room, which would make its rental value nine or ten thousand dollars, and yet stated he was not surprised to know that the actual rental received for the hotel in 1916 was $12,000 (Case, 207). He said there was a decrease in demand for hotel properties during the year 1926, and yet he knew of no vacant hotels on South Carolina Avenue (Case, 208).

On the last day of the hearing he was the only witness called by the defendant in this connection. He said that since 1926 there had been a deflation between twenty-five and thirty-five per cent. in the value of real property in Atlantic City (Case, 713), and that this was due to general economic conditions. Right here we will say that we do not and cannot dispute the fact that there has been a deflation in real estate values—that is—sale values of properties in Atlantic City since July, 1926. The point is that this deflation in sale values has no bearing upon the rental value of the property. Even so, however, the witness Bloom admitted he could not give a specific sale—that he sold very little real estate (Case, 714).

He referred to two specific properties, the Kenepac Apartments at Kentucky and Pacific Avenues, and the Caverly Hotel on Maryland Avenue, near the boardwalk. He purported to give specific prices recently obtained for those properties, but his basis of deflation, also his comparison of those prices with former values and his knowledge of the former values was hazy in the extreme. No other conclusion can be drawn but that the witness does not know what he is talking about, and is only guessing; and, indeed, how could a mortgage man, who has had no experience in renting hotels, do anything but guess at the hotel rental values?

He admitted (Case, 724) that he is not a hotel man, and merely assumed the hotel incomes are less

since the real estate slump. He admitted (Case, 719) that the real estate is by no means the only basis for rental value, and that a reduced demand for property which he had already testified was the reason for the reduced sale value had no bearing on the ability of a hotel man to operate the hotel at a profit (Case, 719) and that the rent a piece of property would bring depends in part upon what the tenant will give, and that what a tenant will give depends very largely on what he can make out of it, and that that factor is not at all dependent upon the value of the land (Case, 719). He also admitted that since the slump it is not true that fewer people have been coming to Atlantic City hotels (Case, 716). This witness's testimony on rental values is practically worthless, and the Court for the truth must turn to the testimony of the other three witnesses, namely, Messrs. Fetter, Powell and Ludy.

It is very significant that the only witness the defendant produced in support of his contention that the undoubted slump in real estate values had caused a diminution in the rental value of the Princess Hotel was the witness Bloom, whose testimony, as we have seen, within itself shows that he does not know what he is talking about, however much he knows about mortgages.

The complainant's contention is that the slump in real estate values, that is to say, in the price for which the Princess Hotel could be sold does not establish a falling off in rental value. Even the vague Mr. Bloom testified (Case, 196) that the percentage on the real estate value which the rental value should be depends upon the use to which the property is put. We say that the rental value of the Princess Hotel depends upon what a prospective tenant will pay for it, and that depends mostly, if not wholly, upon what the prospective tenant feels he can make out of the use of the Princess Hotel

for the purpose for which it is designed, *i. e.*, a hotel. That does not at all depend upon the market for real estate sales in Atlantic City, but depends upon the natural advantages of the community, in salubrity of its climate, and the existence of the thousand and one factors which over a period of many years have united to make Atlantic City what it is. So long as people continue to come to Atlantic City its hotels will be profitable, and so long as hotel men can get sufficient guests for their hotels will they be willing to pay substantial rentals for hotel property. It is significant in support of this argument that the defendant's witness Ludy testified (Case, 216) that although the sale value of properties increased in 1924 and 1925, there was no increase in rentals, and that the only increase which he received for the rentals of his hotels at that time was due to substantial improvements made by him in the buildings. The complainant stands flatfootedly in the position, therefore, that there is no evidence in the case to warrant any diminution in the rental value for the respective years below the testimony as given in July, 1926. The testimony of the three witnesses is: Fetter, $40,000 a year; Powell, $34,000 a year; Ludy, $25,000. Of these three men, Powell is a real estate man, Fetter and Ludy are both hotel men. Ludy is an owner of hotels, whereas Fetter, when he testified, leased four different hotels. He did not merely give an opinion, but stated flatly that for the Princess he would pay $40,000 a year. He testified, of course (Case, 10), that this was based on the landlord paying the taxes, sewerage, water rent, and keeping the roof and plumbing in repair. There should be no deduction, however, in this case for those items. The defendant has paid what might be characterized as the landlord's charges, but, for the reason stated under Point I

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of this part of our brief, he is not entitled to any credit for them as against the complainant, his wife.

The complainant's position therefore is that on her appeal the decree should be reversed, with instructions to modify the accounting by eliminating all of the credits allowed by the Master and increasing the rental value of the property to the rate of $40,000 a year; and that the decree should therefore provide that the defendant account to the complainant for one-half of that rental value for six years, that is to say, $120,000.

May Term, 1931.

Respectfully submitted,

ROBERT H. MCCARTER,
GEORGE W. C. MCCARTER,
Of Counsel with Complainant.

New Jersey Court of Errors and Appeals

Between H. Rae Scull Rosecrans, *Complainant-Respondent,* *and* Paul C. Rosecrans, *Defendant-Appellant.*	*On Appeal from Chancery.*

BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

Statement of the Case.

This appeal is for the review of the final decree, made by the Chancellor, and advised by Vice-Chancellor Ingersoll, directing the payment, by the defendant, to the complainant of a large sum of money, based upon the complainant's right to a share of the rental value of a property operated as a hotel in Atlantic City.

The decree, thus appealed from, is the final determination of various phases of litigation between the parties, predicated upon an original bill of complaint, a counter-claim interposed by the defendant, and an accounting, between the parties, based upon an interlocutory decree requiring the defendant to account for the rental value of the real estate involved. Various other questions arose, as incidental to the litigation, respecting the period of time during which the account should occur and the allowance of credits, to the defendant, for moneys paid in connection with the premises involved.

Exceptions were filed by the defendant to the report of the Master, who stated the account, and

many of the questions involved arise from the conclusions of the Vice-Chancellor, with respect to such exceptions.

All of the many incidental questions were finally determined, one way or the other, as the result of the final decree, holding that the complainant was entitled to the relief prayed for in her bill of complaint, and that the defendant should pay her the sum of money, specified in the decree.

Grounds of Appeal.

The defendant contends that:

1. The Court of Chancery should have found, under the pleadings and proofs, that the complainant had no absolute ownership in the lands and premises, but was entitled merely to an equitable lien thereon, by reason of her loan of money to the defendant, who applied the same, with his own funds, for the purpose of acquiring the premises in question.

2. The Court of Chancery should have sustained the counter-claim filed by the defendant, based upon the fact that the complainant was entitled only to an equitable lien for moneys advanced.

3. In no event should the complainant have been entitled to an accounting for rents from the first day of June, 1922, for the reason that she occupied and had possession of part of the premises, for a long period of time subsequent to said date and was, therefore, not entitled to receive the rental value covering the time of her occupancy.

4. The Court of Chancery erred in making a supplemental interlocutory decree, dated April 10, 1928, requiring an accounting to be had with reference to the contents of the hotel, for the reason that a large portion of the furniture used by the defendant, in the conduct of the hotel business, belonged to him personally, was purchased and paid for out of his own funds.

5. The Court of Chancery erred in failing to sustain the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th exceptions presented to the original Master's report, upon the ground that the Master refused to give the defendant credit for certain allowances to which he was properly entitled, covering payments made during the period of the accounting.

Particular reference to these various objections will be discussed later herein, but they are generally set forth in the petition of appeal (C. p. 4 *et seq.*).

Facts.

At the time of the inception of this controversy, the parties were husband and wife, but were divorced, upon the application of the husband, during the progress of the litigation.

The bill was filed by the wife, against the husband, for the purpose of compelling the latter to account for rents, chargeable against him, while in possession of the real estate, which had been conveyed jointly to the husband and wife on December 1, 1919 (C. p. 11). The property was the Hotel Princess, on South Carolina avenue, in Atlantic City.

While the answer admits the conveyance to the husband and wife, it is alleged therein, and also in the counter-claim, that by an agreement between the parties, the wife was to be included as a co-grantee in the deed, in order that she might be secured for certain moneys which she was advancing to her husband, for the purpose of completing the purchase, and that it was distinctly understood between them, that upon her being repaid such funds, the title to the real estate was to be placed in the name of the husband alone. The counter-claim prayed that an accounting might be had between the parties to show how much money, of the wife, still remained unpaid for advances made by her and upon the repayment thereof by the husband, the title to the real estate should be placed in his name (C. p. 15).

The Vice-Chancellor found adversely to the defendant's claim. The former did, however, state, that he had difficulty in arriving at a satisfactory solution because of the testimony of the complainant herself. He called attention to the excerpts from her testimony, which seemed to indicate that she was testifying to facts directly in variance with the claims being made (C. p. 155).

There was ample justification for this criticism by the Vice-Chancellor, with respect to the testimony of the complainant. It is perfectly apparent that there is no possible way to reconcile her evidence with the documentary proof produced by the defendant, which could adequately support the contention made by her in the bill of complaint, that the real estate was to be conveyed to the husband and wife as tenants by the entireties, without any other qualification.

Practically the only disputed fact in the case, at the hearing before the Vice-Chancellor, on the

original bill, was whether the agreement between the parties, was as stated by the wife, or in accordance with the testimony given by the defendant.

The evidence of the defendant, in this respect, was distinct, certain, definite and positive. When asked as to the conversation between his wife and himself with reference to the purchase of the hotel, the following was his reply (C. p. 81):

"Q What conversation did you have with her in relation to the hotel, buying the hotel?

A I said that I—

(Question repeated.)

A I told her I was not in a position to finance it, I didn't have enough money, and she says, 'Well, you have always repaid me the money I have loaned you before, and I will trust you with the—I will advance you the money you need at the time of settlement, and you can pay the money as you make it; you ought to make that much money in one year's time in a hotel like that to repay me what I am putting in.

Q What was said about taking the title, if anything?

A The title was to be placed—I told her that the only security I could give her would be to let her name appear on the deed, and when I would pay the money, she should release me.

Q It is a fact, isn't it, that the moneys which were used at the settlement for which you drew a check, some of it was loaned to you by your wife?

A Yes; that was the agreement.

Q That was according to the arrangement you made before?

A According to the arrangement I made with her.

Q At the time of the settlement was there any talk between Mrs. Rosecrans and Prettyman with relation to her being released from the purchase money mortgage, and if there was, state exactly what happened.

A No. They were talking about how the property should be placed, and Mrs. Rosecrans told him that we had agreed to place it jointly, for the loans that she had made me, and when I got the money back I was to repay her and she was to release me from the deed, and he said that he would—he practically agreed that he would release her from the bond and deed in one year." * * *

"Q Had you talked with her prior to that time about being released from the bond and mortgage at the expiration of a year?

A I did. She said I ought to make enough money in a year's time in a hotel like that to repay her that loan" (C. p. 85). * * *

"Q Mrs. Rosecrans in her testimony says that you and she talked about this purchase and that you agreed with her that the purchase should be made jointly and the business was to be operated and you were to share in the receipts. Did any conversation of that kind ever occur?

A No, nothing said about such a thing.

Q Did you ever make any agreement to buy this hotel and give her an interest in it, except by way of security for the moneys she advanced?

A No" (C. p. 89).

Of course, these statements made by the defendant were denied by the complainant, but we insist that the outlying and uncontradicted proof amply corroborates the defendant and manifestly shows that the attitude of the complainant, exemplified at the time of the trial, was entirely inconsistent with what she had said and done with respect to the acquisition of the property.

The following quotations from the testimony of the complainant demonstrate conclusively, in our judgment, that the complainant was merely to have a lien on the property for the moneys advanced and the title was to be eventually taken in the husband's name, after the moneys loaned by the wife had been repaid.

Mrs. Rosecrans, in both direct and cross examination, testified as follows (C. p. 30):

"Q And did you contribute any moneys toward the purchase of this hotel?

A I did.

Q Were those checks drawn to your husband's order and deposited by him?

(Question objected to as not cross examination.)

(Question allowed.) (Question repeated.)

A Yes, they were drawn to his order, but I put them in bank for him.

Q They were deposited to his credit?

A Yes.

Q And he drew moneys out for the purpose of paying the consideration for the hotel?

A Repeat that question.

Q He drew the moneys out of the bank where you deposited them for the purpose of paying for the hotel.

A Yes."

(C. p. 31.)

"Q You loaned him money to buy this hotel?

A Yes, but I don't know whether that particular check refers to the loan on that purchase or not."

(C. p. 34.)

"Q I call your attention to another check on the same day, Sept. 7, 1920, for $250 and ask you whether or not you received that check from Mr. Rosecrans?

A That is my endorsement.

Q You got the money?

A Yes.

Q I call your attention to the words endorsed on the face of the check, 'On account of interest.' Are those words in your handwriting?

A Yes, because that is the only interest he ever paid me.

Q They are in your handwriting?

A Yes.

Q And that check for $250 was received the same day you got the check for $2,500, was it not?

A I don't remember. According to the date on the check will show that."

(C. p. 34.)

"Q You say you gave your husband eight or nine thousand dollars to pay down on the Princess Hotel?

A Yes.

Q I want to know was that a loan or was that money handed to him to pay on account of the purchase price?

A That money was loaned for the purchase of the hotel.

Q It was loaned for the purchase of the hotel by you to your husband?

A Yes, it was."

(C. p. 70.)

"Q What I am trying to find out—I don't what to confuse you; what I want to know is the actual amount of money you loaned your husband up to the time that deed was delivered which he used for the purpose of purchasing the property.

A You have it right before you.

Q Is this the amount, $8,758?

A Yes.

Q Well, now, if there are any checks for some of these items dated after the 8th of December, 1919, do they represent moneys that were paid to Mr. Prettyman?

A No, I gave them to Mr. Rosecrans. We didn't get to the deed.

Q Loaned to Mr. Rosecrans and he used it for the purpose of paying Prettyman?

A Yes."

(C. p. 71.)

"Q If there are any checks after the eighth of December, you still say that is money you loaned Mr. Rosecrans to buy this property?

A Yes, right around that time.

Q You expected to get this $8,758 back? Did you not?

A I gave it to him to purchase the property.

Q Answer the question. Did you expect to get it back?

A There was no promise of getting it back.

Q Didn't you expect to get it back?

A It was money I advanced him for the purchase of the property.

The Court: You can answer that yes or no.

(Question repeated.)

A It was money I advanced for the purchase of the property and—

Mr. Starr: I insist on an answer.

The Court: You can answer that, Mrs. Rosecrans. You can answer it yes or no.

A Yes, I expected to get it back.

Q You expected to get it back from your husband, did you not?

A When the money came in from the hotel."

(C. p. 76.)

"Q They were loans to Mr. Rosecrans, the same as you testified this morning?

A Moneys advanced to Mr. Rosecrans to conduct the hotel.

Q Were they loans?

A Advances. You can consider them what you please. Moneys advanced to him.

Q Were they the same character about which you testified this morning?

A They were moneys advanced to him.

Mr. Starr: I think I am entitled to an answer.

The Court: Yes, you are entitled to an answer to the question.

A It was advanced as loans."

The refusal of the complainant to answer responsibly and her demeanor on the stand, made her testimony very unsatisfactory, to say the least.

It is also quite apparent that Mrs. Rosecrans strenuously objected to being made liable as an obligor on the purchase money mortgages, given at the time of the acquisition of the property. That was a matter of discussion between the parties and with the vendor at the time of the negotiations, which will appear from the fol-

lowing testimony of John E. Iszard, who testified on behalf of the complainant.

The witness was interrogated with respect to a conversation between the complainant and Mr. Prettyman, who was selling the property. The following is an excerpt from his testimony:

> "Q Did he say anything as to the execution of the purchase money bond and mortgage?
>
> A Mrs. Rosecrans objected to—when I say objected she spoke about her liability on the bond. There was some discussion about that, and Mr. Prettyman said it would be necessary, of course, for her to sign if the title was taken in both names" (C. p. 111) * * *.
>
> "Q Mr. Iszard, don't you recall that there was some talk about Mrs. Rosecrans being liable on the bond given for the purchase mortgage for a year?
>
> A I don't recall anything about a year. There was discussion as to her liability on the bond.
>
> Q Here is what Mrs. Rosecrans says about it: 'I only asked you'—this is in a letter written by her to Prettyman: 'I only asked you to release me from the bond, and so did he, because you promised me on the day of settlement that after the first year you would do so. John Iszard and also Mr. Robbins was present.' Doesn't that refresh your recollection as to what happened?
>
> A I didn't hear that. I may have been busy talking with someone else at that time. I know of the discussion Mrs. Rosecrans had with me in regard to her liability on the bond" (C. p. 112).

The most significant bit of evidence in the case was a letter written by complainant to Mr. Prettyman on April 10, 1922, Exhibit D. 15 (C. p. 136). This correspondence occurred at a time

when the complainant was making an effort to be released from her liability on the bonds, secured by the purchase money mortgages, and, in our judgment, is conclusive evidence, in support of the defendant's claim that the complainant's ownership in the premises was to continue only so long as it was necessary for her security for the moneys advanced

"HOTEL PRINCESS
South Carolina Avenue near Beach
Atlantic City, N. J.
Paul C. Rosecrans

April 10th, 1922.

Mr. Chas. Prettyman,
Phila., Pa.

I have your letter of 8th and you should have told me on Saturday, when I met you, that you had received my letter.

In regard to the trip West that was the first trip I had ever taken in all my life and I paid my own expenses also my niece every cent with money that I had earned many many years ago, some of it was saved from a salary of 25 and 30 dollars a month; my mother had died just a short time before and I thought perhaps it would help me to forget a little my great loss: I have not had a dollar from the receipts of the Princess Hotel in anyway shape or form, the fact of the matter is I have not been able to get back, so far, what I put in it. You see every cent Mr. Rosecrans could get had to be put right back in the property or in furniture in order to do any business at all, it was in such a terrible condition you would be surprised the thousands and thousands of dollars it has cost.

I only asked you to release me from the bond and so did he, because you promised me on the day of settlement that after the first year you would do so. John Iszard and also Mr. Robbins were present. You

know it is so hard from the credit standpoint to have a business held jointly, both Dunn and Bradstreet told him he could never get a rating as long as it was so held; and the reason that we have been able to pay the bills as well as we have has been due entirely to Mr. Rosecrans and not to me, and he is the one that should have the credit if any is due, as he worked early and late during July and August he worked in A. M. from seven o'clock until two and three the next morning and on Saturday nights during August he laid down in the back office and the night clerk would call him if anyone would come in or go out; that is the reason that his health is broken now; and it is for him to decide where his place is and not you, it is where his health can be built up the best in the shortest space of time.

But you see there is no use of having an unpleasant correspondence, you have some money and you win so just don't answer this letter I am tired of it all.

I am, with kind regards,

Yours very truly,

R. S. Rosecrans."

That the defendant personally paid the consideration, which passed to Prettyman for the sale of the property, is unquestioned. The initial payment on account to Mr. Prettyman of $2,000 was the check of the defendant, Exhibit D. 16 (C. p. 138).

The statement of settlement for the property is Exhibit D. 17 (p. 138) and the checks given at the settlement were those of the defendant, Exhibits 18, 19, 20 and 21 (C. pp. 140-141).

It is a fact, however, that a portion of the moneys paid by the defendant emanated from loans made to him by his wife. This unques-

tionably appears from the various checks, Exhibits D. 1 to D. 14 inclusive, printed on pages 129 to 135 inclusive, which represented returns of loans made by the complainant to the defendant. In some instances, the defendant, in drawing each of the checks, indicated on the face thereof, the purpose for which it was given, and in many other instances, the complainant, after the receipt of checks, made notations thereon to show that they were made on account of loans made by the complainant to the defendant.

Exhibit D. 1 is marked "on account of loan."

Exhibit D. 2 is marked "on account of linen."

Exhibit D. 3 is marked "on account of loan 12/1/19," which was the date of settlement with Prettyman.

Exhibit D. 4 is marked "on account of loans."

Exhibit D. 5 is marked "on account of interest."

Exhibit D. 6 is marked "on account of loan."

Exhibit D. 7 is marked "Loan account."

Exhibit D. 8 is marked "Parlor furniture and carpet account."

Exhibit D. 9 is marked "Loan account."

Exhibit D. 10 is marked "L. ret."

Exhibit D. 11 is marked "Loan account."

Exhibit D. 12 is marked "Account L."

Exhibit D. 13 is a receipt for $750 given by the complainant to the defendant, on account of loans.

We, therefore, submit that the initial decree in favor of the complainant and a rejection of the counter-claim, were clearly against the weight of the evidence.

It was an established fact in the case that the moneys, which were invested in the purchase of the premises in question, were actually paid by the defendant.

It seems to be unnecessary to refer to authorities to support the proposition that if the conveyance was made to the wife, as a joint tenant, merely as security for the moneys advanced to her husband to assist in the purchase of the property, her interest in the latter is that of a pledgee and upon the repayment to her of all moneys advanced, with interest, after a complete accounting as to such loans, between the parties, the husband would be entitled to have the property put in his name.

Of course, the defendant is confronted with the general rule that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her. This presumption may be rebutted, and it is perfectly manifest that from the documentary proof above referred to, particularly the contents of the letter written by complainant to Mr. Prettyman, a copy of which is herein set forth, it was never intended that the moneys invested, in the premises, were to be considered as a gift to his wife, but the latter was merely to have a claim on the property until the funds loaned by her were returned, when she was to be relieved from any further obligation on the bonds securing the purchase money mortgage.

The question of whether or not the sums invested, by the defendant, in the property were to be considered as advances or gifts to or for the benefit of the complainant was considered by the Master. In passing upon the question

of whether the defendant would be entitled to a credit for the carrying charges paid by him, the Master came to the conclusion that the testimony showed that the circumstances displayed a situation, which would rebut the presumption that the payments made, by the husband, were advances or gifts to the wife (C. p. 163).

We submit that the Master was correct in this conclusion, and will discuss the same hereafter in connection with the claim that the moneys paid for carrying charges and other expenses should have been allowed covering a period prior to June 1, 1922.

Period of Accounting and the Inclusion of the Personal Property, under the Terms of the Two Interlocutory Decrees.

The Vice-Chancellor arbitrarily fixed June 1, 1922, as the time from which the defendant should be obliged to account for rental value.

There seems to be no rational ground for the selection of this particular date. Long after this day, the complainant was in actual possession of at least a portion of the premises and she was never excluded from this possession. The defendant, it is true, was conducting the hotel business in his own name but this was with his wife's consent and approval.

Certainly, during the period of such occupation, by the defendant, he cannot be properly charged with rental value, in view of the fact that as co-tenant, he had as much right to use the property as the complainant.

While it is a fact that the relations between the parties became somewhat inharmonious, it is manifest that the complainant was trying to embarrass the defendant as much as possible, during the conduct of the business, and, for that reason, the complainant was taking reasonable precautions to prevent such actions to disastrously effect the conduct of the business. This, it seems, he had a perfect right to do, in view of the fact that he was a part owner and his occupation, with her consent, and the conduct of the business he had built up there, ought not to have been interfered with by her, in view of her permission that the business should be so operated.

It would seem to us, that the complainant had never been excluded from the enjoyment of her right, jointly with her husband, in the possession of the premises. Certainly not up to the date of the trial which was in 1924. She repeatedly admitted, during the progress of the trial, that she had consented to the use by the husband of the property for the purpose of conducting a hotel business.

There had never been such exclusion of her rights as would justify a decree against her husband upon the basis of payment of rental value.

The point involved in this situation is expressly decided by this Court in *O'Connell* v. *O'Connell*, 93 Eq. 603, where almost the identical question, here presented, was decided. The Court used this language:

> "In order to render one co-tenant liable to another for the use and occupation of the jointly owned premises, there must be some-

> thing more than a mere occupation thereof by the former and a forbearance to occupy by the latter."

Not only was the interlocutory decree, requiring the accounting between the parties, as to rental value, erroneous, but there was absolutely no justification, according to the proofs to justify an accounting from June 1, 1922.

No objection was ever made, by the complainant, to the occupation, by the defendant, of the hotel and the conduct of the hotel business therein in his name. This is manifested conclusively by the statements contained in the letter written by the complainant to Mr. Prettyman (Exhibit D. 15, C. p. 136).

It is also shown by the testimony (C. p. 85).

Sometime after the property was purchased, the parties lived in an apartment apart from the hotel, but the complainant took her meals at the latter place, and had the privilege of occupying an apartment there at all times.

Even on the day the testimony was taken in the original case, January 3, 1924, the complainant was living at the hotel and had for her own benefit a suite of rooms and bath. The defendant was then supporting his wife and her bills were paid at the hotel desk (C. p. 102).

The supplemental interlocutory decree, required that the accounting should include the value of the premises, as increased by the presence of personal property owned by the defendant.

Unquestionably there was some personal property in the hotel at the time it was purchased,

as shown by the schedule attached to the deed. The extent of this personal property was meager as compared with what was added later. This will be discussed hereafter.

The defendant was charged with the rental value, based upon a completely equipped hotel, notwithstanding the fact that the complainant had no interest whatever in a very large portion of the equipment.

The injustice of this finding is based upon the fact that while the defendant was required to pay a rental value, based upon the property owned by himself, he was not permitted to show, as a credit, the expense to which he was put in making the additions and replacements to such equipment. In other words, he was obliged to pay rent for the use of his own property.

The only equitable method would have been to ascertain the rental value of the hotel, as furnished at the time it was acquired in 1919, and not as equipped, by reason of additions, replacements, etc., furnished by the defendant, at his own expense.

It was not, however, upon this theory that the accounting proceeded, as a result of which, we contend that there was no justification whatever for the amended order of interlocutory decree.

Questions arising with respect to the Master's Report and Exceptions Filed Thereto.

The Master averaged the rental, during the period of accounting, at $25,000 per annum. No appeal has been taken by either party to this finding.

The questions discussed before the Vice-Chancellor mainly arose upon the failure on the part of the Master, to allow certain credits to which the defendant claimed he was entitled. Both the original interlocutory decree and order of reference and the other supplemental thereto (C. p. 156) did not specify with particularity the credits to which the defendant should be entitled. The language in this respect was that it be referred "to take and state said accounting which shall include any credits to which the defendant is entitled." Substantially the same language is contained in the supplemental order (C. p. 160).

It should be observed that the main objections to the Master's report are those based upon the exceptions presented by the defendant, from the determination of which an appeal has been taken.

There is no cross appeal on behalf of the complainant, either with respect to the rental value allowed or the various credits given and deducted from the gross rents.

Furthermore, while the two interlocutory decrees and orders of reference fixed the time for the charging of rental value from the first of June, 1922, there is no limit as to time with respect to the credits which should be given to the defendant in the statement of the account.

Both Masters, however, interpreted the orders to mean that the credits to be allowed should be limited to the same period, as the term for which the defendant should be chargeable for rent, which we think is entirely erroneous and which will be discussed hereafter with respect to the objections predicated thereon.

On July 24, 1929, the Master presented his report, which found that the average fair rental value of the hotel, including the contents, for the period of the accounting, beginning June 1, 1922, and ending June 1, 1929, at $25,000 per year, or a total of $175,000.

The Master allowed various credits for carrying charges, as shown by Schedule 1 (C. p. 167) attached to the report, amounting to $122,368.71, which amount, being deducted from $175,000, ascertained as the rental value, left a balance of $52,631.29, of which the complainant, as the cotenant with the defendant, was entitled to one-half, or $26,315.65, which latter amount was the sum reported by the Master to be due the complainant from the defendant.

It will be observed that the Master limited the credits allowed the defendant, to what is characterized in the report as carrying charges, covering interest payments on first and second mortgages $56,150 including reduction of principal; reduction of principal secured by second mortgage and sums paid for the extension of the first mortgage; taxes, fire insurance, premium, water rents and sewer rents $66,218.71.

The defendant presented various exceptions to the report of the Master, which for brevity, may be listed in this order:

Elimination from the credits allowed the defendant, the following:

1. Sums paid under the head of carrying charges from the time of the acquisition of the property, involved in the litigation on December 1, 1919, to the first day of June, 1922.

2. Payments made for repairs necessary for the preservation of the property beginning December 1, 1919, and ending June 1, 1922.

3. Same items from the first of June, 1922, to the end of the accounting.

4. Sums paid for the upkeep of the goods and chattels constituting the equipment of the hotel from December 1, 1919 to June 1, 1922.

5. Same items covering the period from June 1, 1922, to the end of the accounting.

The contention of the complainant was, with respect to the various items of credit, that the defendant was not entitled to any allowance whatever, because of the fact that the parties were husband and wife, and there was a presumption that all the payments made, in connection with the property, both carrying charges and repairs and replacements, were gifts to the complainant from the defendant. In other words, it must be assumed that the payments thus made were in the nature of settlements in favor of the wife, which the husband was not entitled to have returned.

The Master rejected this view, as shown by the statement contained in the following:

> "By reason of the payments for carrying charges, repairs having been made by defendant on property owned by complainant and defendant, husband and wife, complainant contends the payments so made are presumed to be by way of advancements and contributions for complainant, his wife; under ordinary circumstances that would be the effect of such payments, but here we have a situation which clearly rebuts any such presumption. There was an utter disagreement

> as to the conduct of the business which culminated in the assumption of control by defendant, who also disputed the title of complainant, claiming her interest to be that of a mortgagee'' (C. p. 163).

No appeal from this finding has been taken by complainant.

We submit that the Master adopted the right theory when he rejected the contention of the complainant that the payments, made generally by the defendant, were advances in the nature of gifts to or settlement for the wife's benefit, although we express the opinion that the Master did not carry his conclusions far enough in order to allow credits to which the defendant was obviously entitled.

The general rule underlying accountings in Equity, as between ordinary tenants in common or joint tenants is that the party in possession should be charged with the rental value of the property and should be given credit for payments made by him by way of taxes, insurance and repairs.

Of course, this rule is subject to the doctrine set forth in *O'Connell* v. *O'Connell*, above referred to, and applies, so far as rental value is concerned, only where there has been an exclusion of one co-tenant by the other co-tenant.

Furthermore, the equitable rule is entirely settled that when a tenant in common has, in good faith, put improvements upon the common property, when the improvements are made honestly for the purpose of improving the property and

not for the purpose of embarrassing his co-tenants or encumbering their estates, or hindering partition, he is entitled, in some way, to be compensated in an equitable partition.

6 N. J. Digest, Sec. 11, page 12109;
Roll v. *Everett*, 73 Eq. 697;
Wolston v. *Pullens*, 88 Eq. 35.

There seems to be no doubt about the fact that in New Jersey there is ample support for this equitable doctrine and should prevail here in the allowance of a very large portion of the sums of money paid by the defendant for repairs, etc., except as the rule may be limited by the presumption, which is also recognized in cases where the joint tenants, or tenants in common, occupy the relation of husband and wife, when in such instances the presumption may be rebutted.

As herein claimed, it seems manifest to us that the presumption, referred to, is conclusively rebutted here, and the question of allowances for repairs, etc., should be determined in accordance with the usual equitable doctrine.

The Accounting, respecting payments by Defendant, should have included those made during the period prior to June 1, 1922.

The right to have credit for disbursements made between the date the property was acquired, December 1, 1919, and June 1, 1922, which latter date was fixed by the order from which charge of rental value was to begin to run, was denied the defendant in the Master's report. During this period the parties were living together, more or less harmoniously, and a fair inference from all the testimony establishes the fact that the com-

plainant either expressly assented to the disbursements made prior to June 1, 1922, or acquiesced therein, which would amount to an implied consent. She consented that such disbursements should be made for the improvement and preservation of the property.

Interest on mortgages, reduction of principal on the latter, taxes and fire insurance premiums, sewer and water rents, were all paid by the defendant.

This question respecting repairs first arose, in the accounting, at the first hearing, while the the testimony of Charles F. Wise, was being taken (C. p. 218, *et seq.*). Mr. Wise was the representative of Henry Goldner Boiler & Tank Works, in Philadelphia, and made an examination of the boilers and heating equipment of the Princess Hotel in 1920, and found that the boiler was in a very bad condition. It had listed and when it got hot it sagged down. It was necessary, for the protection of the property, to have repairs made or new equipment installed. Objection was made by Mr. McCarter to this testimony (C. p. 219) and the matter was thrashed out before Judge Sooy, who made the following statement (C. p. 226):

> "It seems to me that the plain reference is that I shall state an account between June 1, 1922, for the rents and I shall give you credit for all moneys from that date down. I, at the present time, won't take testimony back of that date and if I am in error, I will give you an opportunity to put in that testimony later.
>
> Mr. Starr: For the present then, you decline to take any testimony of payments made by Mr. Rosecrans prior to the first day of June, 1922?

The Master: Yes.

Mr. Starr: That raises the question fairly on the records and that being the ruling, of course, I won't offer any testimony of payments made prior to that time and we will reserve the right either to present that testimony to your Honor or subsequently.

The Master: If I find I am wrong, I will give further time to that."

Later, after Judge Shinn took over the reference, the action of the former Master was called to his attention and, upon reflection, he determined to adhere to the former ruling.

The position taken by the defendant before Judge Sooy, was that the credits should be allowed upon the general theory of the equitable rule, which is entirely settled, to the effect that when a tenant in common, has in good faith put improvements upon the common property, when the improvements are honestly made, he is entitled, in some way, to be compensated, in an equitable partition, and that this rule applies to encumbrances, interest, water rents, taxes and repairs. In view of the fact that the order for the accounting did not define the character of the credits to be allowed, the defendant was entitled to contribution from his co-tenant, for all expenses relating to the upkeep of the property, keeping down all encumbrances, interest, taxes, etc., regardless of the time for which the defendant was liable to account as rent. The defendant was entitled to be repaid for all moneys that would increase or enhance the value of the property from the time it was acquired and that the payments made for carrying charges and repairs, necessary for the preservation of the property, should be allowed, because the same

increased the value of the complainant's estate in the same. The general equitable rule, stated had reference to the period from the time the real estate became the common property of the complainant and defendant, and was enhanced in value by reason of moneys paid for preservation or maintenance.

The theory of the Vice-Chancellor, fixing the beginning of the accounting period as June 1, 1922, evidently was an arbitrary designation of the time that the complainant had been excluded from the enjoyment of the property, although this is not conceded. There is nothing in the order to show that such date was to control the time when the credits were to be allowed. The provision as to credits was unlimited as to time. Such designation of the period for the charging of rent, did not, in any way, deprive either of the joint tenants to contribution, from the other, for any legitimate expenses incident to the property at any time. Three Thousand Dollars a year had been paid by the defendant on account of mortgages covering the property, which, unquestionably, increased the value of the equity of the complainant.

If these payments, made by the defendant prior to June 1, 1922, are not allowed now, the defendant certainly will be entitled to the same out of the proceeds of sale, if the premises be sold hereafter in partition proceedings.

If the element of rental value was not involved here and the matter in issue would be a plain and simple accounting between co-tenants, either in an equitable partition or in any other way, there would seem to be no doubt about the right of one joint tenant, having made payments for the care and preservation of the property or enhancement

of its value or increase in the equity of the other in the property, to have contribution from the latter.

Therefore, it follows that while the accounting for rents must be limited upon the theory that prior to June 1, 1922, there had been no exclusion, so far as the complainant was concerned, as to the care and preservation of the property, the defendant is entitled to a credit for the moneys thus paid, upon the theory that the order is unrestricted as to time and any legitimate expense incurred by the defendant, in the care and preservation of the property, from the time he became an owner jointly with his wife, he is entitled to reimbursement.

In support of this contention, it is manifest that if a sale be made in partition, in order that that the respective interests of the parties may be ascertained, there can be no reasonable doubt, but that the defendant, and the complainant, as well, if she had made payments, would be entitled to contribution from the other. The fact that there is a limit of time, so far as ascertainment of rental value is concerned, does not prevent either of the parties to have contribution from the other, for moneys expended on the property or on account of the property prior to June 1, 1922. It would seem, therefore, that if, upon the theory of the Master, the defendant should be allowed credits for the carrying charges, after June 1, 1922, the same character of credits should have been allowed from the date the property was acquired.

The condition of the hotel at the time of the purchase in 1919, is shown by the testimony of the defendant, which is not contradicted (C., p. 570 *et seq.*).

The defendant testified, with great particularity, as to the plumbing, heating system, including boilers and radiators and furniture. At the time these improvements were made, the parties were living together and the defendant interposed no objection to the expenditure of the defendant's money for the purpose of making the property tenantable. The ceiling in the basement was changed by order of the fire underwriters (C. p. 563).

The bed linens and napkins were replenished because the used ones wore out (C. p. 584).

Linen and lace curtains were supplied to replenish those which were worn out. This is agreed to by the complainant (C. p. 598).

Refurnishing the hotel was done with the knowledge on the part of the complainant and without any objection (C. p. 627).

The same situation existed with reference to furnishing the carpets and floor coverings (C. p. 627).

The re-arrangement of the rooms on the basement floor was consented to by the complainant (C. p. 693).

There is no evidence whatever to support the theory upon which the doctrine of settlement and gift for the benefit of the wife is based, except the mere marital relation. The foundation of the complainant's original claim against the defendant, made by the bill of complaint, was that she, by the purchase of the property from Prettyman, embarked in a joint venture with the defendant, by which she became interested to an extent of 50%.

Manifestly this situation is entirely different from one whereby a husband buys property for his own benefit and places the title to the same, jointly, in the name of himself and his wife.

According to the testimony of the complainant, she contributed to the husband a very considerable portion of the moneys which were put into the property. This irresistably rebuts the presumption that the placing of the title in the name of both parties was in the nature of a gift for the benefit of the wife. This situation is unquestionably established, not only by the evidence appearing in the accounting proceedings, but also by the proofs taken before the Vice-Chancellor upon the hearing of the issue raised by the bill, answer and counter-claim. Such testimony absolutely rebuts the theory for which the complainant contended, to the Master, that the expenditures, by the defendant, were in the nature of a gift to or settlement made for the benefit of the wife.

Many times the complainant stated that she loaned or advanced moneys to her husband for the purpose of buying the property. These statements appear from the extracts of the testimony taken before the Vice-Chancellor, hereinbefore recited.

Furthermore, the complainant contributed considerable of her own funds to furnishing the hotel, as will appear by the checks referred to (C. p. 52, *et seq.*). She also paid expense of the running of the hotel, while her husband was in the West, or when he was short of funds. She also paid employees (C. p. 62). According to the

complainant's statement, she contributed toward the purchase of the hotel $8,758 (C. p. 71), which she expected to get back from her husband when the money came in from the hotel.

Exhibit D. 15, offered by the defendant at the hearing before the Vice-Chancellor, demonstrates, with absolute certainty, that the defendant did not understand that the contributions made toward repairs, improvements and furnishings in the hotel, were in the nature of a gift to or settlement for her benefit, a copy of which letter is hereinbefore set forth.

Another situation relied upon by the complainant to establish joint ownership in the venture, is the testimony appearing (C. p. 94) which established that the complainant had previously been in the hotel business or, at least, connected with the operation of such a business, and that she co-operated with the defendant in the management of the Princess, when they were friendly, prior to 1924.

Some of the furnishings in the hotel were obtained by the defendant upon the credit of the complainant (C. p. 96), and suits against the parties jointly were started to recover some of the moneys paid (C. p. 98).

It must be borne in mind that it was upon this proof that the Vice-Chancellor found that the title to the property was placed in the name of the wife, not for the purpose of conferring upon her a lien thereon until the defendant might return to complainant moneys advanced to him by her with which to make the purchase. This was the contention made in the counter-claim, but the same was disregarded by the Vice-Chancellor.

Manifestly, the testimony upon this feature was produced to show the existence of a joint venture between the husband and wife, and the title to the real estate was placed in the names of both in furtherance of that design. This rebuts the presumption of a gift to or settlement upon the wife, which would prevent the husband from now claiming the right to be reimbursed for expenditures made by him for the benefit of the joint enterprise, notwithstanding he is to be charged with a reasonable rental value for the use and occupation of the same, and the business of keeping the hotel. This negatives the claim now made, that the moneys expended, by the defendant, for carrying charges and repairs, were upon the understanding that the complainant was not to be charged therewith, but that the sums were gifts pure and simple to her, or settlements upon her for her benefit alone.

The hotel was being operated in the defendant's name and the business was carried on by him and he received all moneys incident to its operation. The printed inscription on Exhibit D. 15, being the letter dated April 10, 1922, upon which the complainant sent the communication to Prettyman, shows that the defendant was the proprietor.

The complainant knew that the defendant was making these large expenditures of money, in order to enhance the value of the real estate, replenish the furniture and make repairs so that the business could be carried on profitably. This appears conclusively from the following quotation in Exhibit D. 15, the letter to Mr. Prettyman:

> "I have not had a dollar from the receipts of the Princess Hotel in anyway, shape or form, the fact of the matter is I have not

> been able to get back, so far, what I put in it. You see every cent Mr. Rosecrans could get had to be put right back in the property or in furniture in order to do any business at all, it was in such a terrible condition; you would be surprised the thousands and thousands of dollars it has cost."

The letter also refers to the energies of the defendant in putting the property in shape for the conduct of the business.

It should be observed that this letter is dated April 10, 1922, less than three months prior to the date when the accounting begins on June 1, 1922, according to the interlocutory decree. Up to that time, no claim had been made, by the complainant, that contributions made by the defendant toward the reparation and improvement of the hotel and the payment of the carrying charges were in the nature of gifts to her. In view of complainant's claim of joint ownership, in the venture, and the contributions made by her toward the purchase of the property, in the inception of the transaction, and the fact that she knew that the defendant was investing large sums of money in carrying charges and repairs in order to make the business profitable, it is most inequitable, in the accounting, to set up the claim that the moneys paid thereafter by the husband should be considered as settlements upon or gifts to her. She has always been willing to concede that moneys paid by him in advance of June 1, 1922 were not to be so considered. Certainly, the defendant had a right to assume that he would be entitled, in case of any accounting, to be reimbursed for the expenditures made by him for repairs and carrying charges, if he was to be charged for the rental value of the property. No testimony was presented, during the accounting, to

show that the complainant expected to contend that there was any change in her subsequent attitude from what had occurred prior to June 1, 1922, or that after this date she expected to take the position that the defendant would not be entitled to credit in the accounting for these expenditures.

In many instances, in the testimony taken with reference to the accounting, it appeared that the complainant had knowledge of the various expenditures for repairs, changes and replacements and never made the slightest objection. On the contrary, in some instances, it was established, without contradiction, that the moneys were expended without any indication that she considered the same as voluntary gifts to or settlements upon her, for which the defendant would not be entitled to a credit.

When the hotel was acquired, there were 100 rooms unfurnished and the house had to be re-plumbed and re-piped before the same could be used. This was all done as a result of a talk between the complainant and defendant, and she agreed to the changes which were paid for by the defendant (C. p. 324).

Even in the early Summer of 1923, when the hotel was opened, after being closed for the Winter, which was nearly a year after the beginning of the accounting period, there was considerable repair work done to toilets, washstands, water tanks, etc., ordered by the complainant, because she said that the house was in bad shape and that the work was necessary. Toilets and basins were installed in the upper rooms in order that the rooms might be equipped with running hot and cold water, and that there could be running water in the new rooms, which were built by rearrangement of the old ones.

This colloquy occurred in the proofs:

"Q Had you installed basins in the upper part of the house prior to 1922?

A Yes, 60 of them, 65.

Q What, if anything, did Mrs. Rosecrans have to do with the installation of those basins?"

Mr. McCarter objected to the question as being immaterial *because the complainant had agreed to this work* (C. p. 398).

Nothing appeared in the case to show that the complainant objected to the various repairs and changes being made by the defendant. Certainly, she cannot, in equity, now claim a gift or settlement, in view of the fact that she consented to the various work being done and never indicated, in the slightest degree, thereafter, that there was any change in her attitude.

The complainant remained in the hotel until the 17th of March, 1924 (C. p. 422).

It is rather remarkable that the attitude of counsel for the complainant has undergone such a sudden change and that the claim is now made that all the expenditures by the defendant, with reference to the maintenance and up-keep of the hotel and the carrying charges, were settlements and gifts for the benefit of the wife, particularly in view of counsel's original attitude, as evinced by the statement on page 475, where he speaks of the situation between the parties as "their joint venture," and also on page 477, when he refers to the complainant as being "co-owner."

The defendant explained the condition of the hotel at the time possession was taken in 1919, and the necessity of the repairs to be made, in order to operate the same profitably (C. p. 570).

To the work of reparation, the complainant assented, as shown by Exhibit D. 15.

The interior decoration of the hotel, furnished by Ernest A. Ruegg, beginning June 2, 1922, was assented to by complainant. She agreed to everything to get more money out of the hotel (C. p. 597).

The complainant knew of the purchase of the new furniture, to make additions to the contents of the hotel and, without objection, permitted the defendant to pay for the same (C. p. 585).

After June 1, 1922, the complainant knew about the purchases from the Kensington Carpet Company to refurnish the hotel, or make replacements to carpets, which were worn out. This was made without any objection on her part (C. p. 666).

The complainant also consented to the establishment of a flower garden in front of the hotel and the rearrangement of the rooms in the basement (C. p. 674). This rearrangement, by which the stores were changed into hotel rooms, was with the consent of the complainant (C. p. 693).

In view of the apparent dissention between the parties arising some time in 1923, it is doing violence to the conduct of the parties and particularly the express attitude of the complainant, to invoke the rule of presumption that all the payments made by the defendant, covering carrying charges, repairs, etc., were intended to be gifts to or settlement upon the complainant. The defendant had a right to assume, in the absence of any express declaration by the complainant to the contrary, that the situation

with respect to these payments, after the estrangement, should be the same as before, and that no claim would be made, by the complainant, that the payments made by the defendant were nothing more or less than contributions to the joint venture which, under the interlocutory decree, was evidenced by the ownership by entireties of the hotel. Particularly, as they were all made for the betterment of the joint property and would inure to the benefit of both parties and would render the hotel more profitable by way of rental value of the hotel as a going concern, should the defendant be required to account therefor.

It certainly is opposed to equitable considerations, to charge the defendant with the rental value of the hotel, produced largely by improvements made by him and the replenishments to personal property necessary for the conduct of the business paid out of his own funds, and at the same time deny him the benefit of the expenditures made to produce this situation, upon the theory that it is presumed they were gifts for the benefit of his wife.

The situation being one of joint enterprise, according to the interlocutory decree, manifestly the only equitable manner by which to dispose of the accounting, is upon the basis of the ordinary rule between co-tenants and not upon any theory that the contributions made by the defendant were settlements upon or gifts to his wife.

The nature and character of the repairs, improvements and replacements, both as to the real estate and personal property in the hotel, was shown in the exceptions in which the names of the persons furnishing the goods and doing the work are listed (C. p. 170).

The following are abstracts from the testimony showing the circumstances under which the defendant made expenditures for various matters connected with the property:

Condition of the heating plant, which was repaired in 1920 (C. p. 218, *et seq.*).

Repairs were also needed in 1922 (C. p. 231, *et seq.*).

New copper and galvanized iron work was required to preserve the property (C. p. 235).

Likewise painting and glazing was necessary (C. p. 237).

New heating equipment was required for rooms, which were not tenantable at the time of the purchase of the property (C. p. 327).

Likewise new baths and toilets were required by the addition of more rooms (C. p. 396).

Also paperhanging and painting were required (C. pp. 252, 254).

Metal ceiling in garage was necessary to replace that which was worn out (C. p. 325).

To this the complainant consented (C. p. 338).

Fire brick was supplied to the furnace to replace that burned out (C. p. 358).

Exterior painting was necessary (C. p. 388).

The defendant describes the character of furnishings in the hotel when it was bought and that which was subsequently supplied by him (C. p. 688).

Defendant explains the letters written by him and offered in evidence (C. p. 711).

Further Reference to Testimony respecting payments made by the Defendant, for which no credit is allowed.

After the contract to buy the property was made, the defendant bought approximately $5,000 worth of additional furniture because only a limited number of rooms were furnished at the time of the purchase (C. p. 84).

The letter written by the complainant to Prettyman, hereinbefore referred to, shows that all of the moneys taken from the operation of the hotel, were put back in the same, either in the way of repairs or additional furniture.

Three Thousand Dollars a year was paid before June 1, 1922 on the second mortgage by the defendant (C. p. 86).

He also kept up the interest on the mortgages during the same period (C. p. 86).

The following colloquy occurred at C. p. 87:

"Q Now, what were you obliged to do to the hotel after you purchased it in order to make it tenantable?

A I had to take out all the pipes, the water pipes, all the plumbing fixtures, practically all the plumbing fixtures, the entire steam plant had to be remodelled, and new bath tubs had to be put in. The doors were all broken. The locks on all the doors were broken. They didn't like to lose the hotel, and in the time between October second and December first they did all the damage they could to the place.

Q What about the furnishings? Were you obliged to re-furnish it?

A I re-furnished a hundred rooms, not quite a hundred rooms, somewheres around eighty-five or ninety rooms, and I re-furnished the parlor and the lower lobby and

the dining room, equipped it with silver and the kitchen with kitchen utensils.

Q Whose funds were used for that purpose?

A My own funds. I gave notes to Faith and Company in Philadelphia to remodel the whole place, and I paid those notes when they were due.

Q Can you tell us about how much you spent on the property the first year?

A The first year the properties, according to the income tax figures—

Q I don't care about the income tax figures.

A Thirty-two Thousand Dollars."

The defendant spent over $32,000 the first year after the property was acquired (C. p. 88), $20,000 the second (C. p. 89). The third year he spent between $6,000 and $7,000 and the fourth year spent about the same (C. p. 89). This is not denied.

All of the witnesses by whom the defendant proved the payments made by him, covering the period after the first of June, 1922, testified that such repairs and improvements were necessary for the preservation of the property. This testimony is supplemented by that given by the defendant as to the necessity of work done in order to make it possible for the business of the hotel to be operated.

There might be some merit in the argument that this expense should be borne by the defendant alone, if it were not for the fact that the defendant is being charged for the full rental value of $25,000 a year upon the basis that the property was capable of being operated to the fullest extent.

Some of the work done was taking down old partitions and replacing them with new ones, and the incorporation of new bath rooms.

All new work done prior to 1922 was with the consent of the complainant. This must necessarily be the fact because she was then living at the hotel and made no objection (C. p. 324).

There were 100 unfurnished rooms in the hotel at the time it was acquired. These were supplied with furniture at the expense of the defendant.

All of this work was done as the result of a conversation between the complainant and defendant and the former agreed to it and the latter paid for it.

The moneys paid to Faith & Company, by Exhibits D. 170 to D. 176, were for the heating apparatus, radiators, boilers, etc. (C. p. 613).

The heating plant at the time of the acquisition of the hotel could not be used. It was necessary to rebuild it. This was done in the Winter of 1920, 1921 and 1922, as the result of an arrangement between the complainant and defendant.

Work done by Faith & Company, Yetter and Goldner at the hotel was with the consent of the complainant (C. p. 328).

The change of the bed rooms in the basement was partly the result of action taken by the Board of Health, who refused to allow the old ones to be used.

Fire brick was furnished for the furnace for those which were burned out.

The Master made no allowance as against rental value for the apartments occupied by the complainant.

The Question of ascertaining rental value as affected by the Defendant bearing all expense for repairs and upkeep and replacement of furniture, etc.

The theory of the complainant's claim, after the amendment to the order of reference was made, was that she was entitled to rental value of the hotel as a fully equipped establishment. Apparently, the Master has allowed full value on that basis at the rate of $25,000 a year, upon the hypothesis that it was a going concern, containing adequate furniture, kept in good condition of repair so that the defendant might operate the same to its full capacity.

This being the situation, there seems to be no rational objection to an allowance, to the defendant, for moneys which he disbursed to furnish, equip and keep in repair, the plant for which he is being charged full value. Otherwise, the rental value should be based upon its condition at the time it was purchased, unaltered by the expenditures made by the defendant.

The heating plant was broken down, the plumbing was not usable; there were 100 unfurnished rooms. In other words, the plant, as acquired, was nothing like the condition in which it was put both prior to 1922 and afterward by the defendant, with his own funds, with the consent, either expressed or implied, of the complainant.

It is inequitable that he should be charged rental value based upon the status created by himself, with his own funds, in making the plant tenantable and available for use in the best possible way.

There were some articles of furniture conveyed with the hotel, but the testimony shows that many thousands of dollars were expended by the defendant for additions and replacements.

In the natural order of things, these replacements and betterments belong to the defendant and if the defendant is to be charged with rent, based upon his own investment, and equipment furnished by him, it is equitable, to say the least, that he should be given credit for the payments thus made. Therefore, one or two things should happen. The defendant should be given credit for the moneys paid or the rental value should be based upon the condition of the property as it was, unimproved and unaltered by the improvements and replacements furnished by the defendant at his own expense.

The improvements and replacements furnished by the defendant are not owned by the complainant and constitute no part of the joint plant upon which the complainant would be entitled to rent, unless such allowance be made. As conclusive evidence that the additions furnished by the defendant are not joint property, in the absence of such allowance, it is manifest that if the property is ever sold, in partition proceedings, as between the complainant and defendant, the improvements and replacements furnished by the defendant could not possibly be disposed of unless the defendant be allowed a credit in the proceeds of sale for the value of the articles of personal property and improvements to real estate made by him at his own expense.

There is no suggestion that there was lack of good faith on the part of the defendant. What he did, in the way of keeping the property up, was for the material benefit and advantage of the complainant, if she succeeded in obtaining the relief prayed for in the bill of complaint.

Had the hotel, as a whole, been left in the condition in which it was, when the purchase was made, without the expenditure of a large sum of money for improvements, repairs and replacements, the rental value would not have been anythink like the amount allowed by the Master. The result is that the defendant is being obliged to pay rental value, based upon the use of his own property or a rental value increased by his own expenditures. This result is decidedly inequitable.

Furthermore, up until June 1, 1922, there had been no question, between the parties, as to the justification on the part of the defendant, in making the improvements and spending his own money therefor. After the parties became estranged, naturally the defendant had a right to assume that he could safely continue the practice of keeping the plant in repair, in which practice the complainant acquiesced before the separation, and, in the absence of any notice to the contrary, that the complainant objected to the expenditure of money upon her property, the only equitable method of accounting is to allow the defendant the moneys expended in good faith, upon the same basis which was agreed to by the complainant prior to the separation.

The value of the property has been enhanced many thousands of dollars by payments made from the personal funds of the defendant, and there seems to be no legal or equitable justification in refusing to allow the moneys thus paid, if the improvements, replacements and repairs furnished, by the defendant, are taken into consideration, now, in allowing a proper rental value or disposed of later in partition proceedings, should they be instituted, whereby the property would be sold as a whole, including the improvements and replacements furnished.

Either one of two things ought to happen. The defendant should be allowed credit for the moneys paid, which were used for the purpose of replenishing or increasing the value of the joint property or the improvements and replenishments, furnished by the defendant at his expense, should be excluded now as a basis for the determination of a rental value and the ownership of such improvements and replacements retained by the defendant and not considered as part of the joint property. It will be manifestly inequitable to dispose of the issue in any other way.

This situation applies particularly to the contents of the hotel, which, to a large extent, contributed to the availability of the property as a means of securing patronage.

A poorly or partially furnished hotel is certianly not worth as much, by way of rental value, as one that is completely and attractively equipped. Full rental value should not be charged except in a hotel which could be used for the purpose of securing the largest revenue from its operation. The same situation exists with respect to papering, paint and plumbing. If a plant is permitted to run down by reason of lack of paint, the presence of defective, old-fashioned or unsanitary plumbing or soiled wall paper, and obviously, while the plant may not be normally used, either a reduced rent must be accepted or the plant kept in good condition.

The same situation exists with reference to the increase in the number of rooms available for buests. There were at least 100 unfurnished rooms when the property was purchased. These were furnished by the defendant. There were changes in the basement, by which additional rooms were obtained, all at the expense of the defendant.

It was impossible to conceive how, as an equitable proposition, the defendant should be charged with rent based upon the increased number of rooms, all made available, so far as use was concerned, at his expense.

Originally, the heating plant was incapable of being used in the winter time. At the expense of the defendant, this was changed so that the revenue, from the hotel in the winter time, might be increased. This was taken into consideration in arriving at a proper rental value of the hotel. A hotel, that can be used only in the Summer, is certainly not worth as much, from a rental point of view, as one that can be used the entire year. Yet it was the defendant, at his own expense, who made it possible for the full rental value to be obtained.

Carpets and rugs are in the same category. A hotel with worn-out carpets and rugs is not as attractive as one that is properly maintained in this respect. Apparently the rental value was based upon the fact that the hotel was equipped with adequate and proper floor covering.

The Master originally failed to include certain allowances up to June 1, 1929, although the defendant was charged with rental value to that date.

This matter was re-referred to Judge Shinn, who took additional testimony, covering the credits up to the 1st of June, 1929 (C. p. 726).

SUMMARY.

The Court of Chancery should have held—

1. That the complainant was not entitled to be paid rental value, by the defendant, for the premises involved, but merely decreed to have a lien on the latter for moneys advanced by her, to the defendant, until such time as the same may be returned, after an accounting between the parties with respect thereto.

2. That the period of accounting should not have been fixed as of June 1, 1922, for the reason that the complainant had not been excluded from the possession of the premises at that date nor at any later date.

3. That defendant should have been allowed payments for what has been characterized, by the Master, as carrying charges, prior to June 1, 1922.

4. That the defendant should have been allowed the sums of money paid for permanent repairs necessary to preserve and protect the property since the time of its purchase, December 1, 1919, until the beginning of the period of accounting, June 1, 1922.

5. That the defendant should have been allowed the sums of money paid for permanent repairs necessary to preserve and protect the property, from June 1, 1922, to the termination of the period of accounting.

6. The Court should not have based a finding of rental value including the contents, for the reason that a major portion of the same was bought and paid for by the defendant.

7. If the rental value is to be based upon the hotel, as a completely furnished establishment, the defendant should have been entitled to credit for moneys paid for equipment, furniture, etc., bought by him, to take the place of that which has become worn out and was necessary to make the hotel tenantable.

We submit, therefore, that the final decree should be reversed.

STARR, SUMMERILL & LLOYD,
Solicitors for Paul C. Rosecrans, Defendant.

LEWIS STARR,
Of Counsel.