



II. It is not necessary that the parties intended the arrangement to be a cover or disguise. If the effect of the arrangement was to secure more than lawful interest for the use of the money lent, the intent follows.

The intent must be to get more than lawful interest, it need not be to violate the law.

*McMurtry v. Giveans.* (2 Beas., 351.)

*Sussex Bank v. Baldwin.* (2 Harr., 496-7.)

*Muir v. Newark Savings Institution.* (1 C. E. G., 539.)

*Jacks v. Nichols.* (5 N. Y., 178.)

*Maine Bank v. Butts.* (9 Mass., 49.)

*Tyler on Usury,* 104-5-6.

III. This is not one of that class of cases in which it has been held that collateral contracts for the sale of goods, pay for services or other matters accompanying a contract for a loan are not usurious.

Such contracts are always looked upon with suspicion, but are permitted to be explained, and if they appear to be independent of the loan, and if for the other things furnished to or by the borrower, he gives or receives full and fair compensation, the contract is not necessarily usurious.

The principle which runs through all such cases excludes the case now before the Court.

The true test is stated in the following cases:

*Gleason, admr., v. Bush.* (5 C. E. Green, 301.)

The collateral agreement must not be in consideration of the loan or a condition of its being made.

*Freeman v. Brittan.* (2 Harr., 211, 212.)

*Clark v. Sheehan.* (47 N. Y., 188.)

IV. Complainant gave a mortgage for the whole amount June 27, 1878. The contract to furnish rooms and board as compensation for the use of the money continued in force, and was acted upon by both parties until December, 1873. In addition to that the mortgage *was payable with lawful interest.* Such an arrangement makes the mortgage clearly usurious.

From that time, at any rate, complainant is entitled to relief, as well by general principles of equity as by statute.

*Nixon's Dig.,* page 437, P. L., 4.

## IN CHANCERY OF NEW JERSEY.

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*Between*  
EDWARD A. GILLETTE,  
*Complainant,*  
*and*  
GEORGE M. BALLARD,  
*Defendant.*

*Bill for  
Relief and  
Injunction.*

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*To the Honorable THEODORE RUNYON, Chancellor of the State  
of New Jersey :*

Humbly complaining show unto your Honor, your orator, Edward A. Gillette, of the city of Newark, in the county of Essex and State of New Jersey, that prior to the first day of February, in the year eighteen hundred and seventy-one, your orator was proprietor of a hotel in Buffalo, in the State of New York, and on or about the day and year aforesaid, by the urgent solicitation of one George M. Ballard, of the said City of Newark, your orator 20 was induced to leave his said business in Rochester and remove to Newark, and purchase the furniture and fixtures of a hotel which had been recently erected in that city, and called the Continental Hotel, and your orator was induced by the persuasions of said George M. Ballard to believe that the business of keeping said Continental Hotel would be very profitable, and therefore became quite anxious to become the proprietor thereof; and not having sufficient capital in ready cash to purchase and pay for said furniture and fixtures, the said George M. Ballard proposed to lend to your orator the sum of five thousand 30 and dollars to enable him to effect said purchase, on con-

dition that your orator would board said George M. Ballard and his family, consisting of his wife and his two daughters, at said hotel, as a compensation for the use of the money loaned to him, the said George M. Ballard at the same time alleging that he would, as occasion might require, advance to your orator such sum or sums of money in addition to the said sum of five thousand dollars, as your orator might need to enable him to carry on said hotel business without pecuniary embarrassment.

- 10 And your orator further shows that although he was well aware that the terms on which the said George M. Ballard proposed to loan said money to your orator were grossly usurious, inasmuch as the board of said Ballard and his wife and children, as proposed by him at said hotel, would be worth at least fifty dollars per week, nevertheless, as this defendant believed, partly from the representations of said Ballard, and from other information, that he would do well in taking said hotel, and having no other means of raising the money, and believing that said Ballard would render
- 20 him further assistance from time to time, as it might be needed, and as it was expected, and supposed by both of them that it would be needed, assented to said proposition, and agreed to borrow from said George M. Ballard the said sum of five thousand dollars, on the agreement that in lieu of interest on said money your orator should find and provide rooms, board and lodging for the said George M. Ballard and his said wife and his two daughters.

- And your orator further shows unto your Honor, that in pursuance of such bargain and arrangement, the said George
- 30 M. Ballard did lend and advance to your orator the sum of five thousand dollars, two thousand five hundred dollars of which was advanced and furnished to your orator on or about the first day of February, 1871, and the residue between the last-named date and the first day of October in the same year, the precise dates of which other advances your orator cannot give more definitely than is above stated, part of which was advanced in money and part in furniture, which your orator bought of said Ballard.

- And your orator further shows unto your Honor that, in
- 40 further pursuance of such bargain and agreement (your

Orator having taken said hotel, and purchased the furniture and fixtures thereof, about the aforesaid first day of February, 1871,) afterwards, and on or about the twenty-ninth day of April, in the year 1871, the said George M. Ballard, with his said family, consisting of his wife and two children, came to your orator's said hotel to live, and have from that time until now been furnished and provided by your orator with board, lodging, washing, fuel, liquors and refreshments, and while there have occupied three rooms, two of which are two of the largest rooms in said house, and have also, in 10 addition thereto, used and enjoyed considerable closet room and other conveniences and advantages in and about said hotel, more than those enjoyed by the other boarders therein, and that the fair price and value of said board, lodging, washing, refreshments, and other privileges and advantages so furnished by your orator to said Ballard, at a moderate price less than that charged by your orator to other boarders and lodgers in said house, occupying and enjoying similar advantages and benefits, amounts to the sum of seven thousand seven hundred and ninety-seven dollars and fifty- 20 six cents, as follows, viz. :

135 weeks and 4 days' board and lodging for family at \$50 a week,	- . . . . -	\$6,778 56
Washing, 133 weeks and 6 days, at \$3.50 a week,		469 00
Liquors and refreshments furnished at rooms,	- . . . . -	550 00
Total . . . . .	- . . . . -	<u>\$7,797 56</u>

And your orator further shows unto your Honor, that at the time said loan was made to your orator, no note, bond or other evidence of debt was made, or given therefor by your orator, to said George M. Ballard, nor was any 30 requested of your orator; but your orator says, that occasionally, between the time of making said loan, and the time next hereinafter mentioned, said Ballard would suggest to your orator, that he ought to have something to show for his money, to which your orator always assented; but from neglect on the part of both of them, no such evidence of debt was given, until a mortgage was given therefor, as hereinafter mentioned.

And your orator further shows unto your Honor, that on several occasions during the period last mentioned, your orator became much in need of additional pecuniary assistance to enable him to carry on the business of said hotel, after your orator took the same, and applied to the said George M. Ballard for such assistance, relying on his promise and assistance, made at the time of bargaining for said loan, that he would furnish said assistance when required ; but the said George M. Ballard did not comply with such  
 10 request, or furnish such additional assistance as your orator hoped and expected he would, when said bargain was made.

And your orator further shows unto your Honor, that on the twenty-fifth day of June, 1873, your orator (who up to that time had been a single man), was married, and on the twenty-eighth day of the same month, sailed for Europe with his wife, expecting to be absent several months.

And your orator further shows, that on the evening of the twenty-seventh day of June, 1873, as your orator was about to leave for Europe, early the next morning, the said George  
 20 M. Ballard requested your orator to give him some evidence of his said loan, and some security therefor, which your orator expressed his willingness to do: and thereupon the said George M. Ballard produced to your orator, a chattel mortgage, which, by previous arrangement with your orator, he had caused to be prepared, covering the furniture, fixtures and property in said hotel, worth at least sixteen thousand dollars, and drawn to secure the said sum of five thousand dollars, payable on demand, with interest. And although your orator was not entirely satisfied with the said  
 30 transaction, yet, as he was about to depart on the following day, and was anxious to avoid being harassed or disturbed about said claim during his absence, he executed said chattel mortgage and delivered it to said Ballard, of which the following is a copy, viz :

“ KNOW ALL MEN BY THESE PRESENTS, That I, Edward A. Gillette, of the city of Newark, in the county of Essex and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of one dollar to me duly paid by George M.  
 40 Ballard of the same city of Newark, county of Essex and

State of New Jersey, party of the second part, at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part, his executors, administrators, and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in the building known as the 'Continental Hotel' in said city of Newark.

"TO HAVE AND TO HOLD, all and singular, the said goods and chattels above bargained and sold or intended so to be, 10  
unto the said party of the second part, his executors, administrators, and assigns forever.

"And I, the said party of the first part, for myself and my heirs, executors, administrators, all and singular, the said goods and chattels above bargained and sold, unto the said party of the second part, his executors, administrators and assigns, against me, the said party of the first part, and against all every person or persons whomsoever shall and will warrant and defend.

"Upon condition that if I, the said party of the first part, 20  
shall and do well and truly pay unto the said party of the second part, his executors, administrators and assigns, the sum of five thousand dollars lawful money of the United States of America, on demand, with interest thereon at the rate of seven per cent. per annum, then these presents shall be void.

"And I, the said party of the first part, for myself and my heirs, executors, administrators and assigns, do covenant to and with the said party of the second part, his executors, administrators and assigns, that in case default shall be made 30  
in the payment of the said sum above mentioned, or in case the said party of the first part shall at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property, to be issued against me, or permit or suffer any judgment to be entered up against me, then the said sum of money herein mentioned shall become instantly due and payable; and then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower the said party of the second part, 40

his executors, administrators and assigns, with the aid and assistance of any person or persons to enter said building and any dwelling house, store, and other premises, and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed, to take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any,) unto me, the said party of the first part, my heirs, executors, administrators or assigns.

“ In witness whereof, I, the said party of the first part, hath hereunto set my hand and seal the twenty-seventh day of June, in the year of our Lord one thousand eight hundred hundred and seventy-three.

“ Sealed and delivered in }  
 the presence of            } D. A. GILLETTE.” [L. S.]  
                                   } F. W. LEONARD.

And your orator further shows unto your Honor, that annexed to said chattel mortgage was a schedule therein referred to containing an enumerated list of the goods, chattels and fixtures intended to be mortgaged thereby, which included a complete inventory of all the furniture and fixtures in said hotel as contained in the different rooms, kitchen and bar of said hotel, and worth at least sixteen thousand dollars, which schedule was also signed by your orator and annexed to the said chattel mortgage; and the said mortgage with the schedule so annexed were afterwards, and on the fifth day of July, 1873, duly filed in the office of the Register of said county of Essex, according to the directions of the statute in such case made and provided. All which will more fully appear by the said chattel mortgage and schedule, or by a certified copy thereof, when the same shall be produced and proved as this Honorable Court may direct, and to which your orator prays leave to refer himself if it shall become necessary so to do.

And your orator further shows unto your Honor, that when the said chattel mortgage was given, no new bargain or agreement was made in respect to the interest on said loan of five thousand dollars, and although it was confessed in

said mortgage that interest was to be at the rate of seven per cent., yet the same arrangement and understanding was had and continued between your orator and said G. M. Ballard, which had been made when said loan was first made; that said Ballard should have the board and lodging of himself and family in lieu of interest on the said money; and that he was to receive his compensation for forbearing and giving day of payment for said sum of \$5,000, in the said board, lodging, attendance so to be furnished him at said hotel.

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And your orator further shows unto your Honor that he is advised and respectfully submits to this Court, that by the provisions of the act of the Legislature of the State entitled, "An Act against Usury," and the several supplements thereto, it was unlawful for the said George M. Ballard to take from your orator for the forbearance of said law, either directly or indirectly, above the value of seven dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time; and that the said George M. Ballard, by accepting and receiving from your orator his said board, lodging, attendance, washing, liquors and refreshments, so as aforesaid found and provided for him and his family, as compensation for the loan and use of said money, did take and receive yearly a very large amount above the rate of seven per cent. per annum therefor.

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And your orator further shows and insists that he is entitled to have an account between him and the said George M. Ballard, of, and concerning the said money so loaned to him by said Ballard, and the lawful interest thereon at the rate of seven per cent. per annum, on the one side, and of and concerning the said board, washing, lodging, attendance, liquors, refreshments and other conveniences found and provided by your orator for said George M. Ballard and his family as boarders at said hotel, for all which your orator insists he is entitled to be allowed fair and reasonable compensation, at and after the ordinary rates of compensation for the same, and he charges the truth to be that in taking said account not only will the said George M. Ballard be fully paid for all the principal sum so loaned to your orator, but

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also for all interest thereon; but there will be due to your orator a large sum of money over and above the amount of said loan and interest.

And your orator further shows unto your Honor, that at the time the said chattel mortgage was given to said George M. Ballard for the said sum of five thousand dollars, there was really nothing whatever due to the said Ballard from your orator; but on the contrary, if your orator be allowed such fair and reasonable compensation for the board and  
 10 other valuable things, so furnished by him to said Ballard, said loan was at that time fully paid and satisfied, with all the interest thereon, and that there was no consideration, whatever, for said chattel mortgage, and said chattel mortgage was taken by said Ballard, in pursuance and fulfillment of said unlawful and usurious bargain, and for a consideration, which, but for such usurious agreement, was fully paid and satisfied.

And your orator further shows unto your Honor, that on or about the nineteenth day of November, last, the said  
 20 George M. Ballard demanded of your orator the payment of the said sum of five thousand dollars, and on being informed by your orator that he was unable to comply with such demand, told your orator that if said loan was not paid by the Wednesday following, at noon, he would advertise and sell said mortgaged goods for the satisfaction of said loan,—and, thereupon, your orator made out and presented to said George M. Ballard, a claim for said board and washing, amounting at that date to seven thousand and fifty-four  
 30 dollars and eighty-five cents, exclusive of the bill for liquors and refreshments, the amount of which your orator did not then know, and requested said George M. Ballard to come to a settlement with your orator therefor, which the said Ballard utterly refused to do.

And your orator further shows unto your Honor, that while your orator's present bill of complaint has been in preparation, the said George M. Ballard has been removing his family and furniture from your orator's said hotel, and has given out and threatened that he will as soon as he shall have completed his removal, proceed to advertise and sell  
 40 the goods of your orator, for the satisfaction of the sum

claimed to be due on the chattel mortgage; and your orator apprehends and believes, that he will either advertise said goods for sale, and attempt to sell them to compel payment of said chattel mortgage, or that he will attempt to remove and take into his possession said goods and chattels, under the pretense of satisfying said chattel mortgage, unless he shall be prevented from so doing by the order of this Court. And your orator charges the truth to be that the amount so loaned by the said George M. Ballard has been fully repaid to him by your orator, with all lawful interest there- 10  
 on, in the manner hereinbefore set forth, and that a large balance is due to your orator, from him; that said mortgage was wholly without legal consideration, and is void, and that an attempt on his part to remove or advertise or sell said mortgaged chattels, under color of satisfying said mortgage, will greatly hinder and disturb your orator in carrying on the business of said hotel; will deprive him of his boarders and guests; will injure his credit; will work him an irreparable injury for which no adequate remedy at law can be had by your orator. 20

And your orator further shows unto Honor, that he has frequently, and in a friendly manner, applied to the said George M. Ballard, and requested him to come to an account and settlement with your orator, of, and concerning the matters and things hereinbefore set forth; and that he would pay to your orator such balance as may be due him on such accounting and settlement; your orator being willing to allow and pay said Ballard for all money loaned to your orator, with lawful interest thereon; and your orator well hoped that the said George M. Ballard would have com- 30  
 plied with such reasonable requests, as he in equity and good conscience ought to have done.

But now so it is, may it please your Honor, that the said George M. Ballard not only refuses to comply with such reasonable requests of your orator, but on the contrary, he threatens and intends to remove or advertise, and sell your orator's said goods and chattels, to compel satisfaction of said chattel mortgage, but also combining and confederating himself with divers other persons, at present unknown to your orator, but whose names when discovered your 40

orator prays may be inserted herein, with proper and apt words, to charge them as defendants hereto, give out and pretend in speeches, that the whole of said money is now due him on said chattel mortgage, the contrary whereof your orator asserts to be true.

- And at other times the said confederates pretend that the said wife of said George M. Ballard has, while she was a boarder in said hotel, rendered services to your orator as housekeeper, for which she is entitled to compensation ; and
- 10 your orator says that although he never engaged said Ballard's wife as his housekeeper, or agreed or expected to make her any compensation for such services, yet he admits it to be true that for a part of the time which said Ballard and his family boarded with your orator, while he had no housekeeper, said Ballard's wife did render him some service in that capacity, and if the said George M. Ballard shall claim compensation for such services, he is willing that an account shall be taken thereof, and that said George M. Ballard may be allowed the full and fair value of his said wife's
- 20 services in that behalf; and he charges the truth to be that after making him all reasonable allowances therefor, there will still be a larger balance due to your orator from said George M. Ballard ; and at other times the said confederates pretend that the said George M. Ballard has already paid your orator for the said board and other valuable things furnished to him and his family by your orator, the contrary whereof your orator insists to be true, and charges that he has made no payment whatever on account thereof, except by said loan of money and the interest thereon.
- 30 All which actings, doings, and pretenses of the said George M. Ballard and his confederates, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator is without relief by the strict rules of the common law, and can only have adequate relief in a Court of Equity where matters of this nature are properly cognizable and relievable ;

- To the end therefore that the said George M. Ballard and
- 40 his confederates, when discovered, may without oath (an an-

answer under oath being hereby waived,) true, full and perfect answer make to all and singular the premises herein contained, fully and particularly, paragraph by paragraph, as if the same were herein again repeated and they interrogated thereto; and that the said George M. Ballard may be decreed to come to an account with your orator, under the direction of this Honorable Court, of and concerning the said money so loaned to your orator, with the interest thereon, and of and concerning said board, lodging, fuel, attendance, washing, liquors and refreshments, and other valuable privi- 10  
leges and advantages furnished and provided by your orator to said George M. Ballard and his family as aforesaid; and that he may be decreed to pay to your orator whatever balance may on such accounting be found due to your orator, your orator hereby tendering himself ready and willing to pay to said George M. Ballard whatever sum shall be found due him on such account, if any, and that the said chattel mortgage may be decreed to be without legal consideration, and void, and may be delivered up to your orator to be canceled. 20

And that the said George M. Ballard may be restrained and enjoined by the order and injunction of this Court, from removing or taking into his possession, and also from advertising or selling the said goods and chattels, and fixtures of your orator, so mortgaged by said chattel mortgage, or any of them, under color or pretense of satisfying said chattel mortgage.

And that your orator may have such other and further relief in the premises as shall seem meet and agreeable to equity and good conscience. 30

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of Injunction out of and under the seal of this Court, restraining and enjoining said George M. Ballard, as above prayed and set forth, but, also, the State's writ of subpoena to be directed to said defendant, George M. Ballard, commanding him on a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this Honorable Court, to answer this bill of complaint, and to stand to abide and perform such order and decree in the 40

premises as shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

McCARTER & KEEN,

*Solicitors and of Counsel for Complainant.*

NEW JERSEY, ESSEX COUNTY, ss :

EDWARD A. GILLETTE, being duly sworn, on his oath says, that he is the complainant in the foregoing bill of complaint; that the same has been read to him and he is acquainted  
 10 with its contents; that the loan of five thousand dollars in said bill mentioned was made to this deponent under the circumstances and on the agreement as stated in said bill; that the said George M. Ballard was to have the board and lodging of himself and family for compensation for the use of said money loaned; that this deponent has furnished to said George M. Ballard and his wife and two children the board, lodging, fuel, attendance, washing, refreshments and other conveniences and advantages stated in said bill for the times stated in said bill; that the deponent has had no  
 20 compensation therefor except said loan of money; that at ordinary and reasonable fair prices, the value of said board and other valuable things so furnished to the said George M. Ballard largely exceeds the amount of principal and lawful interest due on said loan; that the account of said board, washing, &c., stated in said bill, is correct to the best of this deponent's knowledge and belief; that the said chattel mortgage was given for the consideration and under the circumstances mentioned in said bill; that on or about the 19th of No-  
 30 vember last the said George M. Ballard demanded of this deponent the money due on said chattel mortgage, and told this deponent that if the same was not paid at the time in said bill stated he would advertise and sell said goods; that said chattel mortgage and the schedule thereto annexed include all, or nearly all, the furniture, appurtenants and fixtures of said hotel, which are worth at least sixteen thous-

and dollars ; that the said George M. Ballard has threatened to sell said goods, and in consequence of such threats some of deponent's boarders and guests have been alarmed and disturbed for fear of having said hotel broken up ; that a removal, advertisement or sale of goods would injure his business, destroy his credit, and do him an irreparable injury ; that the said Ballard and his family moved out of said hotel yesterday, and deponent is sincerely apprehensive that he will either remove or take possession of said goods and advertise and sell them, if not hindered from so doing ; 10 that the facts, matters and things set forth in said bill are true so far as relate to the acts of this deponent, and so far as relates to the acts of others he believes them to be true ; and further this deponent says not.

Sworn and subscribed this }  
 2d day of December, } ED. A. GILLETTE.  
 A. D. 1873, before me, }

RODERICK BYINGTON, *M. C. C.*

Upon filing the within bill and affidavit, a bond from the complainant to defendant in the penal sum of one thousand 20 dollars, conditioned according to the 46th rule of this Court, let an injunction issue according to the prayer of the bill.

I respectively advise his Honor the Chancellor to sign the above order.

AMZI DODD, *V. C.*

December 2, 1873.

## In Chancery of New Jersey.

<hr style="border: 0.5px solid black;"/> <p style="text-align: center;"><i>Between</i>  <b>EDWARD A. GILLETTE,</b>  <i>Complainant,</i>  <i>and</i>  <b>GEORGE M. BALLARD,</b>  <i>Defendant.</i></p> <hr style="border: 0.5px solid black;"/>	}	<i>On Bill, &amp;c.</i>
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The answer of George M. Ballard, defendant, to the bill of complaint of Edward A. Gillette, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such part thereof as this defendant is advised it is material or necessary for him to answer unto, he answers and says:

- 20 That it is true as stated in said bill, that about the first of February, eighteen hundred and seventy-one, the complainant removed from the city of Buffalo, where he was then residing, to the city of Newark, and took possession and charge of what is known as the Continental Hotel, in the said city of Newark, and that he became the purchaser of the furniture and fixtures of the said hotel, and took a lease therefor; that it is also true, as stated in said bill, that this defendant about that time loaned and advanced to said complainant the sum of five thousand dollars. But this
- 30 defendant expressly denies that there was at the time of making the said loan, or at any other time, any corrupt, illegal or usurious bargain, made between him and the said

Gillette in relation thereto; and he says that the circumstances connected with the advancement of the said sum of money, by this defendant to the said complainant, are as follows: sometime prior to the date last aforesaid, this defendant made the acquaintance of the said Gillette, and an intimacy sprung up between them, which ripened into a strong friendship, which this defendant supposed and believed at the time to be mutual; that sometime prior to the first day of February, eighteen hundred and seventy-one, and as this defendant now recollects, about the month of November, 10  
eighteen hundred and seventy, the said complainant visited the house of this defendant in Newark, and while there, stated to this defendant that he was then making an effort to sell out the interest which he had in the hotel at Buffalo to his partner in that business, and stated the reason why he desired to sell, to be, that his interest in the said hotel business was only one-third, and that he was not satisfied with it, and that his partner was willing to buy him out and take the entire interest in the said property; that during his stay at the house of this defendant at that time, they 20  
called upon a friend, then boarding at the said Continental Hotel, kept by Smith and Rose; and the said Gillette during the said visit, expressed himself very much pleased with the said hotel, and told the defendant that he would very much like to become the proprietor of such a house; that thereupon it was suggested that Mr. Edward H. Dodge (the friend upon whom they called at the said hotel), should inquire of Smith and Rose, the then proprietors thereof, and ascertain if they were willing to sell their hotel property, and if so, at what rates they would sell the same; that soon 30  
after, said Gillette returned to the city of Buffalo, and that this defendant received a letter from him from that place, stating that he had been informed by the said Dodge, that the said Continental Hotel property could be purchased, and requesting this defendant to intercede for him, and in his behalf, and see what terms this defendant could make with the said Smith and Rose in regard to the purchase thereof; that this defendant, interested in the success of the said Gillette, and desirous to aid him in every way in his power, opened negotiations with the said Smith and Rose, for the purchase 40

of the said hotel property, on behalf of the said Gillette, and finally received from them a proposition to sell their interest in the said property to the said Gillette, at inventory price; that this defendant stated the said proposition to the said Gillette, and that the said Gillette then informed him that he would like very much to purchase the said hotel property, and that he considered it an excellent opportunity to engage in business, but that he could not command sufficient capital himself to make the purchase; and that all the  
10 money he could raise, would not amount to over twenty-five hundred dollars, and that a much larger sum would be needed; that the said complainant then proposed to this defendant, that he should enter into co-partnership with him and furnish the balance of the capital that might be needed, and receive one-half of the profits of the said business; that this defendant declined to enter into such co-partnership, and gave his reason therefor; that the business would not be sufficient for two, and that he would not himself be satisfied with the entire profits, and that he had no desire, personally,  
20 to engage in the business; that another difficulty existed in regard to the matter, which was also suggested, which was, that said Gillette was a single man, and had no one to take charge of the female department of the said hotel, and that it was very difficult to get any person qualified, upon whom dependence could be placed; that this defendant thereupon, anxious to aid the said Gillette, to the extent of his ability, wrote to him that he would furnish him with the money needed, and would, if possible, induce his wife to sell the property in which they were then residing, and take up their  
30 residence at the said hotel, and to induce her to take charge of the female department of the same, and that he would not only aid the said Gillette with money and credit, for the purpose of carrying on the said business, but that he would give, so far as he was able, without interfering with other business in which he proposed to engage, such assistance, in the management of the same, as he could render; and that in return for the use of the money which he proposed to furnish and the credit which he proposed to give, and the services which he proposed to render, and for the services of his  
40 wife, in superintending, and conducting the female depart-

ment of the said hotel, all he desired would be that he and his wife and two small children should be furnished with suitable rooms at the said hotel, and have their board, washing and lodging furnished them; that the said Gillette wrote to this defendant and his wife gratefully accepting the offer which he had made, and thanking this defendant warmly for the interest which he had manifested in his success, and for the very liberal offer which he had made; that this defendant thereupon sold the house in which he was then living in the city of Newark, and advanced to the said Gillette 10 the sum of five thousand dollars, in pursuance of the arrangement which he had made with him, and from time to time thereafter became responsible for the said Gillette for large sums of money by endorsing his paper, becoming responsible for goods which he purchased and otherwise; that the said Gillette bought furniture and fixtures for the said hotel, and assumed control and charge of the same, and that this defendant and his wife and children took up their residence therein, occupying two rooms in the said hotel, and that the wife of this defendant assumed and took control of the female 20 department of the said hotel, and managed and conducted the same; and this defendant says that the said Gillette took possession of the said hotel a short time before this defendant and his wife were able to take up their residence with him, during which time the said Gillette had a housekeeper in charge of the female department of the said hotel; that the said Gillette frequently applied to this defendant, and requested him to complete his arrangements in order that he and his wife might assist said Gillette in the management of said hotel; that from the first of May, eighteen hundred 30 and seventy-one, to the seventeenth of November, in the year eighteen hundred and seventy-three, except for a short interval of time when the said hotel was being renovated and cleaned, this defendant, and his wife and children, remained in the said hotel, under the arrangement made as herein before stated with the said Gillette, and during all that time; the wife of this defendant acted in the capacity of housekeeper and superintendent, and conducted the female department of the said hotel, attending to and looking after the same in the same manner as she would have done if this 40

defendant had been the proprietor thereof; and that during all that time this defendant, so far as his other business would permit, aided and assisted the said complainant in conducting and carrying on the business, frequently going with him to make purchases, from time to time endorsing his notes and becoming responsible for the bills which he contracted.

And this defendant, further answering, says that he advanced under the said arrangement with the said Gillette, 10 the sum of five thousand dollars in money, and took no note or memorandum therefor; that he had the utmost confidence in the said Gillette, and had no idea that any division or disagreement would arise, or could arise between them; that their relations during all the time in which the said defendant resided at the said hotel, were exceedingly cordial and friendly; and that the said Gillette frequently expressed his appreciation of the services rendered by this defendant and his wife, and his gratitude for the kindness which this defendant had manifested towards him, and for the interest 20 which he had taken in his success and welfare. And this defendant, further answering, says that from the time the said Gillette took possession of the said hotel, he gave considerable time and attention to the business conducted therein, and worked sometimes in one capacity and sometimes in another, as clerk or book-keeper, and that he had to some extent charge over the financial management of said business, and that particularly during the spring and summer of eighteen hundred and seventy-three, while the said Gillette was absent on a tour to Europe for several months, this 30 defendant had almost entire management and control of the said hotel; that the said complainant assured this defendant, that he could not and would not make the visit which he intended to make unless this defendant would consent to take the general supervision of the business, during his absence, and that this defendant consented to do so.

And this defendant, further answering, says that during all the time he and his wife remained with the said Gillette, and from the time said Gillette took possession of the said hotel to within a short time before the bill of complaint in this 40 cause was filed, said Gillette never intimated to this defend-

ant that he had any bill against him for board, either for himself, his wife or children ; that this defendant frequently saw the books of account kept by the said Gillette during that time, and no charge was made therein against this defendant therefor ; and this defendant expressly charges that no such charges were made against this defendant by the said Gillette during that time or at any time.

And this defendant, further answering, says that shortly before the said complainant took the trip to Europe hereinbefore mentioned, and while he was contemplating making 10 the same, this defendant, at the instance of one of his friends, suggested to the said Gillette that it would be better for this defendant that he should have something to show for the money which he had advanced to him, and for which up to that time he had no memorandum or writing whatever, and also some security for the payment thereof; that the said Gillette immediately assented thereto, never intimating to this defendant, that he had any charge against this defendant or expected to make any, or had any set-off or counter claim against him, or against the money which this de- 20 fendant had advanced to the said Gillette; that the said Gillette himself furnished to the attorney who prepared the same, a schedule of the property which he had at that time in the said hotel, to enable him to draw up the mortgage on the same, to secure to this defendant the amount of money so advanced as aforesaid ; that this defendant's idea at that time of taking the said mortgage was, that inasmuch as the health of the said Gillette at that time was not good, and that possibly some accident might happen to him, it would be safer for this defendant to have something to show for his 30 money, and some security therefor ; but that he had at that time no idea or suspicion that the said Gillette had, or claimed to have, or would ever claim to have any defense against the payment of the money due to this defendant ; that he had implicit confidence in his entire good faith, and that he would repay the money advanced to him at any time, and whenever requested so to do, or if he could not at once repay the same, would secure it so far as lay in his power so to do.

And this defendant, further answering, says that shortly before the said Gillette started on his trip to Europe, here- 40

inbefore mentioned, he married a Miss Lyon, a resident of the said city of Newark, and that after his return, as this defendant is informed and believes, his wife desired herself to come to the said hotel and take charge of and control the female department thereof; that inasmuch as this would interfere with and break up the arrangement which had been made between this defendant and the said Gillette in relation to the board of himself and his wife, the said Gillette expressed to this defendant his desire to have him remain, and

10 stated to him that he did not want his wife to take charge of the said hotel, but that he desired this defendant and his wife to do so, but that the wife of the said Gillette was dissatisfied with that arrangement; and that when this defendant learned her dissatisfaction he proposed to the said Gillette that he and his wife should leave the said hotel, and that the arrangement which had been made between them should be brought to a close; and he also requested the said Gillette to make some arrangement to repay him the money which he had advanced, and which was then secured by the

20 said chattel mortgage; and the said Gillette expressed his willingness at that time to secure this defendant for the money which he had advanced to him; that he desired this defendant at one time to take his notes therefor, which this defendant declined to do without security for their payment; that he told this defendant from time to time that he was making efforts to raise the money and to obtain security for the repayment of it; that this defendant did not desire to leave the said hotel, until some arrangement had been made about the repayment to him of the money which

30 he had advanced under the circumstances above set forth; that considerable time elapsed, during which the said Gillette was arranging, or was pretending to this defendant that he was arranging for the payment of the same, and that finally this defendant became impatient, and some ill-feeling, occasioned, as this defendant believes, by the conduct and conversation of the wife of the said complainant, sprang up between them, and that finally the defendant demanded of the said Gillette that he should make immediate arrangements to repay to him the money which he had advanced to

40 the said Gillette, and threatened if he did not within a rea-

reasonable time to foreclose the mortgage which he held on the goods and chattels of the said Gillette, to secure the same, and thereupon the said Gillette filed his bill against this defendant, alleging that the contract between them was usurious and illegal, and that the debt which he had contracted was fully paid by the board, washing, &c., furnished by the said Gillette to this defendant, as stated in the said bill of complaint.

And this defendant, further answering, says, in relation to the charge made in the said bill of complaint that this defendant is indebted to the said Gillette for wines and liquors furnished to this defendant, that this defendant never made any contract with the said Gillette to pay him for the wines and liquors; that no considerable quantity of wines and liquors, or that class of refreshments, were used by the defendant or his family; that occasionally the said complainant, who habitually sat at the same table with defendant and his family, and was often at their rooms, would order wine, or ale, or something of that kind, and that sometimes this defendant would make the order for the same; but this defendant charges that the said complainant did not intend or expect to charge this defendant therefor, any more than with his board, and that he did not make such charge, and never in any way intimated, except by his bill of complaint, that he had such a claim against this defendant.

And this defendant, further answering, says that the services rendered by his wife and himself during the time they remained with the said Gillette, were worth more than the board for him and his wife and children furnished by the said Gillette; that the said Gillette frequently expressed himself not only to this defendant, but to others, that the services thus rendered were invaluable to him, and that he could not have succeeded in the said business if they had not been thus rendered; that this defendant and his wife could not have been induced to render similar services for any other person for anything like the compensation they received from the said Gillette therefor, but that he and his wife were induced to render the services thus performed by them for the said Gillette, because of the great friendship which existed between them, and because of their desire to aid him, in

making the business in which he was engaged a success ; that this defendant intended to render to the said Gillette services as a friend, and that the services which he did render to him, and which his wife rendered as hereinbefore set forth during all the time that they remained with the said Gillette, until shortly before the disruption which took place between them, were gratefully received on the part of the said Gillette ; that he, during all that time, expressed to this defendant and his said wife, the great sense of obligation which he considered he was under to them for their kindness to him ; and this defendant expressly charges and insists that the charge made in the complainant's bill of a corrupt and usurious bargain made between this defendant and the said Gillette, in relation to the said loan of money made by this defendant to the said Gillette, is an after thought on the part of the said Gillette ; and that that defense to the payment of the said claim, against the said Gillette, was devised and invented after this defendant and the said Gillette had fallen out, as hereinbefore stated ; and after this defendant had demanded repayment of his money, and after the said Gillette had failed to raise the same, as hereinbefore stated ; and after this defendant had threatened to foreclose the mortgage which he held against him.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant ; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court should direct ; and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

LEONARD & COULT,

*Solicitors for and of Counsel with Defendant.*

NEW JERSEY, }  
ESSEX COUNTY, } ss.

George M. Ballard, the defendant in the above answer

named, being duly sworn according to law, on his oath saith :  
 that he knows the contents of the above answer, and that  
 the same is true of his own knowledge, except as to those  
 matters which are therein stated to be on his information  
 and belief, and as to those matters he believes them to be  
 true.

Sworn and subscribed be-  
 fore me this 31st day of  
 January, A.D. 1874, at  
 Newark, N. J.,

GEORGE M. BALLARD.

10

LUDLOW McCARTER, *M. C. C. N. J.*

A true copy :

H. S. LITTLE, *Clerk.*

## In Chancery of New Jersey.

—•••—  
*Tuesday, October 6th, 1874.*

<p style="text-align: center;"><i>Between</i> EDWARD A. GILLETTE, <i>Complainant,</i> <i>and</i> GEORGE M. BALLARD, <i>Defendant.</i></p>	}	<p><i>On Bill for Relief.</i></p>
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*Before his Honor, AMZI DODD, Vice-Chancellor.*

*T. N. McCARTER, Esq., Counsel of Complainant.*

*MESSRS. LEONARD & COULT, Counsel for Defendant.*

Complainant's counsel opened, and called—

EDWARD A. GILLETTE, sworn :

*Q* Where do you now reside ?

*A* Newark, N. J.

*Q* How long have you been in this city ?

*A* Since February, 1871.

20 *Q* Where did you live before that ?

*A* In Buffalo, N. Y.

*Q* In what business were you engaged there ?

*A* The hotel business.

*Q* In what hotel ?

*A* Bonney's Hotel, at the corner of Washington and Canal streets.

*Q* In what business did you engage when you came here ?

*A* The hotel business.

*Q* In what hotel ?

*A* The Continental Hotel.

*Q* How did it come that you left Buffalo and came here ?

*A* I came home to spend Thanksgiving.

*Q* What do you mean by home ?

*A* My home in Connecticut, where my parents reside ; I came home to spend Thanksgiving with them, and on my return from there, I stopped here in Newark and visited Mr. Ballard's family, who were living then in Walnut street. This was on the Friday after Thanksgiving.

10

*Q* In the Fall of 1870 ?

*A* Yes, sir ; Mr. Ballard said to me that there was a new hotel here in this city, and he was very anxious for me to stop over night and go to see it, and said that if I would stay, we would all go up in the afternoon and see it. I stayed, and we went up there and called on Mr. Dodge, who was boarding at the hotel ; and he introduced me to the proprietor, Mr. Smith, who showed me about the hotel, and all through it. I was very much pleased with the hotel, and said I would like to have it ; and said to Mr. Ballard that it was a nice hotel, I would like to have it ; he said he did not know that I could have left Buffalo, so soon ; he had thought of writing me, but did not know that I was going to leave there so soon, and so he did not do it ; I returned to Buffalo the next day ; and a day or two after I got back there, Mr. Dodge wrote me a letter — (interrupted.)

20

*Q* I don't care about the contents of the letter. Was it about the purchase of the hotel ?

*A* Yes, sir ; and I wrote Mr. Ballard, saying I had received a letter from Mr. Dodge, who said he would try and get the hotel for me.

30

*Q* Did you subsequently become the purchaser of the hotel ?

*A* The Continental ?

*Q* Yes, sir.

*A* No, sir.

*Q* Subsequently, I mean ?

*A* Yes, sir.

*Q* You purchased what ?

*A* The furniture, pictures, &c.

40

Q And took a lease of it?

A I did, for five years.

Q Was any arrangement made between you and Mr. Ballard, with reference to a loan of money?

A There was.

Q In what form; by what mode was Mr. Ballard's proposal to you, to make that loan, communicated to you?

A By letter.

Q Have you got the letter?

10 A I have.

Q Produce it.

A (Witness did so.)

Q Is this it? (showing witness said letter.)

A Yes, sir.

Q Did you receive it by mail, from Mr. Ballard?

A I did.

Q Is it in his handwriting?

A It is.

Q Are you acquainted with his handwriting?

20 A I am.

Q Is this letter signed by him?

A Yes, sir.

Complainant's counsel then read letter :

" Barnet, Stainsby & Ballard,

" Manufacturers of

" Silver, C and X C Plated and Japanned Saddlery Hardware,

" Mexican and California Bitts and Spurs,

" Malleable and Grey Iron Casting, &c.,

" (Below Chestnut street Depot), Factory Railroad avenue  
and Johnson street.

30

NEWARK, N. J., Dec. 17, 1870.

" FRIEND ED. :

" I have been attending to a bankrupt that has stuck us \$1,300, all this week, but I have got something from the Continental Hotel; they have spent for furniture \$8,000, and have the stoves in the house and the bar yet to pay for. I think they will pay those bills and will sell out for \$10,000, or that is what they told Ed. Dodge they would do;

but Ed. says they are stiff and don't care to sell; the receipts are now over \$75 a day. The bar-keeper told me the bar averages \$25 a day, and I am satisfied it does; they have also two new billiard tables in, and I was there three hours last night and they were running all the time. It is the only saloon of the kind up town, and I think two more would pay. He had about 18 arrivals yesterday. He wants \$5,000 cash and \$2,500 a year for each succeeding year. The man is not at all liked, and his bar-keeper (Ed. Wambold) told me he would not keep it six months, but it would be a poor thing for any man to take it if it becomes run down. I don't want to advise you, but it looks to me as if a nice thing out of it was certain. Ed. Dodge is going for him to-day and get something definite of him, but he is afraid that he will flash in the pan. As for my going in the thing as a partner, why I would rather not do so. I am satisfied that there is a splendid chance for one to make money out of it, but it would not be as well for either of us to split it up and divide the profits. I'll tell you what I'll do. I will lend you \$5,000 without interest, and will aid you in every way possible; will attend to your finances and books, and help you all I can, if you will give me my choice of rooms and board for myself and family. And if it also becomes necessary to get more furniture for other rooms (and, of course, it will,) why, I'll go security for them; in fact, you know enough of me to know what I would do for you when required. This, I think, will make much more money for you than if I was a partner. Don't look at this in anything but a business point of view, and decide according to your conviction. They say that the lease cannot be transferred without consent of landlord, but if so I think I can fix that. Write me immediately in detail what you think of it, and I expect to get something definite this P. M., and if I do I will telegraph you on Monday, thusly: 'He will; do you want it?' and you answer by telegraph 'Yes' or 'No;' and if you think it best to come on immediately also say in the despatch whether you will come in or not. I don't want to advise you, but every one thinks there is money certain in it. Write immediately.

"Yours, in haste,

"GEORGE M. BALLARD."

Complainant's counsel then offered above letter in evidence, and same was marked Exhibit No. 1, C.

Q What did you do in response to that letter?

A I wrote back accepting his offer.

Q Did you receive a dispatch from him afterwards?

A I did.

Q Have you got it with you?

A I have.

Q Produce it please?

10 (Witness did so, and handed same to counsel.)

Q Did you receive this by telegraph while you were away?

A I did; yes, sir.

[Complainant's counsel offered the said dispatch in evidence, and same was marked Exhibit No. 2, C.]

Q What did you do in response to that?

A I came on at once.

Q Do you know the date when you came on?

A No sir; I can't remember the date, but it was right  
20 away after I received the dispatch.

Q And you bought the hotel?

A Yes sir.

Q When did you take possession of it?

A The first of February—I was to have had it on the first of January, but arrangements fell through.

Q Then you got possession on the first of February?

A Yes, sir; or the second of February, it was on the afternoon of the second.

Q Was any money or other valuable thing advanced to  
30 you by Mr. Ballard in pursuance of the proposal in that letter?

A Yes sir.

Q How much?

A At the time I took the hotel \$2,500.

Q In what?

A In money—a check for \$2,300.

Q That was about the second of February, 1871?

A Yes sir.

*By the Vice-Chancellor :*

Q Do I understand you, that that was in addition to the \$5,000?

A No sir; that was part of it. He and Mr. Jessup endorsed my notes to the amount of \$5,000.

*Further examined :*

Q How much was the purchase money of the hotel?

A \$10,294.

Q Who was Mr. Jessup?

A William S. Jessup, that was in the foundry business 10 in Central avenue.

Q Were these notes afterwards paid?

A They were.

Q By whom?

A Myself.

Q What other money or equivalent of money did Mr. Ballard furnish you, in addition to the \$2,300 which you have stated?

A He furnished me the money to get carpets, furniture, &c., and the balance to make up the \$5,000. 20

Q Which things you took as money?

A Yes sir; this was between the second of February and I think the next September or October.

Q Was it all furnished at once or at different times?

A At different times.

Q Was there any account kept by you of the items which made up the remainder of \$5,000?

A No, sir.

Q When was the last furnished?

A I cannot tell you the exact date, but I think some- 30 where in the neighborhood of the first of September, 1871—my notes with their endorsement were six months and one year notes, and I think when the six months notes came due he let me have the rest of the \$5,000.

Q Did Mr. Ballard's family come and live at the hotel?

A They did.

Q When?

A About 29th April, I think, 1871.

Q Of what persons did his family consist?

*A* Himself, his wife and two children.

*Q* Can you state about the ages of the children?

*A* Yes sir, about.

*Q* I mean at that time—three years ago last February?

*A* I think about six and eleven years old, sir.

*Q* How long did they remain at the hotel?

*A* They remained at the hotel until about the time of the filing of this bill.

*Q* With what were they furnished at the hotel?

10 *A* They were furnished with board, three rooms, extra closets, fuel, light, washing, extra meals, liquors, refreshments and segars;

*Q* Can you describe or state the rooms which they occupied by their numbers or otherwise, or that they can be identified; give a general description of the kinds of rooms they are?

*A* They were rooms, Nos. 10, 11 and 12; Nos. 11 and 12 were the largest rooms in the hotel—all the rooms were connected—10 and 11 fronted in Broad street, and No. 12  
20 backed from No. 11.

*Q* On what floor?

*A* The second floor.

*Q* The parlor floor, or floor above?

*A* The floor above the parlor floor.

*Q* The office is on the ground floor?

*A* Yes, sir; the first floor is always called the parlor floor; and the offices and bar-rooms are on the ground floor.

*Q* And these rooms were on the floor above the parlor floor?

30 *A* Yes, sir; the most desirable rooms I had in the house.

*Q* Who selected the rooms?

*A* They did; they had the choice of rooms in the whole hotel.

*Q* What would have been the fair and reasonable compensation for the use of those rooms at the regular rate of board, washing, lights and fuel, which were furnished to them, had they been ordinary boarders at the hotel?

*A* Sixty dollars a week for board, lights and fuel, for those rooms; and the washing they had done was worth  
40 \$5.00 a week—if anything, above. I don't think they could

have got the amount of washing they had done, for \$5.00 a week.

*Q* How do you arrive at that price; by what standard do you determine it?

*A* Well, we once rented those rooms for \$65.00 a week, to a man and his wife, a servant and one child, exclusive of washing, just for board, rooms, light and fuel.

*By the Vice-Chancellor :*

*Q* Those three rooms?

*A* Yes, sir; that is, the man was to take them if Mr. 10 Ballard did not decide what rooms he would take; but he decided on those rooms, and so the other people did not come.

*Further examined :*

*Q* You could have rented those rooms at the time Mr. Ballard took them?

*A* Yes, sir.

*Q* What other privileges, or provision, or refreshment of any kind, was furnished to Mr. Ballard and family, by you during their stay there? 20

*A* Well, they used to have a great many extra meals.

*Q* To what amount?

*A* They had friends there to meals; they would have friends there and have extra meals; and have a private table set in the parlor for them.

*Q* For them and their friends?

*A* Yes, sir.

*Q* Can you state any other items that were furnished by you to them?

*A* Yes, sir; they had liquors and segars, and Mr. Bal- 30 lard used to play billiards in the billiard room, and used to have segars and drinks at the bar,—and Mrs. Ballard used to have liquors sent up to her room.

*Q* Were these extra meals, liquors, billiards and segars paid for, when got?

*A* They were not—they never paid for anything they had at the hotel. They also had things cooked at the hotel and sent away to friends of theirs.

Q Just explain how that happened, on what occasion, under what circumstances, they took place ?

A Well, Mrs. Ballard sent down or came down herself, and told Mr. White, my garden and yard man, that she wanted some chickens killed ; or else she sent her little girl down to say she wanted some chickens killed ; she would send down a basket or carpet-bag and carry them in and send them away ; and she also sent out into the garden for vegetables, &c.

10 *By defendant's counsel :*

Q Are you now telling what you saw done yourself, or what you have been told by others ?

A I am telling what my man told me.

Q How much of this have you learned from others ?

A What I know, is that Mr. Ballard played billiards, and had segars and drinks, and Mrs. Ballard had drinks sent up to her room ; but about the little girl coming down with the basket for these things, I could not say. I have seen her go out with a basket. I have known of biscuit and jelly  
20 and cake being made, and ordered by Mrs. Ballard, to send away.

Q Made for her at her direction ?

A At her direction ; yes, sir.

Q Cake, biscuit and jelly ?

A Yes, sir.

Q But the chickens you do not know about ?

A No, sir.

*Further examined :*

Q This state of things continued generally until when ?

30 A Until they left the house.

Q At the time of the receipt of this money did you give anything to show for it—any note or memorandum ?

A I did not, sir.

Q Did you ever give any evidence of it, or any security for it ?

A I gave him a chattel mortgage just before I went to Europe.

Q When did you go ?

*A* I sailed on the 28th of June, 1873.

*Q* How long were you absent ?

*A* About two months—a little over.

*Q* Were you a single man when you went into the hotel ?

*A* I was.

*Q* Did you get married during your stay there ?

*A* I did.

*Q* When ?

*A* 25th June, 1873. 10

*Q* And you went to Europe on the 28th ?

*A* Yes, sir.

*Q* When was it you gave him the chattel mortgage ?

*A* On the night before I sailed.

*Q* The instrument—a copy of which is set out in the bill ?

*A* Yes, sir.

*Q* State what was said and how that came to be given ?

*A* Mr. Ballard came to me and said that as I was going away I had better give him a chattel mortgage, or something, for that money. I told him, "All right, I was agreeable to that," and he said he would have a man draw it up. I think that was about a week before I went away. Mr. Ballard again spoke to me about it, a day or two afterwards, and asked me if I had a memorandum of the goods. I said, "Yes, on the books," and I gave it to him, and on the afternoon after I was married I went to my home in Sufield, Conn., and came back on Friday night, and while I was in the hotel Mr. Ballard produced the chattel mortgage, and I signed it. 30

*Q* Was any other bargain or arrangement made between you in reference to the loan of the money than that expressed in this letter ?

*A* No, sir.

*Q* Was any bargain whatever made between you and him respecting the service of Mrs. Ballard as housekeeper ?

*A* No, sir.

*Q* Did you ever employ Mrs. Ballard as housekeeper ?

*A* I did not.

*Q* Did Mrs. Ballard render any service in that capacity, 40

or render services such as are sometimes performed by housekeepers ?

*A* Yes, sir, somewhat.

*Q* Did you have, during any part of the time she was there, a hired housekeeper ?

*A* I did.

*Q* Can you state about the time that you had a hired housekeeper ?

*A* Yes, sir ; I had Mrs. Love from April 24th to June 10 24th, 1872.

*Q* What were her duties ?

*A* Her duties were to have the general oversight of all the stuff in the house ; to get up in the morning and see the scrubbing woman was at her work by half-past 4 or 5 o'clock in the morning ; to see that the chamber-maids were down sweeping and dusting before breakfast time ; to take charge of the linen room, get out the linen, to keep it locked and allow no one in there but herself ; to see the washing went down and came back, and see it was accounted for ; to see 20 the rooms were kept in thorough order ; to do the mending, to make sheets, repairing and making carpets, to do work about the hotel, and to see that everything was kept in proper order ; to see that the helps' meals were ready, and that they had them at the proper times.

*Q* What was ordinarily the usual compensation of persons employed in that capacity, and rendering such services as you have described ?

*A* I allowed her for these two months \$35 a month. She afterwards worked for me in the same capacity for \$25 a 30 month. I also had another housekeeper. The first one was a German girl named Johanna, and I paid her at the rate of \$25 a month ; she was there about two weeks. That was in the early part of my being at the Continental Hotel.

*Q* Please state what services were rendered by Mrs. Ballard, such as housekeepers render. Describe services rendered by her ?

*A* Mrs. Ballard kept the key of the linen room and the key of the fruit closet ; but the linen room was never kept locked, it was continually open. She sometimes mended 40 carpets and assisted in making some carpets, and she and

Mrs. Leonard for a time had charge of the general washing, and made out the lists for two or three weeks.

*Q* State anything else that you can think of that she did ?

*A* She overseed the canning of the fruit; and when I happened to be away from the house she would attend to the girls, and if anything was wanted they would go to her for it.

*By defendant's counsel :*

*Q* That you suppose—you cannot tell ? 10

*A* Yes, sir.

*Further examined :*

*Witness :* She used to go to New York with me—she and Mr. Ballard—when I used to purchase carpets.

*Q* Did she assist in their selection ?

*A* Yes, sir.

*Q* Was anything ever said between you and her, or you and him, about her acting in the capacity of your housekeeper ?

*A* All that was ever said was, when my housekeeper 20 went away she said that I need not get another—that she would take the oversight of the things.

*Q* That was about the time Mrs. Love went away ?

*A* Yes, sir.

*Q* Subsequently during her stay there, did you have any conversation with her or her husband about her being the housekeeper of your house ?

*A* Yes, sir. She often made the remark that she was no housekeeper at the hotel. And Mr. Ballard said to me one day that his wife had made the remark that she was house- 30 keeper of the hotel, but that he would have me to understand that she was no housekeeper of the hotel—and that she had a brother, Alderman Stainsby, who had said to her, " I understand you are housekeeper at the Continental—" (interrupted.)

[Defendant's counsel objected.]

[Vice-Chancellor over-ruled objection.]

*Witness :* They both said she was no housekeeper.

Q Was this conversation with Mrs. Ballard in his presence ?

A Yes, sir. He said that she had met Alderman Stainsby at the City Hall, and he said to her, "I understand that you are housekeeper at the Continental Hotel. If George can't support you, without your, going out house-keeping, you can come to my house and live."

Q Did she say what reply she made to that ?

A No, sir, she did not say anything.

10 *By the Vice-Chancellor :*

Q What did you say in reply to her ?

A I said I did not know that any such remark had been made.

*Further examined :*

Q Now, Mr. Gillette, describe what services were rendered to you—what additional furniture you bought for the hotel after the original purchase ?

A At the time I went there the Division street side of the house had not been finished—had not been portioned off  
20 into rooms ; that is what we called the new part of the house. When we went there there were 35 rooms, straight up from the offices, including the parlors, &c., but the other part of the house was not finished until after I went there ; and all these rooms were furnished new after I went there ; the Division street side and half the Broad street front.

Q You purchased new furniture for all these rooms after you went there ?

A Yes, sir.

Q What, if anything, did Mr. Ballard do about that ?

30 A We went together. He went with me to New York when I bought my crockery and sheeting, &c., for those rooms and for the hotel. I was a stranger here, and at the crockery store he had a friend, and Mr. Ballard said to him, if Mr. Gillette don't pay for these goods I will ; you know me, but you don't know him. And he did the same thing at Stewart & Co., Halstead, Haynes & Co., E. S. Higgins & Co., and T. W. Bassett & Co. He told them that as they did not know me he would see to it, and he gave them refer-  
ences to his bankers.

Q What other money, if any, did he advance to you beside the \$5,000?

A No other money, except at different times I have exchanged notes with him, and have had money of him a little at a time.

Q Did he always render you pecuniary assistance when you asked for it, or needed it?

A No, sir.

Q Can you state how that was—give any particulars?

A Yes, sir; I asked him for money at different times, 10 and he replied that he had not it; and I had to borrow money at different times, from different parties.

Q When you gave the mortgage for \$5,000, was there any new bargain made between you?

A No, sir.

Q He continued with his family to board there, the same as before?

A Yes.

*Plaintiff's counsel* asked defendant's counsel for the letter written in reply to Exhibit No. 1. 20

*Defendant's counsel* stated that he did not have it.

Q When did Mr. Ballard and his wife leave your hotel?

A I don't know; I can't tell without referring to my book; but I think it was the first of December—about the first, or it may have been the second or third.

Q Last year you went to Europe on the 28th of June, and was gone about two months, and returned when?

A Returned about the 29th of August.

Q When did any difference arise between you, respecting the loan—the money? 30

A Just before this bill was filed.

Q Did he call on you for the money, or what statement was made to you about what his intentions were?

A Yes, sir; he asked me for money, and I told him I could not pay him the money; and I told him that the only thing I could do was to give him my notes; but the money I did not have, and could not get it anywhere; I think this was on Sunday; he said—"Well, I will give you to next Wednesday, at 12 o'clock, and if you don't give me the money by that time, I will sell you out." 40

Q How long was that before he left the house ?

A About, I think, two or three weeks.

*Cross-examined :*

Q Where did you first make the acquaintance of Mr. Ballard ?

A At Saybrook, Conn.

Q At the sea shore ?

A Yes, sir.

Q What were you doing there ?

10 A I was boarding there.

Q Mrs. Ballard was boarding there, too ?

A Mr. Ballard was boarding there, and Mrs. Ballard used to come down there, too.

Q How long was that before you went into the hotel business, here ?

A I cannot say ; about three years, I guess, or more.

Q Did you keep up your acquaintance with them ?

A Yes, sir.

Q I understand you to say you came on to visit them at  
20 the time you went out to Connecticut, on Thanksgiving ?

A Yes, sir ; when I returned from there.

Q You looked at the hotel, while you were here, with Mr. Dodge ?

A Yes, sir.

Q And you then went back to Buffalo ?

A Yes, sir.

Q And while there, you entered into a correspondence with Mr. Ballard ?

A Yes, sir.

30 Q You produced one letter that you received from Mr. Ballard ?

A Yes, sir.

Q Did you receive other letters from him ?

A I did.

Q Where are they ?

A I don't know.

Q Have you got any of them with you ?

A I have not.

Q Have you looked for them ?

*A* I have.

*Q* Well, this (Exhibit No. 1,) is only one of the letters you received from him ?

*A* Yes, sir.

*Q* How many did you receive from him between the time you came to visit him, and the time when you came on to take possession of the hotel ?

*A* I could not tell ; perhaps one-half a dozen, or a dozen.

*Q* And you wrote replies to Mr. Ballard, to them ?

*A* Yes, sir. 10

*Q* And you have no part of that correspondence, except this one letter (Exhibit No. 1,) that you have produced here ?

*A* No, sir.

*Q* Where did you find that ?

*A* Very carefully laid away.

*Q* Why was it very carefully laid away ?

*A* Because it contained the agreement between Mr. Ballard and myself.

*Q* And at the time you thought it was valuable, and so laid it away to preserve it ? 20

*A* I thought I would keep it, as it might be of service to me.

*Q* For what purpose ?

*A* I did not know.

*Q* The other letters which you received from him were on the same subject, were they not ?

*A* Yes, sir.

*Q* They were in relation to your taking charge of the hotel, and his going into the hotel with you ?

*A* Yes, sir. 30

*Q* You proposed to him to go into partnership with you ?

*A* I did.

*Q* You were a single man at that time ?

*A* Yes, sir.

*Q* You spoke of when you took possession of the hotel. What was the date of it ?

*A* 2d February, 1871.

*Q* How soon after that did Mr. and Mrs. Ballard come there ? 40

*A* I think they came on the 29th April; the books will show, it is registered there on the day they arrived.

*Q* You say Mr. Ballard was living in Walnut street at that time; do you know whether he sold that place?

*A* He told me so.

*Q* Don't you know he did?

*A* Yes, sir; I was not present at the sale; I only know what he told me.

*Q* Did you not urge him to hurry up and make the sale  
10 and to come up to the hotel and live?

*A* No, sir.

*Q* Did he sell it at the time when you first took possession of the hotel?

*A* I think not.

*Q* Between that time and the 29th April, when he came there, he did sell out, as you understood?

*A* Yes, sir.

*Q* Did you not frequently, between that time, urge him to hurry up and get down to the hotel?

20 *A* No, sir, not that I know of.

*Q* Did he buy any furniture or supplies at the time you first went into the hotel?

*A* I think not; I don't remember about that, but I think not.

*Q* How much money did you have of your own at that time, Mr. Gillette?

*A* \$2,700.

*Q* Which you brought with you from Buffalo?

*A* Yes, sir.

30 *Q* How much did you put into the hotel?

*A* \$2,700. Then I had \$50 or \$100 beside; I don't recollect the exact amount, but that is the amount I put into it, when I bought of Smith & Rhodes, and I had a little money left to buy stores; I can't recollect the exact amount—it was \$100 or so.

*Q* Except during the time that you speak of, from the 22d April to 22d June, two months, was there any one in charge of the female department of the hotel except Mrs. Ballard?

40 *A* Yes, sir.

Q Who was it ?

A A girl named Johanna ; I can't tell you her other name ; she was hired for housekeeper.

Q When did she come and when leave, the girl Johanna ?

A I cannot tell.

Q She was there during the time Mrs. Ballard was ?

A I think so.

Q Are you sure of that ?

A I am pretty positive of it. 10

Q Was she not there before Mrs. Ballard came there ?

A I think not ; I think Mrs. Ballard was there before she came.

Q Have you no means of ascertaining ?

A No, sir, I have not ; I did not have any books at that time.

Q During the time that Mrs. Love was there did not Mrs. Ballard have the general supervision at that time ?

A No, sir.

Q Was she not there as well ? 20

A Yes, sir.

Q And in charge ?

A Who in charge ?

Q Mrs. Ballard ?

A No, sir.

Q Did Mrs. Love complain while she was there that she had to follow the instructions, and obey the directions of Mrs. Ballard ?

A Not to me.

Q Don't you know she made such complaint ? 30

A I do not know, sir.

Q Did Mr. Ballard assist you anything in the management of the hotel ?

A No sir, not particularly—he at times wrote up my books for me, and accommodated some of the clerks when they wanted to go out of an evening, and I believe he stayed in the office in the evening then, and I don't remember but what I may have asked him to stay in for me when I wanted to go out.

Q Only on rare occasions, or generally ? 40

*A* Only on rare occasions—very seldom.

*Q* Did he not assist you in making purchases for the hotel?

*A* He used to go with us to New York.

*Q* In whose name were the goods purchased?

*A* I suppose in my name—sometimes the bills came in rendered to Mr. Ballard and sometimes to the hotel.

*Q* Don't you know that parties refused to give you credit, and therefore charged the goods to him, and was not  
10 that the distinct understanding?

*A* No sir, I suppose the goods were charged to me—I had no idea but what the goods were charged to me.

*Q* Were you with him when the goods were purchased at Halstead & Haynes & Co's. store?

*A* Yes, sir, he went with me.

*Q* Do you know to whom they charged the goods purchased then?

*A* I think they were charged to Mr. Ballard, the bills were rendered to Mr. Ballard part of the time, and part of  
20 the time to the Continental Hotel.

*Q* What was bought there?

*A* Sheetting and toweling.

*Q* The general supply for the hotel?

*A* Yes, sir, and the blankets too.

*Q* Who made the purchases?

*A* I did.

*Q* In all cases?

*A* Yes, sir.

*Q* Don't you know that Mrs. Ballard went there and  
30 purchased goods frequently for the hotel?

*A* Not at these times.

*Q* Well, afterwards?

*A* Sometimes she did.

*Q* Was she not in the habit of going to New York, from time to time, and making purchases for the hotel?

*A* No, sir, not alone.

*Q* Well, with you?

*A* She most always went with me when I made purchases.

40 *Q* But she occasionally went alone?

*A* Sometimes when she would be going to New York, if I wanted anything I would ask her to step in and get it for me; but that was very seldom, I don't know that she did that very often, I don't know that it was done at all—I cannot swear to that.

*Q* How long were you in Europe?

*A* I was gone a little over two months—just about two months.

*Q* What two months?

*A* I sailed on the 28th of June, and returned, I think, on 10 the 29th of August,

*Q* 1873?

*A* Yes, sir.

*Q* Who had charge of the hotel while you were gone?

*A* My brother and Mrs. Cornwall—the two clerks.

*Q* Did you request Mr. Ballard before you went away to take the general supervision of the hotel?

*A* No sir, I have my brother there.

*Q* Did you give any one a power of attorney, to act for you? 20

*A* I did, I gave it to Mr. Ballard.

*Q* Did you know who paid the bills matured while you were away?

*A* I supposed my brother did.

*Q* Do you know who did?

*A* No, sir; I was not there and I cannot tell.

*Q* Was your brother authorized to draw any checks, to pay any bills?

*A* No, sir, he could not very well, as Mr. Ballard had the power of attorney. 30

*Q* Now, you say that Mrs. Ballard did some service while she was there; that she had charge of the linen room and charge of the canning of the fruit. Did she not have the general supervision of the hotel as far as the female department went?

*A* No, sir.

*Q* Was it not so understood that she had the arrangement of that?

*A* No, sir; I did that myself.

*Q* I mean of the female department? 40

*A* Of all the departments. I was housekeeper of that hotel most of the time.

*Q* Did you attend to the management of the cooking?

*A* I did.

*Q* Do you say it was not understood between Gillette and Ballard at the time you took possession of this hotel, that Mrs. Ballard was to come there and take supervision and charge of that department?

*Q* Yes, sir.

10 *Q* That there was no such understanding.

*A* No, sir.

*Q* Had that matter been spoken of?

*A* No, sir.

*Q* Or talked about?

*A* No, sir.

*Q* In any way?

*A* No, sir.

*Q* Then you did not understand when she came there that she was to have anything to do with the hotel at all?

20 *A* No, sir.

*Q* And you did not so understand it at any time during the time she was there that she was to have anything to do with it?

*A* Yes, sir; I said that she told me after Mrs. Love went away that I need not get another housekeeper, and that she would look out for the things.

*Q* Did you understand for what reasons?

*A* She said she was willing to do anything for me.

*Q* Then it was out of pure friendship for you?

30 *A* Yes, sir, that's what she said.

*Q* That she was willing to devote herself to the management and care of the house?

*A* Yes, sir, that is what she said.

*Q* Now, between the time when Johanna, as you call her, left, and Mrs. Love came, was there any woman in the house to take charge of the hotel?

*A* I cannot state without referring to my book. There was another German girl hired as seamstress, and who had charge of the girls, but she only stayed a few weeks.

40 *Q* What was her name?

A I cannot recall her name.

Q Now, you say Mr. Ballard and Mr. Jessup endorsed your notes for \$5,000; don't you remember that Mr. Ballard at the same time indemnified Mr. Jessup?

A I did not; no, sir.

Q Did you not understand so at the time?

A No, sir.

Q Did he not continue to endorse other notes for you during all the time he was there?

A He did at times.

10

Q Whenever requested, did he not?

A Not always, sir.

Q Did he ever refuse?

A Yes, sir. Oh! no, sir, he never refused to endorse notes for me that I know of.

Q He always did it when you requested him to?

A Always; yes, sir. He always endorsed my notes. I said a few moments ago that he did not, but I now correct myself—he did.

Q Did he not lend you money from time to time?

20

A Yes, sir, very little; and I lent him money, too.

Q These notes that were given to Smith and Rhodes were made out where?

A At the hotel.

Q In whose presence?

A I don't know; I think Mr. Leonard was present, and I think Lawyer Sherman was present, and Mr. Jessup.

Q Did not Mr. Jessup say when the notes were signed that he would not sign them unless Mr. Ballard indemnified him, at that time?

30

A No, sir, nothing was said about that—or of that kind at all.

Q When you borrowed this money you expected to repay it?

A Yes, sir.

Q The \$5,000?

A Yes, sir.

Q When?

A I did not know when.

Q What was your idea about it?

40

A I supposed I could have it as long as I wanted it.

Q Then if you did not want to pay it, your idea was that you would never be called on to pay it? Was that your idea about it?

A Well, nothing was said about that—about how long I should have the money or when I should pay it back.

Q About the time you went to Europe you executed the chattel mortgage?

A Yes, sir.

10 Q How did you come to do that?

A Mr. Ballard spoke to me, I think, about a week before I went away, and he said he ought to have some security for his money, and wanted to know if I would not give him a chattel mortgage.

Q How long was that before you left?

A Week or ten days.

Q Did you make any objection at that time?

A I did not.

20 Q Did you think you owed him the money at that time?

A No, sir; I thought he had had all the money due to him.

Q At that time?

A Yes, sir.

Q You supposed at that time he had been fully repaid for all the money he had advanced to you?

A If he had paid his board—yes, sir.

Q But when Mr. Ballard suggested that you give him a chattel mortgage you said nothing about it?

30 A No, sir.

Q Why not?

A Because my bargain called for me to give him and his family board for the use of that \$5,000.

Q At that time you intended to live up to your bargain?

A I did live up to it.

Q Until you were finally asked to pay the money?

A Yes, sir.

Q Did you make that mortgage, did you say, the day before you left?

40 A The night before I left.

Q Did you furnish the schedule the night before you left ?

A No, sir.

Q How long before that did you give the schedule ?

A I think about a week before ; it was two days after Mr. Ballard spoke to me about this.

Q Who did you get to draw it ?

A Nobody.

Q Did you not suggest some person to draw the chattel mortgage for you ?

A No, sir, not that I know of.

Q Did you not suggest Mr. Leonard ?

A No, sir ; Mr. Ballard got somebody to draw it.

Q Then it was drawn for Mr. Ballard, and not you ?

A Yes, sir.

Q Did you not go to Mr. Leonard to see about having it drawn ?

A No, sir.

Q Were you ever in his office for the purpose of seeing about having it drawn ?

A No, sir.

Q Did you furnish him the schedule ?

A I did—yes, sir.

*By the Vice-Chancellor :*

Q Furnished it to whom ?

A Mr. Leonard.

Q Where did you give it to him—at his office, or at the hotel ?

A At the hotel—he boarded there.

*Further re-cross-examined :*

Q Don't you recollect bringing the book containing the inventory to the office ?

A No, sir,—I gave it to Mr. Leonard at the hotel office.

Q Were you ever at his office with that book ?

A No, sir.

Q Did you have the inventory in that book ?

A Yes, sir.

Q Was the book ever at his office ?

10

20

30

A I don't know what he done with it—I gave it to him at the hotel, but I don't know what he done with it.

Q At that time you made no suggestion that there was any claim against Mr. Ballard, either to Mr. Leonard, or Mr. Ballard, or to any person?

A No, sir.

Q Did you have any account against him?

A No, sir—I never rendered any account to him.

Q Did you have any account against him on your 10 books?

A No, sir.

Q Any charge for board?

A No, sir.

Q Or wines?

A No, sir.

Q Any charge for billiards?

A No, sir.

Q Segars?

A No, sir.

20 Q Any charge for any extras?

A No, sir.

Q Anything?

A No, sir, not until I made my bill.

Q When was that?

A At the time this bill was filed.

Q Did you make any charge on your books then?

A I did—that is, the clerk did.

Q At your direction?

A Yes, sir.

30 Q At the time of your filing your bill of complaint?

A Yes, sir.

Q After he had advanced the money and after you were satisfied he intended to enforce the payment of it?

A Yes, sir.

Q Did you ever present a bill of items to Mr. Ballard?

A I believe I did.

Q Well, did you yourself?

A I did not myself.

Q Do you know that it was done?

40 A I don't know that it was—I supposed it was, he

wrote to Mr. McCarter to come and see him; I gave it to Mr. McCarter.

Q I thought you said in your bill that you handed it to him yourself—the bill of items.

(Mr. McCarter read from bill, that portion relating to complainant's having presented to defendant a bill of items).

Q Is that true?

A Well I did not present the bill to him—but I made it out and gave it to Mr. McCarter. 10

Q And that is the bill which you handed to Mr. McCarter, which is stated in the answer?

A Yes, sir.

Q That is the only bill you made out—the one you handed to Mr. McCarter, and a copy of which is in the bill of complaint?

A Yes, sir.

Q At the time that Mr. Ballard first asked you for this money did you make any effort to get it?

A I told him I could not get it. 20

Q Did you not tell him you would get it?

A No, sir.

Q Or would make any effort to get it?

A I might have said that.

Q Did you suggest to him where you could get assistance and help?

A No, sir.

Q Did you not suggest that you would get your father-in-law to endorse a note?

A No, sir. 30

Q Did you ever ask him to do it?

A I did not.

Q Did you not tell Mr. Ballard that you had asked him and he would not do it?

A I have no recollection of it.

Q Do you recollect any such conversation with him?

A No, sir, not about that; Mr. Ballard suggested that I ask my father-in-law, Mr. Joseph M. Lyon, and I told him at once that Mr. Lyon would not give me any money for him. 40

Q Did you have company occasionally at the hotel yourself ?

A I did, sir.

Q Where were they entertained ?

A Generally in the dining-room.

Q Were they never taken to Mr. Ballard's room, usually and generally.

A No, sir; and if they stayed over-night they always had rooms assigned to them.

10 Q Did not you and Mr. and Mrs. Ballard eat and sit at the same table ?

A Yes, sir, nearly all the time.

Q And the wines that you had you drank together, if there were any ?

A Sometimes we had them at the table.

Q And were ordered by you occasionally ?

A Yes, sir.

Q Did you not order refreshments up to Mrs. Ballard's room occasionally for your friends that were visiting you and  
20 stopping there at the hotel ?

A Not that I know of, to my own personal friends.

Q Well, other persons that did visit you ?

A Yes, sir ; I have ordered refreshments up there to their rooms.

Q Were not you in the habit frequently of ordering refreshments to that room when guests of the house and other people called there ?

A Well, not unless I happened to be up there ; if I did then I would order them, and sometimes other people would  
30 order them.

Q Are those the refreshments that you speak about ?

A No, sir.

Q Not at all ?

A Not at all.

Q Have you any idea, any date, upon which you base any of the charges against them that you speak of ?

A I cannot give you any exact date ?

Q How do you distinguish between the occasions that you speak of, and how do you arrive at the amount you  
40 speak of ?

A I remember their having company there, and their having a table set in the parlor to entertain them in there.

Q When was that ?

A I cannot give you the date, but I can tell you the people that have been there.

*By the Vice-Chancellor :*

Q I understand you that this account was made up at the time when Ballard threatened to enforce the collection of \$5,000 ?

A Yes, sir. 10

Q It was made up at that time, and made up then from a computation of the number of weeks he had been there; and the washing and other extras were made up from your general recollection ?

A Yes, sir.

Q You had no writing or memorandum—it was from your recollection ?

A Yes, sir, from my recollection and my waiter's recollection.

*Further cross-examined :*

20

Q I want to know whether you had the number of drinks and segars or whether you put in a general charge for them, covering as you supposed all that had been ordered ?

A Well, in liquors and refreshments I think I—(interrupted.)

Q Did you or not undertake to make out any items at all ?

A No, sir—I took my liquor account from my bartender, that is, I took my liquors and billiards, &c., from my bartender and the segars, &c., from the clerks and the bartender at the hotel. 30

Q Did they keep any account, or pretend to keep any account at all ?

A No, sir.

Q Was the same man there all the time ?

A Yes, sir—I never made any charge for liquors, but including the time that my present bar-keeper, Theodore Froxham, was there.

Q You say they occupied three rooms ?

A Yes—Nos. 10, 11, 12.

Q Was not No. 10 used for a sewing-room ?

A I don't know what they used it for; they used it for a sewing-room and a playing-room, and Mrs. Ballard used to keep her clothes hung up in there.

Q You spoke about a seamstress being there at one time—did she occupy that room in doing the sewing ?

A No, sir, not always—sometimes she was in No. 10, and  
10 sometimes in No. 11.

Q Well, she was there in these rooms ?

A Yes, sir.

Q And she was doing sewing for the hotel ?

A Yes, sir, and Mrs. Ballard too.

Q Mrs. Ballard superintending and directing ?

A Yes, sir.

Q Was it not used, too, for the storing of the linen for the  
hotel ?

A It was temporarily, until I got my linen room fixed.

20 Q Was it not intended for a linen room ?

A No, sir, it was not.

*By the Vice-Chancellor :*

Q What was your customary charge for board by the week, when a room furnished to a gentleman or lady ?

A From \$12 to \$25 per week, sir, for a single person, but that would depend upon the location and kind of room they had.

Q Did that include washing ?

A It did not, sir—\$12 a week included just board and  
30 lights—fuel was extra.

Q That was the lowest ?

A That was the lowest—yes, sir.

*Further cross-examined :*

Q Did you ever express to any person your obligation for the services rendered to you by Mr. and Mrs. Ballard, while they were there ?

A I always spoke of them as my particular friends.

Q I mean for the services which they rendered at the hotel ?

A Very likely I did—yes, sir, as well as others who had rendered me services; I always spoke of them in a very friendly way.

Q Did you tell any person you could not possibly have got along without their assistance?

A No, sir.

Q Did you tell anybody that the services of Mrs. Ballard were invaluable, and that you could not have succeeded without her assistance?

A No, sir—I have no recollection of anything of that 10 kind.

Q Was there ever anything said between you and Mr. Ballard in regard to the price for the rooms which he occupied, or what would be a reasonable and fair compensation for these rooms?

A No, sir.

Q Or for washing?

A No, sir.

Q Did you not select these rooms for them?

A No, sir, they did it themselves. 20

Q Did you not tell them to select such rooms as suited them?

A Yes, sir; I gave them the choice of rooms in the hotel, and I suggested to them I would rather have them take rooms Nos. 37 and 38.

Q You said that Mrs. Ballard had taken away things from the hotel; do you speak of your own knowledge at that time?

A I don't speak of my own knowledge of seeing them taken away, but I know she took things away. 30

Q You mean took things away to be used by other people?

A Yes, sir.

Q Do you know whether that was anything more than sending out some delicate little piece of cooking to a sick person—a friend.

A I don't know what it was for.

Q Did you ever suggest that she do so?

A No, sir.

Q Who was boarding there at that time? 40

A What time ?

Q During the time Mr. and Mrs. Ballard were there ?

A Mr. Leonard was boarding there the most of the time, and Ludlow McCarter ; Mr. McCarter is the oldest boarder in the house—and there was Mr. Horace Poinier and Dr. Zeh and wife.

Q That was during the whole time you were in the house ?

A No, sir, none were there the whole time ; but Mr.  
10 McCarter was there very soon after I was.

Q Was Dr. Zeh and wife there the whole time that Mr. and Mrs. Ballard were there ?

A Well, very near ; I cannot tell the exact time that Dr. Zeh came.

*Re-examined (direct) :*

Q You spoke of these things being sent out of the hotel by Mrs. Ballard ; do you mean to say that they were sent out clandestinely or openly ?

A Sometimes clandestinely and sometimes openly.

20 Q There was no objection on your part ?

A No, sir.

Q What was the nature of your acquaintance with them as to being intimate, friendly or otherwise ?

A Always particularly friendly.

Q The power of attorney which you gave Mr. Ballard when you went away, that, of course, was in writing ?

A Yes, sir.

Q Has it ever been returned to you ?

A No, sir, the cashier of the Bank has that ; he said he  
30 always kept that.

Q To what did it have reference—to your bank account ?

A Yes, sir ; it gave him a power of attorney to draw and sign checks. What I gave it to him for was to draw checks, and the paper was deposited at the Bank.

Q Was Jessup a friend of yours ?

A Yes, sir.

Q Were you on intimate terms with him ?

A Very.

- Q Where did you make his acquaintance ?  
 A At Newark.  
 Q After you came here ?  
 A Before I came here to live ?  
 Q He was an acquaintance of yours before you came to the hotel ?  
 A Yes, sir.  
 Q This memorandum in your statement of liquors, &c., furnished, is not made up from any items ?  
 A No, sir. 10  
 Q How did you arrive at that ?  
 A I had it from my bar-tender, who was there all the time, and from the waiters in the hotel at that time who carried it up to their rooms.

*Re-cross-examined :*

- Q You have recently been away ?  
 A Yes, sir.  
 Q And returned when ?  
 A I have been back about a month.  
 Q Where were you ? 20  
 A At California.  
 Q When did you leave California ?  
 A I left about the 25th of July.  
 Q For the States ?  
 A No, sir, for Nevada.

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Complainant's counsel also called ANDREW MCINTYRE,  
 sworn :

- Q Where do you live ?  
 A 77 ( ) street, in this city.  
 Q Are you employed at the Continental Hotel ? 30  
 A Not now, sir.  
 Q Have you been ?  
 A Yes, sir.  
 Q When ?  
 A While Mr. Ballard and Mr. Gillette was there.  
 Q For how long ?

*A* Over a year.

*Q* Can you tell about the time ?

*A* I went there in October, 1872, and was there until the last of September, or a few weeks after Mr. Gillette came home, in 1873.

*Q* In what capacity, were you there ?

*A* As waiter, sir.

*Q* Were you head waiter ?

*A* I was part of the time ; I did not go there as head  
10 waiter, but I became such after I went there.

*Q* Mr. and Mrs. Ballard were there during the time you were there ?

*A* Yes, sir.

*Q* As boarders of the house ?

*A* Yes, sir.

*Q* What do you know in reference to entertainment being afforded to Mr. Ballard and his family, and to their friends, outside of their ordinary meals at the common table of the hotel ?

20 *A* Well, quite frequently, I would send plates of fruit and cream, and such as that to her room at and after meals.

*Q* By whose direction ?

*A* Sometimes by Mr. Ballard's, and sometimes by Mr. Gillette's.

*Q* Do you know of other meals, entertainment and refreshments being afforded to them, beside what they had at the ordinary dining table ?

*A* Yes, sir.

*Q* What ?

30 *A* On several occasions, some five or six occasions, there were extra meals served by Mr. Gillette's order, for Mrs. Ballard and their friends.

*Q* What was the nature of these meals—breakfasts, dinners, suppers, or what ?

*A* Mostly dinners, sir.

*Q* What entertainment was furnished to them, apart from that usually furnished at the table ?

*A* Well, it was always understood that we were to serve things at those private tables, that we did not serve any-  
40 where else.

Q By whose directions would you furnish those private meals?

A Sometimes from Mr. Gillette, and sometimes Mrs. Ballard.

Q Mr. Gillette sometimes gave you directions, did he?

A Yes, sir.

Q Well, when Mrs. Ballard gave you directions, did you consult Mr. Gillette about it?

A No, sir.

Q Do you know anything about wines or other drinks 10 being furnished to the rooms of Mr. Ballard?

A No, sir; I never took any there.

Q Do you know the number of persons who were thus entertained at private meals?

A No, sir, I could not say; three or four, or probably half-a-dozen?

Q How many did you ever set a table for under circumstances of that kind? How many is the most you can state?

A I don't think I ever set the table for many than 10 20 or 12.

Q The private table I am speaking of?

A Yes, sir; I don't think I ever set the table for more than 10.

Q Do you know who the people were?

A No, sir; I don't know that I do. One lady, I think, was Mrs. Ballard's sister, but I am not positive about it; and I think she had a lady friend with her; I don't know who it was—I can't tell you who it was.

Q Do you know of her father and mother being there— 30 I mean old Mr. Stainsby and his wife?

A Yes, sir.

Q Once, or more than once, or how was it?

A Well, I remember, seeing them there three or four times?

Q Were they entertained while they were there?

A I think so, on one occasion. They would most always eat there at meals, but only once at a private table. I only saw them when they came into the dining-room.

Q Do you know of Mr. Ballard having other extra 40

meals in the dining-room besides those furnished in the private dining-room ?

A Yes, sir.

Q How frequently did that occur ?

A Well, quite frequently ; they would have company to take meals with them quite frequently.

*Cross-examined :*

Q Who sat at the table with them in the dining-room ?

A Mr. Gillette ?

10 Q Always ?

A Most always.

Q Well, usually ?

A Yes, sir ; Mr. Ballard and Mr. Gillette occupied it generally.

Q It was occupied by Mr. Ballard and family and Mr. Gillette ?

A Yes, sir.

Q On those occasions when they had meals in the back parlor was Mr. Gillette present ?

20 A I think he was on some occasions.

Q Did you wait on them then ?

A Not always.

Q When you did wait there, was he there ?

A Yes, sir.

Q Sitting at the head of the table, or what ?

A Mostly sitting at the head of the table when I was there.

Q And other persons boarding at the house eat at the table, did they not ?

30 A I won't be positive ; but, I think, that at one dinner that was ordered that Mrs. Leonard was at the table. I don't recollect whether Mr. Leonard was there or not.

Q Can you recollect when Mrs. Ballard would order extra dinner, and you would get it up for her, what she said ?

A She would say, " I am going to have company to-day and would like to have the table set in the back parlor."

Q And you had no hesitancy in getting it done, if she ordered it ?

A No, sir.

Q She was in the habit of giving orders ?

A Yes, sir, in that way.

Q You understood that it was all right to furnish what she ordered ?

A My orders from Mr. Gillette were, that if the family wanted anything to serve it.

Recess.

Complainant's counsel also called THEODORE TROXHALL,  
sworn: 10

Q Where do you live ?

A Newark—the Continental Hotel.

Q Are you employed there ?

A Yes, sir.

Q In what capacity ?

A I have charge of the bar ?

Q Were you there in that capacity when Gillette was there ?

A Yes, sir.

Q While he kept the house ?

A Yes, sir.

Q How much of the time ?

A I have been there now two years and a half, or about two years.

Q And you continued there, right on, with the present keeper of the house ?

A Yes, sir.

Q Who is that ?

A Mr. Carpenter.

*By the Vice-Chancellor :*

Q Give the dates of the time you have been there ? 30

A I went there in May, 1872.

*Further examined :*

Q And you continued these during all the time of Gillett's proprietorship, and all the time since ?

A Yes, sir, I am there still.

Q Were Mr. and Mrs. Ballard living in the house when you were there?

A Yes, sir.

Q Do you know of articles from your department, from the bar being furnished to either or both of them, while they were there, under Mr. Gillette's proprietorship; and if so state how and what it was, and describe how it was done?

A It was sent from the bar to No. 11—and it was some times drinks and sometimes in bottles.

10 Q Who occupied that room?

A Mr. Ballard.

Q How frequently were those articles sent from the bar to No. 11?

A Every day, more or less.

Q Do you know of entertainment of that kind being furnished at the bar to Mr. Ballard, either drinks or segars, or anything of that kind?

A Mr. Ballard never got anything at the bar.

Q Did you keep any account of the amount of what was sent to No. 11?

A No, sir.

Q Can you form any estimate as to what the value of the things sent up there would have been if they had been charged as to ordinary customers at the bar?

A About \$1.00 a day.

Q What kind of drinks were sent there?

A According to the season—fancy drinks and sometimes ale.

Q How about bottled liquors—what were they—liquors sent from the bar, or filled at the bar?

A Filled at the bar.

Q Have you charge of the segars?

A Yes, sir, at the bar—but not of the case.

Q There were segars kept elsewhere than at the bar?

A Yes, sir, the best brands.

Q Were segars furnished from your department to Mr. Ballard?

A No, sir.

Q Was the billiard-room in your department, in the bar-room?

40

A No, sir.

Q The billiard and bar-room are in the same room?

A Yes, sir.

Q Did he play billiards there?

A Occasionally.

Q Did he pay for the use of the table when he played?

A No, sir.

Q What kind of liquors did you send up to room No. 11, in bottles?

A Different kinds, sometimes brandy, sometimes gin, and 10 sometimes "apple."

Q Apple whiskey?

A Yes, sir.

*Cross-examined :*

Q Who ordered the liquors that were sent from the bar?

A I don't know, only the orders came by the porters and bell-boys.

Q You don't know who gave the order?

A No, sir.

Q Nor do you know anything about who used them? 20

A No, sir—I was ordered to let them have whatever was ordered to that room.

Q Ordered by who?

A By the porters and bell-boys.

Q I understood you to say that whatever was wanted for that room you were to let go up there—by whom were you ordered—you understood that from whom?

A The clerk said it would be all right.

Q You kept no account, and made no charge?

A No, sir. 30

Q Mr. Gillette played billiards in the room occasionally?

A Two games, I guess.

Q Did you make any charge to him?

A No, sir.

Q Did he play with Mr. Ballard—occasionally they took a game of billiards together, did they not?

A They may have played those two games, I don't know as I ever see them play.

*Further re-examined (direct) :*

Q Did any of Mr. Ballard's family ever bring those orders to you, his children; or get anything for the room?

A His children?

Q Yes, or either himself, his wife, or the children?

A They might once or twice.

Q What is your recollection about it?

A I would not say for sure; I generally got them from the porters and bell boys.

10 Complainant's counsel also called GEORGE DISBROWE, sworn :

Q Where do you live?

A 134 Central avenue, in this city.

Q Have you ever been employed at the Continental Hotel, while Gillette was there?

A I have.

Q In what capacity?

A As cook.

Q How long, from what time?

20 A A year, I think.

Q Can you tell when you left there?

A 23d March, 1874.

Q Then you were there when Gillette gave up the house?

A I was, sir.

*By the Vice-Chancellor :*

Q Do you know when he gave up the house?

A Sometime in the latter part of February or March, I ain't certain which.

30 Q Of 1874?

A Yes, sir.

*Further examined :*

Q Mr. and Mrs. Ballard lived there while you were there?

A They did.

Q What do you know of cooking being done for them, or articles from your department being furnished for them, while you were there, outside the regular table ?

A Once in a while I had a little extra cooking to do for them.

Q On what occasion and under what circumstances ?

A Well, company.

Q Do you mean when they would have company ?

A I suppose they had company.

Q How did you get your orders and directions ? 10

A The orders would be sent down to me through some of the servants, that they wanted me to have some things got ready, to go up to Mrs. Ballard's room, and I would get them up always to the best of my ability.

Q Do you know of things being prepared for them, to be sent out of the house ?

A I believe there has been such things done.

Q Such things as what ?

A Liking me to cook a little chicken, or something of that kind. 20

Q How often has that been, that these extra meals would be furnished, either in or out of the house ?

A Of that I have no exact dates or times, when it was done.

Q Was it once, or more than once ?

A It was done one time, and might have been done several times, to the best of my recollection.

Q What is the best of your recollection as to the number of times it was done ?

A I should say half a dozen. 30

*By the Vice-Chancellor :*

Q That is extra cooking ?

A Yes, sir.

*Cross-examined :*

Q You, during this time, was cook in charge of the cooking department ?

A I was.

Q And all you know about it is that on these occasions

—you speak of half-a-dozen—you received an order to get up something extra to be sent up-stairs ?

A I did.

Q You did not know where it went ?

A I am sure I could not say ; I did not go up-stairs to see.

Q And you don't know who consumed it ?

A No, sir ; all I know is that I cooked it ; that is all.

Q And you don't really know upon whose order it was  
10 done ?

A That is more than I can say, sir.

Q At the time you were there, you had exclusive charge of the cooking department ?

A I did.

Q And you did not let anybody interfere with your department ?

A That is something I never do, sir.

Q Was not Mrs. Ballard in the kitchen occasionally preparing canned fruit and other things ?

20 A I could not say—it might have been done while I was not there ?

Q I mean in the kitchen, or the lower part of the house, preparing fruit ?

A That might have been ; it was generally my time off after dinner, and I vacated the kitchen and went off until after tea.

Q Then you don't know ?

A No, sir, I can't say. I know canned fruit was prepared, because I have seen them standing around the next  
30 morning.

Q But of your own knowledge you cannot say who did it ?

A No, sir.

*Re-examined (direct):*

Q Those orders, you say, were ordered for Mrs. Ballard ?

A Ordered for Mrs. Ballard.

Q Do you know of chickens being killed for them ?

A I have heard of such things.

Q What have you heard ?

A There has been, when I have killed chickens, an order come down that Mrs. Ballard would like to have two chickens, sometimes three, and sometimes one. That is all I can say. I don't know whether she got them or not.

Q What would you do about it ?

A I would say to Mr. White, " Will you kill a couple chickens extra ? " and I suppose he did it.

Q He would take the order from you ?

A Yes, sir. 10

Q Did he kill extra chickens, do you know ?

A I suppose so.

Complainant rests.

Defendant's counsel called GEORGE M. BALLARD, sworn :

Q When did you first become acquainted with Mr. Gillette ?

A Somewhere about 1866, I think; so far back as that I think.

Q At what place ?

A At a place called Caybrook. Gillette was there in very bad health, and, as I supposed, about to die. My sympathies were enlisted, and I rather took a liking to the man, and there was where our intimacy commenced. 20

Q And then he says he visited you at Newark ?

A Yes, sir; after that friendship was formed my wife and myself went out to his hotel; and my wife boarded there one summer at his hotel at Windsor, Conn. After he recovered, I guess, I was up there a week, or two weeks, myself. We corresponded all the time, and were very intimate friends, I may say. Then he would visit me here in Newark; and did visit me. He visited me at one time when I was living in South Broad street, and was there probably three or four weeks. We were then about to engage in a business project at that time. Then about the Fall of 1870 I was in communication with him, as, of course, we were passing letters back and forth; and he stated to me that the hotel he was in with Mr. Bonney he was dissatisfied with. 30

Q Have you received any letter that you have saved in regard to this?

A No, sir, not a line, such letters as that I never retain; I did not suppose them of any interest whatever. Then he wrote me that he was dissatisfied up there; he supposed he was getting his half of the house, &c., and that he wished to go somewhere else. He came down to Newark with me and visited the Continental Hotel, and he was very much pleased with it, and he made the remark, that he would "like to get that house." I told him I thought there was money to be made in it, and he said he was satisfied of it. He then wanted me to see Smith & Rhodes with regard to it, and Mr. Dodge also; we did so, and after a great deal of haggling, this bargain was made that he speaks of. When it came to the point that the purchase could be made, he wrote me, that he had only \$2,500 to purchase the hotel, which we supposed was over \$10,000, a little over, and at that time we thought there would be a \$3,000 bonus to pay Mr. Smith, also, but that was done away with partly through my work and partly through his; Gillette worked very well at it, and got that bonus off. Well, he stated he had only \$2,500, and he wanted me to furnish the means and take interest on the money; so far as that letter he has produced goes, I acknowledge that letter to be mine; as I stated to him, I did not wish to go into the hotel business, I was not suited for it, and that I did not wish to go into it; but I said I would lend him \$5,000 in money, and would endorse his paper for sufficient to buy the house, and would render him what aid and assistance I could; and I stated in the letter at that time, that I did not wish any of the profits at all. He wrote back thanking me for the offer, and saying he was a single man, and of course there would be no female in charge of the hotel, or that was the purport of it—that he was a single man, and — (interrupted.)

*By complainant's counsel:*

Q Are you giving conversations between you and him?

A No, sir, the contents of letter.

*By the Vice-Chancellor:*

Q Of what date?

A I cannot give you the dates, I wrote this — (interrupted.)

Q You say that you received this letter after you wrote him this letter,—Mr. Gillette wrote to you and stated that one difficulty he had was, he had no female to take charge of the house?

A Yes, sir.

Q Was this before you saw him?

A He may have stated that to me in Newark also, but this was in a letter. 10

Q When was it written?

A After this letter, that has been produced here.

*Further examined :*

*Witness:*—I then spoke to my wife, and asked her if she would consent to go there, and I submitted the letter Gillette wrote me to her, and asked her if she was willing to go there, and I also showed her my answer written to Gillette, which was this; I put it in this way, that I will loan you \$5,000 without interest; then I will endorse your paper sufficient to purchase the hotel, and will do what I can to aid and assist and help you along, and my wife should take charge of the girls as housekeeper. He then wrote back saying he accepted it, and it was a far more liberal offer than he had a right to expect, but he would feel better satisfied if I would accept a share of the profits. That was talked over again when he came down, and was talked over again at my house. This was while the thing was in working; my wife of course consented to go up there in that way, and I then told him I could not go until I sold my house in Walnut street. He came and took possession of the hotel in February, and I used to go up there three or four times a week. For a time when I would go up there his words would be “what luck, have you sold your house yet?” I would say “No;” then he would say “I wish you would sell it, you can’t be up here too soon for me; Jennie ought to be up here now.” Finally I sold my property at a sacrifice and went up there. 20

Q Had you made arrangements about the purchase of the property before that day when he bought? 30

*A* Yes, sir—the bargain was made and he came down here, and I loaned him, he says, \$2,300, but in the aggregate it was \$5,000; which he said was as good as money to him; there was probably \$150 for stoves, and with that exception I loaned the \$5,000 in cash; he said the carpets were as good as so much money—the carpets that were laid down in the house; I also endorsed his paper for \$5,000 with interest at that time; Mr. Smith stated that he wanted another endorser.

10 *Q* Was Mr. Gillette there?

*A* Yes, sir.

*Q* Who else?

*A* Mr. Leonard, W. J. Jessup, and I don't recollect whether Dodge was there or not, but my impression is, he was; I went out to get Mr. Jessup, as he was not there just at that moment, but he was there when the papers were passed over.

*By the Vice-Chancellor:*

*Q* What papers?

20 *A* The sale, notes, &c., when they were delivered up; but when Smith suggested to me that he wanted another endorser, (that was the same day the bargain was closed or the day before,) I went out and told Mr. Jessup who has his office in Orange street, and I asked him —(interrupted)

*Q* What was done in the presence of Gillette?

*A* I put my name on \$5,000 and over of notes at that time.

*Q* And Mr. Jessup also?

30 *A* Yes, sir, and I gave Mr. Jessup my bond of indemnity, or rather gave him my personal notes to indemnify him against any loss, as he would not go on until I would do so; so I did it to secure him against any loss.

*By complainant's counsel:*

*Q* In the presence of Gillette?

*A* No, sir.

*Further direct-examined:*

*Q* You had stated about your selling your house; go back to that and proceed with your statement?

*A* Along in the latter part of April and near the 1st of May, I think within the 1st day of May, I told Gillette that in this bargain that I made, that all the compensation I asked was to take myself and family there, to live free of expense, that I should have choice rooms for my family, (that was part and parcel of the bargain that I made with him), and I would loan him money and endorse his paper; and he very gratefully accepted the offer and wished me to accept a share in the profits.

*Q* Well, tell us what you did, and what your wife did, at 10  
the hotel?

*A* Well, sir, so far as myself is concerned, at different times I have endorsed paper for him; he never asked me to put my name on paper but what I did it. As far as loaning is concerned I have loaned him money, but how much I have done I don't know. After I had loaned out the \$5,000, that was about all I could do, and I had hard work to do that until I got clear of my house; but I think at different times I put my name on paper for him. So far as exchanging notes is concerned there never was any; he did 20  
once put his name to a note of \$1,500 for me—I borrowed his note. I have loaned him money, but how much I don't know. My wife went there and took charge of the girls from the time I went into the hotel until I left it, with the exception of two months that Mrs. Love was there. The house had been renovated, and at that time my wife worked considerable, and her health was not good, and I told her she must let up, and I wanted her to go away, as her health was rather poor then; and so Mrs. Love came there. After two months Gillette asked me if I was willing 30  
that Mrs. Love should go and my wife take hold again. I said, "Yes, if my wife was willing," and with the exception of that two months, from the time I went into the house until the time I left it, my wife acted in the capacity of housekeeper, and the servants went to her for instructions. I have been down to New York at different times with my wife and Gillette purchasing goods for the hotel; I went to Halstead, Haynes & Co., and introduced Mr. Gillette to Mr. Lathrop, who was a salesman there;—Lathrop came to me and said he did not wish to trust Gillette, as he did not 40

know him; and the goods were charged to me. I also did the same at Stewart's, and at the carpet man's, Mr. Higgins.

When Gillette was about going to Europe, he wanted to know if I would stay there, and he conferred his power of attorney on me, and I was to have the general supervision of the house during his absence. My wife then was very ill, and the doctor (at that time Dr. Zeh) said she ought to go away, and I wanted her to go away  
 10 for the summer; but Gillette said he could not go away unless my wife stayed here during the summer. Then he conferred this power of attorney on me; and said also he could not go unless I indorsed his note for \$1,000. The note was taken down to the bank, but not used; but Mr. Gillette told me if I would give my note, that the cashier did not wish his father's note; but if he could bring my note for \$750—all the money he could spare him—he would pass it to his credit, and he asked me if I  
 20 would give it him; I said certainly, and did so, and it was passed to his credit. I have never at any time refused to help him in any way I could, but I have always stood ready to do so. At one time, when he discharged his clerk, I told him I would take hold of his books and write them up, and I did so; I wrote them up as far as I could; at all times I would stay in the office there and attend to the office for him and let him go away, or let his clerks go away; and I took as much interest in the house as if it belonged to me.

Q Now will you state what you actually received  
 30 while you were there, in the way of board, &c.?

A In what respect?

Q What did you get?

A Well, sir, I had my choice of rooms; I selected two rooms on the word from Mr. Gillette, that he wished me to select any two rooms in the house, and that no two rooms were too good for me; and that was part and parcel of the agreement that I should have two rooms, and I selected two as good rooms as I could find. Mr. Gillette said I had better take 37 and 38, as they were better rooms; but I said  
 40 Nos. 11 and 12 suited me. He wanted me to take the room

adjoining as soon as that side of the house was finished, stating his company would have to be received in my room, as he had no other place to receive them, and he said he would like it if I took the other room and put a bed in it, after the other part of the house was finished; I said I did not care about that, my wife wanted to have a bed in that room; the bed I occupied was in No. 11, and the bed my children occupied was in No. 12; the bed in No. 10 was occupied by a boarder, that was when I first came there; after a while it was occupied as a linen-room, and it did not seem 10 to suit as a linen-room; I then put a carpet on the floor myself, a small carpet, and it was used as a sewing-room, and the seamstress when she came in the house had a sewing-machine in there, and usually done the sewing for the hotel, such as making sheets, towels, table-cloths, &c., in room No. 10. Frequently my children would sleep in there, and used it as a playing-room, and whenever the room was needed for anyone he took it; I never had the room to say I had it; I hung clothes up in it and my children slept in it; I had two rooms only; so far as living in the house, I had everything 20 in the house that was just as good as he had, just exactly; our table was his table, it was a family and everything was as a family, and there never was any difficulty in regard to that; I sat at his table or he sat at ours, and it was all one family. Whenever my friends came he was asked up, and he came to my rooms as part and parcel of the family, and I treated him as part and parcel of the family; if his friends came there, my wife would entertain them, whether it was his father or mother or who; my wife would entertain them in my room, and he would sit in my room 30 and order up refreshments of course, times without number; and if I wanted a glass of ale or my wife did, I thought I had a perfect privilege to take it, and I did so. As regards the amount of refreshments that ever went up to my room for myself and my wife, why, I could not state any amount, but it would not exceed in value, all told, during the time I was there, to my knowledge \$200 to \$250. Frequently Gillette came in there and ordered up whatever we wanted; he would say "what will you have?" or else, "have a drink?" and if I wanted a glass of wine I took it, or if he 40

wanted it he took it, and that was the way that anything and everthing came to the room. As regards the washing, all the washing of the family was done there, as it should be.

Q What was the routine of duties your wife had to perform ?

A My wife had charge of the chambermaids ; they came to her for instructions in regard to the rooms to be changed, &c. My wife looked after the rooms and saw the beds were properly made up. She purchased the bed-linen for the  
 10 hotel, had a seamstress come there and assist her in making up of the linen, and she would frequently have a seamstress at work there at the hotel for 3, 4 or 5 days at a time ; she went down stairs, to my knowledge, until 12 o'clock at night putting up preserves ; I did not think that part of her work, and I objected to it, but still she did it, and was down there putting fruit from the garden, up in jars, &c.

Q Was there much of a garden connected with the hotel ?

A There must have been nearly two acres, and it was  
 20 full of fruit.

Q Was there sufficient for the purposes of the hotel ?

A Yes, sir, I should think so, very nearly, if not quite ; we also gave a good deal away ; I say " we," but I mean the hotel.

Q How long did this continue, down to what time, this arrangement ?

A Until somewhere round last year.

Q Mr. Gillette speaks of having had some woman came there, before or about the time your wife came, a wo-  
 30 man named Johanna ?

A Yes, sir, Johanna was a servant of ours previous to going there ; she was rather an intelligent servant girl, a woman perhaps 25 years old ; she lived with me in Walnut street ; but as there had to be some one there at the hotel to take charge, some female, and I and my wife, of course, could not go until I had disposed of my house, and I told Gillette that if Johanna would answer the purpose, he could have her.

Q How long did Johanna stay ?

40 A By the way, I don't know whether Johanna just then

was in my employ or not; but she had formerly been a servant of mine.

*Q* How long did she stay?

*A* She went away about the time my wife went there.

*Q* She went away?

*A* Yes, sir, I think it was just about the time my wife went there, that she went away; but I am not positive, but it did not vary two weeks from then; and from that time, there never was any other lady in charge of the house, with the exception of the two months that Mrs. Love was in the house, (and there was considerable work being done at that time,) and with that exception my wife was there all the time, from the time I went there, until I left. 10

*Q* You say there was considerable work being done there while Mrs. Love was there, what was that?

*A* Laying down carpets, or something of that kind.

*Q* Cleaning house?

*A* That is my judgment; there was a great deal of work, and it was also hard work for my wife, who was not very well; but during all that time from the time I came in there until the middle of November, 1873, from about the 1st of May, 1871, until the middle of November, 1873, my wife was in charge of that house as housekeeper, with the exception of the two months that Mrs. Love was there, as part and parcel of our arrangement; I did not do it as a matter of business, as it was as much friendship as anything else; and while it was business really, I was doing as I did as a friend of Mr. Gillette's. 2)

*Q* You did not consider it a very good bargain to you?

*A* I did not; if I was going to make a business arrangement, I should never put it in that light at all. If it had been a matter of money, so far as money is concerned, my wife could not have been hired to go there as a housekeeper, not for \$500 a week. 30

*By the Vice-Chancellor :*

*Q* Were you engaged in other business?

*A* Certainly, all the time.

*Further examined :*

*Witness :* About the time that Gillette was going to get

married and go away—or rather, after this money was all paid—it was paid from the 1st of February, I gave it to him as he said he wanted it, and it was probably until October until this \$5,000 was all settled up. I then stated “Well, I had better have some little memorandum to show this obligation.” And he said, “What do you want?” “Well,” said I, “I don’t care; you make out a note;” he said, “All right, I will give it you;” but of course he did not give it me. I don’t know that I stated anything about it again, 10 until the time he got married, and then I said—“You are going away, now, and people who go to Europe, sometimes never come back, and I ought to have something to show the obligation existing between us,” (I had seen the obligation on the books, and had seen where he had credited me with \$5,000 on his books.) He said, “Well, what do you want?” I said, “I don’t care—I want something to show for it.” He then said, “Will you have a chattel mortgage?” and I said “yes;” and he said “all right, I will have it made.” This was about a week before he went away; he 20 said “all right—I will have it prepared and will give it to you.” The night before he went away, Mr. Leonard was in the hotel, and he asked where Gillette was, and said, “I have got this mortgage here to be executed, that he wished me to draw up;”—(interrupted.)

[Complainant’s counsel objected.]

*Witness*: Well, any how, Mr. Leonard had the chattel mortgage there, and he showed it to Gillette, and Gillette signed it there that night, and gave it to me.

Q Now come down to the time that you left. What 30 transpired then?

A At the time, about when I left, I told Gillette I wanted that account settled. He stated to me that his wife was coming there to live in the hotel, and I said to him, “then of course my wife won’t occupy and discharge the office of house-keeper any longer, as a matter of course;” and I said, “I don’t want to stay here, and I don’t suppose you want me.” He said, “we did not think it would be pleasant.” I then said, “What provision can you make for my \$5,000?” and he replied, “That he could not pay it.”

"Well," I said, "I, of course, have got to get out of here, and have got to have somewhere to go, and as I have not the means at my disposal now to get a house, consequently I must have money to buy a house, or help buy it." He said, he could not raise it for me, but he would give me his notes; and he said he would see his father-in-law, Mr. Lyon, and see if he could not assist him. A day or two afterwards, I asked him if he had seen him, and he said yes, but he would not assist him in any way. Very well, said I, I have got to have my money; and on the day 10 following, I called him up stairs to my room, and said, "Mr. Gillette, I have got to have that money." He said, "I cannot give it to you." "Well," said I, "unless I get this money by Wednesday, I shall proceed to collect it." Then he said, "What are you going to do? Are you going to foreclose the mortgage?" I said, "No, I don't think it is necessary to do that—I shall advertise the place for sale." Said he, "You will be a long time getting it." And I said, "I suppose I will." He never intimated to me in way, shape or manner, that I ever owed him a shilling at any 20 time; in fact he always said in my presence, that he was under great obligations to myself and wife; and that without our aid and assistance, he never could have succeeded in the hotel.

*Cross-examined :*

Q When was the purchase of the hotel consummated?

A About the 1st of February, 1871.

Q Did you sign that dispatch? (alluding to a telegram produced by complainant and marked exhibit No 2).

A I presume I did—I have no recollection of it. 30

Q Did he come on in response to that dispatch?

A My impression is he did.

Q After that dispatch was received how many times was he here, before the bargain was consummated for the purchase of the house?

A I cannot say.

Q More than once?

A I cannot recollect, he was backwards and forwards two or three times.

Q Was not the bargain substantially made on the visit he made in response to this dispatch?

A I cannot say.

Q You don't know that it was not?

A I don't know whether it was or not.

Q Now you say that after you wrote this letter (Exhibit No. 1), you wrote him another letter, in which you put in as part of your bargain that your wife should be house-keeper at the hotel?

10 A I did.

Q Why?

A Because he wrote me, in reply to this letter, that he wished me to take an interest in the business.

Q That letter was written in reply to this? (Exhibit No. 1.)

A Yes, sir.

Q Then that was dropped from that time; I mean the idea of your taking an interest in the business?

A Yes, sir.

20 Q What occasion had you to write him again on the subject?

A After that letter was written, Mr. Gillette wrote to me that he was a single man, and had no female to take charge of the house, and that he wished somebody.

Q When did he write that?

A I cannot tell you.

Q How long after this letter was written?

A I cannot say, it might have been one or two days.

*By the Vice-Chancellor :*

30 Q Was it after that letter or before?

A After that letter, because it was in reply to what he stated, that he would have to have some one to take charge of the house; I have never saved any letters.

*Further cross-examined :*

Q That letter was dated the 17th December, and the telegram the 19th; you had not then on the 19th received any answer to the letter?

A Not that I know of.

Q Then you had not at that time received any answer to your letter?

A I cannot say.

Q Would you have sent him a dispatch, asking him if he had the letter, if you had had any answer?

A That I don't know.

Q Then he came on?

A Yes, sir.

Q And you talked it over?

A I presume so. 10

Q What occasion was there for your having a correspondence about your wife, and him being a single man, and wanting your wife to take charge?

A I cannot tell you anything except that this conversation took place.

Q What is there that enables you to say that that correspondence was since that letter?

A All I can say is that that letter was in response to that letter he wrote in regard to the fact of his being a single man, and his having no one to take charge of the house; however, that much of it was, I know, in the arrangement, and my impression is, it was in response to that letter where he stated this thing. 20

Q Was your arrangement verbal or written?

A Verbal,—that is, you may call it verbal; the whole thing was talked over after he came down here to my house. Not having kept anything in regard to this matter, consequently my general memory is all I can give you.

Q You cannot determine the order in which the letters were received? 30

A No, sir.

Q Now, when you went to the hotel, was Mrs. Love there?

A No, sir.

Q She came afterwards?

A Yes, sir.

Q How soon afterwards?

A I went there in 1871, and Mrs. Love came in April, 1872.

Q In what capacity did she act? 40

A She took the keys of the linen-room and took charge of the girls.

Q She was housekeeper, then ?

A I presume so.

Q Did the arrangement between you and Gillette terminate then ?

A I presume not.

Q That made no difference in your arrangement at all, then ?

10 A No, sir ; nothing was said to me one way or the other.

Q But while Mrs. Love was there she performed the duties which you say the bargain was that Mrs. Ballard should do ?

A I say I suppose she did, but I cannot say.

Q When was Johanna there ?

A Just before we came to the hotel.

Q Was she there when you came ?

A I think not ; but if so, she may have been there a  
20 week or two.

Q Was she there during any other time while you were there ?

A No, sir.

Q During this time, what business were you engaged in ?

A I was in the firm of " Barnett, Stainsby & Ballard," in the saddlery hardware, &c.

Q Where was that carried on ?

A New Jersey Railroad avenue.

Q What department of that business did you take  
30 charge of ?

A I attended to the books and finances—the buying and selling.

Q Did you continue in that business during the remainder of the time that you were with Gillette ?

A No, sir ; we gave up business about May, 1871.

Q What then did you do ?

A I had an interest in a children's carriage business at that time, and I still retain that interest.

Q What was that firm ?

40 A I think at that time it was Coles & Ballard.

Q Where was that carried on ?

A Up in Academy street.

Q What attention did you pay to that ?

A Well, very little.

Q After you discontinued the business of Barnett, Stainsby & Ballard, what business were you engaged in, if any ?

A Well, two or three.

Q At the same time, or successively ?

A I was in the children's carriage business sometime 10 afterwards ; and along the Fall I was in the tobacco business with Mr. Stainsby also.

Q Did you give any time to that ?

A Oh, yes.

Q You devoted your time to business when you had business ?

A Certainly, sir.

Q When, then, did you render these services to Mr. Gillette ?

A Well, so far as dates are concerned, I don't know. 2)

Q What part of the day—what portion of your time was devoted to Gillette's business, when you were transacting the other business that you speak of ?

A In the evenings, and sometimes an hour or two during the day, and I went to New York to make purchases at any time when he wished me to go.

*By the Vice-Chancellor :*

Q What purchase did you aid him in beside furniture ?

A Nothing that I know of, sir.

*Further cross-examined :*

30

Q When you went to buy these things did you not go to New York on your own business first, and then afterwards join him ?

A Sometimes, yes, sir.

Q Was not that the usual case ?

A Well, I don't know, sometimes I did my business first.

Q Did you have a place of business in New York ?

*A* Yes, sir, at 81 Spruce street.

*Q* What kind of business?

*A* The machinery oil business.

*Q* Was your place there, where you attended?

*A* I used to go down almost every afternoon.

*Q* Where did you spend the mornings?

*A* Part of the time in the hotel, and part of the time in the carriage factory.

*Q* That is, you spent the fore part of the morning at the  
10 hotel?

*A* Yes, sir, a portion of it.

*Q* I suppose that portion was before breakfast?

*A* Well, I always spent that in the hotel, and I used to spend a portion of the time after breakfast there.

*Q* You were not interested as a partner in this hotel, were you?

*A* No, sir.

*Q* But you had, and your family had the liberty of the house?

20 *A* Yes, sir, perfect liberty.

*Q* Did you get a pass on the railroad on the strength of your being connected with the hotel?

*A* Never, sir.

*Q* Did you not get tickets for which you did not pay, because you were connected with the hotel?

*A* No, not because I was connected with the hotel, because I never was connected with it; I presume I have had tickets given me several times, by Mr. Gillette and others, to travel from point to point, and I recollect that  
30 once a conductor was introduced to me as one of the proprietors of the hotel.

*Q* How were the tickets paid for?

*A* I don't know.

*Q* Did not conductors get their meals at the hotel on the strength of those tickets?

*A* Not that I know of; but on the other hand I know conductors were charged for meals that they got at the hotel; I never got a ticket from conductors on the strength of anything they got at the hotel.

40 *Q* I understand you to say that the marriage of Gillette,

and the fact that his wife would come there as housekeeper, rendered it necessary for you to leave ; was the service of your wife as housekeeper, the only inducement you had for going there ?

*A* I don't understand you.

*Q* You said that when Mr. Gillette got married, Mrs. Gillette proposed to take charge of the house, and that of course required that you should leave—the idea being, as I understand it—that there was no occasion for Mrs. Ballard to be there any more ; was that the case, that because Mrs. 10 Ballard was not to be house-keeper, you could not stay ?

*A* I recollect saying to Gillette, that it would not be pleasant, of course, and I supposed he would not want myself and family there then, and he said, no, it would not be pleasant ; and I said, then of course you don't want me to stay here with my wife in charge of the house ; and I said, I would not stay here unless my wife rendered those services.

*Q* Then the main object of your going away, was to get employment for your wife ?

*A* That is a question I don't know how to answer. 20

*Q* What did you mean by saying you could not remain unless your wife could have charge ?

*A* I don't know whether it is necessary for me to answer that question ; well, there was considerable unpleasantness between his wife and mine.

*Q* Could not Mrs. Ballard have stayed there, as a boarder, just the same ?

*Q* I presume she could, if I had wanted to make the arrangement ; but he stated when I made the remark to him that it would not be pleasant for me to stay there—he said, 30 “ No, it would not be ”

*Q* Why did not Mrs. Ballard leave when Mrs. Love came ?

*A* I can only say now what I said before, in regard to that, Mrs. Ballard stayed there right straight along, and Mrs. Love came and assisted in taking charge of the house.

*Q* Why did not Mrs. Ballard go away then ?

*A* I cannot tell you, sir ; nothing was ever said one way or the other, about it.

*Q* Did Mr. Gillette make more than one bargain with 40 Smith and Rhodes, as to the purchase of the house ?

*A* I cannot say.

*Q* Was not one made which fell through ?

*A* I don't recollect.

*Q* Was it not the understanding at first, that Mr. Gillette should take the house on the first of January ?

*A* It might have been—I don't know—I don't recollect.

*Q* And then in consequence of some failure or disagreement on the part of Smith and Rhodes, it was broken off, and renewed again, to take effect on the first of February ?

10 *A* I think probably it was ; I can't recollect that.

*Q* How many times was Mr. Gillette down from Buffalo, between the 19th of December and 1st of January ?

*A* I cannot say.

*Q* More than once ?

*A* I can't recollect.

*Q* Was not another bargain consummated on the visit which he made first after the receipt of your telegram ?

*A* The bargain with Smith and Rhodes ?

*Q* Yes, sir ?

20 *A* I cannot recollect.

*Q* Then you don't know whether it was, or was not ?

*A* No, sir ; the bargain was made of course, and the hotel was taken possession of ; but when, I don't know ; I know when the papers were passed.

*Q* Where did Gillette stay—where was he lodged and entertained, when he came on here in response to this telegram ?

*A* I presume it was at my house.

*Q* Don't you know ?

30 *A* Well, I think so ; he was usually entertained at my house.

*Q* Did he not, while there on that visit, consummate the bargain with Smith and Rhodes ?

*A* He consummated the bargain while at my house.

*Q* Was it not on account of his first visit to Newark, that you wrote him by telegram and by letter ?

*A* I don't know.

*Q* Don't you know that while he made a bargain with Smith and Rhodes and it fell through, that he went to  
40 Mount Vernon to look at a hotel, there ?

*A* I don't know—I think probably he may have gone, because he was looking about for a house.

*By the Vice-Chancellor :*

*Q* What is your recollection about this letter, which you say was written to you, in regard to his having no wife and the necessity of his having a house-keeper—was it before this letter of December 17th, or was it after ?

*A* I cannot say ; my impression is it was after ; I have never kept any memorandum, so I could only answer from a general idea of what I suppose to be the time ; but that was the arrangement that was made, and as far as that is concerned—(interrupted.) 10

*Q* Was that spoken of by him at the time that he suggested you should go into partnership with him—was that the reason—that you had a wife and he had not ?

*A* I don't recollect about that ; but that was part and parcel of our arrangement.

*Re-direct examination :*

*Q* I understood you to say that he came to your house, and this matter was talked over there ? 20

*A* Yes, sir ; after all these letters had passed, and everything, and after I had agreed to assist him and furnish this money—this \$5,000, &c.—at my house, this subject was all talked over, of course, and in my house he thanked me for my very liberal offer.

*Re-cross-examination :*

*Q* I understood that after the letters had been written, and after the arrangement had been made that you furnished him money, &c., you talked over the matter ?

*A* That matter was spoken of right at my table, in my 30 house.

*Q* After the arrangement was made ?

*A* You can call it what you like.

*Q* Well, after you had agreed to furnish the money ?

*A* Yes, sir, at my house.

Defendant's counsel also called  
 FREDERICK W. LEONARD, sworn :

*Q* Did you board at the Continental Hotel during the time Mr. Gillette was there ?

*A* I boarded there for about two years.

*Q* From what time to what time ?

*A* I cannot tell you ; I went there shortly after Gillette took the hotel, within three months, I think ; I went there before Mr. and Mrs. Ballard came there ; now I think I  
 10 was there one year and eleven months, very nearly two years.

*Q* During that time what position, if you know, did Mrs. Ballard occupy ?

*A* Well, I should call it housekeeper, because she took more interest in the hotel than I ever saw ; she interested herself about the hotel generally, and I have frequently heard Gillette call her, (he standing at the foot of the stairs and calling) "Jennie" to consult with her about something.

*Q* What did she do ?

*A* Well, you know I was only in the house mornings and  
 20 nights, and it would be difficult to tell what she did and what she did not do ; she was always constantly doing something, looking after the girls, and — well, I can't tell you what she did.

*Q* Do you know from Gillette whether she had any special charge ?

*A* I cannot say positively ; I have the impression, but I could not say whether Gillette said anything to me about it, or not.

30 *Q* Were you present at the time these notes were given ?

*A* I was.

*Q* What took place ?

*A* If my recollection serves me, there was considerable trouble between Smith and his wife ; I went there early in the day, and the question arose, how much of this money Mr. Smith should get ; Smith and his attorney dilly-dallied about that, so that the notes were not given until late in the evening ; well, Smith came in the room where I was sitting with Mr. Ballard, talking to him about it, and Smith came  
 40 in or his attorney, I forget which —

Q Was Gillette there ?

A Yes, but Gillette did not hear this, at all events after Mr. Sherman went out, Mr. Ballard went out and brought Mr. Jessup in, and Mr. Jessup endorsed the notes, and after he had signed the notes, Mr. Ballard told Gillette that he had agreed to indemnify Mr. Jessup before he would endorse the paper.

Q After that did you draw a chattel mortgage ?

A I did.

Q At whose instance ?

10

A Gillette's,—he spoke to me a week or ten days, or perhaps longer than that, but I think about ten days before he left for Europe, and he told me that he owed Mr. Ballard \$5,000;—that was the first time I ever knew how much he did owe Ballard; I had heard about the house, about what the arrangement was between them, that Ballard had loaned Mr. Gillette some money. He told me that he wanted to give Mr. Ballard a chattel mortgage before he went away, (my impression is that this was at the hotel,) I told him it would be necessary for him to give me an inventory, or a 20 list of the goods in the house, that I might attach it to the mortgage; he said he would have one of his clerks make it out for me, and it went along until a day or two before he went to Europe, when he brought his inventory, the book containing the inventory, to my office; I met him on the street, I remember it distinctly, and he had the book under his arm, and I returned with him, and had the mortgage drawn from the schedule drawn from that book; and I think the book was around the office two or three days, but certainly a day or two; and either the day or night before Mr 30 Gillette left, he executed the mortgage.

*Cross-examined :*

Q You boarded at the house at the time this mortgage was drawn ?

A I am not certain, but I think not.

Q Was it after you left the house ?

A I think so, I am not positive—yes, it was; no, I won't be positive.

Q Did you not leave while he was in Europe ?

*A* Yes, sir, I think I did.

*Q* Then it was after the chattel mortgage was drawn?

*A* Yes, sir.

*Q* Did he ever pay you for drawing that mortgage?

*A* No, sir.

*Q* Did you ever ask him to?

*A* No, sir.

*Q* You paid him board after that?

*A* I think not after that, I remember stating to his  
10 clerk—(interrupted.)

*Q* You did pay him board after that?

*A* I did; I did a great deal of business for Mr. Gillette; he consulted me a great many times, without charging him for it.

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Defendant's counsel also called—

LOUISA LEONARD, sworn:

*Q* You also boarded at the Continental Hotel, while your husband was there?

*A* Yes, sir.

20 *Q* I would like to have you state, if you know, what position Mrs. Ballard held during the time you were there, and what she did, so far as came under your observation?

*A* She directed the chamber-maids, looked after the linen, had the key of the linen closet, superintended the servants; I don't know whether she did in the kitchen, but she did the other servants; I know she did the canning, preserving and jarring of the fruit, and all that work in the house; and she generally did it after the range was not in use, late at night after the other work.

30 *Q* Well, did she have a recognized department of the hotel to look after?

*A* She did.

*Q* Was she or not employed about the hotel in looking after it, during the entire time?

*A* With the exception of a few months that Mrs. Love was there.

*Q* Did she or not manifest an interest in the enterprise of the hotel?

*A* She did.

*Q* Were you ever at the room she occupied ?

*A* Very frequently.

*Q* Did you attend any of those entertainments they speak of as having been given in the back parlor ?

*A* I was in the back parlor at one time, to dinner.

*Q* Was Mr. Gillette there ?

*A* Yes, sir.

*Q* Whose entertainment was it ?

*A* They were friends of Mr. and Mrs. Ballard's. 10

*Q* Was there any other occasion that you know anything about ?

*A* I have no recollection of being there at any other time.

*Q* Do you recollect the occasion where there was a presentation made to Mr. Gillette ?

*A* I was there on that occasion.

*Q* What was the occasion ?

*A* The presentation of a chain to Mr. Gillette.

*Q* By whom ? 20

*A* By the boarders in the house.

*Q* Did he at that time, or on that occasion, make any expression of his appreciation of the services of Mrs. Ballard ?

*A* He did.

*Q* What did he say ?

*A* In thanking the boarders for the present, he said that the success of the hotel was due more to Mr. Ballard than himself; and that the Continental Hotel would not have been the Continental Hotel, without Mrs. Ballard. 30

*Q* That was in public ?

*A* Almost all the boarders in the house were there.

*Q* Do you know whether she looked after the rooms at all ?

*A* I think she did; I never saw her.

*Q* How often were you in Mrs. Ballard's rooms ?

*A* Almost every day.

*Q* Did you notice the room they call No. 10 ?

*A* I did.

*Q* What was that used for ? 40

*A* It was the sewing-room and linen room for some time; it was used for different purposes.

*Q* During the time Mr. and Mrs. Ballard occupied the other two rooms, was that occupied for the purposes of the hotel?

*A* It was used by the seamstress in making things for the hotel.

*Q* Under whose direction was the seamstress?

*A* Under Mrs. Ballard's direction—she always helped  
10 her.

*Q* Did Mrs. Ballard purchase things for the hotel?

*A* She did?

*Q* How do you know?

*A* I have been with her.

*Q* Where?

*A* To New York.

*Q* Purchasing what?

*A* Sheetings and toweling.

*Q* At what places?

*A* Halstead, Haynes & Co.  
20

*Q* Were any other persons with you?

*A* Mr. Gillette and a lady at the hotel at the time.

*Q* Do you know whether she ever went alone?

*A* I do not.

*Q* You say that for two months, while there was another woman there, she was not employed—what was she doing then?

*A* I don't know; I know Mrs. Love looked after the linen at that time; but I always understood that she was  
30 under Mrs. Ballard's direction.

*Q* Do you know whether there was any extra work being done at that time?

*A* I think they changed carpets in the hall or something of that sort.

*Q* Was it or not understood by the boarders and guests, that she had charge of the female department of the hotel?

*A* I have heard Gillette speak of her services being almost invaluable to him.

*Q* What did he say?

*A* I cannot state his exact words; I can only say I have  
40

heard him frequently express his gratitude to Mrs. Ballard, and his dependence on her.

Q He says that you had charge at one time with Mrs. Ballard, with the arrangement of putting out the linen also?

A I did not.

Q Who did it?

A Mrs. Ballard.

*Cross-examined :*

Q Did you do anything about dealing out the linen?

A No, sir, I have been in Mrs. Ballard's room while she 10  
has been attending to those things, and I believe I have written down the articles for her.

Q The canning that you say was done, where was that done?

A In the kitchen.

Q Were you there?

A No.

Q Then how do you know she did it?

A I have seen her going and coming from there, and I  
have heard Mr. Ballard object to her doing it. 20

Q Is that the way you know she did the canning?

A Yes, sir.

Q What did Mr. Ballard say against it?

A That it was too much for her to do.

Q Did they have a cook at that time?

A Yes, sir.

Q How many?

A Two.

Q Was George Disbrowe there then?

A Yes, sir. 30

Q Did they have a pastry cook at that time?

A Yes, sir.

Q Did not she do the canning?

A I never had any reason to think she did.

Q When was this presentation that you speak of?

A I cannot give the date, it was shortly before he was  
married.

Q He said, if it had not been for Mrs. Ballard, the Continental Hotel would have never been?

A That is what he said.

Q And expressed his appreciation of their kindness to him, and his gratitude to them ?

A Yes, sir.

Q Did he not also express himself in the same way in regard to other boarders, to a certain extent ?

A I did not understand it so.

Q Did he not speak of the kindness he always received from the other boarders ?

10 A He might have done so.

Defendant's counsel also called

DANIEL A. PECK, sworn :

Q Were you at any time at the Continental Hotel, while Gillette was there ?

A I was.

Q In what capacity ?

A Head waiter, first as side waiter, and afterwards as head waiter.

Q From what time to what time ?

20 A From the latter part of February, if I recollect right; I went there; Gillette sent for me, and asked me to take charge of the house and I did so.

Q And you continued there how long ?

A In the neighborhood of a year, close on a year.

Q And left about what time ?

A I cannot exactly say.

Q In 1872, some time, was it not ?

A I think so.

Q Did you see Mr. Ballard there ?

30 A I did sir.

Q Who went there first, you or Mrs. Ballard ?

A I was there first.

Q Do you recollect when she came there ?

A Not the date, I remember that Mr. Gillette told me that Mrs. Ballard was coming there as housekeeper.

Q When was that ?

A Previous to Mrs. Ballard's coming.

Q When she came, what position did she assume?

A The same position as I should call it, as housekeeper of the hotel; she took charge of everything in the house; had charge of the girls, seemed to be officiating around the laundry, looked after the washing; and she was also up stairs to see to the laying of the carpets, when they commenced fitting up new in that part, laying down carpets and oil cloth; and I used to have dinner ready for Mr. Ballard, Mr. Gillette, and Mrs. Ballard, because they went to New York to see about the furniture in the fitting up the new part; and sometime I had to get dinner late, because it was late before they got back from New York; Mr. Gillette said that Mrs. Ballard came there as his housekeeper, and he wanted me and the rest of the waiters to respect her as such. 10

Q Did you do so, or not?

A We did, sir.

Q Had you orders from her, and obey them?

A Yes, sir, the same as we would from Mr. Gillette.

Q And that continued while you were there?

20

A It did, sir.

*Cross examined:*

Q When did you go there?

A In the latter part of February.

Q Who was head waiter when you went there?

A Liduck Hers.

Q How long did he stay there?

A I think two or three weeks, not much more than that; then he left in consequence of something, and Mr. Gillette sent up after me, and I went down to see what he wanted, and I met him down in the lower part of the house, and he asked me if I would take charge of the house. 30

Q When?

A Sometime in March, 1871.

Q Well?

A I told him I would, and I assumed command; I think, that afternoon, but I won't be positive, but it was either that afternoon or the next morning.

Q You came back there in March and took possession?

A I think it was then, but I won't be positive.

Q Have you any means of fixing the date when you were there ?

A I think it was then.

Q Was it in March ?

A I think it was.

Q Did you keep any memorandum of the time when you commenced there ?

A I had a memorandum, but I have been moving about  
10 so much, that I don't know what I done with it.

Q When did you leave there ?

A I don't know.

Q How long did you stay there ?

A Very near a year.

Q What month did you leave there ?

A I don't know.

Q How is it you can tell when you went, but not when you left ?

A I don't know.

20 Q You went there first and left again ?

A Yes, but I was not away over four days ; I went there from New York.

Q How long did you stay there after you came from New York ?

A I did not go to New York the first time.

Q How long did you stay at Gillette's ?

A I did not go right to Gillette's when I came from New York.

Q When did you come from New York ?

30 A In the fore part of February, 1871.

Q And how long did you stay here before you went to Gillette's ?

A I cannot exactly fix the date.

Q How long were you here, after you came from New York, before you took employment at Gillette's at all ?

A I could not tell.

Q Give us your best idea ?

A I think it was the latter part of February ; I know I went to Gillette's, but how long I have been there, I don't  
40 know ; well, I could not exactly say.

Q Were you there when Mrs. Love was there?

A No, sir, I don't think I was.

Q Was there any such housekeeper as Mrs. Love, while you were there?

A I think there was some woman there when I first went there, that had charge of the laundry and the things around the house.

A Was her name Johanna?

A I don't know.

Q Was she American or German?

10

A I don't know.

Q When did the Ballards come there?

A I don't know the exact date when Mr. and Mrs. Ballard came to the Continental Hotel, but I know that Mr. and Mrs. Ballard used to come to the house frequently, before they came there altogether; they used to come on Sunday afternoons and take dinner there.

Q They were on intimate terms, were they?

A Yes, sir.

Q Where are you now?

20

A I am public waiting.

Q Who for?

A For Mr. Allen sometimes; sometimes for Davis Bros.

Defendant's counsel also called

Mrs. LAURA S. DODD, sworn :

Q You lived at the hotel?

A I did sir, one year.

Q What year?

A 1871; I went there in March, 1871, and left in April, 1872.

30

Q You are the widow of Bethuel Dodd?

A Yes, sir.

Q Were you at the hotel before Mr. and Mrs. Ballard went there?

A No; I don't know of any other housekeeper than Mrs. Ballard.

Q Did you say Mrs. Ballard was the housekeeper there?

A I looked upon her as such, because she took the entire supervision of everything.

Q What did Mrs. Ballard do at the hotel that came under your observation ?

A She had the general supervision ; she looked after the rooms, gave out the linen, gave out the things from the pantry, and everything of that sort, and took general supervision of the kitchen, as far as I could see.

Q Was that occasional, or was it continued ?

10 A It was continued while I was there.

Q Did she occupy most of her time about the hotel ?

A When I saw her at all, she was always busy about the hotel.

Q What else did she do ?

A She canned the fruit.

Q How do you know ?

A I didn't see her do it, but I know that she did it.

Q How do you know ?

A I know it from her going to and from the kitchen.

20 Q Did you see the fruit cans ?

A No, sir, I didn't see cans ; I knew there was no one else to do it ; in fact, I was in the kitchen at one time when she was making jelly.

Q Were you ever at her rooms at any time in the back parlor ?

A No, sir, never ; I know we were all very social and very pleasant together ; it was like a family.

Q Did Mr. Gillette occupy the same table with the Ballards ?

30 A He did, sir.

Q Did you ever hear Mr. Gillette say anything about Mrs. Ballard ?

A Yes, sir, I have ; I think it was Mr. Gillette introduced me to Mrs. Ballard, and asked me how I liked her ; and he said, I don't know what we should do without her ; her services are indispensable.

Q After you left there, did you go back occasionally ?

A Yes, sir, I did ; I visited persons in the hotel, after I left there.

40 Q Do you know whether Mr. Gillette would order refreshments to room No. 11 ?

*A* Yes, sir; he has done it in a social way a number of times.

*Q* Did you ever know Mrs. Ballard to do it?

*A* Well, not often; I don't know that I have partaken of what Mr. Ballard has offered more than twice; but I know, in a social way, Mr. Gillette, when we dropped in, would often do it.

*Q* What room was it?

*A* The large front room, the sitting-room; the room occupied by Mr. Ballard.

10

*Cross examined :*

*Q* What actual knowledge have you of this canning?

*A* This knowledge; I have no knowledge only that I know she did it; she was a fine housekeeper and a great authority in these matters, and very few cooks you can get could do it; and I know she did it because I saw her going to and from the kitchen making her arrangements to do it.

*Q* Was there a cook there?

*A* Yes, sir.

*Q* Was she competent to do canning?

20

*A* I don't know; very few of them are; I know Mrs. Ballard did it; she took a great interest in the hotel.

*Q* There was great intimacy between Mr. Ballard's family and Mr. Gillette?

*A* Yes, sir, it was like one family.

*Q* The boarders all took an interest in the success of the house?

*A* Yes, sir; there was a general feeling to make the house a success; all did what they could and no one worked harder than Mrs. Ballard.

30

*Q* Well, she had been an acquaintance of Mr. Gillette before he came there?

*A* Yes, sir.

*Q* And the other boarders generally?

*A* No, sir; I don't think so.

*Q* What had Mr. Gillette to do about the house?

*A* He talked about it as any landlord would.

*Q* Did he do anything about the house at all?

*A* Well, he looked about to the comfort of his guests.

*Re-examined :*

Q You say that they all felt interested in the house ; all were social, but none of the boarders except Mrs. Ballard did any work ?

A No ; of course not ; none had that kind of interest ; we were all interested as Newark hadn't a good hotel, and Mrs. Ballard really took an unusual interest.

Q Didn't she do actual physical labor ?

A I used to think she was over zealous.

10 *Further cross-examined :*

Q Did you understand she was employed as house-keeper ?

A No, sir ; I didn't look upon it in that light at all.

Q You knew nothing about the arrangement existing between them at that time ?

A No, sir ; I didn't.

Q You didn't know how they were, then ?

A I supposed there was some arrangement, otherwise Mrs. Ballard would not have taken such an unusual interest.

20 *By the Vice-Chancellor :*

Q You didn't know of the arrangement there ?

A No, sir.

Defendant's counsel also called

JAMES M. MILLS, sworn :

Q Mr. Mills, were you at any time in the Continental Hotel ?

A Yes, sir ; I was clerk there from November, 1872, until somewhere in June, 1873—about five months in all.

Q What was your business—as clerk in the office ?

30 A Yes, sir.

Q State what you know about the services, if anything, that Mrs. Ballard rendered in the hotel ?

A Well, I understood that Mr. Ballard was interested in the house.

[Objected to.]

*By complainant's counsel :*

Q Did Mr. Gillette tell you ?

A I don't remember that I got that information from Mr. Gillette ; it was a common rumor.

*By the Vice-Chancellor ;* If Mr. Gillette told you, or anybody told you in his presence, that will do.

*Further examined :*

Q Did you have charge of the books ?

A Yes, sir.

Q Did the books disclose anything between Mr. Ballard 10 and Mr. Gillette ?

A Yes, sir ; there was \$5,000 credited to Mr. Ballard.

*By the Vice-Chancellor :*

Q In what way was that entry made ?

A I could not exactly say. I was not there at the time, but I saw that entry in the books.

*Further examined :*

Q What did Mrs. Ballard do ?

A She took the general supervision of the house, and as is customary in hotel business, when I first went to the 20 house I sent two or three slips up to her room, recognizing her as housekeeper, to make the changes—as is customary in other hotels, but after a short time I gave that up, understanding that Mrs. Ballard looked after the upper part of the house without any instructions from the office.

Q Had you been in the hotel business before ?

A Yes, sir.

Q How long ?

A Since 1869.

Q As clerk ?

A Yes, sir.

Q Now, then, state again specially what she did that came under your observation ?

A I have seen Mrs. Ballard in different parts of the house looking after the rooms ; saw her once or twice down stairs in the pastry room. I have known her to go to New York and make purchases of towels and other things for the house.

Q Where was your work principally ?

A In the office down stairs—and through the house at times—showing guests through the house.

Q Was there any other person in charge of the up-stairs department during the time you were at the house ?

A No, sir, except the chambermaids ; and I believe they were all under her supervision.

Q Do you know whether they were or not ?

A I have known that she has given instructions to them.

10 Q Do you know whether Mr. Ballard did anything himself in the hotel while you were there ?

A I do ; Mr. Ballard has been in the office, and has been in charge of the office during the absence of Mr. Gillette and myself.

Q He took your place ?

A Well, I don't know that he took my place. I know that he was in charge of the office, when I went and returned to the city.

[Complainant's counsel declined to cross-examine.]

20 Defendant's counsel also called—

SARAH RYAN, sworn :

A Were you at the Continental Hotel any part of the time when Mr. Gillette was there ?

A Yes, sir ; I was eighteen months and three days in Continental Hotel.

Q In the service of Mr. Gillette ?

A Yes, sir.

Q From what time ?

A I went there September 7th, 1872, and I think I  
30 remained there until March 10th, 1874.

Q What did you do there ?

A What Mr. Gillette called scrubbing work. I had to always obey the orders of Mrs. Ballard.

Q What did Mrs. Ballard do at the hotel while you were there ?

A What had I got to do with that ? I had work enough of my own to do.

Q Did you see her through the house?

A I saw her take the part of a careful person through the house on certain occasions; of course I was not looking after Mrs. Ballard; I was looking after myself. What did she do—do you say? Well, I don't know—she did everything. Of course, I suppose from the way she ordered me around—(witness interrupted.)

Q Did she give you orders?

A You are right—she did.

Q To do what?

10

A At the time of house cleaning, I had to go up stairs, and had to receive her orders, the same as Mr. Gillette, and I done it the same as I knew how; the same from Mrs. Ballard as from Mr. Gillette.

Q You scrubbed the paint, &c.?

A You are right—and I wish I was paid for it; but I would rather he would owe it to me yet, than cheat me out of it.

[Complainant's counsel declined to cross-examine.]

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Defendant's counsel also called—

20

MRS. JENNIE BALLARD, SWORN:

Q Do you recollect the time when Mr. Gillette first talked about taking an interest in this hotel, or taking charge of it?

A Yes, sir.

Q What did you first hear in regard to it when he was present?

A Mr. Gillette was visiting us at the time: it was one Sunday evening—I don't remember dates, all—and Mr. Dodge and Mr. Jessup were talking it over; and this Mr. 30 Dodge boarded at the Continental Hotel.

Q Gillette was present at this time?

A Yes, sir; and we invited Mr. Dodge to remain at our house to dinner; and he would take us up there to the Continental Hotel; Mr. Jessup went with us; Mrs. Jessup and I remained in the parlor; and Mr. Jessup and Mr. Dodge and Mr. Ballard went through the Continental Hotel, and

when they returned, Mr. Gillette said to us, if you get me this hotel, I will give you a wine supper or dinner; I would like to have this house; and that was the first of my recollection. We all said we would very much like to have him here, and would do all we could in his absence, after he returned home, to get the hotel for him, which we did.

Q Afterwards, do you recollect anything of your own personal knowledge of any negotiations which passed?

A After that, Mr. Gillette came back; he came back  
10 twice.

Q Came back from where?

A He hadn't sold out the hotel then at Buffalo.

Q Did you see any of the letters which passed between?

A Yes, sir; I saw them all.

Q What do you recollect to be the correspondence between you?

A I could only repeat what Mr. Ballard said.

Q What was said, if anything was said or written, in these letters in relation to you—was anything?

20 A Yes, sir; that I should do all I could, not in the light of a housekeeper, I didn't; Mr. Gillette couldn't hire me for a housekeeper, or anything else; I was not a housekeeper; but I did everything that a housekeeper could do.

Q What was said in these letters about what you would do?

A That I would take charge of the female department—of the servants—not the guests, of course, and do everything I could.

30 Q Was that understood and arranged before you finally went to the hotel?

A Certainly, sir.

Q You say Mr. Gillette came to your house and was there afterwards; was the matter there talked over or not?

A He stayed at our house all the time that he was negotiating about the hotel; but there was some difficulty between Mr. Smith and Rose, and of course the subject was talked over all the time—every meal. Mr. Ballard devoted his whole time until the house was bought.

Q When did you come to the hotel?

40 A I don't remember; I think it was in April—about the 1st of April. I don't remember dates at all, sir.

Q Before you went, did anybody go there to the hotel—that is, was there any lady or any woman in charge?

A Yes, sir; I sent my servant, and did without her two weeks; her name was Johanna. I did without a servant for two weeks.

Q Why was that?

A Because I let Mr. Gillette have her.

Q For what reason?

A He had just gotten there, and there was everything to do. I made the sheets. I got a seamstress at my house, 10 and ordered and made the sheets and sent them up to Mr. Gillette for the hotel

Q And then you said you sent your girl?

A I sent Johanna; yes, sir; she was there—it might have been a month. I don't remember.

Q Before you got ready to go?

A Yes; she was not there after I went. I don't think she was there at all after I went—she might have been a day or two.

Q After you went there, what did you do? 20

A Everything that was to be done.

Q What did you do?

A I prefer to leave that to others.

Q You can tell generally what your duties were?

A There was never a can of fruit, or a jar of preserves or pickles or jelly in that house but what I did.

Q How much would you put up?

A I can't tell you how many jars. On one occasion when Mr. Gillette went to Europe, I did up some two hundred, I think. Mr. Clinton Gillette can tell you. There never 30 was a particle of jelly bought in the house excepting at first, before we came. I went there in April. Of course we didn't do anything up until Fall.

Q That is one thing. What else?

A I oversaw the making of all the linen in the house; I don't think that Mr. Gillette ever laid a carpet in the house but what he called me. I don't think he ever changed a suite of furniture or fixed a suite of rooms but what he called me.

Q Who had charge of the girls? 40

A I had, sir.

Q In the house ?

A Yes, sir.

Q Gave the orders ?

A Yes, sir.

Q Were they obeyed ?

A I can't remember any that were not ; I suppose there was some that was not obeyed. There always is with servants.

10 Q How much of your time did you devote to the hotel while you were there ?

A Well, I cannot answer that question, sir.

Q Answer it generally ?

A There was not a moment that I was in the hotel, but what I was ready and willing to do everything that I was called upon to do, and it was not many minutes but what I was in demand.

Q Do you know the bargain which your husband had made with Mr. Gillette ?

20 A Yes, sir, certainly.

Q What was the bargain ?

A That Mr. Gillette should come here, and Mr. Ballard should loan him \$5,000 in money and assist him to furnish the house, and I should take supervision over the female part of the house, and do everything I could.

Q What was the consideration for that ?

A That we should come there and have any rooms in the house ; and Dr. Zeh wanted 37 and 38 before we went there, and Mr. Gillette would not give it to him, because he was  
30 afraid we would rather have that suite, and he wanted us to take 4 and 5, because he thought the up-stairs rooms would be too much for us to run up-stairs so much ; he wanted us to have the two best rooms in the house.

Q You said you were to have those rooms ; what else were you to have ?

A We were to have our board and washing.

Q During the time that you were there, was Mr. Gillette any considerable part of the time at your rooms ?

A Yes, sir. He called his friends there and entertained  
40 them there ; his own company come there—he had nowhere

else to take them ; his company was our company ; he knew no one in Newark until he came with us, and of course our company was his company. I think I can safely say he did not know a soul in Newark until he came here.

Q He says that you ordered a great many refreshments to your room—what is there about that ?

A Of course, I can only deny that I ever took chickens cooked, alive or dead, out of the house. Of course, Mr. Gillette knows that several times we had application from hospitals, &c., and when I would tell Mr. Gillette he would say of course, like the rest. My sister was sick ; she died ; and on several occasions he sent her little delicacies. 10

Q He says that liquors and other refreshments, and extra meals were served in large quantities in the room and in the back parlor.

A Well, I deny it ; to my recollection I had meals there twice ; it might have been three times—not over ; and on one occasion—it was when Mr. Gillette was in Europe—he visited our friends in Edidburgh—he sent me a letter saying— 20

*By complainant's counsel :*

Q Have you got the letter ?

A No, sir, I don't keep letters.

*Witness :* He sent me a letter saying that Mr. and Mrs. Kennedy would arrive here at such a time, and for me to invite Mr. Lyons' family and Mr. Barnett's family. I invited them, and, of course, I was bound to treat them properly. I had them in number 5. On one occasion I had Mr. Robottam and my father and mother, and Mr. and Mrs. Stainsby, which Mr. Gillette had visited time and again, and Mr. Gillette was there and took the head of the table ; that is two occasions. I may have had once more, I don't remember, though. 30

Q Then he says you sent a great many things ordered from the bar at the room ; who gave the orders, do you know ?

A I don't know what he means, sir. Mr. Gillette always had his friends in our room, and he would always have things sent up there, and order things.

Q Do you recollect whether Mr. Gillette desired you to hurry and get up to the hotel before you got there—whether Mr. Gillette was impatient?

A He said he was.

Q For what reason?

A Why, I sent him my girl when he could not move, and the reason he wanted us to come, he said, she was not a proper person to command servants; they didn't respect her; that was the reason he discharged her.

10 Q What was the reason you didn't go sooner?

A We hadn't sold our house.

Q Was Mr. Gillette sick any part of the time while you were there?

A Yes.

Q Who took care of him when he was sick?

A I did all I could.

Q Did your husband assist him?

A Yes, sir; he stayed up with him one night until after midnight. He always said, if it hadn't been for me  
20 he would have died.

Q Who took care of his clothing, &c.?

A I did.

*Cross-examined :*

Q You have known Mr. Gillette some time?

A Yes, sir.

Q How long?

A Nine years next July.

Q And there had been considerable intimacy between him and your husband and yourself?

30 A Yes, sir.

Q You and your husband were both quite anxious he should come here and take this hotel?

A Yes, sir.

Q You never went out as housekeeper?

A No, sir, not yet.

Q Never took in plain sewing?

A No, sir; but I could do it.

Q The sheets that you made before you went there were not made in that capacity?

A They were made because the hotel needed them.

Q You didn't do it for pay, I understand ?

A No.

Q You did it because of the interest which you took in the concern ?

A Yes, sir.

Q Then after you removed to the hotel you rendered those services of which you have spoken, not as housekeeper —not in the capacity of a hired housekeeper ?

A But as a hired housekeeper, I considered that I was 10 to act.

Q You got your board ; in other words, you worked for your board ?

A Yes, sir.

Q Didn't you take offense sometimes at the statement that was made that you were housekeeper ?

A Yes, sir ; but not more than Mr. Gillette did.

Q Both claimed that you were there, as friends.

A Yes, sir.

Q And you both claimed that you were there as friends 20 and not in that capacity ?

A Yes, sir.

Q Did you say to Mr. Gillette that your brother William had said, that if you could not live without going as housekeeper, he would take you in his house, or anything of that kind ?

A Not those words.

Q You took a great interest in the house ?

A Yes, sir.

Q Did all you could to make it a success ? 30

A Yes.

Q And you and your family, and Mr. Gillette were like one family ?

A Yes, sir.

Q His home, if I may so speak, was in your apartments, and when his friends came to the house they came there and you and he were at the same table ?

A Yes, sir.

Q I don't know whether I understood you rightly ; but I understood you to say that you denied that any refresh- 40

ments were ever sent to your room from the bar, on your order?

*A* No, sir.

*Q* When this hotel was first purchased—you said there was some difficulty about the purchase; some difficulty between him and Smith and Rose; he was staying at your house; he came to your house in December, before the purchase?

*A* I don't remember dates, at all.

10 *Q* He went back two or three times, did he not, to consummate the purchase, soon after your husband had written to him and after he received the telegram?

*A* Yes, sir.

*Q* And he consummated the purchase and agreed on the terms, on a visit which he made subsequent to that?

*A* Yes, sir.

*Q* How many times was he here, between the nineteenth of December and the first of January?

*A* I cannot tell you?

20 *Q* Was he here more than once, between those dates.

*A* I think he went back once and came again; I won't be positive, but I think so.

*Q* When he first came in response to your husband's telegram and letter, did he then stay until he had completed the bargain for the purchase of the house?

*A* No, sir; I think he went immediately back.

*Q* I mean after the telegram; when he came on after the telegram?

*A* I think he remained then until the bargain was consummated; I think so.

30 *Q* And do you know at what time the arrangement was first agreed to go into effect, about taking the house?

*A* Yes, sir; he was to get it the first of January.

*Q* Do you know why that failed?

*A* In consequence of some disagreement between Smith and Rose—between Mr. Gillette and them. The first arrangement was to get the house the first of January, but it failed; Mr. Rose remained there some little time after Mr. Gillette got the house; he got the house about the first  
40 of February.

Q Then if I understand you, when he came on after the telegram had been sent him, he remained here until he made the bargain for the house?

A Yes, sir; and then he went back, I think.

*Further examined :*

Q In reference to those dates you say that Mr. Gillette came here after the telegram was sent and that he stayed until the bargain was completed; do you know or do you suppose that to be the case?

A I don't remember; I am not positive; I said to Mr. 10  
McCarter I was not positive; I know Mr. Gillette went back two or three times; I know once he went back after he had taken the house.

Q You don't speak from absolute memory?

A No, sir.

Q Have you no way of fixing the dates or times?

A I don't remember the dates at all, sir; I think Mr. 20  
Gillette came there the first of February, and I think we went there the first of April or the first of March, I forget which.

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WEDNESDAY, Oct. 7, 1874.

Defendant's counsel also called

CHARLES M. ZEH, sworn:

Q Did you board at the Continental Hotel during the time Mr. and Mrs. Ballard were there?

A I did, sir; I boarded at the Continental Hotel from April, 1871, and I have been there since.

Q You were there during all the time Mr. Gillette was there?

A Well, I was there from April until he left; I think he 30  
had been there from two to three months before I went.

Q Were you there before Mr. and Mrs. Ballard went there?

A I was.

Q Can you state, Doctor, what Mr. and Mrs. Ballard did if anything, at the hotel while you were there, in assisting and

seeing to the carrying on, and the conducting of the business?

*A* When Mr. and Mrs Ballard came there I supposed they were—they came as boarders, and afterwards I learned that Mrs. Ballard had charge of the house as housekeeper, as general manager of the house, and I understood that she kept that position until she left.

*Q* Anything you understood from Mr. Gillette would be all right to give in evidence here, from Mr. Gillette in the presence of the parties?

*A* Well, I did not understand it from either of them, or anything that gave me that idea at all; neither of them told me so.

*Q* What did you see?

*A* I saw Mrs. Ballard about the house, and about the rooms, and when things were wanted in the rooms, Mrs. Ballard was the one applied to for the getting of them.

*Q* Who took care, if anybody, during that time, or took charge of the female department?

*A* I only know so far as my own was concerned, and the patients I saw in the house. Mrs. Ballard was the one that was called upon.

*Q* Then I understand you to say that if any thing was needed, you called upon Mrs. Ballard?

*A* If anything was needed in our rooms, she was the one applied to usually.

*Q* Do you know whether that was so outside of your rooms, in the other rooms of the house?

*A* I can only say, so far as I attended the families in the house, my patients there; they have also sent for Mrs. Ballard and she has come in.

*Q* Was there any one else in charge during the time you were there, so far as you know?

*A* I think, sir, there was a short time, but how long, I don't know, that there was a woman there; but whether it was for two or three weeks, or a month, I don't know, I am unable to say.

*Q* With that exception was there any one else?

*A* None that I know of, sir.

*Q* Was Mr. Gillette sick during any of that time?

*A* He was sick on one or two occasions, during this time.

*Q* Who waited on, and took care of him in his sickness?

*A* I remember Mrs. Ballard being there and attending upon him during his sickness; I don't know whether there was any one else or not, but I think she was the only lady.

*Cross examined :*

*Q* Doctor, is your office in the house?

*A* No, sir. 10

*Q* How much of your time did you spend in the house, except that which was spent in sleep, and at your meals?

*A* Very little, sir; I probably have not averaged an hour every day, since I have been there.

*Q* Then what you observed, of your own personal observation, must have been when you were in the house for those purposes?

*A* Yes, sir; when I have been in my own room—I would say that during this time my wife was an invalid for some 14 months. 20

*Q* From what you saw, what was Mrs. Ballard's apparent position in the house?

*A* From what I saw, I looked upon her as one having charge of the house.

*Q* As a hired housekeeper?

*A* I cannot say that I can say that, sir.

*Q* Do you know from observation, whether or not she exercised privileges, and enjoyed advantages in the house that a hired housekeeper would not, in regard to the ordering of meals, and the direction of matters; or in the ordering of any meals, or refreshment of any kind; whether she enjoyed privileges about the house that would not belong to a hireling? 30

*A* I should suppose, from what I saw of her position there, that it was different from that of a hired housekeeper.

*Q* In what respect?

*A* Well, she seemed more at home, she had more liberties, and felt more at her ease than a hired housekeeper would.

*Re-direct-examination :*

Q You occupied how many rooms in the hotel ?

A Two.

Q What was the character of the rooms ?

A They were on the first floor front, the parlor floor.

Q Were they not about the best rooms in the house ?

A I looked upon them as the best ; I had my choice when I went there.

Q What did you pay ?

10 A I pay \$45 a week for my family.

Q Of how many ?

A Three.

Q Grown persons ?

A Yes, sir ; myself, my wife and a servant.

*Re-cross-examination :*

Q Doctor, is not one of those rooms a dark room ?

A It is not a dark room ; it would be dark if it had been kept as it was intended to be when I first went there ; but I had a door put in it myself in front and back, which  
20 makes it a very fair room now.

Q Your bed-room is what is called an inside room ; it has not communication with the outside of the house except by a door connected with the other rooms ?

A There is a door to it—communicating with the parlor.

Q But there is not outside access ?

A No, sir.

*Re-direct-examination :*

Q Are they large rooms ?

30 A Yes, sir.

Defendant's counsel also called—

BENJAMIN STAINSBY, SWORN :

Q Mrs. Ballard is your daughter ?

A Yes, sir.

Q Did you, during the time that Mr. and Mrs. Ballard were at the Continental Hotel, visit there ?

A Some, sir.

Q On what invitation, if any ?

A Well, I sometimes visited my daughter, as my daughter ; and at other times I visited at the invitation of Mr. Gillette.

Q Did you ever have any special entertainment there ?

A Yes, sir.

Q Was that or not at the times and on the occasions when you were invited there by Gillette ?

10

A Always ?

*Cross-examined :*

Q How many times did Mr. Gillette ever invite you there ?

A I should think a dozen or two.

Q I mean special invitations ?

A I really cannot say, it might be half a dozen ; but the invitations that Mr. Gillette used to give me were constant, and I accepted them ; perhaps—well, I may have dined with Mr. Gillette half a dozen times, but never without 20 special invitations from him ; and generally dined at the public table.

Q Did you never accept invitations to dine with Mr. and Mrs. Ballard ?

A No, sir.

*Re-direct-examination :*

Q Was your wife with you on those occasions ?

A Yes, sir ; always.

Q Was she ever there, so far as you know, without your being there ?

30

A She might be.

*Re-cross-examined :*

Q Did you ever dine there alone ?

A I don't remember that I did ; I don't think I did ; I may have done so, but I think my wife was always with me.

Defendant's counsel also called

ANNA STAINSBY, sworn :

Q You are the mother of Mrs. Ballard ?

A Yes, sir.

Q Did you visit them at any time while they were at the hotel ?

A Yes, sir, several times.

Q Who was with you, if any one ?

A My daughter and sometimes my husband ; we generally went to supper when we were there spending the day.

Q Did you ever have any private meals there ?

A We sometimes had meals in a separate room from the dining-room, on special occasions ; but it was by Mr. Gillette's orders.

Q On what occasions were those ?

A At one time my daughter and the rest sent Mr. Gillette a present of a turkey, and Mr. Gillette ordered a private table for us ; and another time, at the death of my daughter, Mr. Gillette invited me to spend a couple of days there after the funeral ; but we had a private room for one day only, I think.

Q Did you, on any of those occasions, visit the hotel except on the invitation of Mr. Gillette ?

A Yes, sir ; I used—(interrupted.)

Q I mean on those special occasions ?

A No, sir.

Q While you were there, do you know who the servants of the house took their instructions from, in regard to the management of the house ?

30 A I used to see the servants come up and ask Mrs. Ballard what they must do on certain occasions, and she used to give them their orders, while I was there.

Q Was that occasionally, or constantly ?

A I never remember being there under any other circumstances ; the girls used to come to her and ask what was to be done.

*Cross-examined :*

Q Where did you live during the time that your daughter was in the Continental Hotel ?

*A* At 45 Hamilton street.

*Q* How were these invitations got to you?

*A* Mr. Gillette used to come himself.

*Q* To the house?

*A* To our house.

*Q* How many times did he ever come to your house and give you special invitations?

*A* I could not say, but a great many times?

*Q* How would he deliver the invitation—what would he say? 10

*A* Sometimes he used to say, I want you folks to come up to-morrow, or to-day, or just whenever it was—in that off-hand way; he was in the habit of visiting us, and we in return used to visit him, through his invitations.

*Q* Did he not sometimes come and say, that Mrs. Ballard wanted you to go there at certain times?

*A* He might.

*Q* Did you notice at the times when the invitations were given, if they were given in his name, or in the name of Mrs. Ballard? 20

*A* I don't know whether I should have accepted an invitation from Mrs. Ballard.

*Q* Suppose he brought you an invitation to go up there, you would not notice whether he said he wanted you to go, or Mrs. Ballard wanted you?

*A* No, sir.

*Q* There was quite an intimacy between you all?

*A* Yes, sir.

*Q* You were all on very intimate terms, were you not?

*A* Yes, sir. 30

Defendant's counsel also called—

SAMUEL KLOTZ, sworn:

*Q* Did you board at the Continental Hotel during the time Mr. and Mrs. Ballard were there?

*A* Part of the time.

*Q* What time were you there?

*A* I was the first boarder that went into the house,

and I was there when Gillette came, and I remained there with him one year, I think; I left in February, 1873, and he came in February, 1872, I think.

Q In 1871?

A Well, I may be mistaken about that, but I was there from February to February; it was about a year I was with Gillette.

Q Did you, during that time, have any conversation with Mr. Gillette, or have you had any, with regard to  
10 the manner in which Mrs. Ballard was there, and in what capacity?

A No, sir

Q Did you have any conversation with him in regard to the services of Mrs. Ballard?

A No, sir.

Q Do you know what services, if any, were rendered by Mrs. Ballard?

A Nothing more than they were there, and seemed to be consulted in matters of the house, and Mrs. Ballard used to  
20 look after the house quite a good deal, so much so that I was always under the impression — (interrupted.)

*By complainant's counsel :*

Q No matter what your impressions were, what did you see?

*Further direct examination :*

*Witness :* She seemed to take a very friendly, active interest in the house, both of them, as we all did

Q Did Mr. Gillette ever make any expression to you of his appreciation of the services that Mr. and Mrs. Ballard  
30 rendered?

A Well, he has said to me nothing more than this, that Mr. Ballard has been a great friend to him, and had been a father to him in business, or something of that kind, that is all; he always expressed himself as being friendly to both of them, and thought a good deal of them.

Q Did he say anything about the services Mrs. Ballard rendered?

A He always spoke of her as doing a great deal for him,

that is all ; I cannot remember anything else now ; he said she had always taken an interest in him, since he had known her.

Q Do you know whether or not she had any charge of the house during the time she was there in any way ?

Q Well, I would not like to call it charge of the house ; it was nothing more than, as I said before, she took a great interest in the house, and we looked to her ; that is, so far as I was concerned ; if I wanted anything I went to Mrs. Ballard, such as anything connected with my room, bedding or sheeting, or anything that I wanted, I went to her for it, and also if anything was out of order, which was very seldom, I assure you ; it was generally in order. 10

Q Did you ever see Mrs. Ballard in the kitchen ?

A I could not say ; I don't know as I ever saw her in the kitchen ; I have seen her in the dining-room, and in the sewing-room, that was between her room and mine ; I saw her there frequently.

Q What room is that ?

A My rooms are 8 and 9. 20

Q What number is the sewing-room ?

A That is a little room ; I cannot tell you the number exactly ; it was the hall that ran between her room and my sitting-room.

Q Was it No. 10 ?

A I could not say ; I had the first room next towards the street, and my sitting-room and her's were divided by the hall, which was cut off into a room and this was the sewing-room ; then Mrs. Ballard's room came on the corner of the building. 30

Q It was No. 10 ?

A I could not say, I think it was.

Q It was next to the rooms occupied by Mr. and Mrs. Ballard ?

B Yes, sir, and there is a door leading from their room into the work-room.

Q You had how many rooms while you were there ?

A I had two rooms until January, I think, or most of the time I had two rooms ; then I took the room adjoining Mrs. Ballard's rooms, No. 13, and then I only had one room. 40

Q For the two rooms which you occupied what did you pay ?

A \$20 a week.

Q How did your rooms compare with those occupied by Mrs. Ballard ?

A They were not as large.

Q Were they on the same floor ?

A Yes, sir.

Q And adjoining ?

10 A Yes, sir, just across the hall to the left ; I had my choice of rooms in the whole house ; I was the first boarder that went in and I ought to have had the choice. Dr. Zeh's rooms were finished after I went there.

Q How many rooms did Mr. and Mrs. Ballard occupy ?

A Two.

*Cross-examined :*

Q You speak of a sewing-room there,—were you ever in there ?

A Yes, sir.

20 Q What were you doing there ?

A I have gone in there to see Mrs. Ballard.

Q She was there, was she ?

A Yes, sir.

Q Did she occupy that room ?

A No, sir ; I met her there ; at one time I remember particularly, and they were making a lot of sheets, and sewing in there, with a girl.

Q How many times were you ever in there ?

A Two or three times.

30 Q Was she there every time you were there ?

A I should say so ; I should not have gone in there if I had not gone after her.

Q Do you know whether she was in there, when you got there ?

A No, sir.

Q How do you know whether she occupied that room or not ?

A I don't know.

Q You had two rooms part of the time you were there ?

- A* Yes, sir.
- Q* Was one of them a dark room?
- A* Well, I suppose you would call it a dark room.
- Q* It was a room that opened into the front room,—an ordinary hotel room, with no window looking outside, but with a window over the door looking into the passage?
- A* Yes, sir.
- Q* Could that room have been let separately from the other room?
- A* I should not have wanted it as a permanent room. 10
- Q* It was not suitable for that, was it, except in connection with the other room you used?
- A* No, sir.
- Q* Did you not pay \$25 a week?
- A* No, sir.
- Q* Are you sure of that?
- A* To the best of my knowledge I did not; but I can tell by going to my office—no; I have no doubt about it.
- A* Then afterwards you changed and had one room—where was that? 20
- A* That was just ahead of the second landing; it was a very choice room, and Mr. Gillette put a new window into it, and I took that in preference to the rooms I had.
- Q* How much less did you pay?
- A* There I paid \$14—that is, to the best of my knowledge; I could not swear to it.
- Q* What was your business at that time?
- A* I was engaged at what is known as the City Armament.
- Q* What was that? 30
- A* I was dealing in live stock, &c.
- Q* You had a good many people coming to see you in that business?
- A* Yes, sir.
- Q* Do you know if Mrs. Gillette made any deduction in the price of your rooms, by reason of your controlling a good deal of custom to his house?
- A* Well, I made my bargain with Mr. Smith, the former proprietor, and there never was any change made until I took the other room; I took a good deal of interest in the 40 house, and Mr. Gillette was always very kind.

Q When you changed your room, you changed the price?

A Yes, sir.

Q What was said to you as his reason for letting you have that room at that price?

A I could not tell, but I think I had some privileges there that some did not have; he was a warm personal friend of mine.

Q Did he not state to you that he let you have that room  
10 for \$14, and that was less than he would let anybody else have it for?

A I could not say, for I don't remember.

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Defendant's counsel also called—

MINNIE SWINEY, sworn:

Q Were you at the Continental Hotel during the time Mr. and Mrs. Ballard were there?

A Yes, sir.

Q What time did you go there, and when did you leave?

A I went there sometime in June, 1871; I cannot say  
20 exactly when I left, but it was just about the time of Gillette's marriage.

Q What were you doing there?

A I was seamstress.

Q What room did you occupy as seamstress?

A No. 10, it was the sewing-room.

Q Was it used for anything else, except a sewing-room?

A It was the sewing-room, and linen-room.

Q You were there then, as I understand it, until Mr. and Mrs. Ballard left?

30 A No, sir, not until they left, but until the time Mr. Gillette was married; it was that month, I cannot tell the month that it was.

Q During all that time was it used for that purpose, I mean was it during that time used for any other purpose, as far as you know?

A Well, when the hotel was very full, it was used as a transient room.

Q What do you mean?

A Boarders would sleep there one night; if they had none of the permanent rooms empty, they would put a bed and wash stand in there.

Q During the time you were there, from whom did you receive your instructions?

A Mrs. Ballard.

Q Did you from any other source?

A From no other source.

Q What did you do, what were your duties? 10

A I was seamstress, making all the linen; the dinner linen, and sometimes I did sewing for Mr. Gillette, such as shirts.

Q Did you observe while you were there, what Mrs. Ballard did at the hotel?

A While I was there, I thought she did a great deal.

Q Well, what did she do, so far as you saw?

A Well, she assisted me with the sewing, and assisted in whatever was needed, such as preserving; and I have known Mrs. Ballard go down into the kitchen and make pies, 20 and I have eat them, too, and they were good, too; better, I thought, than the pastry cook made.

Q You say she assisted in making linen, she superintended, and went down into the kitchen sometimes; now, what did she do?

A She seemed to give all the orders in the house, all the girls came to her; and if any new girls were to be hired, they came to Mrs. Ballard.

Q Who ordered the changes in the rooms, during the time you were there, the changes in furniture, bedding, and 30 all that sort of thing?

A Mrs. Ballard.

Q During the time you were there, were carpets made and laid down?

A Yes, sir.

Q Who attended to that?

A Mrs. Ballard assisted in sewing on them and I sewed on them, and sometimes the chamber-maid would help sew on them, but Mrs Ballard attended to it all and oversaw it.

Q Who attended to the putting up of fruits and jellies? 40

A Mrs. Ballard.

Q Was there any other person during that time that you were in the house, that had charge of that department of the house?

A Yes, sir; a housekeeper was there a short time, her name was Mrs. Love; but I did not see that it made any difference, for the girls came to Mrs. Ballard for orders just the same, and I got my orders from her just the same.

Q Was she then under Mrs. Ballard, or did she have absolute charge while she was there?

A I cannot say that the housekeeper was under Mrs. Ballard.

Q During the time she was there did Mrs. Ballard still maintain charge, and supervision?

A Yes, sir; things seemed to go on just the same.

Q With the exception of Mrs. Love being there as housekeeper, was there any other housekeeper except Mrs. Ballard?

A Never; no, sir, not while I was there.

Q Who entertained guests, ladies and others that came to the hotel, as hostess?

A They all seemed to go up into Mrs. Ballard's room to be entertained; she would take them into the parlor.

Q Who entertained, if any one, Mr. Gillette's friends, while you were there?

A Mrs. Ballard; they all seemed to be acquainted?

Q Did you see Mrs. Ballard in the kitchen? you speak about her putting up preserves?

A Yes, sir; I remember wanting orders about some sewing and I could not find her, and so I went down there and found her there.

Q Doing what?

A I think she was preserving.

Q Do you recollect when that was?

A Sometime along in the summer, but I cannot exactly state.

*Cross-examined:*

Q Did you ever see Mr. Gillette at the hotel?

A Oh, yes, sir.

Q What would he do ?

A Why, I don't know ; he was in the office a great deal.

Q He was a boarder, was he ?

A No, sir.

Q What did he do that made you think that he was the proprietor ?

A I cannot exactly say ; he would come up to Mrs. Ballard and talk about things, and the affairs of the hotel, and ———

10

Q Well, now, what did he ever do different from the other boarders, except to consult Mrs. Ballard ?

A Why, he seemed to have the whole rule of the hotel.

Q Then Mrs. Ballard was not entirely the proprietress of the hotel ?

A I never looked upon her as the proprietress of the hotel ; I looked upon her as his intimate friend, and that that made her take such an interest in everything.

Q You looked upon her interest as one of extreme friendship ?

20

A Yes, sir.

Q How many times were you ever in the kitchen ?

A I could not say that, but very often.

*By the Vice-Chancellor :*

Q Who paid you ?

A It always came through Mrs. Ballard's hands ; I was always paid in her room, with the exception of one time, that I went to the office for it.

*Further cross-examined :*

Q Did you ever see Mrs. Ballard in the office, and behind the desk ?

A Oh, no, sir.

Q Now this sewing-room that you speak of, what was in that room ?

A The linen, my sewing machine, a few chairs, and I have known her to bring baskets of pears to store there, and keep them there until the time for preserving.

Q Anything else ; was there a bed there ?

*A* For a short time, there was.

*Q* Was there any clothing kept there?

*A* I cannot say; sometimes a few things were put in there.

*Q* Did Mrs. Ballard have her things there?

*A* I have used it, as a general thing, to hang things up in.

*Q* Did Mrs. Ballard make any use of it?

*A* I cannot say; only that it was used as a general  
10 sewing-room.

*Q* Was it adjoining her room?

*A* Yes, sir; the door connected with her room?

*Q* Was the access to it through her room?

*A* Yes, sir.

*Q* Did anybody else make use of that room, excepting you and her, during the time you were there, except when temporarily let for transient boarders?

*A* No, sir.

*Q* How many times was it used for transient boarders  
20 while you were there?

*A* I could not say; but it was just shortly before I left for the last time.

*Q* Did Mrs. Ballard have her clothes hung up in that room, behind the door on the rack, or anywhere in the room?

*A* There may have been at times.

*Q* Did not the children use that room for a playing-room?

*A* Yes, sir; they used to come in there, because I was  
in there.

30 *Q* Did they have their play-things there?

*A* Yes, sir.

*Q* And have they not had free access there, the same same as to their mother's room?

*A* Yes, sir.

*Q* These pies you say Mrs. Ballard made, did you see her make them?

*A* No, sir; but she came up and told me she had made them; and she sent up my lunch from the pies, and said she had made them.

40 *Q* Where did you take your meals?

- A At the family table—Mrs. Ballard's and Mr. Gillette's.
- Q Did you sew some for Mrs. Ballard, too.
- A Yes, sir; and for a good many ladies in the hotel.
- Q Now you sewed for her, and you did for other ladies; did you get paid the same for what you did for the other ladies, as you did for what you did for her?
- A I was always paid through Mrs. Ballard.
- Q Did she pay you anything extra for it?
- A She paid me; but I never asked her whether it was from the others, or not. 10
- Q Were you paid by the day?
- A Yes, sir.
- Q And her sewing went in with the others?
- A I don't know; sometimes it would and sometimes not; sometimes I was there specially for Mrs. Ballard.

*By the Vice-Chancellor :*

- Q Did you stay at the hotel at nights?
- A No, sir.
- Q You were hired by the day?
- A Yes, sir. 20
- Q You were not there every day?
- A No, sir.
- Q Who sent for you to come?
- A Mrs. Ballard; Mr. Ballard's wagon came for my machines and I would go with it.

*Re-direct-examination :*

- Q You speak about doing sewing for Mrs. Ballard; did she not give you instructions to keep that sewing separate at the time?
- A I could not get it mixed very well with Gillette's. 30
- Q Did she not, at the time?
- A Yes, sir.
- Q And you kept that separate?
- A Yes, sir.
- Q From the general hotel sewing?
- A Yes, sir.
- Q You say the children played in that room, did they not play in other places, in the hall, &c.?

*A* Yes, sir.

*Q* Do you know whether or not during the time you were there ; do you know who kept the times of the girls, or attended to the making out of their bills and regulating their accounts ?

*A* That I don't know anything about.

Defendant's counsel also called—

HARRY LAWSON SWORN :

*Q* Were you employed at the hotel during the time Mr.  
10 and Mrs. Ballard were there ?

*A* Yes, sir.

*Q* What time were you there ?

*A* From 25th December until 20th of next May.

*Q* Of what year ?

*A* 1871 and 1872.

*Q* What was your duty ?

*A* Clerk.

*Q* In charge of the office ?

*A* Yes, sir.

20 *Q* During the time you were there, from whom did you receive, or to whom did you go for information in regard to rooms and the management of the hotel ?

*A* Well, I don't understand your question exactly.

*Q* Well, then, I will put it in another form ; Did Mrs. Ballard have any direction or control with regard to the hotel management, or any department of it ?

*A* When I wanted any rooms straightened out I generally went and consulted with Mrs. Ballard ; and if the girls did not do their work properly, I generally spoke to Mrs.  
30 Ballard.

*Q* For what reason did you go to her ?

*A* For the reason that I always looked on her as the lady of the house.

*Q* Were you told to go to her ?

*A* No, sir.

*Q* How did you come to go to her then ?

*A* Because I had always known Mr. and Mrs. Ballard,

and I naturally went to her, as she was the only lady in the house that had anything at all to say.

Q Did Mr. Gillette ever send you to her?

A He has sent me with messages to Mrs. Ballard, but what they were I don't remember.

Q In regard to the hotel, were they?

A I don't remember distinctly, sir.

Q How did you come to go to the hotel?

A I was out of business for sometime, and I applied for a place in New York, and was on my way to get an answer 10 from that place when I met Mr. Ballard, who was at a store in Market street, and I told him what I was going to do, and he — (interrupted.)

Q Who engaged you?

A Mr. Gillette.

Q Was there an advertisement for help at the time?

A There was, but I did not know it at the time.

Q Did Mr. Ballard do anything for the hotel while you were there?

A Yes, sir. 20

Q What?

A I have known him to order goods in New York.

Q Did he have anything to do with the books?

A The books were somewhat confused when I took hold of them, and I asked Mr. Ballard for advice, with respect to them, and he straightened out some things I did not understand.

Q Do you know whether he had any charge of the office, during part of the time, or at times?

A I don't remember. 30

Q Would he or not, relieve you there?

A Sometimes I would ask him if he would be there a few moments while I was gone.

*Cross-examined:*

Q Mr. Ballard was in business at that time?

A Yes, sir.

Q What?

A The segar business, I think, was one of them.

Q Any other?

- A* Yes, sir.
- Q* What was that?
- A* Oil.
- Q* Where did he conduct the segar business?
- A* Three doors below the corner of Market and Broad,  
on this side.
- Q* Where did he conduct the oil business?
- A* In New York.
- Q* Had he any other business?
- 10 *A* Not that I know of.
- Q* Do you know if, at any time he had a foundry, in East Newark?
- Q* Not that I know of.
- Q* Do you know if, at any time, he was engaged in some kind of business in East Newark?
- A* Not while I was at the Continental?
- Q* Was he not engaged in the children's carriage business?
- A* Yes, sir.
- 20 *Q* Where?
- A* In Academy street.
- Q* Was he not engaged in the malleable iron business?
- A* Not that I know of.
- Q* When did you go there?
- A* 25th day of December, 1871.
- Q* Was not Mr. Ballard engaged in developing real estate, in improving and selling it?
- A* I don't know.
- Q* Did he not have a tract in South Orange?
- 30 *A* Yes, sir, I think so.
- Q* And was putting that up in tracts and selling it?
- A* I think so.
- Q* How do you arrange in your office to determine to whom a certain room is assigned?
- A* By the rack.
- Q* A rack containing slips in which the names are put?
- A* Yes, sir.
- Q* What rooms were assigned to Mr. and Mrs. Ballard?
- A* Nos. 11 and 12.
- 40 *Q* On the rack?

A Yes, sir.

Q How about No. 10?

A I think that was marked linen-room, but I am not certain.

Q Was it not part of the time regularly assigned to Mr. Ballard?

A When I went there it was, but a short time after I went there I put in slips and marked the rooms used for the house with a different color, than those used by the boarders. 10

Q When you came there, the room stood assigned to Mrs. Ballard?

A Yes, sir.

Q And sometime afterwards, you put in slip and marked it for the house?

A Yes, sir.

Q How long did that remain so?

A Until after I left.

*Re-direct examination:*

Q Before you went there, there was no way of indicating what rooms were used by the house, and what not? 20

A I know that the day I went there, there was a rack there.

Q But at that time, at the time you made this change, was there anything to indicate in the rack, what rooms were set apart for the use of the house?

A I don't remember, distinctly.

Q Do you know in point of fact, what those rooms were used for during the time you were there?

A I always considered it as the linen-room. 30

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Defendant's counsel also called—

ISAAC COWAN, sworn:

Q What is your business?

A Carpet laying,—upholstering.

Q Did you put down carpets at the Continental Hotel?

A Yes, sir.

Q Under whose direction and supervision ?

A Mrs. Ballard's.

Q Did you have any other directions except what you received from her ?

A No, sir.

Q What carpets did you lay ?

A I laid them all, in the halls, and the stair carpets and the room carpets.

Q Did you see, during the time you were there, what  
10 Mrs. Ballard was doing in the house ?

A She helped fix the carpets, and saw that they were in their right places.

Q Who did the servants go to, if they wanted anything ?

A Mrs. Ballard.

Q Who did you go to, if you wanted anything ?

A Mrs. Ballard.

*Cross-examined :*

Q What servants did you see go to Mrs. Ballard ?

20 A I have seen some of the colored servants.

Q What did you see them do,—what took place ?

A I could not say just exactly what took place.

[Defendant's counsel stated to the Vice-Chancellor, that he had no more witnesses present at this time, therefore complainant's counsel stated that he had a witness in waiting which he would call at this present time.]

Complainant's counsel then called—

CYRUS W. CARPENTER, sworn :

Q. Are you the present proprietor of the Continental  
30 Hotel ?

A Yes, sir.

Q How long have you been such ?

A Since 5th March, last.

Q Since then you have had the management and regulation of the house ?

A Yes, sir.

Q And the control of the prices for board and for accommodation furnished by the house ?

A Yes, sir.

Q Do you know Mr. and Mrs. Ballard ?

A I do.

Q And their children ?

A I do not.

Q Have you seen the children ?

A I don't know.

Q What would be a fair compensation for the use of 10 rooms Nos. 10, 11 and 12, and board for a gentleman, his wife and two children, say six and eleven years old—in that hotel ?

A I should ask sixty dollars a week for them.

Q Suppose room No. 10 were left out, what would be the fair price for 11 and 12 with the same board ?

A I would want 55 dollars for those two rooms.

Q That is what you would consider a fair compensation of ordinary boarders ?

A Yes, sir.

20

*Cross-examined :*

Q If you had permanent boarders, who would stay a year or more, would you not make a reduction from this price ?

A No, sir. I don't think I would.

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Some of defendant's witnesses having arrived,

Defendant's counsel also called—

ALEXANDER HUGGS, SWORN :

Q You were at the Continental Hotel at the time Mr. and Mrs. Ballard were there ?

30

A Yes, sir.

Q During what time were you there ?

A Well, I don't know exactly, I don't recollect the day or dates.

Q Well, the month of the year; what time did you go there ?

A I went there in the spring, I think ; or the fall.

Q What year ?

A 1873, I guess, or 1872, I most forget about dates ; I would not like to say anything with regard to days and dates.

Q How long did you stay ?

A I think for a year, sir.

Q What was your duty ?

A Head waiter ; I had charge of the dining-room.

10 Q Were you in charge of the waiters of the dining-room at the time you were there ?

A Yes, sir.

Q What did Mrs. Ballard do during that time, so far as you saw ?

A Well, sir, she was filling the position of housekeeper.

Q Doing what ?

A Arranging the female part of the house, giving orders in general to them, and sometimes I received orders from her myself.

20 Q When you wanted anything for the dining-room, such as linen and napkins, who did you go to get it from ?

A Sometimes Mr. Gillette, and he sent me to Mrs. Ballard.

Q Where did you get them ?

A From Mrs. Ballard.

Q Was that all the time you were there ?

A Yes, sir.

Q When you wished to get any preserves, or anything of that kind for the table, where did you go to get them ?

30 A To Mrs. Ballard.

Q Who had the keys of the closet ?

A Mrs. Ballard, I believe.

Q Did she carry them and keep them ?

A I don't know whether she carried them, or whether she kept them in her room, but she had them in her charge.

Q Did you ever serve any meals in the private room for them ?

A In the back parlor, sir.

Q What number is that ?

40 A I don't remember the number.

Q Is it No. 5.

A I think it was, sir.

Q At whose direction did you get up these meals ?

A Mr. Gillette ; he ordered me to serve the meals up there, and I got these orders from him, sir.

*Cross examined :*

Q Mr. Gillette gave you the orders, did he ?

A Yes, sir.

Q Did he tell you it was for Mrs. Ballard's company ?

A Yes, sir ; he said she was going to have company and he wished me to fix the table for them, and sometimes he would use the word family. 10

Q Did you get any orders from Mr. Gillette besides for private meals ?

A Not that I remember.

Q Then Mr. Gillette never gave orders about the house at all, did he ?

A Oh, yes ; I got orders from him in regard to the dining-room.

Q These orders you did get from him ? 20

A Yes, from Gillette, and very often Mrs. Ballard was consulted—(interrupted.)

Q Where were your duties ?

A In the dining-room.

Q You had charge of what—the help in the dining-room ?

A Yes, sir.

No more of defendant's witnesses being present.

Complainant's counsel recalled—

EDWARD A. GILLETTE, sworn :

30

Q You heard the statements of Mr. Ballard in regard to your writing him letters, and you produced a letter which was offered in evidence ?

A Yes, sir.

Q Did you write him any letter on the subject of your bargain after the reply to that one in which you stated you accepted that offer ?

*A* No, sir; that contained all the bargain that was ever made.

*Q* When you came on in response to this telegram, which you have offered in evidence, did you return to Buffalo again before you had made the bargain with Smith and Rhodes?

*A* No, sir; I completed the bargain and was to take possession of the house on the 1st of January.

*Q* You did not take possession then?

10 *A* No, sir.

*Q* Was there any other or different bargain made between you than the one contained in that letter?

*A* No, sir.

*Q* I see in your bill of complaint, you state an account and fix the board at \$50 a week; have you charged ordinary board? you have already testified as to what you could have rented these rooms for, why did you fix the price which you did fix in your bill, as compensation for the board of Mr. Ballard's family?

20 *A* Because they have always been very intimate friends of mine, and they rendered me some assistance, and I took that into consideration in making out my bill.

*Cross-examined:*

*Q* Then it was in consideration of the great friendship they extended to you, that induced you to render the bill at a much less than the ordinary price?

*A* Yes, sir, for her services and the friendship, I made a deduction in the price of board.

*Q* Then the bill made out by you was after the rupture  
30 had take place between you and Ballard?

*A* Yes, sir.

*Q* Before that time; before you made out this bill, you did not intend to present any bill; before the rupture?

*A* No, sir, I had no necessity to.

*Q* How then did you intend to compensate Mrs. Ballard for her services?

*A* Well, I thought she had been pretty well compensated for her services.

Q Well, at that time you did not intend to include anything for her services, prior to making out that bill?

A At the time I made out that bill, I intended to pay her for her services, and I did in the making up of that bill, which I thought was a fair compensation for all the services she had rendered.

Q Well, before that, did you suppose that the services that Mrs. Ballard rendered at the hotel were entirely gratuitous?

A I did, yes sir. I thought what she was doing, she was doing out of friendship for me. 10

*By the Vice-Chancellor :*

Q Before the letter of December 17th, 1870, or after that, was anything said, and if so what, between you and Mr. Ballard, or was anything written in regard to the friendly services, or aid that Mrs. Ballard might render you in the care of the hotel?

A No, sir, I think not; I don't remember anything of the kind.

Q Was any reference made by you to the fact of your being a single man, and having no wife to preside over the hotel? 20

A No, sir, nothing was said about it at all, they knew I was a single man, and I do not remember it ever being mentioned at all about my being a single man.

*Further cross-examined :*

Q Did you expect when you went into the hotel that Mrs. Ballard would take charge?

A I did not know whether she would or not.

Q Did you have need to suppose that she would? 30

A No, sir.

Q You did not know she would take the place of housekeeper when you went there, then?

A No, sir.

Q Did you make any provision for a housekeeper?

A I did.

Q Whom did you get?

A Johanna.

Q Where did you get her, and in what way?

A Mrs. Ballard sent her up to me.

Q Had she not been a servant in the family of Mrs. Ballard?

A She had; but I am quite positive she was not at that time.

Q Did you not request them to come earlier than they did to the hotel?

A Not that I remember of.

10 Q Did Johanna stay any longer than until they came.

A Well, as I said in my testimony before, I don't know whether she went before they came or after.

Q Well, it was about the time they came, was it not?

A Yes, sir.

Q After they came did you make any provision for a housekeeper?

A Well, I advertised for a housekeeper two or three times.

Q Did you get any housekeeper?

20 A I did not until I got Mrs. Ballard.

*Re-direct-examination :*

Q State how it came about that Mrs. Ballard took the arrangements she did, whether it was a suggestion of yours or a voluntary act of her own?

A I advertised several times for another housekeeper and I had several applications for the situation, but none of the applicants suited me until Mrs. Love came, and Mrs. Love afterwards gave me notice to leave; then Mrs. Ballard said to me, that after she left I need not get another house-  
30 keeper, and she said "I will do what I can while I board here, but I don't want to be recognized as a housekeeper; however, anything I can do for you I am willing to do it."

*Further re-cross-examination :*

Q That was at the time Mrs. Love was there?

A It was at the time she left.

*Further re-direct-examination :*

Q At the time she rendered you these services and re-

ceived unusual privileges about the house, was there any account kept either way ?

A No, sir, nothing at all ; she had the use and privileges of the house, and anything that she wanted they had it all the time.

*Further re-cross-examination :*

Q Did Mrs. Ballard do anything more after Mrs. Love went away than she had done before ?

A Yes, sir, she carried the keys of the linen-room then.

Q Did she not do that before ? 10

A No, sir.

Defendant's counsel also called—

T. CLINTON GILLETTE, sworn :

Q Are you the brother of Edward A. Gillette ?

A I am.

Q Were you at the hotel during any time that he was in charge as proprietor ?

A I was.

Q At what time ?

A I went there on the 14th day of June, 1873, and have 20 remained there ever since.

Q That was just prior to his leaving for Europe ?

A Yes, sir.

Q At the time you were there did Mr. Ballard have anything to do, or interest himself in any way, with the hotel ?

A Yes, sir.

Q In what way, and how ?

A Well, he had a power of attorney to sign checks for Mr. Gillette, when he was away, in order to pay some of his accounts.

Q In taking in guests and determining the price of rooms, with whom did you consult ?

A I consulted Mr. Ballard and the clerk of the house also, whose name was Mr. Cornwall.

Q Did or did not Mrs. Ballard tell you—(interrupted.)

[Complainant's counsel objected.]

Q What were your instructions from Mr. Gillette in regard to running the house while he was absent?

A He placed me there to have full charge while he was away, and I was to consult Mr. and Mrs. Ballard in any thing I did not know anything about.

Q Did you so consult them?

A I consulted Mr. Ballard in relation to rooms, and I consulted Mrs. Ballard in relation to engaging some help that we had there.

10 Q Who had charge, during the time you were there, of the female department of the hotel?

A I suppose I was in charge of the house.

Q I mean under you?

A I suppose Mrs. Ballard had charged of the help above the office.

Q Who did the preparing of the preserves and jellies, and all that sort of thing for the house during all that time?

A Mrs. Ballard.

Q How do you know?

20 A I saw that Mrs. Ballard was superintending the whole thing, that is the work that she prepared and put in shape for being put up.

Q How do you know she superintended it?

A I saw her doing some of it.

Q Who directed the servants, the female servants in the upper part of the house?

A They all went to Mrs. Ballard, as I suppose; they never came to me, and they never came to the office, only to get instructions as to the rooms that were to be put in

30 order.

Q Were you ever present at any supper served in one the back parlors?

A Yes, sir.

Q What was that occasion; whose friends were served there that day?

A Well, I suppose it was furnished to my brother and Mr. and Mrs. Ballard too.

Q Who sent out the invitations?

40 A I could not tell you, I do not know; I know that they were sent out of the house, and I was invited to dine with them.

Q Did your brother ever say anything to you about the services of Mr. and Mrs. Ballard ?

A No, sir.

Q Did he speak or say anything to you about the character of the service which they had rendered there—I speak in regard to the character of the services which they rendered ?

A No, sir, I was only instructed to consult with them in things I did not know anything about.

Q Did he ever express to you his appreciation of the 10 services which they rendered him ?

A Not to me personally he didn't.

Q Well, in your presence ?

A Yes, sir.

Q What did he say ?

A I don't remember, I could not exactly state the words he said.

*Cross-examined :*

Q Where had you been before you came there ?

A I came from Springfield, Massachusetts.

20

Q Had you been in the hotel business before ?

A Yes, sir.

Q Before you took your brother's place in the house during his absence ?

A Yes, sir.

Q Did he go with you and introduce you to the places where he made his purchases and did his marketing, so that you would be able to do that part of it ?

A Yes, sir.

Q After your brother came back, what were your duties 30 at the house ?

A At that time they remained the same as they were when he was absent.

Q While he was absent were there any entertainments furnished to Mr. and Mrs. Ballard ?

A I think there was one.

Q What was it ?

A Well, it was some of her friends were invited to the house.

Q How were they entertained?

A In one of the rooms, but that is in one instance and that is all.

*Re-direct-examination :*

Q Do you recollect distinctly that there was during your brother's absence — ; you say that there was one entertainment ; but do you recollect distinctly that there was any such occasion ?

A Yes, sir ; I don't know that there were any more —  
10 they were just as much Gillette's friends as they were Mrs. Ballard's.

Defendant's counsel also called—

ANNIE MURPHY, sworn :

Q You were chambermaid during the time Mr. and Mrs. Ballard were at the Continental Hotel ?

A Not all the time.

Q What part of the time ?

A I have been there over two years, two years last June.

20 Q What were your duties as chambermaid ?

A Well, I did my work upstairs.

Q What was your work upstairs ? did you take charge of the rooms ?

A Yes, sir.

Q And see that they were put in order ?

A Yes, sir.

Q During the time you were there and Mrs. Ballard was there, to whom did you go, if anybody, for instructions ?

A To Mrs. Ballard, sir.

30 Q Was that so during the whole time she was there ?

A Sometimes I went to Mr. Gillette at the office about the changing of the rooms.

Q From whom did the other female servants get their instructions, as far as you saw ?

A I suppose from Mrs. Ballard, I don't know ?

Q What did you see ?

*A* What I have seen was they went to Mrs. Ballard, and they went to the office sometimes for a list of the rooms.

*Q* What in regard to changes of beds and that sort of thing?

*A* They sent a list up from the office from the clerk or Mrs. Ballard, and from that we changed the rooms.

*Q* To whom did you go for the linen and bedding?

*A* I went to Mrs. Ballard and got the keys of the linen-room and took it out, and sometimes she gave it to me and sometimes I took it myself.

10

*Cross-examined:*

*Q* How did you know what rooms to put in order?

*A* I got it from the office.

*Q* Did Gillette give any personal attention to looking after the rooms?

*A* Yes, sir.

*Q* What did he do?

*A* Well, when there was a room to clean Mr. Gillette would see it and Mrs. Ballard would see it, and they both ordered us to do it.

20

*Q* Did Mr. Gillette look after the rooms himself?

*A* Yes, sir.

*Q* Did he go through the whole house and keep his eye on the whole house?

*A* Yes, sir; they both were there in the rooms and ordered things to be put down.

*Q* Who oversaw the taking down of the bedsteads and the putting things in order?

*A* Both Mr. Gillette and Mrs. Ballard.

*Q* Do you mean sometimes the one and sometimes the other?

*A* I mean both together.

*Q* They worked together, then?

*A* Yes, sir.

Defendant rests.

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Complainant's counsel then called—

RICHARD B. CORNWALL, sworn:

*Q* Were you employed in the Continental Hotel?

A Yes, sir.

Q In what capacity?

A Clerk.

Q When?

A 30th September, 1872, I came there, and stayed until the middle of March, 1874.

Q Were Mr. and Mrs. Ballard boarders there while you were there?

A Yes, sir.

10 Q What rooms did they have the use of?

A 10, 11, and 12 were appointed to them on the rack.

Q Do you know what use was made by them of No. 10?

A Sometimes the children slept in it, and sometimes they did not.

Q State in what respect the treatment and conduct of Mr. and Mrs. Ballard differed from that of the other boarders in the house, as to things which they did, and things which they had in the house—whether they were like the other boarders, or if they differed, if so, in what respect?

20 A They seemed to be treated as one of the family?

Q In what way, describe what you mean by that, what they did, and what they had different to the other boarders?

A It seemed as if they were the proprietors of the hotel.

Q To what extent do you know of that? Give particulars and instances?

A They all eat at one table, they had a family table, and if anything was in the house they had it. If they wanted anything, they told any of the waiters to get it for them.

30 Q Did they want anything, and did they tell the waiters to get it for them?

A Yes, sir; they had fruit sent up to their room, and anything at the bar that they wanted they ordered up by the bell-boy or the porter, and if Mr. Ballard wanted segars or anything of that kind, he just asked me or the other clerk for them, and sometimes he would go to the segar-case and help himself.

Q Did he ever pay for them?

A I never knew him to pay a cent for anything.

Q Do you know of his playing billiards?

40 A Yes, sir.

Q And taking drinks at the bar?

A A few, but not many.

Q Do you know of liquors or drinks of any kind having been served in their room?

A Yes, sir.

Q Just state under what circumstances and all you know about it?

A The bell would be rung for the bell-boy, and he would go up there and get orders for things at the bar, and would come down and take them up there. 10

Q You have seen him go up after the bell was rung to their room?

A Yes, sir, I have seen the things going up there, and have asked where they were going to, and have been told to No. 11, Mrs. Ballard's room.

Q Was there any charge made for them?

A No, sir, but if they had gone to any other room they would have been charged.

Q Do you know where or how Mr. Ballard got the document or book to draw the chattel mortgage? 20

A I know he got the book from the office, but I don't know the contents of it.

Q Where was it delivered to him?

A At the desk.

Q For what purpose did he get it?

A All that I remember is that Mr. Ballard asked Mr. Gillette for the book, and he went to the desk and took it out and handed it to him.

Q When was that?

A Just before he went away. 30

Q You don't know what use was made of the book?

A No, sir; I was engaged at something else.

Q Do you know of entertainments or meals being served for Mrs. Ballard and their friends in the back parlor, separate from others?

A I have seen such entertainments, sir.

Q In regard to the frequency of these orders—liquors, &c., to go to No. 11 from the bar, can you give any idea of the extent and frequency of these orders and their being served? 40

A It was an everyday occurrence?

Q Do you mean to say by that that the orders were every day?

A Yes, sir.

Q You came there in September, you say?

A September, 1872.

Q Do you know about preserving or canning of fruit after that?

A Yes, sir.

10 Q Who did that?

A Well, the pastry cook did a good deal of it and Mrs. Ballard oversaw it.

Q But the work was done by the pastry cook?

A Yes, sir, I have seen the pastry cook do a great deal of that work.

Q Did it come under your knowledge, of things being taken from the house for Mrs. Ballard's friends?

A On one occasion I saw something go out.

Q Well, what was it?

20 A It was in a basket and I did not look into the basket to see.

Q Do you know of any other occasions?

A I saw a little girl at one time take out a little dish.

Q How do you know about what there was in the basket being on Mrs. Ballard's account?

A Because I know that there was an entertainment given at her mother's.

Q Tell all you know about that?

30 A Well, the cook spoke to me about having to get a lot of chickens ready for them.

Q Was it reported in the course of business at the office that that provision was being made for them?

A Yes, sir, the reason I know about that was because the other clerk was mad because he did not get an invitation to the dinner, and I know that went out in a basket because the cook reported it to me; I saw the basket, but did not look inside of it.

*Cross-examined:*

40 Q Now where did Mr. Gillette make his headquarters the whole time?

- A Which Gillette?
- Q Edward?
- A At that time he was in Europe.
- Q I mean before he went to Europe, in what room?
- A Nos. 14 and 15.
- Q Was he not frequently or a good part of the time in Mr. Ballard's room?
- Q He went in and out there, sir.
- Q Did you not go there when you wanted to find him occasionally? 10
- A I have been there for him a good many times?
- Q Do you know when liquors, as you say, or segars were sent up stairs, who drank the liquors or who smoked the segars?
- A I know they went into room No. 11.
- Q Do you know what use was made of them?
- A I did not see them drank.
- Q When refreshments of that kind were served at rooms in the hotel, you made charges for them, did you not?
- A When they went to the rooms of Mrs. Ballard? 20
- Q No, when anybody wanted segars or drinks, did you not charge them?
- A Yes, sir.
- Q And when rooms were let, did you not charge them for rooms?
- A Yes, sir.
- Q How did you come not to charge them to Mr. Ballard or not to make any charges against Mr. or Mrs. Ballard?
- A I never was told to.
- Q Were you told not to? 30
- A I don't remember whether I was or not.
- Q You knew there was some reason why it was not to be charged, did you not?
- A (No answer.)
- Q Were you not instructed when you first came there, not to make any charges against them?
- A I don't know, I may have been.
- Q There must have been some reason for it, was there not?
- A I never was told to do so, and so I did not do so. 40

Q Did you only make charges where you were told to do it, or did you not in all cases make charges unless you were told not to do it?

A Yes, sir.

Q Then you were told not to do it in this case ?

A I could not say that I was.

*By the Vice-Chancellor :*

Q Did you understand that you were acting in pursuance of your duties in not making any charge ?

10 A Yes, sir.

Case closed.

## EXHIBITS.

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### EXHIBIT 1 ON PART OF COMPLAINANT.

“ Barnet, Stainsby & Ballard,  
 “ Manufacturers of  
 “ Silver, C and X C Plated and Japanned Saddlery Hardware,  
 “ Mexican and California Bitts and Spurs,  
 “ Malleable and Grey Iron Casting, &c.,  
 “ (Below Chestnut street Depot), Factory Railroad avenue  
 and Johnson street.

NEWARK, N. J., Dec. 17, 1870. 10

“ FRIEND ED. :

“ I have been attending to a bankrupt that has stuck us \$1,300, all this week, but I have got something from the Continental Hotel ; they have spent for furniture \$8,000, and have the stoves in the house and the bar yet to pay for. I think they will pay those bills and will sell out for \$10,000, or that is what they told Ed. Dodge they would do ; but Ed. says they are stiff and don't care to sell ; the receipts are now over \$75 a day. The bar-keeper told me the bar averages \$25 a day, and I am satisfied it does ; they 20 have also two new billiard tables in, and I was there three hours last night and they were running all the time. It is the only saloon of the kind up town, and I think two more would pay. He had about 18 arrivals yesterday. He wants \$5,000 cash and \$2,500 a year for each succeeding year. The man is not at all liked, and his bar-keeper (Ed. Wambold) told me he would not keep it six months, but it would be a poor thing for any man to take it if it becomes run down. I don't want to advise you, but it looks to me as if a nice thing out of it was certain. Ed. Dodge is going for 30 him to-day and get something definite of him, but he is afraid that he will flash in the pan. As for my going in the thing as a partner, why I would rather not do so. I am satis-

fied that there is a splendid chance for one to make money out of it, but it would not be as well for either of us to split it up and divide the profits. I'll tell you what I'll do. I will lend you \$5,000 without interest, and will aid you in every way possible ; will attend to your finances and books, and, help you all I can, if you will give me my choice of rooms and board for myself and family. And if it also becomes necessary to get more furniture for other rooms (and, of course, it will,) why, I'll go security for them ; in fact, you

10 know enough of me to know what I would do for you when required. This, I think, will make much more money for you than if I was a partner. Don't look at this in anything but a business point of view, and decide according to your conviction. They say that the lease cannot be transferred without consent of landlord, but if so I think I can fix that. Write me immediately in detail what you think of it, and I expect to get something definite this P. M., and if I do I will telegraph you on Monday, thusly : 'He will ; do you want it ?' and you answer by telegraph ' Yes ' or ' No ;' and if

20 you think it best to come on immediately also say in the despatch whether you will come in or not. I don't want to advise you, but every one thinks there is money certain in it. Write immediately.

" Yours, in haste,

" GEORGE M. BALLARD."

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EXHIBIT 2 ON PART OF COMPLAINANT.

NEWARK, N. J., December 19, 1870.

E. A. GILLETTE, BONNEY HOUSE :—

Have you my letter ? He will sell. Come. No answer.

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G. M. BALLARD,  
12 Walnut street.

## In Chancery of New Jersey.

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EDWARD A. GILLETTE,

vs.

GEORGE M. BALLARD

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MR. McCARTER *for Complainant.*

MR. COULT *for Defendant.*

### OPINION.

*The Vice-Chancellor :*

The complainant's suit is to impeach a chattel mortgage made by himself to the defendant. The mortgage is for five thousand dollars and covers the furniture and fixtures of the Continental Hotel, in the city of Newark. It was executed in the month of June, 1873, though the money had been advanced by the defendant early in 1871 to help the complainant in the purchase of the furniture and fixtures, and in taking charge of the hotel. In November, 1873, Ballard began proceedings for the collection of the mortgage debt and Gillette filed his bill for relief, alleging that the loan was usurious, praying for an account, and offering to pay whatever should be found due. An injunction was issued restraining a sale under the mortgage, and having now heard the cause upon the pleadings and the oral testimony of witnesses, I must advise that the complainant's case has not been established, and that his bill should be dismissed with costs.

The case presented by the bill, is in brief, that being the proprietor of a hotel in Buffalo, he was induced by Ballard to give up that business, and become the purchaser of the

furniture of the Continental Hotel, in Newark ; that not having sufficient capital himself for the purchase, Ballard proposed to lend him five thousand dollars, on condition that Gillette would furnish board at the hotel for Ballard, his wife and two children, as a compensation for the use of the money so loaned, Ballard at the same time alleging, that as occasions might require, he would advance such additional sums as might be needed to enable Gillette to carry on the business ; that Ballard did, in fact, advance the five thousand dollars ; that he boarded with his family, as above mentioned, at complainant's hotel, from the early part of 1871 to the latter part of 1873 ; that although Ballard rendered from time to time aid and services in the business, and although Mrs. Ballard officiated more or less as the female head of the house, having the care or supervision of it—yet that the value of such aid and services, together with the lawful interest of the five thousand dollars, was not enough to compensate for the board and entertainment which Ballard and his family received. The bill prays that Ballard be

10 decreed to account, that he be credited with the fair value of his own services, and the services of his wife, and charged with the fair price of the entertainment and board. It alleges that upon such accounting, a balance will be due himself, but if due to Ballard the complainant offers to pay it when ascertained.

The suit can stand only on the ground that there was a *usurious agreement*. The evidence does not at all warrant, in my judgment, the conclusion that there was. I think the true nature of the transaction was essentially different,

30 and that the loan of money was but one feature of an arrangement for the taking and carrying on of the business of the hotel, an arrangement by which Gillette, who was unmarried, was to become the proprietor, and Ballard and wife to live with him and co-operate in making the enterprise a success. It was meant and expected to be an arrangement of a friendly and confidential nature, equally advantageous to both. They were intimate friends ; Gillette had been a few weeks before visiting at Ballard's house in Newark, and while there the subject of the hotel had been suggested, and also a partnership in it between Ballard and himself. He returned to

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Buffalo leaving Ballard to make further inquiries and report. On the 17th of December, 1870, Ballard sent him a letter, which is an exhibit in the case, and is relied on to establish the usurious bargain. After mention made of the terms on which the hotel could be obtained, the letter goes on as follows: "As to my going into the thing as a partner, why I would rather not do so. I am satisfied that there is a splendid chance for one to make money out of it, but it would not be as well for either of us to split it up and divide the profits. I'll tell you what I will do. I will lend you five thousand 10 dollars without interest, and will aid you in every way possible, will attend to your finances and books, and help you all I can, if you will give me my choice of rooms, and board for myself and family. And if it also becomes necessary to get more furniture for other rooms, (and of course it will,) why, I'll go security for them; in fact, you know enough of me, to know what I would do for you when required; this I think, will make much more money for you than if I was a partner. Don't look at this in anything but a business point of view, and decide according to your convictions." 20

In this letter the part to be performed by Ballard's wife is not specified, but it was understood between the parties, and in view of the evidence and facts of the case, may be regarded as comprehended within the general promise it contains to give aid in every way possible. There can be no doubt that her part was meant to be, as it afterwards became, a material element of the arrangement. In pursuance of these terms the hotel was taken and carried on. Efficient and valuable services of different kinds were rendered by Ballard. His wife, who was known to Gillette to be especially 30 qualified to act as the female head of the establishment, did so act and is proved to have done it well.

In the summer of 1873, Gillette was married and went to Europe for some weeks with his wife. On his return the supervision of Mrs. Ballard became less requisite and the general arrangement was ended. To Ballard's call for the principal of the loan, the charge of usury was for the first time suggested by Gillette. In view of the evidence I think it would be a gross misconstruction to treat this transaction as a cover or device for the taking of illegal interest. If the 40

transactions were less mutually advantageous than the proofs show it to have been, the inference of a usurious design would be still inadmissible, because such an inference will not in any case be made when the opposite conclusion can be reasonably and fairly arrived at. But the arrangement was highly advantageous to Gillette, indispensable to his undertaking the business so far as the loan was concerned, and very conducive to its success so far as the aid and services of the other parties were involved. It was to some extent

10 a partnership, calling for friendly and confidential relations. Having derived from it the benefits which it was fitted to give in virtue of that character, the complainant cannot now ask this court to transform it into a relation of another description, and assign market prices to board and to services which were appraised by himself, on a different principle and with a different aim. To do so would be in accordance neither with legal principles nor with right.

I will advise a decree as above.

