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Notice to Dismiss Appeal.

Dated February 1, 1917.

New Jersey Court of Errors and Appeals

Between

AMERICAN SURETY COMPANY OF NEW YORK,
Complainant-Appellant,

and

ISABELLE E. McGRATH CONWAY,
Defendant-Respondent.

On Appeal from Chancery

Notice.

Sirs:

PLEASE TAKE NOTICE that on Tuesday the 6th day of March next, at 10.30 o'clock in the forenoon, or as soon thereafter as we can be heard, at the Capitol Building, in the City of Trenton, N. J., we shall move the Court of Errors and Appeals to dismiss the appellant's appeal in the above entitled cause upon the following grounds.

First—The complainant has accepted the relief given to it against the defendant William F. Conway, in the decree, part of which is now appealed from and has thereby accepted also those portions of the decree which are the subject of the present appeal, since the decree against the defendant, William F. Conway, was based upon the fact that no relief could be given with respect to the defendant, Isabelle E. McGrath Conway, the present respondent,

New Jersey State Library

or with respect to the property conveyed to her.

Second—In proceeding under the decree personally against William F. Conway, and against the land conveyed to Annie L. Conway, the complainant has waived its right to proceed against the defendant, Isabelle E. McGrath Conway, and the property conveyed to her, and has thereby waived any right it might have had to appeal from said decree.

Third—The complainant by its proceedings with respect to the defendant William F. Conway and the property conveyed to the defendant, Annie L. Conway, under the said decree appealed from has recognized, adopted, insisted on and taken advantage of rights which are inconsistent with and repugnant to any right on which could be asked a reversal of that portion of the decree which relates to the defendant Isabelle E. McGrath Conway, and, therefore, has made an election of rights as well as of remedies, by reason of which election the complainant is estopped from taking the present appeal.

Fourth—The complainant in selling the land conveyed to Annie L. Conway, after the taking of the appeal, has waived its appeal, inasmuch as the conveyance to the said Annie L. Conway was declared void not because of fraud, on the part of the said Annie L. Conway, but because there was no consideration therefor. The property so conveyed to the said Annie L. Conway, who was a mere volunteer, could not be sold to satisfy complainant's claim unless any and all property fraudulently conveyed had been first applied to the payment of such claim. Such action on the part of the

complainant can, accordingly, only be construed as an avowal and affirmation that all property held by fraudulent grantees, if there were any, had been subjected and applied to complainant's claim.

Fifth—The appeal in this case cannot lie, for the reason that the said decree is not separable and divisible, but is a unit, its parts being interrelated and interdependent.

Sixth—The theory on which the complainant appeals is inconsistent, repugnant and not concurrent with the findings of fact and theory on which the parts of the decree not appealed from are founded.

Seventh—The complainant cannot appeal from any part of the decree for the reason that the decree has been fully executed, its functions fulfilled and its advantages to the complainant spent and its effect and purposes exhausted, in that the complainant has caused execution to be issued and has levied upon property of the defendant, William F. Conway, under the personal decree against him, and has instituted an action at law in New York against the said William F. Conway, in that the complainant has caused the personal decree against William F. Conway to be merged in a judgment at law in the New Jersey Supreme Court for the full amount against the said William F. Conway and in that the complainant has caused the land conveyed to Annie L. Conway to be sold pursuant to said decree.

Eighth—The complainant has elected not to follow the property conveyed to Isabelle E. McGrath Conway and has abandoned, renounced and repudiated its right to question such conveyance.

Ninth—The complainant has elected to hold the defendant, William F. Conway, personally liable for the amount of its judgment and costs and has approved, ratified, and confirmed the findings of fact and the theory on which such personal liability is predicated and founded.

Tenth—The complainant by two affidavits made on its behalf, one filed on a motion to strike out the answer of the defendant, William F. Conway, in the action instituted against him personally, in the Supreme Court of New Jersey, on said decree and the other filed in an action in New York against the said William F. Conway on said decree has unequivocally affirmed that the amount of its judgment with interest and costs is justly due and owing from said William F. Conway, to the complainant, and that it considers the decree against the said William F. Conway a personal money judgment against him. Such liability of the said William F. Conway, being founded on the finding and theory that the said William F. Conway, conveyed tracts two to ten inclusive, and twelve, in the bill of complaint set forth, to an innocent purchaser for value, i. e., Isabelle E. McGrath Conway, before the complainant could perfect a lien thereon, the complainant cannot now, by its appeal, put in question, the fact that the said Isabelle E. McGrath Conway, is an innocent purchaser for value, and in this way dispute the correctness of the said personal liability of William F. Conway, which it has caused to be positively affirmed under oath.

Eleventh—The decree was made on motion of the solicitors of the complainant, and no part of it can, therefore, be objected to and appealed from by the complainant.

Twelfth—The said appeal was not taken within the time required by law. Upon said motion we shall read the affidavits hereto annexed.

Respectfully yours,

McCARTER & ENGLISH,
Solicitors of Defendant-Respondent.

Dated February 1, 1917.

Affidavit of William F. Conway.

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

WILLIAM F. CONWAY, being duly sworn, on his oath says, I was one of the defendants in the bill of complaint named in the above cause, and I am the William F. Conway referred to in the final decree made therein on the 20th day of September, 1916. On October 19, 1916, I was served with a summons, complaint, notice and order of publication in a suit instituted on September 21st, 1916, by the American Surety Company of New York against me in the Supreme Court of New York for New York County.

In the complaint which was then served upon me, it was alleged as follows:

> "That on or about September 20, 1916, in a suit or action in equity then pending in the Court of Chancery of New Jersey by this plaintiff against William F. Conway and other defendants, a judgment was duly rendered in said Court of Chancery, in favor of this plaintiff and against this defendant, whereby plaintiff recovered judgment, in which this defendant was ordered, adjudged and decreed to pay to this plaintiff the sum

of fifty-six thousand, four hundred and thirty and 48/100 dollars ($56,430.48), with interest thereon from May 7, 1914, to September 20, 1916, together with costs, which were on September 20, 1916, duly taxed at four hundred and sixty and 63/100 dollars ($460.63).

3. That no part of the sum due under said judgment has been paid."

It was also stated in said complaint

"5. That the Court of Chancery of New Jersey is a court of general jurisdiction in equity, duly established by the Constitution and laws of said State; that under and pursuant to said Constitution and laws of the State of New Jersey and the rules and practice of such Court of Chancery, the judgment above mentioned was given and has the force and effect of a personal money-judgment in favor of the plaintiff against the defendant, and plaintiff is entitled to enforce the same in all ways as a personal judgment for the said sum of $64,904.24."

Said complaint, according to the copy served upon me, was verified by the affidavit of Henry C. Willcox, who stated in his affidavit that he was the vice-president of the American Surety Company of New York.

I have made no defense to the action in New York.

WILLIAM F. CONWAY.

Sworn and subscribed to before me
this second day of February, 1917.

[Seal] DANIEL B. SMITH,

Notary Public for New Jersey.

Affidavit of Arthur F. Egner.

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

ARTHUR F. EGNER, being duly sworn on his oath says, I am a member of the firm of McCarter & English, the solicitors of Isabelle E. McGrath Conway, the respondent in the above appeal named. I have had knowledge of all proceedings taken in connection with this cause. In this cause the said firm of McCarter & English represented not only Isabelle E. McGrath Conway, but also William F. Conway, one of the other defendants named in the bill of complaint therein. In the Court of Chancery a decree was made on September 20, 1916, pursuant to an opinion previously filed by Vice-Chancellor Stevens. A copy of this decree will be found in the printed State of the Case upon the above appeal. By this decree the bill of complaint was dismissed as to the defendant Isabelle E. McGrath Conway, and the said decree ordered, adjudged and decreed that the defendant William F. Conway should pay to the complainant the sum of $56,430.48 with legal interest thereon from May 7, 1914, and also the costs of the suit to be taxed, including a counsel fee of $350.00.

Said decree provides as follows:—"The court being of opinion that the final conveyance set forth in the bill of complaint of said last mentioned tracts numbered two to ten inclusive and twelve, to wit, the conveyance of said tracts by William F. Conway, to Isabelle E. McGrath, were made upon a valuable consideration, namely, the consideration of marriage; and that said Isabelle E. McGrath, was an innocent purchaser, and the court being further satisfied that the de-

fendant William F. Conway, the fraudulent grantee aforesaid, having disposed of said last mentioned tracts, numbered two to ten inclusive and twelve, before the complainant was able to perfect a lien upon same, should be held answerable for the property so disposed of by him, but only to the extent of the complainant's claim amounting to the sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), said amount being made up of the judgment of the complainant in the Supreme Court of this State set forth in the bill of complaint for fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,133.75), and the costs thereon in said Supreme Court amounting to two hundred ninety-six dollars and seventy-three cents ($296.73), with legal interest on said judgment and costs from the date of rendition of judgmnt, to wit, May 7, 1914, together with the costs of the complainant in this cause to be taxed and the court being satisfied from the proofs in this cause that the value of said tracts so disposed of by the said William F. Conway was and is in excess of the complainant's said claim with interest thereon as aforesaid; and the court being further of opinion that said complainant is entitled to the relief prayed for in its said bill of complaint as to tracts one and eleven, and is also entitled to the relief prayed for in said bill of complaint that the defendant William F. Conway may be decreed to pay to the complainant the amount of its claim:

It is thereupon on this twentieth day of September, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ORDERED, ADJUDGED and DECREED, and the Chancellor of the State of New Jersey by virtue of the power and authority of this court

does hereby ORDER, ADJUDGE and DECREE that the said William F. Conway do pay to the complainant the said sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), with legal interest thereon from the seventh day of May, 1914, and also the costs of this suit to be taxed, including a counsel fee of three hundred and fifty dollars ($350.00) and that the complainant have execution therefor according to the course and practice of this court."

It was also provided in said decree that two tracts of land, the title of which were in another defendant, Annie L. Conway, who, under the opinion of the court, held them as a mere volunteer, should also be sold, and the proceeds thereof applied on account of the complainant's decree. Upon this decree of the Court of Chancery a writ of execution was caused by the complainant to be issued out of the Court of Chancery, and was delivered to the Sheriff of Essex County, whose return shows that on the twenty-second day of September, 1916, he executed the said writ by making a levy upon that day upon certain goods, chattels, rights, and credits of the defendant William F. Conway, at the house of one Genaro Inzzolino at No. 56 Delancey Street, Newark, N. J., and in particular upon a bond and mortgage from the said Inzzolino to William F. Conway to secure the sum of $700.00. The return also shows that on the twenty-first day of September, 1916, the Sheriff by virtue of the said writ of execution made levy upon five tracts of real estate in the City of Newark, and County of Essex, belonging to said William F. Conway and which tracts of real estate are more particularly described in the said return. The records in the Sheriff's office further show that pursuant to the said final decree the two tracts of

land aforesaid standing in the name of Annie S. Conway were sold on December 26, 1916, to the complainant, American Surety Company of New York, for the sum of $25.00, and an order confirming sale was made, and a deed for the property taken by the complainant on January 19, 1917.

On November 14, 1916, the appellant, American Surety Company of New York, instituted an action on said decree of the Court of Chancery in the Supreme Court of the State of New Jersey against the defendant, William F. Conway, to recover the sum of $56,430.48 with legal interest thereon from the seventh day of May, 1914, and also the costs of the Chancery suit above mentioned, including therein a counsel fee of $350.00. In the said complaint it was alleged by the present appellant, and the plaintiff therein, that the plaintiff

> "has never assigned said final decree, and is still the owner and holder thereof.
>
> 3. Plaintiff has never received any portion of the sum above mentioned, or of said interest or costs."

The plaintiff claimed judgment for the entire sum above mentioned, besides the costs of the action in the Supreme Court.

The defendant, William F. Conway, filed an answer in this action alleging that the said action should not be brought against him until the lots owned by Annie L. Conway had been sold pursuant to the provisions of the decree in Chancery above mentioned. A motion was made by the plaintiff to strike out this answer, and in an affidavit filed with the notice of motion, Mr. John F. Clark deposed that he was the resident vice-president of the American Surety Company of

Affidavit of Arthur F. Egner.

New York, the plaintiff in the action, and that he was authorized to make the affidavit. The said affidavit stated that the action was founded upon the said decree and "that plaintiff is still the holder and owner of said final decree; that the amounts above stated are justly due and owing thereon from the defendant to the plaintiff, no part thereof having been paid. This deponent further says that he believes that there is no defense to this action." Upon this affidavit an order was made by the Honorable Samuel Kalisch, the Judge before whom such motion was argued, striking out the said answer, and thereupon a judgment was entered in the action in the Supreme Court against the said William F. Conway on December 12, 1916, for $65,637.79 damages and $36.86 costs. The taxed costs of the plaintiff in the action in the Supreme Court were served upon my firm on December 14, 1916, we having appeared for William F. Conway in the action in the Supreme Court.

A true copy of the said decree of the Court of Chancery entered on September 20, 1916, is annexed to this affidavit and made a part thereof.

ARTHUR F. EGNER.

Sworn and subscribed to before me this second day of February, 1917.

[Seal] DANIEL B. SMITH,
Notary Public for New Jersey.

Final Decree.

In Chancery of New Jersey.

Between

AMERICAN SURETY COMPANY OF NEW YORK,
Complainant,

and

WILLIAM F. CONWAY and others,
Defendants.

On Bill, etc.
Final Decree.

This cause coming on to be heard on bill, answer, replication and proofs, in the presence of Pitney, Hardin & Skinner, of counsel with the complainant, and of McCarter & English, of counsel with the defendants, and the arguments of counsel having been heard and considered, and the Court being of opinion that the deed of conveyance in the said bill mentioned and described, for the lands and premises therein set forth and described as the first and eleventh tracts, was made and executed with the intent to defraud the complainant as a creditor of one James Conway, now deceased, and was without consideration, and the Court being further satisfied that the defendant William F. Conway was a fraudulent grantee of certain other tracts described in the bill of complaint and numbered therein from two to ten inclusive and twelve, and that the said William F. Conway held said last mentioned tracts in trust for his father, the said James Conway,

and that the several deeds of conveyance in the said bill mentioned and described for the lands and premises referred to therein as tracts two to ten inclusive and twelve were made and executed with the intent to defraud the complainant as a creditor of the said James Conway, but the Court being of opinion that the final conveyance set forth in the bill of complaint of said last mentioned tracts numbered two to ten inclusive and twelve, to wit, the conveyance of said tracts by William F. Conway to Isabelle E. McGrath, were made upon a valuable consideration, namely, the consideration of marriage, and that said Isabelle E. McGrath was an innocent purchaser; and the Court being further satisfied that the defendant William F. Conway, the fraudulent grantee aforesaid, having disposed of said last mentioned tracts, numbered two to ten inclusive and twelve, before the complainant was able to perfect a lien upon same, should be held answerable for the value of the property so disposed of by him, but only to the extent of the complainant's claim amounting to the sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), said amount being made up of the judgment of the complainant in the Supreme Court of this State set forth in the bill of complaint for fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,133.75) and the costs thereon in said Supreme Court amounting to two hundred ninety-six dollars and seventy-three cents ($296.73), with legal interest on said judgment and costs from the date of rendition of judgment, to wit, May 7, 1914, together with the costs of the complainant in this cause to

be taxed and the Court being satisfied from the proofs in this cause that the value of said tracts so disposed of by the said William F. Conway was and is in excess of the complainant's said claim with interest thereon as aforesaid; and the Court being further of opinion that said complainant is entitled to the relief prayed for in its said bill of complaint as to tracts one and eleven, and is also entitled to the relief prayed for in said bill of complaint that the defendant William F. Conway may be decreed to pay to the complainant the amount of its claim;

It is thereupon on this twentieth day of September, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ORDERED, ADJUDGED and DECREED, and the CHANCELLOR of the State of New Jersey by virtue of the power and authority of this Court does hereby ORDER, ADJUDGE and DECREE that the said William F. Conway do pay to the complainant the said sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), with legal interest thereon from the seventh day of May, 1914, and also the costs of this suit to be taxed, including a counsel fee of three hundred and fifty dollars ($350.00) and that the complainant have execution therefor according to the course and practice of this Court.

And it is FURTHER ORDERED, ADJUDGED and DECREED that the said deed of conveyance in said bill mentioned and described for the tracts of land respectively therein set forth and described as the first and eleventh tracts, that is to say, the deed of conveyance made by James Conway, now deceased, and the defend-

ant Bridget D. Conway, his wife, to the defendant Annie L. Conway, bearing date the 28th day of January, 1902, and recorded in Book Y 34 of Deeds for Essex County on pages 389, etc., be set aside, annulled and made void as against the judgment of the said complainant in said bill set forth and described.

And it is FURTHER ORDERED that unless the defendant Annie L. Conway shall within ten days after service upon her or her solicitors of a copy of this decree (which copy need not be certified) pay to the complainant, or to its solicitors, the amount due to it upon its judgment in this cause referred to, the said premises described in the bill of complaint as the first and eleventh tracts be first sold to raise and satisfy the sum of money due to the complainant as aforesaid, and the interest thereon, and that a writ of *fieri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Essex, commanding him to make sale according to law of the said premises described as the first and eleventh tracts in the said bill of complaint, and that out of the money arising from such sale he pay to the complainant or to its solicitors its said debt, with interest as aforesaid, and in case more money should be raised by the said sale than should be sufficient to answer such payment that such surplus be brought into this Court to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

And it is FURTHER ORDERED that the aforesaid sale by the said sheriff shall be made free,

clear and discharged of and from the said deed of conveyance and of and from all claims of the said Annie L. Conway thereunder or by virtue thereof, and of and from all claims of the heirs and dowress of the said James Conway, deceased, said heirs and dowress being parties defendant to this suit, and free, clear and discharged of any right of dower, inchoate or otherwise, of Isabelle E. McGrath Conway, the wife of said William F. Conway, and of and from any right of courtesy of one James L. Mason and one William A. Kelly, all of the parties named being parties to this suit, and of and from all claims of any other persons claiming through or under any of the parties to this suit.

And it is FURTHER ORDERED, ADJUDGED and DECREED, that while the complainant may forthwith have execution as aforesaid against the said William F. Conway for the amount ordered to be paid to the complainant by the said William F. Conway and may proceed forthwith to make a levy under said execution, no sale shall be held thereunder until sale has been made by the Sheriff of the County of Essex as aforesaid of said first and eleventh tracts, and until the proceeds of said sale of said first and eleventh tracts shall have been credited upon the amount due to the complainant.

And it is FURTHER ORDERED, ADJUDGED and DECREED that as to the defendant Isabelle McGrath Conway the bill of complaint be and it is dismissed with her costs to be taxed.

It is FURTHER ORDERED that the defendant William F. Conway may within two weeks after the date hereof apply upon two days' notice for the change or modification of this decree.

Final Decree.

This leave is not to interfere with the complainant's right to issue execution and make a levy as herein provided.

Respectfully advised,

E. R. WALKER,

C.

FREDERIC W. STEVENS,

V. C.

Service hereof is acknowledged the 2nd day of February, 1917.

PITNEY, HARDIN & SKINNER,

Solicitors of Appellants.

Affidavit of Corwin Howell.

New Jersey Court of Errors and Appeals

Between	
American Surety Company of New York, *Complainant-Appellant,*	*On Appeal from Chancery.*
and	
William F. Conway and others, *Defendants-Respondents.*	*On Motion to Dismiss Appeal.*
	Affidavit.

State of New Jersey, County of Essex. } *ss.*

Corwin Howell, being duly sworn on his oath, says:

I am a counsellor at law of this State and a member of the firm of Pitney, Hardin & Skinner, solicitors for the complainant-appellant in the above entitled cause. I have had knowledge of all proceedings taken in connection with this cause. The final decree in said cause was signed by Vice-Chancellor Stevens on September 20, 1916. On the same day I caused an abstract of such final decree to be filed in the office of the Clerk of the Supreme Court in order to make the same a lien upon any lands of the defendant William F. Conway. On the same day also I caused a writ of *fieri facias* to be issued by the Clerk of the Court of Chancery directed to the Sheriff of the County of

Essex and commanding him to make the complainant's debt of the rights and credits, goods and chattels of William F. Conway, and in the alternative, of his lands and real estate. I had previously caused searches to be made to ascertain any mortgages held by William F. Conway as mortgagee and also to ascertain any real estate in his name. A list of these matters was prepared and handed to the sheriff and he was directed to make a levy on same, which he did on September 21st and September 22nd, 1916. Thereafter I caused the said searches to be brought down to date and it was discovered that all of the mortgages above referred to in the name of William F. Conway had either been cancelled of record or assigned to an apparent *bona fide* holder within two months prior to Septeber 20, 1916, or immediately after that date. In particular, as to the mortgage for $700 from Genaro Inzzolino referred to in the affidavit of Mr. Arthur F. Egner on this motion, an assignment of said mortgage is on record from William F. Conway to Federal Trust Company, a corporation of the State of New Jersey, dated September 22, 1916, and recorded September 25, 1916. The levy upon William F. Conway's interest in said mortgage was made on September 22, 1916, the day of the date of the assignment, and it has not been ascertained which was prior in time, or whether or not the complainant by its levy acquired any interest in said mortgage. Nothing has yet been realized thereon.

The real estate of William F. Conway levied on consisted of five tracts in the City of Newark. Two tracts consist of vacant land assessed in 1916 by the City of Newark for tax-

ing purposes at $700 and $300 respectively. Both of these are tax titles in William F. Conway. These properties do *not* appear from the records to have been mortgaged, at least not recently.

The third tract, on which a building is erected, the tract and building together being assessed by the City of Newark in 1916 for $2,600 was mortgaged by William F. Conway to one Meyer Jedel by instrument dated July 28, 1916, and recorded on August 4, 1916, in Book E 36 of Mortgages for Essex County on page 117, for $2,525.

The fourth tract and fifth tract both consist of vacant land, the former being assessed in 1916 for $900 and the latter being assessed in 1916 for $1,950. These two tracts together were mortgaged by William F. Conway to Saul Schloss by instrument dated July 12, 1916, and recorded on July 14, 1916, in Book X 35 of Mortgages for Essex County, on page 181, for $6,000.

On the various dates above mentioned when said mortgages were dated and recorded, the above case was under consideration by Vice-Chancellor Stevens, same having been argued before him on briefs in May, 1916. Vice-Chancellor Stevens' opinion was filed on August 22, 1916.

At the time the above levy was made I further had the sheriff inquire at practically every bank in the City of Newark and several banks in the Oranges. Mr. Conway being a resident of Orange, with instructions to levy on any bank accounts that he could find. The sheriff reported that he was unable to discover any bank accounts with said William F. Conway

whatever, except one in the Federal Trust Company of Newark, New Jersey, which had been overdrawn on the day the decree was signed.

I had previously been informed that the furniture in the house occupied by William F. Conway and his wife belonged to her, and that he was possessed of no personal property.

No sale has been made or advertised under complainant's levy of any of the five tracts of real estate of William F. Conway above mentioned. The value of same over and above the encumbrances thereon appears to be trifling, certain of the property being mortgaged for sums apparently greatly in excess of its actual value.

In his testimony in the Chancery suit Willian F. Conway stated that he owned certain property at Syracuse, New York. I reported this fact to Henry C. Wilcox, the general counsel of the American Surety Company, and he has informed me that he caused search to be made in Syracuse and located the property in question, and as soon as the decree was entered in the Chancery suit in this cause the complainant caused an attachment suit to be brought against William F. Conway in the State of New York upon the New Jersey Chancery decree. I understand that the property in Syracuse is mortgaged but that there is a small equity therein. I am further informed that while no defense has been made by William F. Conway to said attachment suit in New York, a claim has been set up by a former owner of the property that the deed from him to William F. Conway was not absolute but was intended as a mortgage, and that William F. Conway has only a trustee's interest in said property, except as to the

amount of any moneys advanced to said former owner by said William F. Conway and not repaid to Conway. The truth of this claim is now under investigation.

I know of no other property in William F. Conway's name anywhere than that above stated.

The suit at law against William F. Conway on the Chancery decree referred to in the affidavits for defendants-respondents was brought against William F. Conway for the purpose ultimately of basing thereon an examination in supplementary proceedings, and particularly as to the mortgages placed by William F. Conway on his properties above referred to in the summer of 1916, and without any idea of abandoning any right or remedy of the American Surety Company against any of the defendants. No execution, however, has ever been issued upon the judgment in the suit at law. In the present state of the statute law of this State supplementary proceedings cannot be based upon a decree in Chancery, even thought such decree is equivalent to a judgment for the payment of money.

On or about October 30, 1916, I caused a writ of *fieri facias* to be issued, in accordance with the above mentioned final decree, addressed to the Sheriff of the County of Essex and directing him to sell two certain lots in the name of Annie L. Conway. These lots are unimproved land and were assessed in 1912 for $300 and $600 respectively. These lots were duly advertised and offered for sale by the Sheriff and were bid in together for the complainant for $25. No complete search of the title of these properties had ever been made and their value was and still is unascertained. The amount

realized from the sale of the same, $25, was far less than the Sheriff's charges for printing the advertisement of the sale and for his commissions and fees.

In the final decree above referred to it was directed that while execution against William F. Conway might issue forthwith and while a levy might forthwith be made thereon, no sale should be made of any of William F. Conway's property until sale has been made by the Sheriff of the County of Essex of the two tracts above mentioned in the name of Annie L. Conway, and until the proceeds of said sale of said last two mentioned tracts should have been credited upon the amount due the complainant. Inasmuch as the amount realized from the sale of said tracts in the name of Annie L. Conway was less than the cost and charges of selling the same, there is nothing whatever to be credited, either in favor of William F. Conway or of Isabelle E. McGrath Conway, should the complainant ultimately be found entitled to relief against the latter.

The notice of appeal herein was filed and a certified copy served on the solicitors of the defendants-respondents on December 20, 1916.

All of the real estate that was conveyed to Isabelle E. McGrath Conway, the transfer of which is sought to be set aside in the present suit, was conveyed to her by William F. Conway. William F. Conway admitted in the course of his testimony in the suit before Vice-Chancellor Stevens that he held said properties in trust for the creditor of his father, James Conway, viz., in trust for the complainant-appellant herein.

In addition to the tracts thus conveyed to Isabelle E. McGrath Conway, the said William F. Conway held several other tracts, having received them by mesne conveyances from his father, James Conway, under exactly the same circumstances as the tracts above mentioned conveyed by him to the said Isabelle E. McGrath Conway. As to these tracts also the said William F. Conway was a trustee for his father's creditor, the complainant-appellant herein. These tracts are shown on Exhibit C. 14 as Tract A, Tract B and Tract E. These tracts were disposed of by the said William F. Conway and ultimately got into the hands of persons not parties to this suit, said persons becoming apparently *bona fide* holders thereof. On said Exhibit C. 14 all of the conveyances of said tracts A, B and E from James Conway to William F. Conway and from William F. Conway to others are shown, and it appears therefrom that said Tracts A, B and E were included in the same deeds with the other tracts that were later conveyed by William F. Conway to Isabelle E. McGrath Conway. The tract referred to as Tract B was conveyed by William F. Conway to Isabelle E. McGrath, along with the other tracts above referred to conveyed by him to her, but the said Isabelle E. McGrath Conway thereafter and prior to the commencement of this suit conveyed said tract B to the City of Newark for the opening of Branford Place for a consideration of $8,700.

The various steps taken by the complainant after the final decree was signed by Vice-Chancellor Stevens were determined upon by Henry C. Wilcox, the general counsel of the complainant, by Alfred F. Skinner, by myself or by two

or more of us after conference. These steps were all taken with the intention of protecting the rights of the complainant and without any idea of abandoning any of its rights or remedies.

COWIN HOWELL.

Subscribed and sworn to before me
this 27th day of February, 1917.

ALEXANDER T. SCHENCK,
A Notary Public of N. J.
(L. S.)

Affidavit of James A. Berry.

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

JAMES A. BERRY, being duly sworn, on his oath, says, I have been engaged in the real estate business for upwards of twenty years in the City of Newark, County of Essex, and State of New Jersey, and have bought and sold numerous tracts in almost every part of said city, and have acted as agent for others in the purchase and sale of real estate in said City of Newark, during said period. I am an expert in the market value of real estate in said City of Newark, County of Essex, and State of New Jersey, and have many times acted as such expert both for individuals and the City of Newark, in making appraisals of real estate in said City of Newark, and have qualified and testified as such expert on the market values of land in the City of Newark,

in many trials and judicial investigations in which the market values of real estate in said City of Newark were in issue.

I am familiar with and have examined five tracts of real estate belonging to William F. Conway in said City of Newark. One of said tracts is on Hawthorne avenue, and is commonly known as No. 351 Hawthorne avenue, Newark, N. J., and the fair market value of same is $1,000.00. Another of said tracts is on Edwin place, and is commonly known as No. 28 Edwin place, Newark, N. J., and the fair market value of same is about $500.00. Another of said tracts is on First street, and is commonly known as No. 141 First street, Newark, N. J., and the fair market value of same with the improvements thereon, is about $5,000.00. The other two tracts are on Warren street, and are commonly known as Nos. 463, 465, 467 Warren street, Newark, N. J., and the fair market value of both tracts is about $11,000.00.

I have examined and am familiar with two tracts of land in said City of Newark, formerly owned by Annie L. Conway, and described in the bill of complaint in the above entitled matter, as the first tract and the eleventh tract. The fair market value of the one of said parcels, situated on North Fourth street, and commonly known and designated at No. 508 North Fourth street, Newark, N. J., is about $400.00. The fair market value of the other of said parcels, situated on Pennington street, and commonly known and designated as No. 94 Pennington street, Newark, N. J., is $900.00.

Each and every one of the above values are to the best of my knowledge and opinion, the

fair and reasonable market values of said properties.

JAMES A. BERRY,

Subscribed and sworn to before me
this 1st day of March, A. D. 1917,
at Newark, N. J.

WALTER S. COOPER,
A Notary Public of New Jersey.
(SEAL)

Affidavit of William F. Conway

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

WILLIAM F. CONWAY, being duly sworn, on his oath, says, I have read the copy of the affidavit of Corwin Howell, served February 27th, 1917, on McCarter & English, Esqs., in the above entitled matter.

Within two months prior to September 20th, 1916, the period mentioned in the said affidavit of Corwin Howell, and from that date up to the present time, there were only two mortgages in my name open of record. One of said mortgages was on property in Centre street, Orange, N. J., and, although said mortgage was not cancelled of record until the twenty-ninth day of July, 1916, said mortgage had been endorsed for cancellation on November 30th, 1914. The other of said mortgages was for seven hundred ($700.00) dollars, from Gennaro Inzzolino, to me, and was assigned by me to the Federal Trust Company.

The real estate belonging to me and levied on by the American Surety Company of New

York under its decree against me consists of five tracts in the City of Newark. One of said tracts is on Hawthorne avenue, Newark, N. J., and the fair market value of same is about one thousand ($1,000.00) dollars. Another of said tracts is on Edwin place, Newark, N. J., and the fair market value of same is about five hundred ($500.00) dollars. Another of said tracts is on First street, Newark, N. J., and the fair market value of same is about five thousand ($5,000.00) dollars. The other two tracts are on Warren street, Newark, N. J., and the fair market value of both together is about eleven thousand ($11,000.00) dollars. The value of said tracts over and above the encumbrances thereon is therefore not trifling. Only three of said tracts are mortgaged, as shown in the said affidavit of Corwin Howell, and none of said three tracts is mortgaged in an amount in excess of its actual value or in an amount much greater than one-half its actual value.

I have no knowledge that any claim has been set up by a former owner of the property in Syracuse, N. Y., mentioned in the said affidavit of Corwin Howell. The fair market value of said property in Syracuse, N. Y., is about six thousand ($6,000.00) dollars. There is now on said property only two mortgages, one held by Onondaga Savings Bank, for twenty-five hundred ($2,500.00) dollars, and the second for six hundred ($600.00) dollars.

The statement in the said affidavit of Corwin Howell, that, "William F. Conway admitted in the course of his testimony in the suit before Vice-Chancellor Stevens, that he held said properties in trust for the creditor of his father, James Conway, viz., in trust for the complain-

ant-appellant herein'' is not true. I never made any such statement and never said I held the properties referred to in trust for any creditor of my father, James Conway.

The next to the last paragraph of the said affidavit of Corwin Howell, is not a true statements of facts. The three tracts mentioned in said paragraph are designated on Exhibit C. 14 as Tract A, Tract B and Tract E. None of said tracts were mentioned in the complainant's bill of complaint in the suit in Chancery, between American Surety Company, Complainant, and William F. Conway, and others, defendants, no relief was prayed for as to any of said properties, and no relief was granted and no decree made regarding any of them or the disposition of any of them. As to these three tracts I was not, as set forth in the said affidavit of Corwin Howell, a trustee for my father's creditor, the complainant therein, and the complainant never asserted or established any right, title, or interest, either at law or in equity, in or to any of said three tracts, except by levy under the personal decree rendered against me in said suit, and by the lien of a judgment on said personal decree in the Supreme Court of New Jersey. Said tract A was bought by me for three thousand twenty-five ($3,025.00) dollars, at a Sheriff's sale on foreclosure of a mortgage held by the Public Building and Loan Association of the City of Newark. The owner of said premises at that time was James H. Monahan, and the deed to me from John F. Monahan, Sheriff of Essex County, is dated October 2nd, 1912. This tract is still in my name but has been levied on by the said American Surety Company of New York under the said personal

decree rendered against me in the said suit in Chancery, and the judgment procured against me by the said American Surety Company of New York, in the Supreme Court of New Jersey, on said personal decree is now a lien on said tract. Said tract was never received by me by mesne conveyances or otherwise from my father, James Conway. Tract E was conveyed to myself and Mary L. Conway, as tenants in common, by James Conway, and wife, by deed dated March 26th, 1906, and was conveyed by myself and Mary L. (Conway) Mason, and husband, to Joseph Palmieri, by deed dated November 4th, 1909. It is true that the tract referred to as Tract B was conveyed by me to Isabelle E. McGrath Conway, along with the other tracts conveyed by me to her, and that the said Isabelle E. McGrath Conway, conveyed said Tract B to the City of Newark for the opening of Branford Place, for a consideration of eighty-seven hundred ($8,700.00) dollars. Tract B was the only one of said three above mentioned tracts included in the deed with the other tracts conveyed by me to the said Isabelle E. McGrath Conway, but neither said Tract B nor Tract A nor Tract E were the subject-matter of said suit in Chancery.

WILLIAM F. CONWAY.

Subscribed and sworn to before me
this 2nd day of March, A. D. 1917,
at Newark, N. J.

BERNHARD J. FIRNER,
Notary Public of New Jersey.
(SEAL)

Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between American Surety Company, *Complainant-Appellant,* *and* William F. Conway, and *Defendants-Respondents.*	*On Appeal from Chancery and on Motion to Dismiss Appeal.* *Stipulation.*

It is Hereby Stipulated and Agreed between the parties in the above entitled cause, that on the argument of the motion to dismiss the above appeal anything contained in the State of the Case shall be deemed and taken to be before the court for the purposes of said motion.

PITNEY, HARDIN & SKINNER,
Counsel for Appellants.

McCARTER & ENGLISH,
Counsel for Respondents.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

AMERICAN SURETY COMPANY OF NEW YORK,
Complainant-Appellant,
and
ISABELLE E. MCGRATH CONWAY,
Defendant-Respondent.

On Appeal from Chancery.

Brief for the Defendant-Respondent on Motion to Dismiss the Appeal.

This is an appeal from a final decree advised by Vice-Chancellor Stevens on September 20th, 1916. The notice of appeal was filed on December 20th, 1915. The appeal is from one portion of the decree only, namely, that which adjudged that the bill of complaint should be dismissed as to the defendant, Isabelle E. McGrath Conway (State of the Case, p. 519). The bill was filed by the American Surety Company as a judgment creditor of James Conway, deceased, and sought to have twelve separate tracts of land, which were at one time the property of James Conway, and the legal title of which, at the time the suit was commenced, was no longer in James Conway, declared to have been conveyed to the present holders of the title in fraud of the complainant's rights, and therefore to be void as against the complainant. The defendants in the suit were the present owners of the land in question, and the persons who had been involved in the chain of title from James Conway down to the present

owners. Of the twelve tracts which were the subject of the bill, tracts designated as 1 and 11, were owned by the defendant Annie L. Conway, who acquired them by deed from James Conway, and tracts 2 to 10 inclusive and tract 12 by Isabelle E. McGrath Conway, who acquired them by deed from the defendant William F. Conway upon the consideration of marriage.

The bill of complaint (State of the Case, p. 1) is in the ordinary form of a bill to set aside fraudulent conveyances, and the evidence in the case, and the opinion of the Vice-Chancellor were directed entirely to the inquiry whether or not the last conveyances to Annie L. Conway and Isabelle E. McGrath Conway were fraudulent so as to be of no avail against the complainant's claim. William F. Conway was made a party defendant, not because of any privity existing between himself and the American Surety Company, the complainant, but solely because he appeared in the chain of title, and he was the person who made conveyance of tracts 2 to 10 inclusive and tract 12 to Isabelle E. McGrath.

The opinion of Vice-Chancellor Stevens (State of the Case, p. 503) was devoted therefore to a discussion of whether the complainant should prevail with respect to the properties owned by Annie L. Conway and Isabelle E. McGrath Conway. His conclusion was that the conveyance to Annie L. Conway could not stand, but that the conveyance to Isabelle E. McGrath was valid because she was an innocent purchaser for value.

When the final decree came to be signed, counsel for the complainant, although no such suggestion had been made in their bill of complaint, nor at the hearing, contended that in as much as the final conveyance to Isabelle E. McGrath could not be set aside; as William F. Conway had

succeeded in disposing of property which he had held impressed with a trust for his father's creditors, and as the property conveyed by him to Isabelle E. McGrath was of a value in excess of the complainant's claim, therefore a personal money decree should be made against him. This was upon the authority of the opinion of Vice-Chancellor Van Fleet in *Post* v. *Stiger*, 2 Stew. 554, and other cases of that character. These hold that the grantee of property, conveyed in fraud of creditors, who disposes of it before proceedings are instituted to reach it, may be held answerable for its value.

Vice-Chancellor Stevens, accepting the complainant's view and following these authorities, thereupon advised a money decree against William F. Conway for the full amount due to the complainant, namely, $56,430.48, together with legal interest and the costs of suit, including counsel fee. The recital in the decree clearly shows the basis of this money decree. Thus it is there said,

> "The court being further satisfied that the defendant, William F. Conway, was a fraudulent grantee of certain other tracts described in the bill of complaint and numbered therein from two to ten inclusive and twelve, and that the said William F. Conway held said last mentioned tracts in trust for his father, the said James Conway, and that the several deeds of conveyance in the said bill mentioned and described for the lands and premises referred to therein as tracts two to ten inclusive and twelve were made and executed with the intent to defraud the complainant as a creditor of the said James Conway, but the court being of opinion that the final conveyance set forth

in the bill of complaint of said last mentioned tracts numbered two to ten inclusive and twelve, to wit, the conveyance of said tracts by William F. Conway to Isabelle E. McGrath, was made upon a valuable consideration, namely, the consideration of marriage and that said Isabelle E. McGrath was an innocent purchaser; and the court being further satisfied that the defendant, William F. Conway, the fraudulent grantee aforesaid, having disposed of said last mentioned tracts, numbered two to ten inclusive and twelve, before the complainant was able to perfect a lien upon same, should be held answerable for the value of the property so disposed of by him, but only to the extent of the complainant's claim amounting to the sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), said amount being made up of the judgment of the complainant in the Supreme Court of this State set forth in the bill of complaint for fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,-133.75) and the costs thereon in said Supreme Court amounting to two hundred ninety-six dollars and seventy-three cents ($296.73), with legal interest on said judgment and costs from the date of rendition of judgment, to wit, May 7, 1914, together with the costs of the complainant in this cause to be taxed; and the court being satisfied from the proofs in this cause that the value of said tracts so disposed of by the said William F. Conway was and is in excess of the complainant's said claim with interest thereon as aforesaid; and the court being further of opinion that said complainant is entitled to the relief

prayed for in its said bill of complaint as to tracts one and eleven, and is also entitled to the relief prayed for in said bill of complaint that the defendant, William F. Conway, may be decreed to pay to the complainant the amount of its claim."

Accordingly the decree was made against William for the payment of this sum, and the bill of complaint was dismissed as to Isabelle.

In passing, it should be noted that this decree was made on motion of the solicitors of the complainant (p. 515, State of the Case), and hence at the very outset, the propriety of any appeal therefrom may be challenged.

See *Schmidt* v. *Oregon,* 40 Pac. 406, where it was held that a party, at whose request, judgment was entered, cannot appeal therefrom.

The only portion of the decree unfavorable to the complainant was that dismissing the bill as to Isabelle, upon which dismissal, however, the decree against William was predicated. The complainant delayed taking any appeal whatever until the last day allowed by law for that purpose, and then took an appeal carefully restricted to that portion of the decree unfavorable to it. Meanwhile it is conceded that the complainant, by the most unqualified acts upon its part, evinced its acceptance of the remainder of the decree and its determination to realize upon everything given to it thereby. Thus it is conceded that the Chancery decree was immediately docketed in the Supreme Court so as to become a lien upon lands owned by William. Execution was immediately issued out of Chancery and a levy made not only upon William's real estate, but also upon such personal property as could be found. In order to reach a parcel of real estate to which he held

title in New York State, an independent action was instituted in New York State against William F. Conway, and in that suit the complaint, which was verified by the affidavit of the Vice-President and General Counsel of the complainant, stated

> "That on or about September 20, 1916, in a suit or action in equity then pending in the Court of Chancery of New Jersey by this plaintiff against William F. Conway and other defendants, a judgment was duly rendered in said Court of Chancery, in favor of this plaintiff and against this defendant, whereby plaintiff recovered judgment, in which this defendant was ordered, adjudged and decreed to pay to this plaintiff the sum of fifty-six thousand, four hundred and thirty and 48/100 dollars ($56,430.48), with interest thereon from May 7, 1914, to September 20, 1916, together with costs, which were on September 20, 1916, duly taxed at four hundred and sixty and 63/100 dollars ($460.63).
>
> "3. That no part of the sum due under said judgment has been paid."

It was also stated in said complaint:

> "5. That the Court of Chancery of New Jersey is a court of general jurisdiction in equity, duly established by the constitution and laws of said State; that under and pursuant to said constitution and laws of the State of New Jersey and the rules and practise of such Court of Chancery, the judgment above mentioned was given and has the force and effect of a personal money-judgment in favor of the plaintiff against the defendant, and plaintiff is entitled to enforce the same

in all ways as a personal judgment for the said sum of $64,904.24."

(See affidavit of William F. Conway on motion to dismiss.)

In further enforcement of its right under this portion of the decree, the complainant brought suit in the Supreme Court of this State against William F. Conway, and secured the entry of a judgment thereon in that court. In an affidavit filed in this action the resident Vice-President of the complainant swore

> "that plaintiff is still the holder and owner of said final decree; that the amounts above stated are justly due and owing from the plaintiff to the defendant, no part thereof having been paid. This deponent further says that he believes there is no defense to this action."

In further enforcement of those parts of the decree not appealed from by it, the complainant caused execution to be issued against the two tracts owned by Annie L. Conway, and these were sold by the Sheriff of Essex County and purchased by the complainant for the nominal consideration of $25. (Affidavit of Mr. Howell.)

The complainant-appellant has accepted the decree below and hence the present appeal should be dismissed.

By its actions since the final decree above stated, we submit that the complainant has most unequivocally accepted the decree advised by Vice-Chancellor Stevens UPON ITS OWN MOTION, and that it has waived and relinquished whatever right it may have had to appeal from that portion of the decree, which denied a portion of the

relief sought. The decree is a unit. The complainant is now seeking both to affirm and disaffirm a proceeding which never has been and cannot be sanctioned by any appellate court.

This appeal, of course, brings up only that portion of the decree to which exception is taken in the notice of appeal.

Barton v. *Long,* 45 N. J. Eq. (Er. & App.), 160.

State v. *R. R. Co.,* 26 Pac., 225.

Clowes v. *Dickinson,* 8 Cowan, 328.

Not only does the appeal not bring up the portions of the decree affecting William F. Conway, and Annie L. Conway, but these portions have been executed, in the case of William F. Conway by merger in the judgment obtained against him in the Supreme Court, and in the case of Annie L. Conway by execution upon and sale of her real estate.

Hence the Court upon this appeal can do nothing but reverse or affirm the part of the decree appealed from. Obviously this Court cannot modify or affect that part of the decree not appealed from, particularly in view of its merger and execution. This Court cannot assume to control the action brought by the complainant in the State of New York, nor can this Court control the judgment obtained by the complainant for the full amount of its claim against William F. Conway in the Supreme Court.

In view of the law as laid down in *Post* v. *Stiger* and other cases, a judgment creditor has two possible remedies where a person holding property through grant from the original owner, but in fraud of creditors, has disposed of it. He may seek to follow the property, or he may elect to proceed against the intermediate grantee, and secure a personal money judgment

against him up to the amount of the value of the property disposed of by him.

He cannot do both. If he follows the property he is not entitled to a money judgment in addition.

In *Moore on Fraudulent Conveyances,* Vol. 2, p. 1023, it is said:

> "Where a fraudulent purchaser holds the property the creditor must subject it, and cannot take a personal money decree for his debt, or the value of the property, against such purchaser. Vance Shoe Co. *v.* Haught, 41 W. Va. 275, 23 S. E. 553; Ringold *v.* Suiter, 35 W. Va. 186, 13 S. E. 46. Where the party has taken a conveyance in fraud of creditors of the property transferred, and his title has been declared void, and set aside in a suit by a receiver appointed in proceedings supplemental to execution, by a decree reciting that the property is in existence, a money judgment, cannot, *in addition,* be rendered against him in favor of such receiver. Harrison *v.* Obermeyer, etc., Brewing Co., 64 App. Div. (N. Y.) 499, 72 N. Y. Supp. 270; Van Blarcom *v.* Issac, 92 Wis. 541, 66 N. W. 617."

See also *Ringold* v. *Suiter,* 13 S. E. 46.

The general principles governing election and the binding quality thereof when made, are recognized in this state, and here, as elsewhere, the law is well settled that persons having a choice of rights, and making their election, must abide thereby.

Thus it was said by Chief Justice Beasley, in *Heller* v. *Elliott,* 44 N. J. L., 467:

> "The statement in the affidavit upon which the writ of attachment was founded

to the effect that the contract price was due and owing to the plaintiff for the sale and delivery of these articles was untrue if the title to such articles remained in the vendors, but was true in case the plaintiffs had elected to waive the condition as to prepayment. In effect, the plaintiffs by their own oaths, have testified to the exercise of their option in favor of letting the transaction stand as an unconditional and completed sale. The legal force of that conduct was to place the title to this property in their vendees, and having once placed it there, they could not, at will, retake the title so yielded up. The present suit can be vindicated by them only on the ground that their sworn statements in the first proceedings were knowingly untrue and the seizure of the defendants' property by virtue of it willfully illegal and oppressive. The law will not tolerate such perversions of truth and justice."

The foregoing is particularly important in view of the affidavits made by officers of the American Surety Company in the actions in the Supreme Court and in New York State which so clearly show its acceptance of the decree against William (affidavits of W. F. Conway and A. F. Egner).

In *Richardson* v. *Rittenhouse,* 44 N. J. L., 230, it was held that if the defendant, after an escape, surrenders himself to the sheriff, the plaintiff has his election either to bring his action against the sheriff for the escape, or to affirm the defendant in custody under the writ, and where the defendant, being in actual custody of the sheriff, gives a bond and inventory under section 2 of the Insolvent Laws,

and applies to the court for the benefit of said laws, if the plaintiff having knowledge of the escape appears in court as a creditor, and opposes the debtor's discharge, and he is thereupon remanded and surrenders himself into the custody of the sheriff, the election is made and the action for escape is waived.

In *Harrison* v. *Overmeyer,* 72 N. Y. Supp., 270, it was held that where the title of a person, who has taken a conveyance in fraud of creditors, has been declared void, and set aside in a suit by a receiver appointed in proceedings supplementary to execution, a money judgment cannot, in addition, be rendered against him in favor of the receiver.

In *Terry* v. *Munger,* 121 N. Y., 161, it was held that an action upon an implied contract to pay the value of property converted by the defendant, as upon a sale thereof by the plaintiff to him, waiving the *tort,* is an election of remedy which precludes a subsequent action against other persons to recover damages for their alleged conversion of the same property founded upon their participation in the same acts which in the first suit were treated as constituting a sale of the property, the court said:

> "The proof that an action of that nature had been in fact commenced would have been just as conclusive upon the plaintiffs upon the question of election (proof of knowledge of all the facts at that time being given) as would the judgment have been. It was not necessary that a judgment should follow upon the action thus commenced." * * *
>
> "The plaintiffs claim that the admission of such judgment violated the well-known

general rule that a judgment is not binding upon any but parties and privies. We think the decision does not trench upon the rule in question. If the judgment had been introduced for the purpose of proving any fact adjudicated thereby any fact in litigation therein or which properly might have been so litigated, the rule would doubtless apply and no such fact would or could be proved in favor of the defendant herein as against the plaintiffs by such judgment because the defendant was not a party or privy to it. It was not by way of estoppel, however, that the judgment was admissible. It was admissible for the sole purpose of showing that the plaintiffs had elected to treat the taking of this property as a sale and this was shown by a perusal of the complaint therein."

At page 168, the court continued:

"When it becomes necessary to choose between inconsistent rights and remedies, the election will be final and cannot be reconsidered even where no injury has been done by the choice or would result from setting it aside."

In the case at bar, the complainant brought its suit to set aside the conveyance to Isabelle. In this it did not succeed, but invoking the rule in *Post* v. *Stiger,* the complainant asked the court for, and obtained a judgment against William for the full amount of its claim upon the ground that the property conveyed by him had exceeded in value that claim. Was not this an election to proceed against William for damages and an acquiescence in the determination of the court as to the *bona fide* nature of the conveyance to Isabelle? Is this not par-

ticularly so, in view of the positive steps in enforcement of that election taken by the complainant with full knowledge of all the circumstances? Obviously the court below would not have given the judgment against William unless it had dismissed the bill as against Isabelle. The authorities leave no doubt, therefore, that in view of this inter-dependent nature of the two portions of the decree, the complainant could not accept the benefit of the one part, without at the same time acquiescing in and accepting the other part.

In *Krauss* v. *Krauss,* 74 N. J. Eq., 417 (E. & A.), 1908, Krauss was held in contempt of court for failure to pay alimony, and was imprisoned. The court made an order that he should be relieved and purged of his contempt and be discharged from further imprisonment upon several conditions. He performed these conditions and obtained his discharge. Thereafter he filed his petition of appeal from the order of the court granting his discharge upon the conditions named. In his petition of appeal he complained of each of the conditions imposed upon him. In deciding the case, this Court said:

> "The query now is whether after having secured by acceptance the benefit of the order by which he was set at liberty, and having returned, presumably, to his New York domicile, he can retain that benefit and at the same time challenge the validity of the condition upon which he obtained it. It is a settled rule that where a party recovers a judgment or decree and accepts the benefits thereof voluntarily and knowing the facts, he is estopped to afterwards reverse the judgment or decree on error.

> The acceptance operates as and may be pleaded as a release of error. 2 Cyc. Pl. & Pr. 174, 175; 2 Cyc. 651; Ell. App. Pro. 162. The language of the text in these books of authority is sustained by a great array of cases. From this rule springs the difference between the position of a party who pays a judgment against him and a party who accepts the payment of a sum awarded to him by the judgment. The former has his right of appeal because he receives no benefits from the judgment, while he who accepts the fruits of the judgment is estopped from appealing. Ell. App. Pro. 152. A party cannot avail himself of that portion of the decree which is favorable to him and secure its fruits while prosecuting an appeal to reverse such portion as mitigates against him. Moore *v.* Wilhauer, 29 Ill. App., 597."

The rule that a party may not accept that part of the decree which is favorable to him, and appeal from the rest of it, where the disposition of the appeal might affect his right to the part which he accepts, has been settled by numerous authorities. Reference need be made only to a few in illustration of this rule.

The leading case of *Murphy* v. *Spaulding,* 46 N. Y., 556, is quite in point.

Here the plaintiff in his complaint asked judgment that the defendant be compelled to convey a certain piece of land to him, or if such conveyance should be impracticable, that the defendant be adjudged to pay him damages for not conveying. Judgment was that plaintiff was not entitled to a conveyance, but was entitled to damages for non-conveyance. The plaintiff entered judgment for damages and

then appealed from that part of the judgment which refused him specific performance. Folger, *J.*, said at page 559:

"But the appellate court cannot properly reverse the judgment as to the part specified by the plaintiff and allow the part not complained of by him to stand. The provisions of the judgment are connected and dependent. The parts specified by the notice of appeal should not be reversed without a reversal of the other. (Bennett *v.* Van Syckel, 18 N. Y., 481.) If it should be found on review that the plaintiff is entitled to a conveyance of the premises, and conveyance must be adjudged, then he is not entitled to damages because a conveyance is not and cannot be made. And then to do justice to all, the whole of the judgment should be reversed.

If then, the plaintiff has elected to accept the judgment so far as it is in his favor, he cannot appeal from it so far as it is not.

All that there is in the papers which shows an election by the plaintiff, is the motion for judgment for him and the entry of it by his attorney. The plaintiff was not obliged to enter that part of the judgment which was in his favor, to enable him to appeal from the other part, which was in favor of the defendant Spaulding, and was entered on motion in behalf of her. So that his action in that regard cannot be charged to that motive. His joining in the entry of judgment, we must infer, was to secure to himself the advantageous part of it. By entering it he has claimed the right which the judgment gave him, and

he has it in his power at any time to enforce it. It is inconsistent to claim and accept this, and seek to avoid the other."

See also

Bennett v. *Van Syckel,* 18 N. Y., 481.
Alexander v. *Alexander,* 104 N. Y., 643.
Miller v. *Thomas,* 15 Pac. (Cali.), p. 55.

In *Stern* v. *Vert,* 108 Ind., 232, it was said:

"Having availed herself of so much of the decree as was favorable to her, both the statute (sec. 632) and the common law affirmed that an appeal is thereafter denied to the appellant. Any other rule might result in bringing about embarrassing complications and manifest injustice to the appellees, in case a reversal of the decree should result. The decree appealed from, and which was in force when the land was sold, having exempted the lands claimed by the appellees from the lien of the mortgage, they may not have deemed it of any importance to them to see that the other two tracts sold for a sum sufficient to pay the appellant's debt, or for the best price which might have been obtained. The appellant may have thereby secured a bargain in the purchase. If she may now hold on to what she has thus acquired, and yet reverse the judgment so far as it is unfavorable to her, the appellees will not be in the same situation they would have occupied in case the reversal had been secured before the sale of the other tracts. When the decree appealed from was rendered, the appellant had the election either to appeal, or to adopt the decree as it was, and avail herself of its benefits. Having decisively elected to pursue the latter course, she

must now be confined exclusively to the course first adopted. Every consideration leads to the conclusion that the appeal cannot now be maintained."

In *Bolan* v. *Cumby,* 14 S. W. Rep., 926, the rule is consisely stated:

"Again a party may prosecute his appeal from a judgment partly in his favor and partly against him, even after accepting the benefit awarded him by the judgment, provided the record discloses that what he recovers is his in any event, that is, whether the judgment be reversed or affirmed. But he waives his right to an appeal by accepting a benefit which is inconsistent with the claim of right he seeks to establish by the appeal."

In *Flanders* v. *Town of Merrimac,* 44 Wis., p. 623, the court said:

"The appellant having accepted at the hands of the court the order applied for by him must take it with the burdens imposed. If not satisfied to accept the burdens, he must refuse the benefits."

In *Jarvis* v. *Mitchel,* 99 Mass., 530, it was said:

"A plaintiff in a trustee process in whose favor final judgment is rendered against the principal defendant but the trustee discharged in the Superior Court, and who after appealing from the discharge of the trustee takes out execution in that court against the principal defendant thereby waives his appeal." * * * At page 532 the court says "Under our present system of practice the plaintiff's appeal from the discharge of the trustee transferred that

question only, and not the whole case to this court. Gen. Stat. at page 115, sec. 12. The case remained in the court below. If the plaintiff intended to proceed further against the trustee, he should have had the case continued for judgment against the principal defendant. By taking final judgment and execution against him there (as it is admitted that he did) before the trustee had been charged by the court, he waived all further proceedings against the trustee as much as if he had entered of record, a discontinuance or a release."

In *Tyler* v. *Shea,* 61 N. W. Rep., 468, the judgment appealed from declared that respondents would be entitled to a deed of certain land from appellant provided they paid appellant a sum of money and delivered to him a note and mortgage for a further sum within ninety days after date of the decree. In case of their failure so to do their rights were to be barred and the appellant was to be immediately entitled to the exclusive possession of the property. Appellant applied to the court for an order awarding him execution to put him in possession of the land, claiming that respondents were in default. His application having been denied he appealed. The court held that by accepting a benefit under the judgment, *i. e.,* the right to be heard whether he was entitled to possession thereunder, he had waived his right to appeal from the judgment for the purpose of having the case tried anew. Thus the opinion says:

"It is the possibility that his appeal may lead to a result showing that he was not entitled to what he has received under the judgment appealed from that defeats his right of appeal. When there is no such

possibility the right to appeal is unimpaired by the acceptance of the benefits, under the judgment appealed from. * * * Can a party seek to avail himself of the benefit of a clause in a judgment giving him possession of land after certain time has elapsed and yet by appeal ask for a new trial of the case which may result in a decision that he was not entitled to possession at the time he sought to obtain it? We are clear that he cannot. The appellant could not ask for a new trial of the case with reference to those provisions which were against him and at the same time insist that the balance of the judgment favorable to him should stand without investigation. * * * But it is urged that appellant did not waive his right to appeal because he did not in fact secure possession of the land. His application for an order that execution issue to put him in possession was denied. This contention does not meet the question. The appellant waived his right to appeal if he obtained any benefit under the judgment which on the appeal may be taken from him. He applied for an order that an execution might issue to put him in possession. Whence did he derive the right to make this application if not from a judgment? Was it not a valuable right, the right to be heard whether he should have the benefit of that portion of the judgment which was favorable to him? Was not that right exercised by him? Is he not still exercising it by appealing to this court from the order denying his application for an execution? He enjoyed in the court below, and is enjoying in this court a right under this

very judgment which he is appealing from. Were it not for this judgment he would have nothing to hang a hope upon, he would not be here with his appeal from the order. The judgment gave him a right to be heard, whether an execution should issue. It is a valuable right. It is one he could not have exercised without the judgment and he has enjoyed the benefit of it. The inconsistency of these two appeals is apparent when we consider that we might if we entertain them both hold, on the appeal from the order that the appellant was entitled to execution when he applied for it, and at the same time hold on the appeal from the judgment that the defendants should have ninety days after the rendition of the judgment in this court in which to make the necessary payment to secure title and that during that time the appellant should not have possession. We have no doubt that the appellant accepted such a benefit under the judgment as precludes his right to appeal from it, the benefit being one which his appeal from the judgment might show he was not entitled to." (Citing Murphy *v.* Spaulding, *supra,* and other cases.)

This statement of the rule was quoted with approval in *Mead Plumbing, &c., Co.* v. *Irwin,* 109 N. W. (Neb.) 391.

Under the above authorities, we most earnestly and respectfully submit that the present appeal is not proper.

The affidavit filed on behalf of the appellant upon this motion admits the taking of all of the steps by the complainant mentioned above. There can be no question, of course, that the complain-

ant was not entitled to any relief in this suit against William F. Conway except as and to the extent which he disposed of real estate involved in the suit. Therefore the references to tracts called A, B, and E, in the affidavit filed on behalf of the appellant are merely misleading. These tracts were not involved in the suit; hence the judgment given against William, because of the fact that he had disposed of tracts 2 to 10 inclusive, and tract 12 involved in this suit, cannot, in any event, in whole or in part, be justified in the case of the reversal of that part of the decree affecting Isabelle Conway because of the disposal of tracts A, B, and E which were not at all involved. The mere statement of this proposition demonstrates its obviousness. Furthermore, the affidavit with respect to these tracts, as shown by the replying affidavits, is not accurate. Tract A was purchased by William at a Sheriff's sale, at which he paid the full consideration. Hence he did not, at any time, hold the property as trustee for his father's creditors. Tract B was conveyed by him to Isabelle, and under Vice-Chancellor Stevens' opinion, she held it free of any claim. She sold the property and she received the consideration therefor. Tract E, as already stated, as well as tracts A and B, are not involved in this suit. The recital in the decree, which has already been referred to, shows clearly that tracts A, B and E were not considered by the Court in pronouncing the judgment against William, as indeed it would not have been proper for the Court to consider them. The allegations in the appellant's affidavit as to the value of these lands, as to the placing of the mortgages thereon, &c., are mere conjecture, and ill-founded conjecture as the reply affidavits show. Furthermore, who can tell what may hap-

pen upon the supplementary proceedings against William F. Conway under the judgment secured by the complainant in the Supreme Court. In any event the complainant now has an absolute and unqualified judgment for the full amount of its claim against William. The complainant could not possibly have been entitled to this if the decree as to Isabelle had not been justified. The property conveyed to Isabelle, as shown by the decree prepared by the complainant's solicitors is worth more than enough to pay complainant's claim, should it become subject thereto. Undoubtedly, therefore, the appellant is seeking to justify and advance inconsistent claims. The mere fact that the affidavit states that the complainant intended to waive nothing, of course cannot affect the situation. It is familiar law that persons are presumed to intend the legal consequences of their acts. Particularly is this true of a resourceful surety company acting under the advice of eminent counsel. The fact is, that the complainant's action, taken during the time within which an appeal might have been taken, amounted to an election to accept the entire decree. If the complainant subsequently and at the very last moment changed its mind (and there is no evidence that the complainant has ever determined in any way to relent upon its judgment against William) the answer is that the election, once made, cannot be recalled. Our law cannot countenance the juggling by a party with decrees in Chancery as caprice or changing interest or circumstance may dictate. In the case at bar this action is neither consistent with a proper respect for the court below which pronounced the decree nor for the Supreme Court which gave its judgment upon the faith of the decree. (*Schmidt* v. *Oregon*, 40 Pac. 406.)

The language of the court in *Corwin* v. *Shoup*, 76 Ill. 246, is quite in point:

> "Where a party has submitted to the decree and acted under it, and obtained an advantage, he cannot be permitted to ascertain the practical effect upon his rights by that course of proceeding, and then, when dissatisfied with the result, take another."

In proceeding against the land owned by Annie also, the complainant has evinced its election to abide by the decree as a whole. The conveyances to Annie were not shown to be fraudulent as far as Annie was concerned, but the conveyances were not sustained because, in the opinion of the Vice-Chancellor, Annie did not prove full consideration. In other words, Annie was a mere volunteer. Now it is obvious that Isabelle did give a consideration, namely, marriage, so that if the appellant succeeds upon this appeal, it must be on the ground that Isabelle was a party to the fraud. This would make the conveyance to her void, not because of lack of consideration, but because of participation in the fraud. If this were the result, Annie as a mere volunteer would be entitled to insist that the complainant's claim should first be paid out of the property held by Isabelle, a fraudulent grantee, before resort was had to the property held by Annie, a volunteer. This result is no longer possible, since the decree has been executed as far as Annie is concerned. Again the election appears plainly.

Thus in *Walker* v. *Bank of Manchester*, 79 S. W. (Ken.) 222, it was held that the court would require

> "the subjection first of the property conveyed fraudulently before that conveyed innocently,"

though without consideration.

The unreported decision of this court on the motion to dismiss the writ of error in the case of *Harris* v. *D., L. & W. R. R. Co.*, which was argued before this court on May 14th, 1909, is quite in point. There this court dismissed a writ of error brought to review a judgment of the Supreme Court reversing a judgment of the Morris County Court of Common Pleas and awarding a *venire de novo,* upon the ground that the plaintiff, by giving notice of trial in the Morris County Common Pleas, after the judgment of the Supreme Court, had elected to accept the judgment and waive his appeal.

It is therefore most earnestly submitted that upon all the grounds set forth in the respondent's notice of motion to dismiss, all of which are specifically urged at this time, the complainant's right of appeal has been waived and relinquished; and accordingly the respondent's motion should be granted.

Respectfully advised,

ROBERT H. McCARTER,
ARTHUR F. EGNER,
Of Counsel with Defendant-Respondent.

March Term, 1917.

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Bill of Complaint.

Filed July 14, 1914.

In Chancery of New Jersey.

To his Honor, Edwin R. Walker, Chancellor of the State of New Jersey.

Complaining shows unto your Honor your orator, American Surety Company of New York, a corporation existing under and by virtue of the laws of the State of New York, on behalf of itself and all other creditors of James Conway, now deceased, similarly situated to your orator, who shall come in and contribute to the expenses of this suit:

(1) That on and before the twenty-second day of January, nineteen hundred and two, one James Conway of the City of Newark in the County of Essex and State of New Jersey, now deceased, was seized and possessed in fee simple of all those tracts or parcels of land hereinafter mentioned and described, situate in said City of Newark in the County of Essex and State of New Jersey; that is to say:

First Tract: Beginning at a point in the westerly line of North Fourth street two hundred and thirty-five feet southerly from the corner of same and Second avenue; thence running (1) westerly at right angles to North Fourth street one hundred feet; thence (2) southerly parallel with North Fourth street twenty-five feet; thence (3) easterly parallel with Second avenue one hundred feet to North Fourth street; thence (4) northerly along same

twenty-five feet to beginning. Being lot 15, Block 1952, City Block Maps of Newark.

Being the same premises conveyed to the said James Conway by the Mayor and Common Council of the City of Newark as the third tract in a deed dated October 25, 1895, and recorded in the office of the Register of Essex County in Book L. 29 of Deeds for said county, on pages 305, etc.

SECOND TRACT: Beginning at the intersection of the northeasterly line of Central avenue with southeasterly line of South Seventh street; from thence running along the line of Central avenue south sixty-two degrees forty-five minutes east fifty feet to land of James Conway; thence north twenty-seven degrees fifteen minutes east seventy-five feet eleven inches; thence north seventy-seven degrees fifty-five minutes east seventy-five feet eleven inches to westerly line of Warren street; thence along line of same north twelve degrees forty-five minutes west one hundred seventy-one feet six and three-fourths inches to aforesaid line of South Seventh street; thence along line of South Seventh street south twenty-seven degrees fifteen minutes west two hundred fifty-six feet nine and three-fourths inches to place of beginning.

Being the same premises conveyed to the said James Conway by John H. Kase and wife by deed dated July 2, 1880 and recorded in the office of the Register of Essex County in Book T. 20 of Deeds for said county, on pages 552, etc.

THIRD TRACT: Beginning at the intersection of the northeasterly line of Central avenue with westerly line of Warren street; from thence running along line of Central avenue north sixty-two

degrees forty-five minutes west one hundred sixty feet five inches; thence north twenty-seven degrees fifteen minutes east seventy-five feet eleven inches; thence north seventy-seven degrees fifty-five minutes east seventy-five feet eleven inches to the aforesaid line of Warren street; thence running along line of same south twelve degrees forty-five minutes east one hundred sixty feet five inches to place of beginning.

Being the same premises conveyed to the said James Conway by David Young, executor of Hugh Smith, by deed dated March 14, 1878, and recorded in the office of the Register of Essex County in Book S. 19 of Deeds for said county, on pages 263, etc.

Fourth Tract: Beginning in the southerly line of Cabinet street at a distance of fifty-four feet six inches easterly from easterly line of Camden street; thence (1) along line of Cabinet street south sixty-two degrees thirty minutes east forty-five feet six inches; thence (2) south twenty-seven degrees thirty minutes west seventy-five feet; thence (3) north sixty-two degrees thirty minutes west forty-five feet six inches; thence (4) north twenty-seven degrees thirty minutes east seventy-five feet to line of Cabinet street and place of beginning.

Being a portion of the same premises conveyed to the said James Conway by Hugh Smith and wife, by deed dated October 30, 1866, and recorded in the office of the Register of Essex County, in Book F. 13 of Deeds for said county, on pages 14, etc.

Fifth Tract: Beginning at a point in the westerly line of Bergen street southerly fifty feet from Cabinet street; thence (1) westerly parallel

with Cabinet street one hundred feet; thence (2) northerly parallel with Bergen street fifty feet to Cabinet street; thence (3) easterly along Cabinet street one hundred feet to Bergen street; thence (4) southerly along Bergen street fifty feet to beginning. Being lots 302 and 303 of Thomas F. Johnson property.

Being the same premises conveyed to the said James Conway by William Silvey, Jr., and wife by deed dated February 21, 1872, and recorded in the office of the Register of Essex County in Book G. 16 of Deeds for said county, on pages 192, etc.

SIXTH TRACT: Beginning at the intersection of the easterly line of South Sixth street with southwesterly line of Warren street; thence running along line of Warren street in a southerly direction seventy-three feet one inch; thence south thirty-five degrees fifty-eight minutes west seventy feet one-fourth inch; thence north sixty-one degrees thirty-two minutes west thirty-eight feet four inches to said easterly line of South Sixth street; thence along same north twenty-eight degrees twenty-eight minutes east one hundred twenty-five feet to place of beginning.

Being the same premises conveyed to the said James Conway by Bernard (Barney) McCormick by deed dated July 29, 1889, and recorded in the office of the Register of Essex County in Book V. 24 of Deeds for said county, on pages 562, etc.

SEVENTH TRACT: Beginning at the northeasterly corner of South Sixth street and Eleventh avenue; thence (1) along the northerly line of Eleventh avenue fifty feet; thence (2) northeasterly about fifty-one feet and seventeen one-hundredths of a foot; thence (3) about fifty feet to

line of South Sixth street; thence (4) southwesterly fifty-one and seventeen one-hundredths of a foot to beginning. Being lot 41, Block 1831, Block Maps City of Newark.

Being the same premises conveyed to the said James Conway by the Mayor and Common Council of the City of Newark as the second tract in a deed dated October 25, 1895, and recorded in the office of the Register of Essex County in Book L. 29 of Deeds for said county on pages 305, etc.

EIGHTH TRACT: Beginning at a point on the north side of Eleventh avenue distant seventy feet easterly from the corner of Eleventh avenue and Nicolay (now South Sixth street); thence (1) northerly forty-one feet more or less to or in a driftway to the middle of same, or more or less, wherever said line may come; thence (2) westerly twenty feet parallel with Eleventh avenue; thence (3) southerly from said line at or in said driftway and parallel with Nicolay street forty-one feet more or less to Eleventh avenue; thence (4) easterly along north line of Eleventh avenue twenty feet to beginning. Being lot 40, Block 1831 on map annexed to Report No. 17 of Commissioners of Adjustment.

Being the same premises conveyed to the said James Conway by the Mayor and Common Council of the City of Newark by deed dated November 12, 1895, and recorded in the office of the Register of Essex County in Book L. 29 of Deeds for said county, on pages 372, etc.

NINTH TRACT: Beginning at a point in the northerly line of Central avenue distant fifty feet westerly from the northwesterly corner of Central avenue and North Fifth street, as the same are laid down on the map hereinafter mentioned;

thence (1) westerly along the northerly line of Central avenue thirty-two and ninety-five one-hundredths feet to northeasterly corner of Central avenue and Warren street; thence (2) northerly along easterly line of Warren street forty and eighty one-hundredths feet; thence (3) north sixty-eight degrees thirty-eight minutes east sixty-four and eighty-three one-hundredths feet; thence (4) north thirty-three degrees fifty minutes east twenty-eight and eighty-five one-hundredths feet; thence (5) south fifty-six degrees twelve minutes east twenty-five feet more or less to northwesterly corner of lot No. 5 on map (hereinafter mentioned); thence (6) southerly along westerly line of said Lot No. 5 one hundred and four and fifty-six one-hundredths feet to Central avenue and beginning. Being lots 4 and 3½ on map "Property of Estate of John H. Kase, deceased, C. M. Kase, Admr."

Being the same premises conveyed to the said James Conway by Charles M. Kase and wife by deed dated February 1, 1898, and recorded in the office of the Register of Essex County in Book F. 31 of Deeds for said county, on pages 480, etc.

TENTH TRACT: Beginning at a point in the northerly line of Central avenue distant twenty-five feet westerly from the northwesterly corner of Central avenue and North Fifth street, as the same are laid down on the map hereinafter mentioned; thence (1) westerly along northerly line of Central avenue twenty-five feet to southeasterly corner of lot 4 on map (hereinafter mentioned); thence (2) northerly along easterly line of lot 4 one hundred and four and fifty-six one-hundredths feet; thence (3) south fifty-six degrees twelve minutes east twenty-four and fifty-

eight one-hundredths feet to northwesterly corner of lot No. 6; thence (4) southerly along westerly line of lot 6 one hundred feet to Central avenue and beginning. Being lot No. 5 on "Map of property of John H. Kase, deceased, Charles M. Kase, Admr."

Being the same premises conveyed to the said James Conway by Charles M. Kase and wife by deed dated April 25, 1901, and recorded in the office of the Register of Essex County in Book H. 34 of Deeds for said county, on pages 245, etc.

ELEVENTH TRACT: Beginning in northerly line of Pennington street at a point in said line three hundred seventy feet easterly from the easterly line of New Jersey Railroad avenue; running thence along the northerly line of said Pennington street south sixty degrees east thirty feet; thence north thirty degrees east eighty-four feet ten inches; thence north sixty-three degrees forty minutes west thirty feet, more or less; thence south thirty degrees west eighty-two feet nine inches to place of beginning. Being lot No. 61 on Block No. 924, as laid down on Block Maps of City of Newark.

Being the same premises conveyed to the said James Conway by the Mayor and Common Council of the City of Newark, as the fifth tract in a deed dated October 25, 1895, and recorded in the office of the Register of Essex County in Book L. 29 of Deeds for said county, on pages 305, etc.

(2) That on or about the tenth day of April, nineteen hundred and one, one Daniel F. Minahan and one Antonio Costa, partners composing the firm of Minahan & Costa, as principals, and your orator, as surety, did execute and deliver three

certain bonds to the Town of Wakefield in the State of Massachusetts, conditioned for the proper performance of certain contracts for building Sections 1, 2 and 3, respectively, of the Wakefield Sewerage System in said Town of Wakefield; that in consideration of your orator's executing said bonds as surety the said Daniel F. Minahan, Antonio Costa and one Lawrence T. Fell did by writing under seal dated on said tenth day of April, nineteen hundred and one, agree to indemnify your orator for any loss which it might sustain by reason of its liability upon said three bonds; that thereafter and on or about the twenty-sixth day of June, nineteen hundred and one, in consideration of the release by your orator of the said Antonio Costa and the said Lawrence T. Fell from all liability or responsibility to your orator as indemnitors as aforesaid, the said James Conway, together with the said Daniel F. Minahan and one William Hanna, did by a certain other writing under seal, dated, executed and delivered on said twenty-sixth day of June, nineteen hundred and one, jointly and severally undertake and agree to indemnify and save your orator harmless from and against every claim, demand, liability, cost, charge, expense, suit, order, judgment and adjudication whatsoever by reason of any obligation theretofore or thereafter entered into by the said Daniel F. Minahan and William Hanna and the said James Conway, or by someone or more of them, or by the firm of Minahan & Costa, as principals, and your orator, as surety, and to place your orator in funds to meet every such claim, demand, liability, cost, charge, expense, suit, order or adjudication against it by reason of any obligation theretofore or thereafter entered into by the said Daniel

F. Minahan and William Hanna and the said James Conway, or by some one or more of them, or by the firm of Minahan & Costa, as principals, and the said plaintiff, as surety.

(3) That on the ninth day of January, nineteen hundred and two, the Board of Sewer Commissioners of said Town of Wakefield notified your orator by letter that a vote had been passed by said Board of Sewer Commissioners that the firm of Minahan & Costa, the contractors for the work on said Sections 1, 2 and 3 of the Wakefield Sewerage System, be immediately notified to discontinue all work under their contracts for work on said sections; that on the thirteenth day of January, nineteen hundred and two, your orator by letter dated on said day advised the said James Conway of the situation enclosing a copy of said letter of the Board of Sewer Commissioners of the Town of Wakefield, dated January ninth, nineteen hundred and two; that said letter of your orator to said James Conway, dated January thirteenth, nineteen hundred and two, concluded with a request to the said James Conway to advise your orator of said Conway's wishes in the matter, and to report to your orator the situation, the reasons for the forfeiting of the contract, and what action the said James Conway proposed to take to protect your orator from loss by reason of its suretyship; that the said James Conway had been engaged in the actual work of the construction of said sewers in said Town of Wakefield for several months prior to the month of January, nineteen hundred and two, and that he was entirely familiar with the situation as to the construction of said sewers, even without the notification aforesaid of your orator to the said James Conway; that thereafter suit was brought

in the Superior Court of the County of Suffolk in the State of Massachusetts against your orator by said Town of Wakefield for the breach of said three bonds executed by your orator as surety for the said firm of Minahan & Costa as aforesaid; that the plaintiff in said action, to wit, the Town of Wakefield, recovered a judgment against your orator and that your orator was compelled to pay and did pay to the Town of Wakefield for said judgment and costs on June eighth, nineteen hundred and eleven, a sum in excess of forty-five thousand dollars ($45,000); that your orator was represented throughout the trial of said action resulting in said judgment by counsel of the selection of the said James Conway; and that the said Conway himself attended the trial and gave testimony.

(4) That on or about the seventh day of September, nineteen hundred and eleven, your orator commenced a suit against the said Conway in the Supreme Court of New Jersey upon the agreement above referred to of the said James Conway, dated the twenty-sixth day of June, nineteen hundred and one, to indemnify your orator from and against all loss by reason of its suretyship aforesaid; that in said suit your orator further set up a claim for premiums due from the said James Conway to your orator under the terms of said indemnity agreement; that such proceedings were had in said suit that afterwards, to wit, on the seventh day of May, nineteen hundred and fourteen, your orator recovered a judgment against one Mary L. Mason, the administratrix of the said James Conway (the said James Conway having departed this life in the course of said proceedings as will be hereinafter more particularly set forth) for the

sum of fifty-six thousand one hundred and thirty-three dollars and seventy-five cents ($56,133.75) damages, and two hundred and ninety-six dollars and seventy-three cents ($296.73) costs.

(5) That the said James Conway departed this life on or about the fourth day of April, nineteen hundred and thirteen, leaving him surviving his widow, Bridget D. Conway, a son, William F. Conway, and two daughters, Mary L. Conway Mason and Helen D. Conway Kelly; that letters of administration upon the estate of said James Conway were issued to the said Mary L. Mason on or about the thirtieth day of March, nineteen hundred and fourteen; that the said administratrix has stated, and that your orator therefore is informed and believes, that the value of the personal estate left by the said James Conway is nominal merely and that same does not exceed the sum of two hundred and fifty dollars ($250.00); that the husband of the said Mary L. Mason is one James L. Mason, and that the husband of the said Helen D. Conway Kelly is one William A. Kelly.

(6) That the said James Conway, being so seized and possessed of said tracts of land and premises as aforesaid, after the notice dated January thirteenth, nineteen hundred and two, was sent to him by your orator as aforesaid, advising him of the action of the Board of Sewer Commissioners of the Town of Wakefield, did on or about the dates or times and by the pretended deeds hereinafter mentioned, and in order to secure the said lands and premises for his own use and benefit, and to protect same from any claim of your orator against him upon the indemnity agreement aforesaid, and to prevent

your orator from collecting any judgment recovered by your orator upon the indemnity agreement aforesaid, contriving to defraud your orator, by deed dated on the twenty-eighth day of January, nineteen hundred and two, and recorded on the third day of February, nineteen hundred and two, in the office of the Register of Essex County in Book Y. 34 of Deeds for said county, on pages 389, etc., pretend to convey the first and eleventh tracts above described for the nominal consideration of one dollar to one Annie L. Conway, the sister of the said James Conway; that the said Annie L. Conway is still living and is unmarried and that she still has the record title to said first and eleventh tracts.

(7) That under the circumstances and for the purposes above set forth, the said James Conway did by deed dated on said twenty-eighth day of January, nineteen hundred and two, and recorded on said third day of February, nineteen hundred and two, in the office of the Register of Essex County in Book Y. 34 of Deeds for said county, on pages 385, etc., pretend to convey the second and third tracts above described for the nominal consideration of one dollar to one James Dolan; and did by deed dated on said twenty-eighth day of January, nineteen hundred and two, and recorded on said third day of February, nineteen hundred and two, in the office of the Register of Essex County in Book X. 34 of Deeds for said county, on pages 526, etc., pretend to convey the fourth tract above described for the nominal consideration of one dollar to his said daughter, Mary L. Conway (now Mary L. Mason); and did by deed dated on said twenty-eighth day of January, nineteen hundred and

two, and recorded on said third day of February, nineteen hundred and two, in the office of the Register of Essex County in Book Y. 34 of Deeds for said county, on pages 394, etc., pretend to convey the fifth tract above described for the nominal consideration of one dollar to his said daughter, Helen D. Conway (now Helen D. Kelly); and did by deed dated on the twenty-second day of January, nineteen hundred and two, and recorded on the said third day of February, nineteen hundred and two, in the office of the Register of Essex County in Book Y. 34 of Deeds for said county, on pages 391, etc., pretend to convey the sixth, seventh, eighth, ninth and tenth tracts above described for the nominal consideration of one dollar to the said William F. Conway, the son of the said James Conway.

(8) That by deed dated on or about the twenty-sixth day of December, nineteen hundred and five, and recorded in the office of the Register of Essex County in Book M. 39, page 263, etc., one Charles M. Kase and wife conveyed to the said James Conway the following described tract of land situate in said City of Newark in the County of Essex and State of New Jersey, hereinafter referred to as the twelfth tract:

Twelfth Tract: Beginning at a point in the westerly line of North Fifth street distant one hundred feet northerly from the northwesterly corner of same and Central avenue; thence (1) northerly along North Fifth street fifty-one and seventy-one and one-hundredths feet; thence (2) north fifty-six degrees and twelve minutes west ninety-eight and thirty-three one-hundredths feet; thence (3) south nineteen degrees thirteen minutes west fifty-eight and thirty-one one-hundredths feet to rear line of lots fronting on War-

ren street; thence (4) south fifty-six degrees twelve minutes east along rear line of lots fronting on Warren street and Central avenue fifty-nine and eighteen one-hundredths feet; thence (5) along rear line of the lot on northwest corner of Central avenue and North Fifth street twenty-five feet to beginning. Being lots 7 and 8 on map of property belonging to John H. Kase, deceased.

(9) That under the circumstances and for the purposes above set forth the said James Conway did by deed dated on the twenty-sixth day of March, nineteen hundred and six, and recorded on the thirty-first day of March, nineteen hundred and six, in the office of the Register of Essex County in Book A. 40 of Deeds for said county, on pages 145, etc., pretend to convey the said twelfth tract above described for the nominal consideration of one dollar to the said William F. Conway, the son of the said James Conway.

(9-a) That the said Bridget D. Conway, wife of the said James Conway, joined in all of the above mentioned conveyances of the said James Conway.

(10) That by the deeds hereinafter mentioned the following pretended conveyances were made, each for the nominal consideration of one dollar, of the said second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and twelfth tracts (the first and eleventh tracts being still nominally in the said Annie L. Conway as above set forth):

Second and Third Tracts: The said James Dolan by deed dated on said twenty-eighth day of January, nineteen hundred and two, and re-

corded on said third day of February, nineteen hundred and two, in Book Y. 34, 387, etc., to Bridget D. Conway for life, and after her death to Mary L. Conway (now Mason), Helen D. Conway (now Kelly) and William F. Conway in fee.

The said Helen D. Conway by deed dated on the first day of October, nineteen hundred and four, and recorded on the fifteenth day of October, nineteen hundred and four, in Book B. 38-75, etc., to her mother, Bridget D. Conway. (The marriage of the said Helen D. Conway to the said William A. Kelly took place on October seventeenth, nineteen hundred and four.)

The said Mary L. Mason (formerly Conway) and James L. Mason, her husband, William F. Conway, Bridget D. Conway and James Conway, her husband, by deed dated on October fourth, nineteen hundred and nine, and recorded on October fifteenth, nineteen hundred and nine, in Book A. 46-249, etc., to David Young.

The said David Young and Mary Ella Young, his wife, by deed dated on May twentieth, nineteen hundred and twelve, and recorded on May twenty-second, nineteen hundred and twelve, in Book U. 50-440, etc., to the said William F. Conway.

FIFTH TRACT: The said Helen D. Conway (now Kelly) by deed dated on October first, nineteen hundred and four, and recorded on October fifteenth, nineteen hundred and four, in Book B. 38-77, etc., to her said mother, Bridget D. Conway.

FOURTH AND FIFTH TRACTS: The said Mary L. Mason (formerly Conway) and James L. Mason, her husband, and Bridget D. Conway

and James, her husband, by deed dated on May twenty-sixth, nineteen hundred and nine, and recorded on May twenty-ninth, nineteen and nine, in Book F. 45-384, etc., to one John F. Conroy.

The said John F. Conroy and Margaret E. Conroy, his wife, by deed dated on May twenty-second, nineteen hundred and twelve, and recorded on June third, nineteen hundred and twelve, in Book U. 50-472, etc., to the said William F. Conway.

SIXTH, SEVENTH AND EIGHTH TRACTS: The said William F. Conway by deed dated on June first, nineteen hundred and nine, and recorded on June fourth, nineteen hundred and nine, in Book F. 45-411, etc., to one Edward B. Reiley.

The said Edward B. Reiley and Bessie A. Reiley, his wife, by deed dated on May twenty-fourth, nineteen hundred and twelve, and recorded on June sixth, nineteen hundred and twelve, in Book F. 51-236, etc., to the said William F. Conway.

NINTH, TENTH AND TWELFTH TRACTS: The said William F. Conway by deed dated on June twenty-eighth, nineteen hundred and nine, and recorded on July third, nineteen hundred and nine, in Book F. 45-595, etc., to John F. McGrath.

The said John F. McGrath and Frances A. McGrath, his wife, by deed dated on May twenty-fourth, nineteen hundred and twelve, and recorded on June ninth, nineteen hundred and twelve, in Book V. 50-520, etc., to the said William F. Conway.

(11) That your orator is informed and believes that the said William F. Conway married one Isabelle E. McGrath on or about the first day of July, nineteen hundred and twelve.

(12) That in order further to secure the said property from the just claims of your orator, and to prevent your orator from collecting its said claim, contriving to defraud your orator, the said William F. Conway, at the request and with the consent of his said father, did by deed purporting to be dated on the twenty-seventh day of June, nineteen hundred and twelve, and recorded on the first day of July, nineteen hundred and twelve, in the office of the Register of Essex County, on pages 160, etc., pretend to convey the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and twelfth tracts above described for the nominal consideration of one dollar and for the further alleged consideration of marriage to the said Isabelle E. McGrath.

(13) That your orator has been informed and believes it to be true and therefore expressly charges that no consideration whatever was paid for any of the above mentioned conveyances, and that the said last mentioned conveyance alleged to be in consideration of marriage was not so in fact, but was entirely without consideration and for the sole purpose of defrauding your orator, and that the said Isabelle E. McGrath had full knowledge at and before the time of said conveyance to her of the indebtedness of the said James Conway to your orator, and of the purpose of the said William F. Conway to defraud your orator by making said last mentioned deed to said Isabelle E. McGrath upon the alleged considera-

tion of one dollar and marriage; and that all of the above mentioned conveyances were made for the purpose and with the intent to hinder, delay and defraud your orator in the collection of its said claim against the said James Conway, and that said conveyances have delayed and embarrassed your orator in obtaining satisfaction of its said claim; that by the pretended conveyances above set forth the said James Conway deeded away all the real estate then owned by him, and that at the death of the said James Conway there was no real estate, the legal title to which stood in the name of the said James Conway; that your orator is informed and believes it to be true and therefore expressly charges that the said James Conway up to the time of his death held, occupied, possessed, enjoyed and received the rents and profits of said lands and premises so pretendedly conveyed by him as aforesaid as fully to all intents and purposes as before the said pretended conveyances; that your orator is further informed and believes it to be true that the heirs of the said James Conway since his death have always held, possessed, enjoyed and received the issues and profits of said lands and premises so pretendedly conveyed as aforesaid as fully to all intents and purposes as if said pretended conveyances had never been made.

(14) That inasmuch as the conveyances above mentioned are null, void and of no effect, all of the lands and premises above described descended to the three children of the said James Conway, to wit, the said William F. Conway, the said Mary L. Mason and the said Helen D. Kelly, subject to the lien of your orator upon said lands by reason of the said

indebtedness of the said James Conway to your orator; that no bona fide sale has been made of any of said lands and premises by any of the heirs of the said James Conway and that the said lien of your orator has continued and continues to the present time; that children were born alive of the marriage of the said Helen D. Conway and the said William A. Kelly capable of inheriting her interest in said lands, and that children were likewise born alive of the marriage of the said Mary L. Conway with the said James L. Mason capable of inheriting her interest in said lands; that by reason thereof the said William A. Kelly and the said James L. Mason claim or may claim to have some rights or interest in said lands as having descended to their respective wives; that the said Isabelle E. McGrath Conway, the wife of the said William F. Conway, claims or may claim an inchoate right of dower in said lands as having descended to the said William F. Conway, her husband, but your orator shows and charges that its said lien by reason of the facts hereinabove set forth fastened upon said lands immediately upon the death of the said James Conway as above set forth, and that your orator's said lien is prior and superior to any alleged right of curtesy, or otherwise, in the said William A. Kelly or the said James L. Mason, or to any alleged right of dower in the said Isabelle E. McGrath Conway.

(15) That your orator has frequently and in a friendly manner applied to the said William F. Conway, Isabelle E. McGrath Conway, his wife, Annie L. Conway, Mary L. Conway Mason, James L. Mason, Bridget D. Conway, widow

of the said James Conway, deceased, Helen D. Kelly and William A. Kelly, her husband, to pay the said indebtedness of the said James Conway, deceased, to your orator, and the judgment rendered thereon, as in equity and in good conscience they ought to have done, and as your orator well hoped they would have done, but which they have fully refused to do.

In consideration whereof and forasmuch as your orator is remediless in the premises at the common law and cannot have adequate relief except by the aid of this Honorable Court:

To the End Thereof, that the said William F. Conway, Isabelle E. McGrath Conway, his wife, John F. Conroy and Margaret E. Conroy, his wife, David Young, Mary Ella Young, his wife, Edward B. Reiley, Bessie A. Reiley, his wife, John F. McGrath, Frances A. McGrath, his wife, Annie L. Conway, unmarried, Mary L. Conway Mason, individually and as administratrix of James Conway, deceased, James L. Mason, husband of the said Mary L. Conway Mason, Bridget D. Conway, widow of James Conway, deceased, Helen D. Conway Kelly, William A. Kelly, her husband, and James Dolan, defendants hereto, may without oath, answer under oath being hereby expressly waived, full, true and perfect answer make to all and singular the premises according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said James Conway and conveyed as hereinabove mentioned, and what disposition has been made of or encumbrance put upon the same fully and particularly, and whether the same is encumbered, and if so, in what manner, in

whose favor, by whom, and to what amount, and whether such conveyances as before mentioned were made of the said real estate, and if so, for or upon what consideration, and to whom and by whom the same was paid, and in whose possession and enjoyment said real estate has been since the date of the conveyances thereof as hereinbefore set forth, and who has received the issues and profits thereof, and that it may be decreed that the said Annie L. Conway and the said Isabelle E. McGrath Conway hold the tracts of land above described standing in their respective names in trust for the heirs of the said James Conway, subject to the lien of the indebtedness of the said James Conway to your orator, and that the heirs of the said James Conway are the beneficial owners of said real estate, and that your orator's said lien by reason of the indebtedness of the said James Conway, now deceased, to your orator may be established as against said lands and premises, and that the said defendants, or some one of them, may be decreed to pay to your orator the full amount due and owing to it on the said judgment with the interest and costs thereon; and that the said fraudulent conveyances and all other fraudulent conveyances and encumbrances made, created, or suffered between said defendants and affecting the said lands, may be set aside and decreed null and void; and that the said lands may be sold free, clear and discharged of and from the said fraudulent deeds and all other fraudulent deeds and encumbrances under a writ of execution to be issued by this Court, or otherwise, and that the proceeds thereof, or such part of the same as may be necessary, may be applied to the payment of your orator's said judgment, and that

your orator may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor the premises considered to grant to your orator the state's writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said William F. Conway, Isabelle E. McGrath Conway, his wife, John F. Conroy and Margaret E. Conroy, his wife, David Young, Mary Ella Young, his wife, Edward B. Reiley, Bessie A. Reiley, his wife, John F. McGrath, Frances A. McGrath, his wife, Annie L. Conway, unmarried, Mary L. Conway Mason, individually and as administratrix of James Conway, deceased, James L. Mason, husband of the said Mary L. Conway Mason, Bridget D. Conway, widow of James Conway, deceased, Helen D. Conway Kelly, William A. Kelly, her husband, and James Dolan therein and hereby commanding them, and each of them on a certain date and under a certain penalty to be therein expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with Complainant.

Order Amending Bill of Complaint.

Filed August 10, 1914.

It appearing that subpoena to answer has been issued in the above entitled cause, and that no plea, answer or demurrer to the bill of complaint has been filed by any of the defendants hereto;

IT IS on this tenth day of August, nineteen hundred and fourteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ORDERED that the said bill of complaint herein be and the same is hereby amended in the following particulars:

FIRST: By inserting in paragraph (10) after the words,

"That by the deeds hereinafter mentioned," the following words:

"recorded in the Register's Office of Essex County in the various books of deeds hereinafter set forth."

SECOND: By inserting in paragraph (10) immediately after the words,

"SECOND AND THIRD TRACTS: The said James Dolan,"

the words,

"and Ellen Dolan, his wife."

THIRD: By inserting a new paragraph as follows to be known as Paragraph (10-a) immediately before paragraph (11) of said bill of complaint:—

(10-a) That the deed to the said James Dolan above mentioned in paragraph (7) hereof, recorded in the office of the Register of Essex County in Book Y. 34 of Deeds on pages

385, etc., and the deed from the said James Dolan and Ellen Dolan, his wife, above mentioned in paragraph (10) hereof, recorded in the said Register's Office in Book Y. 34 of Deeds on pages 387, etc., both purported to convey the same premises, to wit, the second and third tracts above described; that both of said deeds were deeds of bargain and sale; that both of said deeds were dated on the same day, to wit, the twenty-eighth day of January, nineteen hundred and two, and were recorded on the same day, to wit, the third day of February, nineteen hundred and two; that the said James Dolan acted as a mere intermediary with instantaneous seizing if any in a pretended conveyance of said second and third tracts from the said James Conway to the said Bridget D. Conway, his wife, and others, as hereinabove set forth, and that neither the said James Dolan, nor the said Ellen Dolan is a necessary party defendant to this suit.

FOURTH: By inserting in paragraph (12) immediately after the words,

"in the office of the Register of Essex County,"

and before the words,

"on pages 160, etc.,"

the following words:

"in Book I. 51 of Deeds for Essex County."

FIFTH: By omitting the following name both from the prayer for answer and from the prayer for subpoena of said bill:

James Dolan.

SIXTH: By omitting from the prayer for subpoena between the words "therein and"

and the words "commanding them," the word "hereby,"
and by inserting in lieu thereof the word "thereby."

E. R. WALKER,
C.

Order Further Amending Bill and Directing Cause to Proceed.

Filed May 8, 1915.

It appearing that this cause was removed to the District Court of the United States for the District of New Jersey on the application of certain of the defendants herein, and that thereafter upon motion of the complainant addressed to said United States District Court it was ordered by said court that this cause be remanded to the Court of Chancery of New Jersey, and upon filing in this Court a duly certified copy of the order of said United States District Court remanding said cause to this Court, and it appearing that subpoena to answer the bill of complaint was duly issued in the above entitled cause before the removal to the United States District Court as aforesaid, and that no plea, answer or demurrer to the bill of complaint has been filed by any of the defendants hereto, either in the said United States District Court or in this Court, within the time limited by law or at any other time;

It is on this seventh day of May, nineteen hundred and fifteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant,

ORDERED and directed that the above entitled cause be proceeded with in this Court.

And it is further ordered, that the said bill of complaint filed in this cause be and the same is hereby further amended in the following particulars:

FIRST: By inserting two new paragraphs as follows, to be known as Paragraphs (10-b) and (10-c), immediately after Paragraph (10-a) and before Paragraph (11) of said bill of complaint:

(10-b) That the deed above mentioned in paragraph (10) hereof given by the said David Young and Mary Ella Young, his wife, and the deed in said paragraph mentioned given by the said John F. Conroy and Margaret E. Conroy, his wife, and the deed in said paragraph mentioned given by the said Edward B. Reiley and Bessie A. Reiley, his wife, and the deed in said paragraph mentioned given by the said John F. McGrath and Frances A. McGrath, his wife, were warranty deeds.

(10-c) That in the deed mentioned in paragraph (9) hereof for the twelfth tract above described, dated on the twenty-sixth day of March, nineteen hundred and six, and recorded on the thirty-first day of March, nineteen hundred and six, in the office of the Register of Essex County in Book A. 40 of Deeds for said county on pages 145, etc., the said Mary L. Conway, one of the daughters of the said James Conway, was named as a grantee along with William F. Conway, the son of the said James Conway; and that the said Mary L. Conway thereafter married one James L. Mason, and that the said Mary L. Mason (formerly Conway) and James L. Mason, her husband, joined

as grantors with the said William F. Conway in the deed referred to in paragraph (10) hereof to the said John F. McGrath for said twelfth tract, which deed was dated on June twenty-eighth, nineteen hundred and nine, and recorded on July 3, 1909, in the office of the Register of Essex County in Book F. 45 of Deeds for said county on pages 595, etc.

SECOND: By omitting from the prayer for relief of said bill of complaint, after the words,

"with the interest and costs thereon,"

and before the words,

"that the said fraudulent conveyances and all other fraudulent conveyances,"

the word,

"and,"

and by inserting in lieu thereof the words,

"or that it be decreed."

And it is further ordered that the defendants do file with the clerk of this Court their respective pleas, demurrers or answers to the bill of complaint as amended within twenty days after service upon them of true copies of this order (which copies need not be certified), and that said service may be either personal service or by leaving at the residence of the respective defendants, or by service upon their respective solicitors.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

Answer of the Defendant, William F. Conway.

Filed June 22, 1915.

The answer of William F. Conway to the bill of complaint of the complainant.

This defendant, for answer to so much of the bill of complaint as he is advised is proper and necessary for him to make, says:

I. This defendant admits the allegations of paragraph one of the bill of complaint.

II. This defendant has no knowledge as to the correctness of the allegations of paragraphs two and three of the bill of complaint and leaves the complainant to make such proof thereof as it may be advised.

III. This defendant believes that a suit was commenced against the said James Conway as alleged in the fourth paragraph of the bill of complaint, but calls for such proof of the particulars thereof as the complainant may be advised.

IV. This defendant admits the allegations of paragraph five of the bill of complaint.

V. This defendant has no knowledge of the sending of the notice alleged in the sixth paragraph of the bill of complaint and has no knowledge of any alleged intention of the said James Conway to protect the lands and premises described in the bill of complaint from the claim of the complainant.

VI. This defendant admits that the conveyances set forth in paragraph seven of the bill of complaint were made for the recited consideration of one dollar and other good and valuable

consideration and not for the nominal consideration of one dollar only as stated in the said paragraph. This defendant, however, denies any knowledge or participation in any alleged fraudulent design of said James Conway, and with respect to such alleged fraudulent design calls for proof. With reference to the conveyance of tracts six, seven, eight, nine and ten referred to in paragraph seven of the bill of complaint, this defendant says that the recited consideration was one dollar and other good and valuable consideration and not merely one dollar as alleged in said paragraph. This defendant says that the consideration for said conveyance to this defendant was as follows: This defendant acquired his preliminary education at the Newark City High School, and upon graduation from the said institution in the year eighteen hundred and ninety-six, this defendant entered into the contracting business. This defendant remained in the said business for over a year and was very much interested in the business and desired to make it his life work. The said James Conway, the father of this defendant, however, was desirous of having this defendant continue his education and study law, and in order to induce this defendant to do so, his father promised him that if he would take up the study of law and graduate with success and otherwise conduct himself in such a way as to please his father, that his father would compensate him by the conveyance of substantial property interests to him. This defendant thereupon gave up the contracting business in which he was engaged and entered the law school of Yale University, and after completing the course there, graduated with honor, and obtained his degree, and later, namely, in the

year nineteen hundred and one, this defendant was admitted to the bar of the State of New Jersey, and the conveyance mentioned to this defendant in said paragraph was made to him by his father in partial execution and fulfillment of the promise above referred to, which induced this defendant to take up the study of law and give up the contracting business as above set forth.

VII. This defendant admits the allegations paragraph nine a of the bill of complaint.

IX. This defendant admits the conveyance set forth in paragraph nine of the bill of complaint, but denies, however, any participation in any alleged fraudulent or improper design therein, and says that the recited consideration mentioned in said deed was one dollar and other good and valuable consideration and that the real consideration of said deed was the fulfillment of the promise made by said James Conway to this defendant as set forth in paragraph six of this answer. This defendant admits, as stated in the amendment to paragraph nine of the bill of complaint, that this defendant's sister, Mary L. Conway, now Mary L. Mason, was named as grantee with this defendant.

X. This defendant admits the allegations of paragraph nine of the bill of complaint.

XI. This defendant admits the making of the conveyances mentioned in paragraph ten of the bill of complaint, but denies, however, that they were pretended conveyances and says that the recited consideration was not one dollar in each of the deeds, but one dollar and other good and valuable consideration.

XII. With reference to the allegations of paragraph ten a of the bill of complaint, this defendant admits the conveyance therein mentioned, but has no knowledge as to whether or not the said Dolan was a mere intermediary and leaves the complainant to make such proof as to this fact as it may be advised is necessary.

XIII. This defendant admits the allegations of paragraphs ten b and ten c of the bill of complaint.

XIV. This defendant admits the allegations of paragraph eleven of the bill of complaint.

XV. With reference to the allegations of paragraph twelve of the bill of complaint, this defendant admits the conveyance therein referred to, but this defendant denies, however, that the said conveyance was made with the intent to defeat the just claims of the complainant or any other person, and this defendant further says that the said conveyance to said Isabelle E. McGrath was not upon an alleged consideration of marriage, but was upon an actual and real consideration of marriage, and that said conveyance was accepted by the said Isabelle E. McGrath in consideration of marriage and without any notice, knowledge or intimation whatever of any alleged fraudulent design or purpose therein. The said conveyance was made in fulfillment of an ante-nuptial agreement between this defendant and the said Isabelle E. McGrath to which this defendant asks that reference may be made as and when it shall be necessary to do so.

XVI. With reference to the allegations of paragraphs thirteen and fourteen of the bill of complaint, this defendant says that all of the conveyances made to him as set forth in the bill

of complaint and as admitted in this answer were made in fulfillment of and upon the consideration mentioned in paragraph six of this answer; that said consideration was a bona fide and true consideration and did not exist for the purpose of defrauding the complainant or any other creditor of the said James Conway. This defendant further denies that the said Isabelle E. McGrath had any knowledge at or before the time of the conveyance to her of the indebtedness of the said James Conway to the complainant and this defendant denies that at the time of the conveyances to him he had knowledge of the alleged claim of the complainant. This defendant says, on the contrary, that the suit to enforce the alleged liability of the said James Conway to the complainant was not begun until many years after the conveyances to this defendant and the said suit, to the knowledge of this defendant, was defended by the said James Conway, and went to two trials, one of which resulted in a verdict in favor of the said James Conway. This defendant denies that the said James Conway, by the conveyances mentioned in the bill of complaint, deeded away all of the real estate then owned by him. This defendant admits, however, that the said James Conway by consent of this defendant, received the rents, issues and profits of the lands and premises conveyed to this defendant up until the time this defendant conveyed the same unto his wife, Isabelle E. McGrath. This defendant says, however, that the rents, issues and profits of the said lands conveyed to the said Isabelle E. McGrath have been paid to and used and enjoyed by her since the said conveyance to her, and this defendant denies that since the death of the said

James Conway the heirs of the said Conway have always held, possessed, enjoyed and received the issues and profits of the said lands and premises.

XVII. This defendant denies the allegations of the fourteenth paragraph of the bill of complaint that the conveyances mentioned in the bill of complaint are null and void and of no effect. He denies that the premises in question descended to the heirs of the said James Conway subject to the lien of the complainant. This defendant says that he has no further interest whatever in the said lands except such interest as he may have as the husband of the said Isabelle E. McGrath Conway, and this defendant says furthermore that the said Isabelle E. McGrath Conway was a bona fide purchaser for value of the lands and premises conveyed to her.

XVIII. This defendant denies the allegations of paragraph fifteen of the bill of complaint.

This defendant prays to be hence dismissed with his costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of Defendant.

Answer of the Defendant, Isabelle E. McGrath Conway.

Filed June 22, 1915.

The answer of the defendant, Isabelle E. McGrath Conway to the bill of complaint of the complainant.

This defendant, for answer to so much of the complainant's bill of complaint as she is advised it is necessary or proper for her to make, answering says:

1. This defendant admits the allegations of paragraph one of the bill of complaint, but has no knowledge as to whether the properties therein referred to are correctly described in the bill of complaint.

2. This defendant has no knowledge as to the allegations of paragraphs two and three of the bill of complaint and leaves the complainant to make such proof thereof as it may be advised.

3. With respect to the allegations of paragraph four of the bill of complaint, this defendant had no knowledge or information whatever with respect to the suit therein referred to until she read the allegations with respect thereto in the fourth paragraph of complainant's bill of complaint. She therefore leaves the complainant to make such proof thereof as it may be advised.

4. This defendant admits the allegations of the fifth paragraph with the exception of the allegation of the amount of the personal property of which said James Conway died possessed and the issuance of letters of administration thereon. This defendant leaves the complainant to make

such proof with respect thereto as it may be advised.

5. This defendant has no knowledge as to the allegations of the sixth paragraph of the bill of complaint and leaves the complainant to make such proof thereof as it may be advised.

6. This defendant admits the making of the conveyances referred to in the seventh paragraph of the bill of complaint, but has no knowledge as to the circumstances and the purposes for which the said conveyances were made. This defendant expressly denies, however, any knowledge or participation in any alleged fraud in the circumstances surrounding the making and recording of these conveyances.

7. This defendant admits the allegations of the eighth paragraph of the bill of complaint.

8. This defendant admits the conveyance set forth in the ninth paragraph of the bill of complaint, but says that the deed therein referred to was made to William F. Conway and Mary L. Conway, now Mary L. Mason. This defendant has no knowledge as to the circumstances and purposes for which the said conveyance was made and expressly says that she had no knowledge or participation in any alleged fraudulent design with respect thereto as charged by the complainant.

9. This defendant admits the allegations of paragraph nine a of the bill of complaint.

10. This defendant admits the conveyances set forth in paragraph ten of the bill of complaint. This defendant denies, however, that the said conveyances were pretended merely, and

says that each of them is recited to be in consideration of one dollar and other good and valuable consideration.

11. This defendant has no knowledge as to the allegations of paragraph ten a of the bill of complaint and leaves the complainant to make such proof thereof as it may be advised.

12. This defendant admits the allegations of paragraphs ten b and ten c of the bill of complaint.

13. This defendant admits the allegations of paragraph eleven of the bill of complaint.

14. This defendant admits that William F. Conway did, on the twenty-seventh day of June, nineteen hundred and twelve, by deed recorded on the first day of July, nineteen hundred and twelve, in the Essex County Register's office, convey to this defendant the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and twelfth tracts described in the bill of complaint. This defendant admits also that the said deed was recited to be in consideration of the sum of one dollar and the marriage of this defendant to the said William F. Conway. This defendant denies, however, that the purpose of the said conveyance was to secure the said property from the just claims of the complainant, or to prevent the complainant from collecting its claim, or to defraud the complainant.

15. With respect to the allegations of paragraph thirteen of the bill of complaint, this defendant expressly denies that no consideration whatever was paid for the conveyance above mentioned to her. This defendant says, on the contrary, that without respect to the

merits of the controversy in this suit between the complainant and the other defendants therein named, this defendant is an innocent holder for value of the premises covered in the deed of conveyance to her from the said William F. Conway and referred to in the foregoing paragraph of this answer. The said conveyance was made to this defendant by the said William F. Conway in fulfillment of an ante-nuptial agreement made and entered into between this defendant and the said William F. Conway, which agreement is in the possession of said defendant and ready to be produced if required, wherein and whereby the said William F. Conway agreed to convey to this defendant, if this defendant would consent to marry the said William F. Conway, the said premises referred to in the foregoing paragraph of this bill. This defendant says that she entered into the said agreement with the said William F. Conway in the most absolute faith and that she at that time considered that he was the absolute legal and equitable owner of the said premises and that she had no knowledge or intimation whatever of any hostile claim thereto. This defendant in fact says that she never at any time had any notice or knowledge whatever of any hostile claim against the title of these premises in the name of said William F. Conway until she read the bill of complaint filed by the complainant in this cause. This defendant denies absolutely any intent to hinder, delay and defraud the complainant or any other creditor of James Conway or of any one else in accepting the conveyance above referred to and this defendant says that as far as she was concerned the said conveyance was taken and made upon the sole consideration of marriage and upon no

other consideration or purpose or intent whatsoever, and this defendant says that since the date of the said conveyance and up to the present time she has possessed, enjoyed and received the entire issues and profits of said lands and premises and she still does posess, enjoy and receive the entire issues and profits thereof, and that no other person whatsoever other than this defendant has received, possessed or enjoyed any portion thereof.

16. This defendant denies that the conveyance to this defendant is null and void and of no effect, as alleged in paragraph fourteen of the bill of complaint. As already stated this defendant claims the absolute and unconditional ownership of the lands and premises described in the said deed from William F. Conway to her.

17. This defendant denies the allegations of paragraph fifteen of the bill of complaint.

This defendant prays to be hence dismissed with her costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of Defendant.

Answer of the Defendant, Annie L. Conway.

Filed June 22, 1915.

The answer of the defendant, Annie L. Conway to the bill of complaint of the complainant.

This defendant, for answer to so much of the complainant's bill of complaint as she is advised it is necessary or proper for her to make, answering says:

1. This defendant admits the allegations of paragraph one of the bill of complaint. This defendant has no knowledge as to the correctness of the descriptions of the lands and premises therein referred to.

2. This defendant has no knowledge as to the allegations of paragraphs two, three and four of the complainant's bill and leaves the complainant to make such proof thereof as it may be advised.

3. This defendant admits that the said James Conway departed this life on the fourth day of April, nineteen hundred and thirteen, as alleged in the fifth paragraph of the bill of complaint. This defendant, however, has no knowledge as to the amount of the personal property left by the said James Conway, nor as to the issuance of letters of administration upon his estate.

4. With reference to the allegations of paragraph six of the bill of complaint, this defendant admits that the said James Conway did, on the twenty-eighth day of January, nineteen hundred and two, by deed dated that day and recorded on the third day of February, nineteen

hundred and two, in the office of the Register of Deeds for Essex County in Book Y. 34 of Deeds for said county on pages 389, etc., convey the first and eleventh tracts mentioned and described in the bill of complaint to this defendant for the recited consideration of one dollar and other good and valuable consideration. This defendant admits that she is a sister of the said James Conway. This defendant, however, has no knowledge as to the alleged notice dated January thirteenth, nineteen hundred and two, referred to in the said paragraph of the bill of complaint, nor has she any knowledge, nor did she have any knowledge or information as to any alleged purpose upon the part of the said James Conway to secure the said lands and premises for his own benefit and to protect them from any claim of the complainant, or any other person. This defendant denies that she had any knowledge or participation whatever in the said alleged fraudulent design of said James Conway. This defendant says that the consideration for the making of the said deed to her by the said James Conway was as follows: The said James Conway was the brother of this defendant. About the year eighteen hundred and ninety-eight, by reason of deaths in the family, this defendant and the same James Conway were left as the sole surviving children of Mary Conway, the mother of this defendant and the said James Conway. At that time this defendant and the said James Conway entered into an agreement whereby this defendant undertook to support and nourish and take care of her mother, who was a widow with practically no means of support of her own, and the said James Conway agreed that if this

defendant would undertake the said burden at her sole expense, that he would compensate her therefor, either in cash or by the conveyance of some parcel of property to her which he at that time was seized of. This defendant says that in reliance upon the said promise of the said James Conway, which was repeated many times to her, she undertook the support and maintenance of her mother, devoting all her time and attention to this end, and continued to support and maintain her until her death in the year nineteen hundred. After the year Nineteen hundred, and also at the request of the said James Conway, and upon his promise to remunerate her therefor, she remained as an occupant of the same house of the said James Conway (this defendant and her mother having resided in the same house with said James Conway from the month of April, eighteen hundred and ninety-nine), and performed services therein for him, including nursing him through severe and lengthy illness to which he became subject at that time. Prior to the year nineteen hundred and two this defendant and the said James Conway had various conversations with reference to the fulfillment of his agreement to compensate her for the services which she had rendered, and this defendant says that the said deed herein referred to for tracts one and eleven mentioned in the bill of complaint was made and executed and delivered to this defendant in consideration of the services so furnished by her. This defendant expressly avers and charges the fact to be that the said conveyance was without any other consideration whatever, was made for the sole and only beneficial interest and enjoyment of this defendant, and as far as

this defendant is concerned was without any fraudulent design or purpose whatever to hinder, delay or defraud the complainant or any creditor or creditors of the said James Conway. At the time the said conveyance was made and delivered to this defendant, she had no notice or knowledge or information whatever as to the said James Conway being involved in any financial difficulties whatever and she at that time and many years thereafter considered him to be a man of independent and ample means. Since the making of the said conveyance, both tracts therein referred to being unimproved lots, this defendant has, out of her own moneys, paid the taxes and other charges which have become due upon the said premises. There has been no income or profits therefrom.

5. With respect to the allegations of the bill of complaint with respect to the various conveyances affecting tracts two to ten inclusive, and tract twelve described in the bill of complaint, this defendant has no knowledge whatever and she leaves the complainant to make such proof thereof as it may be advised. This defendant has no knowledge and never had any knowledge or information with respect to any alleged fraudulent design upon the part of the said James Conway or the other defendants in this suit with respect to the said tracts of land and this defendant says that whatever may be the facts with reference to those tracts of land that this defendant had no part in any such alleged scheme to hinder, delay or defraud the creditors of the said James Conway, and that such alleged scheme, if any, did not include within its scope the said premises so conveyed to this defendant.

This defendant prays to be hence dismissed with her costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of above-named Defendant.

Answer of the Defendant, Mary L. Mason, et. als.

Filed June 22, 1915.

The joint and several answer of the defendants Mary L. Mason, individually, and as administratrix of James Conway, deceased, James L. Mason, Helen D. Conway Kelly and William A. Kelly to the bill of complaint of the complainant.

These defendants for answer to so much of the bill of complaint as they are advised it is necessary and proper for them to make answer to say:

1. These defendants admit the first paragraph of the bill of complaint.

2. These defendants have no knowledge as to the allegations of paragraphs two and three of the bill of complaint and leave the complainant to make such proof thereof as it may be advised.

3. With reference to the allegations of paragraph four of the bill of complaint, these defendants admit that judgment has been entered against the defendant Mary L. Mason, administratrix of James Conway, deceased, as therein set forth, but as to the particulars of said

suit and the amount due upon said judgment, these defendants call for proof.

4. These defendants admit the allegations of paragraph five of the bill of complaint.

5. These defendants admit the conveyance set forth in paragraph six of the bill of complaint, but these defendants have no knowledge as to the circumstances under which the said conveyance was made and they therefore call for proof thereof.

6. These defendants admit the conveyances set forth in paragraph seven of the bill of complaint. These defendants deny, however, that the considerations for the conveyances to the said Mary L. Conway, now Mary L. Mason, and the defendant, Helen D. Conway, now Helen D. Kelly, were merely nominal and that the said conveyances were only pretended. Upon the contrary these defendants say that the considerations of said conveyances were as follows: With respect to the defendant Mary L. Mason, the said defendant for over twenty years, beginning with her graduation from school, at which she had received a general training and also a business training, which fitted her to take up a position in business, at the request of her father, the said James Conway, devoted her entire time as clerk, bookkeeper, paymaster and general assistant in the business of said James Conway. During this entire period this defendant received no compensation as wages from her said father, but she performed the services under the promise of her said father to pay her therefor, either in money or in the conveyance of property. The fact that the said defendant, Mary L. Mason, was performing

these services with the expectation of being compensated therefor and that the said James Conway was to compensate her, was fully understood between this defendant and the said James Conway and was frequently referred to between them, and the conveyances set forth in the bill of complaint, which were made to the said defendant, Mary L. Mason, were made by the said James Conway in pursuance of this arrangement and in discharge of the said obligation which had been incurred by him to the said defendant Mary L. Mason.

With respect to the defendant Helen D. Conway, now Helen D. Kelly, the consideration for the conveyance of said lands and premises to her was as follows: After this defendant, Helen D. Kelly, had completed her education and was about to engage in some calling profitable to herself, she was requested by her said father, James Conway, to remain in his household and take charge of the conduct thereof, because of the fact that the mother of this defendant was crippled by rheumatism and was not herself able to discharge this burden. This defendant's father promised her that if she would do so and give up the opportunity of earning money elsewhere, that he would compensate her either in money or by the conveyance of property. In reliance upon the promise of her said father, therefore, this defendant, Helen D. Kelly, desisted from seeking any profitable employment and for a period of over fifteen years conducted the household of the said James Conway without any other compensation whatsoever and the transfer of the property which is set forth in the bill of complaint was made to the said Helen D. Kelly by the said James

Conway in pursuance of the said arrangement and in discharge of the obligation which had thus been incurred by the said James Conway to this defendant. These defendants deny therefore, that the said conveyances were merely pretended and says that they were upon actual and full consideration as above set forth and were accepted by the said defendants in good faith and without any design or intention to hinder, delay or defraud the complainant, or any other alleged creditor of the said James Conway.

7. These defendants also admit the conveyances set forth in the seventh paragraph of the bill of complaint. They deny, however, that the conveyances therein mentioned, as far as the defendants, Mary L. Conway and Helen D. Conway, are concerned, were merely pretended conveyances and say upon the contrary that the said conveyances were actual conveyances taken under the circumstances and in pursuance of the consideration mentioned in the foregoing paragraph.

8. These defendants admit the eighth paragraph of the bill of complaint.

9. The said defendant, Mary L. Mason, also admits the allegations of the ninth paragraph of the bill of complaint, as amended, to the effect of the conveyance of the twelfth tract referred to in the bill of complaint to the defendant William F. Conway and Mary L. Conway, now Mary L. Mason, and this defendant denies that the said conveyance was a pretended conveyance, and says that the consideration thereof, as far as the defendant Mary L. Mason is concerned was as above set forth.

10. These defendants admit the allegations of paragraph nine a of the bill of complaint.

11. These defendants also admit the conveyances set forth in paragraph ten of the bill of complaint, but deny that the said conveyances were merely pretended conveyances.

12. These defendants admit the conveyances set forth in paragraph ten a of the bill of complaint, but have no knowledge as to whether or not the said James Dolan was a mere intermediary as alleged in said paragraph.

13. With respect to the remaining allegations of the bill of complaint, which these defendants are advised it is necessary for them to make answer unto, these defendants repeat their former allegations that the conveyances made to these defendants, Mary L. Mason and Helen D. Kelly, were upon the respective considerations mentioned in this answer and that they were accepted by these defendants in good faith. These defendants say, however, that they received none of the rents and profits of the said lands and premises during the time which they held same, but at the request of the said James Conway, deceased, they permitted them to be received and used by him. These defendants say that they have no further interest in any of the lands and premises described in the bill of complaint and that they have at no time received any of the rents, issues and profits thereof and they are innocent of any participation in any alleged fraudulent plan or scheme with respect thereto, and they pray to be hence dismissed with their costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of Defendants.

Answer of Bridget D. Conway.

Filed June 22, 1915.

The answer of Bridget D. Conway to the bill of complaint of the complainant.

This defendant, for answer to so much of the bill of complaint in this cause as she is advised is necessary and proper for her to make answer to says, she is without knowledge as to the allegations of the bill of complaint, except as hereinafter set forth, and leaves the complainant to make such proof thereof as it may be advised. This defendant admits, however, that she was the wife of James Conway, deceased, and she admits the making of the conveyances referred to in the bill of complaint which were joined in by this defendant. This defendant, however, had no knowledge of the considerations which passed in such conveyances, and this defendant furthermore had no knowledge of any alleged fraudulent design or purpose in the said conveyances, or any one of them. This defendant furthermore at no time received any of the rents, issues or profits from any of the lands and premises referred to in the bill of complaint, and has at the present time and at no time in the past has had any knowledge or information as to the matters in controversy in the above entitled suit.

This defendant prays to be hence dismissed with her costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of above named Defendant.

Answer of John F. Conroy, et als.

Filed June 22, 1915.

The joint and several answer of John F. Conroy and Margaret E. Conroy, his wife, David Young and Mary Ella Young, his wife, Edward B. Reiley and Bessie A. Reiley, his wife, John F. McGrath and Frances A. Mcrath, his wife, to the bill of complaint of the complainant.

These defendants, for answer to so much of the bill of complaint as they are advised is necessary and proper for them to make answer to, say:

These defendants have no knowledge as to the allegations of the bill of complaint, except as hereinafter specifically admitted, and they therefore leave it to the complainant to make such proof thereof as it may be advised. These defendants, however, admit the making of the various conveyances which are referred to in the bill of complaint as having been made to these defendants or any one of them. These defendants deny, however, that in accepting these conveyances, they had any knowledge or intimation whatever of any alleged fraudulent or improper design in connection with the making thereof, and these defendants say that all of said conveyances were accepted by these defendants without any knowledge of any such alleged fraudulent design whatever. These defendants further say that the said conveyances and re-conveyances were made to and by these defendants at the request of the said James Conway, deceased, and these defendants further say that they received none of the rents and issues of the said lands and premises dur-

ing the periods of time that they respectively held title, but that these rents and profits to the best of the knowledge of these defendants were received by the said James Conway, deceased, during this period.

These defendants at the present time have no right, claim or interest whatsoever as to any of the lands and premises referred to in the bill of complaint and they at no time received any of the rents, issues and profits thereof, nor were they at any time cognizant of any alleged fraudulent design or plan with respect thereto upon the part of the said James Conway or anybody else, and these defendants therefore pray to be hence dismissed with their costs and charges in this behalf sustained.

McCARTER & ENGLISH,
Solicitors of above named Defendants.

Replication.

Replication.

Filed June 23, 1915.

The replication of American Surety Company of New York, complainant, to the answers of William F. Conway, Isabelle E. McGrath Conway, his wife, Bridget D. Conway, Annie L. Conway, Mary L. Mason, individually and as administratrix of James Conway, deceased, James L. Mason, her husband, Helen D. Conway Kelly, William A. Kelly, her husband, John F. Conroy, Margaret E. Conroy, his wife, David Young, Mary Ella Young, his wife, Edward B. Reiley, Bessie A. Reiley, his wife, John F. McGrath and Frances A. McGrath, his wife, defendants.

The complainant joins issue on the answers of the above named defendants.

PITNEY, HARDIN & SKINNER,
Solicitors for Complainant.

Opening.

IN CHANCERY OF NEW JERSEY.

Between

AMERICAN SURETY COMPANY OF NEW YORK,

Complainant,

and

WILLIAM F. CONWAY AND OTHERS,

Defendants.

FIRST DAY.

Before his Honor, Vice Chancellor Stevens.

For complainant, Pitney, Hardin & Skinner, by Alfred F. Skinner and Corwin Howell.

For defendants, McCarter & English, by Robert H. McCarter and Arthur F. Egner.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on December 23rd, 1915, at Chancery Chambers, Newark, N. J.

Mr. Howell. I offer in evidence a stipulation between counsel, which contains a statement of a number of facts which are admitted.

The Court. Well, suppose you read it and then it can be offered.

Mr. Howell. "It is hereby stipulated and agreed by and between the parties to the above entitled cause as follows:

(1) James Conway on January twenty-second, nineteen hundred and two, was seized and possessed in fee simple of the tracts of land mentioned and described in

paragraph one of the bill of complaint. The conveyances set forth in the bill of complaint were made on the dates and between the parties herein mentioned, and were recorded as set forth in said bill. Corrections may be made by either party on proof of errors in description, dates, names or other details. Where in the bill of complaint it is said that the consideration recited in a deed is one dollar, the recited consideration is 'one dollar and other good and valuable consideration.'

(2) Prior to June twenty-sixth, nineteen hundred and one, Daniel F. Minahan and Antonio Costa, partners composing the firm of Minahan & Costa, were under contract with the town of Wakefield, in the State of Massachusetts, for certain sewer construction in that town. Bonds were executed by said Minahan and said Costa as principals and by the complainant as surety, and delivered to said town of Wakefield, conditioned for the proper performance of said contracts. On June twenty-sixth, nineteen hundred and one, James Conway executed an indemnity agreement as printed in the state of the case in the Court of Errors and Appeals on an appeal entitled—American Surety Company of New York, plaintiff-appellee *v.* Mary L. Mason, administratrix of James Conway, defendant-appellant, pages 18-22 inclusive, which may be offered without proof. The Minahan and Costa mentioned in said agreement are the Minahan and Costa hereinabove referred to.

(3) On May thirty-first, nineteen hundred and eleven, judgments were obtained in the

Opening.

Superior Court of Massachusetts and entered as of December third, nineteen hundred and eight, by the town of Wakefield against the complainant on said contracts of suretyship, being the bonds above mentioned. These judgments were satisfied by the complainant by payment on or about June eighth, nineteen hundred and eleven, of forty-five thousand four hundred and thirty-nine dollars and eleven cents ($45,439.11). These judgments were based on a breach of the sewer contracts above mentioned, which breach antedated all the conveyances by James Conway, set forth in the bill of complaint.

(4) (a) That a certified copy or copies of the minutes of the Board of Sewer Commissioners of the town of Wakefield may be offered without other formal proof of such minutes.

(b) That the testimony of Maynard E. S. Clemons, Esquire, on page 143 of the state of the case (New Jersey suit), line 9, to page 145, line 12, may be taken as in this case and read into the record without calling Mr. Clemons.

(c) That any exhibit contained in copies of the printed record of the Wakefield suits now in possession of the parties hereto, or of the state of the case used in the New Jersey suit above mentioned in the Court of Errors and Appeals, may be offered in evidence without other proof.

(d) That the copies of letters of January 9th, 1902, from the Board of Sewer Commissioners to American Surety Company and to Minahan & Costa, which copies are attached to a certified copy of the records of the

Wakefield Sewer Commissioners of the meeting of that date, January 9th, 1902, together with a copy of a letter from the American Surety Company of New York to James Conway, dated January 13th, 1902, with its enclosure, which copy is now in the possession of Pitney, Hardin & Skinner, and has been initialed by the parties hereto for identification, may be offered in evidence, formal proof being waived.

(e) That the transcript of the testimony in the suit of Town of Wakefield *v.* American Surety Company, now in possession of Pitney, Hardin & Skinner, and initialed by the undersigned, shall be considered a correct transcript of the testimony taken in said suit, without proof.

It is further stipulated and agreed that nothing in this stipulation contained is to be taken as depriving either party of the right to object to any evidence as inadmissible or incompetent."

Mr. Howell. It is admitted that the various deeds that are set forth in the bill are correctly set forth, subject to any corrections that counsel may find necessary.

The Court. In each case the consideration is one dollar and other valuable considerations?

Mr. Howell. Except in the deed of Mr. Conway to Miss McGrath, before the marriage, the recited consideration is one dollar and marriage.

I will have this original stipulation marked as an exhibit.

Marked Exhibit C-1.

Opening.

Mr. Howell. Now I would also like to offer in evidence the exemplified copy of the judgment roll in the Massachusetts suit, and as this was printed in the state of the case I wonder if we cannot mark this page of the book?

Mr. McCarter. Yes, it seems to me that is better.

Marked Exhibit C-2.

Mr. Howell. It is Exhibit P-10 in the Court of Errors case.

I will further offer in evidence the judgment roll in our own New Jersey Supreme Court.

Marked Exhibit C-3.

Mr. Howell. Then I will offer a certified copy of a minute of the Wakefield Sewer Commissioners, the meeting of January 9, 1902, with two copies of letters annexed thereto, each dated January 9, 1902.

Mr. McCarter. This seems to us to be utterly immaterial. We are not objecting to the form of proof; the stipulation does not of course concede materiality, and I cannot see how in this case the fact that the town of Wakefield on January 9, 1902, passed some resolution and later wrote to the American Surety Company can bear upon this question.

Mr. Howell. I was just about to read it to his Honor. "The following is a correct copy of the records of the Wakefield Sewer Commissioners, the meeting of the date January 9, 1902.

'Special meeting of the Board of S. Commissioners. Full board and Town Counsel Clemons present. The situation in regard

to sections one, two and three was fully discussed, and the extremely slow progress of the work noted.

The following vote was passed unanimously:

Voted, that the firm of Minahan and Costa, the contractors for work on sections one, two and three of the Wakefield sewerage system, be immediately notified to discontinue all work under their contracts for work on said sections, and that work on said sections be immediately prosecuted by the Board of Sewer Commissioners under the direction of the engineer in accordance with section L in said contracts.

The secretary was then instructed to immediately notify Minahan and Costa by notice sent to Orange, N. J., and to Greenwood, Mass., and the American Surety Company at New York and Boston.

The engineer's monthly statement for work on sections one and two was laid on the table. Adjourned.

WM. B. DANIEL,
Sect'y.

I certify that the above copy is correct.
ALBERT R. PERKINS,
Clerk of the Wakefield Water
and Sewerage Board.

Dec. 1, 1915.

Middlesex, *ss.* The above named Albert R. Perkins appeared before me this first day of December, 1915, and made oath that the above copy is correct.

RICHARD BRITTON,
Justice of the Peace."

Opening.

Mr. McCarter. Well, we will withdraw our objection.

Mr. Howell. I want to read to your Honor the letter which was sent to the American Surety Company by the Board; it is dated January 9th.

"At a meeting of the Board of Sewer Commissioners of the Town of Wakefield held this day the following vote was passed: Voted: That the firm of Minahan & Costa, the contractors for work on Sections 1, 2 and 3 of the Wakefield sewerage system be immediately notified to discontinue all work under their contracts for work on said sections, and that work on said sections be immediately prosecuted by the Board under the direction of the Engineer of the sewerage works, in accordance with the provision of Section L of said contracts."

A copy of this vote has this day been sent to the firm of Minahan & Costa.

Very respectfully,

BOARD OF SEWER COMMISSIONERS,
by William B. Daniel,
Secretary."

Mr. McCarter. Your Honor observes that that letter speaks of Minahan & Costa being the contractors.

The Court. Well, was there a letter to Minahan and Costa directing them to stop work?

Mr. McCarter. Yes.

Mr. Howell. The Board of Sewer Commissioners addressed a letter to Minahan & Costa, and also the American Surety Company. Conway was not referred to at all

in the resolution or in the letters; the Board up there choose to regard Minahan and Costa as the only persons liable to pay, except the Surety Company, and recognized nobody else.

Marked Exhibits C. 4, C. 5 and C. 6.

Mr. Howell. Now I further offer a letter of January 13, 1902. This is important, your Honor. From the Surety Company to James Conway.

"Herewith enclosed I hand you copy of a letter dated January 9, 1902, from the Board of Sewer Commissioners of Wakefield, Massachusetts. Kindly advise us of your wishes in the matter and report fully the present situation, the reasons for the forfeiting of the contract, and what action you purpose taking to protect this company from loss by reason of its suretyship.

Yours very truly,

HENRY C. WILLCOX,
Solicitor."

Marked Exhibit C. 7.

Mr. Howell. I also offer in evidence the enclosure.

Marked Exhibit C. 8.

Mr. Howell. Now, I would further like to offer in evidence a number of the exhibits in this printed book. I might say that by stipulation of counsel it has been agreed that any exhibit in the printed record of this case or of the Wakefield suit may be introduced in evidence by counsel on either side, subject to any objection as to materiality, relevancy, etc.; but as to the formal method of proof, that is all waived.

Opening.

Page 217, I will offer the original bond, Minahan and Costa as principals, and the Surety Company of New York as surety, to the Town of Wakefield, dated April 10, 1901.

Marked Exhibit C. 9.

Mr. Howell. On page 222 of this State of the Case, in the Court of Errors, I will offer the second of the bonds; your Honor will remember that there were three of these bonds for three sections of the sewer, all practically identical.

Marked Exhibit C. 10.

Mr. Howell. And also the third bond, on page 222.

Marked Exhibit C. 11.

Mr. Howell. Next I would offer the exhibit which has already been referred to, attached to the declaration in this case, in the law suit, which is found on pages 18 to 22 inclusive, of the State of the Case, which is the indemnity agreement of James Conway.

Marked Exhibit C. 12.

Mr. Howell. Then I will offer the application for this indemnity agreement, made to the Surety Company and signed by Messrs. Conway and Hanna, dated June 24, 1901, and found on pages 241 to 248, inclusive, of the State of the Case in the Court of Errors.

Mr. McCarter. Objected to as immaterial.

The Court. Is it referred to in any way in the bond?

Mr. McCarter. No, sir.

Opening.

Mr. Howell. It is of the greatest materiality, as will appear from a very short statement of it.

The Court. Well, is it referred to in the bond?

Mr. Howell. In the indemnity agreement? I rather thought it was, but I am not quite positive.

Mr. Egner. No, I do not think it is.

Mr. Howell. I want to call your honor's attention to this evident reference to it, although it is not directly referred to. Here is what the bond says, one of the agreements of it: "That the Surety also looks to and relies upon the property of the principals and the income and earnings thereof, and shall at all times have the right to rely upon, look to and follow and recover out of the property which the principals now have, or may hereafter have, and the income and earnings thereof for anything due or to become due the Surety, under this agreement." Now the application listed Conway's property, his real estate.

The Court. What are you reading from?

Mr. Howell. From the bond. It does not refer to it in so many words; it refers to the property of the principal, and the property was listed by the principal in a paper handed to the Surety Company on the same day or two days before. So that I think it is relevant from that point of view; it sets forth a detailed statement of the assets and liabilities of Mr. Conway at the time he gave the bond or indemnity agreement, listing his real estate.

The Court. Well, it is a statement then, among other things, of his resources, and

in that point of view it is certainly competent.

Mr. Howell. Many of the identical properties in this suit are listed, your honor.

Mr. McCarter. Well, the fact is that it is a paper signed by Conway and Hanna, in which several questions are asked, and Mr. Conway is reported to have certain property and Mr. Hanna is reported to have certain property; those elements are there, as well as several other matters in the application. I do not see how it in any way bears upon the question here whether he had or had not property.

The Court. But it bears upon the question of fraudulent intent, does it not? A man goes to a Surety Company, and the Surety Company says to him: well, before I go on your bond I want to know what your property is; he says: I have house a, and house b, and house c; thereupon the company goes on his bond; the next day he turns around and, as they say, conveys the property for a consideration of love and affection, or something of that sort. Now, certainly, as bearing upon the question of fraudulent intent the statement that he makes is relevant. I have no doubt at all that so far as that paper is a representation of the property that he owns it is competent, and that, of course, admits the paper without reference to other things. You may offer that.

Marked Exhibit C. 13.

Mr. Howell. One other matter covered by our stipulation. Now, it has been stipulated between counsel that the testimony

of Mr. Clemons, who was the attorney for the Town of Wakefield, in the Massachusetts suit, who testified in our suit here in New Jersey from page 143 of the State of the Case in the New Jersey suit, Court of Errors, line 9 to page 145, line 12, may be taken as in this case, and read into the record without calling Mr. Clemons. I will just read the questions and answers:

"Maynard E. S. Clemons, recalled on behalf of plaintiff. Direct examination by Mr. Skinner: "Q Mr. Clemons, I call your attention to exhibit P. 10"—that, by the way, was the judgment roll of the Massachusetts suit, it is our Exhibit C. 2—"I call your attention to page 10 of this exemplified copy, following copies of the contract bonds, and to the entry there of appearance for the defendant, Eliphalet F. Philbrick. I now ask you who conducted the trial of the case on the part of the defendant, what attorney? A The firm of Leahy & Pelletier, Mr. John P. Leahy of that firm being the active attorney in the case. Q During the course of the trial did Mr. James Conway, the defendant in this suit, the gentleman who is sitting here (indicating), testify? A He did. Q And you appeared throughout the trial as the attorney for the plaintiff? A The Town of Wakefield, the plaintiff, yes. Q Did you hear Mr. Conway testify? A I did. Q In the course of his testimony did he make any reference to Leahy & Pelletier? A Yes, he did. Q Do you remember his being interrogated with reference to some notice, as to what had been done with it? A I do.

Q And do you remember the reply that he gave to that question, as to what had been done with the notice, or 'What did you do with the notice?' A I do remember the reply in substance. Q Will you give it? A 'I gave it to my counsel—to our counsel.' Q Was he then asked, 'Who is your counsel?' Was he asked that? A Something in substance, as I remember, to that effect. I cannot give the exact words. Q And to that question of that substance what reply did he make? A He pointed to Mr. Leahy, or something like that, and said 'Our counsel.' Q Was Mr. Leahy present in the court room at the time? A Oh, he was conducting the examination part of the time.'' I think that is as far as we stipulated.

CLEMENTINE McLOUGHLIN, sworn.

Direct examination by Mr. Howell.

Q Where do you live? A I live in Warren street.

Q What is the number, please? A 484 Warren street.

Q How long have you lived there? A I have lived there seven years.

Q From whom did you rent the property? A Of Mr. Conway.

Q Which Mr. Conway? A The old gentleman, he is dead.

Q Mr. James Conway? A Mr. James, yes, sir.

Q Has there been any change in your landlord? A Not as I know of.

Q Well, Mr. James Conway is dead, is he not? A Yes, he is dead, I know that; but I don't know that.

Q Pardon me. You don't know what? A I don't know there has been any change in it.

Q To whom did you pay rent while Mr. James Conway was alive? A To Mr. Conway I paid rent, while he was alive, yes, sir.

Q Mr. James Conway? A Mr. James Conway, when he was alive I paid the rent to him, when he was living.

Q Up to the time of his death? A Up to the time of his death, yes, sir.

Q After his death to whom did you pay rent? A Well, he had an agent, after his death he had an agent.

Q Who was that? A Garrabrandt, but I don't know the name of the agent, I couldn't tell you his name, but Garrabrandt got it.

Q Did Mr. Garrabrandt say who he was collecting for?

Mr. McCarter. Objected to.

A For Mr. Conway.

The Court. Oh, no, no.

Mr. McCarter. Now, Mr. Howell knew better than to ask that question. I move the answer be stricken from the record, if it is on there.

The Court. Yes, I do not think it would make much difference any way.

Q Whom do you understand to be the present owner of the property?

Mr. McCarter. One moment.

A I don't know.

Mr. McCarter. One moment.

The Court. I do not see how that can possibly make any difference; it is her guess, that is all. If Mr. Conway was the owner of the property at his death you will be entitled to the relief that you seek.

Mr. Howell. If I state the facts here I may be able to make my point more clear. The deed from William F. Conway, the son of Mr. James Conway, to his prospective wife was recorded on July first, 1912; Mr. James Conway lived until April 4th, 1913, almost a year after that; the younger Mrs. Conway, who now has the record title to this property, claiming to be the absolute owner, as I understand it, by the answers, thereafter permitted her father-in-law, who had not had the record title—

The Court. Well, that is a matter of argument. Up to the death of Mr. Conway it is perfectly relevant to show that notwithstanding the deeds Mr. Conway collected the rent; that is evidence in favor of your position; but after the death of Mr. Conway the situation changes; it does not make any difference who collected the rents after the death of Mr. Conway, if you can show that at the time of his death he was the owner of this property as against these judgment creditors.

Mr. Howell. But the good faith of this conveyance from Mr. William Conway to his wife is one of the chief issues in this suit.

The Court. If you can show that notwithstanding the marriage Mr. Conway con-

tinued to collect the rents you have proved as much as you can prove.

Mr. Howell. I think there is one more element, and it is this: I want to show that there was no announcement by the Conways of this change of ownership, that the younger Mrs. Conway did not notify the tenants that she was now the owner of the property.

The Court. You can show that, you can show that this witness received no notice from Mrs. Conway that she was the owner; that is a matter between the witness and Mrs. Conway, and Mrs. Conway being a defendant of course her conduct is the subject of investigation. You can show that.

Q Mrs. McLoughlin, did you at any time after you lived in this property receive any notification from anybody of any change in ownership? A I don't know that, I didn't receive any of that, that is so, I didn't, that I didn't know.

Mr. Howell. Now, your honor, I want to urge my former question from another point of view. I want to show that Mr. Will Conway permitted it to be supposed that he was the owner and not his wife, that there was this understanding in the neighborhood, and that the tenants of this property, after the marriage and after the deed, and after the father's death, were of the impression that Mr. Will Conway, and not his wife, was the owner of the property. Mr. Will Conway is also a defendant here.

The Court. You can prove any declaration of Mr. William Conway; if this wit-

ness had a talk with Mr. William Conway you can show what it was.

Q After the death of Mr. James Conway, the old gentleman, have you had any conversations with Mr. Will Conway, the son? A No, sir, not whatever, with any of them.

Q Have you at any time had any communication with the younger Mrs. Conway, Mr. William Conway's wife? A I never did, never in my life, I did not.

Q On the subject of the rent, or anything else? A I didn't, with none of them.

Cross examination by Mr. McCarter.

Q Did you have a rent book in which you took a receipt for your rent? A I have got my rent book, yes.

Q Have you it with you? A No, not with me, I left them home, and I am not going to give them up until I see further.

Q Your husband's name was Frank? A No, Bernard is my husband's name; he is dead; Francis is my son's name.

Q What was the number of your house? A 484 Warren street; I live on the top floor, and lived there seven years.

Q You were not at Mr. Conway's funeral, were you? A I was at it, yes.

Q You were? A I was at it, yes.

Q Do you know when he died, do you know the date? A I don't remember, I can't remember everything; it is very hard to remember things away back, you know.

Q Now, Mr. Garrabrandt is a real estate agent; he has been collecting your rent, has he not? A Yes, he has.

Q Have you got all the books? A I got everything.

Q Don't answer so quickly, wait until you hear me first. A Excuse me.

Q When you go home to lunch, I wish when you come back this afternoon that you would bring back your receipt books. A Yes.

Q I won't keep them, but just want to look at them. A I will, all right.

Re-direct examination by Mr. Howell.

Q When you paid the rent to Mr. James Conway, did you pay it to him in person, hand it to him personally? A I have paid to the old gentleman personally, I went to the house and paid it.

Q (*By Judge Skinner.*) And did that continue—

Mr. McCarter. Well, one at a time, please.

Q And that method was, the payment in person was continued up to the time of his death?

Mr. McCarter. Objected to as leading.

A Yes.

The Court. Well, it was leading.

CHARLES H. KOLB, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 468 Warren street, city.

Q Are you in business in that neighborhood? A 470, sir.

Q How long have you been at 468? A About three years, somewhere there, three and a half years perhaps.

Q Do you rent or own? A I rent.

Q How much do you rent? A The top floor.

Q When you first went there to whom did you pay rent? A Mr. Blood.

Q Mr. who? A Mr. Charles A. Blood.

Mr. McCarter. Blood?

A Yes, sir.

Q Do you own the store 470, or rent it? A Not the property.

Q When did you first rent that? A About four years, four or four and a half years, I am not quite sure about it.

Q Of whom did you rent?

Mr. McCarter. Is that the store?

Q Yes. A Mr. Conway, Sr.

Q You refer to James Conway? A James Conway, Sr.

Q Did you know him personally? A Not until that time.

Q Well, after that time did you? A Yes, sir.

Q And how long did you continue paying rent to him? A Well, personally, I never paid it to Mr. Conway.

Q What do you mean by that, "personally?" A Well, for five months or so, I should judge, as my books show, I did work for Mr. Conway in the vicinity, and it amounted to about that much rent, so we had a settlement about five or six months after I rented the store, a final settlement, and we were about even, I believe, or I had some to pay him, and I paid it over at the house, Mr. Conway's residence.

Q This work for which you had a bill against him, I suppose, was for plumbing work, was

it not; that is your business, is it not? A Yes, sir; repairing.

Q Do you remember, generally, where the repairs were made? A Some in Warren street, and some in his own house, and, I believe, some was done in Cabinet street.

Q When you say "his own house," you mean his residence, I suppose? A His residence, yes.

Q After this settlement of five or six months, then tell us about your course of dealings with Mr. Conway? A I used to send my son over with it, but occasionally I took it up and left it there, and sometimes Mrs. Conway was at home.

Mr. McCarter. You cannot tell us what the boy told you?

A Well, it was sent up to Mr. Conway's home.

Q Occasionally you gave it yourself, you say? A Yes.

Q Just keeping to what you paid yourself, in the way of payment or settlement, did you have any subsequent settlement with Mr. Conway? A Thereafter?

Q Yes. A Only occasionally, when Mr. Conway gave me some work to do, I would either deduct it, that was about the way it was done, I used to deduct it and give him a check for the balance.

Q Did you know of Mr. Conway's death? A I knew of it, yes, sir.

Q And up to the time of his death had there been any change in the arrangements and methods that you had been dealing on?

Mr. McCarter. I object to that; I think he better state what happened.

Judge Skinner. Well, I asked if there was any change; I think that is about the same as asking what happened.

The Court. I do not see any objection to that.

A Up to the time of his death?

Q Yes. A Had there been any change in the method of paying my rent?

Q Yes. A Oh, I can't recollect now, I don't know, I don't think so.

Q And was this plumbing work that you did for Mr. Conway a matter of frequent occurrence, or only once in a great while?

Mr. McCarter. I think we ought to have the facts about it and not these surmises, your honor.

Q (*By the Court.*) Did you do Mr. Conway's work generally, or did somebody else do it? A It seems to me that Mr. Conway had somebody else do some occasionally, I didn't do all of it, I don't think.

Q (*By the Court.*) Well, Mr. McCarter wants you to specify with as much particularity as you can how much you did for him? A I just can't remember the figures; I can produce my books to show that, if he requires it.

Q Can you tell us how long that practice continued, about the latest of your work for Mr. Conway, when with reference to the time of his death, try and fix it by that?

Mr. McCarter. I think, your honor, if there is any point in that at all we ought to have evidence that is worth something. This man knows by his books when he did work; there is no use guessing on this.

The Court. He can testify from recollection, as far as he can recollect; of course, his books are much better evidence than his recollection, but the question is competent, if it relates to this witness's recollection of what he did.

Q Have you any recollection, any distinct recollection of the duration of your doing work for Mr. Conway, how long it continued, if you can tell us; if not, why we will ask you to refer to your books. A I don't think that I could say that, no; I did something for Mr. Conway from the very beginning, as I say, when I rented the store, and up to the time of his death, and I couldn't tell, I don't even remember from that time to the time of his death how much time elapsed, I could not say that.

Q You gave checks, you said? A Yes.

Q To whom did you make the checks payable? A Made them out to William F. Conway.

Q William F. Conway? A Yes.

Q When was that? A Some time after Mr. Conway died, quite some time after Mr. Conway died.

Q Before Mr. Conway died? A I don't think I gave any checks then, no, sir.

Q You think your payments were made by a messenger or in person? A Yes.

Q Or by off-set? A Yes, sir.

Q Since Mr. Conway's death, James Conway's death, have you had any business dealings, in person, with Mrs. Isabelle E. Conway, Will Conway's wife? A Yes, sir.

Q And have you also had business dealings with William F. Conway? A No, sir.

Q You said you made the checks payable to William F. Conway? A Well, I had a reason for that.

Q What was the reason? A Mr. Conway's wife requested me to do that, inasmuch as whenever I made a check out I had to mail it to Mr. Conway, and it was a matter of him bringing it back home, if I made it to her, so I made it directly to him and he endorsed it and got the money in the bank; that is the way I understood checks to be made out, to Mr. Conway.

Q Which Mrs. Conway do you mean? A Young Mrs. Conway.

Q Young Mrs. Conway? A Yes.

Q She requested you to make the checks payable to William? A Yes, and I know Mr. Conway had them cashed in my bank.

Q How much rent did you pay for the store? A Twelve dollars.

Q A month? A Yes, sir, per month.

Q Did you rent anything but the store? A No, sir.

Q Of James Conway? A Not from Mr. Conway.

Q After James Conway's death did you receive any notice of any kind with reference to the ownership of the property? A No, nothing in writing.

Q Well, anything by word of mouth? A Yes, sir.

Q When was that? A The exact date I cannot tell.

Q Well, when, with reference to Mr. James Conway's death? A Well, I began to pay my rent thereafter by request of Mr. Conway, some time after, to Mr. Conway's wife, or to the

house, some time after that when I made out my checks why, as I say, I made out to Mr. William F.

Q May I ask you to bring down, after recess, your books in which you kept account of plumbing work done for Mr. Conway, and any receipts or vouchers that you may have? A Yes, sir.

Q Both before James Conway's death and after? A I can bring you vouchers, returned checks, but I have no receipts.

Cross examination by Mr. McCarter.

Q Do you know when Mr. James Conway died? A No, sir, I can't recollect that.

Q I understand that the only place that you rented from him was the store? A Yes, sir.

Q Now, you went into that place when? A I believe it will be five years this coming August.

Q Do you have a rent book? A Well, Mr. Conway made out one, I believe, one time, and I never had it because I always thought Mr. Conway was a man of his word, he proved so to me, and I never requested one, and when I gave different checks I presumed that would be the receipt.

Q Have you got your checks? A Not here, no, sir.

Q Look at this book; did you ever see that? A Yes, I guess that is the first one Mr. Conway made, and that is the only one.

Q When did you see that first? A I saw that at the time, about the time when we had our first settlement.

Q Well, what do you mean by that? A That dates back about six months after I rented the store.

Q In other words, as soon as that bill had been settled by rent, that you speak of, with the old gentleman, that you call your first settlement, do you? A Yes.

Q That was about six months after you rented the store? A Along thereabouts.

Q That, you think, was seven years ago? A Oh, no, about five years ago.

Q That would be about 1910 then? A About four years, maybe four or five years this coming August, I am a little hazy on that, but I believe it will be five years this August coming.

Q After you fixed up your rent for the five or six months by some plumbing bill you had with the old gentleman, you then said that young Mr. Conway, William there, showed you this book? A I saw this book; I am not positive whether it was young Mr. Conway. Did you say after Mr. Conway's death?

Q (Question read.) Was it William or the old man? A I don't recollect, sir.

Q You saw the book then? A Yes.

Q How did you happen to see the book? A I saw it in Mr. Conway's residence, when he made the settlement.

Q You saw the book then? A Yes.

Q Now, I notice that the first entry in this book is: "Newark, N. J., January 27, 1912. Received from Charles H. Kolb $84.00 in full for seven months' rent in advance from August 1, 1911 to March 1st, 1912, premises 470 Warren street. James Conway, per W. F. C." Was that entry in there at the time you saw it? A I presume, I can't answer directly, sir, I presume it was.

Q Well, how did you happen to see the book? A Mr. Conway, one of the Mr. Con-

ways gave it to me and I looked through it; we had our settlement; I don't know whether I paid it in check or cash; I presume that is all there was to it; I don't believe I ever saw the book from that date to this.

Q Can you tell now, by reference to that book, how many of those entries were in the book at the time you saw it, when you referred to? A No, sir, I couldn't.

Q Cannot? A No, sir, I couldn't truthfully say that.

Q After you made the settlement with the old gentleman for five or six months' rent, by way of plumbing, I want to understand after that was out of the way, those five or six months were settled up, how did you then pay your rent for this store, just describe the operation? A I would occasionally stop in and pay it myself.

Q Stop in where? A Into Mr. Conway's residence; he lives within one hundred feet of where I do, or a little less.

Q Yes. A Or one of my boys would take it.

Q How soon did you begin to have personal relations with James Conway about your rent? A Why, that began when I rented the store; I understood Mr. Conway owned then—at least, Mr. Conway rented it to me.

Q William is the one I mean, how soon did you begin to have personal relations with William Conway about the rent? A Personal relations? I never had any.

Q When did you first see William. I do not care what you call relations. When did you first see William with reference to the rent

of this place? A In reference to collecting rent do you mean?

Q Your rent? A I never paid Mr. William; I saw Mr. William Conway during the time Mr. Conway was alive, he was in about the rooms.

Q I am talking about your store now, you know. A I never paid Mr. William Conway anything but a check.

Q Well, have you got your checks with you? A No, sir.

Q Now, you testified on your direct examination about having had some talk with young Mrs. Conway, Mrs. William Conway. A Yes.

Q Have you any idea when that talk was, do you know how soon it was after she was married? A I don't know as I could say exactly the time.

Q Was it hot weather? A Yes, I believe it was in the summer.

Q How long, if you know, or was it reported to you, had William been married at that time?

Judge Skinner. I object.

Q By either William or her?

Judge Skinner. By William?

Q By William or Mrs. William?

Judge Skinner. That is how long before had it been reported by either of them to him that they were married?

Q Well, I will put it this way: At the time you had this talk with Mrs. Conway she was the wife of William Conway, wasn't she? A I presume so, I understood so.

Q How long had they been married, did they tell you? A No, sir; haven't yet been told that they were married.

Q Pardon me. A I say I presume so, because I heard it indirectly.

Q You heard of their marriage? A Yes.

Q How long had you heard it? A Why—

Q Was it shortly or a long time? A Shortly after, very shortly.

Q Shortly after you heard the report of their marriage? A Yes.

Q At that time, I understand you, Mrs. William Conway, who sits there—that is the lady you refer to (indicating lady in the court room)? A Yes.

Q Told you to pay the rent to her husband? A No, sir.

Q What? A Oh, she told me to pay, not the rent, she told me when I made checks out to make them to William F. and send them to his office, because there he can have them cashed readily in the bank, because the bank is in the same building with him.

Q What did you do after that, pursuant to that request? A I mailed him those checks, as per that request.

Q Mailed the checks to the order of William? A Yes.

Q And how long has that continued? A Ever since.

Mr. McCarter. I would like to have that book marked for identification.

The Court. You may put it in evidence.

Marked Exhibit D. 1.

Q I want to try and refresh your recollection, Mr. Kolb; do you recall that perhaps

within a year and a half or so you gave a note for your rent? A A year and a half since now?

Q Well, it may be two years or a year or a year and a half, you were not able to pay your rent at the time and you gave a note? A No, sir, I do not.

Q Don't you recall that within a year or so, year and a half, you brought this book, Exhibit D. 1, which you had had in the meantime in your possession, and gave it to young Mr. Conway? A It seems to come to me now that I did have that book in my possession; if I did it was only once.

Q I want to try and refresh your recollection. A Yes; I want to answer as correctly as I can.

Q I know you do; it is hard to remember these things. Now, with that thing in your mind—this book seems to start on January 27, 1912—I ask you if it is not a fact that down to within a year or two, a year and a half, you had this book in your possession, with the entries indicated down to that time, and that when you had some occasion to see young Mr. Conway, you saw him and gave him the book at that time, and it has been in his possession ever since? A I know I haven't had the book in a long while; I believe when I did give it back I gave it to Mr. Conway, because Mr. Conway—I would see Mr. Conway more than I would his wife.

Q Are you able to tell us when it was, about when; a year or so ago? A Well, if it was it was longer than a year, because I haven't had that book in my possession in a year; it is nearer two years.

Q And the receipts for the periodical payment of rent were in there down to the time you surrendered it to Mr. Conway, were they not? A Yes, I believe they were.

Q Have you no way of fixing when that was? A Not from memory, no, sir.

Re-direct examination by Judge Skinner.

Q Take the incident of your returning this book, you speak of its having been given back to Mr. Conway; which Mr. Conway do you mean? A William F.

Q Was that before or after the death of James Conway? A Oh, after.

Q And was it a short time after or a long time? A No, sir, not a short time after.

Q Not a short time; can you tell otherwise about how long after his death it was? A I just stated it was somewhere along, must have been two years ago, nearly, or thereabouts.

Q You spoke, I think, of having had the book once; what did you mean then, as to the length of time that you had it; did you have it once and keep it from that time on until the delivery to Will Conway, or what did you mean about that? A I meant that I didn't have any book until we had the settlement that first time, and then Mr. Conway made out a written book and said, I believe, if I can get the words in substance, that "From now on when you pay your rent, why, we will have it receipted in the book."

Q "We will have it receipted?" A It will be receipted; I can't recall the exact words, but to that effect, that "You will receive a receipt, we will call this your rent book"; so I believe it

was at that time, or shortly thereafter that I received the rent book.

Q And after that did you make a practice of taking the book with you every time, or did you overlook it? A I never took the book with me—I did take the book several times, I won't say never.

Q Did you take it regularly? A No, sir.

Q Only several times? A Oh, I don't say several times, I can't remember exactly how many times. As I stated before, Mr. Conway seemed to be a man of his word, etc., and I found him so in dealings with him, and I didn't have any fear of any trouble with Mr. Conway, whether I had a receipt or not.

Q Which Mr. Conway do you mean? A Senior.

Q Then were there times when you did not take the book, when you made rent payments or rent settlements and did not have the book with you at the time? A I believe that I took the rent book every time I made a payment; whether or not my children did I can't recall, but I believe the book went back each time, I am not positive.

Q Well, when this book was produced today you recall it was produced by Mr. Conway's attorney and solicitor?

Mr. McCarter. Is that an argument?

Judge Skinner. I think it ought to appear in the record, if it does not already appear, that it was produced by you and not by us.

Q Had you given it to him? A To whom, sir?

Charles H. Kolb, re-cross.

Q To Mr. Conway's lawyer? A No, sir. I haven't seen it, sir, since I returned it and surrendered it to Mr. Conway.

Q Well, then, since you surrendered it to Mr. Conway have payments been made without the production of the book? A By checks.

Q You were asked about the wedding, and when something was with reference to the wedding of Will Conway and his wife?

Mr. McCarter. I didn't say a word about wedding; I asked about the marriage, that is the distinction that I made.

Q Well, I thought you said wedding, I may be mistaken. As a matter of fact did you know when Mr. Conway and his wife—Will Conway—were married? A I think I did, yes.

Q You spoke of having had some request from Mrs. Isabelle Conway as to the method of payment, do you remember that? A Yes.

Q You were asked about that? A Yes, sir.

Q I think you were asked about when that was with reference to her marriage to Will; can you tell us when it was, with reference to the death of James Conway, was it before or after James Conway's death? A After, I think, I think so, I am not positive.

Re-cross examination by Mr. McCarter.

Q Did you know William was married before or after his father's death? A Before, I believe.

Q You testified a little while ago that this talk with Mrs. Conway, Mrs. William— A Yes.

Q —was before the old gentleman died?

Judge Skinner. Oh, no.

Q One moment. You later told Judge Skinner that it was after.

Judge Skinner. I object to that question as not being a correct statement of his former testimony.

The Court. I did not so understand it; I may be wrong.

Q Well, perhaps I am wrong about that. What I had in mind is this: it appears in the case that Mr. Conway, Senior, died on the fourth of April, 1913, and he said it was very shortly after the marriage that he saw Mrs. Conway, and it was in hot weather; she was married July first, 1912, and I perhaps inferred that it was before that. Are you clear in your mind now whether your conversation with young Mrs. Conway was before or after the old gentleman's death? A Previous, I believe. I don't wish to be pressed so hard on that point, but I am answering as clearly as I can. I think it was previous to Mr. Conway's death, and I try to fix that in mind with this help, that I took my orders from young Mrs. Conway in reference to work; I know I had one or two disputes with Mrs. Conway in reference to the bill, and we had settlements that way, some little disputes in reference to the bill being, possibly, not right, or something was unfinished in some manner; it was absolutely done with young Mrs. Conway.

Q When was that, about? A That was, to the best of my recollection, previous to Mr. Conway's death even.

Q These disputes? A Yes, I took the orders from her, and she ordered me to do this work.

Q Orders of what kind? A Well, for work done, for repairing.

Q Plumbing work? A Yes, sir; occasionally my rent would get behind, possibly for this month, and I would receive word Mrs. Conway wanted to see me; when I would go up the young lady would be there and she would say, "I want to know why this month's rent is not paid, when will you pay it; if you don't pay it on such a date I will have to have somebody else in there"; or, I had occasion to have somebody else share the store with me, and I had to have that matter taken up with young Mrs. Conway, and so we couldn't come to an agreement and I stayed alone; it seemed I had to have all my affairs carried out by order of young Mrs. Conway and nobody else.

Q Do I understand you now that on reflection your best recollection is that the talk that you had with young Mrs. Conway, the first time you ever saw her, in which she told you how to pay the rent, was before the old gentleman's death? A As it comes to me it seems that it was; I am somewhat hazy, I didn't pay so much attention to those things, but I believe now it was before, when I bring it to my mind, that she used to place the orders with me for this work, making repairs, etc., and possibly laxity of rent.

Re-direct examination by Judge Skinner.

Q I appreciate the difficulty you have in recalling distinctly, and that you are now trying to tell us the best you can. Are you sure that the conversation you had with Mrs. Conway, when she directed you about the payment of rent, was the first time you ever had any conversation with her; hadn't you seen her before

that? A I saw her, but I never had any conversation with her, I knew she was there.

Q And where; at Mr. Conway's home? A At Mr. Conway's home, yes, sir.

Q How long had she been there, as far as you know, before this conversation with her? A Well, now, I couldn't state that, how long she was there previous to that.

Q Well, months or years or weeks or days? A Oh, months.

Q So that whenever this talk was when she requested you to pay, you had seen Mrs. Conway, Will Conway, at the James Conway home for months before? A I saw her usually—Mrs. Conway was pointed out to me occasionally when she would drive in her machine or take trips, somebody would say, "There is Mrs. William Conway."

Q What? A They would point her out to me; but after Mr. Conway's death, and previous to Mr. Conway's death I had taken orders from her, but in relation to her marriage with Mr. Conway, why I can't bring that to my mind very clearly.

Q When you took orders from her where was she living? A She was living at the residence, I presume.

Q That is, James Conway's former residence? A Yes, that is where I used to have my dealings.

Q Can you be sure whether or not the old gentleman, James Conway, was dead at that time? A No, sir, he was not.

Q Can you be sure of that? A No, I know he wasn't dead.

Q What makes you sure of that? A Because I know he was sick, the last time I went

up to see young Mrs. Conway Mr. Conway was sick upstairs, and I asked about him several times, and she would say: "Father is not very well," that I can remember, that helps me somewhat to fix in my memory.

Q Was that one of the occasions when you had some orders from Mrs. Conway? A Possibly was.

Q You are not sure of that? A No; I think so, because I didn't go to Conways only when I had to, when they had to have some work done, or to pay some rent occasionally; went in once or twice to call in reference to Mr. Conway's health, when he was sick.

Q Was it on those occasions that you saw Mrs. Will Conway? A Yes, sir, I believe so.

Q And on any of those calls that you made to inquire about the old gentleman, was it in any one of those calls that she made this request about making the checks out to Will? A No, I think it was a purely business matter when I saw her, it was one time, as I stated previously, that I wished to have a sub-tenant with me, and I took that matter up with Mrs. Conway.

Q Well, you took that up with Mrs. Conway. Now the old gentleman was ill for a time there? A Yes.

Q Prior to his illness did you deal with him or Mrs. Will Conway? A Prior to his illness?

Q Yes. A I dealt with Mr. Conway, too, Mr. Conway used to come around and speak to me.

Q James Conway? A Yes, asked me how business was, etc., and "Have you been up home

seeing about the rent," but he never asked me for the rent.

Q You were not dunned for the rent, were you? A Dunned?

Q Did you pay promptly? A No, sir.

Q You carried it along and made a settlement on your plumbing account? A Several times, yes, sir.

CATHERINE BYRNE, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 478 Warren street.

Q How long have you lived there? A About twelve years.

Q Did you own it or did you rent it? A I rented it.

Q Of whom did you rent it when you first went there? A Of Mrs. James Conway.

Q Mrs. James Conway? A Yes.

Q And to whom did you pay rent from that time on? A I paid Mrs. Conway that first month's rent, and after that I never paid her myself any more, my husband always paid it, he went there to Mr. Conway's residence and paid it.

Mr. McCarter. You don't know where he went, you were not there. I move that be stricken out.

A My husband always paid the rent, or my children, either one; I never paid it, only the one rent.

Q Did you get rent receipts? A I always had a rent book.

Q And have you got that now? A No, sir.

Q Where is it? A I haven't got any, I have just one rent book, that is my latest rent book, I always destroyed the others.

Q You have the latest, and the old ones have been destroyed? A Yes.

Q How recently did you get that latest one, how long have you had it? A Well, I don't know, I guess I had one or two since we had the agent.

Q Whom do you refer to as the agent? A Mr. Garrabrandt.

Q You spoke of your husband or your children paying the rent; did you ever pay it in person after that first month? A Not that I remember myself, no.

Q Did you ever have any dealings at all about that property with James Conway? A No, sir.

Q Anything about repairs, or anything of that kind? A No, sir.

Q Whom did you have any such dealings with? A Nobody.

Q After you first went there and made your arrangements with Mrs. James Conway, were you ever notified of any change of ownership? A No, sir.

Q Where did James Conway live? A On Central avenue.

Q Do you remember the street number? A I don't know the number.

Judge Skinner. I think we can agree Mr. James Conway's residence was No. 491 Central avenue.

Q How far was that away from your home, 478 Warren street? A Just around the corner.

Q (*By the Court.*) That is in Newark, of course? A Yes.

Catherine Byrne, cross.

Q (*By the Court.*) Near the Orange line, I suppose?

Judge Skinner. I do not think it is near the Orange line.

Mr. McCarter. It is near the junction of Warren street and Central avenue.

Cross examination by Mr. McCarter.

Q What is your husband's name? A Thomas S. Byrne.

Q There has been some young man come around and collect the rent for some time, has there not? A Young man?

Q An old man. A An agent.

Q Well, whether he was young or old, some agent has been collecting the rent for a long time? A Yes.

Q You do not remember how long; and he was from Mr. Garrabrandt? A I don't know, Mr. Garrabrandt, that is all I know.

Q Did he come personally? A I don't know anything about it.

Q Have you got your book here? A No, sir.

Q Can you get that and bring that down when you come back at two o'clock? A I can't come down.

Q Well, all right.

The Court. Well, she says she destroyed the old books.

A I have only one book, that is all I got.

Q (*By Judge Skinner.*) Have you ever had any dealings about that property with Mrs. Will Conway? A No, sir.

MARY LEWIS, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 480 Warren street.

Q How long have you lived there? A It will be two years this coming February.

Q Do you own that property, or do you rent it? A No, sir, rent it.

Q Of whom did you rent it? A Of Mrs. James Conway.

Q And who has collected the rents? A Mr. Garrabrandt.

Q Did you ever have any dealings about that property with Mrs. Will Conway? A No, sir.

Cross examination by Mr. McCarter.

Q You paid your rent from the beginning to Mr. Garrabrandt or his man? A Yes, from the beginning.

MARY SHELDON, sworn.

Direct examination by Mr. Skinner.

Q Where do you live? A 484 Warren street.

Q How long have you lived there? A Two years.

Q When will the two years be up, or when were they up? A They were up this last November.

Q Last November it was two years? A Yes.

Q Do you own or rent the property? A I rent it.

Q Of whom did you rent it? A Mrs. James Conway.

Q Where? A At her residence, Central avenue and Seventh street.

Q And to whom have you paid rent? A I paid it to Mrs. James Conway the first month.

Q And since then? A To the agent.

Q Who is that? A He signs Garrabrandt.

Q Have you had any dealings at all about that property with Mrs. Will Conway? A No, sir.

Cross examination by Mr. McCarter.

Q Mrs. James Conway did not sign a lease, did she? A She gave me no receipt, no; I gave her the money; she gave me no receipt.

Q I say there was no lease signed by her for this property. A No, but I asked her.

Q You talked to her about the rent, and she told you? A Yes, and she told me I could have the rooms.

Q This was at her residence? A Yes.

Q That same day she took the first month's rent from you? A Not the same day, no.

Q When was it? A I guess it was a week after, or two weeks after.

Q And after that this Garrabrandt man, whoever he is, has collected the rent down to the present time? A Yes.

Q That is all you know about it? A Yes, that is all.

Re-direct examination by Judge Skinner.

Q Why did you see Mrs. James Conway? A Why, I understood she owned the property.

Q Well, when you saw her what did you say to her?

Mr. McCarter. I object.

The Court. Is she a party to the suit?

Judge Skinner. Oh, yes, sir.

The Court. Then the evidence is competent evidence against her; her evidence will not bind the others, it will bind her but not the others, unless there be some ground upon which it may do so by and by.

Q Just tell us what you said to Mrs. Conway, and she said to you, when you rented the property? A I asked her could I have the rooms, and she said I could have them, after awhile, she didn't want me to have them, but I rented them.

Q She said you could have them after awhile? A Yes.

Q What else was said? A Nothing, only she told me I must be prompt in paying my rent.

Q Anything said about the amount of rent? A Yes.

Q Anything said about where you were to pay it? A No.

Q Did you pay any then or was your first rent paid later? A My first rent was paid later.

Q Did you have any written lease? A No.

Q Any other leasing or arrangement about the property than this talk with Mrs. Conway? A That is all.

Re-cross examination by Mr. McCarter.

Q Mrs. Sheldon, was this a room or rooms? A Rooms.

Q Were they vacant at the time? A Yes, sir.

Q When you first saw Mrs. Conway about it, Mrs. James Conway, did she say she would let you know later? A Oh, no.

Q What was it about "after awhile"; I don't understand what you mean. A Well, she didn't quite care for me to have the rooms at first, because she thought I had too large a family for the four rooms, and then she decided she would let me have them.

Q All at one interview? A No, there were several interviews.

Q So that you first saw her and said you would like to rent the rooms which were vacant? A Yes.

Q And you were not able to make arrangements? A No.

Q Then you saw her again? A Yes.

Q And did you make the arrangements then? A Yes, sir.

ELIZABETH HOWELL, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 478 Warren street.

Q On what floor? A Top floor, third floor.

Q What portion, how many rooms have you there? A Six rooms.

Q How long have you lived there? A Well, from fourteen to fifteen years, I don't know just which.

Q Do you own or rent that apartment? A Rent it.

Q Of whom did you rent it? A Mrs. James Conway.

Q Mrs. or Mr.? A Mrs. James Conway.

Q That is back fourteen or fifteen years? A Yes, sir.

Q And since that time, from the time that you first rented it to whom did you pay the

rent? A Well, I paid the rent to Mrs. Conway, until they got the agent.

Q And that was Mr. Garrabrandt? A Mr. Garrabrandt.

Q When was that that they got the agent, with reference to James Conway's death; was it before or after his death? A Before his death they had the agent.

Q Before his death they had the agent, and have you since your renting of the property of Mrs. James Conway had any dealings about that property with Mrs. Will Conway? A No, sir.

Q Were you notified of any change of ownership of the property? A No, sir.

NOT CROSS EXAMINED.

MAY SCHOFIELD, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 470 Warren street.

Q On which floor? A Top floor.

Q How many rooms? A Four.

Q How long have you been there? A A year and five months.

Q Have you owned or rented? A Rented it.

Q Of whom did you rent? A Mrs. Isabelle Conway.

Q Did you see her in person? A Seen her, yes, sir.

Q Where? A At her residence, Seventh street and Central avenue.

Q To whom did you pay the rent? A Mrs. Conway, Isabelle.

Q Didn't you pay it to Will Conway? A Never had no dealings with Will Conway.

Q Didn't you have a call from Mr. Schenck, this gentleman sitting at my left? A Yes.

Q Within the last two or three weeks? A Yes.

Q Didn't he ask you who you paid your rent to? A I don't know as he did.

Q You do not know? A I don't recall; he asked me who I rented the house from; I said from Conway.

Q Didn't you tell him that Will Conway collected the rents and had from the time you had been there? A I did not; he never collected the rent as long as I lived there.

Q Didn't you tell Mr. Schenck that the tenants in that house were the only ones that paid direct to Will, that the others paid to an agent? A Not direct to Will, no, sir, I said to Conway's house. I heard that the others paid their rent to the agent, but not direct to Will Conway personally, no.

Q You did not say that to Mr. Schenck here? A No, sir.

Q When do you say you went there? A I never went to pay the rent; my boy always paid it.

Q No; when did you first rent it? A A year and five months the first of January.

Q You do not pay the rent in person at all? A Never, only the first time.

Q That first time you paid it to Isabelle? A Yes.

Q You see her in court here, do you? A I see her.

Q Which one is it? A Right behind Mr. Conway there.

David Lan, direct.

Cross examination by Mr. McCarter.

Q Have you got a receipt book with you? A No, sir, I have not.

Q Who signed your receipt book? A I can't say; it has always Mrs. Isabelle Conway on it.

Q That is the name? A That is the name on it.

Re-direct examination by Judge Skinner.

Q Have you got that book? A I haven't got it.

Q Where is it? A Home.

Q Will you bring that here after lunch? A I can't come down this afternoon.

Q Will you send it? A I will try and send it if I can.

Q Cannot you? A I don't know for sure.

Judge Skinner. I do not think her statement of what is in the book ought to be taken.

The Court. I think you better send it.

DAVID LAN, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 486 Warren street.

Q What business are you in? A Grocer, on the corner.

Q Where is your store? A Corner of South Seventh street, in the same house.

Q Corner of Seventh and Warren streets? A Yes, sir.

Q Do you rent the whole house? A Yes, sir, now, not in the start, now I keep the whole

house, since it got fixed over a little I keep the whole house, when I came there I didn't.

Q When you came there first what did you rent? A I rented the first floor when I came there.

Q When was that? A That was the eighth of last November; it was twelve years.

Q That is when you first came there and took the first floor? A Yes; I bought it from another party, the business, it got transferred.

Q Of whom did you rent the floor? A Well, I didn't rent it; when I bought the store the gentleman what I bought of, he took me over to Mr. Conway in the corner of Central avenue, and he said, "This is Mr. Lan; I sold to him the store, and he will pay the rent from now on."

Q Which gentleman is that? A The old gentleman and Mrs. Conway.

Q You knew him? A Yes, when he was alive.

Q After that who did you pay the rent to? A The first time I didn't pay no rent, they got groceries of me, and sometimes I didn't pay much rent, and then I had to get a little money over the rent.

Q Well, sometimes, though, there was a balance due from you, and you would pay it in cash? A And I would pay it in cash, yes.

Q Who did you pay it to? A I never paid it myself; when I used to be a little over I used to send the order boy up, if it was a couple of dollars over I used to send him along with the money.

Q Did you on any occasion pay it personally, take the money over? A Not myself, I don't think I ever used to do it myself, maybe I done it once or twice, the first years maybe.

Q Well, I think you said that you supplied groceries? A Yes.

Q To whom did you supply groceries? A Well, to the Conways.

Q And then was your grocery account set over against what you owed for rent? A Well, they used to take groceries every day, then when the month used to be over I used to make up the book, the grocery book, and it used to be more then, and they used to send me a couple of dollars, if not I sent them.

Q Did you have a grocery book for each customer? A Well, I gave them a little book, I got small little books I give to the customers.

Q Did you put the customers' name on the book? A Yes, some times.

Q What name was on this Conway book? A Conway.

Q Just Conway? A Just Conway.

Q Didn't say which Conway? A Didn't say which Conway.

Q Did you hear of James Conway's death, did you know of it at the time? A Yes, sir, I was there the day before.

Q From the time of your going over with the man you bought out, and being introduced to James Conway, until James Conway's death, had you been told or notified of any change of ownership at all? A I didn't know at that time, but I just know, when I was bothering them they shall paint the hall, because after I keep the whole house the tenants bother me, and I asked them they shall do the painting, and they told me they have nothing to do, I shall see Mrs. Isabelle Conway and she will do for me.

Q When was that, was it before or after James Conway's death? A I can't remember just when it was, because I know I used to ask the old man yet for the job, he shall do it, because the hall is very dirty, and he always used to say he can't do it now, they will do it after, and then they told me I shall ask the young Mrs. Conway.

Q Up to the time of Mr. James Conway's death who did you ask to make repairs? A I used to ask in the house there, they used to live together and I used to ask in the house; if I saw Mr. Will Conway I used to ask him too, and I used to see the young lady and I used to ask her, and they then told me I shall ask only the young lady and she will do it.

Q When they told you that was it before or after James Conway's death? A I think it must be before, maybe, because she wasn't married long before, of course I can't remember just so, she only was married maybe a couple of months, maybe six or eight, before the old man died.

Q I think the fact is she was married about eight months before, wasn't she?

Mr. McCarter. Well, he died in April, and she was married July first preceding.

A That is what I say, I can't remember exactly.

Q When you were supplying that house with groceries, and making out the book you just had the name "Conway" on the book; to whom did you look to for your bill? A I sent over the book, and the rest I sent, if it was more I sent; I do the same thing with all my customers that live in the row; I never mark John Howe or John Lavin, I always mark in the second name,

Lavin, Howe or Brown, or anything, I never mark the first name; I never had any troubles, if I come to troubles maybe I would have to find out the first name.

Q When you were supplying the groceries, although you just put the name "Conway" on, didn't you have one member of that family that you were looking to to pay your bill?

Mr. McCarter. Objected to as immaterial, and I do not think it is competent.

The Court. Well, he has told us what he did.

Judge Skinner. Well, I am afraid he has not told us all he did.

Q How much rent have you paid for the whole house? A Since I got the whole house I paid forty dollars.

Q How long has that been going on? A Since they fixed it up and I took it over it will be five or six years, I think.

Q Did you ever negotiate or try to buy that corner? A Yes, I was, maybe nine years ago, that time I only had the first floor.

Q Well, who was it you negotiated with, who was it you saw and talked with about it? A I don't know if he meant it, but he just told me, I asked if I could buy the house.

Q Who did you ask? A The old gentleman, about nine or ten years, in the start when I was there a year, two or three years.

Q Did you ever pay the balance of rent by check? A Yes, sir.

Q Have you got those checks? A I haven't got them, I used to have them in the Roseville Trust Company, and when they busted up I never had any checks.

Q Who were these checks made payable to? A Conway.

Q Which Conway? A I never made it only to Conway.

Q Do you mean to say you just drew a check and made it payable to Conway? A Yes, that is what I always done, I made it Conway; I don't know who was endorsed on the other side, I don't remember, I never looked, because that didn't bother me, but I always made for Conway, pay to Conway.

Q Did you ever have any talk with the old man about the property, about repairs? A Oh, yes, lots of times.

Q What was your talk? A Well, we made the repairs six years ago.

Mr. McCarter. One moment.

Q Six years ago? A Six or seven years ago, when they fixed over.

Q Who did you talk with? A The old man that time.

Q What did you say to him? A Well, I said—he wants me I shall take the whole house, the flat upstairs was empty; I said, "I can't do it, because the store is too small, and I can't do business enough," I said "When you make me larger the store, put a room to the store then I can take the rooms upstairs, and I can do some business when I have a larger store," and then he done it for me.

Q After that did you have any repairs? A No, nothing extra.

Q (*By the Court.*) You say he done it; what did he do? A Well, he put a room to the store, took out the wall and made the store bigger, and then I took the whole house.

David Lan, direct.

Q You say we did it; you didn't do it, did you? A I done too a little work, because the old man was a little—he didn't want to spend nothing, he wants to put me in such fixtures, and I put in a little money of my own that it shall be nicer fixtures, I done a little, and of course I had to put in new grocery fixtures altogether.

Q After that you paid more rent, did you not? A Yes, sir.

Q Who did you make your bargain with about that rent? A I made it with the old man, yes.

Q After that time did you have any other repairs, large or small? A Well, small; they got an old man that stays with them, and when there is a board to put on, or anything, little small repairing, then John, they call him, he do that, if the stoop is a little broke, he do a little repairing.

Q After that time you have been telling us about, about six years ago, when these alterations were made, did you have any talk with the old man about the house at all, about repairs or anything? A Well, sometimes a little, just a little bit, I never used to bother because I was thinking, no use bothering the old man about small payments, because the plumbing and something like that I used to pay myself.

Q After that time when the alterations were made, since then I mean, have you had any notice of any change of ownership of the property? A Well, I had maybe since they told me I shall talk to the young Mrs. Conway, if I want something done she will do it for me; I asked them to paint the hall.

Q How long ago was that? A About three years I think, maybe a little over.

Q Was it before the old man's death or after? A No, I think it was before, because the old man was sick the last couple of months.

Q Do you mean it was while he was sick? A I think so, I can't remember a thing like this, just the date.

Q You say he was sick a couple of months? A Well, he was sick more, because he used to walk around a little, but he was sick, he was laying in bed I think couple of months, too.

Cross examination by Mr. McCarter.

Q You recall, as I understand you, that the time when they told you you would have to talk with Mrs. Isabelle that the old gentleman was sick? A I don't remember just, I think it was about that time.

Q Now have you dealt with her from that time down to the present? A Well, yes, sir.

Re-direct examination by Judge Skinner.

Q You haven't dealt with just Conway, then? A Well, they told me Isabelle Conway, she has got to do, I shall tell her about fixing it, and then I asked her, and I got the books, too, where it is marked Isabelle Conway since that time.

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

Q Let me see them, please. A I got the books, I found two of them, I don't know if there are some more, I don't know, because I don't take such care of them so much.

Q Haven't you any others? A I don't know, I was looking around there and couldn't find any others.

David Lan, re-direct.

Q Did you have this book with you every time you made payments? A No, I used to send it over with the boy.

Q Did you always send it? A Most times, yes, sir.

Q Every time? A No, not every time, but some times; I used to have another book before, I used to have a little book, and when it was full,—when I used to send it and they told me they didn't have time to sign it of course I was never particular, I took the store when they made it bigger just on Mr. Conway's word; I asked for a lease and they never gave me any lease, he said I could stay as long as I wanted, nobody would bother me, and I don't care for a receipt either; of course they used to mark it.

Q Then you did not see the entries made? A No; some times they didn't sign it one month they signed it the next month.

Q Some times then the entry for previous months would be made when you would make a payment? A Well, when I sent over I sent the book along, but they didn't send me right back the book, some times they had it laying there.

Judge Skinner. The books produced by Mr. Lan, one of them begins with July 1st, 1912, with Isabelle E. Conway.

Mr. McCarter. We offer them in evidence if you do not, Judge.

Judge Skinner. I do not propose to offer them in evidence.

Mr. McCarter. Well, we do.

Marked Exhibits D. 2 and D. 3.

Mary O'Leary, direct.

MARY O'LEARY, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 478 Warren street.

Q Which floor? A First floor.

Q How many rooms are there? A Five.

Q What rent do you pay? A Fourteen dollars.

Q How long have you been there? A I was there thirteen years last October.

Q Who did you rent the property of? A Of Mr. James Conway.

Q Who did you pay your rent to? A Well, I never paid my rent personally to anybody, I used to send the children over to the house with it, after I paid my first month's rent to Mr. and Mrs. Conway in their residence on Central avenue and Seventh street.

Q From that time on did you send your money over? A Always.

Q Did you get receipts? A I had a book.

Q Have you got it yet? A I don't think I got the old books, I might, I don't think so.

Q And did you have any repairs made? A Yes.

Q When you wanted repairs who did you see about it? A Well, when Mr. Conway was alive I always seen him about it.

Q After his death who did you see? A Well, the last repairs I had done I went over to Mr. Conway's residence and the only one was there at the time was Mrs. James Conway, and I asked her, and she said she would see about it, and she sent a man to my house to do it, but I don't know who had it done, only the man done it, that is all I know.

Mary O'Leary, cross.

Q Have you been told at any time, or notified, as to any change of ownership in that property? A No, sir.

Q Did you ever have any dealings about the property with Mrs. Will Conway? A No, sir.

Q In your talk with Mrs. James Conway, when you were asking to have the rooms papered, was anything said about Mrs. Isabelle Conway? A No, she never mentioned anybody's name.

Q When was that, how long ago? A That is only a couple of weeks ago.

Q A couple of weeks ago? A About two weeks, I judge, just had it finished.

Cross examination by Mr. McCarter.

Q An agent has been collecting the rent there for some time, has there not? A Yes, sir.

Q Do you remember how long? A Well, I could pretty nearly tell, around three years I think, or going on to that, between two and three years.

Q The same man? A The same man.

Q Do you remember last autumn being behind in your rent and seeing Mrs. William Conway here and asking her if she would not paper your place? A Yes, I do; she was in the back yard, and I asked her over the fence, yes, I remember that.

Q About when was that? A Well, it was in hot weather, I can't just exactly say.

Q Was it about a year ago? A Oh, no, it wasn't that long.

Q Last autumn? A It was last summer.

Q During the hot weather last summer? A Yes.

Q Well, did she comply with your request? A Yes; my husband was sick at the time, and I said I would like to have the rooms done because I didn't know what was going to happen, I said I would like to see Mr. Conway about them; well, she said "We will see about them," that is the answer, and I didn't ask anything more about it until before Thanksgiving I went over, and there was nobody else in the house only Mrs. James Conway, and I asked her, and the rooms were done; I don't know who done them, or anything else.

Q You knew that Mrs. Isabelle Conway, that is Mrs. William, used to live in the old gentleman's house, didn't you? A Yes.

Q And when you went over there before Thanksgiving you expected to find her there, didn't you? A Yes, but she was not there.

Q You found she moved away? A Yes.

Q You expected to see her? A Yes.

Q To renew your request that you had made to her in the back yard? A Yes.

Q So you left the message with Mrs. Conway, Sr.? A Yes.

Q She said she would see about it? A Yes.

Q And the man came and put on the paper? A Yes.

ELIZABETH LAVIN, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 482 Warren street.

Q Do you rent? A Yes.

Q Whom do you rent of? A My husband took the rooms, I didn't; I don't know who he rented them of.

Kate Washington, direct.

Q How long have you been there? A Past ten years.

Q Did you ever see James Conway in connection with that property at all? A No, sir, my husband always paid the rent.

Q Your husband paid it all? A Yes, until the agent came, and then I paid it in the house after that.

Q Who did you pay it to before the agent came? A I never paid it, my husband paid it.

Q I suppose before the agent came the rent had to be taken somewheres instead of being called for? A My husband took it.

Q Is he here today? A No, sir.

Cross examination by Mr. McCarter.

Q When did the agent begin to come, do you remember? A I don't remember so very well, it is two or three years I think.

Q Several years. A Yes.

Q That was Mr. Garrabrandt's man? A Mr. Garrabrandt's man, yes.

Re-direct examination by Judge Skinner.

Q Did you know of Mr. Conway's death? A Yes, sir.

Q Did this agent begin to come for the rent before Mr. Conway's death or after his death? A Before, I think.

Q Are you sure of that? A I think it was before, I forget, I am not sure now about that.

KATE WASHINGTON, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 480 Warren street.

Q Which floor? A First floor.

Q How long have you been there? A A year last November.

Q Did you rent the property? A I pay the rent.

Q Well, did you make the arrangements for it? A Yes.

Q Who did you make them with? A Mrs. James Conway.

Q Where was that? A Over in her house.

Q And what was then arranged, what was it? A Those rooms were vacant; I wanted them; I went over and asked Mrs. Conway if I could have them, and she said yes.

Q Was anything said about the price, or the amount? A Yes, twelve dollars rent.

Q Was anything said about that? A No, not a thing, I didn't say a word about it, I kind of knew that that was the rent of the rooms before then.

Q Since that time whom have you paid the rent to? A To the agent.

Q Mr. Garrabrandt? A Yes.

Q Is that all that took place? A That is all.

Q Have you had any dealings with Mrs. Will Conway? A No, I never had.

Cross examination by Mr. McCarter.

Q Did you hear from your husband, or otherwise, that Mrs. Will Conway owned this property? A No, I didn't hear anything about it.

Q You didn't hear that? A No, sir.

Q Your husband attended to most of the business? A Not in the rent part of it, I always paid the rent myself.

Q But about any repairs, or anything of that kind? A Any repairs or anything like that I

always asked old Mrs. James Conway, that was when we came in, asked her to have the rooms cleaned, and she did.

Q Have there been any repairs since you went in? A Yes, the front room was papered.

Q You have paid the agent from the beginning, have you not? A From the very start, yes.

Q And have you got a book? A Yes, sir.

Q Is it here? A No, I haven't it with me.

Q Can you send that down? A Except if anybody is coming down, I can't come myself; I have two little babies, and the oldest is only two years old, at home.

FRANK McGRATH, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 120 Cabinet street.

Q How long have you lived there? A Between two and three years, cannot tell the right date when I moved there, but it is over two years.

Q You rent it, I suppose? A Yes, sir.

Q Whom did you make renting arrangements with? A Isabelle Conway.

Q Do you think you can place the time you have been there more definitely; you say two or three years? A The only way I could get at it, we had a child born there and that child is slightly over two years old, and we were there a couple of months before the child was born.

Q How much over two years is the child? A That I couldn't say, not much, though.

Q It was with this lady sitting behind Mr. Will Conway? A Yes, sir, that is the lady.

Q Before that had you met her? A Yes, sir.

Q When? A Couldn't tell you the date or the time or how long before that, I couldn't tell you, but I met her on several occasions.

Q Were you acquainted with the Conway family? A Yes, sir, as long as anybody I know.

Q And had lived in that neighborhood, had you? A Yes.

Q Do you remember the death of James Conway? A I remember hearing of it; I don't think I was in the city of Newark at the time.

Q Do you remember hearing of the marriage of Will Conway? A Yes, sir.

Q Had you met Isabelle Conway before that? A I think I seen her around Mr. Conway's residence.

Q Were you introduced to her? A Whether I was or not I couldn't say positively, I could not say.

Q See if you can refresh your recollection about that at all; did Mr. Will Conway speak to you about,—say anything to you about Isabelle Conway, before their marriage? A I heard her name mentioned by several parties, but I couldn't tell you who mentioned it; I heard a lot of talk that Mr. Conway was about to get married.

Mr. McCarter. Is that material?

Q How long was that before he was married?

Mr. McCarter. Objected to as utterly immaterial.

Objection sustained.

Judge Skinner. If there was a public announcement of engagement of marriage prior to the agreement.

The Court. You can ask him whether the agreement was made before or after she was married, the agreement with reference to rent.

Judge Skinner. No, aside entirely from that, I had in mind this, that if by this witness we could prove that there was an announcement of an engagement to marry prior to the ante-nuptial agreement which is set up in this suit as having been the promise of marriage induced by the promise of conveyance, that would thereby directly negative the idea or the contention that the promise of the conveyance was the consideration for the marriage, if there had been a promise of marriage before that it could not have been induced by the promise of conveyance.

The Court. What you are asking about is rumor, what rumor said on the subject, and certainly that cannot be proof.

Judge Skinner. I am trying to get the witness to tell what he has told in advance to Mr. Schenck in the preparation of the case.

Q Didn't you have a talk with Mr. Schenck? A Yes.

Q This gentleman here (indicating)? A Yes.

Mr. McCarter. How is that material? Suppose he did have a talk.

The Court. This is merely leading up, I presume, to something which may refresh his recollection.

Q Don't you remember telling Mr. Schenck that Mr. Will Conway introduced you to Isabelle

McGrath as his expected wife, some time before they were married? A That is not the way the conversation came up. Mr. Schenck asked me if there was no way, when a Catholic person would become engaged if they could find it out through a Catholic church; that was the first starting of it; I told him I wasn't very much versed in Catholicism, I was a Catholic, but not a very good one; so then he asked me how long I thought Mr. Conway was engaged; I said I couldn't tell.

Mr. McCarter. I do not see how this talk between Schenck and this man is competent.

The Court. It is utterly worthless.

Judge Skinner. Well, it seemed to me that if I could show by this witness that Mr. Will Conway had publicly announced this young lady as his intended wife, introduced her as such, before there was any promise to convey, it would tend to negative the defense that the promise of marriage was induced by the conveyance.

The Court. Of course William F. Conway is a party to this suit, and his statements are evidence. Now you can show any statement made by William F. Conway on this subject, but you did not put it in that form.

Judge Skinner. No, I asked him if he did not tell Mr. Schenck.

The Court. Well, that is rather leading. I do not think this witness has as yet shown any disposition to retract what he has said; it seems to me you have sufficiently interrogated him. It is perfectly easy to ask the witness whether he had any conversation with Mr. William F. Conway.

Judge Skinner. I thought I had, if I have not it was an over-sight.

Q Did you ever meet Mr. Will Conway and have any talk with him at all about the present Mrs. Conway? A In what regards?

Q Well, in any regard. Did he ever speak of his wife to you?

The Court. Before the marriage?

Q Yes, before the marriage. A Before the marriage?

Q Yes. A No, not about his wife.

Q Well, about the young lady that became his wife? A No, sir.

Q Did he tell you anything at all about any expected or intended marriage? A Well, there was some talk amongst the neighbors I guess, what I heard.

Q But did Will Conway tell you anything about it? A I don't believe he did, not to rightly remember.

Q Well, have you any recollection of that at all, or is your recollection only indistinct? A Why, hearing it through other people, and heard rumors around that Mr. William Conway was going to get married.

Q But did he at any time say anything like this: "This is"—can I lead the witness?

The Court. Oh, no, I do not think so.

Q Well, did you hear him speak of Miss Isabelle E. McGrath before their marriage to anyone? A I never knew her maiden name through Mr. Conway, I heard it from other people.

Q (*By the Court.*) Did he ever say anything to you about her before he was married to her? A No, I don't think he did.

Frank McGrath, cross.

Q Did he speak to anybody in that way in your presence, though not to you? A No, sir.

Q Mr. McGrath, I am asking only now for your personal knowledge and not for neighborhood gossip or report. Did William F. Conway ever speak of Isabelle E. McGrath as his intended wife?

Mr. McCarter. He has already said no three or four times.

A Not to my knowledge, not him personally, no sir.

Cross examination by Mr. McCarter.

Q Now, Mr. McGrath, have you ever seen Mrs. Isabelle to get some repairs? A Have I asked her to do any repairs?

Q Yes. A No, sir, I never asked her.

Q Have you done any work upon the property of Mrs. O'Leary? A Yes.

Q Who directed you to do the work? A Isabelle Conway.

Q What was the work you did? A Why, I put new steps to a back stairs, it was wore out, repaired a rail that was loose, repaired the back porch in general.

Q When was that, about? A A couple of years ago, I guess, around that time.

Q Have you built any privy vaults? A Yes.

Q On any of this property? A Yes, the Cabinet street property.

Q On the Cabinet street property? A Yes.

Q Who directed that to be done? A Isabelle Conway.

Q And when was that, about? A I think it is a year ago this winter.

Frank McGrath, re-direct.

Q Did you make terms with her, what you charge for digging those vaults? A Yes, sir, and rebuild them of concrete.

Q Who paid you? A Isabelle Conway.

Re-direct examination by Judge Skinner.

Q In this conversation you had with Mr. Schenck did you not tell him that all your dealings about the property had been with Will Conway? A No, sir, did not.

Q Do not answer this question until his Honor has ruled upon it. Was there anything of neighborhood reputation or report as to the engagement of Will Conway and Isabelle E. Conway, and if there was any when did it first come to your knowledge?

Mr. McCarter. Objected to.

Overruled.

RECESS.

Q You have done work on the Conway properites, haven't you? A Yes, sir.

Q And to what extent, and over what time? A Well, now, you would have to tell me about pretty near the years back to tell you the amount.

Q Well, have you done any since James Conway's death? A Yes, sir.

Q Quite a little, haven't you? A Yes, sir.

Q How have you been paid? A By check.

Q Whose check? A Isabelle Conway's.

Q Were you never paid by Will Conway's check? A No, sir, never.

Q Did you have any of your dealings, or make any of your arrangements about these repair jobs with Will Conway? A Never tried,

New Jersey State Library.

only to make only one deal with Will Conway in my life, it was to build a bench in the garage, and we could not agree on the price, he wanted it built too cheap, a tool bench for to repair automobiles, or something like that.

Q Where was that? A On Central avenue.

Q And when was it? A Oh, that is about, I guess two years and a half, maybe two years and nine months ago, somewheres in that neighborhood.

Q Before James Conway's death or since? A No, sir, afterwards.

Q When you made any of those repairs did you get some orders or instructions from somebody to make them? A Got orders from Isabelle Conway.

Q Always saw her personally? A Yes, sir.

Q Where? A She used to come to my house, and then again some times she sent after me.

Q Well, before James Conway's death did you do anything of the same kind of work? A Not for Isabelle Conway, no, sir.

Q Did you for James? A Yes.

Q How near up to the time of his death did you do that? A Well, the work I done for James Conway, I built a house for him corner of Eleventh avenue and Sixth street, that was about the time of the Spanish-American war.

Q How long before his death was it? A Oh, I couldn't tell you how long before his death.

Q A long time? A Yes, a long time.

Q Did you do any work for him shortly before his death? A No, sir; I wasn't in Newark.

JOHN LEHMAN, sworn.

Direct examination by Judge Skinner.

Q Where do you live? A 470 Warren street.

Q That is where you live now? A Yes, sir.

Q Do you rent it? A Yes, sir.

Q How long have you lived there? A I judge it to be about fourteen months.

Q Whom did you rent it of? A I didn't rent it, my wife rented it.

Q Your wife rented it? A Yes.

Q And your wife has since died, has she not? A Yes.

Q When was her death? A About three months ago.

Q And since that time have you made any payments of rent? A Yes, sir.

Q Whom did you make them to? A Well, when I took it over an elderly woman came to the door and I gave her the book and rent.

Q An elderly woman? A Yes, and she said that she would send it over after it was signed.

Q Do you see that elderly woman in court now? A Yes, sir.

Q Which one is it? A I gave it to that lady back there.

Mr. McCarter. Miss Annie Conway.

A Well, I don't know her name.

Q Well, it is agreed that is Miss Annie Conway. And is that the lady you paid the rent to? A Yes, I gave that lady the book.

Cross examination by Mr. McCarter.

Q I suppose on these occasions you have referred to you would ring the door bell and this lady would come to the door? A Yes.

John Lehman, re-direct.

Q You would say: "I have got my rent for my apartment" or "for my rooms," and she would take your book, take the money, and later you would get the book back; is that right? A Yes.

Q Have you got your book here? A No, sir.

Q Can you send it down or bring it down? A I can send it down.

Q Yes. It will be taken care of, you won't lose it. A Yes, sir.

Q Do you remember who signs the book, who signs the name to the receipt? A No, sir, I do not.

Q You took the cash, I suppose, or check, which? A Cash.

Q And you will send the book down, will you? A Yes.

Re-direct examination by Judge Skinner.

Q Did you make payment more than once? A Well, I have paid I believe, as many as I can think of, I don't think I paid over five months of it.

Q Five what? A Five months of it.

Q Five different times do you mean? A Yes, different times.

Q And on those different times who did you pay; you have told of one time a month ago, or about that? A Well, this last month of course an elderly woman came to the door.

Q And the other time? A And of course I have taken it; that is the only month I ever was in the house with it.

Q Well, on these other five times or other four times, when you say you paid the rent personally, whom did you pay it to? A Well, sometimes I handed it to young Mrs. Conway.

Q That is Mrs. Isabelle Conway? A Yes, after she said she would sign it and she would send it over.

Q Sometimes did you hand it to somebody else? A Well, sometimes I handed it to the servant.

Q And to anyone else? You see we have got Annie Conway once, sometimes to Isabelle, sometimes to the servant; ever to anybody else there; Will? A No, sir.

Q Did you have your book with you every time you made a payment? A Yes, sir, every time I made the payment.

Q And was there some entry made in the book at that time, and then the book handed back to you? A No, sir.

Q What was done; would you leave your book there, or would you get it right back? A I would leave it there, I didn't bother waiting for it, and of course they would send it over.

ANNA E. RAYNOR, sworn.

Direct examination by Judge Skinner.

Q Mrs. Raynor, where do you live, please? A 51 Salem street.

Q Were you at one time in the office of Mr. Edward Kenny, an attorney at law? A I was.

Q And was that from about 1890 to 1909 or 1910? A Well, I left his office in 1909, in October, and I had been in the office then about, I guess nearly twenty years.

Q Now, do you remember some occasion when a number of deeds were drawn in that office for Mr. James Conway? A Yes; of course it is hard to say just how many deeds I had drawn, but I remember of those deeds, drawing

quite several deeds for Mr. Conway, under instructions of Mr. Kenny.

Q Can you tell us about when that was? A Well, I don't know whether I could just exactly, as to the year or dates, but I think it must have been about, fully four or five, perhaps six years before I left the office.

Q Do you recall whom they were to? A That I couldn't recall, them all, I guess.

Q Any of them? A I think they were all conveyed, those that I did, to the families, the names of his family.

Q And do you remember where the property was? A Oh, no, that would be hard for me to say, what property, some were on Central avenue, others on Fifth street, I guess Camden street different properties on different streets.

Q Did Mr. James Conway used to come there to the office? A Why he did frequently, Mr. Kenny was his counsel, as far as I knew, and I guess a friend besides.

Mr. McCarter. Perhaps we can save some time. It is not going to be necessary to prove anything, as far as we are concerned, with reference to the title anterior to the title that young Mrs. Conway got. In other words, we are not going to contend that the several conveyances back and forth that are set out in the bill and admitted in the answer were without notice or were for value, we defend this case wholly upon the title of young Mrs. Isabelle Conway, on the consideration that we set up, and I only say that to save time. It may be that we need not bother a great deal about these intermediate conveyances; I judge this testimony is directed to the other features of the case.

It seems this young lady was a typewriter in the office of Mr. Kenny, who was a partner of Mr. Conway, and it seems that she drew a lot of deeds, and if it is directed to that point we will save some time perhaps by saying that we are not going to claim that the intermediate conveyances or the conveyance to William was for value.

Judge Skinner. Well, it was on that line that I was about to question Mrs. Raynor, for the purpose of showing acts of dominion by Mr. James Conway over the property after the conveyance to various members of his family, and I take it that is covered by what Mr. McCarter says.

Mr. McCarter. Exactly. I think we can narrow the issue.

The Court. How many of these lots of land did Mrs. Isabelle Conway get?

Mr. McCarter. Nine out of eleven.

Mr. Howell. Ten out of twelve, twelve altogether, and ten out of twelve.

Judge Skinner. Then I want to be sure that I do not misunderstand. I assume from that that there is no further contention or defense as to the other two of the twelve that did not go to Isabelle Conway.

Mr. McCarter. Oh, no, I didn't say that. There are two conveyances that went from James Conway direct to his sister, Miss Annie, we claim that we defend for her; they are not involved in these intermediate conveyances at all; and the other ten, if that be the correct number, I thought it was nine, were deeded to several people, and we will have to concede that they either had no-

tice or did not give value, does not make any difference which, and therefore we do not claim that they are bona fide purchasers for value, and those ten tracts—if there be ten—are thereafter put in the hands of William Conway, the young man, and they went to his wife; the two tracts that went to his sister are not involved in that, they are distinct, and of course we defend as to that.

The Court. Did she take subject to a life estate in James Conway, or did she take absolutely, I speak now of the face of the deeds?

Mr. Egner. Absolutely.

NOT CROSS EXAMINED.

FREDERICK W. WHERRY, sworn.

Direct examination by Mr. Howell.

Q Mr. Wherry, you are a member of the firm of Pitney, Hardin & Skinner, the solicitors for the complainant in this suit? A I am.

Mr. Howell. I think probably this might be admitted, this is an abstract, and it is a more convenient form.

Mr. Egner. Suppose we admit it, subject to correction later on.

Mr. Howell. Then I offer in evidence an abstract of certain deeds, commencing with the deed L-29, 305, by the Mayor & Common Council of the city of Newark to James Conway, dated October 25th, 1895, and I understand that the complete abstract will be offered in evidence, subject to any corrections which may hereafter be found to be necessary in any particulars.

Marked Exhibit C. 14.

Mr. Howell. I should further state on the record that in the margin appears certain notations; it will be found that twelve tracts are there referred to, numbered from one to twelve inclusive, and these are the same twelve tracts which are described in the bill of complaint.

Mr. Egner. That will appear by comparison.

Mr. Howell. Yes. There are also tracts on this abstract which are lettered from A to I inclusive, and these are other premises which were owned by James Conway on January 22nd, 1902, with the exception of tract E which he acquired in 1905. These tracts which are lettered from A to I inclusive are not mentioned in the bill of complaint.

Mr. McCarter. What is the materiality of conveyances made by Mr. Conway that you do not seek to attack?

Mr. Howell. I am just leading up to it, that Mr. Conway in 1902 deeded away practically everything he had; I am going to show that some of it later got into outside hands, but we do want to show that fact. Now, if permitted, I will say that this abstract shows that of all of these tracts which Mr. James Conway had on January 22nd, 1902—the only one which he did not deed away on that date, or within the next week, was tract F, which is a tract on the northeast corner of New York avenue and Garrison street, running along New York avenue forty-four and ninety one one-hundredths feet, and running along Garrison street two and fifty one-hundredths feet; and

also there are the three additional tracts in which James Conway had an interest on January 22nd, 1902, and which were not at that time conveyed by him, G. H. and I. These tracts, by recitation in a deed which we have on this abstract, it appears were inherited by James Conway and his brothers and sisters, I do not know how many there were, from his father, John Conway; with the exception of tracts F, G, H and I all of the property which James Conway had on January 22nd, 1902, was conveyed away by him either on that date or within the next week.

Mr. McCarter. It does not seem to me that so much of that offer as includes conveyances which they do not attack is at all material, it does not prove anything; he conveyed away on or about January twenty-second some property, but they say it was all right. What does that prove? They do not attack it, they do not refer to it, it is not mentioned in the bill, and I think it is immaterial. There is no claim in the bill, as I recall it, I may be mistaken, that he conveyed all his property away, and that the following they know or claim are fraudulent, and the rest they do not know anything about. The allegations of the bill are confined entirely to the twelve tracts in dispute, and I cannot see that we ought to be subject to any inference from the fact that at or about the same time he made conveyances that are not the subject of attack.

Mr. Howell. All these other conveyances made at that time were to members of the family, as testified to by Mrs. Raynor, and deeds were made by these members of the

family to apparent outsiders at a later time, and that is the reason why we have abandoned any attack on those outside properties. Our bill does state—and I am afraid incorrectly—that Mr. Conway on January 22nd, 1902, or thereabouts, conveyed away all the property that he then owned, and I have since found out that there were these four other tracts in which he had some interest, and I think that is relevant, as to how much of his property he conveyed at one time.

The Court. Do you say these four other tracts in which he had some interest were conveyed to members of his family at this time, and then by them conveyed to bona fide purchasers for value. Is that your statement?

Mr. Howell. No, sir; the four tracts that I have mentioned he conveyed away in nineteen hundred and five or six, and one of them in nineteen hundred and ten.

The Court. But you have told us that at the time of the conveyance of the properties in dispute he conveyed away practically all that he had to members of his family, but that there are certain of those conveyances which you have not attacked in this case, for the reason that subsequently you are satisfied that they were conveyed to bona fide purchasers for value without notice.

Mr. Howell. Those are tracts A to D inclusive, and tract F is in the same situation.

The Court. I think it can be shown of course that he made those conveyances with a view of showing that he not only conveyed without consideration the tracts in litigation,

but that he also conveyed others. Then you may go on and show that the reason why you do not attack those others is because you are satisfied that they have gone into the hands of bona fide purchasers for value. I think that evidence is competent, it is illustrative of the intent of the grantor at that time. Now with reference to undivided interests—if that is what I understand you to say—which he did not convey at the time but which he did subsequently convey to bona fide purchasers for value, it seems to me that they play no part in this controversy. If a man owns two tracts of land, and one he conveys in fraud of creditors, the other he conveys for value to a bona fide purchaser without notice, why it seems to me that proof that he so conveys to a bona fide holder does not shed any light whatever upon the intent with which he conveys the other, and it seems to me that the evidence is therefore irrelevant.

Mr. Howell. I have mis-stated the situation as to three of those four G, H and I, Mr. Conway conveyed to his sister, Annie L. Conway, apparently without consideration, in 1906, and she conveyed them to an outsider.

The Court. Well, you do not attack those?

Mr. Howell. We do not attack those. It seems to me they are in the same situation as deeds made to the members of his family in 1902, other members of his family.

The Court. I do not see how a conveyance made four years afterwards throws any light on the intent of a conveyance made four years before.

Judge Skinner. We want to show not the later conveyance, but that in 1902 James Conway conveyed every bit of property he owned, except one little piece, to some other members of his family.

The Court. That I think is competent.

Judge Skinner. We have to not only show what he conveyed, but we have to show the exception; we cannot show that he conveyed all but one, without showing what the one was.

Mr. McCarter. It does not follow that because he conveyed to his family there was a fraudulent conveyance.

Judge Skinner. The allegation is that he conveyed all the property he owned to members of his family in fraud of his creditors, and the fact that we cannot follow some of it does not change the evidential value of the other conveyance, as showing the intent.

Mr. McCarter. I think the statement they make with regard to that, that they were without consideration to the family, and that the only reason they are not pursued is because they stumble up against a bona fide purchaser must not go down as true, it is not proved.

Judge Skinner. Possibly we have not made ourselves clear. We do not attempt to show fraudulent conveyance as to this piece by showing a non-fraudulent conveyance of another; that is not the fact. What we attempt to show, and have this statement as a convenient method of showing, is that he conveyed all of his property. I ask your Honor to disregard any situation that there

were three or four pieces that were fradulently conveyed; we seek to show that he conveyed all of his property except one little piece that was only two and a half feet frontage, and our argument is that we prove thereby that in 1902 he stripped himself, he conveyed everything he had.

The Court. Well, I say that is competent.

Judge Skinner. Even these G, H and I, as I understand Mr. Howell now, we claim and allege in the bill were conveyed fraudulently, but the fact that we do not follow them does not change their evidential value on the other things that we do follow. We are also perfectly willing to have it understood that this abstract of course is subject to any correction that may be found by anybody, we simply give it as a convenient method of presenting the title facts.

Mr. McCarter. Now there are a lot of tracts here that are not referred to or described in the bill at all.

Mr. Howell. I want to make a correction which Mr. Wherry suggests I ought to make in my statement that tracts 12 and tract E were acquired by James Conway in 1905, it appears on this statement, and were then deeded by him to his children, Mary and William F.

The Court. You attack as fraudulent the conveyances of property that he acquired after 1902.

Mr. Howell. Yes; that is all in the bill.

The Court. Anything that you attack in the bill is, of course, susceptible of being proved by evidence.

Mr. Skinner. We attack one series of acts in 1902, and another act or possibly series of acts in 1905.

The Court. Yes, that I understand, and I suppose Mr. McCarter has the same unstanding.

Mr. McCarter. Yes.

JAMES J. FITZSIMMONS, sworn.

Direct examination by Mr. Howell.

Q Are you the secretary of the Board of Assessment and Revision of Taxes of the city of Newark? A Yes, sir.

Q Have you with you a table of certain assessed valuations of properties in the city of Newark? A Yes, sir.

Q Will you produce that, please? A (Produced.)

Q Now, Mr. Fitzsimmons, you have with you a copy of what has been marked here Exhibit C. 14? A Yes, sir.

Q In which a number of tracts from one to twelve inclusive are described? A Yes.

Q And a number of other tracts from A to I inclusive are described? A Yes, sir.

Mr. McCarter. Well, I think we can probably save time. Subject to correction, if you say, gentlemen, that these statements are correctly transcribed in here we need not bother this witness.

Mr. Howell. Except certain corrections which we want to make right now which are called to my attention.

The Court. Why cannot you put in evidence a corrected statement?

Mr. Howell. Yes, we can have this original corrected, and we will mark it in evidence at once.

Judge Skinner. Well, Mr. Fitzsimmons can withdraw and make the corrections in a few minutes. But let it appear upon the record that this paper is a statement either made up by Mr. Fitzsimmons, or if made by somebody else compared by him and found to be correct, containing a statement of each tract in the bill by the enumeration we already have on this exhibit 14, and with reference to each tract a statement of the assessment as it appears in the books of the city of Newark for the year 1901 and 1912, giving the name of the owner, to whom it was assessed, the description by whatever form it appears there, the valuation at which it was assessed, and in some instances other petty details; and the same thing with reference to the tracts A to I, both inclusive. Then as to some of these tracts there appears a statement of the assessed valuation for the year 1906, and that is, of course, stated here, too, and in two other cases that I see 1905 and 1907, different years for these different properties, made up for convenience, as showing what they were assessed for, and to whom they were assessed.

Mr. McCarter. Subject to the materiality we use the statement rather than the evidence. I cannot see what 1906 has to do with it at all, and I cannot see what the tracts A to E has to do with it, these are the tracts not attacked, but no objection to your letting the statement go in, and

we can hereafter thresh out how much of it should be held material by the court.

The Court. Is your objection that the valuations stated on the paper are not proved?

Mr. McCarter. No, sir, we waive the proof by Mr. Fitzsimmons.

The Court. Well, Mr. Fitzsimmons is not the assessor, he has not valued these properties, and he is merely giving the valuations of the officials who made them. Of course, the primary evidence is the evidence of the officials who made the assessments.

Mr. McCarter. We do not care about that; we will admit, if the particular items are material, that they stand assessed on the books of the city for the years named at that value.

The Court. Then the statement will go in subject to objection on the score of its immateriality, and the objection will be considered later.

Mr. Howell. Just a few more exhibits from this printed case which I omitted to offer this morning.

Page 236 of the book, Mr. McCarter. I offer in evidence an exhibit in the State of the Case in the Court of Errors and Appeals, page 236, a letter from the Surèty Company to James Conway, dated March 27, 1903.

Marked Exhibit C. 15.

Mr. McCarter. That is after the alleged fraudulent conveyance.

Mr. Howell. Yes.

Mr. McCarter. And I think, therefore, immaterial.

The Court. What is the date?

Mr. McCarter. March 27th, 1903.

The Court. On your admission it is not immaterial. Your admission is that the property remained the property of Conway, so far as this judgment creditor is concerned, up to the time of the conveyance to Isabelle. I think this paper is evidence, unless Mr. McCarter has some other objection to make.

Mr. McCarter. The sole purpose, I take it, of this paper is to strengthen the inference drawn from the fact that this claim against him which was started, if you will, by his going on that indemnity bond, accelerated by the letter to him of January thirteenth was, if you will, consummated by another letter of March 27th, 1903. Well, if there was any guilt in his transactions at all it had occurred a year before that, and nothing that they could do to him, or he could do to them could undo the effect, as I look at it, of the transaction that had been accomplished.

The Court. It is a case of continuing guilt, from their standpoint. On the principle upon which evidence of this sort is always admitted I have to admit this evidence, but it will go in subject to objection and subject to your comments upon it hereafter.

Mr. Howell. Then on page 237 is the enclosure in the same letter.

Mr. McCarter. Subject to the same objection, I suppose.

Mr. Howell. This being merely a summons beginning the action in the Massachusetts suit.

Marked Exhibit C. 16.

Mr. Howell. And then on page 239 is a letter from the Surety Company to Mr. Conway, dated May 26th, 1911. This letter shows the fact that judgment had been taken in the Massachusetts suit.

Mr. McCarter. Same objection.

The Court. Did that precede the conveyance to Isabelle?

Mr. Howell. Preceded it.

The Court. Well, I think that anything that preceded it ought to be admitted in evidence, subject to Mr. McCarter's objection. As I understand, the theory of complainant's case is that this was a wrong begun in 1902 and consummated by the final conveyance to Isabelle. Up to that time the transaction may be said to have been in *fiori* it was consummated by the final deed. Now, on that theory, I admit this evidence; it may be that Mr. McCarter's position is stronger than I now think it is.

Marked Exhibit C. 17.

Mr. Howell. There is another similar letter to the last, dated January 1st, 1911, from the Surety Company to Mr. Conway, found on page 240.

Mr. McCarter. Same objection.

Marked Exhibit C. 18.

Mr. Howell. Subject to the tabulations by Mr. Fitzsimmons we close our case.

William F. Conway, direct.

WILLIAM F. CONWAY, sworn.

Direct examination by Mr. McCarter.

Q William, where were you born? A Newark, New Jersey.

Q How old are you? A Thirty-six.

Q You are the son of James Conway? A Yes, sir.

Q And the brother of Mrs. Kelly and Mrs. Mason? A Yes, sir.

Q Is your mother living? A Yes, sir.

Q Is she well or an invalid? A Invalid.

Q When did your father die? A April 4th, 1913.

Q (*By the Court.*) At what age? A Seventy-two.

Q (*By the Court.*) How old is your mother at this time? A Mother is seventy-eight.

Q How long had your father been ill previous to his death in April, 1913? A Oh, he had been ailing for eight, nine, ten years, off and on, Mr. McCarter.

Q And what disease did he die of? A Cancer.

Q Had he been confined to the house practically for some time previous to his death? A Yes.

Q About how long? A Oh, I should say three or four years, off and on, he would get up one day and stay in bed the next, and up and down, that was his condition.

Q You took a legal education at Yale College Law School? A Yes.

Q Later admitted to the bar in New Jersey? A Yes.

Q A partner of Mayor Kenny? A Yes.

Q Practicing here now? A Yes.

Q (*By the Court.*) When were you admitted to the bar? A 1901, February term.

Q Did you graduate from the Yale College Law School? A Yes.

Q What year? A Nineteen hundred.

Q (*By the Court.*) You studied in whose office? A No office at all; I was registered in Mr. Kenny's office, but I did my studying in the law school. I might supplement that, I will say that after I received my degree I spent all the time between June, 1900, and February, 1901, in Mr. Kenny's office; I was admitted under the Five Counsellors Act.

Q Where were you in 1901 and 1902, in Newark, or law school, or where? A I was in Newark.

Q Did you know of the fact of your father's connection with the Wakefield business? A Yes, sir.

Q Do you know when he became first interested in that contract that Minahan and Costa had? A Along 1901, I think, Mr. McCarter.

Q Did you know that he was sued in Massachusetts? A Yes.

Q Or rather the Surety Company was sued? A Yes.

Q And he had this notice that has been offered in evidence from the Surety Company, or didn't you know that? A Well, the notice I am not so sure about, but I knew that the Surety Company was sued in Massachusetts.

Q You knew the Surety Company was sued in Massachusetts? A Yes.

Q Did you attend the trial in Massachusetts? A Yes.

Q You were there yourself? A Yes.

Q After the judgment was obtained in Massachusetts were you aware of the fact that a suit was pending in New Jersey, was commenced and pending in New Jersey against your father on this indemnity agreement that has been offered in evidence? A I knew the suit was started.

Q Were you personally aware of the fact that your father had signed that indemnity agreement at the time he signed it? A No, I didn't know a thing about that.

Q Didn't know anything about that? A No, sir.

Q When were you married? A July first, 1912.

Q Where? A City of Newark, St. Rose of Lima's Church.

Q That is a Catholic church in this vicinity? A Yes, Roseville.

Q Who married you? A Reverend James J. McKeever.

Q Did Father McKeever on that occasion give to you and your wife this marriage certificate that I show you? A He did.

Q Who witnessed your wedding? A Mr. Thomas A. Halloran of Bloomfield, New Jersey, and Miss Annie L. Conway, my aunt.

Mr. McCarter. I offer that certificate in evidence.

Marked Exhibit D. 4.

Q This certificate bears the signature of Father McKeever? A Yes.

Q You know his signature? A Yes.

Q How long have you known—I am going to call her Isabelle, for short—Miss McGrath? A I met Miss McGrath at that time in 1907, I had known her five years.

Q Her maiden name was Isabelle McGrath? A Isabelle E. McGrath.

Q Is she related in any way to the McGrath's who are named as parties grantee in some of these intermediate deeds? A No, sir.

Q Is she related in any way to the Mr. McGrath who was on the stand here today? A No, sir.

Q Where did she live at that time? A Brooklyn.

Q You say you have known her six or seven years? A Knew her from 1907, five years.

Q Do you know where she was living in Brooklyn? A Yes, sir.

Q Where? A 105 India street.

Q Did she own that house? A Yes, sir.

Q Who lived with her? A Her father, mother, sisters and brother.

Q Did she carry on any business there? A Yes, sir; she was at the head of a dress-making establishment.

Q When did you make up your mind you would like to marry her? A In 1911, the latter part of November, I asked Miss McGrath to be my wife.

Q Where was that? A At her home in Brooklyn.

Q And did she accept you? A No, sir, she did not.

Q Go on and describe what next occurred? A I proposed marriage again to her in the latter part of January, 1912, and was again rejected; both times the reasons advanced by Miss McGrath were to the effect that she had a prosperous business, was making money, was self-supporting and she did not see why she should surrender it to me, or give it up, I should

say, and marry me. I renewed my suit at different periods from the first refusal in 1911 until 1912 in the first part of June.

Q Then what occurred? A I called on Miss McGrath in New York, met her by appointment that day in New York.

Q New York? A New York.

Q What day was this? A It was the Sunday preceding the thirteenth of June, 1912, that would be the ninth of June, 1912; and I took Miss McGrath to Newark with me, instead of staying around New York I asked her to take a trip to Newark with me, and she said she would, and when I arrived at Newark I took her around and showed her property which I owned, and I told her the income of the property, and I told her the expense attached to it in the way of taxes, and I told her that in view of the fact that she had refused me on two occasions on the ground of business, on the ground of her income, I told her that I would convey that property to her if she would consent to be my wife.

Q Now, did you go to all of the property and show it to her? A Yes, sir.

Q And is the property that you showed to her the same property that was afterwards deeded to her by you? A Yes, sir.

Q Go on and describe what occurred? A I told Miss McGrath at that time: "Now," I said, "this is a legal matter and it has to be attended to in legal fashion; now you had better call on some attorney and have him draw the necessary papers, because I being a lawyer, I know that the matter has to be in writing."

Q Let me ask you, did you see any member of your family that day? A I took Miss Mc-

Grath up to my home; I showed her the house.

Q (*By the Court.*) You mean your father's house? A My father's house, Vice-Chancellor; I took her into the house; my mother at that time was out with my sister in an automobile, up to my sister's home in South Orange, she is a cripple and cannot walk, and she took her out for a ride; so I had Miss McGrath meet my Aunt Annie, who occupied apartments in the same house with us, and my father, who was in bed sick, I introduced her to my father in his room, we were in there probably two or three minutes, just a formal introduction and good-bye.

Q Previous to the interview with your father had Miss McGrath made any reply to your proposition, after showing her these properties? A That day?

Q Yes. A She said she would consider it.

Q (*By the Court.*) Just at that point, how many children did your father have? A Living at that time?

Q (*By the Court.*) Living at that time. A Two, both married.

Q (*By the Court.*) Who were they? A Mrs. Kelly and Mrs. Mason.

Q (*By the Court.*) Mrs. Kelly lived where? A South Orange, 26 Stanley road, and Mrs. Mason at that time lived on Hawthorne avenue, East Orange.

Q (*By the Court.*) There were no other children but yourself? A No other children but myself; I was the only boy.

Q Did Miss McGrath know any of your family prior to this occasion when she called at the house with you? A No, sir, never met any of them.

Q Well, how was the matter left of her marrying or not marrying you, that day? A She said she would consider the proposition, and I told her, as I said before, that she better have some attorney other than myself draw up the papers; she replied she knew nobody, except it would be one Mr. William H. Darrow of New York City, an attorney, who was a personal friend of mine, and whom I had met with her on a couple of social occasions, so she said she did not know anybody else but Mr. Darrow; "Well," I said, "call on Mr. Darrow," I said, "I would suggest him, if you want me to suggest a man I suggest Mr. Darrow, and you can call on him."

Q Where did you meet Mr. Darrow? A He was in Yale with me.

Q He was at law school? A Yes.

Q You and he were friends? A Yes, good friends.

Q What next occurred? Did you go back with her that day? A I took her back to New York, after having had tea at my home.

Q You mean a formal tea or just a cup of tea? A Cup of tea; father was in bed and the girl served it to my aunt and myself and Miss McGrath, and I took her back home.

Q What next occurred in the matter? A The next thing I knew in the matter was when Mr. Darrow called me on the telephone the next day and told me that Miss McGrath had called on him and said that I sent her in to him, and wanted to know was I going to convey certain property to her, and he wanted to have a description of the property.

Q Did you put a description of the properties in the possession of Mr. Darrow? A Yes, sir; he sent over to Newark for them.

Q You gave them to the messenger? A Gave them to the messenger.

Q What is the next thing you heard? A The next thing I heard was when I received a letter from Miss McGrath to call at Mr. Darrow's office on Tuesday, the following Tuesday; that would be the eleventh.

Judge Skinner. Haven't you got that letter?

A No, Judge. And I went over to Mr. Darrow's office and met Miss McGrath and Mr. Darrow.

Q What occurred there? A Mr. Darrow had the agreement to convey the property drawn, and told me that Miss McGrath had called on him in response to a message that I gave to her to see him, and that the agreement was all ready for execution; Miss McGrath would not sign the agreement that day.

Q Would not? A Would not sign it.

Q What was said? A She said that she couldn't possibly get ready by the first of July, which was the time fixed in the agreement, and she had large orders ahead of her in her business, five or six weeks' work ahead, and had several customers' goods brought in that very day, and she did not think it was fair to her customers to take them at short notice and return the goods.

Q What next occurred? Did you separate then ? A Yes, sir; we left the office together.

Q She declining to sign the paper? A She declined to sign the paper, yes, sir.

Q Then what next occurred? A Why, then Thursday afternoon I met her in New York by appointment, I asked her to meet me and

she did, in Mr. Darrow's office again, and at that time she signed the paper; that was the thirteenth.

Q I show you a document—the other side I think have had a copy of this.

Mr. Howell. Yes, we have.

Q Dated June 13th, 1912, between William F. Conway, of the City of Newark, County of Essex, State of New Jersey, of the first part, and Isabelle McGrath, of the City of New York, County of Kings, State of New York, party of the second part, and I ask you if that is the document to which you just referred, and if it was signed that day by you and Miss McGrath, as there appears, in the presence of Mr. Darrow? A Yes, sir, that is the paper.

Q And acknowledged? A Yes, sir.

Mr. McCarter. I offer it in evidence. This document reads:

"Whereas, the party of the first part (Conway) is the owner and seized in fee of certain lots, tracts or parcels of land and premises, with the buildings thereon situate, lying and being in the County of Essex, City of Newark, and State of New Jersey, and

Whereas, it is the desire of the said party of the first part to have the said party of the second part enter into the marriage relation with him and become his lawfully wedded wife on or before the first day of July, 1912, and

Whereas, in order to procure and obtain the promise of the said party of the second part to enter into the said marriage relation with the said party of the first part,

and in order to induce her to enter into said marriage relation, it is the intention of the said party of the first part to convey to the said party of the second part a portion of the said lots, tracts and parcels of land, of which he is now seized in fee, situate in the County of Essex, City of Newark, and State of New Jersey, hereinafter more specifically bounded and described, and

Whereas, it is the intention of the party of the second part to enter into the marriage relation with the party of the first part and become his lawfully wedded wife on or before the first day of July, 1912, upon the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the said intended marriage and the mutual covenants herein contained, and the sum of one dollar, each to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto covenant and agree to and with each other as follows:

The party of the first part doth covenant and agree to and with the said party of the second part that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, her heirs and assigns forever, by deed of warranty, free from all encumbrances, on or before the 1st day of July, 1912, all those lots, tracts or parcels of land and premises with the buildings thereon situate, hereinafter particularly described, situate, lying and being in the City of Newark, County of Essex, State of New Jer-

sey," then describing by meets and bounds the eleven parcels of land, being the eleven that are referred to in the bill of complaint, and then after this description, continuing:

"And the said party of the second part, in consideration of the premises and conveyances herein agreed to be made, doth covenant, promise and agree to and with the said party of the first part, that she, the said party of the second part, will marry and become the lawful wife of the said party of the first part, and that she, the said party of the second part, doth promise, agree and consent that a proper marriage ceremony shall be solemnized, celebrated and performed between her, the said party of the second part, and him, the said party of the first part, on or before the first day of July, 1912.

And it is further agreed by the parties to these presents that the said party of the second part, her heirs and assigns, may enter into and upon the said land and premises on the first day of July next ensuing the date hereof and from thence take the rents, issues and profits to her own use.

In Witness Whereof, the said parties have hereto interchangeably set their hands and seals the day and year first above mentioned." Signed by Mr. Conway and by Isabelle McGrath, in the presence of Mr. Darrow, and acknowledged before Mr. Darrow, who is here, and who is a Notary Public.

Q Well, it already appears you were married on what day? A July first, 1912.

Q What day of the week was that? A Monday.

(At this point the witness was withdrawn in order to examine Mr. William H. Darrow.)

WILLIAM H. DARROW, sworn.

Direct examination by Mr. McCarter.

Q You are a member of the New York bar? A Yes.

Q You lived where? A Brooklyn, New York.

Q How long have you known William F. Conway? A I met him about nineteen hundred.

Q Where? A He was a student in Yale Law School the time I was.

Q You became friends? A Yes.

Q Remained so ever since? A Yes, sir.

Q Had you ever met, previous to the time when you drew this paper, which I will bring out in a moment, Miss Isabelle McGrath of Brooklyn? A Yes.

Q Previous to that time? A Yes.

Q About how long before had you met her? A Oh, probably a year or two.

Q Do you remember how that came about? A Well, she called upon me one time on a professional matter, and another time, I believe, she called at my house on a social matter.

Q Then you had only seen her about twice? A Twice or three times I met her in Mr. Conway's company.

Q Was it he that introduced you to her? A Yes, sir.

Q After you became acquainted with her you performed some legal services for her? A Yes.

Q Such as collecting a bill, or something? A Yes.

Q Coming down particularly to the time in question, what was the first information you had touching a desire on anybody's part to have a marriage settlement prepared? A On Miss McGrath's, then Miss McGrath.

Q Go on and describe what occurred? A Miss McGrath called me on the 'phone; I was at my office, and she said she wanted to see me at my office, and she came down the day that she telephoned.

Q Do you remember when that was? A I can't fix the date, no, but I know.

Q This paper, this Exhibit D. 5, seems to have been dated and acknowledged the thirteenth; now about how long before that? A Three or four days; she asked to meet me at my office, and she came down that day; she then stated to me that she was going to marry Mr. Conway, and that Mr. Conway was going to give her some property, and that Mr. Conway had stated to her that it was necessary to have a legal document drawn, and had suggested my name as the party to draw it. So I asked her what property she was going to get, and she told me a number of parcels, and I asked her for the descriptions of the parcels; well, she did not have them; I said "I thought it would be necessary to get those"; she said "well, she didn't know, she would leave it with me"; so I said, "So, then you have made up your mind to marry Mr. Conway," and she said, "Well, I think so." "Well," I said, "you must do more than think so, you must know." "Well," she said, "what does this all mean," she said, "It is all Greek to me, what does

it mean?" I said, "It means this: if Mr. Conway is willing to give you this property, and a proper document is drawn, and you marry him, why you own the property." She said, "That property is mine, then?" I said, "Yes, it is yours." I also said to her that time, "If he doesn't give you the property and you do marry him, why you can sue him;" I also said that "If you refuse to marry him after executing the contract why he can sue you." That was the way we talked it over. "Well," she said, "Yes, I am going to do it." I then called Mr. Conway on the 'phone and wanted the description of the property, and I sent over, as I recall it, and got a description, which is incorporated in this agreement, and I draw this agreement here.

Q In the meantime, of course, she had left the office? A Oh, yes; she was down in the morning, as I recollect, and I don't know but possibly while she was in the office I called Mr. Conway on the 'phone, but anyhow I drew this agreement.

Q What next occurred about it, after you got it ready? A After I got it ready Mr. Conway and Miss McGrath came to my office, and the paper was then read, and I asked Mr. Conway to step out into the next room; I went over the paper again with Miss McGrath, or I went over it with her, that was the first time she had seen it, and I said to her, explained to her the nature of this paper, it was a contract whereby she agreed to marry Mr. Conway on or before the first day of July, and that he agreed to give her this property; so I said, "It is a serious matter, Miss McGrath, I suppose you want to look it over again, or look it over,"

and, "Well," she said, "I have changed my mind."

Q That is a woman's privilege. A She said, "I changed my mind." I said, "It is ready for execution"; she said, "I changed my mind, I am not going to sign it." Then I said, "Are you not going to marry Mr. Conway"; she said, "No, I am not going to marry him now."

Q Did you notice anything about her appearance at that time? A Why, yes, she was considerably agitated, very much worried, and she and I talked it over there together alone for quite some few minutes; I did not urge her to do it, but we discussed it anyhow, and she said no, she wouldn't do it; I said, "This is final?" She said, "Yes." So I called in Mr. Conway from the other room, and I said, "Bell has changed her mind, she will not sign this agreement, and she says she will not marry you"; and the two of them discussed the question there in my presence, and I remember that Miss McGrath said at that time, spoke of her business engagements, and spoke of the number of people whom she had made engagements with in her business, that were relying upon her in fact, and one time I know she referred to Mr. Conway as being unreasonable, and she did not sign the paper.

Q So they left without signing the paper? A Yes.

Q What is the next thing you knew about it? A A day or two afterwards, I think, Mr. Conway called me on the 'phone and said, "If you will be in your office for a few minutes we will be down"; I think he was then in New York, and he came down with Miss McGrath, and either he or she said, "Well, where are

those papers," and I said, "So, then you have made up again, have you," and they said, "We will sign the papers," and I produced the paper and they signed it and acknowledged it before me as a Notary Public; I gave them each a copy, and they departed.

Q That is all you know about it? A That is all.

Q It was prepared in duplicate? A Oh, yes, it was prepared in duplicate, and I gave them each a copy.

Q You did not prepare the deed, did you, that followed? A Oh, no.

Q That ended your connection with the matter? A Yes.

Q You were not at the wedding? A No, sir.

Cross examination by Judge Skinner.

Q You met, you say, Mr. William Conway, in 1900; are you sure that was the earliest acquaintance you had with him? A Well, I entered Yale Law School in 1899, and I think I was there about a year before I met him; that is the way I fix it.

Q Then how long did you and he attend Yale Law School together? A Well, I got through in 1902, and I think he was one year ahead of me, or possibly two years.

Q (*By the Court.*) You mean after? A No; Mr. Conway was in either one or two classes ahead of me.

Q (*By the Court.*) Then he entered the school before you did? A I entered in 1899, yes, 1899, and I graduated in 1902, I am certain of that.

Q (*By the Court.*) Then he must have entered the school before 1899? A Who?

Q (*By the Court.*) Mr. Conway. A Yes; Mr. Conway, I think, was a senior when I went down there, I think Mr. Conway was a senior.

Q Do you mean then that you and he were only one year together in Yale? A Yes.

Q His senior year? A Yes, it is about that; I don't know as there is any point about it.

Q You and he in that year became quite intimate, did you not? A Yes.

Q Was there an Edward B. Reilly who was also at the law school at that time? A Yes, sir.

Q And a Mr. McGrath? A Yes, sir.

Q Were you and Will Conway and they sort of chums there? A Why, yes; they were in my class; Mr. Conway wasn't; both Mr. Reilly and Mr. McGrath were in my class.

Q But you four were more or less intimate? A Why, yes, we were.

Q In that time. That senior year, Mr. Conway's senior year must have been the year beginning in the fall of 1902 or the fall of 1901; you went in 1902? A No, I went there in 1899.

Q Oh. A I graduated in 1902.

Q He then graduated, did he, in 1900? A Well, if he says so, yes; he graduated ahead of me anyway, I don't know whether it is one or two years.

Q Well, the course is three, is it not? A No, I think it is two, as a matter of fact; I think Mr. Conway graduated in 1900.

Q You understand me, I asked you if the course was not three years? A Oh, I beg your pardon; the course is three years, yes.

Q If you entered in 1899, and that was Mr. Conway's senior year, I take it then that you and he were together in that law school from

the fall of 1899 to the summer of 1900; is that right? A Yes, I think that is right, it would be right, of course, if Mr. Conway graduated in 1900, as I think he did.

Q Well, did you hear anything at all at any time about Mr. Conway's father's business? A No. At what time? Not at that time when we were up there, no.

Q Later did you? A Later I knew that Mr. Conway was in business.

Q You did not learn that in your year of rather intimate acquaintance with Will Conway in the Yale Law School? A No, sir.

Q Did you know he had a father, I mean when you were together at Yale? A Yes, sir.

Q Didn't know what his business was? A I don't think so, no.

Q Did you later learn that his father had business difficulties? A Yes, sir.

Q When was that; about the time of the difficulties? A Oh, no, well, I can't say just when it was I heard that Mr. Conway was sued in Boston.

Q Did you hear that from Will? A Very probably I did.

Q At the time you heard that had you graduated from the law school? A Oh, yes.

Q And were in practice in New York? A Yes, sir.

Q Did you advise Will Conway at all about his father's affairs? A No, sir.

Q At no time? A There was a suit in New York that I advised either Mr. William Conway or his father about.

Q Where was your office from the time you opened an office in New York or Brooklyn, where was it? A First at 120 Broadway, from 1902

to 1907; then I removed to 156 Broadway, from 1907 to about 1913.

Q And it was there that you were when this agreement was drawn? A I was at 156 Broadway, yes.

Q Did you have associated with you or in your office a Mr. Kelly? A Yes.

Q And a stenographer by the name of Burtis? A Yes, sir.

Q Did you at any time have any talk with Mr. William Conway about his father's business affairs, and particularly his Wakefield contracts? A I do not recall any particular conversation I ever had with him about it; I remember his telling me that they were sued on the Boston contract, or they were sued in Boston, which I take it is near Wakefield, I knew an action was pending or had started, or maybe it was over at the time he told me of it.

Q Did you know of any conveyances in 1902 by James Conway? A I did not, no, sir.

Q Did you know at any time, 1902 or later, that James Conway had conveyed properties to his son William? A Oh, I heard of that later, yes.

Q When? A Oh, I don't know, probably—well, I don't know, three or four years afterwards probably.

Q Three or four years after? A Well, you say 1902? A After 1902?

Q After 1902. A Now, let me see, no, I wouldn't say that I heard of that until 1907, I fix that date because I do not believe that I heard a thing about Mr. Conway, Sr.'s business while I was at 120 Broadway; that is the way I fix the date.

Q Prior to the drawing of this agreement

in 1912 had you had any talk of any kind with Will Conway about his father's business affairs? A Oh, yes.

Q Had you had any talk with him about Will's own property? A Will's own property?

Q Yes. A Yes.

Q Did you know that he had property that had been conveyed to him by his father? A I didn't, no, I didn't know it was conveyed to him by his father.

Q What did you know about it? A Well, I knew that Will had property, or I assumed he had property, he told me he had property.

Q Did you discuss with Mr. Will Conway at all legal propositions as to the sufficiency of consideration that would support a deed? A Yes.

Q When was that? A Along 1912.

Q And did he ask you whether marriage was a sufficient consideration? A He did.

Q Did he bring up that subject, suggest that as a possible consideration, or did you? A I can't recall, I think though that Mr. Conway did, I think it was brought up as an abstract question one time.

Q And about when was that, with reference to the execution of this agreement? A Oh, let me see, that was in June.

Q 1912? A In that spring, or a month before probably, May or April.

Q Did he ask you whether a deed supported by such consideration would be good against creditors of the grantor? A Yes, sir.

Q Did you tell him it would? A I told him in my opinion it would.

Q Did you at that time look up the law at all? A Yes, sir.

Q At his request? A Yes, sir.

Q And did you then advise him that in order to be free or proof against attack the conveyance should not be a conveyance of all the grantor's property? A I did not.

Q I notice that this agreement recites that it is a portion of the grantor's property; do you know why that appears there? A I don't know, no, I don't know why it is worded that way.

Q Well, you put it there, did you not? A Yes, I put it there.

Q You cannot tell us why you put it there? A No, I can't recall just now, but I can say, anyhow, that it was not put there to avoid or to meet the contingency you speak of, because that was not my opinion at the time.

Q It was not put there then because of your having read any case or heard of any case which so held? A It was not put there because it way my opinion at that time a conveyance of all of the property would be void and a conveyance of a part would be good.

Q Of course, you connected the drawing of this agreement, did you not, in your own mind with the advice you had given Mr. Conway about the sufficiency of marriage as a consideration? A I don't get that.

Q When later you were asked to draw such an agreement you connected it in your own mind with the advice you had given Mr. Conway? A Oh, yes, yes.

Q And you then thought, did you not, that in some way this deed was intended to have the effect of defeating some creditors?

Mr. McCarter. I object.

Admitted.

A My idea was to draw a conveyance that would vest in the grantee a good title against attack from anyone; the question came up was whether a conveyance made in consideration of marriage was as good as any other conveyance made for a valuable consideration to a bona fide purchaser without notice.

Q Well, you have said that you had in mind, or in some way discussed—I am not sure that I quote you absolutely—the sufficiency of such a consideration against the attack of creditors. Now what creditors? A Did I say that?

Q I think so. Is not that so? A If I did not I will say it now, yes.

Q And then you connected the drawing of this agreement with your discussion with Will Conway and your advice to him. Did you then have any thought at all as to whose creditors were in mind? A Why, yes.

Q Or whether anybody's? A Yes.

Q Did you think it was Will Conway's creditors? A No, I did not.

Q Did you think it was Will Conway's father's creditors? A Yes, I did.

Q And you thought that because of what you had heard from Will before about his father's troubles, did you not? A Yes.

Q Miss McGrath came and consulted you about this, did she not? A Yes.

Q The first you heard about this was from Miss McGrath? A No, I don't say so.

Q Won't you? A No, sir.

Q Haven't you? A I don't say so; Mr. Conway and I had discussed this matter; I had considered and advised about this question of consideration.

Q You say that she called you on the 'phone, speaking of what led up to the execution of this agreement? A Well, if I did say that I want to change it; what I meant was, the first time I met Miss McGrath in connection with this instrument, or had any talk with her or conversation or communication with her in regard to it was the day that she called me up on the telephone; I had talked with Mr. Conway about the question of marriage being a good consideration.

Q And is that all the talk that you had with Mr. Conway? A Yes.

Q So that there was the situation that when she called you on the 'phone you had once had a discussion with Conway? A Not once, I don't mean once, we discussed it a number of times, and I advised him, I had given him my opinion, I had investigated.

Q That was how long before the telephone call from Miss McGrath? A Oh, during the month previous, probably.

Q As much as two weeks or three weeks previous? A I would not attempt to say, I would say, though, within the month previous.

Q During any discussion that you had with Mr. Conway on this subject of marriage as a consideration did he tell you that he had that subject in mind with reference to a marriage to any particular person? A Yes, sir.

Q Did he tell you he had it in mind with reference to the marriage to Miss McGrath? A Yes.

Q And you knew, of course, that Mr. Conway was a lawyer himself? A Yes, sir.

Q Had been admitted to practice ten years then, hadn't he, or more? A Yes.

Q So that the subject that you had discussed with him was not whether marriage was a good consideration but whether it was good enough to stand an attack by creditors, wasn't that it? A Well, I intended to convey that impression, yes.

Q That was the subject of discussion? A Yes.

Q Then you must have known that he was going to ask Miss McGrath to marry him, did you not? A Yes.

Q And you must have known— A I knew he was going to ask someone to marry him— yes, I knew he was going to ask Miss McGrath, or I inferred he would.

Q You also knew he was thinking of having some conveyance made to Miss McGrath in consideration of marriage, did you not? A Yes, sir.

Q And you know that he was also thinking of that as a shield against somebody's creditors, did you not? A Yes, sir.

Q When Miss McGrath came to you on the day or so before—or, first she called you on the 'phone? A Yes.

Q Had Will Conway made any appointment for her to be at your office? A I don't think he had, no, I don't think he had.

Q Had he told you to expect her? A Well, I won't say about that, I wouldn't be certain about that, I don't think he did, perhaps he did.

Q Well, but you do not remember it? A I do not remember it.

Q So that when she called you on the 'phone you had no arrangement then existing with Will to take care of her when she came, did you? A I won't say that, I think that Will and I had talked it over, and I think he said well, he would send Miss McGrath in.

Q You think so? A I think so; now when it was I don't know, it might have been the morning she came in, it might have been the week before.

Q When she came in she asked your advice, didn't she? A Yes, sir.

Q And you gave it? A She said, "What does this all mean, it is all Greek to me."

Q Oh, that was later. A Well, she said, "What does it mean," I guess she said it more than once.

Q She came in and told you she was going to marry Will Conway? A Yes.

Q Did she tell you that he had promised to convey a lot of property to her? A Yes; that was the first time she came in.

Q Yes, the first time. A Yes.

Q Did she just come to tell you that? A No, she came to have me draw the agreement.

Q She requested you to draw it, did she? A Yes; her words were that, "Will said that this matter should be attended to by a lawyer, and he suggested that I come to you."

Q Did she say that she knew of no other lawyer to come to, that you were the first one that occurred to her, that she had spoken of you? A I don't recall her saying that, no, or at any time in fact.

Q Did you then or at any later time tell Miss McGrath that Will Conway had consulted you as to whether or not a conveyance to her would be a sufficient shield against creditors? A I did not.

Q Why not? A I did not consider it necessary at that time.

Q Why not? A Why should I?

Q Wasn't she consulting you? A She was

—well, I don't know, yes, she was consulting me.

Q Didn't you feel under any obligation to tell her anything that might be within your knowledge of any doubt as to the sufficiency of title? A But there was no doubt; if there was any doubt in my mind I think I would have been obliged to have told her, but there was no doubt in my mind.

Q There wasn't any doubt in your mind that such a deed, based on such a consideration, would be of no value if made to somebody who knew of the existence of the debt, was there, there was no doubt in your mind on that point? A I didn't get that.

Q (Question read.) A No, there was no doubt in my mind, and there was no point about that.

Mr. Howell. Now, I have the tabulation of Mr. Fitzsimmons, and I want to offer it; I have a copy for the other side.

Marked Exhibit C. 19.

Adjourned until tomorrow at 10 A. M., at the Chancery Chambers, Newark, New Jersey.

SECOND DAY.

IN CHANCERY OF NEW JERSEY.

Between

AMERICAN SURETY COMPANY OF NEW YORK,
Complainant,

and

WILLIAM F. CONWAY, *et al.*,
Defendants.

Before His Honor Vice-Chancellor STEVENS.

For complainant: Pitney, Hardin & Skinner by Alfred F. Skinner and Corwin Howell.

For defendants: McCarter & English by Robert H. McCarter and Arthur F. Egner.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Friday, December 24th, 1915, at the Chancery Chambers, Newark, New Jersey.

WILLIAM H. DARROW, resumed.

Judge Skinner. No further questions.

Re-direct examination by Mr. McCarter.

Q Mr. Darrow, did you know from William generally the nature of the claim that the American Surety Company had against his father?

Judge Skinner. I think that is leading; I object.

Q (Question read.)

Judge Skinner. It suggests the answer. This witness is an intelligent witness, a

member of the bar, and I want to guard against his being led, or any suggestion of any kind made as to what his testimony should be, that is why I make this objection. "Did you know generally the nature of the claim?" It seems to me that that is a question that shows the expectation that it will be answered yes, suggests the answer yes, and is leading the witness.

The Court. I cannot see any objection to it.

Q (Question read.) A Yes, I did know it.

Q Did you feel at that time, as a lawyer—

The Court. Well, that may be objectionable, how he felt.

Q Well, did you confer with William and advise William with reference to what you considered the validity or invalidity of that claim?

Judge Skinner. I think that is leading.

The Court. I see no objection to that.

A Well, William and I talked it over. I am speaking now particularly about the Boston matter.

Q That is what I refer to, yes. A William and I talked it over, he told me there was an action pending up there, he told me they had counsel up there, but I did not advise him, no, I did not advise him.

Re-cross examination by Judge Skinner.

Q When was that, please? A Well, that is hard to tell, I can't remember just when that was because I never paid a whole lot of attention to the Boston matter.

Q You knew that there had been a judgment, did you not? A Yes, I know there has been a judgment, but I don't know when I

learned that, I imagine that I learned it about the time the judgment was obtained.

Q Mr. Darrow—

Mr. McCarter. Well, you abandoned any further cross examination, I understand.

Judge Skinner. I certainly ended my cross examination, and I suppose if I have anything that is further cross I will have to ask the leave of the Court to permit it.

Q Mr. Darrow, between the time that Miss McGrath called you on the 'phone, as you have related, and the time when she and Will Conway came in your office, when you had the agreement drawn, did you have any talk with Will Conway, or communication of any kind? A Yes, sir, I telephoned for the description.

Q Was there any other conversation then? A I do not recall of any between the time Miss McGrath called me on the telephone and the time that Mr. Conway and Miss McGrath came in my office the first time, I do not recall seeing Mr. Conway, but I do recall calling on the telephone for the description.

Q Well, how long was your call to him on the 'phone, asking for the description, after Miss McGrath's telephone call to you saying that she wanted to see you? A I do not remember that; my impression is that I called Mr. Conway on the 'phone while Miss McGrath was in the office; I think she came down about a half or three-quarters of an hour after she telephoned.

Q Did you not then say something to Mr. Conway in explanation of your calling upon him, did you not tell him that Miss McGrath had come, was there? A Yes, I did.

Q And that she called with reference to the drawing of some papers? A Yes.

Q And that you would have to have some description? A Yes.

Q What did you say to Will Conway then when you called—by the way, was this in her presence? A I think it was.

Q Now, what did you say? A I think I said that "Bell is here, and she tells me that you are going to be married, and in reference to this contract, I think I should have the descriptions."

Q With reference to this contract? A To this contract.

Q That was the way you approached him, that was your manner of referring to this contract? A Yes, because Mr. Conway knew before that I was going to draw the contract for the young lady he sent.

Q He did? A He and I had discussed it before.

Q And you and he had then arranged that you would draw the contract? A Yes.

Q After that conversation over the 'phone did Will Conway come in the office A Not until he came with Miss McGrath.

Q And when he came next it was with her? A Yes.

Q You noticed, I suppose, that the agreement bound Mr. Conway to convey to Miss McGrath by deed of warranty?

Mr. McCarter. Of course, he drew it.

Q Do you recall that? A I do not recall it, if it is there, why I suppose I put it in.

Q Did you not then feel any obligation to state at this interview when both Miss McGrath and Mr. Conway were present that the property

was being conveyed for the purpose of presenting a shield against creditors? A I didn't think that I was bound to, or under any obligation to make any such disclosure.

Q Did you not feel under any obligation to advise Mr. Conway with reference to giving a deed of warranty, under those circumstances? A I did not, no.

Q Why not? A Why, I didn't think it was necessary for me to do it.

Q Well, why not? A Well, I couldn't see any harm to Mr. Conway by giving a warranty deed.

Q Nor any wrong in it? A Nor any wrong in it.

Q Nor any danger in it? A No, sir, there was no danger in it, in my opinion.

Q Did you not understand that William F. Conway held the property that was then being conveyed in trust for some one else? A I didn't know it, no.

Q Did you not then think so? A No, sir.

Q Did you not know that this property had come to him from his father? A Yes, I knew that there had been several conveyances.

Q And did you not know that all of the property that was being, or about to be conveyed to Miss McGrath had come to him from his father? A No, I didn't know that, but I knew that a greater part of it had, and perhaps all of it, but I didn't know it.

Q You knew that it was only a portion of what he had? A That he was conveying?

Q Yes. A Yes.

Q Had you and he discussed in any way the ascertainment of that portion, the separation of this part from the rest of his real es-

tate holdings? A Why, he told me what he was going to convey.

Q Didn't you know that the part that he retained was property that had not come to him from his father? A I didn't know it, no, sir.

Q Well, did you have any information on that point at all? A I don't recall that I had.

Q But you knew that at least a large part of this that was being conveyed came from his father? A Yes, I knew that.

Q You knew his father's business difficulties, and suit and judgment against him?

The Court. Well, he has gone all over that ground.

Judge Skinner. Well, I only wanted to remind him of that, and then to ask him whether under those circumstances he did not understand and think—

Mr. McCarter. Judgment against his father? There was no judgment against his father at this time.

Q Well, suit; I misspoke myself. A I didn't know there was a judgment; I knew a suit was pending.

Q Didn't you then think—it may be repetition, if so I would like to be permitted to repeat it—didn't you then think that some of this property about to be conveyed to Miss McGrath was held by Mr. Conway as trustee for his father? A No, that thought never occurred to me.

Q Didn't you think that it was held under circumstances that would make him a trustee for his father? A Yes, I thought there was something in that.

Q Now, knowing that condition, or thinking

that, did you not feel that there was anything wrong about his conveying this property to Miss McGrath? A No, I did not. My recollection is, if you will excuse me, my recollection is that there was no judgment at that time; now I may be wrong about it, I don't think the Boston matter had proceeded to a judgment, and I knew they were defending it; Mr. Conway had told me they were going to win it.

Q As a lawyer you knew that made no difference, didn't you? A Oh, I think it does.

Q Didn't you think that such a conveyance, that a conveyance that was in fraud of creditors or to defeat creditors would be bad, whether the creditor had got a judgment or not?

Mr. McCarter. Depends on whether it is a creditor.

Q Do you get the suggestion? A Wait a minute.

Mr. McCarter. I don't think you are fair about it.

Q (Question read.) A Yes, if the party were a creditor.

Q And you knew, did you not, that the purpose of this conveyance was to defeat creditors, did you not? A I knew the purpose of this act was to preserve this property if a judgment were obtained against Mr. Conway.

Q Were you paid for your services in drawing this agreement? A I was, I guess, I know I received some money, but I never rendered any bill for it; I know that Mr. Conway gave me some money.

Q Well, didn't you know what it was for? A Why, yes, I am willing to concede it was payment for services, but I mean I never ren-

dered any bill, I never treated it as—well, as I would any other client, for instance, in the matter of sending out bills, you know.

Q As a matter of fact you were a friend of Mr. Conway? A Yes.

Q Did you not give advice and render service as a friend of his and not as attorney and client? A No, I wouldn't say that; I considered myself his counsel.

Q Well, why then did you not render any bill? A Well, for the reason that he and I are friends of long standing, and it was rather a delicate matter for me to render him a bill, to be very frank with you.

Q There isn't anything delicate about— A I understand.

Q Listen. There isn't anything delicate about rendering a bill to a friend for services that had been rendered, is there? A No, sir.

Q Well? A Well, the peculiar relations existing between Mr. Conway and myself; I have borrowed money from Mr. Conway at times.

Q Well, had you at that time? A Yes, many years before that, as a matter of fact; I have often borrowed money from him.

Q Were you indebted to him at that time? A I don't think I was.

Q But you were grateful for the past loans? A Yes.

Q How long after this incident was it that Mr. Conway gave you any money? A I think he paid me about that time, that day, or a day or two before or afterwards, the time that this agreement was signed.

Q A day or two before the signing of the agreement? A Yes, or after, I don't know, I can't recall just now.

William H. Darrow, re-cross.

Re-direct examination by Mr. McCarter.

Q I show you a check dated January 10, 1912, on the Federal Trust Company, signed William F. Conway, to the order of William H. Darrow, for $81.20. Please look at it and see if that bears your personal endorsement? A Yes, sir, that is my endorsement.

Q And if that is the check you had in mind, to which you referred a minute ago? A Yes; I didn't know the amount.

Mr. McCarter. I will have that marked for identification.

The Court. Well, mark it as an exhibit.

Marked Exhibit D. 6.

Re-cross examined by Judge Skinner.

Q I understand that you received this money from Mr. Conway without having rendered any bill, and as an expression of his gratitude to you for services rendered; is that right?

Mr. McCarter. He didn't say that.

Q Well, I so understand it; is that correct? A No, it is not correct.

Q Did you so receive it? A I did not render a bill, but I did ask Mr. Conway for some money.

Q Can you tell us how it reached the sum of $81.20? A I cannot, no.

Q Rather unusual price for services rendered, is it not? A Not for services, if you include disbursements, there may have been some disbursements.

Q Well, were there? A I do not recall.

Q Could there be? A Yes.

Q What can you think of? A I could have had carfare over here.

Q Oh, did you come over here? A Oh, I saw Mr. Conway a number of times, as I testified yesterday.

Q Over here? A Yes. Excuse me a minute. Understand, I am not saying that that check there includes any disbursements, I am just offering that as a possibility, I don't know, as it is possible I needed that amount for some purpose.

Q Were you over here after you got the first telephone message from Miss McGrath? A I don't recall that I was, I don't think I was.

Q Why cannot you search your recollection a little about that? A I am pretty positive that I was not, as I recall the whole situation now I don't think I was.

Q Are you so positive that you are willing to swear you were not? A Well, I don't think I should be put in that position; my best impression is that I was not, that I did not come to Newark after Miss McGrath telephoned.

Q Now is that the only suggestion that you can give in explanation of the odd amount of this, that it may have been for car fares? A I didn't intend to give that explanation; I intended this, that there was a certain amount of this for legal services, and there may have been some disbursements in it, or it may have been that I needed this money for some urgent purpose at that time, and I asked him for that amount.

Q Then you did ask him, did you? A Oh, yes.

Q So that your sensitiveness was limited to the rendering of a bill and did not extend to the asking him for money?

Mr. McCarter. I object, I do not think that is a proper question.

The Court. That speaks for itself.

Q How did you make any distinction, Mr. Darrow, between rendering a bill and asking for money? A Why, the urgency of the occasion is what prompted me to act; if I needed the money very badly why I would ask Mr. Conway for it, and did ask him.

Q Well, if you did? A Yes.

Q Well, did you need it very badly? A Yes, I did, I can safely say I never asked him for any money unless I needed it very badly.

Q That is the basis for your saying you know that has always been so? A Yes.

Q You have no recollection of what the occasion was, or the urgency? A No, sir.

Q This particular one? A No.

Q Do you want to give the Court to understand that the fact that you needed $81.20 is the reason why this check was made for that, other than to suggest it as a possibility, do you want to be understood as saying that that was the fact? A I do not want to be understood as saying that was the fact, no, because I don't recall why it was that amount.

Re-direct examination by Mr. McCarter.

Q How did you get the descriptions that were incorporated in the marriage settlement? A I sent a messenger to Mr. Conway's office in Newark.

Q (*By the Court.*) I thought you said you telephoned? A I telephoned to Mr. Conway and said I needed them, and then I sent a messenger over to his office.

William H. Darrow, re-cross.

Re-cross examination by Judge Skinner.

Q Who was that messenger? A Either the office boy or the stenographer, I have forgotten.

Q No recollection? A No.

Q The stenographer was Miss Burtis? A I think she was the stenographer at that time, I am not certain about that, but there was only one stenographer.

Q And what was the name of the office boy? A Oh, I don't recall.

Q You do not? A No; I don't know the name of my office boy now, excepting his first name is William, and I think, too, that this boy's name was William.

Q Have you any way of finding out his name? A He left us and went with some insurance company over in New York, and I haven't seen him in, oh, three or four or five years, I guess.

Q Which insurance company? A I don't know.

Q You would not send the stenographer over rather than the office boy, would you, on a mere errand to get some papers?

Mr. McCarter. I think that must be purely problematical, what he would do; the question is what he did do.

(Question withdrawn.)

Q Cannot you be more definite in your recollection as to whether you sent the office boy or the stenographer? A No, sir, I cannot; if the boy and the stenographer were both in the office at the time, why I would have sent the boy; if the boy was out on some other errand I would have sent the stenographer.

Q (*By Mr. McCarter.*) You spoke of your office having been at 120 Broadway; were you

connected with any firm at 120 Broadway? A Yes, sir.

Q (*By Mr. McCarter.*) What firm? A I was with Alexander & Green.

Q (*By Mr. McCarter.*) How long were you with them? A From 1902 until 1907.

Q (*By the Court.*) Then did not the building burn about that time? A I had left before the building burned, I remember.

Q (*By the Court.*) I thought perhaps you left because the building burned? A No; I went into business for myself in April, 1907, and that is when I left Alexander & Green's.

Q Do you mean that you were connected with that firm at the time of the drawing of this agreement? A No, sir; I left Alexander & Green in 1907.

Q At the time of the drawing of this agreement you were at? A 156 Broadway.

WILLIAM F. CONWAY, resumed.

Direct examination by Mr. McCarter.

Q I show you a deed, which for the satisfaction and benefit of my friend, Judge Skinner, I will say is a warranty, dated June 27th, 1912, from William F. Conway, single, to Isabelle E. McGrath, describing several tracts of land in this city; please look at it, and tell us if this is the deed that was made by you pursuant to that agreement, and if that bears your signature, and when it was delivered? A This is the deed I made in pursuance of the antenuptial agreement; bears my signature, and was delivered by me to Miss McGrath shortly before my marriage to her.

Mr. McCarter. I will offer this in evidence.

Marked Exhibit D. 7.

Q Who drew this deed? A I drew it.

Mr. McCarter. It bears date the twenty-seventh of June.

I would now like to have spread upon the record, subject to the objection, if there be any, the dates with reference to the New Jersey litigation, so that your Honor may have that before your mind.

Judge Skinner. I have no objection to its being put upon the record, but want to reserve any objection I may have against the admissibility of the evidence or correction of the accuracy.

Mr. McCarter. Yes, surely. On August 28th, 1911, the summons issued in the New Jersey Supreme Court, case of the American Surety Company against James Conway, the father of the witness; that summons was returnable September 10th, 1911; in September 27th of the same year, the declaration was filed. On November 21st, 1912, the first trial was had and lasted three and one-half days, and resulted in a verdict for the defendant. On December 19th a rule to show cause issued in the February term of 1913. That rule was argued in the Supreme Court. At the November term, 1913, the opinion, *per curiam* opinion granting a new trial was rendered. At the April term, 1914, the second trial was had, and a verdict rendered directed in favor of the plaintiff. June term, 1914, the appeal from that judgment was argued, and No-

vember term, 1914, the decision affirming that judgment was rendered by the Court of Errors and Appeals, the opinion of Mr. Justice Black.

The Court. The *per curiam* opinion giving a new trial, is that published?

Mr. Howell. I have a copy of it here for your Honor, and the other opinion is reported in 2 Gummere.

The Court. Well, you better put in the opinion; I suppose there is no objection.

Mr. McCarter. No, very glad to have it.

Judge Skinner. I reserve objection to this as to its materiality. I feel now that as I am entirely in the dark as to what bearing this has upon the case I should object now to its materiality, in order, if possible, to get some disclosure of what the bearing is; I cannot tell what it is; I object to it, therefore, on that ground.

Mr. McCarter. Well, I think it is material to show the exact situation of the affair, and I think the next two or three questions I am going to ask Mr. Conway will indicate that at the time that this deed was made, and at the time the ante-nuptial contract was made, he had decided views with reference to the validity of this claim, which views were borne out by the fact that later a verdict was obtained in favor of his father. In other words, it was not an absolute claim to which there was no defense, but that he believed conscientiously that there was a defense to the action and was so advised, and went so far as to have a verdict in favor of his father afterwards. That is the object, to show just the history of the litigation.

The Court. Well, it will go in subject to Judge Skinner's objection.

Mr. McCarter. Yes, that is the idea I had; I want to be perfectly frank with Judge Skinner.

Q Now, Mr. Conway, it appears from the record as it now stands, that in August, 1911, a suit was commenced in New Jersey against your father by the American Surety Company. Your father employed counsel in New Jersey? A Yes, sir.

Q Who were they? A McCarter & English.

Q Did you and your father from time to time confer with counsel in regard to that case after it was commenced, and during its progress? A Yes, sir.

Q You were familiar with the legal points involved in that case? A Yes.

Q What was your belief after you employed counsel and before the case was tried at all, with regard to the validity or invalidity of that claim against your father? A I thought the claim was invalid.

Q Your father died in April, 1913; had he been in active business down to the time of his death? A No, sir.

Q About when did he retire? A Well, he was engaged in isolated contracts, sort of irregular intervals after the Boston matter, and I should say he performed two contracts after 1901, and I think to the best of my knowledge they were about 1902 or 1903 and 1904.

Q And then he retired? A Yes, sir.

Q Did no work after that? A His health got bad, he had to retire.

Q Having drawn this deed, Exhibit D. 7, you of course are familiar with the property described in that deed? A Yes, sir.

Q Are the tracts that are therein described they which you showed to Miss McGrath on this Sunday when she came out to Newark? A Absolutely.

Q Did you own other property at that time in the city of Newark, besides the property described in Exhibit D. 7, being the deed to Miss McGrath? A I did.

Q What other property did you own? A I owned 351 Hawthorne avenue, which I still own; I owned 28 Edwin place, which I still own; I purchased at a foreclosure sale 141 First street, which I still own. I also own a house and lot in Syracuse, New York State, on South State street; also 255 East Kinney street, Newark.

Q Did you own all that property at this time? A Yes, sir.

Q Did you and your bride go on a wedding trip? A Yes, sir.

Q How long were you away? A Twenty-one days.

Q And upon your return where did you go to live? A 491 Central avenue.

Q Who also lived in that house? A My father and my mother and my aunt.

Q And your aunt? A Yes.

Q Miss Annie? A Miss Annie.

Q Was your grandmother living at that time? A No, sir.

Q Did Miss Annie live as one of the family, or did she have separate apartments on the top of the house? A Separate apartments.

Q Where she maintained herself? A Yes.

Q How long has your mother been an invalid? A For at least twenty years.

Q To what extent is she an invalid? A Cannot walk, except with the help of somebody, or a cane, cannot walk at all.

Q And your father and your mother, and you and your wife continued living there down to long after your father's death? A Yes, sir.

Q Have you any children? A One.

Q Boy or girl? A Girl.

Q How old? A Two and a half.

Q Now with reference to the property that is included in this deed to your wife, what, if anything, was done by your wife, to your knowledge, in the way of taking control of the property; just describe to the vice-chancellor what was done by your wife to assume control, if she did anything, of these several tracts that are described in the property? A Well, she knew that she owned the property, and she notified the agents and the tenants directly to that effect.

Q Which property was then under agents control? A 114, 116, 118, 120 and 122 Cabinet street, and 21 Arlington street, I think, Mr. McCarter.

Q How about Warren? A Warren street was not under the control of an agent at that time.

Q Was any agency arranged with reference to any of the other properties afterwards? A Yes, sir.

Q When? A She made the arrangements, I think it was in September.

Q What year? A 1912.

Q With reference to what properties? A The other properties on Warren street.

Q And who was the agent; the same man? A The same man.

Q For all that you mentioned? A Yes, sir.

Q And he was who? A Mr. James E. Garrabrandt.

Q After that act on her part, what did you have to do, or your father, so far as you know, with reference to repairs or other work to be done on these properties? A She took care of the repairs herself, except in certain specific instances, for instance if I was down town and I met some of the men who did her repairs, like Mr. McGrath, who is in the court room there, I would say that she wanted to see him, or telephone probably to a plumber, or something, but she always took care of the repairs and paid the bills herself.

Q Who received the rents from the property? A She did, absolutely.

Q And she had her own bank account? A Yes, sir.

Q That we will prove by her. Did your wife have any property of her own, other than that that you had bestowed upon her? A Yes, sir.

Q Of the net rents from these properties did you receive anything at all, and, if so, what? A Never received one dollar of it, or any part thereof.

Q Since your marriage have you received any money from your wife? A No, sir.

Q Has she made any gift to you? A Yes, sir; there was one gift I would like to explain, and that is in 1914 she wanted an automobile; I myself had owned a big French car and I found it too expensive for me to handle, and my wife said she would like to have a little Ford car, and I knew more about cars than

she did, and she paid the price of six hundred dollars to me to buy a Ford car, which cost me five hundred and sixty-nine dollars in the factory, and the other thirty-one dollars was used in equipment, like tire irons and running parts, and the equipment of an automobile; with that exception I have never received one dollar of her money. I might add, with the Court's permission, that she runs the car herself, and has a license to so operate it.

Q As far as you know, did your father, during his life time, or your mother, or your two sisters, receive from your wife, or from this property, any of the income therefrom? A Absolutely no.

Q Did you inform Miss McGrath before your marriage—first I will say before your marriage—of the pendency of this claim against your father? A Certainly not.

Q Did you tell her anything about the Boston matter, or the business of your father? A Absolutely no, Mr. McCarter.

Q So far as you know, did your present wife, Miss McGrath that was, know of the pendency of this suit in New Jersey before final judgment was entered therein? A No, sir.

Q When did you first disclose to her the fact of this claim against your father, and of either the pendency of the claim or the judgment, or whatever was the condition of affairs? A I have never disclosed it to her, Mr. McCarter, until Mr. Egner, of your office, told her in his office when he sent for her.

Q So far as you know, that was the first time she knew anything about it? A That is absolutely true, yes.

Q When was that? A That was about six weeks ago, just before the time set for the trial of the action, November twenty-third, I think it was.

Mr. McCarter. I think that is all; I may have forgotten something, if so of course I will ask permission later on.

Cross examination by Judge Skinner.

Q You say she knew nothing of this Chancery suit until six weeks ago? A Truthfully, yes.

Q Then she had nothing to do with the preparation of the answer that was put in for her? A Absolutely nothing.

Q You are the one that did that? A I am the one that did it.

Q You are the one that gave the counsel whatever there was of information upon which the answers of the other defendants were based, are you not? A Yes, sir.

Q You have been the one who has dealt with counsel for all of the defendants, have you not? A Yes, sir.

Q Whatever story then has been put to this Court in those answers is a story that came from your mouth? A Knowing it to be true, Judge.

Q Knowing it to be true? A Absolutely.

Q You now say, do you, that the story told in each of these answers is the truth? A Yes, sir.

Q (*By the Court.*) Well, she was served with subpoena, was she not? A Yes, sir; I got it at the house.

Q (*By the Court.*) Did you not show it to her? A No, sir; she was away at the time.

Q Did you tell her you were engaging counsel for her? A No, sir.

Q You were asked if you told your wife anything of the claim against your father, and you said certainly not. A Yes.

Q Why not? A You have reference now to before marriage, Judge, or after?

Q Well, I have forgotten how Mr. McCarter asked the question.

Mr. Egner. Before marriage.

Q Before marriage, was it? A Yes.

Q Before marriage, then. A I wanted to have her an innocent purchaser for value.

Q That was the plan, then, that had been devised, was it? A Yes, sir.

Q For the purpose of defeating that claim? A Yes, sir, the possible claim, there was no judgment at that time.

Q You had been advised by counsel that the claim was invalid? A Yes, sir.

Q And you believed that? A And that we would be successful in the litigation, which we eventually were.

Q You were yourself a lawyer? A Yes, and I am still.

Q And had some opinion of your own, aside from that rendered by counsel, as to the validity of this claim, did you not? A Yes, sir.

Q But you were unwilling to rely either upon your own or counsel's opinion to the extent of taking the chances of defeating that claim, weren't you? A I took no chances, Judge.

Q What chances did you think there were; if the truth was as stated in these answers, that the property had been conveyed by your father to the different grantees, for good and valuable considerations, for the considerations set forth in the answer, what chances did you think you were taking under those circumstances. Take

your own answer, you say in that that this property was conveyed by your father to you for this consideration—

Mr. Egner. Part of it, Judge.

Q I will read from the answer. "This defendant says that the consideration for said conveyance to this defendant was as follows"—not in part.

Mr. Egner. Well, you didn't get it all, Judge.

Q You mean part of the property.

Mr. Egner. Yes.

Q "This defendant acquired his preliminary education at the Newark City High School, and upon graduation from the said institution in the year eighteen hundred and ninety-six, this defendant entered into the contracting business. This defendant remained in the said business for over a year and was very much interested in the business and desired to make it his life work. The said James Conway, the father of this defendant, however, was desirous of having this defendant continue his education and study law, and in order to induce this defendant to do so, his father promised him that if he would take up the study of law and graduate with success and otherwise conduct himself in such a way as to please his father, that his father would compensate him by the conveyance of substantial property interests to him." Then you go on and say that you gave up the contracting business, entered Yale Law School and studied law; was admitted to the bar, "and the conveyance mentioned to this defendant in said paragraph was made to him by his father in partial execution and fulfillment of

the promise above referred to." Now was that true? A That is true, Judge.

Q Well now, believing that to be true, what chances did you think you were taking in relying upon that as a sufficient consideration for the conveyance by your father to you? A I didn't think it was sufficiently strong as a conveyance.

Q By the way, was Bridget Conway your mother— A Yes, sir.

Q Pardon me, let me finish the sentence. Was Bridget Conway, your mother, or Annie L. Conway, your aunt, consulted about the preparation of these answers, any more than your wife, Mrs. Conway? A No, sir.

Q Did they know anything about this suit any sooner than your wife, Mrs. Conway? A No, sir.

Q How about your sister, Mrs. Kelly, did she know anything any sooner? A No, sir; the subpoena was left at her house; with reference to the subpoenas left at my own home, they were left with the hired girl I think; when I came home I got them.

Q And kept all knowledge of it from the persons to whom they were directed? A Yes, sir.

Q A subpoena was served on your sister, Mrs. Kelly? A Yes, and Mrs. Mason.

Q Did she know about this suit? A And Mrs. Mason also.

Q They both knew? A They were living apart from me, they are both married.

Q Did they know about this suit? A Yes.

Q Did you act for them in the selection of and consultation with counsel? A Yes, sir, I did.

Q So that anything that has gone into their answers as well came from you? A Yes, I had personal knowledge of the whole transaction.

Q Did they have any personal knowledge of what was being put in their answers? A No, sir, except they knew the fact to be as I stated it in the answer.

Q But they did not know it was being put in the answer? A No, sir.

Q Or made the basis of their defense? A No, sir.

Q (*By the Court.*) Do you mean that you did not show them the answer or tell them anything about it? A No, I did not show them the answer, no, Vice-Chancellor.

Q Then the story told in the answer with reference to the consideration moving from Mary L. Mason was your story? A Founded on the facts of the case, Judge.

Q And it is the fact, is it; you say now that the conveyance by your father to her was made in consideration of the services that she had rendered to your father as clerk, bookkeeper, paymaster and general assistant in his business? A Yes, sir.

Q And you say that she was performing those services with the expectation of being compensated therefor? A Yes, sir.

Q And that James Conway was to compensate her? A Yes, sir.

Q And that that was fully understood between her and her father; was that the fact? A Yes, sir.

Q What was the understanding as to the amount of the compensation; any? A No, sir.

Q Was there any understanding as to when it should be paid? A No, sir.

Q Was it ever put in this form, that she was one of his children and would get a share of his estate after his death? A No, it was not put in that form at all.

Q What form was it put in? A "I will compensate you for what you have done for me."

Q "For what you have done"? A Yes, sir.

Q When was that? A Oh, right along up to the time the conveyance was made.

Q Always a promise to compensate for past services, and never a promise to compensate for future services? A Yes, sir.

Q And the services ran through how many years? A My sister started to work for my father when she was very young, I should say eighteen to twenty years.

Q Eighteen to twenty years prior to the conveyance to her? A No.

Q How long before the conveyance to her? A Oh, I should say—that you mean the promises were made, or the work?

Q No; how long had the services been rendered prior to the conveyance to her? A I should say probably fifteen years.

Q So that this promise had been going on for fifteen years, had it? A Yes.

Q Without any actual compensation to her until this conveyance? A That is right.

Q As a matter of fact, during all that time she was unmarried, was she not? A Yes, sir.

Q Living at home? A Yes.

Q Getting all that she had of education and maintenance, clothing, board and otherwise,

from her father? A No, not the education part of it, Judge; she was working for him.

Q Working for him? A Yes.

Q Oh, for pay? A No, sir; doing the work for him, but not getting education; you said the education part; she was working.

Q Your answer shows that she received a business education? A Yes, preparatory to do his work.

Q She got that? A Yes, she got that.

Q From him? A Yes.

Q (*By the Court.*) Will you give us the ages of the two daughters? A Yes, Vice-Chancellor, my sister Mary is forty-six.

Q (*By Mr. McCarter.*) Is that Mrs. Mason? A Mrs. Mason.

Q And Helen? A Yes, Mrs. Kelly is five years her junior, I think forty-one.

Q Then I suppose that you were unwilling to rely upon the sufficiency of that as a consideration for the conveyance to her, were you not? A Yes, sir, I was unwilling.

Q And as to Mrs. Kelly, the answer states that the consideration for the conveyance to her was that she was requested by her father to remain in his household and take charge of the conduct thereof, because of the fact that her mother was crippled by rheumatism, and herself not able to discharge the burden, and that her father promised her that if she would do so, and give up the opportunity of earning money elsewhere, he would compensate her either in money, or by the conveyance of property; that for over fifteen years, relying upon that promise, she desisted from obtaining other employment, conducted her father's household, and the transfer, etc., was made in pursuance

of that arrangement, and in discharge of that obligation; that was also your story? A Yes.

Q You say that is true? A That is true.

Q You knew the truth of these facts, did you, yourself? A Yes.

Q Heard your father make the promise, did you? A Yes, sir.

Q When did you hear him say it first? A Different times, Judge, different times.

Q What did he say? A He simply said that "Some time I will reimburse you for your kindness to me in taking care of my business" —to Mary; and to Miss Helen he said "I will take care of you" he said "by the conveyance of property, for your staying home here and helping your mother."

Q Your sister, as a matter of fact, Mrs. Kelly, did stay at home until she was married, and then she left, did she not? A Yes.

Q How old was she when she was married? A She is married now since 1904.

Q Then she has been married eleven years, and if she is forty-one now she must have been about thirty then, is not that right? A She was about thirty when she got married, Judge.

Q Well, nothing said by your father about her getting a share of his property? A No, sir.

Q Nothing in payment for all of these services, these fifteen years of service, except this conveyance? A That is all.

Q Now who drew the conveyances from James Conway to yourself and other members of his family? A Mr. Kenny.

Q Well, just to go back to these answers. The consideration set out in the answer for the deed to Annie L. Conway is that she under-

took to support and take care of her mother, who was also the mother of James, your father, and that James agreed that if she would do that he would compensate her therefor, either in cash or by conveyance of property; do you say that that was the consideration? A Yes.

Q You knew about that? A Yes.

Q Did you hear that promise made? A Yes.

Q When was it made? A It was made when my grandmother came to live with us in 1899.

Q Oh, well after she came to live with you who supported her? A Miss Annie, in a separate part of the house.

Q In a separate part of the house? A Where she is occupying today.

Q With a separate table and all? A Yes.

Q And Annie L. Conway paid for all that? A Yes, sir.

Q Did Annie L. Conway have any property? A Yes, sir.

Q What? A She had an interest in her father's estate in Wickliffe street, Nos. 11 and 13.

Q Any income from that? A Yes, sir.

Q Your grandmother, you spoke of, was the widow of John Conway? A Yes.

Q Father of Annie? A Yes.

Q Didn't your grandmother have any of that income? A She had a dower right, as a matter of law, Judge, but Miss Annie got all the money and took care of the mother.

Q Then she was taking care of your grandmother out of money, to some of which your grandmother was entitled, was she not? A If you care to put it that way, Judge, yes, sir.

Q Well, you have no objection to putting it that way? A Absolutely none.

Q Then Annie Conway did not, as a matter of fact, support your grandmother entirely at her own expense, did she? A Yes, sir, she did.

Q Your father supplied the room, did he not? A Yes, sir, he did.

Q And the old lady's board came from money in Annie's hands, part of which at least belonged to her mother? A Yes, sir.

Q And Annie L. Conway herself was a member of your fathers' household, was she not? A No, sir.

Q Lived upstairs with her mother? A Upstairs, and nursed her mother, Judge, I might add, who at that time was eighty years old.

Q And supplied for herself and mother a table separate from that of your father and his family? A Yes, sir.

Q And you mean by that means separate purchases? A Yes, sir.

Q Groceries supplied to your father did not go upstairs? A No, sir.

Q And so with other provisions? A Yes.

Q You were unwilling to rely upon that, then, as a sufficient consideration? A Yes, sir.

Mr. McCarter. You are both inaccurate about that. This property is not included in any transfer to Miss McGrath.

Judge Skinner. Annie Conway?

Mr. McCarter. No. I think both counsel and the witness misapprehend the situation. There has been no transfer of that property.

Judge Skinner. That was not included in the conveyance. I see what you mean.

Q Then you were willing, were you, to rely upon that consideration? A Yes, sir.

Mr. McCarter. He had nothing to do with it.

Q Counsel suggests you had nothing to do with it. Didn't you? A I did have something to do with it.

Q You were putting in this defense for Annie Conway? A Yes.

Q Just tell us why you did not include all the property that had been conveyed to Annie in the conveyance to Isabelle McGrath? A Because I really thought in my heart and soul, to be frank with you, that Miss Annie L. Conway should support that consideration for work that she had done, and I wasn't sure of the other conveyance.

Q This answer, though, for your mother you are responsible for, are you not? A I said so, Judge.

Q The facts or allegations? A Yes.

Q Now this says for your mother that she had no knowledge of the considerations which passed for the conveyances by your father, and I think she says it with reference to all the conveyances set out in the bill, and had no knowledge of any fraudulent, alleged fraudulent design, and at no time received any of the rents, issues or profits of any of the lands referred to; did not your mother, as a matter of fact, receive a good many of the rents, issues and profits? A No, sir.

Q Of the premises, before your father's death? A My mother received not one penny of the rent after I married Miss McGrath.

Q Before that didn't she? A You said

before my father's death; my father died nine months after I was married.

Q Yes. A And before that time my mother never received one penny.

Q Before your marriage? A Before my marriage.

Q So neither before or after has she had a penny of rent? A No, sir.

Q Your mother, although an invalid, is a woman of strong character, is she not? A Yes, sir.

Q Intelligent? A Yes, sir.

Q Been a good deal of a business confidante and adviser for your father all his life, wasn't she? A No, sir, she was not; my father never discussed his business matters with my mother.

Q Well, though an invalid she has directed the affairs of the household within the house, has she not? A Yes, sir.

Q And was the housekeeper, was she not, for your fathers household? A Yes, sir.

Q And how did you know whether she knew of any alleged fraudulent design? A My mother did what she was told, Judge, by my father, that was the way he got along with her, she did just as she was told, and had no knowledge of any of his business dealings whatsoever.

Q Well, you knew, did you not, that these conveyances out of him, back in 1902, were made for the purpose of defeating any possible demand that might be made against him later because of the Wakefield contract failure, did you not? A I gathered as much, yes, sir, I knew that, I knew that.

Q It was a matter of frequent consultation between you and him, was it not? A Not frequent, no, sir.

Q Well, more than once? A I had nothing to do with the preparation of these particular deeds; as a matter of fact I was in Boston when Mr. Kenny drew them, 1902.

Q But you did talk with your father? A After it was done, yes, sir.

Q You had nothing to do with the preparation of any of the deeds out of your father? A I think I drew a deed to Miss Annie for the Wickliffe street property in nineteen hundred and six or seven.

Q Well, did you have anything to do with the drawing of the deeds to Edward B. Reilly and a Mr. McGrath? A That was out of me, Judge, not out of my father; I drew those deeds.

Q And they were friends of yours? A Friends of the family.

Q There was no consideration passing between you and them, was there? A Well, it was not bona fide, Judge, to be honest with you.

Q Those conveyances were made in the further attempt to provide a cover against your father's creditors? A Yes, sir.

Q After the conveyance or conveyances by your father in 1902 who collected or who received the rents? A My father.

Q And was there any property sold by your father prior to your marriage to Isabelle McGrath? A Yes, sir, he sold a piece of property that he purchased in 1905 from Doctor Campbell, on the corner of Second avenue and Sixth street.

Q Is that a little gore? A Oh, no, it is not, it is a hundred foot plot; and then he sold another piece; that property was transferred to Mary and myself.

Q That is the property he got from Campbell? A In 1905 he purchased that from Dr. Campbell, and in 1905 he purchased fifty feet on Fifth street, which he subsequently conveyed to my sister and myself.

Q Well, take the property that he purchased from Wellington Campbell; now you say he conveyed that to you and your sister? A Yes.

Q What was the consideration for that conveyance? A Same consideration, thought he would reimburse us for what we had done.

Q Hadn't he? A Partially.

Q So that the former conveyances to you were only part payment? A Yes, sir.

Q And that was true of your sister Mary? A Yes, sir.

Q When those conveyances were made was there any attempt, so far as you know, to determinue how much was due to each of these grantees for those alleged services? A Not by us, he made the determination himself, Judge.

Q How do you know he did? A Why he must have, I did not and my sister did not.

Q You were in Boston, were you not? A No.

Q 1902? A I want to have you understand me, Judge. I thought you had reference to the deed made by my father to my sister and myself of the property which he purchased three or four years after he made the first conveyance.

Q Perhaps I did not make it clear. At the time of the original conveyances by your father to different members of his family, I mean, was there any attempt to determine how much he owed? A I don't think so, Judge, not by us; may have been by him, I had nothing to do with that.

Q You were in Boston at the time? A I was in Boston at the time, yes, sir.

Q How much was the value of the property that was conveyed to you by your father in 1902, how much was it worth? A Well, I had a remainder in fee, and I cannot tell the value of that.

Q (*By the Court.*) What do you mean by that, you had a remainder in fee? A The property I think the Judge refers to, Vice-Chancellor, is what I call the homestead property, it is bounded by Central avenue, Warren street and Seventh street, it is a triangular piece of property, subject to a life estate in my mother and remainder in fee to the three children, of whom I was one.

Q (*By the Court.*) Is that part of the property you conveyed to your wife? A Yes, sir.

Q The homestead property was on the corner of Central avenue and South Seventh street, was it not? A Yes, sir.

Q And it is what is called in the bill the second and third tract, is that right? A Yes, sir, part of it.

Mr. Egner. Well, I am not sure.

A Yes, I think that is right, Judge.

Q Now that was conveyed by your father in January, 1902, or February, 1902, to James Dolan, was it not? A January, 1902?

Q Well, the deed is dated January 28th, and acknowledged the first of February. A Yes.

Q Did you know anything about that conveyance at the time it was made? A No, sir; I have the deed in court, Judge, if you want to see it.

Q Then the same day James Dolan and his wife conveyed to your mother for life, and

after her death to you and your two sisters in fee, did he not? A Yes, sir.

Q Did you know about that at the time it was done? A No, sir.

Q When did you first hear about it? A When I returned from Boston.

Q When was that, with reference to February, 1902? A Oh, probably a week.

The Court. Well, then what is the date of the release?

Q Then later your sister, Helen D. released and quit claimed her interest in remainder, did she not? A Yes, sir.

Q In 1904? A Yes, sir.

Q And in 1909 you and your mother and father and Mrs. Mason and her husband, being all the persons then left interested in the property, joined in a conveyance to David Young? A Yes, sir.

Q Did you know about that? A Yes, sir.

Q Did you draw it? A Yes, sir, I drew that.

Q Did you know that there was any consideration for that? A Yes, sir.

Q That was another attempt to put an additional cover around this property against your father's creditors, was it not? A Well, I think I could tell you this, Judge, in that connection—I will say yes to the question.

Q All right, then that is all I want.

The Court. Then David Young did what?

Q Now that property was conveyed to you by David Young and his wife in May, 1912, was it not? A Yes, sir.

Q May twentieth or twenty-first? A Three years after the conveyance to Mr. Young.

William F. Conway, cross.

Q And about three weeks before, or four weeks before the conveyance to Miss Isabelle McGrath? A It is over that; I bought it back from Mr. Young I think in May, 1912, and I sold it July first.

Q Well, it is between May twenty-first and July first, a little over a month. Now there was property on the south side of Cabinet street, called the fourth tract in the bill? A Yes, sir.

Q And it is fifty-four feet six inches east of Camden street; do you recall the property? A Yes.

Q Is that improved? A Yes, sir.

Q That is part of the property conveyed by your father to Mary, is it not? A Yes, sir.

Q This homestead property, the second and third tract, went to David Young from your sister Mrs. Mason, and from you father and mother? A From my mother and father.

Q Your mother and father and yourself, as the persons interested in the property? A Yes.

Q And was part of the property that you say, that is, the interest that had been given to your sister in that property was part of the pay that she had gotten for services rendered to your father, was it not? A Yes, sir; if Mr. Young was successful in selling that property to the Hudson and Manhattan Terminal Railroad, which was the object of the conveyance, the money would have been distributed.

Q Would have been distributed? A Yes, sir.

Q Now then, that property is part of the property that you conveyed to Isabelle McGrath? A Yes, sir.

Q It was not yours, was it? A It certainly was, or I could not convey it.

Q How did you get ownership of it? A Mr. Young made a deed of it to me.

Q When he conveyed it back to you he was conveying back property that belonged to your mother and sister, as well as yourself? A No, he was not, he was conveying that property back to me.

Q He got it for no consideration? A True enough.

Q And held it only in trust for the persons who had conveyed it to him? A He held it in trust for my father.

Q Oh, in trust for your father? A If any trust existed; not for me; while I held property my father was the boss, and whatever he said I had to do; he got all the rents of the property.

Q That was true as to all your sisters had? A Yes.

Q So that although he had conveyed these properties to the different members of his family in return and in compensation for services, he really owned it afterwards? A Yes.

Q And there had been no compensation to them had there? A He owned the income, the legal title standing in our names.

Q And all that they were to get then was such ownership as might have been left in them by him at the time of his death? A Possibly.

Q While he lived if he wanted them to convey it they were to convey as he directed? A Yes.

Q He then directed, did he, that this property be conveyed to David Young? A Yes; he purchased that property from David Young, part of it.

Q And when he did so did he direct that it be conveyed to David Young upon any different distribution of its proceeds than he had before arranged? A Hadn't heard him say, Judge.

Q Then where did you get, and how did you get the sole right to that property, after you had it back from David Young? A Because my father told David Young to convey it to me.

Q In 1912? A 1912; he said my two sisters were provided for, both married well, and he wanted Mr. Young to give me a deed of that property.

Q Did your father know you were going to convey that to Isabelle McGrath? A He certainly did not.

Q He did not? A No, he did not.

Q Just happened that about that time his generous instincts in your behalf prompted him to call that property back into your name? A Yes, sir.

Q Just two weeks before this ante-nuptial agreement you made with Miss McGrath? A If the time is two weeks it is two weeks, I am not sure of that.

Q Well now, I started questioning you about the fourth tract, the one on Cabinet street, do you remember? A Yes.

Q That was conveyed in 1909 by Mrs. Mason and her husband, and by your mother and father to Mr. Conroy, John F. Conroy? A Yes.

Q Did you know of that conveyance? A Yes.

Q There was no consideration for that conveyance, was there? A Not to my knowledge.

Q After the conveyance Conroy held in trust for your father? A Conroy, as I understand it, was to some day convey to Young.

Q Well, at your father's direction? A Yes.

Q He was to be subject to your father's direction? A Yes, the same as Mr. Young.

Q Was there an income from that property? A Yes.

Q After the conveyance to Conroy your father continued to get the income? A Yes, as far as I know.

Q Did you draw that deed to Conroy? A I think I did, Judge.

Q Do you know why your father and mother joined in it? A Why?

Q Yes. A Why, because I think that Miss Helen Conroy conveyed that property to my mother in 1904, and my mother having title father had to join in the deed.

Q As a matter of fact the conveyance to Conroy included two tracts, four and five; perhaps what you say is true about the fifth tract, though not about the fourth? A Mary and Helen held the two tracts there.

Q Conroy conveyed that in May, 1912, deed acknowledged May 28th, 1912, to you, did he not? A Yes.

Q Did your father direct that? A Yes, sir.

Q And there was no consideration to Conroy was there? A Not to my knowledge.

Q And why was that, do you know why that conveyance was directed to be made back to you? A Except simply this, Judge, as I told you before, my father thought my two sisters were well married, and he thought that I was the only boy and that I ought to own the property, he was getting old himself, and he put the title in me.

Q And wanted you to have it after he was gone, didn't he? A Ostensibly, yes, sir.

Q Why do you say "ostensibly"? A Well, evidently he did.

Q Was not that the fact? A If I didn't sell it in the mean time.

Q He expected to get the income still from it, did he not? A I expect he did.

Q That is true of the David Young property reconveyed to you? A Yes.

Q When you entered into an agreement with Isabelle McGrath for the conveyance of those two properties you were agreeing to convey property that your father had had placed in your name with the expectation that he would get the income from it; is that so? A That is true.

Q What was your reason for thus wronging your father? A I did not consider it a wrong, Judge.

Q Why not? A Well, because I didn't.

Q Wasn't it because you thought that he was going to get a benefit from it? A He never did.

Q Didn't he? A No, sir, not after the marriage to my wife.

Q Wasn't it because you thought that the conveyance to Isabelle McGrath was going to be a shield from your father's creditors, isn't that why you thought it was doing him no wrong? A No, sir.

Q As a matter of fact every bit of the property that was conveyed by you to Isabelle McGrath, eleven tracts, had come to you under similar circumstances to these that we have been repeating, that is, were held by you for your father; is not that so? A Yes, they were held by me for my father.

Q (*By the Court.*) How was your father to live if he did not have the income from these

properties for his support? A Father had the income while I held the title, and while Mr. Young held the title, and while Mr. Conroy held the title.

Q (*By the Court.*) But after your marriage what income did he have? A He had whatever income that he owned, which was probably a few dollars he had from the income that he collected, the rents—I don't know that, Vice-Chancellor.

Q (*By the Court.*) Well, he was living, as I understand you, he was living in the house which he had occupied for so many years merely by the courtesy of your wife? A Yes, sir.

Q (*By the Court.*) Well, did he understand that? A Yes, sir, I know he understood it, because I told him I sold the property.

Q (*By the Court.*) Sold it to whom? A To my wife.

Q (*By the Court.*) Well now, outside of the properties that you conveyed to your wife, what source of income did he have? A I don't know what source of income, Vice-Chancellor; he was a very secretive man.

Q (*By the Court.*) Did he have any to your knowledge? A He must have had it, because he always had money.

Q (*By the Court.*) You have investigated his affairs since his death, and you know whether or not he left any estate? A Yes, sir.

Q (*By the Court.*) Did he leave any estate? A No, sir, not to my knowledge.

Q He died eight months after your marriage? A Yes.

Q Didn't he leave a will? A No, sir, never made a will.

Q Did you not say that he left a will? A Absolutely no.

Q Did you not call upon Father McKeever, of the Church of St. Rose of Lima, and tell him, a few days or a short time after your father's death, that your father had left five hundred dollars in his will to the church for a memorial window? A No, sir.

Q Never had that call? A I had a call, but I never said it was money left in the will of my father's.

Q What did you say? A I told him that I had five hundred dollars to give him to perpetuate my father's memory.

Q Did not tell him there had been a will? A No, sir.

Q Or that it was left by your father in his will? A No, sir; my father made no will.

Q Well, did he leave any memorandum or paper other than a will? A Not to my knowledge.

Q Did you give him five hundred dollars? A No, sir.

Q Why did you change your mind?

Mr. McCarter. Well, is that material?

A I can tell him.

Q Was there any conversation? A I am glad to tell all I know in this case.

Mr. McCarter. I object, I do not think there is any use going into this.

Q Did you find, after your father's death, any paper of any kind relating to his property? A No, sir.

Q Did he before his death give you any verbal directions as to the distribution of his property? A No, sir.

Q After your marriage was any property sold? A Yes, sir.

Q The first tract in the deed to Isabelle McGrath, your deed to Isabelle McGrath was sold to the city of Newark, was it not? A I want to know where it was.

Q It was on Arlington street, formerly Catherine, now I think Branford place? A My wife sold that property to the city, yes, sir.

Q Eighty-seven hundred dollars was the price? A Yes, sir.

Q Did your wife get that money? A Absolutely.

Q Wasn't there other property sold by your wife for eighty-five hundred dollars? A No, sir.

Q Didn't your aunt, Annie L. Conway, convey property to one Mancini for eighty-five hundred dollars? A My aunt, Annie L. Conway, conveyed property which she owned in Wickliffe street long before my marriage.

Q 1907? A 1907.

Q You knew about that? A I drew that deed.

Q What became of the proceeds of that sale? A Went to Annie L. Conway, who owned the property.

Q Wasn't that part of the property your father had conveyed to her? A No, sir, that was a part of old John Conway's estate, who was the father of my own father and Miss Annie.

Q And your father had an undivided half interest in that? A And he conveyed it to Miss Annie.

Q He did not get half of the proceeds?

Mr. McCarter. What has that to do with this case? I object to it. Supposing it is true—I don't imagine it is—but I cannot see what it has to do with this case if Miss Annie took all of the proceeds; it is not this young man's fault, or it is not this young lady's fault.

Judge Skinner. Annie is a defendant, of course.

Mr. McCarter. That issue is not raised, and the property is not involved at all.

The Court. I think it is not within the scope of the inquiry, I think it is outside of the issue. You do not claim from her any portion of this purchase money, you do not claim the land itself which she sold, and claiming neither the land or the purchase money it seems to me it has nothing to do with this case. I think I will overrule the evidence.

Q When did you learn that your father had signed an indemnity agreement with the American Surety Company? A Oh, a considerable time after it was done.

Q About when? A About three or four weeks probably, or a month, two months, it is a good many years ago, Judge, I can't just recall.

Q Your father attended the trial of the Boston suit, did he not? A Yes, sir; I was up there myself.

Q With him? A Yes, sir.

Q And the trial was defended by lawyers of his selection, was it not? A I wouldn't say that, Judge, there has been errors in the record all along in that suit; Mr. Philbrick, I think,

was the attorney of record, and he represents the American Surety Company in Boston.

Q But the case was tried by Leahy & Pelletier, was it not? A Not of record.

Q Not of record, but in fact? A The attorney of the American Surety Company was Mr. Philbrick in Boston.

Q But the attorney of your father was Leahy & Pelletier? A Yes.

Q And they tried the case, did they not? A Yes, sir, Mr. Leahy tried it, of the firm of Leahy & Pelletier?

Q When did you first meet Isabelle McGrath? A Nineteen hundred and seven.

Q After that time did you not see her frequently? A Not so frequently after that time; I met her in Atlantic City.

Q Were you not frequently in her company at social affairs and dinners, etc., and dances? A At that time?

Q After that time, and between that and 1912, your marriage? A Yes.

Q That occurred in New York and Brooklyn, and Newark too, did it not? A Never was in Newark with me only the Sunday that I took her over here.

Q She never was in this city with you except that one occasion? A Absolutely true, Judge.

Q And were you not paying her decided attention for several years before your marriage? A Not several years, no.

Q Well, one year or two? A Yes, sir.

Q Was not that fact known to your family? A No, sir.

Q Was is concealed by you from them? A Not intentionally; I never told my family where I went.

Q When your father called for the reconveyance from David Young and Conroy, and possibly others, a short time before this antenuptial agreement, had you told him of any special need for money or for property? A No, sir.

Q Did you tell him you were thinking of getting married? A No, sir.

Q Did you tell him that you had a scheme by which you could make his property more secure against his creditors? A No, sir; my father never met my wife, Judge, until after I was married, and never discussed anything with her.

Q That is not what I asked you. I asked you if you did not tell him you had some scheme or plan? A I did not; it was his suggestion to transfer the property to me.

Q Did you tell him anything about having consulted Mr. Darrow? A No, sir.

Q Did you tell Miss McGrath before you signed this agreement with her that your father had been getting the income? A No, sir.

Q Did you tell her that your father would get the income? A No, sir.

Q As a matter of fact he did, did he not? A After the marriage?

Q Yes. A Absolutely no.

Q None of it? A Not one cent.

Q What did he live on? A As I told you, Judge, I don't know what he lived on; the grocery man who testified yesterday supplied the groceries to our household where we lived together; there wasn't any rent to pay.

Q Don't you know that the household, your father's household went on, after your marriage to Isabelle McGrath, supported and maintained out of the income from the property that had

been conveyed to your wife? A Only as far as taking out groceries for the rent, that was spoken of by Mr. Lan yesterday.

Q That is the only instance? A Yes; I gave money home; I was keeping my wife, Judge.

Q Were you keeping your father and mother? A I was giving money home to her to run the house.

Q To her? A To my wife.

Q What became of the income from this property? A My wife got it.

Q And still has it, or spent it? A She spent some of it.

Q Didn't she spend some of it on the maintenance of that household? A She ran the house.

Q Did she keep a bank account? A Yes.

Q Did you keep books of account for the rent receipts? A No, sir.

Q Didn't you? A No, sir.

Q Haven't you got in your possession today a rent book showing rental receipts of all these properties? A No, sir.

Q Has she? A She has.

Q Oh, that is the difference, is it, she has got it. It is up at your home in South Orange? A I don't live in South Orange.

Q Well, wherever it is. A I am living in Orange.

Q It is in your home, is it not? A No, I think it is in court.

Q Hasn't it been in your possession rather than hers? A It has been both ways.

Q You have kept it, have you not? A Not altogether.

Q Mostly? A Some times.

Q Kept it physically at your house? A No, sir.

Q At the Conway house, before you moved to Orange? A At my wife's house, yes, sir.

Q Was that book in existence before the conveyance to your wife? A Why, it is a bank book, Judge; we have it in court here.

Q Haven't you got a book, Mr. Conway, in which entries are made of the payments of rent by the different tenants? A No, sir.

Q Hasn't she? A Only the bank book, that is all she has.

Q Have you or she no way of telling whether a tenant is behind or not, except your memory? A Statement of the agent who collects the rent.

Q That all comes from the agent? A Yes.

Q Does the agent collect the rents of all the properties? A Yes; his statement is in court also.

Q Since when has he been collecting the rents? A He has been collecting, as I said at the outset, the Cabinet street property since a good many years, and he has been acting as my wife's agent for that Cabinet street property since July, 1912, and for the Warren street property since, I think, September.

Q Well, rents certainly have been paid, have they not, right at the Conway house to some member of the family, and not to these agents, since the time you say the agents have had it all? A The point is, Judge, that when a tenant wanted to rent rooms somebody would be at the house to take the money, but Mr. Garrabrandt, who receives his commission for collecting, always had to have that money turned into him, which was done.

Q Well, did you keep a list, or did your wife keep a list of the tenants? A Yes, she

had a list of the tenants, she knows who the tenants are.

Q Did she have a book containing such a list? A No; the statement of the agent.

Q No book? A No.

Q Did your father have any such book? A Not to my knowledge.

Q Did he, or you, or your wife have any book showing the expenditures for repairs? A I did not, and I don't think he did.

Q They were not made through the agent, were they? A Sometimes.

Q Well, not usually? A Not usually.

Q Wasn't any account kept of that? A I suppose checks.

Q No account kept, no book? A No, I never kept one, Judge.

Q Have you had, or seen in your father's or your wife's possession, or your own or anybody else's, any book or record of any kind showing the receipts from the properties and the expenditures? A No, sir.

Q Do you know whether your wife still has the $8,700 and $8,500 proceeds from the sales we have spoken of? A One sale, $8,700.

Q You spoke of $8,700 yourself. A That was one sale, Judge.

Q Then there was another, $8,500? A No, $8,500; it was Miss Annie Conway who sold long before I got married.

Q Oh, yes. Do you know whether your wife still has the eighty-seven hundred dollars? A I think she has it, or part of it; she has built a new home.

Q When you talked with her first, asked her first to marry you, did she make the objection on the ground of not being assured that

you would be able to support her? A She did not put it on that ground, she simply put it on the ground that she was making money and was self-supporting and independent, and she had no notion of getting married.

Q Was it you then that suggested the conveyance to her? A Not at that time; I asked her the second time to marry me.

Q Did you then suggest it? A Not at that time; I did not suggest it until June, 1912.

Q But whenever it was it was your suggestion? A Yes, sir.

Q And what was it you suggested? A I told her that I would give her that property.

Q That property? A Showing her the property.

Q Oh. A Pointing it out to her.

Q Then you did not make the suggestion until you brought her out here? A I certainly did not until she saw the property.

Q And you then showed her all of the property that was conveyed later to her? A Yes, sir, I did.

Q Every bit of it? A Every bit of it.

Q Including the house where your father lived? A Took her in there, too.

Q Took her in there? A Yes, sir.

Q Introduced her to your father? A I said so yesterday; he was in bed sick, Judge.

Q Did she meet your mother for the first time? A Mother was away, up to my sister's at the time.

Q (*By the Court.*) Did you introduce her as your fiancee, or how? A Introduced her as simply plain Miss McGrath to my Aunt Annie, who was the only one at home at that time; of course, up to that time Miss McGrath had not agreed to marry me.

Q (*By the Court.*) Well, I thought you said you introduced her to your father? A I did.

Q (*By the Court.*) Then he was home? A Pardon me.

Q (*By the Court.*) He was home? A Yes, he was in bed, lying down.

Q (*By the Court.*) Well, now, what other members of the family saw her? A Miss Annie L. Conway, my aunt, that is all, because there was nobody else home; my two sisters were married for years, and I was the only single one home who lived there with my mother and father; mother this day was up to Mr. Kelly's in South Orange, he took her up in his automobile, and nobody was home except Miss Annie.

Q This was in the day time, was it? A Sunday evening it was.

Q Well, did you make no explanation to any of those to whom you introduced her as to your reason for bringing her there, or for being in her company? A No, Judge, because I brought other ladies there many a time, many a time, for tea.

Q Then you told your wife that that home belonged to you? A I told her every piece of property I showed her that day belonged to me.

Q And showed her this property? A Yes, sir.

Q She saw that it was your father's home, did she not? A I told her he was living with me.

Q You told her that? A Yes, sir.

Q Did you tell her your mother was living with you? A Yes.

Q Did you tell her your sister was living with you? A Sister wasn't living with me.

Q Did you tell her your sister was living in the house? A My aunt?

Q I mean your aunt. A My aunt was living in the house, she knew that when I introduced her to Miss Annie, I didn't have to tell her that.

Q At that time was your grandmother dead? A Dead.

Q Did you tell her that your father paid rent to you? A No, sir.

Q Or anything, to explain his presence in the house? A No, sir.

Q Or your mother's presence there? A No, sir.

Q Didn't you say to her when you took her there, "This is my home?" A Yes, "This is where we will have to live if I marry you."

Q Did you tell her why you would have to live there if you married her? A It was my home.

Q That would not make it necessary for you to live there after you were married, would it? A No.

Q But if the property belonged to your father, and was your father's and the income from it was to go to him, then you might have to live there; did you explain that to her? A I did not explain anything of that nature to her, Judge.

Q But you did tell her that that is where you and she would have to live after you were married? A If she consented to marry me.

Q Without any explanation as to why you would? A That is all.

Q And did you then, or at any time after that, tell your father that that was the young lady you were going to marry? A I introduced her to my father the first day she was over, and then he did not see her until after the wedding.

Q Then your answer is no? A No to what question?

Q (Question read.) A I told him that that was the young lady I married, after the ceremony.

Q (*By the Court.*) Well, did not your family attend the marriage? A Nobody present of my family at the wedding except Miss Annie, who was the bridesmaid.

Q Why was that; they didn't know you were going to get married? A They didn't know I was going to get married.

Q Why? A I suppose it was a family habit, my two sisters went off the same way.

Q Is it also the McGrath habit? A I think she can speak for herself.

Q You don't know about that? A I know I don't like any display, I know I would not stand for it; my two sisters wouldn't either.

Q Would you call telling your father and mother about it a display? A I would call this a display, that if I told my parents they might tell other people, and there would be people at the church, which I did not want to have.

Q (*By the Court.*) Under the rules of your church there has to be an announcement, does there not? A Yes; I had that waived, like my sisters had it waived also.

Q (*By the Court.*) Was it announced publicly in church? A No, sir.

Q (*By the Court.*) How did you get over that? A Why I had it waived.

Q (*By the Court.*) What? A It can be waived, Vice-Chancellor.

Q You got a dispensation of the bans? A Yes.

Q Applied to the Chancellor of the Diocese for that? A I applied to Father McKeever.

Q Well, he got it for you? A Yes.

Q From the Chancellor of the Diocese? A From the Bishop.

Q You had to give a reason for that? A I didn't have to give a reason.

Q Did not Father McKeever ask you for any reason? A No, sir; my reason was I did not want it to be published that I was going to be married; Miss McGrath had to get a waiver of her bans over in Brooklyn.

Q Never mind your motives, I just want to be sure you understand my question. You did not give Father McKeever any reason for requesting that the bans be dispensed with? A No, sir.

Q Was there any announcement of your marriage in the newspapers, that you know of? A Not until after I was married.

Q How long after? A Why, I suppose that night, July first.

Q (*By the Court.*) Let me understand you. After the wedding you say you went off for three weeks; well, did you first go home? A I was married in Newark, Vice-Chancellor.

Q (*By the Court.*) Well, did you first go to your father's home? A I went right home to my father's house.

Q (*By the Court.*) That same day? A That same morning.

Q (*By the Court.*) And then you announced your marriage? A Yes.

Q (*By the Court.*) Then you went off on a wedding trip? A I went off then, yes.

Q What hour of the day was the wedding? A Eight o'clock in the morning.

Q And then you went back to your father's house, and, as I understand, you told about your having been married; did you then tell your father about having conveyed this property? A No, sir.

Q Did you tell him that thereafter he would be a guest in the home of Isabelle E. Conway? A I said nothing to him at all that day.

Q Did you at any time? A I told him a considerable time after that I conveyed the property.

Q How long after? A Oh, I should say a month maybe; I was away for twenty-one days.

Q Well, after you got back? A Yes, probably about six or seven weeks.

Q (*By the Court.*) You then told him what? A I told him I had conveyed the property to my wife, Miss McGrath.

Q And anything else, did you tell him anything else? A No.

Q What? A No.

Q Did you tell him that she was going to get the rents? A Why, I think I told him, if I did not he knew it, probably, anyway, because he never got any of it.

Q Well, he had been getting the rents before that, had he not? A Yes.

Q How much, about, had he been getting? A I don't know the exact amount, Judge.

Q About? A I don't know, probably—in cash do you mean, Judge?

Q Yes, the rents? A I couldn't tell you exactly now.

Q Well, come to something like three to four hundred dollars a month, would it not? A Possibly, yes, sir.

Q That income was cut off, was it, from him? A Yes, sir.

Q Without any explanation to him? A Oh, I explained it to him, but not on the day of the wedding; I told him my wife would collect the rents, as she owned the property, and he wished me luck, and he said, "All right, I am satisfied."

Q And did you then give him any explanation or statement of what opinion you had from your friend Darrow? A No, sir.

Q Did you say to him anything at all about his continuing to live there? A No, everything went along just as it had been, Judge.

Q Without any arrangement or announcement to him, or any change other than the mere statement that your wife was the owner and would get the rents? A Yes, sir.

Q Before that he had paid the bills, had he not, for the running of the house? A Well, he had paid, the groceryman always continued to supply us groceries that way.

Q He had paid all the bills for running that home up to that time, had he not? A Well, I wouldn't say that; I paid some bills up there myself, you know, Judge.

Q Before your marriage? A Yes.

Q Out of your money? A Out of my money.

Q Well, small amounts, were they not? A Well, I don't know whether they were small or not.

Q Well, your father in the main supported that household, did he not? A Yes.

Q And after that date he ceased entirely to support it, did he? A Yes, sir, he did.

Q And was then dependent upon your wife?

A Well, I was putting money in there of my own, Judge.

Q In where? A Right in that house, I was supporting my wife.

Q What did you put in? A What?

Q Yes. A Money.

Q Money? A Yes, sir.

Q By cash advances to your wife, or by the payment of bills, or how? A Cash advances to my wife, and payment of bills also.

Q Well, you know that reports, for some years past reports appear in the daily papers of conveyances of real estate, do you not; as a lawyer, you know that? A Oh, yes; I know that.

Q And that was true in 1912, and for a long time prior to that, was it not? A Yes, sir.

Q These reports appear in the daily papers of the day succeeding the recording of the instrument, do they not? A Yes.

Q Did any such report appear in the Newark Evening News or the Newark Advertiser or Star or Eagle, or whatever it was then? A I did not get a paper from July first until July twenty-first, I was away.

Q Did you make any arrangement for its not appearing? A I probably did; I do that right along.

Q Well, did you not in this case? A I think I did; in every conveyance I have, as a lawyer I have clients who want things kept out of the papers, and they ask me to do it, and I ask the register to do it.

Q You wanted this kept out? A I suppose I did, yes, sir, I did.

Q Why? A I didn't think it was anybody's business.

Q It certainly was your father's business, was it not? A Well, I intended to tell my father, and I did tell him.

Q After the marriage and your return from your wedding trip did your father do anything, that you know of, in the way of control of or management of any of this property? A No, sir, I never knew him to have anything to do with it, after I told him what I had done.

Q Or did your mother? A No, except to collect rents from tenants; if they didn't find Mrs. Conway, my wife there, they would pay to anybody.

Q I thought the rents were all collected by agents? A Why, they were, after September, 1912, for all of the property.

Q Then after September, 1912, your mother had nothing to do with the property at all? A Nothing to do, except if a tenant wanted to rent the property, Judge, the agent lives down here in Clinton street, and they would see the sign on the house and would go over to the house and pay the rent there, which would be turned over to the agent.

Q When you took Miss McGrath to your house that day you brought her up to see the property, your father was in bed, you said? A Yes.

Q And you took Miss McGrath up to his bedroom? A Yes, sir.

Q And introduced her there? A Yes.

Q That was a rather intimate thing to do, was it not; did you not then explain to him in some way your bringing her into his bed room? A No, sir; not a thing.

Q Your ordinary way of doing things, was is? A Yes.

Q And had you ever done it with any other young lady before? A No; I can tell you the

reason for it in this case, Judge, if you want me to.

Q Go ahead. A The bath room was right opposite my father's door.

Q Yes. A And Miss McGrath went up to the bath room with my Aunt Annie, and I had gone up to the bath room and when they came out I met them right at the door, and my father was in bed lying down, the door is right opposite, and I introduced her to him.

Q Took her in the room? A At the door, I don't think she was really in the room; just at the door.

Q Didn't they shake hands at all? A No.

Q Have you got the letter from Miss McGrath, that you spoke of, as requesting you to call at Mr. Darrow's office Tuesday? A You asked me that yesterday; no, I haven't got it; it was simply that I was to meet her there.

Q What? A Simply a letter to meet her in New York; I didn't attach any importance to it and I did not save it.

Q You spoke of her as saying that she could not get ready by July first; she did, didn't she? A She finally did, yes.

Q How did you persuade her, how did you overcome her objections? A I told her I insisted on it, and wanted to have her ready by that time.

Q Did you tell her any reason why? A No, except I might have said that there was a vacation period, and Mr. Kenny being away from me I had to take my vacation in July.

Q Not what you might have said, but did you? A I probably did say I was going to take my vacation in July, and I thought I would make that the wedding trip.

Q Did she close her business right up? A Yes, sir.

Q Upon her marriage? A Yes, sir.

Q So that you persuaded her to shut up her shop? A Yes, sir.

Q On two weeks' notice? A Yes, sir.

Q You said you had your wife's bank book in court? A She has got it, I think, or Mr. McCarter has got it.

Q And you spoke of the purchase of a Ford car; was that purchased in your name? A Yes, sir.

Q With her money? A Yes, sir.

Q Why did you call it a gift from her? A Why did I call it a gift?

Q Yes. A Because it was.

Q Why, she asked you to get a car for her, did she not? A She asked me to buy a car; I had a big French car and, as I said, she wanted a little Ford car.

Q For herself? A For both of us; she runs it.

Q The license is in her name? A For the car? No, the license is in my name.

Q She has a driver's license? A She has a driver's license.

Q She asked you to get a car then for your joint use? A Yes.

Q You got it with her money, and had it billed to you? A Yes.

Q Did you tell her you had? A Certainly I did.

Q Did you tell her you were going to? A Yes, sir.

Q Why did you tell her you were going to have it billed in your name? A I told her I was going to buy the car at her request; I knew more about a car than she did, so she claimed.

Q Did you tell her that the ownership of the car was going to be in you? A Probably did, probably did not, I don't know about that, Judge; I treated the matter of small moment.

Q Certainly there would not be any occasion to tell her if she said she wanted to give it to you, would there? A No, it was for our joint use.

Q Then it was not to be a gift? A Not strictly a gift.

Q Not strictly a gift; it was something that both of you wanted, both of you were going to use, and she was going to pay for it? A And both of us are using it.

Q Did your father get any part of the proceeds of sale of any of this property since your marriage to Isabelle McGrath? A There is only one piece sold.

Q Well, did he get any part of it? A No, sir.

Q Did he not get the rents after your marriage, and up to the time of his death? A No, sir.

Q Or any of them? A No, sir.

Q Well, the agent was not appointed until September, was he? A Yes, sir, he was appointed in July for part of the property, and September for the balance.

Q What part in July? A Why, Cabinet street, 114, 116, 118, 120 and 122, and I think No. 21 Arlington street.

Q How much were the rentals from those properties? A Oh, small, seven dollars and fifty cents for one floor, and eight dollars and fifty cents for the other.

Q Well, altogether, it is small? A Yes, it is all small.

Q So that the bulk of the rents, the collection of them, was not put in the hands of an agent until September? A Oh, no, because the brewery company, which had three properties in hand, mailed their check directly to Mrs. Conway; all of this property is not in an agent's hands, she receives this money directly herself.

Q You said that in September, 1912, she arranged with Garrabrandt? A Yes.

Q For all? A Well, yes, for all that Mr. Garrabrandt didn't have up to that time.

Q Now, up to that time then he had not had the part of the property from which the bulk of the rent came? A No, sir.

Q That is right? A It is not right, because the bulk of the rent, I think, is payable to her directly by the tenants.

Q Payable to your wife? A To my wife directly.

Q Well, Garrabrandt did not have it then, did he? A No, but there were other tenants besides Garrabrandt's tenants; take the Union Brewing Company of Newark.

Mr. McCarter. I think you are at cross purposes.

Q Yes, I think perhaps either you do not understand me, or I do not understand you. Between your marriage and September, 1912, was there not a considerable part of this property, the rent from which was not collected by Garrabrandt?

Mr. McCarter. Now answer that question, will you?

A There was a part of the property.

Q A large part of it? A Yes, sir.

Q Nor by any other agent? A No, sir.

Q Didn't your father get those rents? A No, sir.

Q Were they not paid, collected in the same manner as before your marriage? A Yes, sir, up to the house.

Q Paid right at the house? A I got them.

Q You had before got them, had you not? A I got them, yes.

Q Tenants had been in the habit of coming to the house and paying you, and sometimes your mother and sometimes your father, is not that so? A Up to July.

Q And the same condition or method continued after your marriage up to September, as to these properties, did it not? A Yes, sir.

Q There was not, so far as the tenants could see, any difference in the arrangement, was there? A No, sir, until September, when they had to pay the agent.

Q What did you do with the rent that you collected, which you have just been speaking of, payments made to the house, sometimes to you, sometimes to your father, sometimes to your mother, what did you do? A For the small period of time there, July and August?

Q Take that first. A Gave it to Mrs. Conway.

Q Your wife? A My wife.

Q And have you done the same thing since September, 1912? A I have not collected any rent since September, 1912.

Q Haven't you received payment of rents by check? A Except Mr. Kolb's check; he testified yesterday that he used to pay me the check, because I was right in the same building with the bank.

Q What did you do with those checks? A Gave them to Mrs. Conway.

Q Gave them to her? A Yes, sir. You speak of the checks now, or the proceeds of the checks?

Q I am talking about the checks. A I cashed Mr. Kolb's check, as he said yesterday, every month or every time he paid it; I gave that to Mrs. Conway, the proceeds.

Q Well, why did you do that? A Because she was entitled to the money.

Q Why didn't you just give her the check? A Because, as Mr. Kolb said yesterday, he would pay me the check at my office, and sometimes the account would not be strong enough to meet the check.

Q Whose account? A Mr. Kolb's, one of the tenants.

Q Well, that would be a good reason for holding the checks, would it not? A Good reason for me to hold it and present it in the bank any time that I thought the money was there.

Q Well, then, why didn't you just hold it for your wife until that time? A It was made out to me.

Q Well, you could endorse it to your wife? A Yes, and she would have to run down to the bank to get it, the Broad and Market bank, which is downstairs in my building.

Q Who made the deposits for her? A She did sometimes, and sometimes I did.

Q You could have done it with the Kolb check? A Yes.

Q Why didn't you? A I would rather have the money than I would to deposit it.

Q So you went to the trouble of cashing that check and taking the money home to your wife? A Yes.

Q Did you ever get a receipt from her? A From my wife?

Q Yes. A I certainly did not.

Q Certainly not. It would be absurd, wouldn't it? A Yes, it would.

Q As a matter of fact she kept no rent account, you say? A The rent account that she kept was kept by the agent who collected her rents.

Q We are talking about rents that were not collected by the agent? A She kept no account, to my knowledge.

Q She could not tell whether Kolb paid his rent or not? A You better ask her, I guess she can tell you that.

Q Well, as far as you know? A As far as I know she can tell you.

Q When you gave her the money you just told her, here is so much money you got from Kolb? A "Here is Mr. Kolb's check."

Q Check? A Proceeds of the check.

Q Well, those checks were almost always for odd amounts, not just so many months' rent, but so many months' rent after crediting something that had been done for plumbing work? A No, a lot of checks of Mr. Kolb was for twelve dollars.

Q A lot of them were for balances struck after putting his plumbing account over against your wife's rent account? A That is right.

Q Didn't you give her any statement of those? A Mr. Kolb gave her a statement; he was dealing with her.

Q But he came to you and he paid you? A He enclosed the bill always with his check, and I gave my wife the bill.

Q Oh, the bill? A The receipted bill for

work that he had done, and the balance he gave me a check for, and I gave her the money; and many a time to my knowledge she has called upon Mr. Kolb and criticized him for the charges in the bill, after I turned the bill over to her.

Q You have given an explanation of the reason why your father conveyed to Mrs. Kelly and the other members of the family in 1902; do you remember having a talk with a Mrs. Raynor in Mr. Kenny's office on the subject?

Mr. McCarter. Perhaps we can save time. It seems to me, your Honor, that this is utterly immaterial, and if it is endeavoring to contradict it is contradicting upon an immaterial point, because it is agreed about those conveyances.

The Court. Yes, there does not seem any necessity to go into that.

Mr. Skinner. Only to show that he had given other explanations than given now.

The Court. It would have been relevant if they had insisted upon the validity of the first deeds.

Judge Skinner. It might still affect his credibility.

Mr. McCarter. But you cannot contradict on an immaterial point.

Judge Skinner. May I say it is not an immaterial point. If the explanation that he gives today on the witness stand, under oath, is something which can be contradicted by some other explanation it seems to me it does affect his credibility.

Q Mr. Conway, did you show your wife, or Miss McGrath, any other property than this

that was subsequently conveyed to her? A No, I did not.

Q You owned other property? A Yes, sir.

Q Why didn't you show her that property? A Because I wasn't going to give her that other property.

Q And why weren't you going to give her that? A Because I wanted it myself.

Q Wasn't there another reason? A That was my reason; I don't know of any other reason.

Q You only wanted to give her the property that had come from your father and might be subject to attack; is not that right? A That is true, Judge.

The Court. That is what he has said; he has been very frank about it, unusually frank about it, and I do not see why you want to go into it any more.

Q Who paid the taxes on those properties after your marriage? A My wife.

Q And who paid the taxes while the title was in David Young? A My father or Mr. Young; I don't know that.

Q Well, you know that your father paid the taxes on all these properties, notwithstanding the deeds to Young and Conroy and Reilly? A I know that there was a working agreement with my father; those facts he would not communicate to me; how he paid them I do not know, they were paid between them, but I don't think that was a bona fide matter, as I said before; I can't tell you any more than that.

Q Did you tell Miss McGrath anything about how you got these properties? A I certainly did not; I wanted to keep Miss McGrath's mind

innocent; I may have been wrong in the other cases, but in Miss McGrath's case I certainly wanted to have her a bona fide purchaser for value.

Q Did you give Miss McGrath an engagement ring? A I certainly did.

Q When? A The moment she signed—I do not say the moment, but after she signed the agreement to marry me.

Q When did you procure it? A I procured it, I cannot tell you the month, it was some time prior thereto.

Q How long? A I should say a month, six weeks, maybe two months.

Q Before she had signed this ante-nuptial agreement? A Yes.

Q Before she agreed to it? A Yes.

Q Engraving on it? A I don't think so; it is in court, you can look at it, Judge.

Q You do not remember having any initials put on? A I think they were put on, Judge.

Q And put on at the time you bought it? A No, because that young lady had not promised to marry me at that time.

Q Why did you buy the engagement ring if she had not promised to marry you? A I had an elegant chance to buy a diamond ring at a sacrifice, and I then bought it.

Q Intending to use it for this purpose? A If the opportunity presented itself I intended to use it, which I actually did.

Q Where did you first show it to her? A At her home.

Q When? A I think it was the Sunday night after she signed this agreement, it was signed on the thirteenth, on a Thursday, and I think on Sunday I showed it to her.

Q That is the first she had seen it? A Yes.

Q You had it in your possession for about a month before that? A I should say a month.

Q Without showing it to her? A Without showing it to anybody.

Q You understand, do you not, that the properties were called in, or the persons who held, like Mr. Young and Mr. Conroy, were called upon by your father to convey this property back to you, two or three weeks before the antenuptial agreement was signed? A I don't know just exactly the date, Judge, but I know I heard my father say that he was going to have Mr. Young convey to me, as both of my sisters were well provided for, and he was going to have me have the property.

Q And wasn't that done two or three weeks before in expectation of your conveying it afterwards to somebody, Miss McGrath or somebody else? A Absolutely no, Judge.

Q Did you tell your wife the value of this property? A I did not; told her the income.

Q Did you tell her anything about the expenses, the taxes, etc.? A I told her the taxes were approximately so much, and the income approximately so much.

Q This was before she signed the agreement? A The day I took her over and showed her the property.

Re-direct examination by Mr. McCarter.

Q William, I want to ask you a little about your sister, Mrs. Mason; as a matter of fact, did she do work for your father? A Oh, she did, Mr. McCarter, from the time she was twelve years of age.

Q Well, during this episode at Boston, was she up there working? A She was time-keeper, and used to go on the ditches and take the time of the men in the ditches and pay them off.

Q Did she keep the books? A She kept the books, yes.

Q So that as a matter of fact she served in a rather clerical capacity for many years for your father? A I said fifteen years to Judge Skinner, I may be a year or two out of the way.

Q She had received no regular compensation for that? A No, sir.

Q I think she was secretary of the company, was she not? A Of the Conway Contracting Company, composed of my father, Mr. Hanna, and Miss Conway, who held one share.

Q That is your sister? A I believe Judge Skinner said yesterday that Mr. Minnahan was a member, but he was not a member.

Q That is your sister? A Mary L.

Q Was a stockholder and secretary of that company? A Yes, sir.

Q And did she receive any compensation for what she did as secretary? A Not a cent.

Q So that you understood, and meant to say in that answer and testify, that the deeds were made to her as compensation for the work she had done in that way? A Yes, sir.

Q Now your grandmother died when? A 1900, December.

Q Before her death she had lived how long with your aunt, Miss Annie? A Oh, she had lived since the death of my grandfather, I should say around 1872.

Q And they had lived, I think, with somebody else first? A They had lived after the death of my grandfather, one of my aunts married Mr. Thompson, and Mr. Thompson furnished a home for Miss Annie and her mother.

Q Mr. Thompson died? A Mrs. Thompson died, Miss Annie's sister, died in 1898.

Q And it was then that your grandmother and Miss Annie— A Came to live in my father's household.

Q On the upper floor? A In my father's house upstairs.

Q Now, the David Young that has been referred to, is the David Young of the firm of Van Duyne & Young? A Yes, general manager of the Traction Company one time.

Q Have you since your marriage given your wife any moneys, independent altogether now of her income from this property? A Oh, certainly, I support my wife.

Q In addition to that have you given her any sums of money? A Yes, I have.

Q To what extent, and when? A At different periods, every time she wanted twenty-five or fifty dollars, I was making money, and making it today, I would hand it to her, sometimes I would cash a check for a hundred or two and give it to her, sometimes I made a check directly to her.

Q Do you remember any occasion when considerable amounts were given to her? A I know I gave her 1912 July rent that was paid to me by the brewery; the Union Brewing Company used to pay the rent sometimes at spasmodic intervals, and they would pay it, when it would be in arrears they would give a check that might pay the arrearages and one or two months ahead, and they paid me July rent in a check of something like four hundred dollars, and that July rent she was entitled to, and I drew a check to her order for one hundred and seventy-five dollars, which was the rental of

that property received by me, and gave it to my wife and told her what it was for.

Q No, no, no, I am asking whether there were any occasions when, from your own funds, from your own personal funds? A Yes, there were occasions, I have given my wife one hunderd and twenty-five, one hundred and fifty, two hundred dollars, even as high as five hundred dollars.

Q You have stated that Mr. Kolb's bank account was not always good, so that you would have to nurse it by inquiring at the bank? A That is right.

Q Kolb had a book, did he not? A Yes sir, he had a book.

Q Did you or he keep that book? A He kept it for probably, I should say, a year.

Q Afterwards? A Yes, after he received it.

Q Then what became of it? A He brought it up to my house one night with a promissory note for the rent that was due.

Q Was it left with you afterwards? A Left with me afterwards, and it was receipted by me every month.

Q So that you had the Kolb book after that time in your presence? A Ready for him to call for it; he never did, although I often told him.

Q And you could tell by looking at it how his account stood? A Yes.

Q About when was it the Kolb book was left with you? A About, I should say around June, 1913.

Re-cross examination by Judge Skinner.

Q Have you got Mr. Kolb's plumbing—possibly Mr. McCarter has it. Has counsel got the

Kolb plumbing receipts? A I don't think we have them in court, Judge.

Q You can get them and have them after lunch? A I don't think we can get them here after lunch.

Mr. McCarter. Away out at Orange, I suppose.

Q Could you have them here before adjournment, sending for them? A I don't think we could send for them; I can get them to you some time today, Judge, I don't know what time.

Q I would like to have them before the Court adjourns.

Mr. McCarter. You haven't asked us to produce them; this is the first time, and they are up in Orange and we are here.

Q Is there no way you can telephone? A Have no telephone up there, Judge.

Q Could you send a messenger to anybody there at the house with authority to give them. I would be glad to pay the expenses? A It is not a question of that. I am willing to show you everything I have and gladly will do so, and I will go up there, if I can make it consistent with the time we have in this case, and I will submit Mr. Kolb's bills. Mr. Kolb was subpoenaed by you yesterday, and you could have told him to bring his bills or his books.

Mr. Howell. I just spoke to Mr. Kolb and asked him if he had the receipts, and he said he did not know who they were made out to, and asked me to ask you for them.

A The bills?

Q Yes. A I have the bills, yes.

Q When did he do plumbing work last? A I don't know that.

Q Since your marriage to your wife? A Oh, yes, she had a conversation with him and told him what to do.

Q Does not this book marked Exhibit D. 2 start with July 1st, 1912? A Yes, sir.

Q You say that you gave your wife a check for—I forget the amount—one hundred and seventy odd? A That was for the Brewery's money that was paid to me, not Kolb's.

Q You gave your wife then checks at various times for payments that had been made by Mr. Kolb in settlement of a difference between his account, his plumbing account, and her rent account? A Yes.

Q Are these entries in this book D. 2 in your handwriting or your wife's? A Those are my wife's.

Q All your wife's? A Yes, sir.

Q And there is no mention anywheres there of any plumbing account, is there? A Oh, no, because he would get a receipt in full, and he would receipt his plumbing bill in full, don't you see.

Q But that settlement of balancing of accounts might cover several months rent? A This is not Kolb's book, Mr. Skinner.

Mr. McCarter. Oh, well, I supposed it was, I didn't look at it. Well, here it is (producing book).

Q This appears to be the Kolb book, and it is not marked.

Mr. Egner. There is an earlier Kolb book which was marked; there are two of them.

Q The payment of $175 came to you when? A Came to me I think it was, Judge, in June.

Q In June, 1912? A Yes, sir.

Q That was before the property had become your wife's? A Certainly, being July rent to me.

Q Kolb's? A No, not Kolb's, the Brewery.

Q Was that the rent for one month? A No, it was a large check, probably three or four hundred dollars, which paid the arrearages that the Brewery owed, with July rent in advance.

Q And July rent amounted to how much? A One hundred and seventy-five dollars, and Mr. Kolb is not interested in that.

Q You took out one hundred and seventy-five dollars and gave that to your wife? A Yes.

Q What did you do with the rest of it? A I kept it.

Q It was your father's? A I kept that money, that June rent was mine, I owned that property in June.

Q Didn't your father own it? A No, I owned it; I tell you, he made the people convey it to me thinking that my sisters were married and they had enough, and I was to get the property.

Q You spoke of your aunt Annie and your grandmother coming to live in your father's household, and then corrected that, coming to live in his house? A House.

Q Didn't they come to live in your father's household? A Absolutely not; I am on my oath here today, and I am telling you what is true; they lived upstairs in their apartments.

Q (*By the Court.*) What was your father's condition of health in July, 1912? A Very sick, Vice-Chancellor.

Q (*By the Court.*) Well, he was in bed all the time? A In bed for an hour, or a day at

a time, and then he would get up, and then he would go back again.

Q (*By the Court.*) Was he able to go out at that time? A No, just around the back yard.

Q (*By the Court.*) What was the matter with him? A He had cancer.

Q (*By the Court.*) Who was his physician? A Doctor Wendall and Doctor Haggerty.

Q He got somewhat better after that, did he not? A Oh, no, he did not, Judge.

Q Well, he some times after that was out around the front of the property? A Oh, he would walk around some times.

Q It was not always the back yard? A Oh, no; as I told the Vice-Chancellor, he walked in the front of the house, and around the side, of a nice sunny day.

Q (*By the Court.*) From what did he finally die? A Cancer.

Q His condition fluctuated a good deal? A Yes.

Q His activity fluctuated a good deal? A He would be good one day and bad the next.

Re-direct examination by Mr. McCarter.

Q Where was the cancer? A Stomach.

Q For how long a time did you expect his death? A Doctor Wendall told us years ago that his heart was bad also, and we might expect his death any moment from heart trouble.

Q He had been out of business for seven years? A He had retired for seven years, couldn't work any more.

Q And his life so far as—take the time when you were married, for example, from then on and for a time before that, was as you described

it, some times in bed? A Most of the time in bed; he was a sick man.

RECESS.

Mr. McCarter. I offer in evidence one of these rent receipt books for the Schofield flat, and will ask to have it marked.

Marked Exhibit D. 8.

Mr. Howell. There is an explanation here that Judge Skinner asked me to put in, which I omitted in our direct case, just a little question of identification of some of these properties, and Mr. McCarter said he thought there would be no objection.

The Court. Has Mr. McCarter put in all his exhibits?

Mr. McCarter. All that I think is material, the rest are rent books that will be explained by Mr. Garrabrandt when he comes down.

Mr. Howell. It is page 246, just like to have it appear on the record as to Exhibit C. 13, which commences on page 241 of the case in the Court of Errors, that certain properties, as already stated, are listed by James Conway; these appear at page 246 of the State of the Case; by use of the Newark City Atlas it appears that the first property there listed, Cabinet street, one block, Bergen to Camden street, store, etc., and tenements, Newark, is identical with tracts 4 and 5, and tract C on Exhibit C. 14.

The next tract listed by James Conway is the corner of Lafayette and Madison, Newark, $5,000, and it appears that that was

conveyed by James Conway before January, 1902, and is not here concerned at all.

The third tract listed by James Conway is 21 Arlington street, Newark, $2,500. This is the same as tract B in C. 14. I should state that Arlington street was formerly known as Catherine street, and that the description in tract B uses the word Catherine street instead of Arlington street.

The fourth property listed by James Conway is two lots, First street near Ogden street, Newark, $1,200. Now First street and Ogden street are nowheres near each other, but if we substitute Orange street for Ogden street—

Mr. McCarter. Oh, no.

Mr. Howell. Well, let it appear on the record then that I have been unable to locate any such property, because Ogden street and First street do not intersect, or rather are nowheres near each other. Would you permit me to say that I have found two—

Mr. McCarter. No, I don't think you ought to do that, it is mere surmise.

Mr. Howell. The next property listed by Mr. Conway is corner of Eleventh avenue and Sixth street, Newark, $5,000. This is tract 7 and 8 on C.14.

The next property, Central avenue, Warren street, no amount opposite. I identify that as tracts 2, 3, 6, 9 and 10 of the properties that James Conway owned in January, 1902. I might state that tract 12 is in the same vicinity, but naturally that could not have been referred to by James Conway on P. 18 because he did not acquire it until 1905.

Isabelle E. Conway, direct.

ISABELLE E. CONWAY, sworn.

Direct examination by Mr. McCarter.

Q Before I forget I will ask you to look, Mrs. Conway, at Exhibit D. 8, and tell me in whose hand writing the entries made therein are? A That is my handwriting.

Q You are or were formerly Isabelle McGrath? A Yes, sir.

Q Where were you born, Mrs. Conway? A Born in Cincinnati, Ohio.

Q May I ask you how old you are? A I am thirty-seven.

Q And did you subsequently move to Brooklyn? A I came east to live when I was about twelve years old.

Q And where did you live? A Always in Brooklyn.

Q You were educated in Brooklyn? A Well, I only went to school a very short time after I came to Brooklyn; I got most of my education in Cincinnati.

Q Before your marriage were you carrying on any business? A I had a dressmaking business of my own.

Q In Brooklyn? A In Brooklyn.

Q How long a time had you been operating that dressmaking business? A Well, I was in business from I was about seventeen years old; I went to work when I was fourteen, I went to learn my trade when I was about fourteen or fifteen years old.

Q You learned your trade as a dressmaker? A Yes.

Q After learning your trade you started in business for yourself? A Yes, when I was about seventeen.

Q Where did you carry on that business? A Most of the time on India street, I lived for a while in 119, and then I purchased the house at 105 India street.

Q Brooklyn? A And carried on the business there.

Q When did you purchase this house? A Well now, I had that house I guess about four years before I got married, four or five, maybe.

Q Who lived at the house? A My folks all lived with me.

Q And the family consisted of whom? A My mother and father and two sisters and one brother; I was the oldest.

Q You were the oldest of the children? A I was the oldest.

Q They all lived with you in this house, with your father and mother? A Yes, sir.

Q Did you carry on this dressmaking business there? A I did up until the time of my marriage.

Q Were you moderately successful? A Very.

Q Did you have any hands or girls working for you? A Certainly; I couldn't do all the work myself.

Q How many hands did you have, or girls? A I had at times eight girls, some times ten girls; then I found with a better force of help we could get along with fewer, and I always had from five, six, seven, depended on the seasons.

Q When did you first meet, if you can recall, William Conway? A I met Mr. Conway, as nearly as I can think it was in August, 1907, in Atlantic City.

Q That was your first acquaintance with him?

A That was the first time I ever saw Mr. Conway.

Q Now that was 1907, you say? A 1907.

Q You were then in the dressmaking business? A I was.

Q Taking a little vacation at Atlantic City? A I always closed usually the first of August, and didn't do much until October.

Q Are you able to recall the annual profit from your business for the last four or five years prior to your marriage? A Of course you know everyone has to get a start; I didn't make such an awful lot when I started, but my business grew each year, and when I was married I guess I was making anywhere in the neighborhood of twenty-five to three thousand dollars a year, perhaps more, but I had a great many expenses, didn't tally down everything, you know, because there was a great deal of it going out.

Q When you were in business in Brooklyn, as you described, did you have a bank account? A I certainly did.

Q And had you accumulated any money in the savings bank? A I had two savings banks, and I had a checking account.

Q And you took title to this house? A I did.

Q And was there a mortgage on that? A There was.

Q You subsequently sold the equity in that, I think? A I sold my house after I was married.

Q Now having met William in Atlantic City in the summer of 1907, how much did you see of him down there? Very much? A Mr. Conway was only in Atlantic City, I should judge, probably two or three days after I met him, and

then Mr. Conway, no, I did not see Mr. Conway that fall, but the next summer I was sitting on the porch of the same hotel when Mr. Conway came up to engage his rooms again at the hotel, and he spoke to me, and we renewed our acquaintance, and I went out with Mr. Conway that summer, and when Mr. Conway came back to Newark, and I to my home, he called on me that winter; as near as I remember the following summer Mr. Conway went to Europe, and then when Mr. Conway was in Europe he wrote to me and sent me cards from different places, and he called on me when he came back, that was in 1909, I think, and 1910 I went to Atlantic City again, which was my custom every summer, and I saw a great deal of Mr. Conway that summer.

Q He was down there then? A He was, yes, and was with me mostly all the time.

Q That was the summer of 1910? A 1910, and of course then in the winter he came over to see me again.

Q During this time when you were going out with him did you find him quite a liberal spender? A Well, I certainly did, Mr. Conway was always a big spender in my presence.

Q You remained friends all this time? A Yes.

Q Did he finally ask you to marry him? A Well, I was down to Atlantic City again in 1911, and Mr. Conway was down there, and came to see me quite often when I came back in the fall, and I think it was along in the fall of 1911, probably the latter part of November Mr. Conway asked me to marry him.

Q And did you accept him, or what? A No, I did not.

Q What did you say to him? A I told Mr. Conway I did not want to get married, that I had a good business, a profitable business, and I was home there and owned my own house, and I said, well, I think I said to him, "While I like you, and I like to go out with you, I do not feel I want to give up my income," and then Mr. Conway did not come so often after that, until along about January he commenced to come see me again, the early part of January, and I think it was around the latter part of January he asked me again if I would not consider marrying him, and I laughed at him, and I said "no, I wouldn't, I didn't want to get married because I had a good business and I was making good money," and I said "I can do just as I please with my money," and I didn't feel that I wanted to get married. So then Mr. Conway did not come, I don't think I saw him so often again then until around the first part of June. Mr. Conway commenced to come over to see me again; he used to call me on the telephone, and he used to take me out, and then it was—

Q Is this 1912? A 1912; it was in June that Mr. Conway had an appointment with me in New York, on Sunday, I think it was the ninth of June, and Mr. Conway asked me if I would come to Newark, and I had never been in Newark before that, with the exception of once I went to Lake Hopatcong and came back to Newark to change cars to go to Atlantic City, and that was only going from one depot to the other, that is all I knew about Newark, so of course when Mr. Conway asked me to come to Newark it was kind of nice I thought to go to a place you had never seen, and I came over with Mr. Conway, and when we got to Newark he took me around

and showed me the different properties he owned. After he showed me all the properties he asked me if I would marry him if he would give me that property, and I said, "Will you give me all that you showed me," and he said, "Yes, I will give you all that property," and then I asked Mr. Conway what the income of it was, and he told me at the time, and I said, "Well, I will think it over," and Mr. Conway said, as near as I remember Mr. Conway said, "Well, if you make up your mind to accept me you know we have to have this in legal form," or writing, or something like that, and he said, "Of course we have to have a lawyer," and I said, "Well, anyone you want to suggest;" he said, "Well, Mr. Darrow," he said, "I know Mr. Darrow and you know Mr. Darrow." I had met Mr. Darrow probably twice or maybe three times with Mr. Conway and I said, "Well, that is agreeable to me," and he said, "Well, you think it over." Mr. Conway took me back to New York that night.

Q Before you got back to New York, after you had looked at the properties did you go in William's home? A Yes, Mr. Conway took me in there and told me that was the homestead where he lived, his home, as he called it.

Q Did you meet any of the family that day? A I think it was Miss Annie—no, I think Mr. Conway opened the door with his key, but Miss Annie came right out downstairs, or wherever she was, I don't know; he introduced me to Miss Annie, and then Miss Annie took me upstairs, and it was while I was upstairs Mr. Conway came upstairs, and he opened his father's door, which was right opposite the bath room, and he introduced me to his father; his father was not

well, he was lying down; I was only a couple of minutes at the door and then I came downstairs.

Q And you went back to Brooklyn that night? A Yes; Miss Annie had a cup of tea, we had a cup of tea, the three of us, the girl served it.

Q Had you ever met any member of the Conway family before this Sunday, other than William? A No, I never met any of Mr. Conway's people.

Q And Miss Annie and Mr. Conway, Sr., were the only two you met that day? A Mrs. Conway was out riding with her daughter; of course I didn't know any of those people.

Q What next occurred? A Why, it was the next day I went to Mr. Darrow's office, and I told him Mr. Conway wanted me to get married, and I said, "Mr. Conway has promised me if I do marry him that he will give me certain pieces of property that he owns," and he said, "Well;" I said then "Mr. Conway said it had to be done in legal form and that if I wished I could have you draw the deeds for it, or papers, whatever it was," and he said, "Well, I will have to have a description," and it was while I was there he telephoned to Mr. Conway for the descriptions. So that was Monday.

Q Did you make any appointment, or anything? A I said I would come back on Tuesday, and in the meantime I would notify Mr. Conway; so I dropped just a little line to Mr. Conway that night and asked him to meet me in New York the next day, and I met Mr. Conway the next day by appointment.

Q At Mr. Darrow's office? A No, I don't think it was at the office, I think I met Mr. Conway uptown, because it was more convenient for me, and we went to Mr. Darrow's office.

Q What occurred there? A After I got in the office I thought it over, and I was between two minds, I said, "I am not going to sign the papers, I am not going to get married," I said, "I don't see possibly how I can get married by the first of July," Mr. Conway said the end of June or the first of July, and I did not sign the papers that day; I went out with Mr. Conway and went home; then I went back again on Thursday, and I met Mr. Conway and I signed the papers that day.

Q (*By Judge Skinner.*) What is that? A I went back on Thursday, which I believe was the thirteenth of June, I remember it because Mr. Darrow remarked was I superstitious about the thirteenth, that's how I am sure about that date.

Q How was the appointment made with Mr. Conway for the thirteenth? A I cannot recall that second appointment, whether I telephoned him or dropped him a line, I am not so sure about that.

Q At any rate you met there again? A Yes, I met there.

Q Did you announce any conclusion, or what was said? A I don't understand you.

Q What was said then? A I decided to sign the papers.

Q Well, you then and there signed? A Yes, I signed the papers.

Q The paper that has been offered in evidence? A Yes.

Q How long a time do you suppose you were in Mr. Darrow's office on the day that the paper was actually signed, which I see is the thirteenth? A I do not think that it was very long, Mr. McCarter.

Q After the documents were signed what became of them? A Mr. Darrow handed one to me and one to Mr. Conway.

Q And then did you leave? A Yes, we went out.

Q What became of you and what became of Mr. Conway? A As near as I remember Mr. Conway took me to dinner, and I went home and he went home.

Q When was the time set for your marriage ceremony? A July first, 1912.

Q When had you fixed that? A I think it was that day we agreed to it.

Q Now you are a member of the Catholic church? A I am.

Q Did you have to make any arrangements in Brooklyn about your marriage in Newark? A I certainly did, I had to go to the parish priest and have him sign a little paper for me, which is customary when you are not called, you know; he knew me, he knew who I was, and knew, I suppose, that everything was all right.

Q Was any reason given why the marriage took place in Newark rather than in Brooklyn? A Well, I wanted my marriage very quiet, because I had a great deal of work on hand at the time and I didn't want to give everyone that came in the reason for my sending back their materials and their stuff half finished, and everything else, that I was going to get married, and I thought the simplest way was to tell them I was going to take a vacation, I didn't tell them for what reason, or anything else, and I always said, before I thought of marrying Mr. Conway, or anybody else, if I ever married I wanted a quiet wedding, because after my years of experience, and dressing probably a hundred or more brides, and seeing the anxiety they go through, I could

never go through it; I think it is a lot of nonsense; I may be odd.

Q So you were married? A Yes. My sister was married eight months before I was, and she had a wedding, and that too, I knew the trouble it was in the house, and everything else.

Q Now I show you the paper that has already been marked Exhibit D. 5, and also show you another paper which is a duplicate, and ask you if they are the two documents that were signed by you and Mr. Conway on the thirteenth of June in the office of Mr. Darrow, and in his presence? A Those are my signatures.

Q You took one, and your husband that was to be took the other? A And Mr. Conway took the other.

Mr. McCarter. I would like to have this paper marked also.

Marked Exhibit D. 9.

Judge Skinner. There is no difference, is there?

Mr. McCarter. Absolutely the same, as far as I know; I never saw the other one before, but you can look at it.

Q Who witnessed your wedding here? A Miss Annie Conway and Mr. Thomas Halloran.

Q After the wedding were you made acquainted with any of the family? A After we left the church we drove down to Mr. Conway's home, which was my home afterwards, and when I went in the house I was introduced to Mr. Conway's mother, and his father came downstairs also, he wasn't there when I went in but he came down and shook hands with me.

Q Were they then and there made acquainted with the fact that you had been married and

were their son's wife? A Yes, certainly, and we had some refreshments and went away.

Q Now here is this deed, Exhibit D. 7, from William F. Conway to you; when was that deed given to you, if you recall? A Mr. Conway gave me that deed on the morning of my marriage when I met him at the station, he handed it to me, you know, when he met me at the station.

Q In Newark? A In Newark, yes.

Q The morning of the marriage? A Yes, before I went to the church.

Q I observe that this deed is marked as having been recorded on the first day of July, in the Register's office here in Newark; do you know anything about the recording of that deed? A Well, I know that after I was married the automobile drove me down to the City Hall and I went in to the City Hall.

Q To the City Hall or Register's office? A The Register's office, wherever it is.

Q Well, where was this building you went in, which you call the City Hall? A It is up here on High street and Market.

Q The City Hall is down on Broad street; it was the Court House? A Oh, yes, the Court House.

Q You went away for a wedding trip of three weeks? A Yes, I was away for three weeks.

Q Now at that time did you know anything about the business affairs of Mr. James Conway? A No, sir, I did not.

Q Did you know that a suit had been commenced against him? A No, sir, I did not.

Q Did you know that he had been engaged in some operations up in Wakefield, Massachusetts? A No, I did not.

Q Did you know anything at all about his business? A I knew nothing at all about Mr. Conway's people or their business, or anything.

Q You have stated that on that Sunday that you were out here William took you around and showed you the property and stated what the income was; do you recall what the income was stated to be? A Well, as near as I can remember I think he told me that the three properties that the brewery had brought one hundred and seventy-five dollars a month, and the rest of the property brought in the neighborhood of two hundred dollars a month.

Q So that that would make, if I have your figures correctly— A About three hundred and seventy-five dollars a month.

Q Gross? A Yes.

Q Did you learn what the taxes amounted to? A I asked Mr. Conway and he told me, I think it was around thirteen hundreds dollars a year, between thirteen and fourteen hundred dollars a year.

Q Did you then in your minds eye estimate the net rental to be derived from this property? A Well, I didn't just figure it that way, because I wasn't sure whether I would accept Mr. Conway or not.

Q But before finally deciding did you have in mind the net rental? A About what it would figure up.

Q That was about what? A I figured up it ought to bring around two hundred dollars a month, when you take all out of it, repairs and everything, maybe more and maybe less.

Q You have stated that you got married; what did you do in the way of giving up your business? A Why, I simply returned all the

goods that I had in the house as fast as I could, by the first of July, and what I didn't have returned I bundled up and marked so that my mother could return them and notify the people to come for their materials and stuff, and marked each one of them so that she would know which ones to give to the people.

Q Did you discharge your help? A I didn't tell them I was getting married, I simply told them I was going on a vacation.

Q Well, you gave up your business? A Yes, they weren't there when I wasn't there, which was always the way when I took a vacation.

Q How long a time did you continue to own the Brooklyn house? A I kept the Brooklyn house until after my father died; I was married in April, and my father didn't die until the September a year after that and I sold the house, the following November I think; my mother didn't care to have it.

Q You said you were married in April? A July I should say; well, my father died the September a year after I was married.

Q Now in that intervening year and two or three months your father and mother continued to live in your house? A Yes, and my sister and brother.

Q Did they pay you any rent? A No, they never paid any rent.

Q And then after his death you sold the house? A Not right away; my father died in September, and I would not ask my mother to leave the house until she left of her own free will, when she said there was a woman there wanted to buy the house I went over to see the woman, or the woman, rather, came over here to see me, and I decided on selling it.

Q And you did sell it? A I sold it, yes.

Q Reaping from the sale— A I got thirteen hundred and some odd dollars out of it, because my property depreciated, you know.

Q Did you surrender your Brooklyn bank accounts when you came to Newark? A Oh, no.

Q You retained them? A Always kept them.

Q What did you do towards assuming dominion and control over the property that William deeded to you, after you got back and were ensconced in the homestead up on the hill? A I knew it was my home, and I went in there.

Q I mean that and the other property, too? A Well, the rents that came in were my rents, of course any rents that were paid there were handed over to me.

Q Tell the Vice-Chancellor, without too much detail, what this property consisted of besides the homestead; in the first place, there was the house you lived in? A Yes.

Q Who lived there? A In the house I lived in, the homestead?

Q Yes. A Mr. Conway's father, mother and aunt lived there, and myself.

Q How did Miss Annie live? A Miss Annie always had her separate place upstairs, always did her own cooking.

Q What was the condition of Mr. Conway Sr.'s health during this time? A Very poor from the time I went into the house until the time of his death.

Q Did you know, and was it known in the family that he had a fatal disease? A Well, I don't know whether they knew it was exactly fatal, but they always seemed kind of anxious about his health, and I know by looking at the man I could tell he was anything but a well man.

Q When did you become aware of the fact from the doctor that he had this cancer? A I guess it was along in the fall, the doctor was coming in; I don't think the doctor told anyone right away what he had, you know.

Q Mrs. Conway, now I see this property that you have, under these circumstances, consisted in the first place of this homestead. Now that is one thing? A Yes.

Q Without going into numbers, or what not, what did the rest consist of? A It consisted of the whole triangle, of that plot which takes in Seventh street, Warren street and Central avenue, it is a triangular plot.

Q On that triangle is what? A The old homestead, as I would call it, the corner house where the saloon is, the other corner house where the grocery store is, and there are three houses I call the row, and another larger house, and the smaller house where the plumbing shop is.

Q They are all together? A Yes, right on the one plot of ground, across the way there are some vacant lots on Warren street; go around the corner of Fifth street, I have a couple of lots there; over on the other corner of Warren and Sixth street I have some vacant lots there, and a small house next, just two tenants in; then I have the houses on Cabinet street corner of Bergen.

Q Now at the time that you took hold of this thing how were the rents of this property actually managed, just describe that to the Vice-Chancellor? A Well, the Cabinet street property was with the agent, Mr. Garrabrandt collecting the Cabinet street property.

Q He was already doing that? A Yes, the brewery sent their check to the house or to Mr.

Conway's office, I presume, before I got it; and Arlington street I believe the agent had, and then the other properties the rents used to come to the house, the tenants used to pay it at the house.

Q Who ultimately got those rents? A Well, Mr. McCarter, after I was married, of course I was housed a great deal before I was married, and I went out considerably after I was married, went home to Brooklyn, and I would stay two and three days a week in Brooklyn if I felt like it, and anyone that was in the house took the rent, and it was always turned over to me.

Q The question was who ultimately got it? A I did.

Q Some times it was handed to somebody else and you got it? A I always got it.

Q What did you do with the rent you got? A I used some of it for my personal use, and the most of it I put in the bank.

Q Did you open some bank accounts in Newark? A I did.

Q Where? A I had an account in the City Trust, and I had an account in the Howard, and I had an account in the Franklin, and I had an account in the National since I have been married, National State Bank.

Q And of course you had bank books? A Yes.

Q I show you four bank books, one in the City Trust Company, the first entry in which appears on the seventh of August, 1912; is that one of your accounts? A Yes.

Mr. McCarter. I will offer that in evidence.

Marked Exhibit D. 10.

Q I observe that there is a lot of blurring or lead pencil, looks like smirch there; how do you account for that? A What do you mean?

Q Has there been any erasure? A Well, I will tell you. Mr. Conway some times used to make the deposit for me, and he used to mark it in what the deposit was, and when I went to Mr. Egner's office they told me, he told me rather, perhaps I would have to produce these books, and Mr. Conway writes a kind of peculiar hand, which some times I cannot read offhand, and I took it upon myself one night in the house and rubbed them out and put them in in my own handwriting; they are back as they were before, didn't change them around in any way, but those amounts that are in there are in for what they were always.

Q Let us read the first item. A Where I have "Gar" that means Garrabrandt rents, and this is the Union Brewing Company, that was a check, Mr. Conway gave me that hundred and seventy-five dollars, that was July rent; then here, this is for the Newark Bill Posting Company, Central and Warren, that is what I got for my fences.

Q Did you keep, yourself, any other account than the entries that are thus made in the bank books? A No, I did not.

Q Now the next I show you in a second bank book in the City Trust Company, whose first entry seems to be the eighth of August, 1913; is that a book of yours? A Well, you can see I drew out some of my money out of the City Trust when the City Trust—the time that the other bank on Roseville avenue failed.

Q Roseville Trust? A Yes; I drew out some, I drew out all my account there and only

left a few dollars, and opened the one in the National that time.

Q This is the book you had that time? A And after I felt it was all right again I put back more money.

Q So this is your current account in the City Trust Company? A Yes.

Mr. McCarter. I offer this in evidence.

Marked Exhibit D. 11.

Q Now I show you bank book in the Howard Savings Institution in the name of Isabelle E. Conway, and I observe that the first entry is there on August 7, 1912, $200; did you deposit $200 on the seventh of August? A I suppose I did.

Q You opened an account at any rate in the Howard, and it has been there ever since? A Yes—no, I got most of it out now.

Mr. McCarter. I also offer this in evidence.

Marked Exhibit D. 12.

A Most of that money was cash I had on hand, and if you will realize, when I closed my business so abruptly there was quite a good deal of money outstanding, and I had so much money coming in after I was married for bills and one thing and another that I was putting it in one bank and another.

Q I next show you bank book of the National State Bank, which seems to have been opened in August, 1913; did you open that account? A I did.

Q Was that about the time that you lost your nerve on account of the failure of the Roseville Trust? A It was; I took thirty-four hundred

dollars from there and I put thirty-four hundred dollars in the National State Bank.

Q And have you an account there yet? A Yes.

Q I notice again the same blurring in the entries between the date and the amounts? A Well, I wrote these all over, too.

Q I do not know whether the Court and counsel understand about that. These entries were made either by you originally or by William as the deposits were made, to explain what the entries were? A Yes. As fast as I would put a check in I would tell Mr. Conway to mark it in the book, because you see Mr. Conway was going out every day and I wasn't, and it wasn't out of Mr. Conway's way to go in this bank, and it was not out of his way much to go in the other bank, and he used to walk over with the checks and put them in, but I usually made my deposit slips at home and gave them to him, rather handed them to him.

Q He would write in there the source or origin of the money that was deposited in the bank? A Yes; Mr. Conway had a habit of keeping his own books that way; when he told me I thought it was wise, too.

Q You had no other memorandum in your possession than these memoranda of where the moneys came from? A Yes, I had them all down there, which will tally with any check I ever had.

Mr. McCarter. I do not think this National State Bank book has been marked.

Marked Exhibit D. 13.

Q Then here is a bank book of the National City Bank of Brooklyn, which seems to have

been opened on the twentieth day of July, 1914; tell us about that? A Well, I had a great deal of money; you know I was after selling my Arlington street property, and I put that eighty-seven hundred dollars into this National City Bank; I was also after selling my Greenpoint property or Brooklyn, as you want to call it, and I deposited that in the National Bank.

Q In the National State? A Yes, here it is, $1,300. I put my $8,700 in there that I got from my Arlington street property; also I put in the thirteen hundred and some odd dollars that I got from my Brooklyn property in there.

Judge Skinner. I understood you were asking about the Brooklyn bank book.

Q Well, go on, finish what you were going to say? A So I took this, I drew ten thousand dollars from this National State Bank of Newark, and I was going to Brooklyn that day, and I had an account in the Corn Exchange, which I closed probably a year ago, because I have no business up in that neighborhood, now my folks do not live up that way and it is out of the way to go there, and I had always heard that the National City Bank of Brooklyn was a good bank, and on my way to Brooklyn that day I took the ten thousand dollars with me, and when I got over to the bank I got speaking to one of the gentlemen in the bank and I put two thousand dollars there in the checking account and I put the other eight thousand dollars in some kind of a savings department they have which pays two and a half per cent. I knew that I could not put it in a savings bank then because I would not get the interest on it, I was too late for July interest, so I left that eight thousand dollars there, ten thousand rather, had two

thousand dollars in check and eight thousand dollars in the savings department. I think it was in October I went there and I decided I would take that eight thousand dollars out of there, and I split it up and took nine thousand dollars, I think, out, and I put three thousand into the Bushwick, three thousand dollars into the Kings County and three thousand dollars into the Dimes Savings Bank, the Williamsburg branch, because I know that Newark banks only pay four per cent. on one thousand, and in Brooklyn you get four per cent. on three thousand dollars.

Mr. McCarter. I offer in evidence the bank book in the Kings County, showing the only entry, October 3, 1914, $3,000.

Marked Exhibit D. 14.

Q There seems to have been no drafts on that, that is still there apparently? A Yes, that is still there.

Mr. McCarter. I offer in evidence that bank book in the Dimes Savings Bank of Williamsburg, the first entry of which seems to be three thousand dollars, made on October 2nd, 1914, in the name of Isabelle E. Conway, as was the other.

Marked Exhibit D.15.

Q And I take it that that three thousand dollars is still there in the Dimes Savings? A Yes, it is.

Q What became of your deposit in the Bushwick? A Why, I drew that out, Mr. McCarter; you know I built a house and I had to have some money.

Q You described a situation with regard to

the matter of collecting the rents when you first went back; what change was made, and when did Mr. Garrabrandt take hold of any further rents for you? A Why, I think it was coming into the first of September I told Mr. Conway to call up Mr. Garrabrandt, or Gus, as we always called him, and tell him he might as well take the rest of the property that I couldn't be bothered collecting it, it was coming to the house in dribs and drabs and every old way, and I thought the agent should have it all.

Q Did you get monthly statements from Garrabrandt? A I certainly did.

Q I show you what appear to be thirty-eight sheets of papers, entitled "I. E. Conway, in account with James E. Garrabrandt. To collecting rent of property as follows." Look at these documents and see if they are the monthly statements that were rendered to you from time to time of the rents collected by Mr. Garrabrandt? A Yes, they are.

Mr. McCarter. Suppose we make one exhibit of them?

Judge Skinner. Surely.

Mr. McCarter. I may have miscounted, but I counted thirty-eight.

Marked Exhibit D. 16.

Q How did you become possessed of the balance shown to be due you on those monthly statements? A What do you mean?

Q How did Mr. Garrabrandt pay you? A Every month you mean?

Q Yes. A He mails me a check.

Q Mailed you a check. When did you become acquainted with Mr. Garrabrandt? A Why, I guess it was shortly after I was mar-

ried Mr. Garrabrandt came to the house one day, but Mr. Conway had told me that Mr. Garrabrandt had always been the agent, and I said "Well, let it go, if he collected for you I guess he is all right to collect for me."

Q You met him in the house? A I think he was to the house, I couldn't say how soon after I was married, but he was there one day.

Q I show you a series of checks, commencing July 31, 1912, and ending November 30, 1915, signed by Garrabrandt, J. Edwin Garrabrandt, and one of them, the first one, being to the order of Florence E. Garrabrandt, and then endorsed "Pay to the order of I. E. Conway, Florence E. Garrabrandt," and then endorsed "Isabelle E. Conway;" did you receive that check from Mr. Garrabrandt? A Yes.

Q And you got all the others, did you? A Yes.

Q And were they the monthly rents? A Those were the monthly rents.

Q That you received from that time down to the present? A Yes.

Mr. McCarter. I suppose we better mark them as one batch.

Marked Exhibit D. 17.

Q Now you also had a tenant, the Union Brewery Company? A Yes.

Q What property did they occupy? A Why, that property, they have three pieces, the corner of Central avenue and Warren street, at the junction there, and they have a piece at Bergen and Cabinet, and a piece at Eleventh avenue and Sixth street.

Q What does their monthly rent amount to? A They did pay me $175, but they pay me $225 now.

Q When was the change made? A I think it was January a year ago; you will see I have it all marked in my check book.

Q How did that change happen to take place? A Why, I advanced their rent fifty dollars.

Q And did you do that yourself? A Yes; I spoke to Mr. Schefmeyer.

Q And he agreed to it with you personally? A Yes, and he made the advances on the property as he saw fit, he raised his tenants; I rented the three pieces to him for one amount.

Q And he sublets? A Yes.

Q And you would be paid the rent, that is the Union Brewing Company's rent, in what manner? A Well, some times Mr. Schefmeyer sends me a check for one month, some times for three months and some times for two months, that way, and he always encloses a little receipt marking the time the rent is for.

Q But he has sent you invariably a check to your order for the rent? A Yes, some times two months and some times more.

Q Now did you have any personal oversight or relation with these properties, and with the condition they were in, and the repairs that were made, or anything of that kind? A What do you mean?

Q Did you personally attend to any of that? A Well, I personally did not, of the repairs, because I was only married nine months when my baby was born, she was born four days after Mr. Conway's death, and my health wasn't so good that I could be out all the time, and when Mr. Garrabrandt would notify me, or some times the tenants, they needed repairs, I would ask Mr. Conway on his way down town to stop in and see what they wanted, and of course,

as you know, I was a stranger in Newark, I didn't know where to look for mechanics, and I had to ask Mr. Conway, or when I first went there I spoke to his father, if he knew anyone that would do repairing, or if they had anyone would do repairing, and Mr. Conway would either send them to me or he would get a statement and bring it home to me to see if it was all right, and when their bill was presented of course I always had to pay the bills; I paid all the bills on the property, whatever they wanted.

Q Well, did you some times, however, attend to the repairs yourself personally? A Yes, sir.

Q Your baby was born when? A Nine months and nine days after I was married.

Q And that is your only child? A That is my only child, yes.

Q Have you received any money from your husband since you were married? A Well, Mr. Conway gives me money whenever I ask him for it, of course I expect Mr. Conway to give me some money to help support me.

Q Has he given it to you? A He certainly has given it to me when I asked him for it, some times he gives me money when I don't ask him for it.

Q Do you remember the incident of the automobile? A Yes.

Q Tell us about that.

The Court. What difference does that make? No use going into that.

Q Now you have sold your Brooklyn house, from which you recovered net thirteen hundred dollars? A Thirteen hundred and some odd dollars.

Q You have been in receipt of the net rents of this property? A Yes.

Q What have you done in Orange? A Why, I built a home in Orange.

Q When did you purchase the property, and tell the Vice-Chancellor where it is located? A Why, my property is on Center street, Orange, and how I came to get that property, Mr. Conway had a large French car, as I heard him say to you, and he had a chance to swing that car in a deal on real estate, and my brother-in-law was also in that deal, so after Mr. Conway swung the deal he was going to dispose of the lots he had up there, and I was up once or twice driving past there and I saw the ground, and I said to Mr. Conway I would like to have a part of that to have a home, because I felt that my baby needed a place outside of the city, and I had the money to build a place; so I gave Mr. Conway the money for what it cost him in the lots; my check will show that; I don't recall just the amount now, it was twenty-five hundred dollars, or something like that, and Mr. Conway made a deed of the ground to me.

Q And later you built what kind of a house on it? A Then I had Mr. Hicks draw me a set of plans, he drew my first plans, and they—

The Court. Well, you need not go into that. You built a house at what cost?

A My house cost me between eight thousand and eighty-five hundred dollars, I think, without the ground, so that it cost about ten thousand dollars all told, or a little over.

Q Did any of the proceeds of this rent go into that house or lot? A Well, I have drawn

checks I guess for some of it, I don't know, I had money in the different banks.

Q Would you from time to time spend any of the money that you received as the proceeds of rent of this property? A Yes, if I wanted it I did.

Q Have you got your checks here? A Why, I guess my checks are there.

The Court. That does not make any difference.

Mr. McCarter. All right, sir, very good.

Judge Skinner. It seems to me it makes a difference.

The Court. Well, you can bring it out on cross examination.

Q Well, leaving out the automobile, about which the Vice-Chancellor says we need not examine you, did William or any other member of the Conway family get any of the net proceeds of this rent? A No, they did not.

Q When were you first made aware of, or first knew of the fact that this suit was pending? A Why, I didn't know anything about it until Mr. Conway told me that I was wanted at Mr. Egner's office.

Q About when was that? A That is probably six weeks, seven weeks ago, and when I came into Mr. Egner's office he told me about it.

Q You had not heard of it up to that time? A Not a word, no.

Q And had you up to that time ever heard anything concerning the business affairs of Mr. Conway, Sr? A No, I never heard them discussed.

Q Up to that time had you ever heard of

the suit against the senior Mr. Conway? A No, I never did.

Cross examination by Judge Skinner.

Q Mrs. Conway, although you were in business when you met Mr. Conway you did not want to stay in business, did you? A Well, I never wanted to leave it, Judge Skinner.

Q Did you not feel then that you would rather be happily married than to be in business? A No, I did not, I never was anxious to get married.

Q You were never anxious? A No; I liked my business, liked it very much.

Q Do you know Mrs. Haslet? A Yes.

Q Did you not say to her, speaking of your business and of your weariness of it, that if the right man came along you would get married in a kimono if he wouldn't wait? A Oh, I might have said that, but at the same time I did not mean it.

Q Didn't you say it? A I don't remember saying it, I might have said it.

Q You did not mean it if you did say it? A No, I did not, because I said all along I would never marry until I saw that I could get just as much as what I had or better.

Q Was this marriage of yours, or this engagement of yours, an arrangement into which love entered, or was it a commercial arrangement? A Well, I don't know, Judge, I was in business a good many years and I didn't want to give it up and feel that I would have to go back to it again, I had too much pride for that, and while I liked Mr. Conway I did not think that I liked him well enough to give up my business unless he could support me the way I was used to being supported.

Q Didn't you think that he could? A I didn't know; I didn't want to take any chances.

Q When he showed you all this property didn't you believe he owned it? A He told me he owned it.

Q Did you not believe it? A I did.

Q Did not that assure you as to his ability to support you? A Well, I think it is better to have it yourself, though.

Q Was that your feeling then? A That was my feeling.

Q You were unwilling to trust him and his means? A Well, I don't know as I was unwilling, but I wanted to be sure I had it in my own hands, my income.

Q Income? A Well, I mean my money to do as I liked with, which I had been accustomed to doing.

Q You had known him a long time, had you? A Not so very long.

Q Several years? A Five years.

Q He had been quite attentive? A Yes.

Q You were together a great deal? A Not so much.

Q One summer you spoke of at Atlantic City? A Yes, I was with him a great deal.

Q You said he was with you all the time? A Yes.

Q He was frequently in your company in New York and Brooklyn, out to theatres, dinners, restaurants, and so on? A Yes.

Q Paying marked attention? A Yes.

Q He proposed marriage some time before you agreed to marry him, did he not? A Yes.

Q And you received his attentions and encouraged them, didn't you? A Yes, I did.

Q Didn't you in the course of all that acquaintance before your marriage didn't you

learn to trust Mr. Conway? A Well, I did trust him.

Q And didn't you gain for him something more than just liking? A Well, I was very fond of him.

Q Surely, Mrs. Conway, you would not for the world, in June, 1912, have married any man simply because you liked him and he could guarantee you a living, would you? A Well, I was going to be sure of the living, Judge, I will tell you that.

Q Yes, but you were also going to be sure— A Well, you would have to like a person a little bit, I guess, to marry them.

Q Well, more than a little bit, wouldn't you? A Well, I don't know; everybody don't marry for love; you grow to love people after your marriage some times.

Q Did you know what Mr. Conway's occupation or business has been when you married him? A I knew he was a lawyer, that is all.

Q Did you know anything at all about his income? A No, I did not.

Q Didn't you ask? A No, I did not.

Q Why, you wanted to be sure you were going to have— A Well, Mr. Conway offered me the property, and I knew from that income that I could keep myself on that income.

Q But before he offered you the property surely you had had some interest in knowing whether this man who was asking you to marry him could support you out of his profession or occupation, had you not? A Well, I did not promise to marry Mr. Conway until he offered me the property.

Q But he asked you? A He did.

Q And surely you had some curiosity as to

whether or not he could support you? A I never asked him what his income was.

Q Never asked him that? A No, I never did.

Q Then you not only relied upon the property, but you did that in complete ignorance of whether or not he would or could support you? A Well, if Mr. Conway did not contribute to me I had enough to give me a fairly good living out of the property.

Q You relied then entirely on the property, did you? A On the property, that is what I was looking for.

Q In entire ignorance of whether or not he was able to support you? A Well, I judge a man of education and a lawyer, he was able to make some kind of a living.

Q And that was all that you knew of his ability to support you? A That is all I knew of Mr. Conway's affairs; I never asked him.

Q Well, did you have the title examined? A No, I did not.

Q Why not? A Because Mr. Conway told me the property was free and clear.

Q Well, if you could trust Mr. Conway to that extent—did you trust him to that extent? A I did trust him; I never found Mr. Conway to lie to me.

Q Well, did he tell you that the property was his? A Mr. Conway told me the property was his.

Q Did he tell you where he got it? A No, he did not.

Q Did you ask? A No, I did not ask him.

Q You saw, did you not, at that time that the property was valuable? A Well, I did not realize it was as valuable as what it is, because,

as I told you before, I was never in Newark before.

Q But you knew from him? A Judging from the income I thought it was a pretty good piece of property.

Q And judging from the income you must have formed some idea of its value, did you not? A Well, yes.

Q What idea did you form? A Well, at the time I didn't put the exact valuation on it, I didn't think those houses were worth such an awful lot of money.

Q Well, you knew that the taxes amounted to thirteen hundred dollars a year? A Yes, thirteen hundred dollars a year.

Q That certainly indicated to you that the property was worth a large sum of money, did it not? A Yes, but the exact amount I did not think of at the time.

Q But it meant to you a large sum? A Yes, it was a good deal to me.

Q Meant something like fifty to seventy-five thousand dollars, did it not? A I don't think it is worth that much.

Q Didn't you then? A No, I did not.

Q Did you make any inquiry at all as to what the tax rate in Newark was? A No, I did not.

Q Or how much was usually spent in the course of a year in the way of repairs? A No, I did not.

Q Did you know that the property was assessed for sixty-four or sixty-five thousand dollars in 1912, the property you got? A In 1912, before I got it?

Q Yes. A I didn't know anything about the assessments before I got it.

Q Well, you found it out very soon, did you

not? A I found it when I had to pay my taxes.

Q You paid those in December, 1912, didn't you? A Yes.

Q Then you found that it was assessed for over sixty-four thousand dollars, did you not? A Yes, sir.

Q Did it not occur to you to ask Mr. Conway a single question as to where or how he got this property? A I never asked Mr. Conway where he got that property.

Q And you saw that it included his own family's home, did you not? A Well, Mr. Conway told me that was his home.

Q Well, you saw for yourself that it was the home of his parents? A He told me that his people were living there.

Q He told you that? A Yes, Mr. Conway said that we would live there and his people were living there.

Q He told you that after marriage you and he would live there? A Yes.

Q You did not suggest living with your parents, did you? A No, I did not.

Q Would not expect Mr. Conway to do that, would you? A Well, I suppose if I asked him.

Q Well, did it come entirely natural? A No, it came natural to me that he wanted to live there.

Q It did not surprise you in the least to have him propose that you and he should live with his father and mother and aunt? A No, it did not surprise me; I lived with my people home and always looked out for them; I didn't see anything in that.

Q Did you think he was looking out for his

father? A Well, I thought that his people were living there with him, I didn't know.

Q Did you think he was looking out for his father and mother? A Do you mean taking care of his father and mother?

Q Yes. A I presumed he was when he lived there.

Q When you spoke about your looking out for your father and mother— A I meant I lived with my people, and Mr. Conway lived with his people, his father and mother were old, I meant that they lived with him.

Q You did not mean then that you supported your father and mother? A Why, I did not exactly support my father and mother, but I did a great deal toward it.

Q Did you ask any questions at all about the ownership of this property? A I never did.

Q After you had been taken to the Conway home and had been introduced to his father and his aunt? A I never did.

Q When you went to the Conway home did you expect to meet his father? A Why I had met his father before I went there.

Q You had? A I met his father the first day I went with Mr. Conway to his home; I told you that; I was introduced to him.

Q I am speaking about the time you went to his home when he was showing you the property; was that the first time? A That is the first time I met his father.

Q That is the time I am speaking of; did you then expect to meet his father when you went there? A No, I did not.

Q What did you go there for? A Mr. Conway took me in to show me the home.

Isabelle E. Conway, cross.

Q You were introduced to the old gentleman? A I was.

Q You told us that Mr. Conway opened the door of the bed room where his father was and introduced you? A Yes.

Q Then the door was not already open? A Well now, that I do not recall; I came out of the bath room, and Mr. Conway was standing at the door; I don't remember whether it was open or closed, but anyway he introduced me to his father.

Q Did you have any idea at all then as to how his father and mother and aunt were supported? A Why, I didn't know, unless Mr. Conway was supporting them.

Q Did you ask? A No, I didn't ask.

Q When you were introduced to Miss Annie Conway did you tell her that you had come to look at the property ? A No, I did not.

Q Did you tell James Conway anything of that? A No, I didn't tell him.

Q Why not? A I don't know why I didn't tell them; I didn't see why I should.

Q There wasn't anything secret about it? A Why should I tell them?

Q There wasn't anything secret about it, was there? A Nothing secret; I hadn't promised to marry Mr. Conway then, why should I tell them that I came.

Q And did you see his father and mother after that, between that time and your marriage? A No, I never did, I never met Mrs. Conway until after I was married.

Q So that you accepted Mr. Conway and agreed to marry him and make your home with him with his father and mother and aunt without ever having seen them but once? A I did.

Q Not having seen the mother at all, did you? A No, I never saw the mother.

Q You said that he invited you to come to Newark, in June this was, and you thought it was nice to come to a new place; do you remember that? A Yes.

Q That was your object then in coming to Newark, was it? A I didn't know what Mr. Conway was bringing me to Newark for.

Q He hadn't said anything? A Not a word Mr. Conway never said to me.

Q Let me finish the question. He had said nothing to you about what he wanted to do when you got to Newark? A No, he never did.

Q Did you know Mr. Darrow? A I had met Mr. Darrow with Mr. Conway.

Q Several times, had you not? A Not several times, no more than two or three times.

Q Mr. Conway said that when you expressed your willingness to accept his proposition, or to marry him if he would convey these properties to you, he said that you would need a lawyer; do you remember that? A Yes.

Q Is that what he said? A Yes.

Q And that you then said—I think this is the substance of it—the only one I know is Mr. Darrow; did you say that? A I do not recall whether I said that or Mr. Conway, but anyway I think I said well, I didn't particularly know any lawyer, and Mr. Conway said "Well, there is Bill Darrow, he is a friend of mine"; I said "Well, it don't make any difference to me," or something to that effect.

Q Is your memory clear on that? A I could not tell you exactly.

Q Then your husband, Mr. Conway, may be correct when he says— A Yes, if he suggested Mr. Darrow he may be correct about that.

Q —that you spoke of Mr. Darrow, and then he said— A No, I think Mr. Conway spoke of Mr. Darrow.

Q He says you spoke of him. A Well, maybe I did, I am not sure about that.

Q What did you think there was need of a lawyer for? A Well, I thought when you sell property or transfer property it has to be done in regular form, that a lawyer had to do it.

Q You knew Mr. Conway was a lawyer, did you not? A I thought Mr. Conway didn't want to do his own personal work; it is just like doctors don't do their own personal work; I wasn't so very much up on those things; I thought perhaps it was better to have a strange person.

Q You made dresses for yourself, did you not? A I did.

Q Did you have any thought in your mind at that time that Mr. Conway would object in any way to drawing these papers for you? A I didn't know whether it was the proper thing for a lawyer to draw his own deeds, I thought maybe that was the custom, to have another person do it.

Q Were you willing to trust Mr. Conway to do it? A I was.

Q As a matter of fact Mr. Conway did draw the deeds, did he not, or the deed? A That I couldn't tell you.

Q You do not know? A No, I don't know, because I signed the papers in Mr. Darrow's office, as I told you, and then each one of those were handed, one to Mr. Conway and one to myself.

Q You went to Mr. Darrow, you say, because you thought it was proper to have a

lawyer draw the papers? A Yes; Mr. Conway said it had to be done in legal form.

Q Didn't you think that the drawing of the deeds was a very essential part of the doing the thing in legal form? A Well, I don't just understand what you mean.

Q You had bought property before that, had you not? A Yes.

Q And you knew the difference between a promise and the performance of it? A Yes, I knew you had to have a deed for property.

Q You knew you ought to have a deed? A Yes, for property.

Q And you were careful to get it before you went to the church to be married, were you not? A Yes.

Q Didn't you then expect Mr. Darrow to draw the deed? A Well, I didn't know whether Mr. Darrow drew it or Mr. Conway; I trusted that part to Mr. Conway.

Q I know you didn't know, but didn't you expect Mr. Darrow to draw it? A Well, I supposed he would.

Q Did you inquire whether he did? A No, I did not.

Q Didn't you see that the deed was in the handwriting of Mr. Conway? A No, I did not.

Mr. McCarter. It is typewritten.

Q Did you look at the deed when he brought it to you? A I think I did glance over it.

Q Did you see the inscription on the outside that bore the name of Edward Kenny? A That part I don't remember.

Q Did you know that the deed was not to be published? A Why, I don't remember that part.

Q Did you know that there was anything on

this deed that has been erased, on the outside? A No, I did not.

Q When you went to Mr. Darrow did you tell him that you wanted him to draw the necessary papers? A I think those were the words I used; I said I was going to marry Mr. Conway.

Q Did you tell him you were going to marry him because he had promised— A I said Mr. Conway—

Q Pardon me. Because Mr. Conway had promised to convey property to you; did you tell him that? A Well, I told him that Mr. Conway said if I would marry him he would give me those certain pieces of property.

Q Did you tell Mr. Darrow you wanted him to put that in legal form? A Well, something like that.

Q Words to that effect? A Yes.

Q And what did he say? A Well, he said he would have to have the descriptions, or something like that, and he said he would get them.

Q He what? A He said he would get them from Mr. Conway.

Q Did you tell him what properties you were going to get? A Why, I don't think I told him just each and every property; I told him Mr. Conway had promised to give me some property if I would marry him.

Q (*By the Court.*) Did he give you any advice in reference to what you ought to do in order to see that the property was valuable, for instance, not encumbered by mortgages? A I said to him that Mr. Conway told me the property was free and clear, and he didn't say any more; Mr. Conway told me.

Q How did you come to tell Mr. Darrow that? A I think Mr. Darrow said something

to me did I want a search, and I said "Well, I don't think it is necessary because Mr. Conway says the property is free and clear."

Q Then when did you first see the agreement drawn by Mr. Darrow? A On Tuesday.

Q In Mr. Darrow's office? A In Mr. Darrow's office.

Q Did you read it? A I did glance over it, but I said that day I wouldn't get married, and I didn't pay much attention to it.

Q When did you next see it? A Thursday.

Q Did you then sign it? A Yes, I signed it.

Q How long before you signed it did you see it, that Thursday? A Why, Mr. Darrow brought it out when I went to the office.

Q How long before you signed it did you see it? A Well, I suppose he laid it on the desk for me to look it over, and I looked it over, and he read it to me I think, and then I signed it.

Q He read it to you? A Yes.

Q Read all the descriptions and everything? A Yes, all the descriptions.

Q And you could identify the properties that you had seen by those descriptions, could you? A Well, I guess, I don't know exactly the streets, because, as I told you before, I was never in Newark before, and in once going over streets you won't memorize them all.

Q But you think you remembered? A Yes, from the description I could pretty nearly tell what the description meant, what houses.

Q Do you think you remembered the names of most of the streets but not all? A Well, I thought I did at the time.

Q Most of them, but not all? A Not all.

Q Of course you could not tell from the description just where it was on that street,

you could not identify it? A No, but I knew that Mr. Conway showed me each and every piece.

Q Did you do anything at all to check up the descriptions that were in this paper with the properties that Mr. Conway had shown you? A I don't understand you.

Q Did you do anything by examination or scrutiny to see whether the property you were getting was the same that Mr. Conway had shown you? A Well, I judged Mr. Conway was giving it to me, he would not lie to me.

Q You took that on trust? A Why, certainly.

Q When you got the deed from Mr. Conway I suppose you took that on trust too, did you not? A Well, I trusted Mr. Conway; I was on the verge of marrying him and I didn't think he would deceive me at the last moment.

Q Did you when you looked at the properties make any list of them at all? A No, I did not.

Q Make any notes at all of the information he had given you as to rental, and so on? A No, because I had not fully made up my mind whether I would accept Mr. Conway or not.

Q Did you know he owned other property? A No, I did not.

Q You thought then that this was all that William F. Conway owned in the world? A Well, I suppose I did; he didn't show me any other property.

Q You certainly not only supposed it but you did, did you not? A Yes, I took it for granted that is all he had.

Q Now, did your father and mother know of your marriage before it happened? A I told my mother about two weeks before I got

married that I was going to get married, and I didn't tell my father until the Saturday before I was married; Mr. Conway came over and told him.

Q Telling your mother you place at about two weeks; cannot you place it definitely? A I think it was about two weeks, it wasn't any longer than that.

Q Was it after you signed this agreement? A I think it was after, yes, I am sure it was after I signed that agreement.

Q Did you make any announcement of your engagement among your circle of friends? A I did not; no one knew I was going to get married, not even my brother or sisters.

Q Neither your father or mother or anyone of your family was present at the marriage? A No.

Q Did they know that it was to be performed that morning? A Why certainly.

Q Did you ask them to come? A No, I didn't ask them to come.

Q Why not? A Because I was going right away from the church and I could not see the sense of bringing my people all the way to Jersey; I was getting married over here.

Q Just unnecessary trouble? A I didn't want anyone at the church, I wanted a quiet affair, I always said I wanted a quiet affair.

Q When you ment in after the ceremony to the Conway house did Will tell his father and mother, or did you, that you were his wife? A Well, I don't remember; I was quite excited that morning, and I guess it was Mr. Conway of course introduced me to his mother as his wife.

Q Was anybody else excited when they neard the news? A Well, his mother is a person

that never gets excited, she has a happy disposition, and she greeted me very friendly, and the father came down and shook hands with me and wished me luck; I was only there a few minutes.

Q So that it was all taken pleasantly? A All; and when I came back from the wedding trip I was greeted the same way.

Q Was anything said about that you were going to return from your wedding trip and live with them? A No, there was nothing said then at all.

Q When you got back from your wedding trip and went in that house you saw, I suppose, Mr. Conway, Sr.? A Right as soon as I got back there, I don't recall that; I know his mother was there, because she is always there.

Q Well, whoever you met of the household when you got back did you then explain to them that you were going to live with them? A No, I went right in there and continued to live there.

Q Nothing said? A Nothing said, everything always went along smoothly.

Q You just took your place in the household, and it went on its even tenor without a word said by either them or by you? A Mrs. Conway didn't say anything about what I wanted to do, and I didn't say anything about what she wanted to do.

Q Nothing said about who was going to pay the bills? A No; Mr. Conway gave me the money to pay the bills.

Q Nothing said at all as to whether anything should be paid by Mr. James Conway toward the support of the house? A No, Mr. Conway didn't pay any bills.

Q (*By the Court.*) Any rearrangement of rooms made? A No, we all continued to live there the same as it always had been.

Q (*By the Court.*) They occupied the same rooms? A There was always the one parlor, dining room and kitchen, and the same bed rooms we used.

Q Did you think when you married Mr. Conway that aside from this property he was able to support you? A Well, I did not know what Mr. Conway had, as I told you before, but I judged he made enough to give anyone a fair living.

Q Was that judgment borne out by what you saw after marriage? A Well, Mr. Conway always gave me money any time I asked him for it.

Q Has he supported you? A Yes, he has.

Q Has he supported that household there? A He gave the money in for anything was wanted.

Q No, has he supported it, is my question. A I don't know what you mean by the support of it. Do you mean the keeping of the table and everything and paying the girl? Mr. Conway did all that.

Q I mean paying the bills for the support? A Mr. Conway did that.

Q I thought you said he gave it to you when you asked him? A As I say, I paid the bills but Mr. Conway gave me the money to pay the bills.

Q Do you mean that you have been reimbursed by him for every dollar that has been spent by you in the carrying on of that household? A I don't say every dollar; I always had money of my own, you know what I mean, money around me, and I kept it altogether,

and if I was short I got money from Mr. Conway, and Mr. Conway would say "This bill is due, here is the money to pay it."

Q You always had money of your own from what source? A I got the rent money.

Q You used that for paying the bills of the houses? A I don't know whether I used any of it or not; I didn't keep separate pocket books, I kept it all together, and as I needed to pay the bills I paid them.

Q Did you have any other income from which you paid household bills, except this rent? A Only what Mr. Conway gave me; I had no income after I got married, after I gave up my business; my rents, and what Mr. Conway gave me, that is all I had.

Q You got thirteen hundred dollars out of the sale of that Brooklyn property? A I did, but I never touched that, it went right in the bank.

Q You did not touch the proceeds. You have sold some of this Newark property since it came to you? A Yes.

Q And you have kept the proceeds of the sale intact, except as it has gone into this Orange or South Orange property, have you not? A Yes, I put that in the bank and used it right along, that is for paying repairs, and one thing and another, you know I had to draw checks on the bank for taxes and one thing and another.

Q But the money that has been obtained by you from the sale of any of these Newark properties has not been spent, has it? A Well, it is in the business bank, and I have been drawing checks on that bank.

Q Well, haven't you got as much there as, a balance as much as the proceeds? A No.

Q Eighty-seven hundred dollars, was it not? A I don't believe I have now, because I drew some of that money out and put it in the Brooklyn bank, and I have been drawing checks from that bank.

Q Paying what? A I built this house in Orange.

Q That is the only place the money has gone, this house in Orange? A That is all I know of.

Q And your other expenditures have all come out of the rents, haven't they? A Well, what do you mean, other expenditures?

Q Just what I said, other expenditures than for the building of the South Orange house. A I built that house up there, but for my personal use Mr. Conway supplied me with money many times.

Q Your other expenditures, whatever you have spent, except what went into that house, has been money that came to you from those rents? A No, Mr. Conway gave me money.

Q You were told that the rental would be about $375 a month, gross? A Yes.

Q You figured about two hundred dollars a month, net? A Yes.

Q Have your estimates been justified? A Well, it is not always rented.

Q Have your estimates been justified, have you had as much as two hundred dollars a month net? A Well, I don't know that I had that much, maybe I had that much and maybe I had more some months.

Q Could you tell us how much you had from that property in any year? A In any year?

Q Yes. A My income will tell you that.

Q Can you? A Well, my property brought me in the neighborhood, if I got two hundred

dollars a month I would be getting twenty-four hundred dollars a year.

Q I do not want your arithmetic; tell us from memory, if you can, how much you have had in gross or net income from those properties in any year? A Well, I don't know just how much by the year.

Q (*By the Court.*) Give us the best estimate you can. A I suppose I got anywheres in the neighborhood of one hundred, one hundred and fifty dollars a month out of it, when I paid all my expenses.

Q Didn't you get more than that? A Maybe a little more than that.

Q Have not the rents been increased? A Yes, but there is repairs all the time, and when you pay taxes and water rent, and everything.

Q Haven't you had as much as you expected, that estimate of yours of two hundred dollars a month? A Well, about that.

Q Where has it gone? A Why, it has gone in the bank.

Q The two hundred dollars a month? A Pretty near all of that.

Q Who paid the bills for household supplies? A Mr. Conway gave me the money to pay that.

Q Who paid it? A I paid it.

Q By check? A No, by cash.

Q Always by cash? A I never paid my butcher by check, because I don't deal in the one place.

Q Did you pay any of the household supplies by check? Not that I know of, only my telephone bill, that is all.

Q Did you draw out of the bank from the deposit in which you had put the rents, and used the cash to pay any of the household bills? A No, sir.

Q Then the rents have accumulated, haven't they? A Yes, they have.

Q How much do they amount to? A How much? What do you mean, my bank account?

Q The accumulation? A Well, you see I have money in different banks.

Q Don't you know how much you have got accumulated from those rents? You are a business woman? A I couldn't figure it all up; I had two hundred dollars a month, but I spent some of it for personal use I guess; I have one house there I never gave the agent; I have spent that money.

Q What house was that? A The house where Mr. Kolb lives, that house the agent hasn't got, and that cash comes in to me and I do as I like with it; I don't run the house on it; I have personal expenses.

Q You have not even invested the rents as they accumulated? A Well, I built that house out of it in Orange.

Q I thought that came out of the proceeds of sale? A Not altogether.

Q How much did the house cost? A It cost me about ten thousand dollars; I didn't figure it that way; I put all the money in the bank, drew checks as I wanted it; didn't figure so much sale money or rent money, I took it as I wanted it.

Q When did you buy or pay Mr. Conway for the lot on which you built this house? A Along about this time last year, or maybe a little before.

Q That would be about— A My check will show that, I gave Mr. Conway the check for that.

Q About December, 1914? A No, it was

before that, because my man that I engaged to build my house broke ground up there in December.

Q How much did the Brewery pay you? A They paid me a hundred and seventy-five dollars a month.

Q You raised it, did you not? A I raised it to two hundred and twenty-five dollars.

Q Do they make their repairs? A They make their own repairs.

Q So that you have been getting one hundred and seventy-five dollars, at the least, out of that property, net, except taxes, haven't you? A Yes.

Q Why do you say that the income from this property net has only been one hundred and fifty to two hundred dollars a year? A Maybe it has been more than that, but I haven't used any of that to run the house on, that I can give you my positive word for.

Q Are you unable to tell us how much it has been? A It may be over two hundred dollars a month; as I say, it all went in the bank, and I have those different banks I opened in Brooklyn, that is all rents.

Q Did Mr. Conway collect the Kolb rents ever? A Mr. Kolb paid his check to Mr. Conway because Mr. Kolb, when he gave the checks in some times his account was short down there, and I told Mr. Conway it was better for him to get that check and drop in the bank whenever he felt like it, because he would go some times five or six times before he would get the money.

Q Did Mr. Conway bring to you any money as being the Kolb rent? A He certainly did.

Q Didn't bring a check? A No, he always brought me the cash.

Q Did he bring you a receipted bill from Mr. Kolb showing the plumbing repairs? A Yes.

Q Have you got them? A They are home on my file.

Q On your file? A Yes, up in Orange.

Q Did Mr. Conway receive, do you know, any checks for rent from other tenants? A I think the first month I was married he got a check from the brewery.

Q Other than that do you know of any instance? A No, I do not.

Q Now I understand you that the lead pencil writing on D. 10 now is your handwriting? A Yes.

Q Before there were the same entries in there in Mr. Conway's handwriting? A Yes.

Q Why did you rub that out? A Because, as I told you before, I couldn't read Mr. Conway's writing right off as quickly as I can my own, some times I had to study it out, and when I couldn't understand it home I used to call Mr. Conway's assistance, and Mr. Egner told me I would have to produce those books probably in court, and when I went home that night I looked them over, I couldn't read them quickly, and I did not suppose they would let me call Mr. Conway up here to explain what the items were; if I sit down to study them out I can.

Q Hadn't you rubbed out what there was in Mr. Conway's handwriting before Mr. Egner told you you would have to produce them in court? A No, I never touched it.

Q Did you put them back at the same time as you erased the others? A Yes.

Q One right after the other? A Yes, one right after the other.

Q Who were the contractors that built your house in South Orange? A Mr. Hanson was my general contractor, he had charge of the carpenter and mason work.

Q How much did you get from the winding up of your business; anything? A No, I did not sell my business.

Q You went away to get married, telling your clerks you were going to take a vacation? A Yes.

Q Then they were subsequently dismissed, and paid up to date, and that is all there was of it? A Yes.

Q You made no attempt to sell your business? A No, I did not.

Q Before September 1912, had you seen Mr. Garrabrandt? A Well, I think Mr. Garrabrandt was in the house once or twice.

Q Well, had you seen him? A I am quite sure that I did see him before that.

Q Did your husband suggest him? A Why no, Mr. Garrabrandt had the Cabinet street property when Mr. Conway gave it to me, and when I decided to give the other property to an agent I said to Mr. Conway "Why not let Mr. Garrabrandt have it all."

Q When did you first meet him, cannot you tell us that? A It must have been around the early part of August, because I was away until July 21st or 22nd.

Q Do all moneys that come to you from Garrabrandt, or all checks that come to you from Garrabrandt go into some bank? A Well, they are mostly all either in the City Trust or in the National, you will see them all marked in my bank books.

Q Did you deposit them all in some bank? A Oh, yes.

Q You said, I think, that you asked Mr. Conway to look after repairs. A I did.

Q And that that was because your health was poor? A I told you before that I wasn't only married a short time when my baby was born, and I wasn't able to run around to look after those things.

Q You also asked his father to look after them? A When I first went there I think that Mr. Conway was able to get out, he used to walk over to the Warren street property.

Q He walked over to the Warren street property, and he did look after the repairs? A And he would tell me if anything was needed.

Q He did look after the repairs, did he not? A Yes, but he done no repairing.

Q He did no repairing, you say? A No.

Q What do you mean by that? A I mean he only went over to see what was to be done, and would tell me about it.

Q Then come back and tell you? A And tell me; and I asked Mr. Conway where I would find masons and different people, because, as I told you, I was a stranger here.

Q Didn't the old gentleman find the masons himself? A I do not recall whether the old gentleman ever brought me anyone or not; he didn't go very often to look at anything, for he wasn't able.

Q Did not he himself give directions to masons and carpenters and others about repairs on that property? A Well, now, that I do not recall, he might have; that is a long time ago.

Q (*By the Court.*) Did you ever have any talk with the old gentleman about the changed situation? A I never did, Judge.

Q (*By the Court.*) Never spoke about the deed of those properties? A No, sir, never was discussed at all.

Q (*By the Court.*) Nothing at all? A Not a word was ever said.

Q (*By the Court.*) Did he know from anything you said, or anything that anybody else said in your presence, that you were the owner of this house in which he was living? A He never said anything to me, Judge.

Q Did anybody else say that to him in your presence? A No one, no.

Q As far as you know he did not know that you were the owner? A Well, I suppose he did when I took full responsibility there, but he never discussed it with me.

Q What do you mean by "took full responsibility"? A Why, I attended to everything, everything around the place, I was the boss, I could do as I liked, and Mr. Conway's health was so very poor from the time I went there that the man did not bother about anything.

Q (*By the Court.*) Then so far as you know, up to the time of his death he had no knowledge of the fact that your husband had transferred this property to you? A Well, I think Mr. Conway said when he was here that he told him.

Q (*By the Court.*) What? A I think Mr. Conway said he told his father, but it was never told in my presence.

Q (*By the Court.*) You know nothing about it? A I know absolutely nothing.

Q You said you did not know of this suit now being tried until I think about six weeks ago? A That is the first I ever heard the word American Surety mentioned; I never knew of such a company, even existing.

Q Did not know there was a suit pending against the old gentleman? A I didn't know a word about it.

Q In the Circuit Court here? A I never knew a word about it.

Q November 18th, 19th and 20th, 1912, James Conway was in court here, and Will too, and you didn't know anything about it? A I knew nothing about it; perhaps I wasn't home at the time, maybe I was and maybe I wasn't, but there was never a word discussed in my presence; I am here on my oath and I can tell you that, that I knew absolutely nothing about the business, or nothing about the suit until I heard it in Mr. Egner's office.

Q Were you away for three days at a time in November? A I used to go to Brooklyn and stay two, three, or one day, just as I felt like it, because there was always someone there to run the place, I didn't have to be there, I could leave the responsibility to Annie or to Mrs. Conway and they would do just as I would do.

Q You did not go over to Brooklyn after your marriage in connection with your dressmaking business? A No, I used to go over and stay with my folks.

Q When you talked with Will about marriage first didn't you ask him as to whether he had any prospects of inheriting anything from his parents? A I never asked him; I didn't know what Mr. Conway's parents had, how should I know that.

Q Did not the fact that the wedding was being held so hurriedly and privately excite your suspicion at all? A I said to Mr. Conway, "Well, cannot you wait a little later;" Mr. Conway said, "Well, I want to get married in

June, I always thought June was a nice month, and I thought most girls choose June, and," he said, "I want to go away on a vacation, and we will make it in June, the end of June or first of July," and we decided on the first of July; and it did not surprise me that Mr. Conway wanted a quiet wedding, because he said his two sisters were married quietly, and I myself always approved of a quiet wedding.

Q It was a pretty hurried affair, was it not? A Well, people get married more hurriedly than that.

Q Two weeks after the engagement? A Well, some people do not be engaged at all, they marry right away.

Q You were not engaged before that? A Never.

Q Have you got your engagement ring? A I have.

Q Has it any initials on? A I think it has the year on, or something; you may look at it if you wish. I think this is the one.

Q When did you first see that ring? A I think it was the Sunday after I was in Newark, Mr. Conway came to my house and brought it to me.

Q The Sunday after you were in Newark; now when was that? That was the ninth of June, was it? A It was the ninth I came over here, I think, as I remember, and that would be the following Sunday, which would be the fifteenth or sixteenth.

Q What day of the week was it you came over here? A Sunday.

Q Sunday? A The ninth of June I think it was.

Q Then this was the following Sunday, the sixteenth, that he gave you that ring? A Yes, I think we signed the agreement on Thursday.

Q Did you know before he gave you this ring on June 16th that he had it? A No, I did not.

Judge Skinner. Might just as well have it appear in the record what the ring says. I will ask Mr. Howell to read it.

Mr. Howell. "W. F. C. to I. E. McG. 1912."

Q Now you can verify that, Mrs. Conway, if you will. Did Mr. Conway, when he was showing you the properties, or at any other time, tell you how long he had owned them? A No, he did not.

Q Did you ask him? A No, I did not.

Q Did not ask him a single question? A I didn't ask him.

Q Wait a minute. Did not ask him a single question as to when he got it; is that right? A Yes.

Q Nor how he got any of it? A No, I asked him nothing about it.

Q Nor from whom he got it? A No, I didn't ask him from whom he got it.

Q Did you give him any ring? A No, I gave Mr. Conway a scarf pin.

Q At the same time? A No, I think it was only a day or two before I was married to Mr. Conway, I made him a little gift of a pin.

Q Your brother and Will Conway were very intimate, weren't they? A Not that I ever knew.

Q Didn't they go to Europe together? A Why, no, that is not my brother, he is no relation to me.

Q Who is he? A I believe he is a college friend of Mr. Conway.

Q By the same name? A Yes, but his home is in Waterbury, Connecticut; I never met the gentleman until after I was married to Mr. Conway; he is no relation to me.

Q Did you know at any time that any of this property had ever belonged to or been in the name of that Mr. McGrath, of Waterbury? A I never did.

Q Or Mr. Reilly? A I never did until I heard you speak about it here yesterday, or today, here in court.

Q Did you know that any of the property had been in the name of Mr. David Young? A No, I never knew that either.

Q Did you have any reason for wanting this marriage to be performed over in Newark rather than in your own parish? A The only reason I had for it, the church I went to everyone in the church knew me, and I didn't care to have a wedding because I knew there were too many people there that knew me and were around, and Mr. Conway suggested that if—and I said I would like a quiet wedding—Mr. Conway said, "I can arrange that, because Father McKeever knows me since I was a boy, and," he said, "I can have it arranged over there;" so then Father McKeever gave Mr. Conway a paper and I had to have it signed by my priest over there.

Q Then you had no reason at all yourself? A None particularly, only I didn't want any notoriety, and I wanted a quiet affair.

Q Couldn't you have a quiet affair in Brooklyn as well as Newark? A Well, it is pretty hard, because the priest over there is very strict,

and don't like to marry without publishing the bans.

Q So all you got from the priest over there— A Was a dispensation, as they call it.

Q All you got over there was permission from your priest to have the marriage here, not permission to dispense with the bans? A Oh, yes; I wasn't called over there, he didn't call me there.

Q Of course he would not if you were not married over there? A Oh, yes, you are supposed to be called in both churches.

Q I thought you said he was very particular about that? A When I explained to him I was going to be married over here he said, "It is all right," and he signed the paper for me, and that was a week before I was married, I guess.

Q Did Mr. Conway, your husband, ever tell you anything about what property his father owned? A No, he never did.

Q Did you ever ask? A No, I never did.

Q You knew his father had been in business as a contractor, did you not? A Well, I heard him say something about it at the house, but not before I was married to Mr. Conway, he never spoke about his father's business.

Q Hadn't he ever told you anything about his family circumstances? A Not as I recall, he never mentioned it.

Q Hadn't you at any time prior to the hearing of this suit, six weeks ago, made any inquiry at all as to any property of James Conway? A No, I never did.

Q You didn't know anything about his having business reverses, did you? A No, I did not.

Q Business troubles up in Wakefield? A Mr. Conway was out of business when I went there, and I didn't know anything about it.

Q You knew, did you not, that he had given his son Will a college education? A I knew Mr. Conway graduated from Yale college.

Q You did not think he supported himself while he was there, did you? A No, I presumed his father paid for his education.

Q You knew he was a free spender? A Yes.

Q Didn't you think he was in receipt of anything from his father? A No, I did not, outside of his education; I believe that is usually customary, a boy gets that from his father.

Q So that you neither asked any questions of Will as to where he got this property from? A I never did.

Q Nor did you ask any questions of anybody as to whether James Conway had anything? A No, I never did.

Q And the same applies to any inquiry about Bridget Conway or Annie L. Conway? A I never asked them anything.

Q Before your marriage did you know any of the rest of the Conway family, the sisters? A No.

Q Have you since the marriage been intimate? A I have been on very good terms, I am not much of a visitor, I don't visit them often.

Q Don't they visit you? A They came to the house, often they came to the house I wasn't even downstairs.

Q Never in any of those meetings did you hear anything about the American Surety Company? A Never was anything discussed, never in my presence.

Q They often called at the Newark Conway home when you were still living there? A Yes; they come to my house now.

Q But before that they were frequently at their mother's house? A Yes.

Q Never any mention of the American Surety Company? A No, sir.

Q Or of any suit? A Never in my presence, no.

Q Before Will brought you out here to Newark did he tell you not to ask any questions? A No, he did not.

Q Did he say to you: "I am going to show you some property, and I am going to offer to deed it to you"? A No, he never said anything like that, he didn't say anything about property until he got to Newark.

Q What? You didn't know then that you were going to look at any property? A No, I did not.

Q Did he ask you, or say to you not to say anything about it to anybody? A No, he did not.

Q Did you say anything about it to anybody? A Not that I remember, I didn't say a word to anyone.

Q Could you tell us now what rent you are getting from No. 470 Warren street? A 470 Warren street, that is Mr. Kolb's house I think.

Q Don't you know? A Yes, I get twelve dollars from Mr. Kolb, and I get nine dollars from Mr. Lehman, and I get ten dollars for the upper floor.

Q What is 486 Warren street? A 486, I think that is one of the row; I know the row brings me twelve dollars a floor; I have three tenants there, I think, that pay eleven dollars, but my statement will show that.

Q Who are the tenants, do you know? A There is Lavin and Washington and Hudson and McLoughlin and Sheldon.

Q All in this one property? A All in the one property?

Q I am asking you about that one property, what tenants are there in that one property. You do not know, do you? A Well, I go over my statement every month.

Q But you don't know without going over the statement, do you? A I think that is Sheldon on the first floor there, I am not sure.

Q Did you or William suggest Newark as the place of marriage rather than Brooklyn?

The Court. That does not make any difference.

A I don't recall that, Judge Skinner.

Judge Skinner. It makes a lot of difference in the Catholic church.

The Court. But we are not trying that question.

Mr. McCarter. Do you attack the legality of the marriage?

Judge Skinner. Not at all; we attack the circumstances under which it was performed, that is all.

Q Have you had any purpose, Mrs. Conway, in keeping or accumulating these rents? A Any purpose?

Q Yes. A You mean saving them and putting them away?

Q Have you been doing it for any reason? A Oh, no reason whatever.

Q Did anybody suggest to you that you do it? A No; I always was of a saving nature, I always liked to save something for my old

days, and I feel I have a little child I must look out for, and if I want to bank my money I think that is no more than right.

Q Haven't you had a regular allowance from your husband for housekeeping expenses? A Well, no regular allowance, Mr. Conway advances me money at different times, he don't give me so much a week or so much a day, or anything like that.

Q Can you tell us how much he has advanced in the year 1914, or this year? A I don't keep account of what Mr. Conway gives me.

Q Has it been as much as a hundred dollars in the past year? A I guess he has given me a hundred dollars and more.

Q How much more? A Mr. Conway gave me a thousand dollars not long ago, and fifteen hundred and twelve hundred another time.

Q Then it comes in large amounts? A Yes; I didn't want to break my interest, and I asked Mr. Conway for some money.

Q Other than that? A Oh, you mean for running the house?

Q Yes. A He gives me fifty, twenty-five, any way I want it; I don't take large amounts because I don't like to keep much cash on hand.

Q Has the amount that you have had from Mr. Conway for the household expenses been as much as two hundred dollars in any one year since your marriage? A Oh, indeed it has.

Q How much has it been? A Well, you see to keep my table going,—I can't keep my table going for two hundred dollars a year.

Q Has he supplied the money that keeps your table going? A Every cent of it Mr.

Conway gives me, and money to pay the girl, and anything like that, household expenses I would call it.

Q All that comes from him? A Mr. Conway keeps the house; Mr. Conway furnished my new home for me, paid for all the furniture, I paid for the house but Mr. Conway bought all the new furniture.

Re-direct examination by Mr. McCarter.

Q Mrs. Conway, I show you a check signed by you, dated May 29, 1914, to the order of William F. Conway for $2,500. Did you give him that check and, if so, for what purpose? A I guess that is the money I gave Mr. Conway, at least I know it is, for my lots up there on Center street.

Q That must have been about May 29th, 1914? A Yes, I took title.

Q Now I show you a check dated August 5th, 1912, to your order, from William F. Conway for $175. Do you remember what that is, August 5th, 1912, $175. You spoke of some brewery rents. A Oh, yes, I guess that was the money Mr. Conway gave me at that time for the brewery rent. I think you will see that in my check book or my bank book rather. Mr. Conway gave me his check for the rent.

Mr. McCarter. I will offer those two checks in evidence.

Marked Exhibits D. 18 and D. 19.

WILLIAM F. CONWAY, recalled.

Direct examination by Mr. McCarter.

Q Do you remember the first trial here for three days up in the Circuit Court? A Yes.

Q Your father and you were in court? A Yes.

Q Do you remember where Mrs. Conway, your wife, was during that time? A Home with her people in Brooklyn.

Q How long was she there? A She was there about four or five days; I sent her away on purpose.

Cross examination by Judge Skinner.

Q What was your purpose? A So that she wouldn't know anything about the law suit even at that date.

Q Then you were trying, were you, after your marriage to keep from your wife any knowledge of your father's difficulties? A I told you this morning, Judge, that my wife was innocent until she met Mr. Egner and Mr. McCarter.

Q You were trying to keep it away from her, were you? A Yes, I was.

Q Why? A Because I didn't think it did her any good to know it.

Q Did you have any understanding with your sisters that they should refrain from saying anything? A My sisters and I never discussed it.

CHARLES A. SCHAFFMAYER, sworn.

Direct examination by Mr. Egner.

Q You are the general manager of the Union Brewing Company?

Judge Skinner. Cannot you state what you expect to prove, perhaps we will admit it.

Q You are? A Yes, sir.

Q And your company has for quite a period been a tenant of the Conway property up on Central avenue and Warren street? A Yes.

Q I have in my hand a series of checks, beginning July twenty-fourth, 1912, and concluding October twentieth, 1915; those checks represent payments of rent, do they, of the property? A Yes, sir.

Q I notice that the check dated October 25th, 1912, and the subsequent checks, are made out to the order of I. E. Conway; do you know how that came to be done? A Yes, by notification from Mr. Conway, said that the property belonged to Mrs. I. E. Conway, and hereafter draw the checks as such.

Q And that was done? A Yes, sir.

Q And the checks were mailed? A Yes, sir.

Q Since that time have you had any occasion to have any repairs made on any of these properties? A Well, we have made repairs inside, and then we have made repairs in which Mrs. Conway made part payment with us.

Q About how long ago was that? A The last payment was made around in July of this year.

Q And with whom were your arrangements made? A Mrs. Conway.

Q Isabelle Conway? A Yes, sir.

Q Did you see Mr. William Conway about it? A No, sir.

Q Since those checks have been made this way has your rent been raised? A Since the repairs?

Q No; since you have been making checks to Mrs. Conway.

The Court. Well, that is proved; what is the use of proving it over again.

A Yes, the rent was raised some time ago, I can't recall just when.

Q By whom? A Mrs. Conway.

Mr. Egner. I would like to have these checks marked as one exhibit.

Marked Exhibit D. 20.

Cross examination by Judge Skinner.

Q When was your first arrangement made for the leasing of that property? A Well, Judge, we never had a lease.

Q When did you first go into it? A Oh, twenty years ago, sir.

Q Did you then make your arrangements with James Conway? A You mean as to the repairs?

Q No; did you rent the property of James Conway? A Yes, years ago we did.

Q Did you ever have any notice of change of ownership? A We did, according to the checks there.

Q Not according to the checks; did you ever have notice of change of ownership? A Yes, sir.

Q When? A About two years ago, to my knowledge.

Q When, with reference to James Conway's death? A I don't think I got any notice in regards to Mr. Conway's death.

Q Well, you knew of it, did you not? A Knew of what, sir?

Q Of his death? A Oh, yes, I was at the funeral.

Q You were at the funeral? A Yes.

Q Wasn't it long after his death, or some time after his death that you got any notice of change of ownership? A No, it was before that.

Q When? A I can't just recall the date, the only thing I can go by is the checks.

Q You said it was about two years ago that you got this notice, do you remember? A About that time.

Q Can you place it in any way?

Mr. McCarter. The checks show.

Judge Skinner. I beg your pardon. That ought not to be suggested.

Mr. McCarter. Well, what is the use of trying to fool about a thing.

Judge Skinner. I am not trying to fool, and I do not think the suggestion ought to be made.

A I said before that Mr. Will Conway came to me, and he said "In the future make the checks payable to my wife," and I cannot,—the only thing I can recall is—

Q (*By the Court.*) The question is whether that was the only notice you had of change of ownership? A Yes.

Q Then after that you made the checks to his wife? A Yes.

Q Before that you had not? A Yes, sir.

The Court. Well, before that the checks speak for themselves.

WILLIAM F. CONWAY, recalled.

Direct examination by Mr. Egner.

Q Mr. Conway, among the checks which have just been offered in evidence from the Union Brewing Company is one dated January 19, 1914, to the order of I. E. Conway, and which has apparently been endorsed by you? A Yes.

Q Did you get the money, the proceeds of that check, or did Mrs. Conway? A Mrs.

New Jersey State Library.

Conway was ill at the time and I cashed that check for her and brought her home six hundred and seventy-five dollars, the amount of the check, five hundred dollars of which she put into one bank, the City Trust of Roseville, and one hundred and seventy-five into the National State.

Q (*By Mr. McCarter.*) And the entries appear therein? A Yes, sir.

Cross examination by Judge Skinner.

Q How do you know where she put it? A Because I deposited the money for her.

Q You know all about her affairs? A Not all.

Q Handled all this money, did you not? A No, I did not.

DEFENDANTS REST.

WILLIAM F. CONWAY, recalled.

Direct examination by Judge Skinner.

Q Is Annie L. Conway in the room? A Yes.

Q Is Mr. Garrabrandt in the room? A No, Mr. Garrabrandt is not, Mr. Garrabrandt's man is in the room.

Q Well, the representative from his office? A Yes.

Q Will you be good enough to tell me who the man on the back seat is?

Gentleman in the Room. I can tell you, I am cashier of the Union Brewing Company.

CHARLES H. KOLB, recalled.

Direct examination by Mr. Howell.

Q You have already been sworn? A Yes, sir.

Q As requested, have you brought your book of your business here today? A One of them, yes, sir.

Q Will you turn to the account of Conway in the book, on page 147? A Yes, sir.

Q It is entitled "James Conway" and commences July 26, 1911, and then there are entries running through.

Mr. McCarter. Objected to as utterly immaterial.

The Court. I will hear what it is.

Q And then there are entries running through on page 148 to January 10, 1912? A Yes.

Q And then where does the account go? A Page 158.

Q And that page is also headed "James Conway?" A Yes, sir.

Q And runs down through— A 1914, 1912 to 1914, through 1914.

Q Runs to December 4, 1914? A Yes.

Q Then where does it go? The account then goes to page 331? A Yes.

Q How is that page headed? A March twenty-fifth.

Q What is the name? A W. F. Conway.

Q William F.? A No, Wm. F. Conway.

Q Did you make any change in your index?

The Court. That does not make any difference.

Q And on page 331, runs through from March 25th,—what year is that? A 1914.

Q To November 13, 1915? A Yes.

Q Is there any other change in the name of this account? A No, sir.

Q The entries on these pages are of plumbing work you did?

The Court. Oh, yes.

Q Will you produce the vouchers? A I produced several of them.

Q Here are five checks, all on the Broad and Market National Bank of Newark, the earliest one March 13, 1915, and the latest one October 16, 1915, all to the order of William F. Conway. A Yes.

Q And some of them with the phrase on, rent to such and such a date, for instance "Rent to October first." A Yes.

Q Endorsed, all of them, merely "William F. Conway." A Yes, sir, as you see.

Q Was that for the rent of property which you occupied as a store? A Yes.

Q Were any of these checks for rent alone, without having had any balance struck? A Yes, sir.

Q Which ones? A Why, they were all applied on the rent, if I understand your question right.

Examined by Judge Skinner.

Q Was any one of these checks, Mr. Kolb, a check for rent that had not in any way been reduced by a plumbing bill? A Yes.

Q Well, just rent, without any off-set? A Yes.

Q Which one? A That one (indicating).

Q One for what? A $12.00, dated October 16, 1915.

Charles H. Kolb, cross.

Q Any others? A And that one (indicating).

Q Another one for $12.00, dated September 13, 1915; is that right? A Yes, sir.

Q What about this twenty-four dollar one? A I am not positive about that, whether that carried some, or whether there was a balance struck.

Judge Skinner. I offer these in evidence.

Marked Exhibit C. 20.

Cross examination by Mr. McCarter.

Q You sometimes give checks when you haven't any bank account. A No, sir, never did that in my life.

Q You are sure then that the checks have always been good when they were given? A I intended them to be good, and I never gave a check in my life when there was no bank account; that would be a criminal act.

Q I asked you if you were always sure that the check you had, or bank account, was equal to the checks you gave when you gave those checks to Mr. Conway? A There were times when I was mistaken.

Q I notice you kept your books in the name of Mr. James Conway down through 1914, didn't you? A Yes, sir.

Q You testified yesterday you knew he died early in April, 1913? A Yes.

Q So you kept your books against a dead man? A Yes.

Q You had no dealings at all with Mrs. Conway? A Young Mrs. Conway?

Q Yes. A Yes, sir.

Q You knew she was the owner of this property, didn't you? A Yes.

Charles H. Kolb, cross.

Q You used to render her bills in your name, didn't you? A Yes.

Q I show you a letter dated November 26, 1915, addressed to her from you; did you send her that estimate? A Yes, sir.

Mr. McCarter. I offer it in evidence.

Marked Exhibit D. 21.

A I would like to give an explanation of reason why I did not carry that account along that way, if it is desired, I would like to give it.

Q I ask what that explanation is. A With a one-horse concern, as I call myself, only employing several men, I must estimate, scale the work, execute it, pay the bills, collect the bills, and get very little time to do book-keeping, and very few plumbers have an exact set of books; I never thought it worth while to change them, although I knew my work was being done for William Conway's wife, that I swore to yesterday, and I say it today, I took my orders from her and executed the work as per her orders.

Q (*By Judge Skinner.*) Did you later change it to William, the entry?

The Court. Well, the books show that he did.

Mr. McCarter. This bank book of the National City Bank of Brooklyn is not marked and I will ask to have it marked now.

Marked Exhibit D. 22.

CASE CLOSED.

Exhibits C. 1 and C. 2.

EXHIBITS.

EXHIBIT C. 1.

Exhibit C. 1 is a stipulation between counsel as to facts and is printed in full on pages 52 to 55.

EXHIBIT C. 2.

Exemplified copy of the record of the Superior Court for the County of Suffolk in the State of Massachusetts, and also of the Supreme Judicial Court of the State of Massachusetts, in the case of Town of Wakefield against American Surety Company of New York, showing that judgments were entered in said Superior Court, in favor of the plaintiff, on the third day of December, 1908, upon the three counts of the declaration in said suit, each of said counts being upon one of the bonds, Exhibits P-1, P-2 and P-3 in the present suit.

The exemplified copy of said records further shows that certain exceptions were taken to the rulings and opinion of the said Superior Court on behalf of the defendant to the said Supreme Judicial Court of Massachusetts; that on May 19, 1911, it was ordered by said Supreme Judicial Court, that said exceptions be overruled, that thereupon it was ordered that the three several judgments be entered as of December 3, 1908, and that judgments were entered accordingly as of the 3d day of December, 1908, in said Superior Court, and executions awarded, in favor of the plaintiff, upon the three counts of the declaration in said suit as follows:

Exhibit C. 3.

On the First Count. Damages $8,966.05. Costs $144.91. Total $9,110.96, with interest thereon from December 3, 1908.

On the Second Count. Damages $13,415. Costs —none. With interest on said damages from December 3, 1908.

On the Third Count. Damages $16,768.75. Costs —none. With interest on said damages from December 3, 1908.

The exemplified copy of said records further shows that an execution issued on each of said judgments on the 8th day of June, 1911, and was returned into Court fully satisfied on June 15, 1911.

EXHIBIT C. 3.

NEW JERSEY, *ss:*

THE STATE OF NEW JERSEY.

To the Sheriff of the County of Essex,

[SEAL] GREETING:

WE COMMAND YOU TO SUMMON JAMES CONWAY, to be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the Seventh day of September, 1911, to answer unto American Surety Company of New York, a corporation, plaintiff in an action on contract to its damage one hundred thousand dollars, as is said, and have you then there this writ.

Exhibit C. 3.

WITNESS, William S. Gummere, Esquire, Chief Justice, at Trenton aforesaid, the Twenty-eighth day of August, in the year Nineteen Hundred and Eleven.

WM. RIKER, JR.,
Clerk.

PITNEY, HARDIN & SKINNER,
Attorneys.

I hereby appoint and depute John L. Lane to serve the within writ.

Witness my hand and seal this 30th day of August, 1911.

WILLIAM HARRIGAN,
[SEAL] *Sheriff.*

Served the within Summons personally upon the within named defendant Aug. 30, 1911, at his place of abode at No. 491 Central avenue, in the City of Newark, N. J.

WILLIAM HARRIGAN,
Sheriff.

By JOHN L. KANE,
Special Deputy.

Filed Sept. 5, 1911.

WM. RIKER, JR.,
CLERK.

Sheriff's fee $2.28.

Exhibit C. 3.

RULE TO SHOW CAUSE.

Application for this rule having been duly made within the time limited by law, to me, the Circuit Court Judge, to whom the above cause was referred for trial, on behalf of the plaintiff, American Surety Company of New York, upon the ground of newly discovered evidence and upon further grounds, and I having considered said application;

It is ORDERED, that the defendant, James Conway, do show cause before the New Jersey Supreme Court why a new trial of the issues in said cause should not be granted.

And it is further ORDERED, that the said plaintiff have leave to take depositions in support of said rule according to the practice of this Court, both within and without this State on four days' notice to the defendant, which depositions may be used upon the hearing of the said rules to show cause.

Dated December 19, 1912.

On motion of

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

Let this rule be entered in the minutes.

FREDERIC ADAMS,
Circuit Court Judge.

Exhibit C. 3.

Service of a copy of the within rule to show cause is hereby acknowledged this 19th day of December, 1912.

McCARTER & ENGLISH,
Attorneys of Defendant.

Filed Dec. 19, 1912.

JOSEPH P. TUMULTY,
Clerk.

REASONS.

The plaintiff assigns the following reasons why the verdict in the above entitled cause should be set aside and a new trial granted:

(1) Because the verdict was contrary to the weight of evidence.

(2) Because new evidence has been discovered by the plaintiff of a nature to make a new trial of said cause proper.

(3) Because since the trial of said cause evidence has been discovered material to the issues presented at said trial and not merely cumulative or corroborative of or additional to the other evidence presented at said trial, which if placed before the jury at said trial probably would have changed their verdict, and which evidence with due diligence could not have been discovered and presented at said trial.

(4) Because said newly discovered evidence if same had been placed before the jury would have changed their verdict.

(5) Because said newly discovered evidence if same had been placed before the jury would with strong probability have changed their verdict.

Exhibit C. 3.

(6) Because the trial court should have directed a verdict for the plaintiff.

(7) Because no question of fact material to the issues in the case remained for the jury to determine.

(8) Because the trial court submitted the case to the jury upon the question of fact as to whether a certain release dated June twenty-sixth, Nineteen Hundred and One, had or had not been delivered by the plaintiff.

(9) Because the trial court submitted the case to the jury upon the question of fact as to whether said release dated June twenty-sixth, Nineteen Hundred and One, had or had not been delivered by the plaintiff to James Conway, William Hanna or Daniel F. Minahan at the time and place testified to by the witness, Jarvis W. Mason.

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

Service of the within service is hereby acknowledged this 6th day of January, 1913.

McCARTER & ENGLISH,
Attorneys of Defendant.

Filed Jan. 6, 1913.

JOSEPH P. TUMULTY,
Clerk.

RULE SETTING ASIDE VERDICT, ETC.

A rule to show cause why the verdict heretofore entered in the above stated cause should not be set aside and a new trial granted having been allowed, and the said rule to show cause having been argued by Pitney, Hardin & Skinner, Esqs., of counsel with the plaintiff, and Mc-

Exhibit C. 3.

Carter & English, Esqs., of counsel with the defendant, and the arguments of the respective parties having been heard and considered; and it appearing to the Court that the said verdict should be set aside and a new trial granted; and it further appearing that since the allowance of the said rule as aforesaid the said James Conway has departed this life, and that the death of the said James Conway has been duly suggested on the record, and that the proceedings in said cause have been duly continued against Mary L. Mason, the administratrix of all and singular the goods and chattels, rights and credits of the said James Conway, deceased;

It is thereupon ordered that the said rule to show cause be and the same hereby is made absolute, and that the verdict heretofore rendered in the above stated cause in favor of the defendant, and any judgment entered thereon, be and the same are hereby vacated, set aside and for nothing holden, and that a *venire de novo* do issue, and that all further proceedings in said cause be continued against said Mary L. Mason, the administratrix of all and singular the goods and chattels, rights and credits of the said James Conway, deceased,

Dated April 2, 1914.

On motion of

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

Rule actually entered
April 1914.

Filed April 4, 1914.

Wm. C. Gebhardt,
Clerk.

Exhibit C. 3.

STIPULATION.

The rule to show cause why a verdict obtained on behalf of the defendant in the above entitled cause having been heard before the Supreme Court, and the said rule to show cause having been made absolute, and the said defendant James Conway having departed this life, pending the argument of the said rule to show cause, and the attorneys of the parties in this cause desiring to simplify and expedite the further proceedings therein;

It is, on this fourth day of April, Nineteen Hundred and Fourteen, hereby Stipulated by and between the attorneys of the respective parties as follows:

An administrator of the estate of James Conway, deceased, having been appointed, the above entitled cause shall be revived as against such representative, and said cause shall be put on the list of causes to be tried at the April Term, Nineteen Hundred and Fourteen, at the Essex Circuit, as if regularly noticed for trial, notice of trial being hereby waived, and shall be brought on for trial at the said April term of said Court at such early day as the Judge of said Court may assign therefor.

The record of the former trial in this cause shall be used as the record upon such new trial in all respects as if the witnesses were sworn and testified and the testimony therein introduced anew, and the various motions, objections, orders and rulings in respect thereto made upon said first trial were again made, and counsel for both parties may make, before said Circuit Court, such motions or requests for the direction of a verdict, or the submission of the case to

Exhibit C. 3.

the jury as they may be advised, and upon the entry of judgment, any appeal to be taken therefrom to the Court of Errors and Appeals shall be prosecuted promptly so that said appeal shall be placed upon the list of the June Term, Nineteen Hundred and Fourteen of said Court of Errors and Appeals.

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

McCARTER & ENGLISH,
Attorneys of Defendant.

Filed April 23, 1914.

WM. C. GEBHARDT,
Clerk.

STIPULATION AND CONSENT.

The Honorable Frederic Adams, the Circuit Court Judge to whom the above case was referred for trial, having this day directed the jury sworn in said case to give a verdict in favor of the plaintiff and against the defendant for the sum of fifty-six thousand one hundred thirty-three dollars and seventy-five cents, and said verdict having been duly rendered as directed;

And the parties hereto having previously stipulated that the defendant shall bring on the argument upon her appeal to the Court of Errors and Appeals at the June Term, 1914, of said court;

It is hereby stipulated between the parties and consented by the defendant that the *postea* signed by said Circuit Judge may be filed im-

Exhibit C. 3.

mediately with the Clerk of the Supreme Court, and that judgment be entered thereon forthwith.

Dated May 4, 1914.

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

McCARTER & ENGLISH,
Attorneys of Defendant.

Filed May 7, 1914.

WM. C. GEBHARDT,
Clerk.

Afterwards, to wit, at a Circuit Court holden at Newark, in and for the County of Essex, on the fourth day of May, in the year of our Lord one thousand nine hundred and fourteen, before his Honor, Frederic Adams, a Circuit Court Judge, to whom the said cause had been referred for trial by Honorable William S. Gummere, the Chief Justice of the Supreme Court, presiding on said Circuit, according to the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, upon their oath say they find for the plaintiff and assess the damages of the said plaintiff against the defendant over and above the costs and charges by the said plaintiff about its suit in this behalf expended, at the sum of fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,133.75), and for those costs and charges.

FREDERIC ADAMS,
Circuit Court Judge.

Exhibit C. 3.

POSTEA.

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of fifty-six thousand one hundred and thirty-three dollars and seventy-five cents besides costs to be taxed.

Entered May 7, 1914,
On motion of

PITNEY, HARDIN & SKINNER,
Attorneys.

JUDGMENT.

Judgment entered this seventh day of May, A. D., nineteen hundred and fourteen for the sum of fifty-six thousand one hundred and thirty-three dollars and seventy-five cents damages and two hundred and ninety-six dollars and seventy-three cents costs.

$56,133.75	
296.73	
$56,430.48	

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

Take Notice, that the above named defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the seventh day of May, nineteen hundred and fourteen, on the following grounds:

1. Because the said judgment was for the plaintiff, whereas the judgment should have been for the defendant.

Exhibit C. 3.

2. Because the Circuit Court Judge before whom the said cause was tried erroneously admitted in evidence, over the objection of the defendant, an exemplified copy of the record of a judgment in the Superior Court of the County of Suffolk, State of Massachusetts.

3. Because the said Circuit Court Judge, over the objection of the defendant, erroneously admitted in evidence a certain agreement of indemnity (p. 11), dated April 10, 1901.

4. Because the said Circuit Court Judge, erroneously admitted in evidence a certain alleged copy of a release (Exhibit P. 13), without sufficient proof as to the search for the original thereof, or proof of the delivery thereof.

5. Because the said Circuit Court Judge admitted in evidence, over the objection of the defendant, certain bonds which were marked as Exhibits P. 1, P. 2 and P. 3.

6. Because the said Circuit Court Judge erroneously refused to permit the witness Jarvis W. Mason, upon cross examination, to answer the following question propounded by the defendant:

> "Q And furthermore, is it not true that at the same time you expressed a willingness to become responsible for the completion of the contracts by the Conway Contracting Company if Mr. Conway and these two other gentlemen, namely, Messrs. Minahan and Hanna, indemnified your company, in lieu of Mr. Fell and Mr. Costa?"

7. Because the said Circuit Court Judge erroneously refused to permit the witness Mason to answer the following question propounded by the defendant (p. 114):

Exhibit C. 3.

"Q Mr. Mason, before the gentlemen left your office that day, and before they signed the paper, was it not agreed to by you, on behalf of the American Surety Company, that you would become surety for the proposed assignee of the contract if the indemnity agreement sued on were signed and delivered to you?"

8. Because the said Circuit Court Judge erroneously refused to permit the witness Mason to answer the following question propounded by the defendant:

"Q And was it not also expressly stated on that occasion that the paper was signed by those that did sign it on the condition that when the time arrived the surety company would become surety without further expense for the current year to the proposed assignee of the contract, in lieu of their former surety-ship for Minahan and Costa?"

9. Because the said Circuit Court Judge erroneously refused to permit the witness Mason to answer the following question propounded by the defendant:

"Q Did you expect that they would delived the paper to Fell or Costa?"

10. Because the said Circuit Court Judge erroneously refused to permit the witness Mason to answer the following question propounded by the defendant:

"Q Well, you expected them to show that release to Fell and Costa, did you not?"

11. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Mason the following question against the objection of the defendant:

Exhibit C. 3.

"Q You were asked yesterday after identifying Mr. Conway whether you had talked with Judge Skinner in the court room. Was anything said about the identification of Mr. Conway in that talk?"

12. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Mason the following question against the objection of the defendant:

"Q Was Mr. Conway pointed out to you before that by anybody?"

13. Because the said Circuit Court Judge erroneously admitted in evidence, over the objection of the defendant, a certain check which was marked as Exhibit P. 7.

14. Because the said Circuit Court Judge erroneously admitted in evidence, over the objection of the defendant, a certain receipt which was marked Exhibit P. 8.

15. Because the said Circuit Court Judge erroneously denied the motion made by the defendant for a non-suit at the close of the plaintiff's case.

16. Because the said Circuit Court Judge erroneously refused to permit the defendant to proceed with an offer of proof as follows:

"I now offer to prove by this witness the fact that at the interview which he just described a statement was made by him that he only signed this bond upon the condition that the American Surety Company would consent to the assignment of these Wakefield contracts to the Conway Contracting Company, and become responsible for it in the same way that they were now responsible for Minahan & Costa, and that without any further expense for the current

year of work, and that Mr. Clark said that he would agree to that."

17. Because the said Circuit Court Judge erroneously refused to permit the witness James Conway to answer the following question propounded by the defendant, namely:

"Q I notice this paper that bears your signature and the signature of Mr. Hanna reads, 'Application is hereby made to the American Surety Company of New York for the execution of bonds of the suretyship, for us as principal or upon our request under a general contract of indemnity. James Conway and William Hanna, Contracting partnership,' and so forth, without undertaking to read it all. Did the American Surety Company ever go on your bond?"

18. Because the said Circuit Court Judge erroneously refused to permit the defendant to offer proof in accordance with the following offer:

"Q I offer to prove the assignment of this contract for the Wakefield work from Minahan, Costa and Fell, to Thomas A. Davis, trustee,—that is, Judge Davis—trustee,—that is, Judge Davis—by assignment dated the 15th day of June, 1901; a subsequent assignment by him, Davis, trustee, to Conway Contracting Company, on the 27th day of June, 1901; and to be followed by proof of the fact that after that assignment was made, by the correspondence that was identified yesterday by Mr. Mason, an effort was made to procure from the American Surety Company their bonds for the Conway Contracting Company, which had received the assignment, and refused by the American Surety Company, whereupon the

Exhibit C. 3.

Town of Wakefield rejected the presence of the Conway Contracting Company upon the work, refused to permit them to continue and drove them from the job."

19. Because the said Circuit Court Judge erroneously refused to permit the defendant to offer proof in accordance with the following offer:

"Q We now have here the policies of insurance; first, the fire insurance policy upon the plant up there, issued in the name of Minahan & Costa, on the 18th day of May, 1901, by the Philadelphia Underwriters Policy Company, with the assignment thereof to Conway Contracting Company, dated the 5th of August, 1901; also liability policy for casualty to the employees engaged on the work, issued on the 21st day of May, 1901, by the Maryland Casualty Company to Minahan & Costa, and on the 7th of November, 1901, assigned to the Conway Contracting Company. I assume that under your Honor's ruling, they will be also excluded; but they go to indicate the extent to which this assignment to the Conway Contracting Company was endeavored to be perfected."

20. Because the said Circuit Court Judge erroneously refused to permit the defendant to offer in evidence certain letters written between the witness Maynard E. S. Clemons and plaintiff.

21. Because the said Circuit Court Judge erroneously refused to permit the defendant to offer in evidence a certain resolution of the sewer commission of Wakefield, Mass., discharging the Conway Contracting Company from the job.

Exhibit C. 3.

21. Because the said Circuit Court Judge erroneously refused to permit the witness Clemons to answer the following question propounded by the defendant:

"Q Was any bond ever received by the Town of Wakefield from the American Surety Company, covering the contract of the Conway Contracting Company on this Wakefield Sewerage job?"

23. Because the said Circuit Court Judge erroneously refused to permit the witness Clemons to answer the following questions propounded by the defendant:

"Q Did the American Surety Company ever give to you or to the Town of Wakefield any bonds covering the work that the Conway Contracting Company might do upon the Wakefield sewers?"

24. Because the said Circuit Court Judge erroneously refused to permit the defendant to offer in evidence a duly authenticated copy of an opinion by Mr. Justice Rugg of the Supreme Judicial Court of Massachusetts, in a certain cause of the Town of Wakefield, Mass, against the plaintiff.

25. Because the said Circuit Court Judge erroneously refused to permit the witness Clemons to answer the following question propounded by the defendant:

"Q Did the Town of Wakefield ever formally recognize and consent to the assignments that have been produced and marked for identification here?"

26. Because the said Circuit Court Judge erroneously refused to permit the witness Clemons to answer the following question propounded by the defendant:

"Q If they did not, why not?"

Exhibit C. 3.

27. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Tierney, against the objection of the defendant, the following question:

"Q Mr. Tierney, although you have no recollection of the occurrence of the taking of this acknowledgment on June 26, 1901, can you, nevertheless, state whether or not these gentlemen appeared before you?"

28. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Tierney, against the objection of the defendant, the following question:

"Q And on what do you base your statement?"

29. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Tierney, against the objection of the defendant, the following question:

"Q Well, how does the fact that you took the acknowledgment convey to you the fact that those gentlemen appeared before you?"

30. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness, Tierney, against the objection of the defendant, the following question:

"Q Well, what does that mean to you?"

31. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Tierney, against the objection of the defendant, the following question:

"Q What was your course of business or practice as to the taking of acknowledgments at that time with reference to having the parties before you whose acknowledgments you were taking?"

Exhibit C. 3.

32. Because the said Circuit Court Judge erroneously permitted the plaintiff's counsel to ask the witness Tierney, against the objection of the defendant, the following question:

"Q Will you please tell us, Mr. Tierney, what the custom was?"

33. Because the said Circuit Court Judge erroneously refused to direct a verdict for the defendant for the reasons stated, upon the motion for the said direction of a verdict.

34. Because the said Circuit Court Judge erroneously granted the plaintiff's motion for the direction of a verdict in favor of the plaintiff.

35. Because the said Circuit Court Judge erroneously refused to permit the case to go to the jury.

36. Because the judgment below is in divers other respects illegal, unjust and improper.

McCARTER & ENGLISH,
Attorneys of Defendant-Appellant.

To Messrs. Pitney, Hardin & Skinner,
Attorneys of Plaintiff-Appellee.

Dated June 2nd, 1914.

Service hereof is acknowledged this 3rd day of June, 1914.

PITNEY, HARDIN & SKINNER,
Attorneys of Appellee.

Filed June 5, 1914.

Wm. C. Gebhardt,
Clerk.

Exhibit C. 3.

NEW JERSEY SUPREME COURT.

AMERICAN SURETY COMPANY OF NEW YORK, vs. MARY L. MASON, Administratrix of JAMES CONWAY, deceased.	*On Contract.* *On Postea.* *Pitney, Hardin & Skinner, Attorneys.*

As yet of the seventh day of September, A. D., nineteen hundred and eleven.

Witness,

WILLIAM S. GUMMERE, ESQ.,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

ESSEX COUNTY, *ss*:

James Conway, the defendant in this suit, was summoned to answer American Surety Company of New York, a corporation, the plaintiff therein, in an action upon contract, and thereupon the plaintiff, by Pitney, Hardin & Skinner, its attorneys, complains:

For that whereas, heretofore, to wit, on the tenth day of April in the year one thousand nine hundred and one, at the City of New York in the State of New York, to wit, at Newark in said County of Essex, one Daniel F. Minahan and one Antonio Costa, partners composing the firm of Minahan & Costa, as principals, and the said plaintiff as surety at the special instance

Exhibit C. 3.

and request of the said principals and one Lawrence T. Fell, did execute three certain writings under seal, or bonds, to the Town of Wakefield in the State of Massachusetts, conditioned for the proper performance of certain contracts for building sections 1, 2 and 3 respectively of the Wakefield Sewerage System in Wakefield; and whereas the aforesaid Daniel F. Minahan, Antonio Costa and Lawrence T. Fell, in consideration that the plaintiff would execute as surety the three bonds or writings aforesaid, did by a certain other writing under seal on the day last aforesaid and at the place aforesaid, agree to indemnify the said plaintiff for any loss which it, the said plaintiff, might sustain by reason of its liability upon said three bonds; and whereas thereafter, to wit, on the twenty-sixth day of June, one thousand nine hundred and one, at the City of New York in the State of New York, to wit, at Newark in said County of Essex, the said defendant did request the plaintiff to release the said Antonio Costa and the said Lawrence T. Fell from all liability or responsibility to the plaintiff by reason of the agreement of indemnity last above mentioned, and the plaintiff avers that on the day and year last aforesaid at the place aforesaid, the said defendant together with the said Daniel F. Minahan and one William Hanna in consideration that the said plaintiff would release the said Antonio Costa and the said Lawrence T. Fell from all liability or responsibility to the said plaintiff as indemnitors as aforesaid, did by a certain other writing under seal then and there made, jointly and severally undertake and agree to indemnify and save the plaintiff harmless from and against every claim, demand, liability, cost, charge, ex-

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pense, suit, order, judgment and adjudication whatsoever by reason of any obligation theretofore or thereafter entered into by the said Daniel F. Minahan and William Hanna, and the said defendant, or by some one or more of them or by the firm of Minahan & Costa as principals, and the said plaintiff as surety and to place the said plaintiff in funds to meet every such claim, demand, liability, cost, charge, expense, suit, order or adjudication against it by reason of any obligation theretofore or thereafter entered into by the said Daniel F. Minahan and William Hanna and the said defendant, or by some one or more of them or by the firm of Minahan & Costa as principals, and the said plaintiff as surety, (which said last mentioned writing with the seal of the said defendant, the said plaintiff now brings here into Court, the date whereof is the day and year last aforesaid, a true copy of which said writing is attached hereto and hereby made a part hereof); and the plaintiff further avers that at the special instance and request of the said defendant as aforesaid, it did release the said Antonio Costa and the said Lawrence T. Fell from all liability or responsibility to the said plaintiff as indemnitors by reason of the obligation aforesaid, and that it, the said plaintiff did accept in lieu of the said agreement of indemnity executed by the said Daniel F. Minahan, Antonio Costa and Lawrence T. Fell as aforesaid, the agreement of indemnity last above mentioned, executed on the twenty-sixth day of June, one thousand nine hundred and one as aforesaid, by the said Daniel F. Minahan, William Hanna and the said defendant; yet the said defendant not regarding his said promise and undertaking contained in

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the agreement of indemnity aforesaid, a copy of which is annexed hereto, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, did not, nor would indemnify or save harmless the said plaintiff from and against every claim, demand, liability, cost, charge, expense, suit, order, judgment and adjudication, or place the said plaintiff in funds to meet every such claim demand, liability, cost, charge, expense, suit, order or adjudication against it by reason of the three bonds or obligations above mentioned, entered into by the said Daniel F. Minahan and the said Antonio Costa as principals, and the said plaintiff as surety, but wholly neglected and refused so to do; by means and in consequence whereof the said plaintiff as surety upon said three bonds afterwards, to wit, on the eighth day of June, one thousand nine hundred and eleven, at Boston in the State of Massachusetts, to wit, at Newark in said County of Essex, was called upon and forced and obliged to pay, and did then and there pay to the said Town of Wakefield, the obligee named in said three bonds, a large sum of money, to wit, the sum of thirty-three thousand dollars, ($33,000). being the total of the penalties in said three bonds specified, together with certain interest thereon, and the costs of a certain action or actions before then brought in the Superior Court holden at Boston for and within the County of Suffolk in the State of Massachusetts and carried by exceptions to the Supreme Judicial Court of the State of Massachusetts, on the said three bonds or obligations by the said Town of Wakefield against the said plaintiff, and together with certain charges for poundage on executions is-

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sued upon judgments obtained by the said Town of Wakefield in said actions, in the whole amounting to a large sum of money, to wit, the sum of one hundred thousand dollars ($100,000); and the said plaintiff avers that it has duly kept and performed and fully complied with all the terms and conditions of the said agreement of indemnity on its part to be kept, performed and fulfilled, and all conditions precedent have been performed, and all events have happened, and all things exist, and all periods of time have elapsed to entitle the plaintiff to a performance by the defendant of his said agreement to indemnify the said plaintiff and to entitle the plaintiff to maintain an action for the breach by the said defendant of his said agreement to indemnify the said plaintiff; whereof the said defendant, afterwards, to wit, on the day and year last aforesaid, had notice; yet the said defendant further disregarding the terms and conditions of the said agreement of indemnity and his said promise and undertaking hath not (although he was afterwards, to wit, on the day and year last aforesaid at Newark in said County of Essex, requested by the said plaintiff so to do) as yet paid the said sum of one hundred thousand dollars ($100,000), or any part thereof to the said plaintiff, but so to do hath wholly refused and still doth refuse, to wit, at Newark, in said County of Essex, to the damage of the said plaintiff one hundred thousand dollars ($100,000).

And whereas also heretofore, to wit, on the twenty-sixth day of June, in the year one thousand nine hundred and one, at the City of New York in the State of New York, to wit, at Newark, in said County of Essex, by a certain other

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writing under seal then and there made (which said writing with the seal of the said defendant the said plaintiff now brings here into Court, the date whereof is the day and year aforesaid, a true copy of which said writing is attached hereto and made a part hereof), the aforesaid defendant and one Daniel F. Minahan and one William Hanna, in consideration that the plaintiff at the special instance and request of the said defendant and said Daniel F. Minahan and said William Hanna would release certain other indemnitors of it, the said plaintiff, did jointly and severally undertake and agree to indemnify the plaintiff for any loss which it, the said plaintiff, might sustain by reason of its liability upon three certain contract bonds theretofore executed, by it, to wit, on the tenth day of April in the year one thousand nine hundred and one, at the City of New York in the State of New York, to wit, at Newark in said County of Essex; and the said defendant and the said Daniel F. Minahan and the said William Hanna in and by the said agreement of indemnity did, among other things, jointly and severally undertake and agree to pay to the plaintiff, on the anniversary of the date of the execution of each of said contract bonds, in advance, an annual premium or charge of one per cent. of the amount of every such contract, bond, until the said defendant or the said Daniel F. Minahan or the said William Hanna should deliver to said plaintiff competent written evidence of its discharge from any and all responsibility upon said bonds as by said agreement, a copy of which is attached hereto as aforesaid, will more fully appear; and the plaintiff avers that said annual premium or charge of one per cent. of the amount of said

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three contract bonds is in the case of the first of said bonds the sum of one hundred and five dollars, in the case of the second of said bonds the sum of one hundred and twenty-five dollars, and in the case of the third of said bonds the sum of one hundred dollars, making a total yearly premium due upon said three bonds of three hundred and thirty dollars; and although it, the said plaintiff, did duly execute as surety the three contract bonds as aforesaid, at the time and place aforesaid (whereof the said defendant afterwards, to wit, on the twenty-sixth day of June in the year one thousand nine hundred and one had notice) and hath always from the time of the making of said agreement of indemnity hitherto well and truly performed, fulfilled and kept all things therein mentioned and contained on its part and behalf to be performed, fulfilled and kept according to the tenor and effect, true intent and meaning thereof, and although no notice has been served on or delivered to the said plaintiff of its discharge from its responsibility upon said three bonds as aforesaid, the said plaintiff in fact saith that neither the said defendant nor any other person or persons, did at any time pay to the said plaintiff the said premium of three hundred and thirty dollars due to the said plaintiff on the first anniversary of the date of said three bonds, to wit, on the tenth day of April in the year one thousand nine hundred and two, and that neither the said defendant nor any other person or persons has at any time paid to the said plaintiff the premiums or charges for said three bonds amounting to three hundred aud thirty dollars annually and due on the respective subsequent anniversaries of the date of said bonds up to

Exhibit C. 3.

the present time; and on the contrary thereof the said annual premiums or charges with interest upon the same, together making the sum of seven thousand dollars, became and were and still are in arrear and unpaid to the said plaintiff contrary to the form and effect of the said agreement of indemnity, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of seven thousand dollars above demanded; yet neither the said defendant although often requested so to do, nor any other person, has paid the said sum of seven thousand dollars above demanded, or any part thereof, to the said plaintiff, but has hitherto wholly neglected and refused and still does neglect and refuse so to do, to the damage of the said plaintiff seven thousand dollars ($7,000).

And whereas also the said defendant heretofore, to wit, on the twenty-seventh day of August, in the year one thousand nine hundred and eleven, at the City of New York in the State of New York, to wit, at Newark in said County of Essex, was indebted to the said plaintiff in the further sum of seven thousand dollars for certain premiums before that time and then due and payable from the said defendant to the said plaintiff upon, for and in respect to the said plaintiff's having before then at the special instance and request of the said defendant executed three certain other bonds as surety, and being so indebted, he, the said defendant, in consideration thereof afterwards, to wit, on the day and year last aforesaid at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said last mentioned sum of money when he, the said defend-

ant, should thereunto be afterwards requested; yet the said defendant hath not, although often requested so to do, paid said sum of seven thousand dollars ($7,000) or any part thereof to the said plaintiff but has hitherto wholly neglected and refused and still does neglect and refuse so to do, to the damage of the said plaintiff seven thousand dollars ($7,000).

And whereas also the said defendant heretofore, to wit, on the day and year last aforesaid at Newark in said County of Essex, was indebted to the plaintiff in the sum of one hundred thousand dollars ($100,000) upon an account stated between the plaintiff and the defendant, the same to be paid by the defendant when he should be thereunto afterwards requested; and in the like sum of money for money received by the defendant for the use of the plaintiff; and in the like sum of money for money loaned by the plaintiff to the defendant at his request; and in the like sum of money for interest for the forbearance by the plaintiff at the defendant's request of money due and owing from the defendant to the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at his request; and being so indebted the defendant in consideration thereof did then and there promise the plaintiff to pay to it, the said plaintiff, the said several sums of money on request; yet the defendant has disregarded his said several promises and has not paid the said several sums of money, or any of them, or any part thereof, although often requested so to do, but to do so hath hitherto wholly refused and still doth refuse to the damage of the said plaintiff one hun-

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dred thousand dollars ($100,000), and therefore it brings its suit, etc.

AMERICAN SURETY COMPANY of NEW YORK.	Contract No.....
	Limit of Liability $75,000.
.....	
Capital $2,500,000. General Contract of Indemnity.	Premium Rate....%
.....	

Whereas, D. F. Minahan, James Conway and Wm. Hanna, or some one or more of us, hereinafter called the principals have required and may hereafter require suretyship upon certain obligations, known as "Sureties Consents," "Sureties Guarantees," "Sureties Agreements," "Guarantees on Bids," "Bidders Bonds," and "Contract Bonds," or otherwise, and have applied and will apply to the American Surety Company of New York hereinafter called the Surety to execute such instruments, as Surety:

Therefore, we do hereby jointly and severally undertake and agree:

First—That the principals, commencing on the date of the execution of each such obligation and thereafter on the anniversary thereof, will pay the Surety in advance, a premium or charge of Five Dollars ($5) for each such "Sureties Consent," "Sureties Guarantee," "Sureties Agreement," "Guarantee on Bids," "Bidders Bond," or similar obligation, and likewise in advance an annual premium or charge of one per cent. of the amount of every such "Contract Bond," "Sureties Consent," "Sureties Guarantee,"

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"Sureties Agreement," "Guarantee on Bids," "Bidders Bond," or similar obligation which shall operate as a bond or obligation for the performance of the contract therein referred to;

Such premiums to be paid in each instance, until the Surety shall be discharged and released from any and all responsibility upon such obligations and until the principals shall deliver to said Surety, at its office in the City of New York, competent written evidence of such discharge; that the amount to be paid said Surety for executing any one of such obligations shall not, however, for any one year, or fraction thereof, be less than $10 when such obligation shall be or shall operate as a bond or obligation for the performance of the contract therein referred to.

Second—That the principals will perform all the conditions of each of said obligations on the part of the principals to be performed, and will at all times indemnify and save the Surety harmless from and against every claim, demand, liability, cost, charge, expense, suit, order, judgment and adjudication whatsoever, and will place the Surety in funds to meet every such claim, demand, liability, cost, charge, expense, suit, order or adjudication against it by reason of any such obligation before it shall be required to pay thereunder.

Third—That upon the making of any demand, or the giving of any notice, or the institution of any proceeding, preliminary to determining or fixing any liability which the Surety may be called upon to discharge by reason of any such obligation, the principals will immediately notify the Surety thereof in writing at its said office.

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Fourth—That in the event of the principals requesting the Surety to prosecute or defend or appear to take part in any suit, action, proceeding, appeal, or writ of error, the principals will, on making such request, place the Surety in possession of funds or collateral security, approved by the Surety, sufficient to defray any costs, charges and expenses which the Surety may incur, in so doing, and to discharge any liability, order, judgment or adjudication which may result in consequence of the Surety so doing, or of its suretyship upon any such obligation.

Fifth—That the principals will, on request of the Surety, procure the discharge of the Surety from any and all such obligations and all liability by reason thereof.

Sixth—That the Surety shall, at its option have and may exercise in the name of the principals or otherwise, any and all rights and remedies which the principals have or may have in connection with any of the matters arising out of or connected with any of the matters out of which any such suretyship obligation arises; and the Surety shall have, at any time, the right to be discharged from liability for further default of the principals on any of such obligations, and to require the principals to account and give new sureties.

Seventh—That the voucher or other evidence of payment by the Surety in discharge of any liability for which the Surety is or may be liable by reason of any such obligation shall be prima facie evidence of such payment and the propriety thereof, and of the principals liability therefor to the Surety.

Eighth—That this agreement shall not, nor shall acceptance by the Surety of payment for its suretyship, nor agreement to accept, nor ac-

Exhibit C. 3.

ceptance by it at any time of other security, in any way abridge, defer or limit its right to be subrogated to any right or remedy or limit or abridge any right or remedy which the Surety otherwise might or may have, acquire, exercise or enforce, and it shall have every right and remedy which an individual Surety acting without compensation would have.

Ninth—That the Surety also looks to and relies upon the property of the principals and the income and earnings thereof, and shall at all times have the right to rely upon, look to and follow and recover out of the property which the principals now have or may hereafter have, and the income and earnings thereof, for anything due or to become due the Surety, under this agreement; such suretyship in each instance being by the Surety entered into for the special benefit of the principals and the special benefit and protection of the property of the principals, their income and earnings.

Tenth—That this agreement shall cover all obligations heretofore or hereafter issued for us or either of us or heretofore issued for the firm of Minahan and Costa, and the principals do hereby stipulate that the Surety may release, and it is hereby requested to release Antonio Costa and L. T. Fell from all liability or responsibility to it by reason of any such obligations.

In Witness Whereof, we have caused these presents to be signed and sealed this 26th day of June, 1901.

DANIEL F. MINAHAN (SEAL)
JAMES CONWAY (SEAL)
WILLIAM HANNA (SEAL)

Fifty Cent stamp cancelled.

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STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

On this 26th day of June, 1901, before me personally came Daniel F. Minahan, James Conway, William Hanna, to me known and known to me to *to* be the persons described in and who executed the foregoing instrument and they thereupon severally acknowledged to me that they executed the same.

(SEAL) FRANK I. TIERNEY,
Notary Public, New York County.

And the said defendant, by McCarter & English, his attorneys, as to the first count of the said declaration, comes and defends the wrong and injury when etc., and says that the said supposed writing obligatory is not his deed, and of this he puts himself upon the country.

And the said defendant, as to the second, third and fourth counts of the said declaration, comes and defends the wrong and injury when etc. and says that he does not owe the sums of money above demanded or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country.

The defendant, pursuant to the statute in such case made and provided, hereby annexes to the pleas filed herewith a notice of special matter, which, if pleaded, would have been a bar to the foregoing action, and at the trial of the issues joined herein will give evidence in support thereof, namely:

1. There was no consideration for the said alleged signing of said paper writing by the defendant.

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2. The consideration for said alleged bond or paper writing wholly failed.

3. The true consideration of said bond of indemnity or paper writing upon which this action is based was the agreement on the part of the plaintiff to be and become surety for the Conway Contracting Company in the execution and performance by it of a certain contract or contracts with the Town of Wakefield, in the Commonwealth of Massachusetts, for the construction of Sections 1, 2 and 3 of the Wakefield System of Sewerage; that the said plaintiff, after the making by the defendant of the alleged agreement of indemnity, refused to become surety as aforesaid, and refused to execute the necessary papers for that purpose, and the object of the defendant in executing the said alleged agreement of indemnity was thereby frustrated, and the consideration therefor wholly failed.

4. The said plaintiff has not paid out any money on account of its said alleged liability referred to in said first count of said declaration.

5. The said plaintiff was not compelled to pay out to the Town of Wakefield, or any other person, the sum of money in said first count mentioned, or any other sum, as a basis for the plaintiff's right to commence this suit.

6. If any moneys were paid by the plaintiff herein to the Town of Wakefield on account of its alleged liability to said Town under its alleged agreement therewith, said payments were improperly made, and no real liability therefor existed, and hence no ground of action exists against the defendant herein on said alleged agreement of indemnity.

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7. No liability exists on the part of the defendant to pay the plaintiff any money.

8. The contingencies named in the alleged bond of indemnity as conditions precedent to the liability of the defendant to the plaintiff herein, have never arisen, nor have the events happened, nor do the things exist, nor has the time elapsed to entitle the plaintiff to a performance by the defendant of said alleged agreement to indemnify, or to maintain the said first count of said declaration.

9. It is not true that the plaintiff released Antonio Costa and Lawrence T. Fell from all liability or responsibility to the plaintiff as indemnitors of plaintiff by reason of the alleged obligation here in suit, or as a consideration therefor, or that the plaintiff did accept, in lieu of the agreement of indemnity of said Antonio Costa and said Lawrence T. Fell the alleged agreement in the first count of said declaration.

10. There was no breach of the surety bond or bonds, agreement or agreements entered into by the plaintiff with the Town of Wakefield, whereby the plaintiff became in law liable to pay the plaintiff any money.

11. The plaintiff, as surety for the performance of said contracts for the construction of Sections 1, 2 and 3 of the Wakefield System of Sewerage, was, by said Town of Wakefield, discharged and released from liability as said surety before its alleged payment to said Town of the moneys named in the first count of said declaration, as said plaintiff well knew, and said release and discharge operated to release and discharge the defendant's supposed liability to plaintiff on said alleged agreement of indemnity

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referred to in the first count of the declaration herein.

12. Said alleged agreement of indemnity was and is void, and of no legal effect whatever.

13. Said alleged agreement of indemnity was not properly stamped as required by the War Revenue Law of the United States, in operation and effect at the time of the alleged execution thereof.

14. Said alleged agreement of indemnity was never completely executed and delivered by the parties, styled the principals therein, and before such completion the principal and said plaintiffs differed and failed to agree as to the amount of premium to be paid by said principals for the obligation to be assumed by the plaintiff under said agreement.

15. The said alleged agreement was based upon the assumption and condition that D. F. Minahan, James Conway and William Hanna, or some one or more of them, required, or would require suretyship upon certain obligations known as "Sureties Consents," "Sureties Guaranties," "Sureties Agreements," "Guarantees on Bids," "Bidding Bonds"' and "Contract Bonds," and required, or would require the plaintiff to execute such bonds or agreements, and that the plaintiff would have to execute, and would, in fact, execute, some or all of said agreements above described; whereas in fact no such requirement existed, nor did plaintiff ever execute or become liable upon any such agreement or any agreement whatever after the alleged making of the agreement referred to in the first count of said declaration, and no liability exists on account of the principals in said

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alleged agreement named to the plaintiff to indemnify or save it harmless.

16. The payments, made, if any, by the plaintiff herein to the Town of Wakefield, and forming the basis of the first count of said declaration, were made upon bonds, contracts or agreements made by said plaintiff before the making of the said alleged agreement in the first count declared on, and in connection with the firm of Minahan & Costa, and not for or in connection with D. F. Minahan, James Conway and William Hanna, or either of them; and the obligation, if any, which the defendant by said alleged agreement assumed with regard thereto was unilateral, without consideration, and void.

17. No obligation was assumed by the defendant in the said alleged agreement with regard to losses or payments suffered or made by the plaintiff by reason of contracts or obligations previously incurred by it with, or for, or in regard to the firm of Minahan & Costa.

18. The defendant never agreed to pay, or in any way became liable or obliged to pay the plaintiff any sums of money in the second, third, or fourth counts of said declaration claimed.

McCARTER & ENGLISH,
Attorneys of Defendant.

And now at this date, to wit, the first day of April, nineteen hundred and fourteen, before the Justices of the Supreme Court aforesaid at Trenton aforesaid comes American Surety Company of New York, a corporation, the plaintiff in the above stated cause, by Pitney, Hardin & Skinner, its attorneys; and hereupon the said American Surety Company of New York, gives

Exhibit C. 3.

the Court here to understand and be informed that after the making and entry of the rule entered in this cause that the defendant do show cause why a new trial of the issues in said cause should not be granted, to wit, on the fourth day of April, nineteen hundred and thirteen, the said James Conway departed this life, and that thereafter, to wit, on the thirtieth day of March, nineteen hundred and fourteen, letters of administration in due form of law of all and singular the goods and chattels, rights and credits of the said James Conway, deceased, were granted to one Mary L. Mason, the daughter of the said James Conway, which allegations the said Mary L. Mason, administratrix, doth not deny but admits the same to be true.

Therefore let all further proceedings in this cause be continued against Mary L. Mason, administratrix of all and singular the goods and chattels, rights and credits of the said James Conway, deceased, and now at this date, to wit, on the first day of April, nineteen hundred and fourteen before the Justices aforesaid at Trenton come the parties aforesaid by their attorneys aforesaid, etc., etc.

Entered April 4, 1914,
On motion of

PITNEY, HARDIN & SKINNER,
Attorneys of Plaintiff.

Let this rule be entered in the minutes.

WM. S. GUMMERE, *C. J.*

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at

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a Circuit Court to be holden at Newark, in and for the County of Essex, on the first Tuesday of April, in the year of our Lord, one thousand nine hundred and fourteen, by whom, etc., and the same day of given to the parties aforesaid there, etc.

And now at this day, to wit, the seventh day of May, A. D., nineteen hundred and fourteen, before our said Supreme Court at Trenton comes the said plaintiff, by its attorneys aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at Newark, in and for the County of Essex, on the fourth day of May, in the year of our Lord one thousand nine hundred and fourteen, before his Honor, Frederic Adams, a Circuit Court Judge, to whom the said cause had been referred for trial by Honorable William S. Gummere, the Chief Justice of the Supreme Court, presiding on said Circuit, according to the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, upon their oath say thy find for the plaintiff and assess the damages of the said plaintiff against the defendant over and above the costs and charges by the said plaintiff about its suit in this behalf expended, at the sum of fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,133.75) and for those costs and charges.

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Therefore it is considered that the said plaintiff do recover against the said defendant its said damages by the jury in form aforesaid found to fifty-six thousand one hundred thirty-three dollars and seventy-five cents and also two hundred and ninety-six dollars and seventy-three cents for its costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with its assent, which said damages, costs and charges in the whole amount to fifty-six thousand four hundred and thirty dollars and forty-eight cents.

Judgment signed this seventh day of May, A. D., one thousand nine hundred and fourteen.

WM. S. GUMMERE,
C. J.

REMITTITUR.

It appearing by the Remittitur now here returned from the Court of Errors and Appeals, that the judgment of this Court removed by appeal in the above entitled cause, was in and by said Court of Errors and Appeals, affirmed, with costs.

It is ordered that said Remittitur be filed and that said cause be proceeded with according to law.

Entered February 13, 1915,
On motion of

PITNEY, HARDIN & SKINNER,
Attorneys.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the entire

Exhibit C. 4.

proceedings in the above stated cause as the same remain on file in my office.

In testimony whereof I have set my hand and the seal of said Court at (L. S.) Trenton, this seventeeth day of November, A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

EXHIBIT C. 4.

Charles A. Dean Hervey J. Skinner
James H. Kimball, M. D.

TOWN OF WAKEFIELD

WAKEFIELD WATER AND SEWERAGE BOARD
Telephone Wakefield 36

Wakefield, Mass., Dec. 1, 1915.

The following is a correct copy of the records of the Wakefield Sewer Commissioners, the meeting of the date January 9, 1902.

"Special meeting of the Board of S. Commissioners. Full Board and Town Counsel Clemons present. The situation in regard to sections one, two and three was fully discussed, and the extremely slow progress of the work noted.

The following vote was passed unanimously:

Voted, that the firm of Minahan and Costa, the Contractors for work on Sections one, two and three of the Wakefield Sewerage System, be immediately notified to discontinue all work under their contracts for work on said sections, and that work on said sections be immediately prosecuted by the Board of Sewer Commis-

Exhibit C. 5.

sioners under the direction of the Engineer in accordance with section L in said contracts.

The Secretary was then instructed to immediately notify Minahan and Costa by notice sent to Orange, N. J., and to Greenwood, Mass., and the American Surety Company at New York and Boston.

The engineer's monthly statement for work on Sections one and two was laid on the table.

Adjourned.

WM. B. DANIEL,
Secretary.

I certify that the above copy is correct.

ALBERT R. PERKINS,
Clerk,
Of the Wakefield Water & Sewerage Board.

Dec. 1, 1915.

MIDDLESEX, *ss:*

The above named Albert R. Perkins appeared before me this first day of December, 1915, and made oath that the above copy is correct.

RICHARD BRITTON,
Justice of the Peace.

EXHIBIT C. 5.
Copy.

Ex. 29.
Jan. 9 2.

American Surety Co.,
100 Broadway, N. York.

Gentlemen:

At a meeting of the Board of Sewer Commissioners of the Town of Wakefield held this day

Exhibit C. 6.

the following vote was passed: Voted: That the firm of Minahan & Costa, the Contractors for work on Sections 1, 2 and 3 of the Wakefield Sewerage system be immediately notified to discontinue all work under their contracts for work on said sections, and that work on said sections be immediately prosecuted by the Board under the direction of the Engineer of the Sewerage works, in accordance with the provision of Section L of said Contracts."

A Copy of this vote has this day been sent to the Firm of Minahan & Costa.

Very respectfully,

BOARD OF SEWER COMMISSIONERS.

By WILLIAM B. DANIEL,
Secretary.

Sewer Coms. Book, page 46.
M. E. S. McC. & E.
(9/13/09) P. H. & S.

EXHIBIT C. 6.
Copy.

Ex. 29.
Jan. 9 2.

To Minahan & Costa, Contractors,
169 Main Street,
Orange, N. J.

Gentlemen:

At a meeting of the Board of Sewer Commissioners of the Town of Wakefield held this day the following vote was passed:

"Voted that the Firm of Minahan & Costa, the contractors for work on Sections 1 and 2 and 3 of the Wakefield Sewerage system be immediately notified to discontinue all work under their

Exhibit C. 7.

contracts for work on said Sections, and that work on said Sections be immediately prosecuted by the Board under the direction of the Engineer of the Sewerage Works, in accordance with the provision of Section 1 of said Contracts."

Please take notice and govern yourselves accordingly.

Very respectfully,

BOARD OF SEWER COMMISSIONERS.

By WILLIAM B. DANIEL,
Secretary.

Duplicate.

(Marked "Copy to Greenwood.")

Sewer Coms. Book, page 44.

McC. & E.
M. E. S./9/13/09. P. H. & S.

EXHIBIT C. 7.

Copy.

Jany. 13, 1902.

J. W. M.

84757—8—9: Minahan & Costa to Board of Sewer Commissioners, Wakefield, Mass.

James Conway, Esq.,
491 Central Avenue,
Newark, N. J.

Dear Sir:—

Herewith enclosed I hand you copy of a letter dated January 9, 1902, from the Board of Sewer Commissioners of Wakefield, Massachusetts. Kindly advise us of your wishes in the matter and report fully the present situation, the rea-

Exhibit C. 9.

sons for the forfeiting of the contract, and what action you purpose taking to protect this Company from loss by reason of its suretyship.

Yours very truly,

HENRY C. WILLCOX,
Solicitor.

By.....
Assistant Solicitor.

EXHIBIT C. 8.

Exhibit C. 8. is identical with C. 5.

McC. & E.
P. H. & S.

EXHIBIT C. 9.

Know all men by these presents, that we Minahan and Costa, of Orange, N. J., as principals, and the American Surety Company of New York, of 100 Broadway, Borough of Manhattan, City of New York, as surety, are held and firmly bound unto the Town of Wakefield, Mass., in the sum of Ten Thousand, Five Hundred Dollars ($10,500.-00) to be paid the said Town of Wakefield, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

The conditions of this obligation is such, that if the above bounden Minahan and Costa, their heirs, executors, administrators or assigns, shall in all things stand to and abide by, and well and truly keep and perform, the covenants, conditions and agreements in the foregoing contract for building Section 1 of the Wakefield Sewerage

Exhibit C. 9.

System in Wakefield on his or their part to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the Town of Wakefield, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

In witness whereof we hereunto set our hands and seals this tenth day of April in the year nineteen hundred and one.

(Signed) DANIEL F. MINAHAN, (SEAL)
MINAHAN & COSTA, (SEAL)
ANTONIO COSTA, (SEAL)

(Seal of American Surety Company of New York.)

(Signed) AMERICAN SURETY COMPANY OF NEW YORK.

DAVID B. SICKELS, *Vice-President.*

G. M. SWEENEY, *Secretary.*

Signed and sealed in the presence of

(Signed) MAYNARD E. S. CLEMONS,
as to principals.

WM. H. BISHOP,
HARRY C. JONES,
as to surety.

(U. S. Internal Revenue Stamps cancelled, amounting to one dollar two and one-half cents.)

STATE AND COUNTY OF NEW YORK, *ss:*

On this 10th day of April, 1901, before me personally appeared David B. Sickels, Vice-Presi-

Exhibit C. 9.

dent of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York; that he is the Vice-President of the American Surety Company of New York, the Corporation described in and which executed the above instrument; that he knew the corporate seal of said Corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickels further said that he was acquainted with G. M. Sweney and knew him to be the Secretary of said corporation; that the signature of said G. M. Sweney subscribed to the said instrument, is in the genuine handwriting of the said G. M. Sweney, and was thereto subscribed by the like order of said Board of Directors, and in the presence of him the said David B. Sickels, Vice-President.

WM. H. BISHOP,
Notary Public.

(Seal) New York County.

At a regular quarterly meeting of the Board of Directors of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the President and Vice-Presidents be, and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on

Exhibit C. 9.

behalf of the Company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the Secretary, one of the Assistant Secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss.*

I, G. M. Sweney, Secretary of the American Surety Company of New York, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original Resolution.

Given under my hand and the seal of the Company, at the City of New York, this 10th day of April, 1901.

G. M. SWENEY,
Secretary.

(Seal.)

(Incorporated April 14, 1884.)

AMERICAN SURETY COMPANY OF NEW YORK.

General Offices, 100 Broadway.

FINANCIAL STATEMENT, MAR. 30, 1901.

RESOURCES.

Real Estate and Improvements	$3,054,567.16	
Stocks and Bonds	1,515,584.00	
Bills Receivable	701,667.99	
Cash in Banks and Offices	145,328.56	
Premiums in Course of Collection	234,423.26	
Accrued Interest and Rents	36,076.13	
		$5,687,647.10

Exhibit C. 9.

LIABILITIES.

Capital Stock	$2,500,000.00
Surplus	1,000,000.00
Undivided Profits	1,093,306.39
Premium Reserve Requirement	592,012.00
Claims in Process of Adjustment	289,725.63
Bills and Accounts Payable	212,603.08
	$5,687,647.10

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

G. M. SWENEY, being duly sworn, says: That he is Secretary of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain coporatins to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to Section 4 of said Act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

G. W. SWENEY.

Subscribed and sworn to before me this
10th day of April, 1901.
Wm. H. Bishof,
Notary Public,
New York County.
(Seal)

Exhibits C. 10, C. 11, C. 12.

EXHIBIT C. 10.

Exhibit C. 10 is a bond in all respects similar to Exhibit C. 9, except that same is numbered 84758, is in the sum of twelve thousand five hundred dollars, refers to Section 3 instead of Section 1 of the Wakefield Sewerage System, and has cancelled U. S. Revenue Stamps amounting to one dollar twelve and one-half cents.

EXHIBIT C. 11.

Exhibit C. 11 is a bond in all respects similar to Exhibit C. 9, except that same is numbered 84759, is in the sum of ten thousand dollars, refers to Section 2 of the Wakefield Sewerage System, and has cancelled U. S. Revenue Stamps amounting to one dollar.

EXHIBIT C. 12.

Form C. 390-5,000-6-1900.

Contract No.....

Limit of Liability, $75,000.

Premium Rate.....%

AMERICAN SURETY COMPANY OF NEW YORK

Capital, $2,500,000

General Contract of Indemity.

WHEREAS, D. F. Minahan, James Conway and Wm. Hanna, or some one or more of us, hereinafter called the principals have required and may hereafter require suretyship upon certain obligations, known as "Sureties Consents," "Sureties Guarantees," "Sureties Agreements," "Guarantees on Bids," "Bidders

Bonds," and "Contract Bonds," or otherwise, and have applied and will apply to the AMERICAN SURETY COMPANY OF NEW YORK hereinafter called the Surety to execute such instruments, as surety.

THEREFORE, we do hereby jointly and severally undertake and agree:

FIRST: That the principals, commencing on the date of the execution of each such obligation and thereafter on the anniversary thereof, will pay the Surety in advance, a premium or charge of five dollars ($5) for each such "Sureties Consent," "Sureties Guarantee," "Sureties Agreement," "Guarantee on Bids," "Bidders Bond," or similar obligation, and otherwise in advance an annual premium or charge of one per cent of the amount of every such "Contract Bond," "Sureties Consent," "Sureties Guarantee," "Sureties Agreement," "Guarantee on Bids," "Bidders Bond," or similar obligation which shall operate as a bond or obligation for the performance of the contract therein referred to. Such premiums to be paid in each instance, until the Surety shall be discharged and released from any and all responsibility upon such obligations and until the principals shall deliver to said Surety, at its office in the city of New York, competent written evidence of such discharge, that the amount to be paid said Surety, for executing any one of such obligations shall not, however, for any one year, or fraction thereof, be less than $10, when such obligation shall be or shall operate as a bond or obligation for the performance of the contract therein referred to.

SECOND: That the principals will perform all the conditions of each of said obligations on the part of the principals to be performed, and will

Exhibit C. 12.

at all times indemnify and save the Surety harmless from and against every claim, demand, liability, cost, charge, expense, suit, order, judgment and adjudication whatsoever and will place the Surety in funds to meet every such claim, demand, liability, cost, charge, expense, suit, order or adjudication against it by reason of any such obligation before it shall be required to pay thereunder.

THIRD. That upon the making of any demand, or the giving of any notice, or the institution of any proceeding, preliminary to determining or fixing any liability which the Surety may be called upon to discharge by reason of any such obligation, the principals will immediately notify the Surety thereof in writing at its said office.

FOURTH. That in the event of the principals requesting the Surety to prosecute or defend or appear or take part in any suit, action, proceeding, appeal, or writ of error, the principals will, on making such request place the Surety in possession of funds or collateral security, approved by the Surety, sufficient to defray any costs, charges and expenses which the Surety may incur in so doing, and to discharge any liability, order, judgment or adjudication which may result in consequence of the Surety so doing, or of its suretyship upon any such obligation.

FIFTH. That the principals will, on request of the Surety, procure the discharge of the Surety from any and all such obligation and all liability by reason thereof.

SIXTH. That the Surety shall, at its option have and may exercise in the name of the principals or otherwise, any and all rights and remedies which the principals have or may have in

Exhibit C. 12.

connection with any of the matters arising out of or connected with any of the matters out of which any such suretyship obligation arises; and the Surety shall have, at any time, the right to be discharged from liability for further default of the principals on any of such obligations, and to require the principals to account and give new sureties.

SEVENTH. That the voucher or other evidence of payment by the Surety in discharge of any liability for which the Surety is or may be liable by reason of any such obligation shall be *prima facie* evidence of such payment and the propriety thereof, and of the principals liability therefor to the Surety.

EIGHTH. That this agreement shall not, nor shall acceptance by the Surety of payment for its suretyship, nor agreement to accept, nor acceptance by it at any time of other security, in any way abridge, defer or limit its right to be subrogated to any right or remedy, or limit or abridge any right or remedy which the Surety otherwise might or may have, acquire, exercise or enforce, and it shall have every right and remedy which an individual Surety acting without compensation would have.

NINTH. That the Surety also looks to and relies upon the property of the principals and the income and earnings thereof, and shall at all times have the right to rely upon, look to and follow and recover out of the property which the principals now have or may hereafter have, and the income and earnings thereof, for anything due or to become due the Surety, under this agreement; such suretyship in each instance being by the Surety entered into for the special benefit of the principals and the special benefit

Exhibit C. 12.

and protection of the property of the principals, their income and earnings.

TENTH. That this agreement shall cover all obligations heretofore or hereafter issued for us or either of us or heretofore issued for the firm of Minahan and Costa, and the principals do hereby stipulate that the Surety may release, and it is hereby requested to release Antonio Costa and L. T. Fell from all liability or responsibility to it by reason of any such obligations.

IN WITNESS WHEREOF, we have caused these present to be signed and sealed this 26th day of June, 1901.

DANIEL F. MINAHAN (Seal)
JAMES CONWAY (Seal)
WILLIAM HANNA (Seal)

Fifty-cent stamp cancelled.

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

On this 26th day of June, 1901, before me personally came Daniel F. Minahan, James Conway, William Hanna, to me known and known to me to be the persons described in and who executed the foregoing instrument and they thereupon severally acknowledged to me that they executed the same.

(Seal) FRANK I. TIERNEY,
Notary Public, New York County.

Exhibit C. 13.

EXHIBIT C. 13.

AMERICAN SURETY COMPANY
OF NEW YORK

Capital $2,500,000

Application of a Co-Partnership for Bond of Suretyship under a General Contract.

State..... Agency.....
A. No.....
Contract No .....
Amount $.....
Premium ..... %

Application is hereby made to the American Surety Company of New York for the execution of bonds of suretyship for us as principals or upon our request under a general contract of indemnity.

1. State name of firm James Conway
   William Hanna
2. State nature of your business—Contractings
3. State location of its principal office
4. State other states, territories and countries in which it transacts business
5. State names and residences of partners in full:
   William Hanna
   Residence Sherman Ave. E. Newark.
   Residence
   James Conway
   Residence 491 Central Ave.
   Residence Newark
6. At what office of the American Surety Company of New York will application be made for bonds?

Exhibit C. 13.

7. Has the said firm or any firm or individual to which it is a successor, or any member of said firm, ever compromised with its or his creditors or become bankrupt, or in any other way been discharged from payment of its or his debts otherwise than by payment thereof in full? If so, state details thereof in full in confidential letter to be annexed.

This application is for the purpose of inducing the American Surety Co. of N. Y. to accept us as Indemnitors on Bonds of Dan'l F. Minahan of Orange, N. J.

ASSETS.

Mr. Conway.

Real Estate as per Schedule A-1. (Schedule A-1 should be prepared and annexed and should describe in detail each piece of real estate owned. State its cost price, its present value, and the nature and amount of encumbrances thereon. The amount should be here entered at its present value without deduction for encumbrances, the amount of such encumbrances being included in the statement of liabilities contra.)	40700
Cash on hand and in bank	1000
Stocks, bonds and similar securities as per Schedule B-1. (Schedule B-1 should be prepared and annexed showing in detail the stocks, bonds and securities owned.)	15000
Notes and accounts not otherwise included herein secured by lien on real estate.	

Exhibit C. 13.

Notes and accounts not otherwise included herein secured by collateral.
Notes and accounts unsecured not otherwise included herein.
Interest in foregoing business.
Interest in other businesses as follows:

Total Assets..... 56700.00

LIABILITIES.

Debts secured by lien on real estate as per Schedule A-1.
Debts, including notes, secured by collateral.
Debts due the United States.
Debts due any state, county or municipality. NOTHING.
Debts due to laborers or employees.
Debts, including notes, unsecured and not yet due.
Debts, including notes, unsecured and past due.

Total Liabilities .....
Surplus 56700

Total 56700

ASSETS.

Mr. Hanna.

Real Estate as per Schedule A-2 (Schedule A-2 should be prepared and annexed and should describe in detail each piece of real estate owned. State its cost price, its present value, and the nature and amount of encumbrances thereon. The amount should be here entered at its present value without deduction for encumbrances, the amount of such en-

Exhibit C. 13.

	cumbrances being included in the statement of liabilities contra.)	26700
	Cash on hand and in bank.	1000
	Stocks, bonds and similar securities as per Schedule B-2.	
	(Schedule B-2 should be prepared and annexed, showing in detail the stocks, bonds and securities held.)	
	Notes and accounts not otherwise included herein secured by lien on real estate.	2000
	Notes and accounts not otherwise included herein secured by collateral.	
	Notes and accounts unsecured not otherwise included herein.	
	Interest in foregoing business.	
	Interest in other businesses as follows:	
	Conway Contracting Co.	4900
	Total Assets.....	34600
	LIABILITIES.	
	Debts secured by lien on real estate as per Schedule A-2.	3200
	Debts, including notes, secured by collateral.	
	Debts due the United States.	
	Debts due any state, county or municipality.	
	Debts due to laborers or employees.	
	Debts, including notes, unsecured and not yet due.	
	Debts, including notes, unsecured and past due.	
	Total Liabilities.....	3200
	Surplus	31400
	Total	34600

Exhibit C. 13.

The undersigned, the members of the foregoing firm, hereby certify that each statement hereinbefore contained is true, and that this statement is made for the purpose of inducing the American Surety Company of New York, to execute certain bonds or undertakings on behalf of Daniel F. Minahan firm without demanding collateral security to the full amount thereof. Dated, June 24, 1901.

WILLIAM HANNA
JAMES CONWAY

Schedule A-1

AMERICAN SURETY COMPANY
OF NEW YORK

H. D. Lyman, President

LOCAL BOARD

Thomas W. Crooks, Res. Vice-Prest.,
Frederick Frelinghuysen,
Benjamin Atha,
George R. Gray,
John R. Hardin.

Jay Ten Eyck, Counsel,
John F. Clark, Agent & Res. Asst. Sec.,
Telephone 415. 804 Broad Street,
Newark, N. J.

Cabinet St. JAMES CONWAY.

1 Block Bergen to Camden St.
Store etc. & Tenements, Newark. $27,000.
Cor. Lafayette & Madison, Newark 5,000.
21 Arlington St., Newark..... 2,500.
2 Lots First St. near Ogden, Newark 1,200.
Cor. 11th Ave & 6th St., Newark 5,000.
Central Ave., Warren St.

$40,700

Exhibit C. 13.

Schedule B-1

AMERICAN SURETY COMPANY
OF NEW YORK

H. D. Lyman, President

LOCAL BOARD

Thomas W. Crooks, Res. Vice-Prest.,
Frederick Frelinghuysen,
Benjamin Atha,
George R. Gray,
John R. Hardin.

Jay Ten Eyck, Counsel,
John F. Clark, Agent & Res. Asst. Sec.,
Telephone 415. 804 Broad Street,
Newark, N. J.

JAMES CONWAY,
Paid up worth

Conway Contracting Co.	5000
Mortgages	10000
	$15000

Schedule A-2

AMERICAN SURETY COMPANY
OF NEW YORK

H. D. Lyman, President

LOCAL BOARD

Thomas W. Crooks, Res. Vice-Prest.,
Frederick Frelinghuysen,
Benjamin Atha,
George R. Gray,
John R. Hardin.

Jay Ten Eyck, Counsel,
John F. Clark, Agent & Res. Asst. Sec.,
Telephone 415. 804 Broad Street,
Newark, N. J.

WILLIAM HANNA,

Exhibit C. 13.

No. 1-8 Sherman Ave., E. Newark, N. J.	
No mortgage—value	16,000.
38-40 Central Ave., E. Newark, N. J.	
Mortgage 2000—value	5,000.
Sheridan Ave., Kearney, N. J.	
Dwelling & machine Shop, value	3,500.
Mortgage	1,200.
2 Lots Maple St., Kearney, N. J.	1,000.
	26,700.

Schedule B-2

AMERICAN SURETY COMPANY
OF NEW YORK

H. D. Lyman, President

LOCAL BOARD

Thomas W. Crooks, Res. Vice-Prest.,
Frederick Frelinghuysen,
Benjamin Atha,
George R. Gray,
John R. Hardin.

Jay Ten Eyck, Counsel,
John F. Clark, Agent & Res. Asst. Sec.,
Telephone 415. 804 Broad Street,
Newark, N. J.

WILLIAM HANNA,

Conway Contracting Co., 49 shares	4,900
25 shares Peoples Building & Loan Ass'n, Harrison, N. J.	300
Mortgages	3,000
	8,200

Exhibit C. 14.

EXHIBIT C. 14.

American Surety Company vs. William F. Conway and others.	Abstract of Real Estate owned by James Conway on January 22, 1902; also two additional tracts purchased in 1905; also three additional tracts owned by John Conway who died intestate in 1873, James Conway being one of his heirs.

L-29-305.

Mayor and Common Council of City of Newark, to James Conway.	Dated October 25, 1895.

Conveys premises in the City of Newark.

Tract A.
Pages 382 and 383.

First Parcel: East side of First Street 422 feet northeasterly from Sussex Avenue; (1) northeasterly along same 41 and 33/100 feet; (2) southeasterly 100 feet; (3) southwesterly parallel with first course 41 and 33/100 feet; (4) parallel to second course 100 feet to First Street and beginning. Being lot 23, block 1882 on Block Maps of City of Newark.

Pages 390, 391 and 394.

Second Parcel: Seventh Tract in Bill.

Page 382.

Third Parcel: First Tract in Bill.

Tract B.
Pages 386, 387, 388, 394 and 395.

Fourth Parcel: Beginning westerly corner of lot conveyed by Richard Miller and wife to Simon Passmore, July 1, 1833, said beginning point being in southeasterly line of Catharine

Exhibit C. 14.

Street; (1) Along line of lot so conveyed a southerly course 79 feet to line of Michael Corrigan's land; (2) along line of Michael Corrigan and land of Morris Fitzgerald, a southwesterly course 16 feet; (3) northwesterly 79 feet to Catharine Street; (4) along Catharine Street a northerly course 16 feet to beginning. Being lot 10, Block 75, map of Report No. 23 of Commissioners of Adjustment.

Fifth Parcel: Eleventh Tract in Bill. Page 382.

T-20-552.

John H. Kase and Mary R. Kase, his wife,
to
James Conway.
} Dated July 2, 1880.

Conveys premises in the City of Newark. Second Tract in Bill. Pages 384, 385, 388 and 394.

S-19-263.

David Young, Executor of Hugh Smith,
to
James Conway.
} Dated March 14, 1878.

Conveys premises in the City of Newark. Third Tract in Bill. Pages 384, 385, 388 and 394.

Exhibit C. 14.

F-13-14.

Hugh Smith and Bridget, his wife,
to
James Conway and Bridget, his wife.
} Dated October 30, 1866.

Conveys premises in the City of Newark.

Beginning at the southerly line of Cabinet Street; 50 feet east of Camden Street; (1) along Cabinet southeasterly fifty feet; (2) southwesterly seventy-five feet; (3) northwesterly fifty feet; (4) northeasterly seventy-five feet to Cabinet Street and beginning.

Fourth Tract in Bill of Complaint is a portion of this.

Pages 388, 389, 390 and 394.

(Note: The description of the fourth tract in bill of complaint is as follows:

Beginning in the southerly line of Cabinet Street at a distance of fifty-four feet six inches easterly from easterly line of Camden Street; thence (1) along line of Cabinet Street south sixty-two degrees thirty minutes East forty-five feet six inches; thence (2) South twenty-seven degrees thirty minutes West seventy-five feet; thence (3) North sixty-two degrees thirty minutes West forty-five feet six inches; thence (4) North twenty-seven degrees thirty minutes East seventy-five feet to line of Cabinet Street and place of beginning.

This description is taken from First Tract in F. 45-384 infra.)

Exhibit C. 14.

G-16-192.

William Silvey, Jr., and Isabella H., his wife,
to
James Conway.

Dated February 21, 1872.

Conveys premises in the City of Newark. Fifth Tract in Bill.

Pages 386. 387, 389, 390 and 394.

V-24-562.

Bernard (Barney) McCormick and Mary E., his wife,
to
James Conway.

Dated July 29, 1889.

Conveys premises in the City of Newark. Sixth Tract in Bill.

Pages 390, 391 and 394.

L-29-372.

Mayor and Common Council of the City of Newark,
to
James Conway.

Dated November 12, 1895.

Conveys premises in the City of Newark. Eighth Tract in Bill.

Pages 390, 391 and 394.

Exhibit C. 14.

F-31-480.

Charles M. Kase and Emma, his wife, to James Conway. — Dated February 1, 1898.

Pages 390, 393 and 394.

Conveys premises in the City of Newark. Ninth Tract in Bill.

H-34-245.

Charles M. Kase and Emma, his wife, to James Conway. — Dated April 25, 1901.

Conveys premises in the City of Newark.

Tenth Tract in Bill.

Pages 390, 393 and 394.

Beginning at a point in the northerly line of Central Avenue distant twenty-five feet westerly from the northwesterly corner of Central Avenue and North Fifth Street, as the same are laid down on the map hereinafter mentioned; thence (1) westerly along northerly line of Central Avenue twenty-five feet to southeasterly corner of lot 4 on map (hereinafter mentioned); thence (2) northerly along easterly line of lot 4 one hundred and four and fifty-six one-hundredths feet; thence (3) south fifty-six degrees twelve minutes east twenty-four and fifty-eight one-hundredths feet to northwesterly corner of lot No. 6; thence (4) southerly along westerly line of lot 6 one hundred feet to Central Avenue

and beginning. Being lot No. 5 on "Map of property of John H. Kase, deceased, Charles M. Kase, Admr."

M-39-263.

Charles M. Kase and Emma A. Kase, his wife,
to
James Conway.
Dated December 26, 1905.

Conveys premises in the City of Newark. Twelfth Tract in Bill.

Pages 392, 393 and 394.

O-17-96.

Hugh Smith and wife,
to
James Conway and Bridget Conway, his wife.
Dated May 1, 1873.

Conveys premises in the City of Newark.

Beginning at the intersection of easterly line of Camden with southerly line of Cabinet; (1) easterly along line of Cabinet fifty feet; (2) south parallel with Camden seventy-five feet; (3) westerly parallel with Cabinet fifty feet to Camden; (4) northerly along Camden seventy-five feet to beginning.

Tract C. Pages 388 and 389.

Exhibit C. 14.

G-34-157.

Mayor and Common Council of the City of Newark, to James Conway.	Dated April 22, 1901.

Conveys premises in the City of Newark.

Tract D. Page 386.

Beginning at the southerly line of Kinney Street twenty feet from southwesterly corner of Kinney and Jefferson; (1) south seventy-seven feet more or less to the line of lot sold by William A. Howell to one Sobasky; (2) west twenty feet to line of lot sold by said Howell and wife to Charles Klein; (3) along said line north seventy-seven feet more or less to line of said Kinney Street; (4) along line of said street twenty feet to beginning.

H-39-266.

Wellington Campbell to James Conway.	Dated October 23, 1905.

Conveys premises in the City of Newark.

Tract E. Page 392.

Beginning at the southwest corner of North Sixth Street and Second Avenue; (1) southerly along west line of North Sixth Street one hundred and thirty-five feet; (2) westerly at right angles to North Sixth Street one hundred feet; (3) northerly parallel with North Sixth Street thirty-five feet; (4) easterly parallel with Second Avenue twenty-five feet to line of lot 37; (5) northerly along line of lot 37 and at right angles to Second Avenue one hundred feet to Second Avenue (6) easterly along south line of Second

Exhibit C. 14.

Avenue seventy-five feet to beginning. Being lots 34, 35, 36 and 37, Block F on map "The property of Peter Campbell, Esq., situate in City of Newark, New Jersey, adjoining the proposed part of the City."

S-31-388.

Mayor and Common Council of the City of Newark,
to
James Conway.
} Dated October 13, 1896.

Conveys premises in the City of Newark.

Beginning at the northeasterly corner of New York Avenue and Garrison Street; (1) northwesterly along New York Avenue forty-four and ninety one-hundredths feet; (2) at right angles to New York Avenue to line of lot No. 32, Block 1006; (3) along same southeasterly to a point in line of Garrison Street two and fifty one-hundredths feet northeasterly from corner of New York Avenue; (4) southwesterly two and fifty one-hundredths feet to beginning. Being lot 35, Block 1006 on map annexed to Report No. 30 of Commissioners of Adjustment.

Tract F. (The only tract retained by Jas. Conway in Jan., 1902, with the exception of an interest in G. H. and I.)

Page 396.

Tracts G, H and *I* were the property of John Conway, who died intestate Dec. 13, 1873. James Conway as one of the heirs of John Conway had an interest in these tracts. For the descriptions of these tracts see deed M. 39-561 infra and the deed X.41-16 infra.

Pages 396 and 397.

Exhibit C. 14.

FIRST AND ELEVENTH TRACTS AND TRACT A.

Y-34-389.

WARRANTY DEED.

James Conway and Bridget D. Conway, his wife,	Dated January 28, 1902.
	Ack'd February 1, 1902.
to	Rec'd February 3, 1902.
Annie L. Conway.	Cons. $1. and other val. Cons.

Conveys first, third and fifth parceels in L-29-305; namely, *Tracts A, one and eleven.*

A-46-481.

Annie L. Conway	Dated November 3, 1909.
	Ack'd November 26, 1909.
to	Rec'd November 27, 1909.
James H. Monahan.	Cons. $1. and other val. con.

Conveys *Tract A;* that is, First Parcel in L-29-305.

Exhibit C. 14.

N-51-407.

SHERIFF'S DEED.

John F. Monahan, Sheriff of Essex County, to William F. Conway.	Dated Oct. 2, 1912. Proved Oct. 8, 1912. Rec'd Oct. 9, 1912. Cons. $3025. Hab. in fee.

Conveys *Tract A;* namely, First Parcel in L-29-305.

Fi. Fa. dated June 6, 1912, from Court of Chancery in pursuance of decree therein May 21, 1912, in cause between "Public Building & Loan Association" of Newark, a corporation, complainant, and James H. Monahan and Marie Monahan, his wife, Annie L. Conway, The W. T. Crane Carriage Hardware Co. and Gerardo Avallone, defendants, Book D. 9 of Executions, page 493. To pay to complainant $2856.78 with interest from May 14, 1912; to Annie L. Conway $670.70 with interest May 14, 1912; to pay to Gerardo Avallone $447.30 with interest from May 14, 1912, and costs. Sale July 23, 1912.

Being same premises conveyed to party of the first part by Annie L. Conway by warranty deed bearing even date herewith and not yet recorded, but delivered simultaneously herewith.

Exhibit C. 14.

SECOND AND THIRD TRACTS.

Y-34-385.

B. & S. DEED.

COV. VS. GRANTORS.

James Conway and Bridget D. Conway, his wife, to James Dolan.	Dated January 28, 1902. Ack'd February 1, 1902. Rec'd February 3, 1902. Cons. $1. and other val. cons.

Conveys *Second* and *Third Tracts;* that is, T-20-552 and S-19-263.

Y-34-387.

B. & S. DEED.

COV. VS. GRANTORS.

James Dolan and Ellen, his wife, to Bridget D. Conway and others.	Dated January 28, 1902. Ack'd February 1, 1902. Rec'd February 3, 1902. Cons. $1. and other val. cons.

Conveys *Second* and *Third Tracts;* that is, T-20-552 and S-19-263 to Bridget D. Conway for life, and after her death to Mary L. Conway, Helen D. Conway and William F. Conway in fee.

Exhibit C. 14.

B-38-75.

QUITCLAIM DEED.

Helen D. Conway to Bridget Conway.	Dated October 1, 1904. Ack'd October 15, 1904. Rec'd October 15, 1904. Cons. $1. and other val. cons.

Conveys *Second* and *Third Tracts;* that is, T-20-552 and S-19-263.

A-46-249.

WARRANTY DEED.

Mary L. Mason (formerly Conway) and James L. Mason, her husband, William F. Conway, Bridget D. Conway and James Conway, her husband, to David Young.	Dated October 4, 1909. Ack'd October 13, 1909. Rec'd October 15, 1909. Cons. $1. and other val. Cons.

Conveys *Second* and *Third Tracts;* that is, T-20-552 and S-19-263.

Exhibit C. 14.

FIFTH TRACT AND TRACTS B AND D.

Y-34-394.

WARRANTY DEED.

James Conway and Bridget D. Conway, his wife,	Dated January 28, 1902.
to	Ack'd February 1, 1902.
Helen D. Conway.	Rec'd February 3, 1902.
	Cons. $1. and other val. cons.

Conveys *Fifth Tract;* that is, G-16-192, and *Tract B;* that is, fourth parcel in L-29-305, and *Tract D;* that is, G-34-157.

T-37-131.

Helen D. Conway	Dated July 1, 1904.
	Ack'd July 6, 1904.
to	Rec'd July 7, 1904.
	Cons. $1. and other
Domenico Falaguerra.	val. cons.

Conveys *Tract D;* that is, G-34-157.

Exhibit C. 14.

B-38-77.

B. & S. DEED.

COV. VS. GRANTORS.

Helen D. Conway to Bridget D. Conway, wife of James Conway.	Dated October 1, 1904. Ack'd October 15, 1904. Rec'd October 15, 1904. Cons. $1. and other val. cons.

Conveys *Fifth Tract;* that is, G-16-192, and *Tract B;* that is, fourth parcel in L-29-305.

A-46-248.

Bridget D. Conway and James Conway, her husband, to David Young.	Dated October 4, 1909. Ack'd Oct. 13, 1909. Rec'd Oct. 15, 1909. Cons. $1. and other val. cons.

Conveys *Tract B;* that is, fourth parcel in L-29-305.

Exhibit C. 14.

SECOND AND THIRD TRACTS AND TRACT B.

U-50-440.

WARRANTY DEED.

David Young and Mary Ella Young, his wife, to William F. Conway.	Dated May 20, 1912. Ack'd May 21, 1912. Rec'd May 22, 1912. Cons. $1. and other good and valuable considerations. Hab. in fee.

Conveys three parcels as follows:

First Parcel: *Tract B;* that is, fourth parcel in L-29-305.

Second Parcel: *Second Tract;* that is, T-20-552.

Third Parcel: *Third Tract;* that is, S-19-263.

FOURTH TRACT AND TRACT C.

X-34-526.

WARRANTY DEED.

James Conway and Bridget D. Conway, his wife, to Mary L. Conway.	Dated January 28, 1902. Ack'd February 1, 1902. Rec'd February 3, 1902 Cons. $1. and other val. cons.

Conveys all of F-13-14 in which our *fourth tract* is included; and *Tract C;* that is, O-17-96.

Exhibit C. 14.

U-38-279.

Mary L. Conway to Louis Schutzman.	Dated May 18, 1905. Ack'd May 29, 1905. Rec'd June 5, 1905. Cons. $1. and other val. cons.

Conveys property described in a single tract. This property is *Tract C;* that is, O-17-96; also an adjoining strip 4½ feet on Cabinet St. 75 ft. deep, part of F-13-14 and adjoining our *fourth tract.*

FOURTH AND FIFTH TRACTS.

F-45-384.

WARRANTY DEED.

Mary L. Mason and James L. Mason, her husband, and Bridget D. Conway and James, her husband, to John F. Conroy.	Dated May 26, 1909. Ack'd May 26, 1909. Rec'd May 29, 1909. Cons. $1.00 Hab. in fee.

Conveys *fourth tract* by description given at bottom of page 376, *supra;* part of F-13-14, and *fifth tract;* that is G-16-192.

Exhibit C. 14.

U-50-472.

WARRANTY DEED.

John F. Conroy and Margaret E. Conroy, his wife, to William F. Conway.	Dated May 22, 1912. Ack'd May 28, 1912. Rec'd June 3, 1912. Cons. $1. and other good and valuable considerations. Hab. in fee.

Conveys a number of tracts, among them the following:

Fourth Tract; that is, F-13-14 and

Fifth Tract; that is, G-16-192.

SIXTH, SEVENTH, EIGHTH, NINTH AND TENTH TRACTS.

Y-34-391. Warranty Deed.

James Conway and Bridget D. Conway, his wife, to William F. Conway.	Dated January 22, 1902. Ack'd February 1, 1902. Rec'd February 3, 1902. Cons. $1. and other val. cons.

Conveys *Sixth Tract;* that is, V-24-562, *Seventh Tract;* that is Second Parcel in L-29-305, *Eighth Tract;* that is, L-29-372, *Ninth Tract;* that is, F-31-480, and *Tenth Tract;* that is H-34-245.

Exhibit C. 14.

SIXTH, SEVENTH AND EIGHTH TRACTS.

F-45-411. Warranty Deed.

William F. Conway to Edward B. Reiley.	Dated June 1, 1909. Ack'd June 1, 1909. Rec'd June 4, 1909. Cons. $1. and other val. cons.

Conveys *Sixth Tract;* that is, V-24-562, *Seventh Tract;* that is, Second Parcel in L-29-305, and *Eighth Tract;* that is, L-29-372.

F-51-236. Warranty Deed.

Edward B. Reiley and Bessie A. Reiley, his wife, to William F. Conway.	Dated May 24, 1912. Ack'd June 1, 1912. Rec'd June 6, 1912. Cons. $1.00 and other good and valuable considerations. Hab. in fee.

Conveys *Sixth Tract;* that is, V-24-562, *Seventh Tract;* that is, Second Parcel in L-29-305; and *Eighth Tract;* that is, L-29-372.

Exhibit C. 14.

TWELFTH TRACT AND TRACT E.

A-40-145

B. & S. Deed.
Cov. vs. Grantors.

James Conway and Bridget D. Conway, his wife, to William F. Conway and Mary L. Conway.	Dated March 26, 1906. Ack'd March 28, 1906. Rec'd March 31, 1906. Cons. $1. and other val. cons.

Conveys *Twelfth Tract;* that is, M-39-263, and *Tract E;* that is, H-39-266.

F-46-206.

William F. Conway, Mary L. Mason and husband, to Joseph Palmieri.	Dated November 4, 1909. Ack'd November 5, 1909. Rec'd November 18, 1909. Cons. $1. and other val. cons.

Conveys *Tract E;* that is, H-39-266.

Exhibit C. 14.

NINTH, TENTH AND TWELFTH TRACTS.

F-45-595. Warranty Deed.

William F. Conway (single), Mary L. Mason and James L. Mason, her husband, to John F. McGrath.	Dated June 28, 1909. Ack'd June 28, 1909. Rec'd July 3, 1909. Cons. $1. and other val. cons.

Conveys *Ninth Tract;* that is, F-31-480; *Tenth Tract;* that is, H-34-245, and *Twelfth Tract;* that is, M-39-263.

V-50-520 Warranty Deed.

John F. McGrath and Frances A. McGrath, his wife. to William F. Conway.	Dated May 24, 1912. Ack'd May 31, 1912. Rec'd June 9, 1912. Cons. $1.00 and other good and valuable considerations. Hab. in fee.

Conveys *Ninth Tract;* that is, F-31-480, *Tenth Tract;* that is, H-34-245, and *Twelfth Tract;* that is, M-39-263.

Exhibit C. 14.

SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH AND TWELFTH TRACTS AND TRACT B. I-51-160.

I-51-160. Warranty Deed.

William F. Conway, single, to Isabelle E. McGrath, of the City of New York, County of Kings.	Dated June 27, 1912. Ack'd June 29, 1912. Rec'd July 1, 1912. Cons. In consideration of marriage and $1.00. Hab. in fee.

Conveys eleven parcels:

First Parcel: *Tract B;* that is, fourth parcel in L-29-305.

Second Parcel: *Second Tract;* that is, T-20-552.

Third Parcel: *Third Tract;* that is, S-19-263.

Recites. Same premises conveyed to said William F. Conway by David Young and Mary Ella Young, his wife, by deed dated May 20, 1912, and recorded May 22, 1912.

Fourth Parcel: *Fourth Tract;* that is, part of F-13-14.

Fifth Parcel: *Fifth Tract;* that is, G-16-192.

Recites. Same premises conveyed to said William F. Conway by John F. Conroy and wife by deed dated May 22, 1912, recorded June 3, 1912.

Sixth Parcel: *Sixth Tract;* that is, V-24-562.

Seventh Parcel: *Seventh Tract;* that is, second parcel in L-29-305.

Exhibit C. 14.

Eighth Parcel: *Eighth Tract;* that is, L-29-372.

Recites. Same premises conveyed to William F. Conway by Edward B. Reiley and Bessie A. Reiley, his wife, by deed dated May 24, 1912, recorded in Essex County June 6, 1912.

Ninth Parcel: *Ninth Tract,* that is, F-31-480.

Tenth Parcel: *Tenth Tract;* that is, H-34-245.

Eleventh Parcel: *Twelfth Tract;* that is, M-39-263.

Recites. Same premises conveyed to said William F. Conway by John F. McGrath and Frances A. McGrath, his wife, by deed dated May 24, 1912, recorded June 7, 1912, in Essex Co.

TRACT B.

F-54-171. Warranty Deed.

Isabelle E. Conway and William F. Conway, her husband, of Newark, to The Mayor and Common Council of the City of Newark.	Dated March 12, 1914. Ack'd March 12, 1914. Rec'd March 16, 1914. Cons. $8700. Hab. in fee.

Conveys *Tract B;* that is, Fourth Parcel in L-29-305.

Exhibit C. 14.

TRACT F.

D-48-237.

James Conway to Alfred Schmidt and wife.	Dated November 3, 1910. Ack'd November 3, 1910. Rec'd November 7, 1910. Cons. $1. and other val. cons.

Conveys *Tract F;* that is, S-31-388.

TRACTS G, H AND I.

M-39-561 Quitclaim Deed.

James and Bridget Conway to Annie L. Conway.	Dated February 6, 1906. Ack'd February 8, 1906. Rec'd February 19, 1906. Cons. $1.00

Conveys premises in the City of Newark.

First Parcel; (that is, our *Tract G*): Fifty feet from northeast corner of Lock and Cabinet; (1) west parallel with Cabinet one hundred feet; (2) northerly at right angles to Cabinet twenty-five feet; (3) east parallel with first course one hundred feet; (4) parallel with second course twenty-five feet to beginning. Recites being same premises conveyed to John Conway by Silas Barber, et al., by deed K-11-107 and 108.

Exhibit C. 14.

Second Parcel; (that is, our *Tract H.*): West line of Lock street one hundred and forty feet three inches south from Warren; (1) along Lock south twenty-three feet eight inches to line of said Conway; (2) west along his line sixty-six feet; (3) north still along his line eleven feet ten inches; (4) still along his line west thirty-four feet nine and one-half inches; (5) north parallel with Lock street eleven feet ten inches; (6) east one hundred feet to beginning. Recites being the same premises conveyed to John Conway by Warren Searing, et al., by deed 1-11-53; said James Conway being one of the heirs of said John Conway, who died intestate in Newark, December 13, 1873.

X-41-16. Quitclaim Deed.

James Conway and Bridget, his wife, to Annie L. Conway.	Dated March 4, 1907. Ack'd March 4, 1907, before W. F. Conway. Rec'd April 6, 1907. Cons. $1. and other val. cons.

Conveys premises in the City of Newark.

Tract I: Beginning in the east line of Nuttman street, northwest corner of public school lot; (1) along the school lot east thirty-four feet more or less to Silas Barber; (2) along same north twenty-five feet; (3) along line of same east twenty-eight feet six inches more or less to center of well; (4) north eleven feet ten inches; (5) west sixty-one feet to Nuttman street; (6) along same south thirty-seven feet to beginning. Recites being same premises in deed recorded in A-10-511, excepting such part conveyed by John Conway to Aaron A. Price by deed recorded in Q-11-358.

Exhibit C. 15.

X-41-17. Warranty Deed.

Annie L. Conway, unmarried, to Peter Mancini of the City of Newark.	Dated April 1, 1907. Ack'd April 6, 1907. Rec'd April 6, 1907. Cons. $8500. Hab. in fee.

Conveys *Tract G;* that is, first parcel in M-39-561; *Tract H;* that is, second parcel in M-39-561, and *Tract I;* that is, X-41-16.

EXHIBIT C. 15.

March 27, 1903.

J. W. M.

84757-8-9: Minahan & Costa to the Township of Wakefield.

James Conway, Esq.,
491 Central Avenue,
Newark, N. J.

Dear Sir:

Herewith enclosed I hand you copy of process in the case of Town of Wakefield, Mass., against this company, served upon the Insurance Commissioner of the Commonwealth of Massachusetts on behalf of this company on March 25, 1903. Please take notice of the peniency of this action, the answer in which must be made on or before May 4, 1903. Kindly advise us before that date of your wishes in the matter and of any defence there may be the cause of action therein set forth, and if you wish come in and take part in the defence thereof and in all proceedings and the trial of the action, as you will

Exhibit C. 16.

be bound by any judgment which may be recovered therein.

Kindly acknowledge receipt, and oblige.

Yours very truly,

HENRY C. WILCOX,
Solicitor.

By J. W. MASON,
Assistant Solicitor.

L. B.

EXHIBIT C. 16.

(*Copy*)

COMMONWEALTH OF MASSACHUSETTS
Suffolk, ss:

To the American Surety Company of New York, a corporation duly established under the laws of the State of New York and having an usual place of business in Boston in said County of Suffolk, GREETING:

(L. S.)

We command you that you appear at our Superior Court to be holden at Boston within and for our County of Suffolk aforesaid, on the first Monday of May next; then and there to answer unto the town of Wakefield, a municipal corporation duly established by, within the County of Middlesex in said Commonwealth of Massachusetts in an action of contract which action the said plaintiff has commenced against you to be heard and tried at our said Court; and your goods or estate are attached to the value of forty thousand Dollars, for security to satisfy the judgment which the said plaintiff may recover upon the aforesaid trial. Fail not of appearance at your peril.

Exhibit C. 16.

WITNESS, ALBERT MASON, Esquire, at Boston, the twenty fourth day of March in the year of our Lord one thousand nine hundred and three.

(Signed) JOS. A. WILLARD,
Clerk.

From the office of M. E. S. Clemons,
15 Court Square, Boston.

COMMONWEALTH OF MASSACHUSETTS
Suffolk, ss:

To the Sheriffs of our Several Counties,
(L. S.) or their Deputies, GREETING:

WE COMMAND you to attach the goods or estate of the American Surety Company of New York, a corporation duly established under the laws of the State of New York and having an usual place of business in Boston in said County of Suffolk to the value of forty thousand dollars; and summon the said defendant (if it may be found in your precinct), to appear before our Justices of our Superior Court, to be holden at Boston, within and for our said County of Suffolk on the first Monday of May next; then and there in our said Court to answer unto the Town of Wakefield, a municipal corporation duly established by law, within the County of Middlesex in said Commonwealth of Massachusetts.

In an action of contract.

To the damage of the said plaintiff (as it says) the sum of forty thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Exhibit C. 17.

WITNESS, Albert Mason, Esquire, at Boston, the twenty-fourth day of March in the year of our Lord one thousand nine hundred and three.

JOS. A. WILLARD,

A true copy.

Attest:

ROBERT E. MAGUIRE,
Deputy Sheriff.

EXHIBIT C. 17.

C. R. B. May 26, 1911.

L. D. No. 15: The Township of Wakefield *vs.* American Surety Company of New York.

B-84757: $10,500: Minahan & Costa -to- Town of Wakefield. 4/10/01
B-84758: $12,500: " " " " " " " 4/10/01
B-84759: $10,000: " " " " " " " 4/10/01

E. F. Minahan, Esq., 81 High St., Orange, N. J.
James Conway, Esq., 491 Central Ave., Newark, N. J.
Conway Construction Co., 491 Central Ave., Newark, N. J.
William Hanna, Esq., Sherman Ave., E. Newark, N. J.

Dear Sirs:

I have just been advised that the Supreme Court of the State of Massachusetts has decided the above-entitled action in favor of the Town of Wakefield. Demand will undoubtedly be made upon this Company for payment of the judgment, the amount of which I do not know, but the same together with interest and costs will be something over $40,000. Please put this Company in funds to meet the demand when it is made, or if the same is not to be paid please

Exhibit C. 18.

advise me the reasons therefor. This is a matter which should have your immediate attention.

Yours very truly,

HENRY C. WILLCOX,
General Solicitor.

CBE.

EXHIBIT C. 18.

C. R. B. June 1, 1911.

L. D. No. 15: The Township of Wakefield *vs.* American Surety Company of New York.

B-84757: $10,500: Minahan & Costa -to- Town of Wakefield. 4/10/01
B-84758: $12,500: " " " " " " " 4/10/01
B-84759: $10,000: " " " " " " " 4/10/01

E. F. Minahan, Esq., 81 High St., Orange, N. J.
James Conway, Esq., 491 Central Ave., Newark, N. J.
Conway Construction Co., 491 Central Ave., Newark, N. J.
William Hanna, Esq., Sherman Ave., East Newark, N. J.

Gentlemen:

A few days ago I advised you that I had heard that the Supreme Court of the State of Massachusetts had decided the above-entitled action in favor of the Town of Wakefield. I am now in receipt of further advices, to the effect that judgments of affirmance have been entered. Three judgments, one on each count, were entered, instead of one judgment covering all. These three judgments, one on each count, were entered, in- The exact sum has not been furnished me. I understand that if the same are not paid on or before next Monday execution

Exhibit C. 19.

will issue. Please put this Company in funds to pay these judgments at once.

Very truly yours,

HENRY C. WILLCOX,
General Solicitor.

CBE.

EXHIBIT C. 19.

American Surety Company vs. William F. Conway and others.	Abstract of Newark City Assessments on real estate of James Conway.

FIRST TRACT.
Block 1952, Lot 15.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character	Amt of Assessm't	
ames Conway	508 4th St.	25'x100'	Land	$ 150.	
nnie F. Conway	508 N. 4th St.	25'x100'	Land		$ 300.

SECOND AND THIRD TRACTS.

(These two tracts together comprise Block 1851. Lots in this block are separately assessed as follows):

(1) Block 1851, Lot 11.

ames Conway	462-466 Warren St.	85' on each street	House & Lot	$ 4000.	
Wm. F. Conway	462-466 Warren St.	85' on each street	Land $ 3000.		
			Bldg. 3000.		$ 6000.

(2) Block 1851, Lots 7-10.

ames Conway	468-474 Warren St.	100'x65' average	House & Lot	$ 2500.	
Wm. F. Conway	468-474 Warren St.	100'x65' average	Land $ 3700.		
			Bldg. 1000.		$ 4700.

(3) Block 1851, Lot 6.

ames Conway	476 Warren St.	25'x94' average	H. & L.	$ 2800.	
Wm. F. Conway	476 Warren St.	25'x94' average	Land $ 1100.		
			Bldg. 3400.		$ 4500.
			Carried forward	$ 9450.	$15500.

Exhibit C. 19.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character		Amt of Assessm't	
		Brought forward			$ 9450.	$15500.
		(4) Block 1851, Lot 5.				
ames Conway	478 Warren St.	20′x99′	H. & L.		$ 1500.	
Vm. F. Conway	478 Warren St.	20′x94′ average	Land	$ 850.		
			Bldg.	1950.		$ 2800.
		(5) Block 1851, Lot 4.				
ames Conway	480 Warren St.	20′x60′	H. & L.		$ 1500.	
Vm. F. Conway	480 Warren St.	20′x75′average	Land	$ 750.		
			Bldg.	2050.		$ 2800.
		(6) Block 1851, Lot 3.				
ames Conway	480½ Warren St.	20′x60′ average	H. & L.		$ 1500.	
Vm. F. Conway	480½ Warren St.	20′x60′ average	Land	$ 700.		
			Bldg.	2100.		$ 2800.
		(7) Block 1851, Lot 1.				
mes Conway	482-484 Warren St.	61′ 6″ to a point	H. & L.		$ 3000.	
m. F. Conway	482-484 Warren St.	61′ on Warren St. 80′ on So. 7th St.	Land	$ 2200.		
			Bldg.	2400.		$ 4600.
		(8) Block 1851, Lots 16-20.				
mes Conway	483-491 Central Ave.	125′x75′	H. & L.		$ 7000.	
m. F. Conway	483-491 Central Ave.	125′ on Central Ave.x100′ On So. 7th St. Depth 75′	Land	$ 7300.		
			Bldg.	5000.		$12300.
		Carried forward			$23950.	$40800.

		Brought forward		$23950.	$40800.

FOURTH TRACT.
Block 1804, Lot 33.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character		Amt of Assessm't	
ames Conway	120-122 Cabinet St.	46′x75′	H. & L.		$ 1200.	
Vm. F. Conway	120-122 Cabinet St.	45′ 5″x75′	Land	$ 1200.		
			Bldg.	1000.		$ 2200.

FIFTH TRACT.

(Our tract is assessed in four lot numbers, as follows: 1, 2, 36 and 35.)

(1) Block 1804, Lot 1.

ames Conway	112 Cabinet St.	25′x50′	H. & L.		$ 800.	
Vm. F. Conway	112 Cabinet St.	50′ on Bergen St. x 25′ on Cabinet St.	Land	$ 600.		
			Bldg.	1200.		$ 1800.

(2) Block 1804, Lot 2.

ames Conway	114 Cabinet St.	25′x50′	H. & L.		$ 800.	
Vm. F. Conway	114 Cabinet St.	25′x50′	Land	$ 500.		
			Bldg.	700.		$ 1200.

(3) Block 1804, Lot 36.

ames Conway	116 Cabinet St.	25′x50′	H. & L.		$ 800.	
ohn F. Conroy	116 Cabinet St.	25′x50′	Land	$ 500.		
			Bldg.	700.		$ 1200.
		Carried forward			$27550.	$47200.

			Brought forward		$27550.	$47200.

(4) Block 1804, Lot 35.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character		Amt of Assessm't	
ames Conway	118 Cabinet St.	25'x50'	H.& L.		$ 800.	
ohn F. Conroy	118 Cabinet St.	25'x50'	Land	$ 500.		
			Bldg.	700.		$ 1200.

SIXTH TRACT.

Block 1831, Lot 1.

mes Conway	2-12 So. 6th St.	125'x50', rear 70'	H. & L.		$ 1200.	
m. F. Conway	2-12 So. 6th St.	125' on So. 6th St. x 73' on Warren St.	Land	$ 2500.		
			Bldg.	400.		$ 2900

SEVENTH AND EIGHTH TRACTS.

Block 1831, Lots 40 & 41.

mes Conway	60 and 58 So. 6th St.	51' 3"x70'	H. & L.		$ 2000.	
m. F. Conway	60 and 58 So. 6th St.	70' on 11th Ave. x 52' on So. 6th Street	Land	$ 1350.		
			Bldg.	3650.		$ 5000.
			Carried forward		$31550.	$56300.

NINTH TRACT.
Block 1850, Lots 24 & 25.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character		Amt of Assessm't
Brought forward				$31550.	$56300.
(1) Block 1850, Lot 24.					
mes Conway	469 Central Ave.	32′ 11″ x 105′, rear 25′	Land	$ 900.	
hn T. McGrath	469 Central Ave.	32′x100′	Land		$ 2500.
(2) Block 1850, Lot 25.					
mes Conway	459-461 Warren St.	40′ 10″ x 80′ to a point	Land	$ 800.	
m. F. Conway	459-461 Warren St.	40′ x 80′ average	Land		$ 1500.

TENTH TRACT.
Block 1850, Lot 23.

state of John H. Kase	467 Central Ave.	25′ x 100′	Land	$ 700	
m. F. Conway	467 Central Ave.	25′ x 100′	Land		$ 1500.

ELEVENTH TRACT.
Block 924, Lot 61.

ames Conway	94 Pennington St.	30′ x 84′	Land	$ 300.	
nnie Conway	94 Pennington St.	30′ x 83′ average	Land		$ 600.
			(Total 1901)	$34250.	
			Carried forward		$62400.

TWELFTH TRACT.
Block 1850, Lot 20.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character		Amt of Assessm't	
			Brought forward			$62400.
			(1905)			
state of John H. Kase	10-12 5th St.	51′ 8″ x 98′, rear 58′	Land	$ 1000.		
			(1906)			
m. F. Conway, et al.	10-12 5th St.	51′ 8″ x 98′, rear 58′	Land	$ 1550.		
ichael F. Conway	10-12 No. 5th St.	52′ x 96′ average	Land			$ 1600.
			(Total 1912)			$64000.

TRACT A.
Block 1882, Lot 23.

mes Conway	141 1st St.	41′ 4″ x 100′	Land	$ 500.		

TRACT B.
Block 75, Lot 10.

mes Conway	21 Catharine St. (now Arlington St.)	15′ 10″ x 79′	H. & L.		$ 800.	
illiam F. Conway	21 Arlington St.	16′ x 79′	Land	1000.		
			Bldg.	800.		$ 1800.

TRACT C.
(This tract is assessed in three lot numbers as follows:)
(1) Block 1804, Lot 32.

nes Conway	124 Cabinet St.	18′ x 75′	H. & L.		$ 700.	

(2) Block 1804, Lot 31.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character	Amt of Assessm't
mes Conway	124½ Cabinet St.	18′ x 75′	H. & L.	$ 700.

(3) Block 1804, Lot 30.

mes Conway	126 Cabinet St.	18′ x 75′	H. & L.	$ 1000.

TRACT D.

Block 946, Lot 42.

mes Conway	255 E. Kinney St.	20′ x 77′	H. & L.	$ 700.

TRACT E.

(This tract is assessed in two sections as follows:)

(1) Block 1954, Lots 6-8.

ellington Campbell	290-294 Second Ave.	75′ x 100′	V. L.	$ 600.
mes Conway	290-294 Second Ave.	75′ x 100′	V. L.	$ 1000.

(2) Block 1954, Lot 9.

ellington Campbell	488-486 North Sixth St.	35′ x 100′	V. L.	$ 275.
illiam F. Conway	488-486 North Sixth St.	35′ x 100′	V. L.	$ 500.

TRACT F.
Block 1006, Lot 35.

To Whom Assessed	St. Nos. Assessed	Dimensions	Character	Amt of Assessm't
ames Conway	377-379 New York Ave.	42′ x 16′	V. L.	$ 100.

TRACT G.
Block 403, Lot 22.

state of John Conway	13 Wickliffe St. (formerly Lock St.)	25′ x 102′ 6″	H. & L.	$ 1500.
state of **James** Conway	13 Wickliffe St.	23′ 8″ x 103′ 2″	H. & L.	$ 2500.
eter Mancini	13 Wickliffe St.	25′ x 102′ 6″	H. & L.	$ 2300.

TRACTS H AND I.
Block 403, Lot 21.

state of John Conway	11 Wickliffe St. (formerly Lock St.)	23′ 8″ x 103′ 2″	H. & L.	$ 1500.
state of **James** Conway	11 Wickliffe St.	25′ x 128′	H. & L.	$ 2500.
eter Mancini	11 Wickliffe St.	23′ 8″ x 103′ 2″	H. & L.	$ 2300.

Exhibit C. 20.

EXHIBIT C. 20.

55-22

No. 1308 Newark, N. J., Sept. 13, 1915

The BROAD & MARKET NATIONAL BANK
of Newark, N. J.

Pay to the order of Wm. F. Conway Twelve
10 00/100 Dollars $12.00. Rent to Sept. 1, 1915.

CHARLES M. KOLB.

CHARLES H. KOLB, Plumber.

WM. F. CONWAY.

55-22

No. 1068 Newark, N. J., Oct. 16, 1915

The BROAD & MARKET NATIONAL BANK
of Newark, N. J.

Pay to the order of Wm. F. Conway, rent to
20 October 1st, Twelve 00/100 Dollars $12.00.

CHARLES H. KOLB.

CHARLES H. KOLB, Plumber.

WM. F. CONWAY.

55-22

CHARLES H. KOLB No. 861
Plumber

Newark, N. J., March 13, 1915.

Pay to the order of Wm. F. Conway $24.00/100
30 Twenty Four 00/100 Dollars.

To the Broad & Market
National Bank of Newark. Charles H. Kolb

WM. F. CONWAY.

40

Exhibit C. 20.

55-22

CHARLES H. KOLB No. 958.
Plumber

Newark, N. J., June 22, 1915

Pay to the order of Wm. F. Conway $12.70/100 Twelve 70/100 Dollars.

To the Broad & Market

National Bank of Newark Charles H. Kolb.

WM. F. CONWAY.

55-22

CHARLES H. KOLB No. 919
Plumber

Newark, N. J., May 8, 1915.

Pay to the order of Wm. F. Conway $4.00/100 Four 00/100 Dollars. To May 1st

To the Broad & Market

National Bank of Newark Charles H. Kolb.

WM. F. CONWAY.

Opinion of Supreme Court on Rule to Show Cause.

Filed January 2, 1914.

NEW JERSEY SUPREME COURT.

February T., 1913.

10

AMERICAN SURETY COMPANY, of New York,

vs.

JAMES CONWAY.

PLAINTIFF'S RULE TO SHOW CAUSE.

Argued before Gummere, Chief Justice, and
20 Justices Bergen and Kalisch.

For the rule, Pitney, Hardin & Skinner.

Contra, Robert H. McCarter and Ernest F. Egner.

Per Curiam.

The firm of Minahan & Costa entered into a series of contracts with the Town of Wakefield, Massachusetts, for the building of certain sections of the sewerage system of that town. The
30 plaintiff company guaranteed to the town the performance of these contracts by the firm and was itself secured against loss by a bond of indemnity made by Minahan, Costa and Lawrence T. Fell. Minahan and Costa assigned their contracts to the Conway Contracting Company, the stockholders of which corporation were the defendant Conway, his daughter, Minahan, one of the original contractors, and William Hanna. After the assignment of the
40 contracts a second indemnity bond was given

to the surety company executed by Minahan, Conway and Hanna. This latter bond provided, among other things that "this agreement shall cover all obligations heretofore or hereafter issued for us or either of us or heretofore issued for the firm of Minahan & Costa, and the principals do hereby stipulate that the surety may release, and it is hereby requested to release Antonio Costa and L. T. Fell from all liability or responsibility to it by reason of any such obligations." The Conway Contracting Company having failed to carry out the contracts with the Town of Wakefield in accordance with the provisions thereof, that municipality brought suit against the plaintiff company upon its guarantee and the company thereupon notified the defendant, Conway, and also Minahan and Hanna of the pendency of that suit. Conway attended at the trial thereof, *was represented there by counsel of his own selection* and testified as a witness. The trial resulted in a verdict in favor of the town and judgment was entered thereon. The plaintiff company then paid the judgment with costs and interest amounting to the sum of $45,439.11 and after calling upon Conway for payment and his refusal to comply brought suit against him upon the indemnity bond executed by him, Minahan and Hanna. The bond in suit is a joint and several one, and it is conceded that the plaintiff company was entitled to bring suit against Conway alone. The defense set up was that the consideration for the bond was the promise of the plaintiff company to release Costa and Lawrence T. Fell as indemnitors on the original bond given to the surety company and that this promise had never been performed by the company. The Court charged the jury that the

right of the plaintiff to recover against the defendant depended upon whether or not it had duly executed and delivered a written release of those two original indemnitors; that if it had their verdict should be for the plaintiff, but if not, then their verdict should be for the defendant. The jury on this instruction found for the defendant.

The plaintiff offered evidence to prove the execution of a written release to Costa and Fell and its delivery to either Minahan, Conway or Hanna at the time these gentlemen signed the bond in suit. Conway testified that no such release had in fact been delivered. Our examination of the proofs sent up with the rule satisfies us that the finding of the jury that no release had been delivered was against the preponderance of the evidence, and, if we considered the crucial point in the case to have been execution and delivery of the release *vel non*, we should feel compelled to set aside the verdict as contrary to the evidence. But in our opinion it was quite immaterial whether or not a formal release in writing was executed and delivered. It will be observed that there was no express agreement by the surety company to release either Costa or Fell from liability on the original bond of indemnity. The company did not execute the substituted bond but merely accepted it. The provision in the writing is in terms a consent to and a request for a release made by the obligors to the obligee and we think it very doubtful whether the mere acceptance of the defendants' obligation with this consent and request in it constitute an agreement to comply with the request. But assuming that it did, then in our judgment the acceptance of the bond by the plaintiff, in itself worked a release of

Costa and Fell without any other action on its part, for it operated as a substitution of new indemnitors in the place of the original ones; and consequently, upon the facts recited, the plaintiff's right of recovery against the defendant was complete.

The rule to show cause will be made absolute.

Opinion of Court of Errors and Appeals on Appeal from Supreme Court.

Filed Jan. 27, 1915.

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMERICAN SURETY COMPANY, of New York, *Plaintiff-Appellee,* *vs.* MARY L. MASON, Administratrix of James Conway, deceased, *Defendant-Appellant.*	*Opinion.* *On Appeal from Supreme Court.*

Argued July 1st, 1914.

Decided January 27, 1915.

When a written contract contains the whole agreement, parol evidence is not admissible, to engraft terms upon the written agreement.

Pitney, Hardin & Skinner for Plaintiff-Appellee.

McCarter & English for Defendant-Appellant.

The opinion of the Court was delivered by

BLACK, *J.*

The suit in this case was brought by the plaintiff against the defendant's intestate, on an indemnity bond given to the surety company, to recover money which the surety company paid on its bonds guaranteeing the Town of Wakefield, Massachusetts, performance of sewerage contracts. The plaintiff itself was secured

against loss by the bond of indemnity. The Town of Wakefield brought suit against the plaintiff company, upon its guarantee, in the courts of Massachusetts, recovering a judgment against it. The plaintiff company paid the judgment with costs and interest, and now brings this suit upon the indemnity bond, executed by James Conway, the defendant's intestate, and two others, Minahan and Hanna.

The case was tried in the Essex Circuit Court before Hon. Frederic Adams. At the first trial, the only issue submitted to the jury was whether a certain release, called for by the tenth clause of said bond of indemnity, permitting the surety to make such a release, had been executed and delivered by the plaintiff company; on that issue the jury found, that it had not and rendered a verdict for the defendant. On the plaintiff's rule to show cause, the verdict was set aside by the Supreme Court, on the ground that the verdict of the jury on that issue was against the weight of evidence. The Supreme Court also held, that it was immaterial whether or not a formal release in writing was executed and delivered. A verdict should have been directed for the plaintiff on the record, as then presented. Meanwhile, the defendant, James Conway, having died, the administratrix, Mary L. Mason, was made a party defendant to the suit. The suit was then brought on for a second trial under a stipulation, that the re-trial be had on the same facts and on the same testimony. The trial judge thereupon directed a verdict in favor of the plaintiff and against the defendant, for the sum of fifty-six thousand, one hundred and thirty-three dollars and seventy-five cents, ($56,133.75). Objection to this ruling of the trial court was noted. The defendant alleges

this as error. We think the ruling of the trial court was correct; the judgment cannot be reversed, on that ground. There is also alleged error in the rulings of the trial court in rejecting and admitting testimony. There are thirty objections noted to such rulings of the trial judge. We have examined the record and find that the objections are without merit. Many of them, if the rulings had been different, could not in any event, affect the result. Three of the questions overruled by the trial court, were questions propounded to a witness, Jarvis W. Mason. The first, whether it was not true, that the witness had expressed a willingness to become responsible for the completion of the contracts by the Conway Contracting Company, if Mr. Conway and two other gentlemen, indemnified his company, in lieu of two others; second, was it not agreed by him, on behalf of the American Surety Company, that he would become surety for the proposed assignee of the contract, if the indemnity agreement sued on was signed and delivered to him; third, was it not also expressly stated on that occasion, that the paper was signed by those who did sign it, on the condition, that when the time arrived, the surety company would become surety, without further expense for the current year, to the proposed assignee of the contract, in lieu of their former surety-ship.

The rulings to these and other similar questions by the trial court were based upon the case of *Naumberg* v. *Young,* 44 N. J. L., 341. The trial judge said in disposing of the questions raised, that the contract contains mutual covenants and seems to be complete in itself; the subject, which the question is designed to

develop, is so clearly connected with the subject-matter, that forms the contract itself, as to bring it within the rule of *Naumberg* v. *Young,* 44 N. J. L. 341. In that case Mr. Justice Depue said, "When the contract is reduced to writing the law presumes that the writing contains the whole agreement. To permit terms to be engrafted upon the written agreement by mere parol evidence, would be attended with all the danger, laxity and inconvenience which the general rule is calculated to exclude."

This disposition of the proposed questions by the trial court was not error. The judgment is therefore affirmed.

Endorsed:

"Filed Jan. 27, 1915,

DAVID S. CRATER,
Clerk."

Exhibit D. 1.

EXHIBIT D. 1.

Rent Receipt Book of Charles H. Kolb.

NEWARK, N. J., Jan. 27th, 1912.

Received from Mr. Charles H. Kolb Eighty-four Dollars in full for seven months' rent in advance from August 1, 1911, to March 1st, 1912, premises No. 470 Warren Street.

$84.00. Jas. Conway, Agents
Per. W. F. C.

NEWARK, N. J., March 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from March 1, 1912, premises No. 470 Warren Street.

$12 Jas. Conway, Agents
Per. W. F. C.

NEWARK, N. J., April 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from April 1, 1912, premises No. 470 Warren Street.

$12 Jas. Conway, Agents
Per W. F. C.

NEWARK, N. J., May 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from May 1, 1912, premises No. 470 Warren Street.

$12 Jas. Conway, Agents
Per W. F. C.

Exhibit D. 1.

NEWARK, N. J., June 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from June 1, 1912, premises No. 470 Warren Street.

$12 William F. Conway, Agents
Per.....

NEWARK, N. J., July 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from July 1, 1912, premises No. 470 Warren Street.

$12 I. E. Conway, Agents
Per W.

NEWARK, N. J., Aug. 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from Aug. 1, 1912, premises No. 470 Warren Street.

$12.00 I. E. Conway, Agents
Per W.

NEWARK, N. J., Sept. 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from Sept. 1, 1912, premises No. 470 Warren Street.

$12.00 I. E. Conway, Agents
Per W.

NEWARK, N. J., Oct. 1, 1912.

Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from Oct. 1, 1912, premises No. 470 Warren Street.

$12 I. E. Conway, Agents
Per W.

Exhibit D. 1.

NEWARK, N. J., Nov. 1, 1912.
Received from Mr. Charles Kolb Twelve and 00/100 Dollars for one month's rent in advance from Nov. 1, 1912, premises No. 470 Warren Street.
$12.00 I. E. Conway, Agents
Per W.

NEWARK, N. J., Dec. 1, 1912.
Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from Dec. 1, 1912, premises No. 470 Warren Street.
$12.00 I. E. Conway, Agents
Per W.

NEWARK, N. J., Mch. 27, 1913.
Received from Mr. Charles H. Kolb Thirty-six and 00/00 Dollars in payment of rent of the premises No. 470 Warren Street to April 1, 1913.
$36.00 I. E. Conway, Agents
Per W.

NEWARK, N. J., May 27, 1913.
Received from Mr. Charles H. Kolb Twelve and 00/100 Dollars for one month's rent in advance from April 1, 1913, premises No. 470 Warren Street.
$12.00 I. E. Conway, Agents
Per W.

Exhibit D. 2.

EXHIBIT D. 2.

Rent Receipt Book of David Lan.

NEWARK, N. J., July 1, 1912
Received from Mr. David Lan Forty Dollars for one month's rent in advance from July 1/12 to Aug. 1/12, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., August 1, 1912.
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Aug. 1/12 to Sept. 1/12, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., September 1, 1912.
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Sept. 1/12 to Oct. 1/12, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., October 1, 1912
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Oct. 1/12 to Nov. 1/12, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

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NEWARK, N. J., November 1, 1912
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Nov. 1/12 to Dec. 1/12, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., December 1, 1912
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Dec. 1/12 to Jan. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

Exhibit D. 2.

NEWARK, N. J., January 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Jan. 1/13 to Feb. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., February 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Feb. 1/13 to Mar. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., March 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Mar. 1/13 to Apr. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., April 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from April 1/13 to May 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., May 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from May 1/13 to June 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., June 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from June 1/13 to July 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., July 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from July 1/13 to Aug. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

Exhibit D. 2.

NEWARK, N. J., August 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Aug. 1/13 to Sept. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., September 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Sept. 1/13 to Oct. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., October 1, 1913.
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Oct. 1/13 to Nov. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., November 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Nov. 1/13 to Dec. 1/13, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., December 1, 1913
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Dec. 1/13 to Jan. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., January 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Jan 1/14 to Feb. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., February 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Feb. 1/14 to Mar. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

Exhibit D. 2.

NEWARK, N. J., March 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Mar. 1/14 to April 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., April 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Apr. 1/14 to May 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., May 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from May 1/14 to June 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., June 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from June 1/14 to July 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., July 1, 1914
Received from Mr. David Lan Eighty Dollars for rent in advance from July 1/14 to Sept. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., September 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Sept. 1/14 to Oct. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., October 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Oct. 1/14 to Nov. 1/14. premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

Exhibit D. 2.

NEWARK, N. J., November 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Nov. 1/14 to Dec. 1/14, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., Dec. 1, 1914
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Dec. 1/14 to Jan. 1/15, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., Jan. 1, 1915
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Jan. 1/15 to Feb. 1/15, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., Feb. 1, 1915
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Feb. 1/15 to Mar. 1/15, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., March 1, 1915
Received from Mr. David Lan Forty Dollars for one month's rent in advance from Mar. 1/15, premises No. 486 Warren street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., April 1, 1915
Received from Mr. David Lan Forty Dollars for one month's rent in advance from April 1/15, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

NEWARK, N. J., May 1, 1915
Received from Mr. David Lan Forty Dollars for one month's rent in advance from May 1/15, premises No. 486 Warren Street.
$40 00/100 Isabelle E. Conway

EXHIBIT D. 3.

Rent Receipt Book of David Lan.

NEWARK, N. J., Sept. 1, 1915

Received from Mr. David Lan Forty Dollars for one month's rent in advance from Sept. 1/15, premises No. 486 Warren Street.

$40 00/100 Isabelle E. Conway

NEWARK, N. J., Oct. 1, 1915

Received from Mr. David Lan Forty Dollars for one month's rent in advance from Oct. 1/15, premises No. 486 Warren Street.

$40 00/100 Isabelle E. Conway

NEWARK, N. J., Nov. 1, 1915

Received from Mr. David Lan Forty Dollars for one month's rent in advance from Nov. 1/15, premises No. 486 Warren Street.

$40 00/100 Isabelle E. Conway

NEWARK, N. J., Dec. 1, 1915

Received from Mr. David Lan Forty Dollars for one month's rent in advance from Dec. 1/15, premises No. 486 Warren Street.

$40 00/100 Isabelle E. Conway

EXHIBIT D. 4.

Certificate of marriage of William F. Conway and Isabelle E. McGrath showing marraige on July 1, 1912.

EXHIBIT D. 5.

THIS AGREEMENT made this 13 day of June, 1912, between William F. Conway of the City of Newark, County of Essex, State of New Jersey, party of the first part, and Isabelle Mc-

Exhibit D. 5.

Grath of the City of New York, County of Kings, State of New York, party of the second part Witnesseth:

WHEREAS the party of the first part is the owner and seized in fee of certain lots, tracts or parcels of land and premises, with the buildings thereon situate, lying and being in the County of Essex, City of Newark, and State of New Jersey, and

WHEREAS it is the desire of the said party of the first part to have the said party of the second part enter into the marriage relation with him and become his lawfully wedded wife on or before the 1st day of July, 1912, and

WHEREAS in order to procure and obtain the promise of the said party of the second part to enter into the said marriage relation with the said party of the first part, and in order to induce her to enter into said marriage relation, it is the intention of the said party of the first part to convey to the said party of the second part, a portion of the said lots, tracts and parcels of land, of which he is now seized in fee, situate in the County of Essex, City of Newark, and State of New Jersey, hereinafter more specifically bounded and described, and

WHEREAS it is the intention of the party of the second part to enter into the marriage relation with the party of the first part and become his lawfully wedded wife on or before the 1st day of July, 1912, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the said intended marriage and the mutual covenants herein contained, and the sum of one dollar, each to the other in hand paid, receipt whereof is hereby acknowledged the parties

Exhibit D. 5.

hereto covenant and agree to and with each other as follows:

The party of the first part doth covenant and agree to and with the said party of the second part that he the said party of the first part, will well and sufficiently convey to the said party of the second part, her heirs and assigns forever, by deed of warranty, free from all encumbrances, on or before the 1st day of July 1912, all those lots, tracts or parcels of land and premises with the buildings thereon situate, hereinafter particularly described, situate, lying and being in the City of Newark, County of Essex, State of New Jersey, to wit:

PARCEL 1.

BEGINNING at the westerly corner of a lot conveyed by Richard Miller and wife to one Simon Passmore on the first day of July, 1833, the said beginning being in the southeast line of Catherine Street, thence running along the line of the lot so conveyed, a southerly course seventy-nine (79) feet to the line of Michael Corrigan's land; thence along the line of Michael Corrigan's land and land of Morris Fitzgerald a southwesterly course sixteen (16) feet; thence running a northwesterly course seventy-nine (79) feet to the line of Catharine Street; thence along said line of Catharine Street, a northerly course sixteen (16) feet to the place of beginning. Being lot No. 10 on Block No. 75 as laid down on the Maps of Report No. 23 of Commissioners of Adjustment.

PARCEL 2.

BEGINNING at the intersection of the northeasterly line of Central Avenue with the southeasterly line of South Seventh Street, from

Exhibit D. 5.

thence running along the line of Central Avenue south, sixty-two (62) degrees and forty-five (45) minutes east fifty (50) feet to the land of James Conway; thence north twenty-seven (27) degrees and fifteen (15) minutes East seventy-five (75) feet and eleven (11) inches; thence North, seventy-seven (77) degrees and fifty-five (55) minutes, East, seventy-five (75) feet and eleven (11) inches to the Westerly line of Warren Street; thence along the line of the same North, twelve (12) degrees and forty-five (45) minutes West, one hundred and seventy-one (171) feet, six and three quarters (6¾) inches to the aforesaid line of South Seventh Street, and thence running along the line of South Seventh Street, South, twenty-seven (27) degrees and (15) minutes West two hundred and fifty-six (256) feet and nine (9) inches and three quarters (¾) of an inch to the place of beginning.

PARCEL 3.

BEGINNING at the intersection of the Northeasterly line of Central Avenue with the Westerly line of Warren Street, from thence running along the line of Central Avenue, north sixty-two (62) degrees, and forty-five (45) minutes West, one hundred and sixty (160) feet and five (5) inches; thence North twenty-seven degrees (27) and fifteen minutes East, seventy-five (75) feet and eleven (11) inches; thence north seventy-seven (77) degrees and fifty-five (55) minutes East, seventy-five feet (75) and (11) inches to the aforesaid line of Warren Street, and thence running along the line of the same South twelve (12) degrees and forty-five (45) minutes East one hundred and sixty (160) feet and five (5) inches, to the place of beginning.

Exhibit D. 5.

PARCEL 4.

BEGINNING in the Southerly line of Cabinet Street, at the distance of fifty-four (54) feet six (6) inches easterly from the easterly line of Camden Street, and from thence running along the line of Cabinet Street, South, sixty-two (62) degrees and thirty (30) minutes East, forty-five (45) feet six (6) inches; thence South, twenty-seven (27) degrees and thirty (30) minutes West seventy-five (75) feet; thence north sixty-two (62) degrees and thirty (30) minutes West forty-five (45) feet six (6) inches; thence North twenty-seven degrees (27) and thirty (30) minutes, East, seventy-five (75) feet to the line of Cabinet Street and place of beginning.

PARCEL 5.

BEGINNING in the Westerly line of Bergen Street at a point distant Southerly fifty (50) feet from the corner of the same and Cabinet Street; thence Westerly parallel with Cabinet Street, one hundred (100) feet; thence Northerly parallel with Bergen Street, fifty (50) feet to Cabinet Street; thence Easterly along Cabinet Street one hundred (100) feet to Bergen Street; thence along Bergen Street Southerly fifty (50) feet to the place of beginning, known as Lots Nos. 302 and 303 on a map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of the City of Newark, surveyed by Dunn and Thompson, Surveyors, October 1852.

PARCEL 6.

BEGINNING at the intersection of the easterly line of South Sixth Street with the Southwesterly line of Warren Street; thence running along the line of Warren Street in a southerly direction seventy-three (73) feet one (1) inch;

Exhibit D. 5.

thence south thirty-five (35) degrees, fifty-eight (58) minutes West seventy (70) feet and one-quarter (¼) of an inch; thence north sixty-one (61) degrees, thirty-two (32) minutes West, thirty-eight (38) feet four (4) inches to said Easterly line of South Sixth Street; and thence along the same North, twenty-eight (28) degrees, twenty-eight (28) minutes East one hundred and twenty-five (125) feet to the place of beginning.

PARCEL 7.

BEGINNING at the northeasterly corner of South Sixth Street and Eleventh Avenue; thence running along the Northerly line of Eleventh Avenue, fifty feet (50); thence northeasterly about fifty-one (51) and seventeen hundredths feet; thence about fifty (50) feet to the line of South Sixth Street; thence southwesterly fifty-one (51) and seventeen-hundredths feet to the place of beginning. Being lot 41 on block 1831 as laid down on the block maps of the City of Newark.

PARCEL 8.

BEGINNING at a point on the North side of Eleventh Avenue seventy (70) feet Easterly from the corner of Eleventh Avenue and Nicolay (now South Sixth Street); thence running northerly forty-one (41) feet more or less to or in a driftway to the middle of the same or more or less wherever said line may come; thence westerly twenty (20) feet parallel with Eleventh Avenue; thence southerly from said line at or in said driftway and parallel with said Nicolay Street forty-one (41) feet more or less to Eleventh Avenue; thence easterly along the North line of Eleventh Avenue twenty feet (20) to the

Exhibit D. 5.

place of beginning. Being lot No. 40 on Block No. 1831 as laid down on Maps annexed to Report No. 17 of the Commissioners of Adjustment.

PARCEL 9.

BEGINNING in the Northerly line of Central Avenue at a point therein fifty (50) feet Westerly from the Northwesterly corner of Central Avenue and North Fifth Street as the same are laid down on the Map hereinafter mentioned; thence running westerly along the Northerly line of Central Avenue thirty-two (32) feet and ninety-five (95) hundredths of a foot to the Northeasterly corner of Central Avenue and Warren Street; thence northerly along the easterly line of Warren Street forty (40) feet and eighty hundredths of a foot; thence north sixty-eight (68) degrees and thirty-eight (38) minutes east, sixty-four (64) feet and eighty-three hundredths of a foot; thence North thirty-three (33) degrees and fifty (50) minutes east twenty-eight (28) feet and eighty-five (85) hundredths of a foot; thence South fifty-six (56) degrees and twelve (12) minutes east twenty-five (25) feet more or less to the Northwesterly corner of lot No. 5 on said map; thence southerly along the westerly line of said lot No. 5 one hundred and four (104) feet and fifty-six (56) hundredths of a foot to Central Avenue and the place of beginning. Being known and designated as lots Nos. 4 and 3½ on a map entitled "Property of the Estate of John H. Kase, decd. C. M. Kase, Admr."

Exhibit D. 5.

PARCEL 10.

BEGINNING in the northerly line of Central Avenue at a point therein distant twenty-five (25) feet westerly from the northwesterly corner of Central Avenue and North Fifth Street as the same are laid down on the map hereinafter mentioned; thence running westerly along the northerly line of Central Avenue twenty-five (25) feet to the southeasterly corner of lot No. 4 on said map; thence northerly along the easterly line of lot No. 4 on said map one hundred and four (104) feet and fifty-six (56) hundredths of a foot; thence south fifty-six (56) degrees twelve minutes east twenty-four (24) feet and fifty-eight hundredths of a foot to the northwesterly corner of lot No. 6 on said map; thence southerly along the westerly line of said lot No. 6 one hundred (100) feet to Central Avenue and the place of beginning. Being known and designated as lot No. 5 on map entitled "Property of the estate of John H. Kase, decd., C. M. Kase, Admr."

PARCEL 11.

BEGINNING in the westerly line of North Fifth Street at a point therein distant northerly one hundred (100) feet from the northwesterly corner of the same and Central Avenue; thence northerly along said North Fifth Street fifty-one (51) feet and seventy-one one-hundreds of a foot; thence north fifty-six (56) degrees, twelve minutes west ninety-eight (98) feet and thirty-three one-hundredths of a foot; thence south nineteen (19) degrees, thirteen minutes west, fifty-eight (58) feet and thirty one-hundredths of a foot to the rear line of lots fronting on Warren Street; thence south fifty-six (56) degrees, twelve minutes east and along the

Exhibit D. 5.

rear line of lots fronting on Warren Street and Central Avenue, fifty-nine (59) feet and eighteen one-hundredths of a foot; thence along the rear line of the lot on the northwest corner of said Central Avenue and North Fifth Street, twenty-five (25) feet to the place of beginning Being known and designated as lots Nos. 7 and 8 on map of property belonging to the estate of John H. Kase, deceased.

And the said party of the second part, in consideration of the premises and conveyances herein agreed to be made, doth covenant, promise and agree to and with the said party of the first part, that she, the said party of the second part, will marry and become the lawful wife of the said party of the first part, and that she, the said party of the second part, doth promise, agree and consent that a proper marriage ceremony shall be solemnized, celebrated and performed between her, the said party of the second part, and him, the said party of the first part, on or before the 1st day of July, 1912.

And it is further AGREED by the parties to these presents that the said party of the second part, her heirs and assigns, may enter into and upon the said land and premises on the first day of July next ensuing the date hereof and from thence take the rents, issues and profits to her own use.

IN WITNESS WHEREOF, the said parties have hereto interchangeably set their hands and seals the day and year first above mentioned.

WILLIAM F. CONWAY, [L. S.]
ISABELLE McGRATH. [L S.]

Signed, sealed and delivered
in the presence of:
WILLIAM H. DARROW.

Exhibit D. 6.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

On this 13th day of June, in the year 1912, before me, the undersigned personally came and appeared, William F. Conway and Isabelle McGrath, to me personally known and known to me to be the individuals described in, and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

WILLIAM H. DARROW,
[L. S.] *Notary Public, Kings Co.*
Certificate filed, New York Co.

EXHIBIT D. 6.

WILLIAM F. CONWAY,
Counsellor at Law.

No. 1116. Newark, N. J., June 10, 1912.

FEDERAL TRUST COMPANY
747 Broad Street

Pay to the order of William H. Darrow $81.20
Eighty-one and 20/100 Dollars.

WILLIAM F. CONWAY.

Certified June 11, 1912.
FEDERAL TRUST CO.,
Newark, N. J.
COBB, *Teller.*

WILLIAM H. DARROW.

Pay to the order of any bank endorsements guaranteed 5 June 12, 1912.
NATIONAL NEWARK BANKING CO.,
Newark, N. J.

Exhibits D. 7, D. 8.

Pay to the order of any Bank, Banker or Trust Co. all prior endorsements guaranteed June 11, 1912.

THE NATIONAL RESERVE BANK

1—221 New York City, N. Y. 1—221

R. B. MINIS, *Cashier.*

EXHIBIT D. 7.

WARRANTY DEED.

WILLIAM F. CONWAY

to

ISABELLE E. MCGRATH.

Dated June 27, 1912.
Ackgd. June 29, 1912.
Recd. July 1, 1912.
Book I. 51, pg. 160,
the consideration marriage and one dollar.

Conveys premises described in antenuptial agreement Exhibit D. 5.

EXHIBIT D. 8.

Rent Receipt Book of John Scofield.

Newark, N. J., August 1, 1914.

Received from Mr. John Scofield Ten Dollars for one month's rent in advance from August 1/14 to Sept. 1/14 top floor premises No. 470 Warren Street.

$10 00/100 ISABELLE E. CONWAY

Newark, N. J., September 1, 1914.

Received from Mr. John Scofield Ten Dollars for one month's rent in advance from September 1 to October 1/14 top floor premises No. 470 Warren Street.

$10 00/100 ISABELLE E. CONWAY

Exhibit D. 8.

Newark, N. J., October 1, 1914.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from October 1/14 top floor No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., November 1, 1914.
(NOTE Copy—tattered and Torn—

Newark, N. J., December, 1914.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from Dec. 1/14 top floor 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., January 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from January 1/15 top floor premises No. 470 Warren Street.
$10 00/100 I. E. CONWAY

Newark, N. J., February 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from February 1/1915 top floor premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., March 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from March 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., April 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from April 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Exhibit D. 8.

Newark, N. J., May 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from May 1/15 3rd floor premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., June 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from June 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., July 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from July 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., August 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from August 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., September 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from September 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., October 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from October 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

Newark, N. J., November 1, 1915.
Received from Mr. John Scofield Ten Dollars for one month's rent in advance from November 1/15 premises No. 470 Warren Street.
$10 00/100 ISABELLE E. CONWAY

EXHIBIT D. 9.

Duplicate original copy of antenuptial agreement Exhibit D. 5.

EXHIBIT D. 10.

Bank Book of Isabelle E. Conway in the City Trust Company, Newark, N. J., beginning August, 1912.

CITY TRUST COMPANY
OF NEWARK, N. J.

In account with
ISABELLE E. CONWAY.

Dr. City Trust Company of Newark, N. J., in acc't with Isabelle E. Conway, Cr.

1912			
	Gar. $107.35		
	Dr. B. Cr. July 1/15		
Aug. 7	Cash R	$ 282.35	
	U. B. C. A. & W.		
13	to Oct./12	75.00	
Sept. 29	Cash D	500.00	
	Gar. Aug./15		
	Gar. Sept./12		
		116.85	
Oct. 4	D	225.90	
	N. B. P. C. & W.		
24	Cash D	575.00	
	N. B. C. 3 prop.		
	to Nov./12		
30	D	475.00	
	Gar. Oct./12		
Nov. 7	R	270.99	
	N. P. C. fences		

Exhibit D. 10.

Dec.	2	D	60.00
		May/13	
		Gar. Nov./12	
	2	D	243.28
	31	D	350.00
		U. B. C. 3 prop.	
		Jan./13	
Jan.	20	D	
		N. P. Cr. Jan.	
		to Apr./13	75.00
Jan.	20	D	265.53
		Gar. Dec./12	
		Gar. Jan./12	
Feb.	26	D	266.48
		Gar. Feb./12	
Mch.	3	D	242.25
		U. B. C. Cr.	
		3 prop. Mar./13	
	3	D	450.00
Apr.	8	R	240.83
		Gar. Mar./13	
	8	R	225.00
		U. B. C. Apr./13	
Sept.	27	Int.	.75
Oct.	31	"	1.52
Nov.	27	"	.90
Dec.	27	"	.56
Jan.	30	"	1.40
Feb.	28	"	2.03
Mar.	28	"	3.07
		Total Credits D	$4,949.69
		Vouchers Ret'd per list	2,427.64
Apr.	9	Balance	$2,522.05

Exhibit D. 10.

May 14	D	75.00	
	N. B. P. Cr. Ch.		
	4/13 7/13		
	Gar. Apr./13		
14	D	262.63	
June 11	F	30.00	
	N. B. Posting		10
	Nov. 1/13		
11	F	30.00	
	N. B. Cr.		
	Warren Nov./13		
11	F	262.68	
	Gar. May/13		
	U. B. C.		
25	F	675.00	
	to July/13		
	Gar. June/13		20
July 10	F	263.15	
	Gar. July/13		
Aug. 7	R	217.63	
	N. P. C.		
	July-Oct./13		
7	R	75.00	
Apr. 28	Apr. Int.	3.75	
May 28	May "	4.10	
June 27	June "	4.60	
July 30	July "	4.95	30
	Total Credits	$4,430.54	
	Vouchers Ret'd per list S	947.12	
Aug. 7, 1913	Balance	$3,483.42	

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Exhibit D. 11.

EXHIBIT D. 11.

Bank Book of Isabelle E. Conway in the City Trust Company of Newark, N. J., beginning August 8, 1913.

CITY TRUST COMPANY

OF NEWARK, N. J.

In account with

ISABELLE CONWAY

1913		Credits
Aug. 8	Balance	$3,483.42
28	Interest	3.60
	Total Credits D	$3,487.02
	Vouchers Ret'd per list	3,465.00
Jan. 21, 1914	Balance	$ 22.02
	Part N. B. C. Feb. 1/14	
21	F	500.00
	Cash	
Aug. 5	E	140.00
Jan. 29	Jan. Int.	.10
Feb. 27	Feb. "	.36
	Total Credits	$ 662.48
	Vouchers Ret'd per list S	317.77
Aug. 5, 1914	Balance	$ 344.71
	Total Credits	$ 344.71
	Vouchers Ret'd per list S	179.04
Jan. 29, 1915	Balance	$ 165.67
Apr. 10	R	100.00
	Cash from mother	
	Total Credits	$ 265.67

Exhibit D. 11.

	Vouchers Ret'd per list S		94.81
Apr. 13, 1915	Balance	$	170.86
June 21	R		197.50
	Part bill posting under new contract		
	Total Credits	$	368.36
	Vouchers Ret'd per list L		86.90
June 21, 1915	Balance	$	281.46
	Cash		
Aug. 7	E		100.00
	Total Credits	$	381.46
	Vouchers Ret'd per list L		78.03
Aug. 9, 1915	Balance	$	303.43
Oct. 22	S		60.00
	Given Bank Int.		
	Total Credits	$	363.43
	Vouchers Ret'd per list S		82.75
Oct. 22, 1915	Balance	$	280.68
Dec. 2	R		225.00
	N. B. C. Nov./15 Gar. November		
2	R		241.30
	Total Credits	$	746.98
	Vouchers Ret'd per list S		154.92
Dec. 20, 1915	Balance	$	592.06

Exhibit D. 11.

		Bill posting to Apr. 1/16	
	Feb. 8	16 R	162.50
		Gar. Jan./16	
	8	R	196.42
	Dec.	Int.	.58
	1916		
10	Jan.	"	.84
	Feb.	"	1.14
	Mar.	"	1.42
	Apr.	"	1.52
	May	"	1.48
	June	"	1.52
		Total Credits	$ 959.48
		Vouchers Ret'd per list L	40.56
	July 7,	1916 Balance	$ 918.92
20	July 25	R	500.00
		Post bill	
	28	Int.	1.50
	Aug. 3	Int.	2.00
	Sept. 28	Int.	2.20
		Total Credits	$1,424.62
		Vouchers Ret'd per list S	134.16
30	Sept. 29,	1916 Balance	$1,290.46
	Oct. 31	Int.	1.84
	Nov. 27	"	1.70
	Dec. 28	"	1.64
		Total Credits	$1,295.64
		Vouchers Ret'd per list S	269.86
	Jan. 8,	1917 Balance	$1,025.78

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Exhibit D. 12.

EXHIBIT D. 12.

Savings Bank Book of Isabelle E. Conway in the Howard Savings Institution of Newark, N. J., beginning August 7, 1912.

Dr. HOWARD SAVINGS INSTITUTION, in account with Isabelle E. Conway, Cr.

1912				
Aug. 7	Two hundred D		$ 200.00	
12	Two hundred twenty-five D		225.00	
Sept. 6	Forty-five D		45.00	
9	One hundred D		100.00	
		$570.00		
12	One hundred eighty-eight 49/D		188.49	
23	One hundred fourteen 97/D		114.97	
Oct. 1	Twenty-nine 32/D		29.32	
8	Eighty-three 84/D		83.84	
		$986.62		
22	Seventy-eight 57/D		78.57	
Nov. 8	Thirty-seven 16/D		37.16	
Dec. 5	Thirty-five D		35.00	
1	Int.		7.91	
1913				
Jan. 22	Ten D	$1,155.26	10.00	
Feb. 11	Thirty-five D		35.00	
24	Fifty-two and 50/100 D		52.50	
Mar. 13	Twenty-five		25.00	
	Carried forward		$1,267.76	
1913	Brought forward		$1,267.76	
Mch. 18	Thirty-nine 29/100 D		39.29	
June 1	Interest	$1,330.20	23.15	
Oct. 14	Five D		5.00	
Dec. 1	Interest	1,355.20	20.00	

Exhibit D. 13.

	1914			
June 1	Interest		1,375.20	20.00
Dec. 1	Interest		1,395.20	20.00
	1915			
June 1	Interest			20.00
Dec. 1	Interest		1,415.60	.40
	1916			
Feb. 14	One hundred and fifty	D		150.00
"	One hundred and fifty	D		150.00
June 1	Interest			3.40
Dec. 1	Interest		$1,725.46	6.46
	1913			
Oct. 14	Three hundred thirty-five 20/100	D		335.20
	1914			
Jan. 13	Twenty	D	$355.20	20.00
June 22	Twenty	D	375.20	20.00
Dec. 15	Twenty	D		20.00
	1915			
June 1	One thousand	D		1,000.00
			1,395.20	

EXHIBIT D. 13.

Bank Book of Isabelle E. Conway in the National State Bank of Newark, N. J., beginning August , 1913.

National State Bank, Newark, N. J., in account with Isabelle E. Conway.

1913	Amount drawn from City Fund		
Aug. 26	P		$3,400.00
	N. B. Cr. K. to Sept./13		
"	P		440.00
	G. Aug/13		

Exhibit D. 13.

Sept. 24	O	267.43	
	Gar. Sept./13		
Oct. 4	P	220.92	
	N. P. C. Cur.		
	and Nar. Jan./14		
16	P	75.00	
	U. B. Co. to Nov./13		10
30	P	460.00	
Nov. 13	P	236.55	
	Gar. Oct./13		
	Gar. Nov./13		
Dec. 8	P	244.15	
	N. P. C. other		
"	fences May/13	60.00	
Oct. 1	Int.	7.45	
Nov. 3	Int.	6.79	
Dec. 1	Int.	4.68	
Dec. 31	Int.	5.14	20
	Total Credits	$5,428.11	
	Less Vouchers Ret'd	2,350.62	
1914	Balance	$3,077.49	
1914			
Jan. 2	Balance	$3,077.49	
5	P	242.73	
	G. Dec./13		30
Feb. 6	P	216.13	
	G. Jan./14		
"	P	87.50	
	N. P. C. C. & W		
	to Apr./14		

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Exhibit D. 13.

Mch.13	P		175.00
	Bal. N. B. Cr. to Feb./14		
17	P		199.50
	Gar. Feb./14		
	Arlington L.		
	of all		
21	P		8,700.00
Apr. 7	P		212.33
	Gar. Mar./14		
25	P		75.00
	Bal. N. B. Cr. May 1/14		
May 12	P		216.07
	Gar. Apr./14		
25	P		87.50
	U. B. Cr. C. & W. to July/14		
Feb. 2	Int. Jan.		5.09
Mar. 4	Int. Feb.		5.37
Apr. 6	Int. Mar.		9.36
May 5	Int. Apr.		20.82
	Total Credits		$13,329.89
	Less Vouchers Ret'd		3,171.14
2 1914	June Balance		$10,158.75
10	P		229.67
	Gar. May/14		
5	Int. May		20.44
	U. B. C. to Aug./14		
2	P		956.15
	Gar. June/14		
	P. Cr. July/14		

Exhibit D. 13.

Aug. 13	O	220.40	
	Gar. July/14		
	N. P. Cr. to		
	Oct./14		
"	O	87.50	
Sept. 11	O	207.58	
	Gar. Aug./14		10
14	O	450.00	
	U. B. Cr. Oct./14		
July 3	Int. June	18.09	
Aug. 7	Int. July	11.17	
Sept. 3	Int. Aug.	2.02	
	Total Credits	$12,361.77	
	Less Vouchers Ret'd	10,436.67	
1 1914	Oct. 1 Balance	$ 1,925.10	
Oct. 1	Balance	$ 1,925.10	20
	Gar. Sept./14		
14	P	197.20	
	U. B. Cr. Ch.		
	Oct./14		
28	P	225.00	
	Sale Greenpoint property		
"	P	1,313.33	
Nov. 5	P	228.95	
	Gar. Oct./14		30
30	N	30.00	
	Posting Cr.		
30	N	87.50	
	Posting Cr.		
	Jan./15		
Oct. 5	Int. for Sept.	2.68	
Nov. 6	Int. for Oct.	3.16	
	Total Credits	$ 4,012.92	
	Less Vouchers Ret'd	1,693.66	40

Exhibit D. 13.

Oct.			
30	1914	Balance	$ 2,319.26
Dec.	12	P	195.70
		Gar. Nov./14	
	"	P	30.00
		Poster Cr.	
		other fences	
Jan.	11/15	P	195.54
		Gar. Dec./14	
		N. P. Cr.	
	29	P	87.50
		C. & W. Apr./15	
	"	P	675.00
		U. B. Co.	
		Feb./15	
Dec.	7	Int. Nov.	3.71
Jan.	2	Int. Dec.	3.83
		Total Credits	$ 3,510.54
		Less Vouchers Ret'd	1,057.85
June.			
29	1915	Balance	$ 2,452.69
July	8/15	O	225.98
		Gar. Jan./15	
Mch.	16	P	226.82
		Gar. Feb./15	
Apr.	28	P	218.30
		Gar. Mch./15	
	"	P	675.00
		N. B. C.	
		May/15	
May	13	P	194.28
		Gar. Apr./15	
June	15	P	232.75
		Gar. May	

Exhibit D. 13.

July 14	O	252.23	
	Gar. June		
"	O	675.00	
	U. B. C.		
	Aug./15		
Feb. 4	Int. Jan.	3.84	
Mch. 4	Int. Feb.	4.16	10
Apr. 7	Int. Mar.	3.95	
May 6	Int. Apr.	4.16	
June 7	Int. May	5.26	
July 2	Int. June	5.70	
	Total Credits	$ 5,180.12	
	Less Vouchers Ret'd	890.14	
July 14, 1915	Balance	$ 4,289.98	
Aug. 30	O	325.00	20
	N. P. Co. all fences		
	Jan. 1/16		
30	O	192.14	
	Gar. July/15		
Sept. 25	P	218.50	
	Gar. Aug./15		
Oct. 14	P	247.48	
	Gar. Sept./15		
25	P	675.00	
	U. B. Cr.		30
	to Nov./15		
Aug. 4	Int. July	6.03	
Sept. 7	Int. Aug.	6.41	
Oct. 5	Int. Sept.	5.86	
	Total Credits	$ 5,966.40	
	Less Vouchers Ret'd	2,924.11	
Nov. 1, 1915	Balance	$ 3,042.29	
	Certified out $1,547.32		40

Exhibit D. 13.

Nov.	1	Balance	$ 3,042.29
	3	Gar. Oct./15	200.93
	11	Int. Oct.	6.29
Dec.	9	Int. Nov.	5.55
		Total Credits	$ 3,255.06
		Less Vouchers Ret'd Certified charged in previous bal. $1,547.32	436.68
20	1915 Dec.	Balance	$ 2,818.38
	28	P	225.00
		U. B. Co. Dec.	
Jan.	7, 1916	M	203.67
		Gar. Dec.	
	28	M	225.00
		U. B. C. Jan./16	
Mch.	2	P	191.19
		Gar. Feb./16	
Apr.	7	M	264.34
		Gar. Mar.	
	26	P	675.00
		U. B. Co. to May 1/16	
Jan.	7	Int. Dec.	4.70
Feb.	8	Int. Jan.	5.04
30 Mar.	6	Int. Feb.	5.14
Apr.	4	Int. Mar.	4.82
		Total Credits	$ 4,622.28
		Less Vouchers Ret'd	719.25
Apr.	26, 1916	Balance	$ 3,903.03
May	3	P	162.50
		N. B. Posting Apr. to July/16	
	17	M	199.03
40		Gar. Apr.	

Exhibit D. 13.

June 8	P	262.44	
	Gar. May		
July 6	P	209.24	
	Gar. June/16		
May 9	Int. Apr.	5.26	
June 2	Int. May	6.32	
			10
	Total Credits	$ 4,747.82	
	Less Vouchers Ret'd	289.10	
July 6, 1916	Balance	$ 4,458.72	
20	P	675.00	
	U. Br. W. Cr. to Aug./16		
Aug. 8	P	162.50	
	N. Posting to Oct.		
"	P	224.68	
	Gar. July		20
July 25	Int. June	3.67	
Aug. 7	Int. July	2.84	
	Total Credits	$ 5,527.41	
	Less Vouchers Ret'd	4,059.90	
28 1916	Aug. Balance	$ 1,467.51	
Sept. 5	P	222.30	
	Gar. Aug.		
19	P	450.00	30
	U. B. C. to Oct. 1/16		
Oct. 4	O	54.50	
	Cash rents		
16	M	227.05	
	Gar. Sept.		
"	M	34.00	
	Cash rents		
	Newark P. Cr. to		
	Jan. 1/16		
			40

Exhibit D. 13.

	Oct. 19	O	162.50
		Total Credits	$ 2,617.86
		Less Vouchers Ret'd	143.31
	19 1916	Oct. Balance	$ 2,474.55
10	Nov. 6	P	450.00
		U. B. Co. to Dec. 1/16	
	9	P	233.23
		Gar. Oct./16	
	23	P	37.00
		Other rents.	
	1916		
	Dec. 11	P	190.95
		Gar. Nov./1916	
	Jan. 4/17	P	162.50
20		Bill posting to April/17	
	"	Int. Nov.	1.42
		Gar. Dec./16	
		Total Credits	$ 3,549.65
		Less Vouchers Ret'd	1,799.85
	Jan. 4,	1917 Balance	$ 1,749.80
	8	P	208.29
	Jan. 8	Int. Aug.	2.12
30	8	Int. Sept.	2.62
	8	Int. Oct.	3.41
	8	Int. Dec.	2.35
	25	P	450.00
		U. Bru. Co. to Feb. 1/17	
	29	P	60.00
		Division Int.	
	"	P	60.00
		Bessh. Int.	
	"	P	60.00
40	Feb. 1	P	60.00

Exhibits D. 14, D. 15.

EXHIBIT D. 14.

Bank Book of Isabelle E. Conway in the Kings County Bank of Brooklyn, N. Y., beginning October 3, 1914.

THE KINGS COUNTY SAVINGS INSTITUTION in account with Isabelle E. Conway.

1914		Dpsts.	Dfts.	Bal.
Oct. 3	Three thousand Dol.	$3,000		$3,000
Jan. 1	1916 Interest to date	150		3,150
Feb. 10	One hundred and fifty Dol.		$150	3,000
July 1,	1916 Interest to date	60		3,060
" 28	Sixty Dol.		60	3,000
Jan. 1,	1917 Interest to date	60		3,060
" 24	Sixty Dol.		60	3,000

EXHIBIT D. 15.

Savings Bank Book of Isabelle E. Conway in the Dime Savings Bank of Williamsburgh, N. Y., beginning October 2, 1914.

Isabelle E. Conway, in account with THE DIME SAVINGS BANK OF WILLIAMSBURGH.

1914	1	Dfts. 1	Dpsts.	Bals.
Oct. 2	Three thousand Dolls.		$3,000 ch.	
1916	Jan. to date		150	$3,150
Feb. 10	One hundred fifty Dolls.	$150 ch.		$3,000
1916	July		6$	
July 28	Sixty Dolls.	60 ch.		3,000
1917	Jan.		60	3,060
Jan. 26	Sixty Dolls.	60 ch.		3,000

Exhibit D. 16.

EXHIBIT D. 16.

Newark, N. J., July 31st, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

	Apl.	May	June	July		
Cabinet St.						
#114. 1. C. Callahan, 8th				+ 7.50	$ 7.50	
2. J. Gandoli				+ 8.50	8.50	$ 16.00
#116. 1. B. Brady	+	4.50			4.50	
2. W. Merrigan			+ 7.		7.00	11.50
#118. 1. E. Carr, 12th			+ 7.50		7.50	
2. D. McGlynn, 8th				+ 8.50	8.50	16.00
#120. Wm. Hart, 8th				+ 13.	13.00	13.00
#122. 1. Ed. Lee, 20th			+ 7.50		7.50	
2. Jos. Meechan				+ 8.	8.00	15.50
21 Arlington St.						
Victoria Craig, 6th				+ 15.	15.00	15.00
South 6th St.						
#4. J. Palmiere				+ 5.	5.00	5.00
#6. 1. D. L. Arney				+ 11.	11.00	
2. G. B. Cooper, 6th				+ 10.	10.00	21.00
rear 58. A. Hirmes				unpaid		
#60. Union Brewing Co.				"		
						$113.00
To Coms. for collecting					$ 5.65	
" Check to Bal.					107.35	$113.00
						$113.00

JAMES E. GARABRANT.

Newark, N. J., August 31st, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

	1912					
	May	June	July	Aug.		
Cabinet St.						
#114. 1. C. Callahan, 8th				+ 7.50	$ 7.50	
2. J. Gandoli				+ 8.50	8.50	$ 16.00
#116. 1. B. Brady	+	6.			6.00	
2. W. Merrigan			+ 8.50		8.50	14.50
#118. 1. E. Carr, 12th			+ 7.50		7.50	
2. D. McGlynn				+ 8.50	8.50	16.00
#120. Wm. Hart, 8th				+ 13.	13.00	13.00
#122. 1. Ed. Lee, 20th			+ 7.50		7.50	
2. J. Meehan				+ 8.	8.00	15.50
21 Arlington St.						
Victoria Craig, 6th				+ 15.	15.00	15.00
South 6th St.						
#4. Jos. Palmiere				+ 5.	5.00	5.00
#6. 1. D. L. Arney				+ 11.	11.00	
2. G. B. Cooper, 6th				+ 10.	10.00	21.00
#58. A. Hirmes (rear)			+ 7.		7.00	7.00
60. Union Brewing Co.			+ unpaid			
						$123.00
To Coms. for collecting						$ 6.15
" check to Bal.						116.85
						$123.00
						$123.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., September 30th, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

		1912 Apl.	May	June	July	Aug.	Sept.		
	114 Cabinet St.								
1.	Cath Callahan, 8th					+	7.50	$ 7.50	
2.	J. Gandoli					+	8.50	8.50	$ 16.00
	116 Cabinet St.								
1.	B. Brady		+ 1.50	5.50				7.00	
2.	W. Merrigan			+	8.			8.00	15.00
	118 Cabinet St.								
1.	E. Carr, 12th				+	7.50		7.50	
2.	D. McGlynn, 8th					+	8.50	8.50	16.00
	120 Cabinet St.								
	Wm. Hart, 8th					+	13.	13.00	13.00
	122 Cabinet St.								
1.	E. Lee, 20th ejected								
"	J. Hardcastle, 23d					+	7.50	7.50	
2.	J. Meehan					+	7.00	7.00	14.50
	21 Arlington St.								
	V. Craig, 6th					+	15.	15.00	15.00
	4 So. 6th St.								
	J. Palmiere					+	5.	5.00	5.00
	6 So. 6th St.								
1.	D. L. Arnoy					+	11.	11.00	
2.	G. B. Cooper, 6th					+	10.	10.00	21.00
	60 So. 6th St.								
	Union Brewing Co.					unpaid			
	rear 58.								
	A. Hermes		+ 7.					7.00	7.00
	470 Warren St.								
2.	W. Banks			+	Paid Mr. Conway				
3.	E. M. Schauner					+	9.50	9.50	9.50
	478 Warren St.								
1.	D. O'Leary					+	14.	14.00	
2.	Thos. Byrne					+	15.	15.00	29.00
3.	George Howell	+ 11.						11.00	11.00
	480 Warren St.								
1.	J. Hanson			+	6.		5.00	11.00	
2.	F. Bataille			+	4.		Bal.	4.00	
3.	M. Birmingham			Paid to Mr. Conway					15.00
	482 Warren St.								
			Bal.						
1.	M. Hudson, 20th		+ 7.	3.				10.00	
2.	D. Lavin					+	11.	11.00	
3.	Marg't Smith + 10.							10.00	31.00
	484 Warren St.								
1.	E. Fitzpatrick					+	11.	11.00	
2.	Geo. Morgan			Pd. to Mr. Conway					
			Bal.						
3.	Frank McLaughlin, 20th		+ 5.00	5.00				11.00	22.00
									$240.00

To cost of ejectment suit vs Ed. Lee
122 Cabinet St. ..... $ 2.10
To Coms. for collecting rents 12.00 $ 14.10
" check to Bal. 225.90
$240.00
$240.00

JAMES E. GARABRANT.

New Jersey State Library.

Exhibit D. 16.

Newark, N. J., Oct. 31, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

			1912 June	July	Aug.	Sept.	Oct.		
		114 Cabinet St.				+	7.50	$ 7.50	
1.		C. Callahan, 8th				+	8.50	8.50	$ 16.00
2.		J. Gandoli							
116.	1.	B. Brady	+	2.00	7.50	1.50		11.00	
	2.	W. Merrigan		+	.50	1.50		2.00	13.00
118.	1.	E. Carr, 12th			+	7.50		7.50	
	2.	D. McGlynn, 8th				+	8.50	8.50	16.00
120.		Wm. Hart, 8th				+	13.	13.00	13.00
122.	1.	J. Hardcastle, 23d				+	7.50	7.50	
	2.	J. Meehan			+	1.00	8.	9.00	16.50
		21 Arlington St.							
		V. Craig, 6th				+	15.	15.00	15.00
		4 South 6th St.							
		J. Palmiere				+	5.	5.00	5.00
6.	1.	D. L. Arnoy				+	11.	11.00	
	2.	G. B. Cooper, 6th				+	10.	10.00	21.00
r. 58.		A. Hermes		+	7.			7.00	7.00
		470 Warren St.							
	2.	W. Banks				+	9.	9.00	
	3.	E. M. Schaumer				+	9.50	9.50	18.50
478.	1.	D. O'Leary				+	14.	14.00	
	2.	Thos. Byrne				+	15.	15.00	
	3.	Geo. Howell	+	11.	11.			22.00	51.00
480.	1.	J. Hanson				+	7.	8.	15.00	
	2.	F. Bataille				+	12.		12.00	
	3.	Mary Finan					+	6.25	6.25	33.25
482.	1.	M. Hudson, 20th	+	5.					5.00	
	2.	D. Lavin					+	11.	11.00	
	3.	M. Smith + 10.							10.00	26.00
484.	1.	E. Fitzpatrick					+	11.	11.00	
	2.	Geo. Morgan					+	12.	12.00	
	3.	F. McLaughlin, 20th	+	5.50	5.50				11.00	34.00
										$285.25

To Coms. for collecting	$ 14.26
" check to Bal.	270.99
	$285.25
	$285.25

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Nov. 29th, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1912

			June	July	Aug.	Sept.	Oct.	Nov.		
114 Cabinet St.										
1.	C. Callahan	due on 8th					+	7.50	$ 7.50	
2.	J. Gandoli						+	8.50	8.50	$ 16.00
#116.	1.	B. Brady			+ 8.		2.50		8.50	
	2.	W. Merrigan			+ 7.		1.00		8.00	16.50
#118.	1.	E. Carr " " 12th				+	7.50		7.50	
	2.	D. McGlynn " " 8th					+	8.50	8.50	16.00
#120.		Wm. Hart " " 8th					+	13.	13.00	13.00
#122.	1.	J. Hardcastle " " 23d					+	7.50	7.50	
	2.	J. Meehan					+	8.	8.00	15.50
21 Arlington St.										
		Victoria Craig " " 6th					+	15.	15.00	15.00
4 So. 6th St.										
		J. Palmiere					+	5.	5.00	5.00
#6.	1.	D. L. Arnoy					+	11.	11.00	11.00
	2.	G. B. Cooper " " 6th					+	10.	10.00	10.00
rear 58.		A. Hermes		+ 7.		3.			10.00	10.00
470 Warren St.										
	2.	Wm. Banks ejected for nonpayment							unpaid	
	3.	E. M. Schumer					+	9.50	9.50	9.50
#478.	1.	D. O'Leary					+	14.	14.00	
	2.	Thos. Byrne					+	15.	15.00	
	3.	Geo. Howell		+ 11.					11.00	40.00
#480.	1.	J. Hanson				+ 4.		7.	11.00	
	2.	F. Bataille ejected for nonpayment								
	3.									11.00
		due 20th								
#482.	1.	M. Hudson + 3.			11.				14.00	
	2.	D. Lavin					+	11.	11.00	
	3.	M. Smith + 10.		3.					13.00	38.00
#484.	1.	E. Fitzpatrick					+	11.	11.00	
	2.	Geo. Morgan					+	12.	12.00	
		due on 20th								
	3.	F. McLaughlin		+ 5.50	5.50				11.00	34.00
										$260.50

To cost of ejectment suits
vs. W. Banks 470 Warren St. $2.10
vs. F. Bataille 480 " " 2.10 $ 4.20
To Coms. for collecting 13.02
" check to Bal. 243.28

$260.50

$260.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Dec. 31, 1912.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

			1912 June	July	Aug.	Sept.	Oct.	Nov.	Dec.		
Cabinet St.											
#114.	1.	C. Callahan, 8th						+	7.50	$ 7.50	
	2.	J. Gandoli						+	8.50	8.50	$ 16.00
#116.	1.	B. Brady			+	5.00	2.50			7.50	
	2.	W. Merrigan			+	7.50	3.50			11.00	18.50
#118.	1.	E. Carr, 12th				+	7.50			7.50	
	2.	D. McGlynn, 8th						+	8.50	8.50	16.00
#120.		Wm. Hart, 18th						+	13.	13.00	13.00
#122.	1.	J. Hardcastle, 23d						+	7.50	7.50	
	2.	J. Meehan						+	8.	8.00	15.50
21 Arlington St.											
		V. Craig, 6th						+	15.	15.00	15.00
4 So. 6th St.											
+		J. Palmiere						+	5.	5.00	5.00
#6.	1.	D. L. Arnoy						+	11.	11.00	
	2.	G. B. Cooper, 6th						+	10.	10.00	21.00
rear 58.		A. Hermes			+	4.	7.			11.00	11.00
Warren St.											
#470.	1.								vac.		
	2.	E. M. Schaumer						+	9.50	9.50	9.50
#478.	1.	D. O'Leary						+	14.	14.00	
	2.	T. Byrne						+	15.	15.00	
	3.	Geo. Howell			+	11.				11.00	40.00
#480.	1.	J. Hanson					+	5.	4.	9.00	
	2.	Adolph Lonn, 12th						+	12.	12.00	
	3.							+	vac.		21.00
#482.	1.	M. Hudson, 20th	+	11.		9.				20.00	
	2.	D. Lavin						+	11.	11.00	
	3.	M. Smith + 7.		6.						13.00	44.00
#484.	1.	E. Fitzpatrick						+	11.	11.00	
	2.	Geo. Morgan						+	12.	12.00	
	3.	F. McLaughlin, 20th	+	5.50		5.50				11.00	34.00
											$279.50

To Coms. for collecting $ 13.97
" Check to Bal. 265.53

$279.50

$279.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., January 30th, 1913.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

		1912						1913	
		Aug.	Sept.	Oct.	Nov.	Dec.	Jan.		
114 Cabinet St.									
	1. C. Callahan, 8th					+	7.50	$ 7.50	
	2. J. Gandoli					+	8.50	8.50	$ 16.00
#116.	1. B. Brady			+	5.	2.50		7.50	
	2. W. Merrigan				+	5.00	5.50	10.50	18.00
#118.	1. E. Carr, 12th				+	7.50		7.50	
	2. D. McGlynn, 8th					+	8.50	8.50	16.00
#120.	Wm. Hart, 8th					+	13.	13.00	13.00
#122.	1. J. Hardcastle, 23d						unpaid		
	2. J. Meehan					+	8.	8.00	8.00
21 Arlington St.									
	V. Craig, 6th					+	15.	15.00	15.00
4 So. 6th St.									
	J. Palmiere					+	5.	5.00	5.00
#6.	1. D. L. Arnoy					+	11.	11.00	
	2. G. B. Cooper, 6th					+	10.	10.00	21.00
r. 58	A. Hermes				+	7.		7.00	7.00
470 Warren St.									
	2.						vac.		
	3. E. M. Schaumer					+	9.50	9.50	9.50
#478.	1. D. O'Leary					+	14.	14.00	
	2. T. Byrne					+	15.	15.00	
	3. G. Howell	+	10.	13.				23.00	52.00
#480.	1. J. Hanson				+	8.	10.	18.00	
	2. Otto Lonn, 9th					+	12.	12.00	
	3. Geo. W. Brooks					+	10.	10.00	40.00
#482.	1. M. Hudson, 20th	+	2.					2.00	
	2. D. Lavin					+	11.	11.00	
	3. M. Smith + 4.	9.						13.00	26.00
#484.	1. E. Fitzpatrick					+	11.	11.00	
	2. Geo. Morgan						12.	12.00	
	3. F. McLaughlin, 20th	+	5.50	5.50				11.00	34.00
									$280.50

To Com's. for collecting $ 14.02

" check to Bal. 266.48

$280.50

$280.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., February 28, 1913.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

			1912						1913
			Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	
	114 Cabinet St.								
	1.	C. Callahan, 8th					+ 7.50	$ 7.50	
	2.	J. Gandoli					+ 8.50	8.50	$ 16.00
116.	1.	B. Brady			+ 5.00		3.00	8.00	
	2.	W. Merrigan				+ 3.00	4.	7.00	15.00
118.	1.	E. Carr				+ 7.50		7.50	
	2.	D. McGlynn, 8th					+ 8.50	8.50	16.00
120.		Wm. Hart, 8th					+ 13.	13.00	13.00
122.	1.	J. Hardcastle, 23d				+ 7.50	4.50	12.00	
	2.	J. Meehan					+ 8.	8.00	20.00
	21 Arlington St.								
		V. Craig, 6th					+ 15.	15.00	15.00
	4 So. 6th St.								
		J. Palmiere					+ 5.	5.00	5.00
6.	1.	D. L. Arnoy					+ 10.	10.00	
	2.	G. B. Cooper, 6th					+ 10.	10.00	
r. 58		A. Hermes				+ 7.		7.00	27.00
	470 Warren St.								
	2.							vac.	
	3.	E. M. Schaumer						unpaid	
478.	1.	D. O'Leary					+	unpaid	
	2.	T. Byrne					+ 15.	15.00	
	3.	Geo. Howell			+ 13.			13.00	28.00
480.	1.	J. Hanson				+ 2.	12.	14.00	
	2.	Otto Lonn, 9th					+ 7.	7.00	
	3.	Geo. W. Brooks					+ 10.	10.00	31.00
482.	1.	M. Hudson, 20th		+ 11.				11.00	
	2.	D. Lavin					+ 11.	11.00	
	3.	M. Smith + 1.00	10.	2.00				13.00	35.00
484.	1.	E. Fitzpatrick					+ 11.	11.00	
	2.	Geo. Morgan					+ 12.	12.00	
	3.	F. McLaughlin		+ 5.50	5.50			11.00	34.00
									$255.00
	To Coms. for collecting								$ 12.75
	" Check to balance								242.25
									$255.00
									$255.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., March 31st, 1913.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

			1912						1913
			Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mch.		
114 Cabinet St.											
	1.	C. Callahan, 8th						+	4.	$ 4.00	
	2.	Jos. Gandoli						+	8.50	8.50	$ 12.50
#116.	1.	B. Brady			+	4.50	1.00			5.50	
	2.	Wm. Merrigan				+	4.50	5.50		10.00	15.50
#118.	1.	E. Carr, 12th				+	7.50			7.50	
	2.	D. McGlynn, 8th						+	8.50	8.50	16.00
#120.		Wm. Hart, 8th						+	13.	13.00	13.00
#122.	1.	J. Hardcastle, 23d				+	3.		4.50	7.50	
	2.	J. Meehan						+	8.	8.00	15.50
#21 Arlington St.											
		V. Craig, 6th						+	15.	15.00	15.00
4 So. 6th St.											
		J. Palmiere						+	5.	5.00	5.00
#6.		D. L. Arnoy				+	1.00	10.		11.00	
	2.	G. B. Cooper, 6th						+	10.	10.00	21.00
r. 58		A. Hermes				+	7.			7.00	7.00
470 Warren St.											
	1.										
	2.	new tenant paid to Mr. Conway									
	3.	E. Schaumer							unpaid		
#478.	1.	D. O'Leary							unpaid		
	2.	T. Byrne						+	15.	15.00	
	3.	G. Howell			+	13.				13.00	28.00
#480.	1.	J. Hanson						+	12.	12.00	
	2.	O. Lonn, 9th					+	5.	12.	17.00	
	3.	G. W. Brooks						+	10.	10.00	39.00
#482.	1.	M. Hudson		+	8.					8.00	
	2.	D. Lavin		+		+	+	+	11.	11.00	
	3.	M. Smith	+	8.		5.				13.00	32.00
#484.	1.	C. Fitzpatrick						+	11.	11.00	
	2.	Geo. Morgan						+	12.	12.00	
		20th									
	3.	F. McLaughlin		+	5.50	5.50				11.00	34.00
											$253.50

To Coms. for collecting rents	$ 12.67
" Check to balance	240.83
	$253.50
	$253.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., April 30th, 1913.

I. E. CONWAY In account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1912	1913								
		Oct.	Nov.	Dec.	Jan.	Feb'y	Mch	Apl.	
	114 Cabinet St.								
1.	C. Callahan, 8th					+ 3.50	7.50	$11.00	
2.	Jos. Gandoli						+ 8.50	8.50	$19.50
	No. 116								
1.	B. Brady		+ 3.					3.00	
2.	Wm. Merrigan			+ 3.		2.		5.00	8.00
	No. 118								
1.	E. Carr, 12th					+ 7.50		7.50	
2.	D. McGlynn, 8th						+ 4.	4.00	11.50
	No. 120								
	Wm. Hart, 8th						+ 13.	13.00	13.00
	No. 122								
1.	J. Hardcastle, 23d					+ 3.	4.50	7.50	
2.	J. Meehan						+ unpaid		7.50
	21 Arlington St.								
	V. Craig, 6th						+ 15.	15.00	15.00
	4 So. 6th St.								
	J. Palmiere						+ 5.	5.00	5.00
	No. 6								
1.	D. L. Arnoy					+ 1.00	11.	12.00	
2.	G. B. Cooper, 6th						+ 10.	10.00	22.00
	Rear 58								
	A. Hermes					+ 7.		7.00	7.00
	478 Warren St.								
1.	D. O'Leary			+ 14.				14.00	
2.	T. Byrne						+ 15.	15.00	
3.	Geo. Howell			+ 13.		13.	13.	39.00	68.00
	No. 480								
1.	J. Hanson						+ 10.	10.00	
2.	O. Sonn, 9th						+ 12.	12.00	
3.	G. W. Brooks						+ 12.	12.00	34.00
	No. 482								
1.	M. Hudson, 20th	+ 3.00	6.					9.00	
2.	D. Larvin						+ 11.	11.00	
3.	M. Smith	+ 5.	8.					13.00	33.00
	No. 484								
1.	C. Fitzpatrick						+ 11.	11.00	
2.	G. Morgan						+ 12.	12.00	
3.	F. McLaughlin, 20th		+ 5.50	5.50				11.00	34.00
									$277.50

Mr. Hart, of 120 Cabinet St., wished me to say that he will move unless you have the kitchen walls painted.

To allowance to "Arnoy" in South 6th St. for window glass & door locks by Mrs. Conway's permission	$ 1.00	
Coms. for collecting	13.87	$ 14.87
Check to bal		262.63
		$277.50
		$277.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., May 31st, 1913.

I. E. CONWAY In account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913

		Jan.	Feb.	Mch	Apl	May		
	114 Cabinet St.							
1.	Cath. Callahan, 8th					+ 3.50	$ 3.50	
2.	J. Gandoli					+ 8.50	8.50	$ 12.00
	116							
1.	B. Brady	+ 3.50	4.50				8.00	
2.	W. Merrigan		+	6.50	3.		9.50	17.50
	118							
1.	E. Carr, 12th			+	7.50		7.50	
2.	D. McGlynn, 8th			+	4.50		4.50	12.00
	120							
	Wm. Hart, 8th					+ 13.	13.00	13.00
	122							
1.	J. Hardcastle, 23			+	3.	5.	8.00	
2.	J. Meehan			+	8.		8.00	16.00
	21 Arlington St.							
	V. Craig					+ 15.	15.00	15.00
	4 So. 6th St.							
	J. Palmiere					+ 5.	5.00	5.00
	6							
1.	D. L. Arnoy					+ 11.	10.00	
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00
	Rear 58							
	A. Hermes			+	7.		7.00	7.00
	478 Warren St.							
1.	D. O'Leary		+	14.	14.		28.00	
2.	T. Byrne					+ 15.	15.00	
3.	Geo. Howell					+ 13.	13.00	56.00
	480							
1.	J. Hanson			+	2.	12.	14.00	
2.	O. Sonn, 9th					+ 12.	12.00	
3.	G. W. Brooks					+ 12.	12.00	38.00
	482							
1.	M. Hudson, 20	+ 5.					5.00	
2.	D. Lavin					+ 11.	11.00	
3.	M. Smith	+ 2.	10.	1.00			13.00	29.00
	484							
1.	C. Fitzpatrick				vacated			
2.	Geo. Morgan					+ 12.	12.00	
3.	F. McLaughlin, 20th		+ 5.50	5.50			11.00	
1.	A. S. Radcliff					+ 12.	12.00	35.00
								$276.50

To Com's for collecting rents	$ 13.82	
" Check to bal.	262.68	$276.50
		$276.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., June 30, 1913.

I. E. CONWAY In account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913

		Jan.	Feb.	Mch	Apl	May	June		
	114 Cabinet St.								
1.	Cath. Callahan, 8th				+ 4.		7.50	11.50	
2.	J. Gandoli					+	8.50	8.50	$ 20.00
	#116								
1.	B. Brady	+ 3.		1.00				4.00	
2.	W. Merrigan			+	2.50			2.50	6.50
	#118								
1.	E. Carr, 12th			+	3.50	7.50		11.00	
2.	D. McGlynn, 8th				+	8.50		8.50	19.50
	#120								
	Wm. Hart, 8th					+	13.	13.00	13.00
	#122								
1.	J. Hardcastle, 23d				+	2.50	5.50	8.00	
2.	J. Meehan				+	8.	7.	15.00	23.00
	21 Arlington St.								
	V. Craig, 6th					+	15.	15.00	15.00
	4 So. 6th St.								
	J. Palmiere					+	5.	5.00	5.00
	#6								
1.	D. L. Arnoy					+	11.	11.00	
2.	G. B. Cooper, 6th					+	10.	10.00	21.00
	R. 58								
	A. Hermes				+ 7.			7.00	7.00
	478 Warren St.								
1.	D. O'Leary				+ 14.			14.00	
2.	T. Byrne					+	15.	15.00	
3.	Geo. Howell					+	13.	13.00	42.00
	#480								
1.	J. Hanson					+	12.	12.00	
2.	O. Sonn, 9th					+	12.	12.00	
3.	G. W. Brooks					+	12.	12.00	36.00
	#482								
1.	M. Hudson, 20th	+ 11.		11.				22.00	
2.	D. Lavin					+	11.	11.00	
3.	M. Smith		+	9.	4.			13.00	46.00
	#484								
1.	A. S. Radcliffe					+	12.	12.00	
2.	Geo. Morgan				vacated June 1st				
3.	F. McLaughlin, 20th		+	5.50	5.50			11.00	23.00
									$277.00
	Com's for collecting								$ 13.85
	Check to Bal.								363.15
									$277.00
									$277.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., July 31, 1913.

MRS. I. E. CONWAY In account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

1913

		Jan.	Feb.	Mch	Apl	May	June	July		
	114 Cabinet St.									
1.	C. Callahan, 8th									
2.	J. Gandoli						+	8.50	8.50	8.50
	116									
1.								vac.		
2.	J. Duggan, 15th						+	6.50	6.50	6.50
	118									
1.	E. Carr, 12th					+	7.50		7.50	
2.	D. McGlynn, 8th					+	8.50		8.50	16.00
	120									
	Wm. Hart, 8th						+	13.	13.00	13.00
	122									
1.	J. Hardcastle, 23d					+	2.	6.50	8.50	
2.	J. Meehan					+	1.00	8.	9.00	17.50
	21 Arlington St.									
	V. Craig						+	15.	15.00	15.00
	4 So. 6th St.									
	J. Palmiere						+	5.	5.00	5.00
	6									
1.	D. L. Arnoy						+	11.	11.00	
2.	G. B. Cooper						+	10.	10.00	21.00
	R. 58									
	A. Hermes									
	478 Warren St.									
1.	D. O'Leary					+	14.		14.00	
2.	T. Byrne							+ 15.	15.00	
3.	G. Howell							+ 13.	13.00	42.00
	480									
1.	J. Hansen							+ 5.	5.00	
2.	O. Sonn, 9th							+ 6.	6.00	
3.	G. W. Brooks							+ 12.	12.00	23.00
	482									
1.	J. Hudson, 20th			+ 11.	6.				17.00	
2.	D. Lavin							+ 11.	11.00	
3.	T. Washington, 15th							+ 10.	10.00	38.00
	484									
1.	A. S. Radcliff							+ 12.	12.00	
2.	Willwerth					+	4.	4.	8.00	
3.	F. McLaughlin, 20th			+ 5.50	2.50				8.00	28.00
										$233.50

To cost of ejectment suit vs. Brady	2.10	
" " " " " " Merrigan	2.10	
" Coms for collecting	11.67	$ 15.87
" Check to Bal.		217.63
		$233.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., August, 1913.

I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913

		Jan.	Feb.	Mch	Apl	May	June	July	Aug.		
	114 Cabinet St.										
1.	C. Callahan, 8th						+	7.50	7.00	14.50	
2.	J. Gandoli							+	8.50	8.50	$ 23.00
	#116										
1.									vac.		
2.	E. Duggan, 15th							+	8.50	8.50	8.50
	#118										
1.	E. Carr, 12th						+	7.50		7.50	
2.	D. McGlynn, 8th						+	8.50		8.50	16.00
	#120										
	Wm. Hart, 8th							+	13.	13.00	13.00
	#122										
1.	J. Hardcastle, 23d						+	1.00	7.50	8.50	
2.	McCarthy, 5th							+	8.50	8.50	17.00
	21 Arlington St.										
	V. Craig, 6th							+	15.	15.00	15.00
	4 So. 6th St.										
	J. Palmiere							+	5.	5.00	5.00
	#6										
1.	D. L. Arnoy							+	11.	11.00	11.00
2.	G. B. Cooper, 6th							+	10.	10.00	21.00
	Rear 58										
	A. Hermes					+	7.	7.			14.00
	478 Warren St.										
1.	D. O'Leary						+	14.		14.00	
2.	T. Byrne								15.	15.00	
3.	Geo. Howell								13.	13.00	42.00
	#480										
1.	J. Hanson						+	7.	5.	12.00	
2.	O. Sonn, 9th						+	6.	12.	18.00	
3.	G. W. Brooks								12.	12.00	42.00
	#482										
1.	M. Hudson, 20th			+	4.					4.00	
2.	D. Lavin								11.	11.00	
3.	T. Washington, 15th								12.	12.00	27.00
	#484										
1.	A. S. Radcliffe								12.	12.00	
2.	A. Willwerth								12.	12.00	
3.	F. McLaughlin, 20th			+	8.50	5.50				14.00	38.00
											$281.50

To Coms for collecting rents	$ 14.07
" Check to bal.	267.43
	$281.50
	$281.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Sept. 30, 1913.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

		Apl	May	June	July	Aug.	Sept.			
	114 Cabinet St.									
1.	C. Callahan, 8th				+ 0.50			0.50		
2.	J. Gandoli					+ 8.50		8.50	$ 9.00	
	116 Cabinet St.									
1.	John Somek, 12th					+ 7.50		7.50		
2.	E. Duggan, 15th			pays to Oct. 1st				4.25	11.75	10
	118 Cabinet St.									
1.	E. Carr, 12th				+ 7.50			7.50		
2.	D. McGlynn, 8th				+ 8.50			8.50	16.00	
	120 Cabinet St.									
	Wm. Hart, 8th			vacated Sept. 8th						
	122 Cabinet St.									
1.	J. Hardcastle, 22d					+ 7.50		7.50		
2.	McCarthy, 5th					+ 8.50		8.50	16.00	
	21 Arlington St.									
	V. Craig, 6th					+ 15.		15.00	15.00	
	4 South 6th St.									
	J. Palmiere					+ 5.		5.00	5.00	
	#6 South 6th St.									
1.	D. S. Arnoy					+ 11.		11.00		
2.	G. B. Cooper, 6th						10.	10.00	21.00	
	R. 58 So. 6th St.									20
	A. Hermes				+ 7.			7.00	7.00	
	478 Warren St.									
1.	D. O'Leary				+ 14.			14.00		
2.	T. Byrne					+ 15.		15.00		
3.	E. Howell					+ 13.		13.00	42.00	
	480 Warren St.									
1.	J. Hanson				+ 7.		5.	12.00		
2.	A. Sonn, 9th			ejected for non-payment						
3.	G. W. Brooks					+ 12.		12.00	24.00	
	482 Warren St.									
1.	M. Hudson, 20th	+ 1.00	9.					10.00		
2.	D. Lavin					+ 11.		11.00		
3.	T. Washington, 15th					+ 12.		12.00	33.00	
	484 Warren St.									
1.	A. S. Radcliffe					+ 12.		12.00		
2.	A. Willwerth					+ 12.		12.00		
3.	F. McLaughlin, 20th	+ 5.50	5.50					11.00	35.00	30
									$234.75	

To cost of ejectment suit vs. A. Sonn	$ 2.10	
" Coms for collecting	11.73	$ 13.83
" Check to bal.		220.92
		$234.75
		$234.75

JAMES E. GARABRANT.

40

Exhibit D. 16.

Newark, N. J., Oct. 31, 1913.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913

		June	July	Aug.	Sept.	Oct.		
	114 Cabinet St.							
1.						vac.		
2.	J. Gandoli					+ 8.50	8.50	$ 8.50
	#116							
1.	J. Somek, 12th					+ 7.50	7.50	
2.	E. Duggan					+ 8.50	8.50	16.00
	#118							
1.	E. Carr, 12th			+	4.	m'd out	4.00	
"	Frank Franzin, 25th					+ 7.50	7.50	
2.	D. McGlynn, 8th			+	8.50		8.50	20.00
	#120							
	F. McGrath, 15th					+ 13.	13.00	13.00
	#122							
1.	J. Hardcastle, 22d					+ 7.50	7.50	
2.						+ vac.		7.50
	21 Arlington St.							
	V. Craig, 6th					+ 15.	15.00	15.00
	4 So. 6th St.							
	J. Palmiere					+ 5.	5.00	5.00
	#6							
1.	D. L. Arnoy					+ 11.	11.00	
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00
	R. 58							
	A. Hermes			+	7.		7.00	7.00
	478 Warren St.							
1.	D. O'Leary			+	14.		14.00	
2.	T. Byrne					+ 15.	15.00	
3.	E. Howell					+ 13.	13.00	42.00
	#480							
1.	J. Hanson			+	7.	6.	13.00	
2.						vac.		
3.	G. W. Brooks					+ 12.	12.00	25.00
	#482							
1.	M. Hudson, 20th	+ 2.	8.				10.00	
2.	D. Lavin					+ 11.	11.00	
3.	T. Washington					+ 12.	12.00	33.00
	#484							
1.	A. S. Radcliffe					+ 12.	12.00	
2.	A. S. Willwerth					+ 12.	12.00	
3.	F. McLaughlin, 20th		+ 5.50	6.50			12.00	36.00
								$249.00

To Com's for collecting	$ 12.45
" Check to Bal.	236.55
	$249.00
	$249.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., November 29th, 1913.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913

		June	July	Aug.	Sept.	Oct.	Nov.		
	114 Cabinet St.								
1.	Mrs. J. Moore					+	7.50	$ 7.50	
2.	J. Gandoli					+	8.50	8.50	$ 16.00
	116 Cabinet St.								
1.	J. Somek, 12th					+	7.50	7.50	
2.	E. Duggan					+	8.50	8.50	16.00
	118 Cabinet St.								
1.	F. Franzin, 25th					+	7.50	7.50	
2.	D. McGlynn, 8th			+	8.50			8.50	16.00
	120 Cabinet St.								
	F. McGrath, 15th						+ 11.	11.00	11.00
	122 Cabinet St.								
1.	J. Hardcastle, 23d					+	7.50	7.50	
2.	Sarah Martin					+	8.50	8.50	16.00
	21 Arlington St.								
	V. Craig, 6th					+	15.	15.00	15.00
	4 So. 6th St.								
	J. Palmiere					+	5.	5.00	5.00
	6 So. 6th St.								
1.	D. L. Arnoy					+	11.	11.00	
2.	G. B. Cooper, 6th					+	10.	10.00	21.00
	Rear 58 So. 6th St.								
	A. Hermes			+	7.			7.00	7.00
	478 Warren St.								
1.	D. O'Leary			+	14.			14.00	
2.	T. Byrne					+	15.	15.00	
3.	E. Howell					+	13.	13.00	42.00
	#480 Warren St.								
1.	J. Hanson			+	6.			6.00	
2.							vac.		
3.	G. W. Brooks					+	12.	12.00	18.00
	#482 Warren St.								
1.	M. Hudson, 20th	+	3.	11.				14.00	
2.	D. Lavin					+	11.	11.00	
3.	T. Washington, 15th					+	12.	12.00	37.00
	#484 Warren St.								
1.	A. S. Radcliffe					+	12.	12.00	
2.	A. Willwerth					+	12.	12.00	
3.	F. McLaughlin, 20th	+	4.50	8.50				13.00	37.00
									$257.00

To Coms for collecting rents	$ 12.85	
" Check to Bal.	244.15	$257.00
		$257.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Dec. 31, 1913.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

		Sept.	Oct.	Nov.	Dec.		
	114 Cabinet St.						
1.	Mrs. J. Moore			+	4.	$ 4.00	
2.	J. Gandoli			+	8.50	8.50	$ 12.50
	#116						
1.	J. Somek, 12th			+	7.50	7.50	
2.	E. Duggan, 1st			+	8.50	8.50	16.00
	#118						
1.	F. Franzin, 25th			+	7.50	7.50	
2.	D. McGlynn, 8th		+ 8.50			8.50	16.00
	#120						
	F. McGrath, 15th		+ 2.		8.	10.00	10.00
	#122						
1.	J. Hardcastle, 22d			+	7.50	7.50	
2.	S. Morton			+	8.50	8.50	16.00
	21 Arlington St.						
	V. Craig, 6th			+	15.	15.00	15.00
	6 So. 6th St.						
1.	D. L. Arnoy			+	11.	11.00	
2.	G. B. Cooper, 6th			+	10.	10.00	21.00
	Rear 58						
	A. Hermes		+ 7.			7.00	7.00
	478 Warren St.						
1.	D. O'Leary			+	14.	14.00	
2.	T. Byrne			+	15.	15.00	
3.	Geo. Howell			+	13.	13.00	42.00
	#480						
1.	J. Hanson		+ 12.		12.	24.00	
2.	Mr. Vandervoort		Paid Conway				
3.	G. W. Brooks			+	12.	12.00	36.00
	#482						
1.	M. Hudson, 20th	+ 11.	7.00			18.00	
2.	D. Lavin			+	11.	11.00	
3.	T. Washington, 15th			+	12.	12.00	41.00
	#484						
1.	C. Sheldon, 2d (A. S. Radcliffe moved Dec. 1st)			+	12.	12.00	
2.	A. Willwerth—vacated Dec. 1st			+	vac.		
3.	F. McLaughlin, 20th	+ 2.50	8.50			11.00	23.00
							$255.50
	Coms for collecting						$ 12.77
	Chck to bal.						242.73
							$255.50
							$255.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., January 31, 1914.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT

To Collecting Rent of Property as follows:

1913	1914							
		Sept.	Oct.	Nov.	Dec.	Jan.		
	114 Cabinet St							
1.	J. Moore			+	3.50	7.50	$11.00	
2.	J. Gandoli				+	8.50	8.50	$ 19.50
	#116							
1.	J. Somek, 12th				+	7.50	7.50	
2.	E. Duggan				+	8.50	8.50	16.00
	#118							
1.	F. Franzin, 25th				+	5.	5.00	
2.	D. McGlynn, 8th			+	8.50	8.50	17.00	22.00
	#120							
	F. McGrath, 15th			+	5.	7.	12.00	12.00
	#122							
1.	J. Hardcastle, 22				+	unpaid		
2.	S. Morton				+	2.	2.00	2.00
	21 Arlington St.							
	V. Craig, 6th				+	15.	15.00	15.00
	6 So. 6th St.							
1.	D. L. Arnoy				+	11.	11.00	
2.	G. B. Cooper, 6th				+	10.	10.00	21.00
	R. #58 So. 6th St.							
	A Hermes			+	7.		7.00	7.00
	478 Warren St.							
1.	D. O'Leary				+	14.	14.00	
2.	T. Byrne				+	15.	15.00	
3.	Geo. Howell				+	13.	13.00	42.00
	#480							
1.	J. Hanson				+	5.	5.00	
2.						vac.		
3.	G. W. Brooks				+	12.	12.00	17.00
	#482							
1.	M. Hudson, 20th	+	4.	4.			8.00	
2.	D. Lavin				+	11.	11.00	
3.	T. Washington, 15th				+	12.	12.00	31.00
	#484							
1.	Chas. Shield, 2d				+	12.	12.00	
2.						vac.		
3.	F. McLaughlin, 20th	+	2.50	8.50			11.00	23.00
								$227.50

To Coms for collecting	$ 11.37
" Check to Bal.	216.13
	$227.50
	$227.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., February 28th, 1914.

MRS. I. E. CONWAY In Account with JAMES E. GARABRANT
To Collecting Rent of Property as follows:

1913	1914						
		Oct.	Nov.	Dec.	Jan.	Feb.	
	114 Cabinet St.						
1.	J. Moore				+		
2.	J. Gandoli				+	8.50	8.50 $ 8.50
	#116						
1.	J. Somek, 12th				+	7.50	7.50
2.	E. Duggan				+	8.50	8.50 16.00
	#118						
1.	F. Franzin, 25th			+	2.50	7.50	10.00
2.	D. McGlynn, 8th				+	8.50	8.50 18.50
	#120						
	F. McGrath, 15th						
	#122						
1.	J. Hardcastle, 22			+	7.50	7.50	15.00
2.	S. Morton, vacated					vac.	15.00
	21 Arlington St.						
	V. Craig, 6th				+	15.	15.00 15.00
	6 So. 6th St.						
1.	D. L. Arnoy				+	11.	11.00
2.	G. B. Cooper, 6th				+	10.	10.00 21.00
	Rear 58						
	A. Hermes						
	478 Warren St.						
1.	D. O'Leary						
2.	T. Byrne				+	15.	15.00
3.	Geo. Howell				+	13.	13.00 28.00
	#480						
1.	J. Hanson			+	7.		7.00
2.	Benj. Lewis (Feb. 15 to March 15)				+	12.	12.00
3.	G. W. Brooks				+	12.	12.00 31.00
	#482						
1.	M. Hudson	+	7.	4.			12.00 31.00
2.	D. Lavin				+	11.	11.00
3.	T. Washington (Feb. 15 to March 1st)				+	6.	6.00 28.00
	#484						
1.	C. Sheldon, 2d				+	12.	12.00
2.	Wm. Evirs, 15th to Mch. 1st				+	6.	6.00
3.	F. McLaughlin	+	2.50	8.50			11.00 29.00
							$210.00

Have begun ejectment suit against Moore.
Hermes has not yet paid on account of his wife being sick in Hospital. O'Leary is out of work and will pay later. McGrath's time you've extended to March 1st.

JAMES E. GARABRANT.

W. F. Conway, Esq.
2/28. 1914

To Coms. for collecting	$ 10.50
" Check to bal.	199.50
	$210.00
	$210.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., March 31, 1914.

I. E. CONWAY

In Account with James E. Garabrant.

To Collecting Rents of Ppty. as follows:

			1913			1914		
			Oct.	Nov.	Dec.	Jan.	Feb.	Mar.		
114 Cabinet St.	1.	J. Moore				+6.			$ 6.00	
	2.	J. Gandoli					+	8.50	8.50	$ 14.50
116 " "	1.	J. Somek, (12th)						moved out		
	2.	E. Duggan					+	8.50	8.50	8.50
118 " "	1.	F. Franzin, (25th)					+	7.50	7.50	
	2.	D. McGlynn, (8th)					+	8.50	8.50	16.00
120 " "		F. McGrath, (15th)				+ 6.			6.00	6.00
122 " "	1.	J. Hardcastle, (22d)					+	unpaid		
	2.	..... Mallaney					+	6.50	6.50	6.50
21 Arlington St.		V. Craig, (6th) Ppty sold, tenant moved out, March rent unpaid from the 6th								
6 South 6th St.	1.	D. L. Arnoy					+	11.	11.00	
	2.	G. B. Cooper, 6th					+	10.	10.00	21.00
r. 58 " " "		A. Hermes				+ 7.			7.00	7.00
478 Warren St.	1.	D. O'Leary				+ 14.			14.00	
	2.	T. Byrne					+	unpaid		
	3.	Geo. Howell					+	13.	13.00	27.00
480 " "	1.	J. Hansen				+ 12.		3.	15.00	
	2.	Benj. Lewis, (15th)					+	12.	12.00	
	3.	Frank Dennis (20th)					+	12.	12.00	39.00
482 " "	1.	M. Hudson + 7.				8.			15.00	
	2.	D. Lavin					+	11.	11.00	
	3.	T. Washington, (1st)					+	6.	6.00	
	"	" " (15th)					+	12.	12.00	44.00
484 " "	1.	C. Sheldon, (2d)					+	11.	11.00	
	2.	Wm. Evers (20th)					+	12.	12.00	
	3.	F. McLaughlin + 2.50				8.50			11.00	34.00
		5% Coms. for collecting							$ 11.17	$223.50
		Check to Bal.							212.33	223.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., April 30, 1914

MRS. I. E. CONWAY
In Account with JAMES E. GARABRANT & CO.
To Collecting Rent of Property as follows:

		1914 Jan.	Feby.	March	April		
	114 Cabinet St.						
1.	J. Moore ejected for nonpayment						
2.	J. Gandoli			+	8.50	$ 8.50	$ 8.50
	116 Cabinet St.						
1.	M. Heitman			+	7.50	7.50	
2.	E. Duggan			+	8.50	8.50	16.00
	118 Cabinet St.						
1.	F. Franzin, 25th			+	3.50	3.50	
2.	D. McGlynn, 8th			+	8.50	8.50	12.00
	120 Cabinet St.						
	F. McGrath	+ 8.				8.00	8.00
	122 Cabinet St.						
1.	J. Hardcastle		+	7.50	2.50	10.00	
2.	Mrs. Mallaney			+	8.50	8.50	18.50
	6 So. 6th St.						
1.	Henry Boyce			+	10.	10.00	
2.	G. B. Cooper, 6th			+	10.	10.00	20.00
	r. 58 So. 6th St.						
	A. Hermes vacated, rent unpaid						
	478 Warren St.						
1.	D. O'Leary	+ 14.				14.00	
2.	T. Byrne		+	15.		15.00	
3.	Geo. Howell			+	13.	13.00	42.00
	480 Warren St.						
1.	J. Hanson		+	9.	10.	19.00	
2.	B. Lewis, 15th			+	12.	12.00	
3.	F. Dennis			+	12.	12.00	43.00
	482 Warren St.						
1.	M. Hudson, 20th	+ 3.	6.			9.00	
2.	D. Lavin			+	11.	11.00	
3.	T. Washington, 15th			+	6.	6.00	26.00
	484 Warren St.						
1.	C. Sheldon, 2d		+	1.00	11.75	12.75	
2.	Wm. Evers			+	12.	12.00	
3.	E. McLaughlin, 20th	+ 2.50	8.50			11.00	35.75
							$229.75

To cost of ejectment suit vs J. Moore 114 Cabinet St. $ 2.20
" Coms. for collecting 11.48
" Check to bal. 216.07

$229.75

$229.75

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., May 29th, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1914

		Jan.	Feb.	Mch.	Apl.	May		
	114 Cabinet St.							
1.	Julia Boyd (from 25th)					+ 3.	$ 3.00	
2.	J. Gandoli					+ 5.	5.00	$ 8.00
	#116. Have started ejectment suit against Mrs. Heitman							
1.	M. Heitman					+ 2.50	2.50	
2.	E. Duggan					+ 8.50	8.50	11.00
	#118.							
1.	F. Franzin (25th)			+ 4.		3.	7.00	
2.	D. McGlynn (8th)					+ 8.50	8.50	15.50
	#120.							
	F. McGrath (15th)	+ 5.	13.		9.		27.00	27.00
	#122.							
1.	J. Hardcastle, 23d			+ 5.		5.	10.00	
2.	C. Mallaney, 10th					+ 5.	5.00	15.00
	6 So. 6th St.							
1.	Henry Boice					+ 11.	11.00	
2.	G. B. Cooper (6th)					+ 10.	10.00	21.00
	478 Warren St.							
1.	D. O'Leary		+ 14.				14.00	
2.	T. Byrne			+ 15.			15.00	
3.	Geo. Howell					+ 13.	13.00	42.00
	#480.							
1.	J. Hanson				2.	6.	8.00	
2.	B. Lewis, 15th					+ 12.	12.00	
3.	F. Dennis					+ 12.	12.00	32.00
	#482.							
1.	M. Hudson, 20th	+ 5.	1.00				6.00	
2.	D. Lavin					+ 11.	11.00	
3.	T. Washington, 15th			+ 6.	12.		18.00	35.00
	#484.							
1.	C. Sheldon, 2d			+	0.25	12.	12.25	
2.	Wm. Evers				+	12.	12.00	
3.	F. McLaughlin (20th)	+ 2.50	8.50				11.00	35.25
								$241.75

Mrs. Boyd, 114 Cabinet St., has no shelves in kitchen closet and wants them right away.

To Coms. for collecting	$ 12.08
" Check to bal.	229.67
	$241.75
	$241.75

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., June 30th, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

		1914						
		Jan.	Feb.	Mch.	Apl.	May	June	
	114 Cabinet St.							
1.	Julia Boyd, 25th				+ 4.50		$ 4.50	
2.	J. Gandoli				ejected for nonpayment			4.50
	116.							
1.	M. Heitman, ejected for nonpayment						vac.	
2.	E. Duggan						Paid to Mr. Conway	
	118.							
1.	F. Franzin, 25th				+ 4.50	7.50	12.00	
2.	D. McGlynn, 8th					+ 8.50	8.50	20.50
	120.							
	F. McGrath, 15th			+ 4.	13.		17.00	17.00
	122.							
1.	J. Hardcastle, 23d				+ 2.50	5.00	7.50	
2.	C. Mallaney, 10th				+ 3.50		3.50	11.00
	6. So. 6th St.							
1.	H. Boice					+ 11.	11.00	
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00
	478 Warren St.							
1.	D. O'Leary			+ 14.	14.		28.00	
2.	T. Byrne				+ 15.		15.00	
3.	Geo. Howell					+ 13.	13.00	56.00
	480.							
1.	J. Hanson				+ 6.	7.	13.00	
2.	B. Lewis, 15th					+ 12.	12.00	
3.	F. Dennis					+ 12.	12.00	37.00
	482.							
1.	M. Hudson, 20th			+ 10.			10.00	
2.	D. Lavin					+ 11.	11.00	
3.	T. Washington, 15th					+ 12.	12.00	33.00
	484.							
1.	C. Sheldon, 2d					+ 12.	12.00	
2.	W. Evers					+ 12.	12.00	
3.	F. McLaughlin, 20th	+ 2.50	8.50				11.00	35.00
								$235.00

To cost of ejectment suit vs M. Heitman		$ 2.10	
" Coms. for collecting		11.75	$ 13.85
" Check to bal.			221.15
			$235.00
			$235.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., July, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

		1914						
		Mch.	April	May	June	July		
	114 Cabinet St.							
1.	J. Boyd, 25th			+	7.50		$ 7.50	
2.	Wm. Cassell, 15th				+	8.50	8.50	$ 16.00
	116 Cabinet St.							
1.	Cath Smith, 4th				+	7.50	7.50	
2.	E. Duggan			+	8.50	vac.	8.50	16.00
	118 Cabinet St.							
1.	F. Franzin, 25th				+	moved out		
2.	D. McGlynn, 8th				+	8.50	8.50	8.50
	120 Cabinet St.							
	F. McGrath, 15th			+	13.		13.00	13.00
	122 Cabinet St.							
1.	J. Hardcastle, 23d			+	2.50	5.00	7.50	
2.	C. Mallaney, 10th			+	8.50		8.50	16.00
	6 So. 6th St.							
1.	Henry Boice				+	11.	11.00	
2.	G. B. Cooper, 6th				+	10.	10.00	21.00
	478 Warren St.							
1.	D. O'Leary			+	14.		14.00	
2.	T. Byrne			+	15.		15.00	
3.	Geo. Howell				+	13.	13.00	42.00
	480 Warren St.							
1.	J. Hanson			+	5.	9	14.00	
2.	B. Lewis, 15th				+	12.	12.00	
3.	F. Dennis				+	12.	12.00	38.00
	482 Warren St.							
1.	M. Hudson, 20th	+	9.				9.00	
2.	D. Lavin				+	11.	11.00	
3.	T. Washington, 15th				+	12.	12.00	32.00
	484 Warren St.							
1.	C. Sheldon, 2d				+	12.	12.00	
2.	W. Evers				+	12.	12.00	
3.	F. McLaughlin, 20th	+	2.50	3.00			5.50	29.50
								$232.00
	To Coms. for collecting							$ 11.60
	" Check to bal.							220.40
								$232.00
								$232.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., August 31, 1914.

MRS. J. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

		1914 Apl.	May	June	July	Aug.		
	114 Cabinet St.							
1.	Julia Boyd, 25th			+ 7.50			$ 7.50	
2.	Wm. Cassell, 15th				+ unpaid			$ 7.50
	#116.							
1.	Cath. Smith, 4th				+ 7.50	7.50		
2.	Ed. Rooney, 10th				+ 8.50	8.50		16.00
	#118.							
1.	Wm. H. Taylor				+ 7.50	7.50		
2.	D. McGlynn, 8th				+ 8.50	8.50		16.00
	#120.							
	F. McGrath, 15th			+ 13.		13.00		13.00
	#122.							
1.	J. Hardcastle, 23d				vacated Aug. 29			
2.	C. Mallaney, 10th			+ 8.50		8.50		8.50
	4 South 6th St.							
1.	Henry Boice				+ 11.	11.00		
2.	G. B. Cooper, 6th				+ 10.	10.00		21.00
	478 Warren St.							
1.	D. O'Leary			+ 14.		14.00		
2.	T. Byrne			+ 15.		15.00		
3.	Geo. Howell				+ 13.	13.00		42.00
	#480.							
1.	J. Hanson			+ 3.	10.	13.00		
2.	B. Lewis, 15th				+ 12.	12.00		
3.	F. Dennis				+ 12.	12.00		37.00
	#482.							
1.	M. Hudson, 20th	+ 2.	11.			13.00		
2.	D. Lavin				+ 11.	11.00		
3.	T. Washington, 15th				+ 12.	12.00		36.00
	#484.							
1.	C. Sheldon, 2d				+ 9.50	9.50		
2.	Wm. Evers				+ 12.	12.00		
3.	F. McLaughlin, 20th				unpaid			21.50
								$218.50
	Coms. for collecting							$ 10.92
	Check to bal.							207.58
								$218.50
								$218.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Sept. 30, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1914

		Apl.	May	June	July	Aug.	Sep.		
	114 Cabinet St.								
1.	J. Boyd, 25th				ejected				
2.	W. Cassell				vacated				
"	Lawrence Farrell, 15th					+ 8.50	8.50	8.50	10
	#116.								
1.	C. Smith, 4th				ejected				
2.	Ed. Rooney, 10th					+ 8.50	8.50	8.50	
	#118.								
1.	W. H. Taylor					+ 7.50	7.50		
2.	D. McGlynn, 8th					+ 8.50	8.50	16.00	
	#120.								
	F. McGrath, 15th			+ 13.			13.00	13.00	
	#122.								
1.	J. D.....					+ 7.50	7.50		
2.	C. Mallaney, 10th			+ 8.50			8.50	16.00	
	6 South 6th St.								
1.	Henry Boice					+ 11.	11.00		
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00	
	478 Warren St.								
1.	D. O'Leary			+ 14.			14.00		
2.	T. Byrne			+ 15.			15.00		20
3.	G. Howell					+ 13.	13.00	42.00	
	#480.								
1.	J. Hanson			+ 2.		8.	10.00		
2.	B. Lewis, 15th					+ 12.	12.00		
3.	F. Dennis					+ 12.	12.00	34.00	
	#482.								
1.	M. Hudson, 20th	+ 8.					8.00		
2.	D. Lavin					+ 11.	11.00		
3.	T. Washington, 15th (moved out Sep. 12th)					vac.		19.00	
	#484.								
1.	C. Sheldon			+ 2.50	6.50		9.00		
2.	W. Evers					+ 12.	12.00		
3.	F. McLaughlin, 20th + 8.		5.				13.00	34.00	
								$212.00	
	Cost of ejectment suit vs Boyd						$ 2.10		30
	" " " " " Smith						2.10		
	Coms. for collecting						10.60	$ 14.80	
	Check to Bal.							197.20	
								$212.00	
								$212.00	

JAMES E. GARABRANT.

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Exhibit D. 16.

Newark, N. J., October 31, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1914

		May	June	July	Aug.	Sep.	Oct.	
	#114 Cabinet St.							
	1.					vac.		
10	2. Lawrence Farrell, 15th					+ 8.50	8.50	$ 8.50
	#116.							
	1. Louis Senc., 10th					+ 7.50	7.50	
	2. Edward Rooney, 10th					+ 8.50	8.50	16.00
	#118.							
	1. W. H. Taylor					+ 7.50	7.50	
	2. D. McGlynn, 8th					+ 8.50	8.50	16.00
	#120.							
	F. McGrath, 15th				+ 13.	13.	26.00	26.00
	#122.							
	1. Jos. Dobrino, 15th					+ 7.50	7.50	
	2. C. Mullaney, 10th				+ 8.50		8.50	16.00
	6 South 6th St.							
	1. H. Boice					+ 11.	11.00	
	2. G. B. Cooper, 6th					+ 10.	10.00	21.00
	478 Warren St.							
	1. D. O'Leary					unpaid		
20	2. T. Byrne				+ 15.		15.00	
	3. Geo. Howell					+ 13.	13.00	28.00
	#480.							
	1. J. Hanson (moved out Oct. 15th)				4.	3.	7.00	
	2. Benj. Lewis, 15th					+ 12.	12.00	
	3. F. Dennis					+ 12.	12.00	31.00
	#482.							
	1. M. Hudson, 20th	+ 3.		6.			9.00	
	2. D. Lavin					+ 11.	11.00	
	3. A. Beck (for Nov. 1914)						12.00	32.00
	#484.							
	1. C. Sheldon, 2d			+	5.50	12.00	17.50	
	2. W. Evers					+ 12.	12.00	
	3. F. McLaughlin, 20th	+ 6.		11.			17.00	46.50
								$241.00
30	Coms. for collecting							$ 12.05
	Check to bal.							228.95
								$241.00
								$241.00

JAMES E. GARABRANT.

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Exhibit D. 16.

Newark, N. J., November 30, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

			June	July	Aug.	Sep.	Oct.	Nov.		
Cabinet St.										
#104.	1.	Edward Dolan, 15th					+ 7.50	7.50		
	2.	Lawrence Farrell, 15th					+ 8.50	8.50	$ 16.00	
#116.	1.	Louis Senc., 10th					+ 7.50	7.50		
	2.	Edward Rooney, 10th					+ 8.50	8.50	16.00	
#118.	1.	W. H. Taylor					+ 7.50	7.50		
	2.	D. McGlynn, 8th					+ 8.50	8.50	16.00	
#120.		F. McGrath, 15th					+ unpaid			
#122.	1.	Jos. Dobrino, 15th					+ 7.50	7.50		
	2.	C. Mullaney, 10th				+ 5.		5.00	12.50	
So. 6th St.										
#6.	1.	Henry Boice					+ 11.	11.00		
	2.	G. B. Cooper, 6th					+ 10.	10.00	21.00	
Warren St.										
#478.	1.	D. O'Leary					unpaid			
	2.	T. Byrne				+ 15.		15.00		
	3.	Geo. Howell					+ 13.	13.00	28.00	
#480.	1.	T. Washington, 15th					+ 12.	12.00		
	2.	Benj. Lewis, 15th					+ 12.	12.00		
	3.	F. Dennis 20th					+ 12.	12.00	36.00	
#482.	1.	M. Hudson	+ 5.	4.				9.00		
	2.	D. Lavin					+ 11.	11.00		
	3.	A. Beck				pd. in Oct. ac.			20.00	
#484.	1.	C. Sheldon, 2d					+ 12.	12.00		
	2.	W. Evers 20th					+ 12.	12.00		
	3.	F. McLaughlin	+ 11.		5.50			16.50	40.50	
									$206.00	

Coms. for collecting	$ 10.30
Check to balance	195.70
	$206.00
	$206.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Dec. 31, 1914.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

		1914 Aug.	Sep.	Oct.	Nov.	Dec.		
	114 Cabinet St.							
1.	Edward Dolan				+	7.50	$ 7.50	
2.	Lawrence Farrell				+	8.50	8.50	$ 16.00
	No. 116.							
1.	Louis Senc				+	7.50	7.50	
2.	Edward Rooney				+	4.25	4.25	11.75
	No. 118.							
1.	Wm. H. Taylor				+	7.50	7.50	
2.	D. McGlynn				+	8.50	8.50	16.00
	No. 120.							
	Frank McGrath				unpaid			
	No. 122.							
1.	Jos. Dobrino					7.50	7.50	
2.	C. Mullaney			+	3.50	5.00	8.50	16.00
	6 South 6th St.							
1.	Henry Boice				+	11.	11.00	
2.	Geo. B. Cooper				+	10.	10.00	21.00
	478 Warren St.							
1.	D. O'Leary				unpaid			
2.	T. Byrne			+	15.		15.00	
3.	George Howell				+	13.	13.00	28.00
	#480.							
1.	Thos. Washington				+	6.	6.00	
2.	Benj. Lewis				+	12.	12.00	
3.	F. Dennis				+	12.	12.00	30.00
	#482.							
1.	Michael Hudson	+ 7.	6.				13.00	
2.	D. Lavin				+	11.	11.00	
3.	A. Beck				+	12.	12.00	36.00
	#484.							
1.	C. Sheldon				+	8.50	8.50	
2.	W. Evers				+	12.	12.00	
3.	F. McLaughlin		5.50	5.50			11.00	31.50
								$206.25
	Coms. for collecting						$10.31	
	Advertising stable to let r. 58							
	So. 6th St. Dec. 18-19						0.40	$ 10.71
	Check to Bal.							195.54
								$206.25
								$206.25

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., January 30, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

					1914			1915	
		Sept.	Oct.	Nov.	Dec.	Jan.			
	114 Cabinet St.								
1.	Edward Dolan, 15th					+ 5.	$ 5.00		
2.	Lawrence Farrell, 15th					+ 8.50	8.50	$ 13.50	
	#116.								
1.	Louis Cens, 10th					+ 7.50	7.50		
2.	Ed. Rooney, 10th				+ 4.25	4.25	8.50	16.00	
	#118.								
1.	Wm. H. Taylor					+ 7.50	7.50		
2.	D. McGlynn, 8th					+ 8.50	8.50	16.00	
	#120								
	Frank McGrath, 15th					unpaid			
	#122.								
1.	J. Dobrino, 15th					+ 7.50	7.50		
2.	C. Mullaney, 10th			3.50	5.		8.50	16.00	
	6 South Sixth St.								
1.	H. Boice					+ 11.	11.00		
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00	
	478 Warren St.								
1.	D. O'Leary	+ 14.					14.00		
2.	T. Byrne				+ 15.		15.00		
3.	Geo. Howell					+ 13.	13.00	42.00	
	#480.								
1.	T. Washington, 15th				+ 6.	12.	18.00		
2.	Benj. Lewis, 15th					+ 12.	12.00		
3.	F. Dennis					+ 12.	12.00	42.00	
	#482.								
1.	M. Hudson, 20th	+ 5.	11.	1.00			17.00		
2.	D. Lavin					+ 11.	11.00		
3.	A. Beck					+ 12.	12.00	40.00	
	#484.								
1.	C. Sheldon, 2d				+ 3.50	5.50	9.00		
2.	W. Evers					+ 12.	12.00		
3.	F. McLaughlin, 20th	+ 5.50		5.50			11.00	32.00	
								$238.50	

Jan. 2.	Advertising So. 6th St. stable		
	3 Insertions	$ 0.60	
	Coms. for collecting	11.92	$ 12.52
	Check to bal.		225.98
			$238.50
			$238.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., February, 1915.

MRS. ISABELLA E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

		1914									1915	
		Mch.	Apl.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	
	114 Cabinet St.													
	1. Edward Dolan, 15th												unpaid	
	2. L. Farrell, 15th										+	8.50	8.50	$ 8.50
	#116													
	1. Louis Cenc, 10th										+	7.50	7.50	
	2. Ed. Rooney, 10th									+	4.25	8.50	12.75	20.25
	#118.													
	1. Wm. H. Taylor										+	7.50	7.50	
	2. Dom. McGlynn, 8th										+	8.50	8.50	16.00
	#120.													
	F. McGrath										unpaid			
	#122													
	1. J. Dobrino, 15th										+	7.50	7.50	
	2. C. Mullaney, 10th							+	3.50	5.00			8.50	16.00
	6 South 6th St.													
	1. H. Boice										+	11.	11.00	
	2. G. B. Cooper, 6th										+	10.	10.00	21.00
	478 Warren St.													
	1. D. O'Leary					+	14.						14.00	
	2. T. Byrne									+	15.		15.00	
	3. Geo. Howell										+	13.	13.00	42.00
	#480													
	1. T. Washington										+	12.	12.00	
	2. B. Lewis, 15th										+	12.	12.00	
	3. F. Dennis, 15th										+	12.	12.00	36.00
	#482													
	1. M. Hudson, 20th					+	10.		8.				18.00	
	2. D. Lavin										+	11.	11.00	
	3. A. Beck										+	12.	12.00	41.00
	#484													
	1. C. Sheldon, 2d									+	6.50	8.50	15.00	
	2. Wm. Evers										+	12.	12.00	
	3. F. McLaughlin, 20th					+	5.50	5.50					11.00	38.00
														$238.75
	To Com's for collecting													$ 11.93
	" Check to balance													226.82
														$238.75
														$238.75

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., March 31, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Nov.	Dec.	Jan.	Feb.	March			
	114 Cabinet St.								
1.	Edward Dolan, 15th	ejected for non-payment							
2.	L. Farrell, 15th					+ 8.50	8.50	8.50	
	116 Cabinet St.								
1.	L. Cens, 10th					+ 7.50	7.50		
2.	Ed. Rooney, 10th					+ 8.50	8.50	16.00	
	118 Cabinet St.								
1.	Wm. H. Taylor					+ 7.50	7.50		
2.	D. McGlynn, 8th					+ 8.50	8.50	16.00	
	120 Cabinet St.								
	F. McGrath, 15th		+ 5.					5.00	
	122 Cabinet St.								
1.	J. Dobrino, 15th					+ 7.50	7.50		
2.	C. Mullaney, 10th			+ 3.50	3.00		6.50	14.00	
	6 So. 6th St.								
1.	H. Boice					+ 11.	11.00		
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00	
	478 Warren St.								
1.	D. O'Leary	+ 14.	14.				28.00		
2.	T. Byrne				+ 15.		15.00		
3.	Geo. Howell					+ 13.	13.00	56.00	
	480 Warren St.								
1.	T. Washington, 15th					+ 6.00	6.00		
2.	B. Lewis, 15th					+ 12.	12.00		
3.	F. Dennis					+ 10.	10.00	28.00	
	482 Warren St.								
1.	M. Hudson, 20th		+ 3.	11.			14.00		
2.	D. Lavin					+ 11.	11.00		
3.	A. Beck					+ 12.	12.00	37.00	
	484								
1.	C. Sheldon, 2d				+ 3.50	9.50	13.00		
2.	W. Evers					+ 12.	12.00		
3.	F. McLaughlin, 20th		+ 5.50				5.50	30.50	
								$232.00	

To Cost of ejectment suit vs. Ed. Dolan, 114 Cabinet St.	$ 2.10	
Coms for collecting rents	11.60	$ 13.70
Check to bal.		218.30
		$232.00
		$232.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., April 30, 1915

MRS. ISABELLA E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1914 1915

		May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jany	Feby	Mch	April		
	114 Cabinet St.														
1.	Annie Curran										+	7.50	$ 7.50		
2.	L. Farrell, 15th										+	8.50	8.50		16.00
	#116														
1.	L. Cens, moved out												vac.		
2.	E. Rooney, 10th										+		unpaid		
	#118														
1.	W. H. Taylor										+	7.50	7.50		
2.	D. McGlynn, 8th										+	8.50	8.50		16.00
	#120														
	F. McGrath, 15th												unpaid		
	#122														
1.	J. Dobrino, 15th										+	7.50	7.50		
2.	C. Mullaney, 10th									+	5.50		5.50		13.00
	6 South 6th St.														
1.	H. Boice										+	11.	11.00		
2.	G. B. Cooper, 6th										+	10.	10.00		21.00
	478 Warren St.														
1.	D. O'Leary												unpaid		
2.	T. Byrne									+	15.		15.00		
3.	Geo. Howell										+	13.	13.00		28.00
	#480														
1.	T. Washington, 15th									+	6.	12.	18.00		
2.	B. Lewis, 15th										+	12.	12.00		
3.	F. Dennis										+	2.12	14.00		44.00
	#482														
1.	M. Hudson, 20th							+	9.				9.00		
2.	D. Lavin										+	11.	11.00		
3.	A. Beck										+	12.	12.00		32.00
	#484														
1.	C. Sheldon, 2d									+	2.50	9.00	11.50		
2.	W. Evers										+	12.	12.00		
3.	F. McLaughlin, 20th						+	11.					11.00		34.50
															$204.50
	Coms for collecting														$ 10.22
	Check to bal.														194.28
															$204.50
															$204.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., May 29th, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

	Nov.	Dec.	Jan.	Feb.	Mch	April	May		
114 Cabinet St.									
1. Annie Curran						+	7.50	$ 7.50	
2. L. Farrell, 15th						+	8.50	8.50	$ 16.00
116 Cabinet St.									
1. Peter Burnet, 15th						+	7.50	7.50	
2. Ed. Rooney, 10th					+ 8.50			8.50	16.00
118 Cabinet St.									
1. W. H. Taylor						+	7.50	7.50	
2. D. McGlynn, 8th						+	8.50	8.50	16.00
#120									
F. McGrath, 15th +	8.	13.	13.	1.00					35.00
#122									
1. J. Dobrino, 15th						unpaid			
2. C. Mullaney, 10th					+ 8.50			8.50	8.50
6 So. 6th St.									
1. Henry Boice						+	11.	11.00	
2. G. B. Cooper, 6th						+	10.	10.00	21.00
478 Warren St.									
1. D. O'Leary	+ 10.							10.00	
2. T. Byrne					+ 15.			15.00	
3. Geo. Howell						+	13.	13.00	38.00
480 Warren St.									
1. T. Washington, 15th						+	6.	6.00	
2. B. Lewis, 15th						+	12.	12.00	
3. F. Dennis						+	12.	12.00	30.00
482 Warren St.									
1. M. Hudson, 20th			+	2.	7.50			9.50	
2. D. Lavin						+	11.	11.00	
3. A. Beck						+	12.	12.00	32.50
484 Warren St.									
1. C. Sheldon, 2d					+ 3.		6.	9.00	
2. W. Evers						+	12.	12.00	
3. F. McLaughlin, 20th		+ 11.						11.00	32.00
									$245.00
Com's for collecting								$ 12.25	
Check to balance								232.75	$245.00
									$245.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., June 30th, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Jan.	Feb.	Mch	Apl	May	June		
	No. 114 Cabinet St.								
1.	Annie Curran					+	7.50	$ 7.50	
2.	L. Farrell, 15th					+	8.50	8.50	$ 16.00
	#116								
1.	P. Burnett					+	7.50	7.50	
2.	Ed. Rooney, 10th				+	8.50		8.50	16.00
	#118								
1.	Wm. H. Taylor					+	7.50	7.50	
2.	D. McGlynn, 8th					+	8.50	8.50	16.00
	#120								
	F. McGrath, 15th	+	12.	4.				16.00	16.00
	#122								
1.	J. Dobrino, 15th				+	7.50		7.50	
2.	C. Mullaney, 10th				+	7.00		7.00	14.50
	6 South 6th St.								
1.	Henry Boice					+	11.	11.00	
2.	G. B. Cooper, 6th					+	10.	10.00	21.06
	478 Warren St.								
1.	D. O'Leary	+	4.	14.	14.			32.00	
2.	T. Byrne				+	15.		15.00	
3.	Geo. Howell					+	13.	13.00	60.00
	#480								
1.	T. Washington, 15th				+	6.	12.	18.00	
2.	B. Lewis, 15th					+	12.	12.00	
3.	F. Dennis					+	12.	12.00	42.00
	#482								
1.	M. Hudson, 20th		+	3.50	10.50			14.00	
2.	D. Lavin					+	11.	11.00	
3.	A. Beck					+	12.	12.00	37.00
	#484								
1.	C. Sheldon, 2d				+	6.	10.	16.00	
2.	W. Evers						+ vac.		
3.	F. McLaughlin, 20th		+	11.				11.00	27.00
									$265.50
	To Coms for collecting								$ 13.27
	" Check to bal.								252.23
									$265.50
									$265.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., July, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Jan.	Feb.	Mch	Apl	May	June	July		
Cabinet St.										
#114. 1.	Annie Curran						+	7.50	$ 7.50	
2.	L. Farrell (July 15 to Aug. 1st)						+	4.25	4.25	$ 11.75
#116. 1.	P. Burnett						+	7.50	7.50	
2.	E. Rooney, 10th					+	8.50	4.50	13.00	20.50
#118. 1.	W. H. Taylor						+	7.50	7.50	
2.	D. McGlynn, 8th						+	8.50	8.50	16.00
#120.	F. McGrath, 15th						unpaid			
#122. 1.	J. Dobrino, 15th					+	7.50		7.50	
2.	Cath. Mullaney			+	1.50	6.			7.50	15.00
6 So. 6th St.										
1.	Henry Boice						+	11.	11.00	
2.	G. B. Cooper, 6th						+	10.	10.00	21.00
Warren St.										
#478										
1.	D. O'Leary			+	14.				14.00	
2.	T. Byrne					+	15.		15.00	
3.	Geo. Howell						+	13.	13.00	42.00
#480										
1.	T. Washington, 15th						+	12.	12.00	
2.	B. Lewis, 15th						+	12.	12.00	
3.	F. Dennis							+	unpaid	24.00
#482										
1.	M. Hudson, 20th			+	0.50	9.50			10.00	
2.	D. Lavin						+	11.	11.00	
3.	A. Beck						+	12.	12.00	33.00
#484										
1.	C. Sheldon, 2d					+	2.	6.	8.00	
2.								vac.		
3.	F. McLaughlin, 20th			+	11.				11.00	19.00
										$202.25

To Coms for collecting	$ 10.11
" Check to bal.	192.14
	$202.25
	$202.25

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., August 31, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Jan.	Feby	Mch	Apl	May	June	July	Aug.		
	114 Cabinet St.										
1.	Annie Curran							+	7.50	7.50	
2.	L. Farrell							+	8.50	8.50	16.00
	116										
1.	P. Burnett							+	7.50	7.50	
2.	Ed. Rooney, 10th						+ 4.		8.50	12.50	20.00
	118										
1.	W. H. Taylor							+	7.50	7.50	
2.	D. McGlynn, 8th							+	8.50	8.50	16.00
	120										
	Frank McGrath, 15th + 9.		1.00							10.00	10.00
	122										
1.	J. Dobrino, 15th						+	7.50		7.50	
2.	C. Mullaney, 10th		+	2.50	7.50					10.00	17.50
	6 South 6th St.										
1.	H. Boice							+	11.	11.00	
2.	G. B. Cooper, 6th							+	10.	10.00	21.00
	478 Warren St.										
1.	D. O'Leary		+	14.						14.00	
2.	T. Byrne					+	15.			15.00	
3.	Geo. Howell							+	13.	13.00	42.00
	480										
1.	T. Washington, 15th							+	unpaid		
2.	Benj. Lewis, 15th							+	12.	12.00	
3.	F. Dennis					+	12.			12.00	24.00
	482										
1.	M. Hudson, 20th		+	1.50	11.00					12.50	
2.	D. Lavin							+	11.	11.00	
3.	A. Beck							+	12.	12.00	35.50
	484										
1.	C. Sheldon, 2d					+	6.		11.	17.00	
2.								+	vac.		
3.	F. McLaughlin, 15th		+	11.						11.00	28.00
											$230.00
	Coms for collecting										$ 11.50
	Check to bal.										218.50
											$230.00
											$230.00

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., Sept. 30, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Apl	May	June	July	Aug.	Sept.			
	114 Cabinet St.									
1.	A. Curran					+	7.50	$ 7.50		
2.	L. Farrell					+	8.50	8.50	$ 16.00	
	#116									
1.	P. Bernett					+	7.50	7.50		
2.	E. Rooney, 10th					+	8.50	8.50	16.00	
	#118									
1.	W. H. Taylor					+	7.50	7.50		
2.	D. McGlynn, 8th					+	8.50	8.50	16.00	
	#120									
	F. McGrath	+ 12.	6.					18.00	18.00	
	#122									
1.	J. Dobrino, 15				+	7.50		7.50		
2.	C. Mullaney		+	1.00	6.00			7.00	14.50	
	6 South 6th St.									
1.	H. Boice					+	11.	11.00		
2.	G. B. Cooper, 6th					+	10.	10.00	21.00	
	478 Warren St.									
1.	D. O'Leary		+	14.	14.			28.00		
2.	T. Byrne				+	15.		15.00		
3.	Geo. Howell					+	13.	13.00	56.00	
	#480									
1.	T. Washington, 15th				+	12.		12.00		
2.	B. Lewis, 15th					+	12.	12.00		
3.	F. Dennis				+	12.	12.	24.00	48.00	
	#482									
1.	M. Hudson, 20th			+	11.	4.		15.00		
2.	D. Lavin					+	11.	11.00		
3.	A. Beck					+	12.	12.00	38.00	
	#484									
1.	C. Sheldon, 2d				+	1.00	5.	6.00		
2.							vac.			
3.	F. McLaughlin, 20th		+	11.				11.00	17.00	
									$260.50	
	To Coms for collecting								$ 13.02	
	" Check to bal.								247.48	
									$260.50	
									$260.50	

JAMES E. GARABRANT & CO.

Exhibit D. 16.

Newark, N. J., October 30, 1915.

MRS. I. E. CONWAY

In Account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		Jan.	Feb.	Mch	Apl	May	June	July	Aug.	Sept.	Oct.		
	114 Cabinet St.												
1.	A. Curran									+	7.50	$ 7.50	
2.	L. Farrell									+	8.50	8.50	16.00
	#116												
1.	P. Burnett									+	7.50	7.50	
2.	E. Rooney, 10th									+	8.50	8.50	16.00
	#118												
1.	W. H. Taylor									+	7.50	7.50	
2.	D. McGlynn, 8th									+	8.50	8.50	16.00
	#120												
	F. McGrath, 15th	+	5.									5.00	5.00
	#122												
1.	J. Dobrino, 15th							+	7.50	7.50		15.00	
2.	C. Mullaney, 10th					2.50	8.50		4.00			15.00	30.00
	6 So. 6th St.												
1.	H. Boice									+	11.	11.00	
2.	G. B. Cooper, 6th									+	10.	10.00	21.00
	478 Warren St.												
1.	D. O'Leary										unpaid		
2.	T. Byrne							+	15.			15.00	
3.	G. Howell										13.	13.00	28.00
	#480												
1.	T. Washington, 15th							+	12.			12.00	
2.	B. Lewis, 15th										+ 12.	12.00	
3.											vac.		24.00
	#482												
1.	M. Hudson, 20th						+	7.				7.00	
2.	D. Lavin									+	11.	11.00	
3.	A. Beck									+	12.	12.00	30.00
	#484												
1.	C. Sheldon, 2d							+	7.		2.	9.00	
2.											vac.		
3.	F. McLaughlin, 20th					11.		5.50				16.50	25.50
													$211.50

Coms for collecting $ 10.57
Check to bal. 200.93

$211.50

$211.50

JAMES E. GARABRANT.

Exhibit D. 16.

Newark, N. J., November 30, 1915.

MRS. I. E. CONWAY

In account with JAMES E. GARABRANT & CO.

To Collecting Rent of Property as follows:

1915

		July	Aug.	Sept.	Oct.	Nov.			
	114 Cabinet St.								
1.	A. Curran					+ 7.50	$ 7.50		
2.	L. Farrell					+ 8.50	8.50	$ 16.00	
	#116								
1.	P. Burnett					+ 7.50	7.50		
2.	E. Rooney, 10th					+ 8.50	8.50	16.00	
	#118								
1.	Grace Crammer, 10th					+ 7.50	7.50		
2.	D. McGlynn, 8th					+ 8.50	8.50	16.00	
	#120								
	F. McGrath, 15th					unpaid			
	#122								
1.	J. Dobrino, 15th					+ 7.50	7.50		
2.	C. Mullaney, 10th			4.50	8.50		13.00	20.50	
	6 South 6th St.								
1.	H. Boice					+ 11.	11.00		
2.	G. B. Cooper, 6th					+ 10.	10.00	21.00	
	478 Warren St.								
1.	D. O'Leary	+ 14.	14.	14.			42.00		
2.	T. Byrne			+ 15.			15.00		
3.	Geo. Howell					+ 13.	13.00	70.00	
	#480								
1.	T. Washington, 15th			+ 12.			12.00		
2.	B. Lewis, 15th					+ 12.	12.00		
3.						vac.		24.00	
	#482								
1.	M. Hudson, 20th		+ 11.00	3.50			14.50		
2.	D. Lavin					+ 11.	11.00		
3.	A. Beck					+ 12.	12.00	37.50	
	#484								
1.	C. Sheldon, 2d			+ 10.		12.	22.00		
2.						vac.			
3.	F. McLaughlin, 20th	+ 5.50	5.50				11.00	33.00	
								$254.00	
	Coms for collecting							$ 12.70	
	Check to balance							241.30	
								$254.00	
								$254.00	

JAMES E. GARABRANT.

Exhibits D. 17, D. 18.

EXHIBIT D. 17.

41 checks from James E. Garrabrant to Isabelle E. Conway covering rents collected according to statements included in Exhibit D. 16.

EXHIBIT D. 18.

WILLIAM F. CONWAY,
Counsellor at Law.

No. 1125 Newark, N. J., Aug. 5, 1912.

FEDERAL TRUST COMPANY
747 Broad Street

Pay to the order of Isabelle E. Conway $175.00 July rent 468 Warren, 58-60 S. 6th St. and 112 Cab. St. One Hundred seventy-five and 00/100 Dollars.

WILLIAM F. CONWAY

ISABELLE E. CONWAY

Pay to the order of the National Newark Banking Company, Newark, N. J., Apr. 7, 1912.

CITY TRUST CO.,
of Newark, N. J.
E. S. CARR, *Treas.*

Pay to the order of any bank endorsements guaranteed 13 Aug. 8, 1912.

NATIONAL NEWARK BANKING CO.
Newark, N. J.

Exhibits D. 19, D. 20, D. 21.

EXHIBIT D. 19.

No. 25 Newark, N. J., May 29, 1914.

NATIONAL STATE BANK OF NEWARK

55-2

Pay to the order of William F. Conway Two thousand five hundred and 00/100 Dollars.

$2500/00 ISABELLE E. CONWAY

WILLIAM F. CONWAY

Credit

FEDERAL TRUST CO.

Newark, N. J.

May 29, 1914.

B. F. MaGuire, *Treasurer.*

EXHIBIT D. 20.

Twenty checks from Union Brewing Company in payment of rent; two checks dated July 24, 1912, to the order of W. F. Conway, the other 18 checks beginning October 25, 1912, ending October 20th, 1915, to the order of I. E. Conway and bearing endorsements of I. E. Conway and Isabelle E. Conway.

EXHIBIT D. 21.

CHAS. H. KOLB

Plumbing and Heating

470 Warren Street At Central Avenue

Newark, N. J., Nov. 26, 1915.

Mrs. I. E. Conway.

Dear Madam:

I agree to recover the cornice damaged by fire at No. 468 Warren st., as follows:

To take off old tin and recover new cornice, when completed by carpenter, with 14x20 15-lb.

Exhibit D. 21.

coating tin, same to be slashed into brick wall and nailed over front edge, complete for the sum of $11.00 Eleven Dollars.

Respectfully submitted,

C. H. KOLB.

Opinion.

Filed August 22, 1916.

IN CHANCERY OF NEW JERSEY.

Between	
AMERICAN SURETY COMPANY, *Complainant,*	*On Bill.*
and	
WILLIAM F. CONWAY, *et al., Defendants.*	

Mr. Corwin Howell, Mr. Alexander T. Schenck and Mr. Alfred F. Skinner for complainant.

Mr. Arthur F. Egner and Mr. Robert H. McCarter for defendants.

STEVENS, *V. C.*

This is a creditor's bill. The pertinent facts are undisputed. James Conway was a contractor. He became interested in a contract made with the Town of Wakefield by the firm of Minahan & Costa, and he joined in a bond of indemnity given to the complainant, the American Surety Company, which had guaranteed the proper performance of the work. The contractors defaulted, the town sued in the Massachusetts courts and recovered judgment. Thereupon the complainant paid the amount recovered ($45,439.11) and sued Conway, on the indemnity bond, in the Supreme Court of this State. Conway died pending suit and judgment was recovered against his administratrix for $56,133.75 damages and $296.73 costs. This judgment was affirmed in the Court of Errors.

The indemnity bond was executed on June 26, 1901. The notification to discontinue work was given to the contractors by the town of Wakefield on January 13, 1902. Conway conveyed to his sister, the defendant, Annie L. Conway the first and eleventh tracts mentioned in the bill on January 28, 1902. On the same day he conveyed the second and third tracts therein mentioned to one Dolan; the fourth tract, to one of his daughters and the fifth tract to another. On January 22, he conveyed the sixth, seventh, eighth, ninth and tenth tracts to his son, William F. Conway. By a series of conveyance made subsequently, William became the holder of the legal title to all the lots, except the two conveyed to Annie. I need not particularize these conveyances, for it was admitted that the conveyances of the various lots, while in the hands of William, were fraudulent and void as against the creditors of James Conway. As to Annie's lots it is said that they were founded upon valuable consideration.

I will first consider the lots that William held. The defense is that they are now held by William's wife, Isabelle, who became a bona fide purchaser of them for value without notice.

On this branch of the case there is little or no dispute about the facts. It is rather a question of the proper inference to be drawn from them. William met Isabelle McGrath for the first time at Atlantic City in 1907. He was a member of the bar, having been graduated from the Yale Law School in 1900 and having been admitted to practice here in 1901. She was a dressmaker in Brooklyn, about twenty-eight years, when she first met him, with a business, the annual profit from which, just before her marriage in July, 1912, was, she says, from twenty-five hundred to

three thousand dollars. William seems to have been continuously attentive to her from the time he first met her until November, 1911, when he proposed marriage and was refused. In January, 1912, he proposed again and was again refused. She says, "I laughed at him and said no, I wouldn't. I didn't want to get married, because I had a good business and I was making good money. I can do just as I please with my money." After that she did not see him so often until June, 1912. On June 9 William met her in New York and asked her if she would not go to Newark with him. She says that she had never been in Newark before, except to pass through it from one depot to another, and that it being "kind of nice to go to a place you had never seen," she accepted the invitation. Her story told in her own words is as follows: "When we got to Newark, he took me around and showed me the different properties he owned. After he showed me all the properties, he asked me if I would marry him, if he would give me that property and I said will you give me all that you showed me and he said yes, I will give you all that property; and then I asked Mr. Conway what the income of it was and he told me at the time and I said well I will think it over and Mr. Conway said, as near as I remembered, 'Well, if you make up your mind to accept me, you know we have to have this in legal form or writing or something like that; and he said, of course we have to have a lawyer,' and I said, well, anyone you want to suggest; he said, well, Mr. Darrow; 'I know Mr. Darrow and you know Mr. Darrow.' I said well that is agreeable to me and he said, well, you think it over."

In order that the full significance of what occurred a few days later may be understood, it will be well to consider the then situation. The judgment was obtained by the Town of Wakefield in the Massachusetts Court in June, 1911. Suit on the bond was commenced against James Conway in the Supreme Court of this State in August of that year, but not tried until November of the following year. There was first a verdict for defendant which was set aside. A new trial had in April, 1914, resulted in the judgment upon which the present bill was filed. In April or May, 1912, William had consulted his friend Darrow, whom he had met at Yale as a fellow law student and who was then practicing law in New York City. He wanted his opinion as to whether marriage was a consideration valuable enough to stand against his father's creditor. After examining the question, Darrow gave it as his opinion that marriage would be held to be a valuable consideration if the grantee stood as a bona fide purchaser without notice. A few weeks after getting this opinion he took Miss McGrath to Newark on the trip described. Within a day or two Miss McGrath saw Darrow and instructed him to draw up a marriage agreement. This he did. By its terms William was to convey the property and they were to be married on or before the first day of July following. On July 1st they were married, very quietly, in a Newark church. Before the ceremony was performed William handed his fiancee a deed conveying the property. They made a wedding trip of three weeks and then returned to Newark and took up their residence in his father's home. It is argued that William's wife did not take immediate possession of all the property but I think

the evidence shows that her conduct was such as to indicate that she regarded the property as hers and asserted dominion over it in a perfectly natural and becoming way. She has always claimed to be the owner of it and as far as appears no member of the household has failed to recognize her as such or claimed any beneficial interest in it.

Now William and Darrow both admit that they knew that the transfer was in fraud of complainant's rights, if he had a right, which was then being contested. William's purpose in offering to convey was two fold. He wanted to protect the property against the possible judgment and he wanted to offer to Miss McGrath a sufficient inducement to marry him. According to his own story he only held the property in trust for his father and yet he says that he did not inform him of his proposed action. He was, from a moral standpoint, guilty of a double wrong. The wrong he did his father was moral and not legal for his father had no legal redress against him and seems in point of fact either to have acquiesced in or to have approved of his son's conduct. He was old and dying and felt no doubt that as far as he was concerned the transfer would, from a practical standpoint, make no difference to him.

If the transfer could be avoided for the fraud of the grantor alone, of course, it would fall; but the law is that the grantee, for valuable consideration, must concur in or have notice of it, if such is to be the result. Tanburn *v.* Green, 21 Eq. 364. That marriage is a valuable consideration is undisputable, Prewit *v.* Wilson, 103 U. S. 22; and so the inquiry is narrowed down to the question of notice. Isabelle says she did not

have notice and in this she is corroborated by William and Darrow. Their testimony accords with the probabilities. It is not likely that knowing, as they did, that notice would defeat the very object aimed at, they would have given notice. It is virtually conceded that she had no actual notice but, it is said, she had constructive notice, in that the situation was such as to have put her upon inquiry. This is the only debatable question in the case.

Now, it seems to me that the situation was not such as to put her upon inquiry. We must view it from her standpoint; from the standpoint of what she herself knew. She had known William for five years. His attentions during all that time had been such that when in November, 1911, he first asked her to marry him, she must have thought that he had a sincere affection for her. She twice refused him on the ground that while she liked him she did not like him well enough to give up her business and her independence. Living in a different city she had never met any member of his family. She knew nothing about their pecuniary circumstances. She knew only that William was a lawyer of eleven years' standing and, as it is phrased in the proofs 'a liberal spender.' The property, assessed at $64,000, had, most of it, stood in his name undisturbed for ten years. She knew nothing about the circumstances under which he had acquired it. Knowing this and nothing more, when William showed her the property and told her that it was his and that it brought in a net rental of two hundred or two hundred and fifty dollars a month—about the sum she was making in her business—she no doubt reasoned that he was giving her little more than an equivalent for what

she was giving up; that the offer was a practical demonstration of his genuine affection and the very sacrifice that was her due; and that, in any event, they would enjoy the property together during their joint lives.

It is said that her conduct was mercenary, but if it was, that does not help the argument. It must be remembered too that she was a business woman of over sixteen years' experience in making bargains and knew perhaps better than most girls the value of a business arrangement. Looking at the circumstances from her standpoint and with her limited information, I cannot say that there was anything in what she knew to put her upon inquiry.

Then it is said that the law is that if a man transfers to a woman all his property in consideration of marriage, the transaction is *per se* fraudulent. The authorities are somewhat conflicting on this question but they are inapplicable for the reason that William did not give up all. Whether she thought he was giving up all is a different question—a question to which these authorities do not apply.

It is further argued that if Isabelle had no notice of the intended fraud, Darrow, her legal adviser, had and she is affected with his knowledge. The case of Vulcan Detinning Co. *v.* American Can Co., 2 Buch. 387, has settled the law on this point. The rule, as there established, is that the knowledge of the agent is chargeable upon his principal, whenever the principal, if acting for himself would have received notice of the matters known to the agent. Under this rule, Isabelle is not affected with notice. Darrow had acquired his knowledge weeks, if not months, before he saw Miss McGrath, while acting only for

William. It is certain, as I have already said, that whether Miss McGrath had acted for herself or through some agent other than Darrow, the facts that constituted the notice would not have been communicated and the case does not, as complainant contends, come within the modifications of the rule suggested by Justice Dixon in the Sooy case, 41 N. J. Law 395. William did *not* refrain from giving notice because he knew that Darrow was aware of the facts that and he did *not* deal with Darrow on the basis of those facts. Paraphrasing the words of Judge Dixon, it would be unfair and unreasonable to assume that express notice would have been given if Darrow had not, to his (William's) knowledge, been cognizant of the situation.

It is further insisted that Miss McGrath had constructive notice of what the tenants would have told her, had she made the inquiry. For the vacant lots there were no tenants; in the case of the lots built upon, had the inquiry extended to Garrabrant, the agent who collected the rents, she would have learned that they were being paid to James Conway. That would have indicated that James had some interest and that she would take subject thereto. The doctrine of notice in cases of this class is intended to protect those in possession, not those who may, by possibility, have some adverse claim against the possessors. The knowledge to be imputed is that which would have been communicated not that which would have been withheld. It would cover facts admitted not facts denied. Had the tenants or Garrabrant been interrogated, they would have said that the rents were being paid to James Conway. Had James been interrogated, he would have said that William was living with him and

that he had given him a deed of the property. It would be carrying the doctrine of imputed knowledge to a fantastic extreme to hold that such replies as these or similar ones, coming from an old man on the brink of the grave, would or ought to have suggested to Miss McGrath,had she made the inquiry, that the conveyances were intended as a fraudulent contrivance to protect the property against James' creditors, and not as a family settlement. Wood *v.* Price, 9 Buch. 621, contains a discussion of the question whether possession by a tenant is constructive notice not only of the tenant's rights but of the landlord's. The Court of Errors decides that it is notice of both. Voorhees, *J.*, says "The purchaser is therefore chargeable with notice of the facts which he would have learned had he pursued such inquiry not only as to the tenant's title, but as to all the facts and circumstances which the *tenant knew concerning the title.*"

This decision is far from sustaining the contention that an inquiry as to the tenant's knowledge, should have been followed by a further inquiry as to the landlord's; (assuming James Conway to have been the landlord, which as between himself and his son he was not) whose statement, on inquiry if he affirmed title in his son, was to be disbelieved. The complainant cannot therefore succeed on the theory of imputed knowledge.

The conveyances to Annie L. Conway, sister of James, were plainly fraudulent as against creditors. Although in Court she failed to testify, the only evidence given on her behalf being that of William. He says that the consideration for the deeds made to her was that James promised her that if she undertook to support and take

care of their mother he would compensate her either in cash or by conveyance of property. The promise is said to have been made when the mother came to live at her son's house in 1899. Before that she and Annie had been living with Mrs. Thompson, William's aunt. After they came they occupied a part of the upper floor. They had their meals apart from the rest of the family. They were clothed and fed partly by the mother's money and partly by Annie's. How much each contributed does not appear. The mother died in December, 1900, so that Annie's service, whatever it was, covered only a year and an indefinite number of months. They paid no rent. The service was presumably one that a daughter would render to her mother out of affection. Annie was able to tell what it consisted of but did not. In fact, for aught that appears, the services may have been mutual and the mother may have contributed in money as much or more than Annie did. In the case of Demarest *v.* Terhune, 3 C. E. Gr. 532 it was held that where the transfer, injurious to the creditor, was not such as the Court would set aside in *toto* (and this is the most favorable view that can be taken of Annie's cause) it would be permitted to stand only as security for the amount *proved* to be really due. In the present case it does not *at* appear that at the time the deeds were given any effort was made to ascertain the amount; and no proof of the kind of service rendered or its value was given at the trial. Under these circumstances the conveyances cannot stand as against complainant's judgment.

Final Decree.

Filed September 20, 1916.

IN CHANCERY OF NEW JERSEY.

Between AMERICAN SURETY COMPANY OF NEW YORK, *Complainant,* and WILLIAM F. CONWAY and others, *Defendants.*	*On Bill, Etc. Final Decree.*

This cause coming on to be heard on bill, answer, replication and proofs, in the presence of Pitney, Hardin & Skinner, of counsel with the complainant, and of McCarter & English, of counsel with the defendants, and the arguments of counsel having been heard and considered, and the court being of opinion that the deed of conveyance in the said bill mentioned and described, for the lands and premises therein set forth and described as the first and eleventh tracts, was made and executed with the intent to defraud the complainant as a creditor of one James Conway, now deceased, and was without consideration, and the court being further satisfied that the defendant, William F. Conway, was a fraudulent grantee of certain other tracts described in the bill of complaint and numbered therein from two to ten inclusive and twelve, and that the said William F. Conway held said last mentioned tracts in trust for his father, the said James Conway, and that the several deeds of convey-

ance in the said bill mentioned and described for the lands and premises referred to therein as tracts two to ten inclusive and twelve were made and executed with the intent to defraud the complainant as a creditor of the said James Conway, but the Court being of opinion that the final conveyance set forth in the bill of complaint of said last mentioned tracts numbered two to ten inclusive and twelve, to wit, the conveyance of said tracts by William F. Conway to Isabelle E. McGrath, was made upon a valuable consideration, namely, the consideration of marriage and that said Isabelle E. McGrath was an innocent purchaser; and the court being further satisfied that the defendant, William F. Conway, the fraudulent grantee aforesaid, having disposed of said last mentioned tracts, numbered two to ten inclusive and twelve, before the complainant was able to perfect a lien upon same, should be held answerable for the value of the property so disposed of by him, but only to the extent of the complainant's claim amounting to the sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), said amount being made up of the judgment of the complainant in the Supreme Court of this State set forth in the bill of complaint for fifty-six thousand one hundred thirty-three dollars and seventy-five cents ($56,133.75) and the costs thereon in said Supreme Court amounting to two hundred ninety-six dollars and seventy-three cents ($296.73), with legal interest on said judgment and costs from the date of rendition of judgment, to wit, May 7, 1914, together with the costs of the complainant in this cause to be taxed; and the court being satisfied from the proofs in this cause that the value of said tracts so disposed of

by the said William F. Conway was and is in excess of the complainant's said claim with interest thereon as aforesaid; and the court being further of opinion that said complainant is entitled to the relief prayed for in its said bill of complaint as to tracts one and eleven, and is also entitled to the relief prayed for in said bill of complaint that the defendant, William F. Conway, may be decreed to pay to the complainant the amount of its claim;

It is thereupon on this twentieth day of September, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ORDERED, ADJUDGED and DECREED, and the Chancellor of the State of New Jersey by virtue of the power and authority of this Court does hereby ORDER, ADJUDGE and DECREE that the said William F. Conway do pay to the complainant the said sum of fifty-six thousand four hundred thirty dollars and forty-eight cents ($56,430.48), with legal interest thereon from the seventh day of May, 1914, and also the costs of this suit to be taxed, including a counsel fee of three hundred and fifty dollars ($350.00), and that the complainant have execution therefor according to the course and practice of this court.

And it is FURTHER ORDERED, ADJUGDED and DECREED that the said deed of conveyance in said bill mentioned and described for the tracts of land respectively therein set forth and described as the first and eleventh tracts, that is to say, the deed of conveyance made by James Conway, now deceased, and the defendant, Bridget D. Conway, his wife, to the defendant, Annie L. Conway, bearing date the 28th day of January, 1902, and recorded in Book Y-34 of Deeds for Essex County on pages 389, etc., be set aside, annulled

and made void as against the judgment of the said complainant in said bill set forth and described.

And it is FURTHER ORDERED that unless the defendant, Annie L. Conway, shall within ten days after service upon her or her solicitors of a copy of this decree (which copy need not be certified) pay to the complainant, or to its solicitors, the amount due to it upon its judgment in this cause referred to, the said premises described in the bill of complaint as the first and eleventh tracts be first sold to raise and satisfy the sum of money due to the complainant as aforesaid, and the interest thereon, and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Essex, commanding him to make sale according to law of the said premises described as the first and eleventh tracts in the said bill of complaint, and that out of the money arising from such sale he pay to the complainant or to its solicitors its said debt, with interest as aforesaid, and in case more money should be raised by the said sale than should be sufficient to answer such payment that such surplus be brought into this court to abide the further order of the court, unless otherwise previously disposed of by the order of this court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And it is FURTHER ORDERED that the aforesaid sale by the said Sheriff shall be made free, clear and discharged of and from the said deed of conveyance and of and from all claims of the said Annie L. Conway thereunder or by virtue thereof, and of and from all claims of the heirs and dowress of the said James Conway, deceased, said heirs and dowress being parties defendant

to this suit, and free, clear and discharged of any right of dower, inchoate or otherwise, of Isabelle E. McGrath Conway, the wife of said William F. Conway, and of and from any right of curtesy of one James L. Mason and one William A. Kelly, all of the parties named being parties to this suit, and of and from all claims of any other persons claiming through or under any of the parties to this suit.

And it is FURTHER ORDERED, ADJUDGED and DECREED that while the complainant may forthwith have execution as aforesaid against the said William F. Conway for the amount ordered to be paid to the complainant by the said William F. Conway and may proceed forthwith to make a levy under said execution, no sale shall be held thereunder until sale has been made by the Sheriff of the County of Essex as aforesaid of said first and eleventh tracts, and until the proceeds of said sale of said first and eleventh tracts shall have been credited upon the amount due to the complainant.

And it is further ordered, adjudged and decreed that as to the defendant Isabelle McGrath Conway the bill of complaint be and it is dismissed with her costs to be taxed.

It is further ordered that the defendant William F. Conway may within two weeks after the date hereof apply upon two days' notice for the change or modification of this decree. This leave is not to interfere with the complainant's right to issue execution and make a levy as herein provided.

E. R. WALKER,

Respectfully advised, *C.*

FREDERIC W. STEVENS,

V. C.

Order.

Order That Suit Proceed Against the Surviving Defendants.

Filed Oct. 4, 1916.

IN CHANCERY OF NEW JERSEY.

Between

AMERICAN SURETY COMPANY OF NEW YORK,
Complainant,

and

WILLIAM F. CONWAY and others,
Defendants.

On Bill, &c.

It appearing by affidavit to the satisfaction of the court that Bridget D. Conway, one of the defendants in the above stated cause, has departed this life prior to the 19th day of September, 1916, and that the cause of action survives to the complainant against the surviving defendants;

IT IS on this third day of October, nineteen hundred and sixteen, *nunc pro tunc,* as of the 19th day of September, 1916, on motion of Pitney, Hardin & Skinner, solicitors of the complainant, ORDERED that the said suit proceed against the surviving defendants.

E. R. WALKER,
C.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

Notice of Appeal.

Filed December 20, 1916.

IN CHANCERY OF NEW JERSEY.

Between	
AMERICAN SURETY COMPANY OF NEW YORK, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
WILLIAM F. CONWAY and others, *Defendants.*	

The complainant, American Surety Company of New York, a corporation, hereby appeals to the Court of Errors and Appeals, the last resort in all cases, from so much of the final decree made in the above entitled cause in the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor, bearing date and filed the twentieth day of September, nineteen hundred and sixteen, as adjudges that as to the defendant Isabelle McGrath Conway the bill of complaint should be dismissed with her costs to be taxed.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainant.

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

ALFRED F. SKINNER,
Of Counsel with Complainant.

AFFIDAVIT OF SERVICE.

Filed January 11, 1917.

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

ALEXANDER T. SCHENCK, of full age, being duly sworn according to law upon his oath, deposes and says that he is an attorney at law of the State of New Jersey in the employ of Pitney, Hardin & Skinner, the solicitors for the complainant in the above entitled cause; that on the 20th day of December, 1916, at three minutes before five o'clock in the afternoon of said day he served a "true copy" of the notice of appeal in the above stated cause upon McCarter & English, the solicitors for the defendants in said cause, by handing said "true copy" to Arthur F. Egner, a member of said firm, in person, at the office of McCarter & English, 763 Broad street, Newark, New Jersey.

Deponent further says that a "true copy" of said notice of appeal is hereto annexed and made a part hereof.

ALEXANDER T. SCHENCK.

Subscribed and sworn to before me
this 21st day of December, 1916.

JAMES S. DENNIS,
An Attorney at Law of New Jersey.

Petition of Appeal.

Filed January 5, 1917.

New Jersey Court of Errors and Appeals

Between AMERICAN SURETY COMPANY OF NEW YORK, a corporation of the State of New York, *Complainant-Appellant,* *and* WILLIAM F. CONWAY and others, *Defendants-Respondents.*	*On Appeal from Chancery.* *Petition of Appeal.*

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

The petition of American Surety Company of New York, a corporation of the State of New York, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin R. Walker, Chancellor of New Jersey, bearing date and filed the twentieth day of September, nineteen hundred and sixteen, wherein the said American Surety Company of New York was complainant, and William F. Conway, Isabelle E. McGrath Conway, his wife; John F. Conroy and Margaret E. Conroy, his wife; David Young, Mary Ella Young, his wife; Edward B. Reiley, Bessie A. Reiley, his wife; John F. McGrath, Frances A. McGrath, his wife; Annie L. Con-

way, Mary L. Conway Mason, individually and as administratrix of James Conway, deceased; James L. Mason, husband of the said Mary L. Conway Mason; Helen D. Conway Kelly and William A. Kelly, her husband, were defendants (another defendant, Bridget D. Conway, having departed this life during the progress of said cause and an order having been made by said Court of Chancery that the suit proceed against the surviving defendants), in the following respect, to wit: that the said decree adjudges that as to the defendant Isabelle McGrath Conway the bill of complaint should be dismissed with her costs to be taxed.

And your petitioner humbly appeals from that part of the final decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous; for that it should have been decreed by the Chancellor in said final decree that the conveyance of certain tracts of land in said decree mentioned and therein referred to as tracts numbered 2 to 10, inclusive and 12, by William F. Conway to Isabelle E. McGrath, were not made upon a valuable consideration; and for that it should have been decreed that the marriage of the said William F. Conway to the said Isabelle E. McGrath was not the consideration for said conveyance; and for that it should have been decreed that the said Isabelle E. McGrath was not an innocent purchaser of said tracts of land, but that she at the time of the conveyance to her either knew of the fraudulent purpose of the said William F. Conway or was chargeable with notice thereof; and for that it should have been decreed that the various deeds of conveyance for said tracts of land in the bill of complaint mentioned should

be set aside, annulled and made void as against the judgment of the said complainant in the said bill set forth and described; and for that it should have been decreed that said tracts of land be sold to raise and satisfy the sum of money due to the complainant, and that a writ of *fieri facias* issue for that purpose out of said Court of Chancery.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between AMERICAN SURETY COMPANY OF NEW YORK, *Complainant-Appellant,* *and* WILLIAM F. CONWAY, *et als.*, *Defendants-Respondents.*	*On Bill, etc.* *On Appeal from Chancery.*

Brief for Respondent, Isabelle E. McGrath Conway.

This is an appeal from a portion and only a portion of a decree advised by Vice-Chancellor Stevens in the Court of Chancery. The only part of the decree appealed from is that which dismisses the bill as to the defendant Isabelle McGrath Conway. The entire remainder of the decree, which granted relief to the complainant, was accepted by the complainant and acted upon. Upon this ground that the complainant by its acceptance of those portions of the decree, all of the parts of the decree being dependent, the motion has been given to dismiss the appeal.

We shall not now repeat the matter covered in our brief already filed upon the motion to dismiss the appeal. The court has already been furnished with this brief, and we need only add thereto that further consideration has convinced us of the soundness of the argument therein made. No answer to our brief is found in that portion of the appellant's brief dealing with our motion to dismiss.

Reference should, however, be made to a few things in the appellant's brief.

On page 3 it is argued that inasmuch as the Vice-Chancellor found that the two tracts conveyed to Annie L. Conway "were plainly fraudulent as against creditors" the argument of the defendant on this phase of the motion to dismiss the appeal is "demolished."

While it is true that the Vice-Chancellor used this language, the conveyances to Annie L. Conway were nevertheless set aside, not because she was a party to the fraud, but because she was a mere volunteer. Neither the complainant's bill (see paragraph 5, Bill of Complaint, case, p. 11), nor the decree (see case, p. 515) contains any allegation of fraud on her part (see paragraph 5, Bill of Complaint, case, p. 11) and the learned Vice-Chancellor, in discussing the matter, concerned himself solely with the adequacy of the consideration for the deeds (case, p. 511). Not once, in the whole case, is there any mention of fraud on the part of Annie. It is therefore clear that the conveyances to her were set aside because the court found they were fraudulent as against creditors; and, while Annie was not chargeable with fraud, she had not paid a sufficient consideration for them.

With respect to the statement of the brief (p. 3) that the amount realized upon the sale of the two tracts held by Annie L. Conway was less than the costs and charges of selling same so there was nothing to be credited upon the complainant's judgment, we refer to the fact that the complainant was the purchaser at said sale, that said lots were assessed in 1912 for $300 and $600 respectively (Supplemental State of Case, p. 22), and that the fair market values of

said lots are about $400 and $900 respectively (Supplemental State of Case, p. 26).

We need hardly refer to the extraordinary statement made at the bottom of page 5 of the brief:

> "The learned Vice-Chancellor's opinion, together with the facts and evidence before him, justify the statement by us that the court regretted its inability to give complainant all the relief it sought and would welcome a decision by this court contrary to the conclusion thus reached."

This remark is scarcely complimentary to the court below, and support of it will be looked for in vain in the Court's opinion.

Nor is the inference justified that the complainants were awarded only some slight relief in the court below. We refer elsewhere in this brief to the property which William F. Conway owns. All of this is subject to the lien of the complainant's judgment and beside, as stated in their affidavit upon the motion, they have hopes upon supplementary proceedings of unearthing other property. The fallacy, however, of their entire argument upon the motion is their insistment that they were entitled to both a personal decree for the entire amount of their claim against William F. and to the relief which they sought against Isabelle. They will look in vain for an authority to justify this insistment. The recital in the decree already referred to in our brief establishes without the possibility of a doubt that the relief against William was based entirely upon the denial of relief against Isabelle. The statement of their position at the bottom of page 6 and top of page 7 of their brief demonstrates its unsoundness. Thus they say that the relief which they were entitled to was "first a money judgment against William F.

Conway for the full amount of our claim, second, direction for the sale of the Annie L. Conway tracts and the property still held by Isabelle E., and third, a direction that these properties be resorted to before collecting upon the personal judgment, collection on that to be limited to the deficiency after resorting to the other properties."

It is very clear that this notion is born of the necessities of the complainant and is clearly contrary to their own consistent theory of the case until we made our motion.

The bill of complaint as originally filed (p. 21) prayed among other things,

> "And that your orator's said lien by reason of the indebtedness of the said James Conway, now deceased, to your orator, may be established as against said lands and premises, and that the said defendant, or some one of them may be decreed to pay to your orator the full amount due and owing to it on the said judgment with the interest and costs thereon; *and* that the said fraudulent conveyances and all other conveyances made, created or suffered between said defendants and affecting the said lands, may be set aside and decreed null and void."

No doubt in the belief, which was quite proper, that they were not entitled to both, the complainants upon their own motion amended their bill by making the prayer alternative. The order amending the bill is found on pages 25 *et seq.* of the state of the case, and the particular amendment we refer to (p. 27) was by changing the word "and" above italicized to "or that it be decreed."

Pursuant to the prayer for alternate relief contained in the bill as so amended and pursuant to the insistment of the complainant, who

brought to the attention of the Vice-Chancellor, the case of *Post* v. *Stiger,* 29 N. J. Eq. 554, the personal decree against William F. Conway was made (see pp. 10 & 11 of complainant's brief). In view of these facts and in view of the fact that the decree was made on its motion, we fail to see any justification for the statement on page 8 in the brief "that the harsh alternative was put upon us."

Now it is undoubted that the judgment against William, as *Post* v. *Stiger* and the other cases show, proceeded entirely upon the theory that as trustee he had misappropriated trust property, and therefore he was personally liable *to the extent of the value of the property* misappropriated. It is no general liability, but only one to respond for the value of property disposed of. If no property is disposed of, the Court will not and cannot give a personal decree against the trustee whatever may be its opinion of him.

That this is so appears from all the cases and from none more clearly than those cited on pages 10 and 11 of the complainant's brief.

Thus in *Bigbee* v. *Warnock,* 57 L. R. A. p. 754 there cited, it is said,

> "Of course the recovery against the fraudulent grantee will be limited to the amount of the creditor's judgment against his debtor and cannot exceed the proceeds of the property or its value."

Central Improvement Co. v. *Cambria Steel Co.,* 210 Fed. 696, which the complainant seems to rely on with some confidence, does not support the contention that they would be entitled both to set aside the conveyances and to a personal judgment against William for the full amount. That case was rather exceptional in its facts, but all that it did hold was that where the fraudu-

lent grantee still held the property so that it might be applied in payment of the creditor's claim, that the Court might give a personal judgment against the fraudulent grantee, in as much as it appeared clearly that the property which was the subject of the fraudulent grant, was worth considerably more than the amount of the creditor's claim, and in as much as the fraudulent grantee still held the property, the Court said it made no difference in the final result what course was adopted. It is, of course, obvious that this is quite different from the case at bar.

That the decree below proceeded upon the proper rule is apparent from a reading of it.

In view of the unequivocable language of the recital in the decree which so clearly shows the ground upon which the Vice-Chancellor proceeded, the statement on page 10 of the complainant's brief

> "This court is without the aid of any expression from the learned Vice-Chancellor who tried the case of the view on which he based the money judgment against William F. Conway,"

is rather surprising In their difficulties, occasioned by our motion, the appellant's counsel are forced to the adoption of arguments which they know are not founded in fact. Thus on page 6 of their brief they say,

> "Until the property still held by Isabelle E. shall have been sold and the proceeds applied, we cannot tell whether there will be enough to satisfy our claim."

They evidently forgot that on page 37 of their brief they say with reference to the property conveyed to Isabelle, "the property in question is worth many thousands of dollars more than enough to pay James Conway's creditors."

Authority will be looked for in vain for the proposition advanced on page 7 that this court, upon the determination of an appeal from one portion of a decree, will undertake to control proceedings taken by the appellant under a portion of the decree not appealed from, and those proceedings taken not only in the court below, but in another and distinct court of this state, and in a court of another jurisdiction entirely.

It is undoubted that when an alteration is desired, in the finding or judgment of the lower court, that court should be applied to and not the appellate court. *Binghamton* v. *Binghamton,* 51 N. E. 315; *in re Diament's Est.,* 99 Atl. 915 (E. & A. 1917).

In spite of the admission contained on pages 10 and 11 of its brief concerning the manner in which the learned Vice-Chancellor was induced by the complainant to render a personal decree against William F. Conway, the complainant argues on pages 11 and 12 of its brief that the motion of its solicitors on which the decree was entered was purely formal and the words "on motion of" had no other purpose than to indicate to the clerk to whom to charge the fee for filing. It is difficult, however, to understand how the complainant can consider as merely formal, the motion of its solicitors to amend its bill, so that it might be entitled to a personal decree against William F. Conway in lieu of relief against the property disposed of, nor can it be easily understood how it can consider as merely formal, the motion of its solicitors for a decree granting such personal decree against William F. Conway, pursuant to the prayer for alternative relief contained in the bill as so amended.

The complainant's prayer that the conveyance be set aside was denied, but on their motion they were allowed the alternative relief of the personal money decree for which they had asked. In *Hooper* v. *Beecher,* 109 N. Y. 609, cited by Mr. Justice Swayze in *Ewald* v. *Ortynsky,* 76 N. J. Eq. 291, the Court said, "The order of the General Term modifying its previous order and making the payment of costs a lien upon the funds in the hands of one of the defendants, as assignee, was granted upon the appellants' motion. Thereby they obtained the precise relief they had made application for. A party in whose favor a judgment is entered or an order made, cannot be aggrieved by it, and he is, therefore, in no position to claim the right of appeal." In the present case, the decree does not merely deny the complainant certain relief, but in lieu thereof, grants it alternative, affirmative relief, on motion of its solicitors. See on this point *Ewald* v. *Ortynsky. supra,* in which this court held that only those who are aggrieved can appeal, and that a party cannot appeal from an order procured by himself.

There is no doubt that the appellant is now seeking to back down from an unequivocable election once made; in other words complainant seeks to play fast and loose with the decree made below. With respect to the argument made that no step was taken other than those necessary to establish a lien under the portion of the decree in favor of the complainant. it is only necessary to say that such a lien could have been, and in fact had been established without the suit in the Supreme Court, and without obtaining the personal money judgment therein against William F. which, as the complainant says, was for the purpose of proceeding against William in sup-

plementary proceedings which obviously were not designed to effect a lien upon his existing property rights.

We submit, therefore, that no answer has been made to our brief upon the motion, and that the motion is well founded.

The portion of the decree appealed from is justified by the merits of the case.

The facts in this case are either undisputed, or have been so clearly shown as to admit of no controversy, and therefore there remains for discussion merely the legal inquiry, whether, in view of the facts shown, the complainant has presented a case which would justify depriving the defendant Isabelle Conway of the property she now holds, upon the ground that she was a participant in a fraudulent scheme to protect it from the claim of the complainant.

We are not now concerned with the merits of the original controversy between the surety company and the Town of Waflefield, and the surety company and James Conway, as much as may be said in connection with these subjects upon the moral aspects of the complainant's demand. Nor is it necessary to discuss the insistent of the complainant that James Conway as early as 1902 conceived a plan to dispose of his property to protect it against the complainant. In this connection it is only necessary to point out that as late as 1905 Mr. James Conway purchased property and took the title thereto in his own name (page 380).

We are, at present, concerned only with the title of Mrs. Isabelle Conway.

If she is entitled to these properties free from any claim of the complainant, that is an end of the discussion.

The evidence shows clearly that Isabelle Conway was a bona fide purchaser for value, free from any participation in any fraudulent scheme, and her title is therefore unassailable.

Only three witnesses testified as to the events leading up to the transfer of these properties to Isabelle Conway, namely, William F. Conway, William H. Darrow and Isabelle Conway, herself. Their testimony is in substantial accord, and is uncontradicted, despite the most thorough preparation and investigation both in Newark and Brooklyn conducted by the zealous counsel for the complainant. The facts disclosed were that Isabelle Conway, then Isabelle McGrath, was a young lady living in Brooklyn, N. Y. She had several years prior to 1912 met William F. Conway, principally at Atlantic City, and they had become friends. Mr. Conway was accustomed to visit her in her home in Brooklyn, but she knew no other member of his family, nor had she, in fact, ever been in Newark. She was engaged in business for herself, being the head of a dressmaking establishment (p. 139), where she had from five to ten girls working for her, and at the time of her marriage she was making between $2,500 and $3,000 per year (pp. 242-243). She had been so successful that she had saved enough money to purchase a home in Brooklyn (p. 139, l. 19) where her father, mother, sisters and brothers were living with her rent free (p. 139, l. 20, p. 253, l. 31), and she even assisted in the support of her family. She was doing well,thoroughly independent, and had no desire or reason for marriage. In November, 1911, William asked her to marry him and was refused (p. 139, l. 25). He renewed his proposal in January of 1912 and was again refused on the ground that while Miss McGrath liked him,

she had no desire to get married, as she was independent and was supporting herself. She was unwilling to give up her business. On Sunday, June 9th, 1912, Mr. Conway met Miss McGrath in New York and asked her to go to Newark with him, which she did. After their arrival at Newark, in the language of Mr. Conway (p. 140, l. 18):

> "When I arrived at Newark I took her around and showed her property which I owned, and I told her the income of the property, and I told her the expense attached to it in the way of taxes, and I told her that in view of the fact that she had refused me on two occasions on the ground of business, on the ground of her income, I told her that I would convey that property to her if she would consent to be my wife."

At the time he showed her the properties which were included in his offer. After having visited the property, they went to the homestead which he said would be their home, and he told her that his father and mother were living with him (p. 213, l. 30). At the home they met Annie Conway and James Conway, James being sick in bed (p. 141, l. 2). James Conway, the father, had been ailing for eight or nine years, and had been practically confined to the house for four years (p. 136). They stayed at the house a short time and then returned to New York. Mr. Conway suggested that if she accepted his proposal that a lawyer ought to prepare the papers as to the property and Mr. Conway suggested Mr. Darrow, who was an intimate friend of his and with whom Miss McGrath was slightly acquainted. On the following Tuesday they met at Mr. Darrow's office (p. 143, l. 15). Miss McGrath then refused to sign (p. 143) and said that she would not accept Mr. Conway's offer because of his insistence

that they should be married by July 1, 1912. She felt that she could not leave her business by that time. Mr. Darrow's testimony as to the occurrences at his office on Tuesday is significant. He said (p. 150, l. 13):

> "She was considerably agitated, very much worried, and she and I talked it over there together alone for quite some few minutes; I did not urge her to do it, but we discussed it anyhow, and she said no, she wouldn't do it; I said 'This is final?'; she said 'Yes.' So I called in Mr. Conway from the other room, and I said 'Bell has changed her mind, she will not sign this agreement, and she says she will not marry you;' and the two of them discussed the question there in my presence, and I remember that Miss McGrath said at that time, spoke of her business engagements, and spoke of the number of people whom she had made engagements with in her business, that were relying upon her in fact, and one time I know she referred to Mr. Conway as being unreasonable, and she did not sign the paper."

On Thursday they again met at Mr. Darrow's office and the papers were signed. They were married on July 1st and just before the marriage Mr. Conway delivered to Miss McGrath a deed for the properties described in the antenuptial agreement and since the marriage Mrs. Isabelle Conway has had the entire rents and profits of the properties, and no one else has had any part thereof whatever. She did not meet the other members of Mr. Conway's family until after the marriage and she never heard of any aspersion cast upon her husband's right to convey this property to her or of any claim hostile to her title until about six weeks before the hearing in this cause, when the situation was stated to her by her solicitors (p. 267, l. 25). She denied absolutely any knowledge of the af-

fairs of James Conway, the American Surety Company or its claim. She confidently asserted her entire innocence. Her testimony was fully corroborated by Mr. Darrow and by William F. Conway.

Under these circumstances we earnestly submit that she must prevail. It is well settled that marriage is a valuable consideration and that where a conveyance is made founded upon the consideration of marriage, that however fraudulent the intention of the grantor may have been the grantee is entitled to insist upon her status of a bona fide purchaser for value, unless it is shown that she was an actual party to the fraud. Participation in the fraud will not be presumed against her, but must be *clearly and unequivocably shown by the person alleging it.*

The leading case on this subject is *Prewit* v. *Wilson,* 103 U. S. 22. That was an action to set aside an ante-nuptial settlement of lands claimed to have been made by the settler with the design of defrauding his creditors. The Court, by Mr. Justice Field, said (the italics are ours):

> "It would seem from the evidence, and we assume it to be a fact, that he was insolvent at the time he executed the deed of settlement, in the sense that his debts largely exceeded the value of his property. It may also be taken as true, so far as the present suit is concerned, that he intended by the deed to hinder, delay, and defraud his creditors, and that he made the settlement to place his property beyond their reach.
>
> There is no evidence that Mrs. Prewit was *aware at the time of the amount of property he held,* or of the extent of his debts, or that he had any purpose in the execution of the deed except to induce her to consent to the marriage. It is not at all likely, judg-

ing from the ordinary motives governing men, that whilst pressing his suit with her, and offering to settle property upon her to obtain her consent to the marriage, he informed her that he was insolvent, and would, by the deed he proposed to execute, defraud his creditors. If he intended to commit the fraud imputed to him, it is unreasonable to suppose that he would, by unfolding his scheme, expose his true character to one whose good opinion he was at that time anxious to secure. If capable of the fraud charged, he was capable of deceiving Mrs. Prewit as to his pecuniary condition. She states in her answer that she knew he was embarrassed and in debt, but to what extent or to whom she did not know, and that it was because of the knowledge that he was embarrassed that she insisted upon his making a settlement upon her. * * *

When a deed is executed for a valuable and adequate consideration, without knowledge by the grantee of any fraudulent intent of the grantor, it will be upheld, however fraudulent his purpose. To vitiate the transfer in such case, the grantee also must be chargeable with knowledge of the intention of the grantor.

Now, marriage is not only a valuable consideration, but, as Coke says, there is no other consideration so much respected in the law. Bishop justly observes, that 'Marriage is attended and followed by pecuniary consequences; by happiness or misery to the parties; by life to unborn children; by unquiet or repose to the State; by what money ordinarily buys and by what no money can buy, to an extent which cannot be estimated or expressed, except by the word "infinite." To say, therefore, that it is to be regarded, where it is the inducement to any contract, as a valuable consideration, is to utter truth, yet only a part of the truth.' And, also, that 'Marriage is to be ranked among the valuable considerations, yet it is distinguishable from most of these in not

being reducible to a value which can be expressed in dollars and cents, while still it is in general terms of the very highest value.' Law of Married Women, sects. 775, 776. Such is the purport and language running through all the decisions, both in England and in this country, with reference to marriage as a consideration for an ante-nuptial settlement. Barrow *v.* Barrow, 2 Dick. 504; Nairn *v.* Prowse, 6 Ves. Jr. 752; Campion *v.* Cotton, 17 id. 264; Sterry *v.* Arden, 1 Johns. (N. Y.) Ch. 261; Herring *v.* Wickham, 29 Gratt. (Va.) 628.

In Magniac *v.* Thompson this court said that 'Nothing can be clearer, both upon principle and authority, than the doctrine that to make an ante-nuptial settlement void, as a fraud upon creditors, it is necessary that both parties should concur in or have cognizance of the intended fraud. If the settler alone intend a fraud and the other party have no notice of it, but is innocent of it, she is not and cannot be affected by it. Marriage, in contemplation of the law, is not only a valuable consideration to support such a settlement, but is a consideration of the highest value, and from motives of the soundest policy is upheld with a steady resolution.' 7 Pet. 348, 393.

The same doctrine is asserted by the Supreme Court of Alabama, in which State the parties to the deed of settlement reside and in which it was executed. Andrews *v.* Jones, 10 Ala. 400.

According to these authorities there can be no question of the validity of the settlement in this case. There is an entire absence of elements which would vitiate even an ordinary transaction of sale where, if set aside, the parties may be placed in their former positions. And an ante-nuptial settlement, though made with a fraudulent design, by the settler, should not be annuled *without the clearest proof of the wife's participation in the intended fraud,*

> for upon its annulment there can follow no dissolution of the marriage, which was the consideration of the settlement."

Prewit v. *Wilson* has been cited with approval not only in later cases in the Federal Courts but also in this state.

In *Flemington National Bank* v. *Jones,* 5 Dick. 244, Vice-Chancellor Pitney in citing this case with approval said, p. 249:

> "In order to postpone such a mortgage to one executed and recorded subsequent to its record, it is necessary to hold the mortgage itself void as against such subsequent mortgage creditor. In order to do that it is necessary to find that the mortgagee was guilty of what is known as actual fraud as distinguished from constructive fraud; for it is well settled that a conveyance or mortgage made or given for full and valuable consideration can only be impeached by another creditor on the ground of actual fraud, in which the grantee or mortgagee has himself participated."

In *New York Fire Insurance Co.* v. *Tooker,* 8 Stew. 408, affirmed 9 Stew. 646, it was said by Vice-Chancellor Van Fleet, p. 412:

> "Now, in a case of this kind, it is not enough to show that the vendor made the sale with intent to defraud his creditors, but the party seeking to set the sale aside must show, in addition, that the vendee was either an active or passive participant in the vendor's fraud. He must show, either that the vendee had direct information that the vendor desired to make the sale to defraud his creditors, or that the vendee purchased with notice of facts and circumstances from which the fraudulent purpose of the vendor was a natural and legal inference."

To the same effect Chancellor Zabriskie said in *Merchants National Bank* v. *Northrup,* 7 C. E. Gr. 58:

> "It is not sufficient for the purpose of setting aside a conveyance like this, that the object of the grantor was fraudulent; it must be shown that the grantee participated in that intent, or had knowledge of the object of the grantor, or of such facts as should have put him upon inquiry as to that object."

In *Thompson* v. *Crane,* 73 Fed., p. 327, it was said:

> "In all cases where a deed is executed for a valuable consideration, without knowledge by the grantee of any fraudulent intent of the grantor, it will be upheld; and where the consideration is valuable, inadequacy of price alone will not make the conveyance fraudulent, for in such a case the law will not weigh consideration in diamond scales" (citing Prewit *v.* Wilson).

It is scarcely necessary to cite additional authorities on this subject. There are very many cases in the reports to the same effect. Among the more prominent of the authorities, reference may be made to

Magniac v. *Thompson,* 7 Peters, p. 348.
Smith v. *Allen,* 87 Mass. 454.
Gibson v. *Bernett,* 79 Me. 309.
State v. *Osborne,* 42 N. E. (Ind.), p. 921.

In view of these authorities, it is at once apparent that the authorities referred to under sections 2 and 3 of the complainant's brief are not in point. The authorities referred to under section 2 relate to transfers between persons occupying the position of relatives to each other at the time of the transactions complained of.

Thus it is said in the extract from 20 Cyc., p. 601:

> "If the wife claims ownership of the property by a purchase *during coverture.*"

And in *Bulmer* v. *Hunter,* cited at page 17 of the complainant's brief, the Vice-Chancellor was careful to add this qualification to what he said, "the intended wife being a party to the fraud."

We have made a most exhaustive examination of the authorities and fail to find any well considered cases which cast any doubt whatever upon the soundness of the rules laid down in *Prewit* v. *Wilson.*

Such being the law, the law, the inquiry is, was Isabelle McGrath a party to the alleged fraud? There is no direct evidence that she was. Not only does she herself, but William F. Conway and Mr. Darrow also deny positively that she had the least suspicion or intimation of anything whatever unusual in the transaction. Either she was innocent or these three witnesses have committed perjury. No middle line can be taken. Counsel for the complainant seeks to discredit not only Isabelle Conway herself, but William F. Conway and Darrow too. None of these witnesses, however, had the appearance of other than truthful witnesses. Both Mr. Darrow and Mr. Conway freely and frankly admitted matters as to which obviously they would have preferred to have been silent and it was very plain to any observer that they were telling the truth; in fact Mr. Conway was so unusually frank that the Court commented thereon (p. 229, l. 19). Reference is made to the answers which Mr. Conway filed in the suit. The allegations of these answers are true, and in the entire case nothing has occurred which would

justify any one in branding William F. Conway as a perjurer.

Pursuing their policy which is evident throughout the brief, counsel seek to give the impression that the testimony of William and Darrow was a virtual flaunting in the face of the court with glee, of fraud. Thus, on page 9 of their brief, they say, wholly without justification

> "With William F. Conway sitting back smilingly admitting to this court that he has tried to accomplish a fraud and is confident that he has succeeded,"

and on page 10 they refer to

> "His attitude on the stand."

These references are quite improper. Upon the moral aspects of the case, William F. Conway undoubtedly has his own views which may not agree with those of the counsel of the complainant. These views may be quite consistent with his truthfulness and are far from justifying the court in disregarding his testimony. The same applies to Mr. Darrow. Neither of these witnesses, we confidently submit, had other than the appearance or the manner of truthful witnesses. Furthermore, as was said by this court in *Baldauf* v. *Russell,* 88 N. J. Law, 303, the testimony of a competent witness can not be capriciously rejected, and must be accepted as the truth, if not inherently improbable or contradicted or impeached.

In fact, the brief of the complainant involves a practical admission that the evidence produced in this cause leads to the necessary result that Isabelle Conway had no intimation of the plan which was in the mind of William, and which was known to Mr. Darrow, therefore the brief is made up of distortions of the evidence and insinuations and inferences against

Mrs. Conway; some founded upon distortions of the record and others entirely outside of the record. From all which the argument is made that the court should conclude she must have known that something was wrong and that she purposely shut her eyes to the truth. We respectfully protest against the insinuations which are made against Mrs. Conway, and in particular, against the charge several times repeated in the brief, that she is lacking in moral standing and is entitled to censure because she now makes a claim to this property, in view of the evidence produced upon the trial. The injustice of such an insinuation is most manifest. If Mrs. Conway was innocent, as she said she was, and if she entered upon this marriage and gave up her business upon the inducement of this transfer, then it would seem after the marriag has been consummated, and she has become the mother of a child, and so charged not only with looking out for herself in the future, but also with the welfare of this child; in other words, if she accepted the conveyance in innocence, and can no longer be restored to her former position, she is from every point of view entitled to insist upon the retention of the property for the protection of herself and her child. It scarcely lies in the mouths of the counsel of a great surety company, engaged in taking the risks of the character of that which it took in this case, for the payment of premiums, and seeking to collect a judgment obtained in part in reliance upon the technical rules of evidence (87 N. J. L. 290) to cast slurs upon her.

Realizing that they have no support in the direct evidence, the counsel for the complainant refer in their brief to alleged circumstances from which they argue that Mrs. Conway either knew

of the alleged fraudulent purpose or was chargeable with notice.

In the first place, it is suggested that Mrs. Conway's story "imputes to her a mercenariness that is unnatural and improbable" and this idea is supported by arguments which involve distortions of the evidence. First in the statement (p. 19 of the brief) "she was giving up a business of her own, which though small, afforded her a living" and in the statement that the property conveyed to her was worth $100,000; followed up by this rather remarkable conclusion "her story that she *exacted* such a consideration is unnatural and improbable and imputes to her a coldbloodedness and mercenary disposition not borne out by her appearance." As we have already shown, the business which Mrs. Conway owned was not a small business. It was a successful business from which her income averaged from $2,500 to $3,000 a year, a very considerable income for a young lady of her age. With respect to the value of the property, while it is reiterated time and again in the brief that it is worth $100,000, there is not an iota of evidence to this effect in the record. In fact, the learned counsel for the complainant himself upon the trial did not seem to have any idea in his own mind that the property was of that value. Thus, upon his cross examination of Mrs. Conway, he asked her this question with reference to the value of the property: "Meant something like $50,000 to $75,000, didn't it? A I don't think it worth that much. Q Didn't you then? A No, I did not." At the time of the transaction Mrs. Conway did not know what the property was assessed at (p. 272, l. 36). She had no idea of its value, Mr. Conway did not tell her and all that he did tell her was about

its income—bearing capacity, from which she figured out that the property would bring her in net about $200 a month (p. 252, l. 34), which was about the same amount which she was making in her business. The properties themselves are of a poorer class of tenements and stores and not impressive in looks. The great injustice to Mrs. Conway of this argument, however, is the insinuation that she *exacted* anything. The evidence shows that it was not Mrs. Conway, but William who made the suggestion of this transfer. She refused him twice and then without any exaction or any intimation that she would accept him upon the transfer of property, on the Sunday in Newark, William made the proposal and volunteered the offer of this property, the income of which was sufficient to make up to her what she would lose out of her business by relinquishing it. It certainly cannot be said that she exacted this consideration when William *of his own* accord offered it to her.

Again it is alleged that no notification of the change of ownership was given. This is not so as a fact, as we shall show hereafter. As to those tenants who paid rent directly, notice of the change of ownership was given to them, and from the time of the transfer they had their dealings with Mrs. Conway. With respect to all of the other tenants who paid through an agent, Mr. Garrabrant, they continued to pay their rent to Mr. Garrabrant, but he was notified as to the change of ownership and from the date of the transfer he made his remittances to Mrs. Conway, as his checks and the monthly statements which were offered in evidence clearly show. Besides practically all of the tenants knew of the change. It is suggested that it was unbusinesslike not to give formal notice to the

tenants. The only effect of such notice would be to prevent the former owner from continuing to collect the rents. It certainly was not unbusinesslike on Mrs. Conway's part to trust the man she married to the extent of believing that he would not continue to collect the rents after he had conveyed the property to her.

Next, reference is made to the alleged secrecy surrounding the engagement and marriage. The marriage was quiet, but we do not see how that fact at all affects the situation. If any argument at all is to be deduced from the place of marriage, it is one in favor of the defendant, since if secrecy because of the complainant's claim was desired it would have been advanced more by a marriage in Brooklyn than by one in Newark. It is suggested that a marriage of this character is an unnatural kind of a marriage, but the Conway family seem to have had an aversion to large and showy marriages. Both Mr. Conway's sisters were married in the same way (p. 215, l. 13). Nor is there any significance in the fact that the family of Mr. Conway were not present at the wedding. They were notified thereof immediately after the wedding and how their presence or absence from the wedding is of any materiality we fail to see, except this much seems to be true, that if the transfer to Mrs. Conway was a family scheme to defraud the creditors of James Conway and if Isabelle Conway was a party to the fraudulent scheme, then there would seem to have been no reason why the entire family should not have been at the wedding. Nor can any argument be deduced from the fact that Mrs. Conway came to the Conway home to live after the wedding trip. It is suggested that it would have been natural for her to have a home of her

own away from her father-in-law and mother-in-law. As already shown, however, William had told her that was his home and that his father and mother were living with him and that this was the very same situation which obtained in Brooklyn where her own family were living with her in her house. Therefore there could not have been anything unusual in this circumstance to the mind of Mrs. Conway. It was simply the same kind of an arrangement which she herself had in Brooklyn. Nor is there anything suspicious in the suspension of the publication of the bans of the marriage. The same had been done with Mr. Conway's sisters and Mrs. Conway gave the very natural reason that in view of the suddenness with which she expected to give up her business and the fact that she was very well known in her home church, she did not want anything said about the marriage so as to avoid the inquiries which would be made among her customers with respect to the continuance of her business. Furthermore, the experience which she had had in her business with brides made nervous by the stress of a large church wedding was in her mind in this connection (p. 249, l. 26).

Again it is said that Mrs. Conway carried her profession of innocence too far. The obvious answer to this allegation is that it was necessary for Mrs. Conway to tell the truth. That we submit it is very clear she has done. She stated that she saw nothing to excite any suspicion after the marriage and that was the fact. That she said nothing to Mr. and Mrs. Conway as to the terms upon which they were living in the homestead was both natural and proper. Assuming as she did from William's statement that they were living with him and hence objects of

his bounty, the kind and delicate thing to do was to permit the old arrangement to continue without comment which might scarcely have been grateful to the feelings of the old couple. The allegation that she saw the tenants pay the rents to James Conway and sometimes to Mrs. Bridget Conway, and that she saw James Conway going around looking after the property, and making repairs and alterations, is without foundation in the testimony. This we shall show hereafter.

Again it is said that William's statement that he owned the property that he proposed to convey was of itself sufficient to excite her suspicion and put her upon inquiry.

Here again we have a speculation founded upon distortions of the evidence. In the first place, Miss McGrath knew nothing about William's family. The reference on page 23 of the brief to "their many mutual friends" is entirely outside the record and furthermore untrue. She had never been in Newark, had met William in Brooklyn, Atlantic City and other places. She knew nothing about him other than that he was a lawyer and whenever he was with her he was always a liberal spender (p. 244, l. 26). At the time of the marriage William had been admitted to the bar and had been practicing for about eleven years. She knew nothing at all about James having been a fairly successful contractor, and, in fact, upon the one occasion when she did see him before the marriage she found a poor old man sick in bed. Had she then inquired she would have learned that he had been in no business for the past eight or nine years. As already stated, the allegation that the property was worth $100,000 is not founded upon fact and she knew nothing at all as to the value of the property other than might be deduced from the income which it brought.

In this connection it is argued that James continued in dominion over this property until the time of his death.

The complainant attempted to support this conclusion by the testimony of some of the tenants. That the complainant failed in this effort is most manifest from the evidence. The properties are occupied by many tenants. Twenty-one names appeared on the last monthly statement submitted by the agent, Mr. Garrabrant, and in addition, there are four or five other tenants who have paid directly to Mrs. Conway. Out of all these tenants and after all had been previously approached by the complainant, some few were produced, and of all these tenants, there is but one who gave the slightest support to the complainant's contention. This was Mrs. McLoughlin, a poor old lady whose excited and incoherent condition on the stand her testimony clearly reveals. For an example of the incoherency of her answers, reference may be made to page 65 of her testimony. The insistment of the complainant upon her testimony savors somewhat of disingenuousness. She testified (p. 65) that she paid her rent to James, while he, James, was living, and that "after his death, he had an agent." She could not remember the date of James' death (p. 68, l. 35). The monthly statements, which were offered in evidence, made by the agent, Mr. Garrabrant, showed conclusively that Mrs. McLoughlin's rent was paid to Mr. Garrabrant from the very month that he took charge of the property. Every one of his monthly statements include a remittance of the McLoughlin rent and that began with the month of September, which was directly after the marriage, and thus Mr. Garrabrant's statements and checks, as to which there can be no possible question, show

that Mrs. McLoughlin's rent was paid to him and by him paid to Mrs. Isabelle Conway for many months prior to the death of James, which occurred on April 4th, 1913. This is particularly significant in view of her statement that she went to the house to pay the rent to James (p. 69, l. 18). She was very evidently referring to her practice before the advent of Mr. Garrabrant. We submit, therefore, that it is very evident that Mrs. McLoughlin was in error. None of the other tenants gave the least support to this insistment. As to the great majority of the tenants, their rent was collected by the agent as the statements for each month show and by the agent they were paid to Mrs. Isabelle Conway and she and William both testified, and they are borne out by the exhibits, and in no manner contradicted, that all of these rents were paid to Isabelle and used by her alone. It may be in place here to refer to the testimony of such other of the tenants as testified.

Charles H. Kolb, one of the tenants, was at first somewhat confused. It was very evident that he is an honest man and was doing his best to tell the exact truth, and at the conclusion of his testimony, there was no doubt at all as to the accuracy of his recollection. He stated that he made out his checks for the payment of the rent to the order of William F. Conway at the request of Isabelle Conway (p. 79, l. 20). That he had talks with Isabelle with reference to the properties in which he took instructions from her and these talks were very shortly after he heard of her marriage (p. 79, l. 10). Receipts in his book were in the name of Isabelle Conway after the marriage (Exhibit D. 1, p. 422). Said distinctly that he paid his rent to Isabelle, had disputes with her about the property and took orders from her before the death of James (pp. 84-

85). As he expressed it (p. 85, l. 17): "It seemed I had to have all my affairs carried out by order of young Mrs. Conway and nobody else." He remembered on one occasion when he went to see Isabelle Conway about the property, James was sick in bed upstairs (p 86, l. 40). He also stated that James asked him "how business was, &c., but he never asked me for the rent" (p. 87, l. 39).

We suggest that the court read the entire testimony of Mr. Kolb. Nothing better illustrates how hard pressed the appellant's counsel are for support in the record of their contentions than the references made to this witness's testimony on pages 24-25 of the brief.

Elizabeth Howell testified that she paid her rent each month to Mrs. James Conway till they got the agent, which was before the death of James (p. 95, l. 10).

Mary Schofield rented from Isabelle and paid the rent to her (p. 95). Her receipt book was always signed Isabelle Conway (p. 97, l. 8).

David Lan, a tenant at No. 486 Warren street, was an occupant of the premises for many years. He said that upon asking for the making of repairs (p. 99, l. 38) "they told me they have nothing to do, I shall see Mrs. Isabelle Conway and she will do for me." His recollection was that this conversation was before the death of James (p. 100, l. 20). The incident that he recalled about the painting of the hallway was before the death of James (p. 104, l. 4). His rent books were offered in evidence and the one beginning with July 1, 1912, shows receipts for the rent from then on signed Isabelle E. Conway (Exhibit D. 2, p. 425).

Mary O'Leary once asked Mrs. James Conway to make repairs and she said: "She would see

about it" (p. 106, l. 35). Prior to that time she had also made a request to Isabelle (p. 107, l. 28). The recollection of Elizabeth Lavin was that the agent came before the death of James (p 109, l. 30).

Frank McGrath rented his apartment from Isabelle (p. 111, l. 29). He has done work on the various Conway properties at the direction of Isabelle (p. 116) and has been paid by her (p. 117, l. 4).

John Lehman left his rent at the house, sometimes with Annie Conway (p. 119, l. 30), sometimes with Isabelle (p. 120, l. 40) and sometimes with the servant (p. 121, l. 9). He would leave his book and it would be sent to him after it was receipted (p. 121, l. 20).

The most considerable tenant was the Union Brewing Company. Mr. Scheffmayer, the manager of this company, testified that he was advised by William Conway that the property belonged to Isabelle E. Conway and that thereafter he should draw the checks for the rent to her order (p. 305, l. 15). The checks offered in evidence show that he did so, beginning immediately after the marriage, and continuing down to the present time, and these checks also have been deposited by Mrs. Conway in her account and used by her alone. Any arrangements with respect to repairs which he made were done with Isabelle (p. 305, l. 30). The notice which he had of the change of ownership was before the death of James (p. 306, l. 40).

Mr. Kolb, on being recalled to the stand, testified that the plumbing work done on the property he knew was being done for Isabelle. He said: "I took my orders from her and executed the work as per her orders" (p. 312, l.23).

Other tenants were called, but their testimony is of no significance. Most of them paid through the agent, Mr. Garrabrant. As to the others, who left their rent at the house, the extent of their testimony merely is that in inquiring after the rooms, some of them saw Mrs. James Conway that in paying their rent, they sometimes left it with one person and sometimes with another, but, as we have already shown, the proof is uncontradicted that all the rent, whoever it was left with, came into the hands of Isabelle and was used by her alone.

There was, of course, no reason in the world why Mrs. Conway should not permit her mother-in-law, or any other inmate of the house in her absence, to answer inquiries about the rooms when made, and to also act as the receiver of the rent when it was paid by the tenants. The important thing is, who received the money, and as to this, there is no doubt. No information whatever was withheld by Mrs. Conway as to the receipt and use of the moneys representing the income from the property. All of her bank books were in court, as well as her check books and returned vouchers. In addition to her own testimony that she herself received all of this money, and used it in her own behalf, and that no member of the Conway family got any of it (p. 267, l. 20), her checks were in court and were offered in evidence (p. 267, l. 20). The court then stated that the checks made no difference. Counsel for the complainant said he thought that they did, and the court then said that he might go into that on cross examination. Counsel for the complainant, however, made no effort to do so.

Again in this connection, doubt is cast upon Mrs. Conway's testimony that she knew nothing of the claim of the complainant until a few

weeks before the trial, and her testimony is declared to be unworthy of credence in this respect. Soundly considered, however, this testimony is eloquent of the truth of her entire evidence. If, in fact, the whole affair was a family scheme, in which Isabelle took part, if, in other words, the entire support of the defense lay in perjury, there was no need of testimony to this effect, and it would have been very easy to fabricate a story with numerous details. On the other hand, what happened was very natural. If the story told by Isabelle and William is true, if Isabelle was wholly innocent in the transaction, it was, no doubt, a considerable shock and surprise to her to learn that there was a hostile claim against her title, and in view of William's part in the transaction, it is obvious that this was information which he, as her husband, was scarcely anxious to impart to her. The fact therefore that he told her nothing about the suit, that he had the answer filed in her behalf, and kept her in ignorance of the suit even until the day of the trial approached, and it was absolutely necessary for her to be advised, in order that she might be a witness, shows how unpleasant the duty of informing her was to him, and indicates clearly, his reluctance to tell her. Had she been a party to the fraud, William obviously would have felt no compunction about telling her about the suit. The suit would have been something she might naturally have expected to come at any time. Realizing, as we do, therefore, the motives which actuate persons under circumstances of this character, we submit that this circumstance, which is really quite immateral as to the legal aspects of the case, is nevertheless very important in the light which it throws upon the truth of the defense.

Further, it may be remarked that had Mrs. Conway been a party to the alleged fraud, she could have mortgaged or conveyed this property during the period of three years which she owned it prior to the *lis pendens* in this suit.. Her retention of the property shows that she thought she had the right to retain it. As further evidence of her innocence, we may point to the fact that when she sold the Brooklyn property, which was hers, she put the money which she received in the same account wherein she had her other money, received from the rents &c. (p. 260). Everything she did with the property points to her innocence. Money which she received from her business after the marriage was placed to the same account (p. 258, l.27).

Again it is argued that Isabelle thought William was conveying to her all the property which he owned, and therefore she was chargeable with some sort of notice. Mrs. Conway testified on cross examination (p. 281, l. 30) that she did not know whether or not Mr. Conway at the time owned other property. In response to the question, "You thought then that this was all that William F. Conway owned in the world?" She answered, "Well, I suppose I did; he didn't show me any other property."

Mrs. Conway testified that the ante-nuptial agreement was read to her in Mr. Darrow's office, and in this connection, she probably forgot that the agreement in district terms said that William had agreed to convey to her a *portion of the property which he owned.* As an actual fact at the time this agreement was made, Mr. Conway did own other property, namely, No. 351 Hawthorne avenue, No. 28 Edwin place, No. 141 First street, No. 255 East Kinney street, all in the City of Newark, and also a house and lot on

South State street, Syracuse, N. Y. State (p. 178, l. 15). Assuming then that Mrs. Conway should have asked whether or not this was all the property which William owned, had she asked she would have ascertained that he owned all of these other properties in addition. We do not see, therefore, how any argument can be founded upon the allegation that William conveyed all of his property to her, when the fact is that he did not. The most that her ignorance on that subject could possibly amount to would be that she would be charged with notice of what inquiry would have developed. Such inquiry would have developed that William was not conveying all of his property to her, but only a portion thereof.

But even assuming that this had been all of the property which William owned, even that fact would not render the transaction void in the absence of participation by Isabelle in the alleged fraud. The complainant's argument in this respect is based principally upon the case of *Simpson* v. *Graves,* Reilly's Eq. 232, an early South Carolina case involving very unusual facts and containing an opinion in many respects obviously unsound, and which has since been criticised by other courts. The fact that counsel for the complainant find it necessary to quote at great length from this discredited case, while they have overlooked the leading cases in the Federal Courts, the courts of New Jersey, New York and Massachusetts, shows what a slender foundation there is in the authorities for the position which they take. In the first place, the facts in the *Simpson* v. *Graves* case were very unusual. That involved a conveyance of the grantor's entire property, consisting of about $400,000 worth of real estate; $300,000 of person-

al property, besides other property, to a woman who was herself a person of wealth. The amount involved was therefore so exceptionally large as to of itself almost necessarily lead to suspicion. It is scarcely necessary to point out that in this case, the amount of property conveyed was not so great. Mrs. Conway naturally thought there was nothing extraordinary in her proposed husband offering to her property which bore an income, the equivalent of and sufficient to take the place of the income which she received from her business, which she would have to relinquish. In view of the possibility of children being born of the marriage, the amount of property involved was clearly not an extraordinary settlement to be made by a man who was a member of the Bar and whose liberal expenditures in society had made him seem to be a person of means; and even if this settlement, which was not exacted by Miss McGrath, but was freely offered by Mr. Conway, did, at the time, seem to be a generous one, from that fact alone fraud cannot be inferred on the part of the grantee. As stated in the head note in the case of *Bank of Freehold* v. *Irons,* 1 Stew., p. 43, *affd. id.,* p. 625,

> "Fraud will not be inferred from circumstances which merely indicate unusual generosity."

The opinion of the Court in *Simpson* v. *Graves* is obviously unsound in many particulars. Thus the Court said there, contrary to all the other authorities,

> "It is not to be understood that because marriage is equivalent to a pecuniary consideration, it is to be considered in the nature of an actual purchase."

All of the authorities on the other hand state that marriage is to be considered one of the

highest considerations. Furthermore the court is clearly in error in stating that the transfer of all the property should be considered as "conclusive evidence of fraud." It may at once be asked whether if a transfer of all the property is conclusive evidence of fraud, what part of the property may be transferred without the conclusion of fraud, and who shall say what the boundary line is between the part which may be conveyed and the part which may not be conveyed.

As already pointed out, *Simpson* v. *Graves* was not only unusual in its facts, but the conclusions of the court have since been criticised in other well considered cases, which have held that the mere fact that the settlement included all of the property did not indicate that the wife was a party to the fraud.

In *Herring* v. *Wickham,* 29 Gratt. (Va.) p. 628, a man conveyed all of his property except a heavily encumbered tract in consideration of marriage. The wife had no knowledge of the fraudulent intent and her title was held good as against creditors. The Court said:

> "The court cannot act upon mere suspicion or presumption. Fraud on the part of the grantee must be proven."

Referring to the contention that a transfer of all of the property made the transaction invalid, which was based upon the *Simpson* v. *Graves,* case, the Court said:

> "It would be impracticable to hold that merely because all was transferred, the conveyance was invalid. Who would determine how much the wife should hold. No one contends that the conveyance would be void *in toto.* No case has been found that rules as the Simpson case other than itself."

In *Boggess* v. *Richards,* 26 L. R. A. (W. Va.) p. 537, it was said:

> "However much a man may be indebted, an ante-nuptial settlement made by him in contemplation of marriage is good as against his creditors Unless it appears his intended wife was cognizant of the fraud, and even though it conveyed his whole estate, it is not simply on that ground void, and when a settlement is made in contemplation of marriage, the law presumes it was an inducement to it, and the courts cannot assume the contrary to be the fact."

In *Noble* v. *Davies,* 4 S. E. (Va.), p. 206, it was held that fraud could not be presumed in an action to set aside a marriage settlement, but must be proved by clear and satisfactory evidence to have been concurred in by both parties, and this, irrespective of the amount of the husband's indebtedness, and even though his whole estate is included in the settlement. The Court said, p. 209,

> "Fraud cannot be presumed; it must be proved by clear and satisfactory evidence. Marriage is a valuable consideration, sufficient to support a conveyance of property, even against creditors; and in such a case the wife is deemed a purchaser of the property settled on her, in consideration of the marriage, and is entitled to hold it against all the world. However much a man may be indebted, an ante-nuptial settlement made by him in consideration of marriage is good against his creditors, unless it appears that the intended wife was cognizant of the fraud. And even though it conveys the whole estate, it is not simply on that account void. And when a settlement is made in contemplation of marriage, the law presumes it was an inducement to it, and the courts cannot assume the contrary to be the fact.

> In the case of Clay *v.* Walter, *supra,* Judge Lacy, delivering the opinion of the court, said: 'After the late case of Herring *v.* Wickham, in this court (29 Gratt. 628), it may be said, as was contended in argument here in this case by the learned counsel for the appellant, that it is now beyond dispute that, whatever was the design of her husband, the settlement upon his wife in contemplation of marriage, and with marriage as the expressed consideration, is valid, as such settlement is upon valuable consideration, unless a knowledge of the intended fraud is proved by clear and satisfactory evidence. Does the record show that the intended wife had knowledge of, and participated in, the intended fraud, if any such existed. This knowledge cannot be presumed. There is no reason to believe that an intended husband would confess his guilt, if any, to his intended wife on the eve of their marriage. It is not pretended that any knowledge was brought to Mrs. Clay of this intended fraud, except such constructive notice and knowledge as she may be held to have had from a service of this paper writing left with her.' ''

In *Kerker* v. *Levy,* 140 App. Div. 428, 125 N. Y. Supp. 357, there was a transfer upon a marriage settlement of practically all of the property of the grantor. The court upheld the wife's title. It was said:

> ''The defendant * * * cannot be charged with knowledge that the effect of the transfers to her was to hinder, delay and defraud creditors of whom she was ignorant.''

It is significant that while, as appears from the report of *Prewit* v. *Wilson, supra,* in 26 U. S. Sup. Ct. Reports, Lawyers' Co-operative Pub. Co. edition, *Simpson* v. *Graves,* 1 Reilly's Ch. 232 was cited by the appellees as authority for their position, it was not noticed by Mr. Justice Field in his opinion for the Supreme Court, but upon

the contrary he cites with approval the case of *Herring* v. *Wickham, supra,* which criticises *Simpson* v. *Graves.*

See also *Clay* v. *Walter,* 79 Va. 92.

In *McGowan v. Hitt,* 16 So. Caro. 602, it was said that the wife was regarded as "having the knowledge which proper inquiry would have given her."

As already observed, inquiry as to the total amount of William's property, if it had been made by Miss McGrath, would have disclosed that he had considerable property in addition to that which he was conveying. The other authorities cited in the complainant's brief were not in point upon this proposition. They refer to the circumstances which may necessitate a conclusion that as to the grantor the conveyance was fraudulent.

The suggestion that the conveyance was shrouded in secrecy is entirely unfounded. The deed was recorded in the usual course. As already shown, tenants were instructed to pay the rent to Mrs. Isabelle Conway; the agent was retained by her to collect it; he made all of his checks and rendered all of his statements to her; the brewing company, who were the largest tenant, were also so informed and entered into the same practice, and knowledge of the ownership of Mrs. Isabelle Conway was also shown by the tenants Kolb and Lan, who were the only other two considerable tenants in addition to the brewing company.

Again we protest against the effort of the brief to exaggerate the value of this property. The amount of the income has been shown. The properties themselves are a poor class of tenements and are obviously not the kind of properties to impress one with their value upon a mere inspec-

tion thereof. However that may be, all that Mrs. Conway knew was that the income of the property was about sufficient to take the place of her income from her business, and the exchange must have seemed a not unreasonable provision to her. The fact that the marriage was a quiet one does not affect the situation at all, and it is not apparent, how the utmost publicity given to the marriage would have in any way indicated to anybody that a marriage settlement was proposed by William, so that the character of the arrangements of the marriage is not important one way or the other.

Nor can we see any force in the suggestion that Miss McGrath should have made inquiries further than she did. It is quite obvious that had she made inquiries, she would have learned nothing. William himself had no creditors. William's father had been out of business for many years. There was nothing to indicate to a casual observer that he had ever had a dollar's worth of property. The situation in the home in Newark was like that in the home at Brooklyn. There was nothing at all, therefore, unusual about it to Miss McGrath. Had she searched the records, she would have found that William received the title to this property from various other people, not from his father, and that the title to these properties had not been in the name of the father for practically ten years. Had she made further inquiries of William or had she consulted any member of William's family, it is obvious she would have learned nothing, and this is particularly so, if, as the complainant alleges, there was a fraudulent scheme concurred in by William and his father. Had she gone to the extent of making a judgment search against William and his father, she would have discovered no judgments against either. The judgment which is the basis

of the present suit was not recovered by the complainant against James Conway until May 7th, 1914, almost two years after the deed was made to Miss McGrath. She was an absolute stranger in Newark, and while, therefore, it is very well to argue about the necessity of inquiry, &c., it may very pertinently be asked, what would have been disclosed had inquiry been made. But it is very plain that Miss McGrath acted throughout as a reasonable and honorable person, and that she was entirely justified in taking William at his word, and accepted the property which he offered to her, and that there was nothing in all of these circumstances attending the transfer of the property which, in view of what she then knew, should have aroused in her any suspicion whatever. Under the facts of this case, the references in pages 37 and 38 of the brief to "the old man practically ending a successful money-making career" and to the "woman now shown to be willing to retain the proceeds of a gross and undisputed fraud," are obviously unfounded, unfair and improper.

There is nothing in the engagement ring situation. Miss McGrath did not see the ring or know of its existence until after she had accepted William's offer. William says that he had an opportunity to buy the ring cheap, and therefore bought it (p. 230, l. 33). Miss McGrath did not see the ring until after she had signed the agreement (p. 230, l. 37).

The suggestion made in section 8 of the brief that Miss McGrath was in some way chargeable with what Mr. Darrow knew, is not only contrary to the authorities in this state, but, if sound, would lead to a result which would necessarily shock one's sense of equity and justice.

In the first place, Mr. Darrow was hired simply to prepare the ante-nuptial agreement. Therefore, he acted solely in the capacity of a mere scrivener. He was the intimate friend of William and only a slight acquaintance of Miss McGrath. That William suggested his name to Miss McGrath is very plain from the evidence. Not only did he suggest his name, but he also paid him for his services (p. 168). To say then, at the present time, that Miss McGrath was chargeable with knowledge which Mr. Darrow obtained upon a prior occasion, when he was acting for Mr. Conway, and which it was his duty to Mr. Conway not to disclose,and which, in the interests of Mr. Conway, he was careful not to disclose, would undoubtedly result in the greatest hardship and injustice to Miss McGrath, herself perfectly innocent in the matter. The Court could not possibly countenance the view that the innocent Miss McGrath was chargeable with knowledge which William and Mr. Darrow had, and which they combined to keep from her. The case at bar is a most apt illustration of the justice of the view which has finally been adopted by this court, namely, that the principal is only chargeable with such knowledge as the principal would have himself acquired had he been acting in the place of the agent in the transaction in question, in other words, Miss McGrath was chargeable with notice of everything learned by Mr. Darrow, if it be conceded that Mr. Darrow was her agent (which we by no means admit), during the course of what he was doing for her. He was employed merely as a scrivener to prepare the ante-nuptial agreement. The only communication he had with William from the time of his retainer for this purpose, up to the time of the execution of the papers, was to call him up on the telephone and ask him for the description of the property (p.

164, l. 14). What he knew he had learned long prior to the coming of Miss McGrath to his office. What he knew he did not learn and would not have learned in the course of what he did after she came to his office. Had Miss McGrath employed another lawyer, and had he done the same for her which Mr. Darrow did, and had he had the same communications with Mr. Conway, it is obvious that he would not have learned what Mr. Darrow knew, nor would Miss McGrath have acquired this knowledge had she done for herself what Mr. Darrow did, and this is the test.

This court in *Vulcan Detinning Company* v. *American Can Company,* 2 Buch. 387, said (p. 400):

> "The scope, and to some extent, the theory of the presumption of imputed knowledge has been the subject of two decisions in this court which are not in accord. I refer to State *v.* Sooy, 41 N. J. Law (12 Vr.) 394, and Willard *v.* Denise, 50 N. J. Eq. (5 Dick.) 483. The latter of these cases which was also the later in point of time, laid down the rule that
>
> 'Where information is casually obtained by an agent of a corporation, the corporation is not charged with notice from the mere fact of its agent's knowledge, but if the corporation act through such agent in a matter where the information possessed by him is pertinent, the knowledge of the agent will be imputed to the principal.'
>
> Under the rule thus stated the defendant corporation is clearly chargeable with notice of all the pertinent information possessed by Assmann and used by him in its behalf. We are not, however, willing to rest our decision of this matter upon the case of Willard *v.* Denise. In the earlier case of State *v.* Sooy, the rule stated in the syllabus of the opinion, delivered by Mr. Justice Dixon, in this:
>
> 'The knowledge of the agent is chargeable upon his principal whenever the principal,

if acting for himself, would have received notice of the matters known to the agent.'

This rule, it will be observed, is far more favorable to the respondents in the present case than that of Willard *v* Denise, and is, in our judgment, the rule to be applied whenever the presumption of imputed knowledge becomes pertinent to the rights or remedies of litigating parties. By force of this rule and of the reasoning upon which it rests, the American Can Company is chargeable with the knowledge possessed by Assmann only in case the principal, that is, the can company, if acting for itself in the acquisi- of the complainant's process, or (being a corporation) if acting through some other agent, would have received notice of the material matters known to Assmann. In applying this rule we think it is reasonably certain that if the board of directors of the American Can Company, when they contemplated going into competition with the complainant in the detinning business, by use of its process, has set about the acquisition of a practical knowledge of the construction and working details of such process, either as a board of directors or by the employment of agents not already possessed of such knowledge, they must inevitably have run up against the barrier of secrecy maintained by the complainant for the express purpose of heading off such competition. In that case they would either have failed to obtain the secret of the complainant's process except with its knowledge and consent, or if they did obtain it clandestinely from someone who held it in confidence, would have done so under circumstances that would have put them upon inquiry, and hence, have charged their corporation with whatever knowledge such inquiry would have led to. This is the test established by the case of State *v.* Sooy (as applied to a corporation) and the conclusion to which it leads is that the defendant corporation holds the fruits of Assman's agency in its behalf, with the burden of so much of the knowledge possessed by him as would

have come to it if it had acted for itself or through an agent who was not already possessed of such knowledge.

Being chargeable with this notice, the defendant corporation is amenable to the same decree touching competition and publication as that already accorded to the complainant with respect to Assmann individually. The inadequacy of the protection afforded to principals generally and to the defendant corporation in this case by the rule stated in Willard *v.* Denise, having been necessarily considered by us in reaching the conclusion that the doctrine of the case of State *v.* Sooy should by preference be adopted, the former case must be deemed to be overruled."

In the later case of *Geyer* v. *Geyer,* 5 Buch. 124 Vice-Chancellor Howell said (p. 126):

"There is no proof that the mortgagee had any actual knowledge of the son's fraud upon his father, but an attempt is made on the part of the complainant to charge her with notice of the transaction for the reason that the solicitors whom she employed knew about it. This is carrying the doctrine of notice to an agent to an extreme to which the decisions in our State do not now go. It may be that under the case of Willard *v.* Denise, 50 N. J. Eq. (5 Dick.) 482, the position might be maintained, but Willard *v.* Denise was overruled in the case of Vulcan Detinning Co. *v.* American Can Co., 67 Atl. Rep. 339, and the earlier doctrine announced in Sooy *v.* State, 41 N. J. Law (12 Vr.) 394, was re-established. The rule now is 'the knowledge of the agent is chargeable upon his principal whenever the principal, if acting for himself, would have received notice of the matters known to the agent.' It is quite plain that if the mortgagee had acted for herself in the transaction she would not have received notice of the matters which were known to the solicitor who acted for her.

I must ,therefore, declare that the knowledge of the solicitors, if any they had, was not imputable to the mortgagee."

See also

Fidelity Trust Co. v. *Baker,* 15 Dick. 170.
Villor v. *Spalding,* RR *N. E.* (Mass.) 846.

An interesting case showing the principles upon which the courts act in these cases is:

Sebald v. *Citizens Deposit Bank,* 105 S. W. (Ky.) 130.

The cases cited in the brief of the complainant are either obviously different or are contrary to *Vulcan Detinning Co.* v. *American Can Company.*

The argument made in section 9 of the complainant's brief is based upon the idea that it was necessary for Miss McGrath before accepting the deed, to go out around among the tenants and make inquiries among them as to who owned the property. It is quite obvious that this was not necessary. Such inquiry is rarely made upon the purchase of real estate. Purchasers always rely upon the record title. The only possible situation in which such an inquiry might be important, would be in order to ascertain what the rights of the occupants themselves are, in view of the notice which is sometimes inferred from possession, and even as to this notice, the necessity for inquiry among tenants has been practically removed by the provisions of the recording acts requiring tenancies of any considerable time to be recorded. The cases cited under this head merely mean this.

As was said in *Essex County National Bank* v. *Harrison,* 57 Eq. 91:

> "The actual possession of the premises puts any person having a claim or seeking to acquire a title thereto to an inquiry of such person *as to what his title actually is.*"

and failure to make this inquiry may sometimes result in one being required to take subject to the rights of the occupant.

This principle is, of course, not in point in the case at bar.

In this connection it is said that it is not disputed that at the time of the ante-nuptial settlement the premises were in the possession of James Conway and that he occupied the homestead as his home. It is true that James Conway lived in the homestead, but William lived there too, and he told Miss McGrath that his father was living with him. William was therefore in the apparent possession of all of his property, and therefore nothing either way can be inferred from the fact of possession at the time the conveyance was executed. The only part of the property in the physical possession of any member of the Conway family was the homestead, and both James and William lived there, James being, as William said, a member of his family.

One could not sit through the examination and cross examination of Mrs. Isabelle Conway without realizing that she was a truthful witness and that her statement of what happened was in all respects truthful and accurate. A reading of the record leaves one with the same impression. Although she was submitted to a most thorough and searching cross examination by the able counsel for the complainant, her evidence was in no manner shaken. Her situation at the trial was one of much embarrassment and difficulty, yet she answered in a frank and open way, which left no doubt as to the truth of what she was saying. She conducted herself in the negotiations which led up to her marriage in a way in which any honorable young woman would conduct herself in her dealings with a man whom she respected enough to marry, a man who had never, as far as she knew, deceived

her in anything. The answer which she gave to the question, why she did not have the title searched to ascertain whether there were encumbrances, is typical. She said, "Well, I trusted Mr. Conway; I was on the verge of marrying him and I didn't think he would deceive me at the last moment." (P. 281, l. 19). The marriage has now been consummated and Mrs. Conway is the mother of a child of the marriage. If she was, in fact, innocent, and took this property upon the *bona fide* consideration of the marriage, great injustice would be done to her if the property were now taken from her. The marriage cannot be undone, she cannot be restored to her former position, her business and means of income are also gone. The Court cannot lightly disregard her sworn testimony, and that of William, and Mr. Darrow. In view of the disastrous result to the defendant, should the complainant's claim prevail, the Court should not proceed on mere innuendoes and inferences, in view of the positive testimony of innocence. As Vice-Chancellor Leaming said in the recent case of *Atlantic Refining Co.* v. *Stokes,* 75 Atl. (N. J. Ch.), p. 445:

> "With an absence of knowledge on the part of the grantee of other indebtedness of the grantor, no fraudulent purpose can be properly assumed. In Muirheld *v.* Smith, *supra,* at page 309 of 35 N. J. Eq., it is said: 'Astute as courts should be in the detection of fraud, they are not justified in finding it on grounds which show no more than its possible existence. When the acts of the parties admit of a reasonable interpretation in favor of honesty and fair dealing, they should receive it.' "

The complainant argues that an inference should be drawn from the fact that no other members of the Conway family appeared to testify at the trial or were present in court. We do not see how this can in any manner affect the case made on behalf of Mrs. Isabelle Conway, except as it does throw further light upon the *bona fideness* and truth of the entire transaction. If, as we have already stated, the entire basis of the defense lay in perjury, and that Mrs. Isabelle Conway was merely a participant in a fraudulent scheme, conceived and executed by the Conway family, then, no doubt, Mr. Conway's sisters and the other members of the family would have been ready in court to do their part by further perjury in rounding out the details of the scheme. They were not produced, however. The sisters knew nothing of the events leading up to William's marriage and were not present at the marriage. They knew nothing about the dominion over the property after the marriage, nor about the collection of rents therefrom, nor did they receive any part of it. There was, therefore nothing as to which they could truthfully testify, if they had been present in court. Mrs. Bridget Conway, Mr. William F. Conway's mother, is an invalid and an elderly lady and can only leave the house with great difficulty.

This case lasted two days and at no time were any of these parties in court. It is scarcely necessary to point out that they were all subject to subpoena and there was nothing to prevent the complainant from calling any one whom they desired to examine.

The opinion of the learned court below, which is printed on page 503, is a complete vindication of the propriety of the decree, and we most respectfully submit that should the Court conclude that our motion to dismiss the appeal is not well founded, that there must, without doubt, be an affirmance of the decree below upon the unquestioned merits of the case.

Respectfully submitted,

ROBERT H. McCARTER,
ARTHUR F. EGNER,
Of Counsel with Respondent,
Isabelle McGrath Conway.

June Term, 1907.

New Jersey Court of Errors and Appeals

Between AMERICAN SURETY COMPANY OF NEW YORK, *Complainant-Appellant,* *and* WILLIAM F. CONWAY, *et als.*, *Defendants-Respondents.*	*On Bill, &c.* *On Appeal from Chancery.*

Brief for Complainant-Appellant.

This is a suit to set aside conveyances as in fraud of the creditors of James Conway. In 1901 Conway, then in the general contracting business, agreed to indemnify the American Surety Company against any claim that might be made by reason of its suretyship on contract bonds given by the firm of Minahan & Costa (Exhibit C. 12, case page 362). In 1903 the town of Wakefield, Massachusetts, sued the Surety Company on three such bonds. That suit was defended by Conway on the company's call for him to do so (Exhibit C. 15, page 398 and page 363). Judgment went against the company and after an unsuccessful appeal the company paid $45,439.11 in satisfaction of these judgments (case page 54). Then the company began suit against Conway on the indemnity agreement. The first trial resulted in a verdict for the defendant. On a retrial there was a direction of a verdict for the plaintiff for $56,133.75 (affirmed 87 Law, 290). Complainant having thus finally prevailed, was confronted by the fact that in 1902, about two weeks after default in the Wakefield con-

tracts and notice thereof to him, Conway had begun an attempt to put his property out of reach of the Surety Company, and by various conveyances to members of his family and to friends, had divested himself of all his real estate except a little triangular piece of two and one half feet frontage, and a fractional interest in some other property as one of the heirs of his father (Case page 125). Some of his property seems to have gone to bona fide purchasers. No attempt has been made to follow that, but two tracts that went to Annie L. Conway, his sister, and ten tracts that went to William F. Conway, his son, are the subject of attack in this suit.

The son, William F. Conway, is a member of the New Jersey bar. He seems to have been his father's adviser in the attempt to put the prop-rty out of the reach of creditors as above described. He became distrustful of the sufficiency of these conveyances to accomplish his fraudulent purpose. He had a friend, also a lawyer, William H. Darrow, a member of the New York bar, who had been with him at the Law School. He (Conway) was paying devoted attention to a young lady by the name of Isabelle E. McGrath. He had proposed marriage, had been rejected, but was continuing his attention (Case pages 138-139). We cannot be positive whether it was Darrow or William F. Conway that conceived the idea of a conveyance to Isabelle E. McGrath in consideration of a marriage as another obstacle in the way of the complainant as a creditor of James Conway, but apparently the credit (?) belongs to William F. At any rate they discussed it and Darrow gave his opinion that marriage as a consideration was sufficient to support a deed (Case pages 155-156). Of course we are at the disadvantage that the story of

what passed between Darrow and William F. and between William F. and Isabelle E. McGrath comes entirely from their lips.

On cross examination William F. Conway quickly abandoned the specious denials of fraud and allegations of sufficient consideration set up in the answers and admitted that the conveyances out of James Conway were made for the purpose of defeating any possible demand that might be made against him later because of the Wakefield contract failure, that he, William F. Conway knew that that was so; that after the conveyances his father collected or received the rents and controlled and really owned the property, and that the conveyance made by him to Isabelle E. McGrath transferred nothing but properties that were held by him for his father (Case page 185, line 10; page 193, line 30; page 194, lines 20 to 30; page 197, line 30; page 198, lines 20 to 25; page 199, lines 10 to 35; page 200, lines 30 to 40; page 201, lines 1 to 10, lines 20 to 30; page 202, lines 1 to 20; page 203, lines 1 to 35).

As to the two tracts so conveyed to Annie L. Conway the learned Vice-Chancellor found that they "were plainly fraudulent as against creditors" (Case page 511), thus demolishing the argument on page 23 of our opponents' brief on their motion to dismiss our appeal. The decree entered in the Court of Chancery directed the sale of these two tracts (the first and eleventh in the bill of complaint), the proceeds to be applied to the satisfaction of the complainant's judgment. The amount realized upon the sale of these tracts was less than the costs and charges of selling same so there was nothing to be credited upon the complainant's judgment (Supplemental State of the Case, page 23). The decree also ordered that William F. Conway

pay the complainant the amount of its judgment with interest, etc., and that the complainant have execution therefor out of the Court of Chancery, but that no sale should be had thereunder until the first and eleventh tracts, the Annie L. Conway tracts, had been sold and the proceeds, if any, credited. As to the properties conveyed to Isabelle E. McGrath Conway on the alleged consideration of marriage, the bill was dismissed.

The complainant was for a long time uncertain whether to appeal from this part of the decree; waiting (as was its right) practically the full length of time given by the statute. In the meantime, besides selling the Annie L. Conway tracts, it had caused an abstract of the final decree to be filed in the office of the clerk of the Supreme Court in order to make it a lien upon the lands of William F. Conway, caused execution to issue out of Chancery and a levy to be made upon a mortgage and upon five tracts of land standing in the name of William F. Conway. But no sale has been made under this levy (Supplemental State of the Case, pages 19, 20 and 21). William F. Conway having testified in the Court of Chancery that he owned certain property at Syracuse, New York, complainant caused an attachment suit to be brought in that state, but this suit has not gone farther than was necessary to fix the lien. Suit at law was also begun against William F. Conway on the Chancery decree referred to, for the purpose of making it the foundation for examination of defendant in supplementary proceedings. The decree in Chancery is an insufficient basis for such proceedings, the statute providing for such examination only in aid of a judgment-at-law, 2 Comp. Stat., 2249,

Sec. 23, 1 Comp. Stat., 435, Sec. 70. Judgment was taken in this suit but no execution has been issued upon it.

I.

The motion to dismiss appeal should be denied.

The defendant respondent moves this Court to dismiss our appeal on the ground that the complainant appellant had accepted the decree below in the steps that it had taken to avail itself of those portions of it that had given it the right to follow the Annie L. Conway tracts and to have a personal judgment against William F. Conway, as well as in the bringing of the attachment suit in New York, arguing that in so proceeding the complainant had shown its election to abide by the decree and should not be permitted to question the correctness of any part of it. This motion was fully argued before this Court and decision reserved until the argument of the main appeal. We will not burden the Court with extended repetition of the objections to this motion presented by us on that argument. The Court of Chancery found that a fraud had been attempted, both as to the Annie L. Conway tracts and the tracts conveyed by William F. Conway to Isabelle E. McGrath Conway, but that the attempt though fraudulent was successful with reference to the Isabelle E. McGrath conveyance because the grantee was a bona fide purchaser for value without notice of the fraud. The learned Vice-Chancellor's opinion, together with the facts in evidence before him, justify the statement by us that the court regretted its inability to give the complainant all the relief it sought and would

welcome a decision by this Court contrary to the conclusion thus reached. We have no doubt that had we anticipated that our attempt to preserve the small degree of relief the court found itself able to give would be distorted into an acceptance of the entire decree, we would have had no trouble in obtaining some expression in that it would have expressly permitted us to do just what we did. We were dealing with a self-confessed fraud-doer from whom we might reasonably anticipate some further attempt to defeat the complainant's claim, and all we have done in proceeding under the decree has been in the endeavor to prevent any such attempt and to effectuate as well as preserve the relief which the court found itself able to give. We ought to have had both the personal decree against William F., as well as the relief we sought against Isabelle E., his wife. Some of the property that went from William F. to Isabelle E. was later conveyed to the City of Newark (see tract B in Exhibit C. 14. Case pages 374, 386, 387, 388, 394, 395. See also testimony, Case page 205, lines 1-17); and until the property still held by Isabelle E. shall have been sold and the proceeds applied we cannot tell whether there will be enough to satisfy our claim. If it proves insufficient we should be entitled to proceed against William F. personally to the extent of the deficiency; in other words, if the decree below were to have been what we contend it should have been or were to be now moulded to give us all the relief we are entitled to, we say that it should have included first, a money judgment against William F. Conway for the full amount of our claim; second, direction for the sale of the Annie L. Conway tracts and the property still held by Isa-

belle E.; and third, a direction that these properties be resorted to before collecting on the personal judgment, collection on that to be limited to the deficiency after resorting to the other properties. If this Court shall see fit to reverse the court below in that part of the decree from which we have appealed, we ask that it order the decree below to be moulded along the above lines.

If this Court shall conclude that this bill should not be dismissed against Isabelle E. McGrath Conway it can control the complainant, holding it at the point already reached, that is with its Chancery decree, levy thereunder, judgment at law to be used as a foundation for supplemental proceedings and attachment lien on property in New York, and may maintain this status until the complainant's appeal has been determined, when it can direct how and when, if at all, the judgment at law and the New York attachment shall be prosecuted further. There can be no doubt of the court's full power in this respect, in addition to which, however, the defendant respondent has offered and does offer to submit itself entirely to the court's control in these respects, to the end that out of all the phases of relief to which the complainant appellant may be entitled there shall come but one payment of its judgment. The defendant respondent's argument seems to consist of the premise that we have proceeded under the Chancery decree and the minor conclusion that we have accepted it, followed by the major conclusion that therefore we cannot question it. The logic, we submit, is faulty, the premise is an insufficient foundation for either minor or major conclusion and the major conclusion in no way follows upon the minor one. The partial re-

lief that was given the complainant appellant by the Chancery decree was not based upon any reasoning that made the acceptance of that part an acceptance of the whole decree. Examination of the decree in the light of the findings of facts by the Vice-Chancellor shows nothing to justify the inference that the relief given by the decree was on condition that the complainant appellant should abide by the court's denial of the main relief sought, nor that the harsh alternative was put upon us that if we sought to review that denial it must abandon the partial relief the court had found itself able to give. There is nothing in our proceedings under the decree from which may be implied any election to abide by the court's denial of further relief. The statute gave us the right to appeal from a part of the decree. Election is something more than the mere following out of one of several lines of action. It is that plus the fact that the following of one line is under such circumstances of conduct and expression as show intent to abandon all the others. Such intent may be either actual or implied. In this case there was no actual intent (Supplemental State of the Case, page 22, line 20, page 25, lines 1 to 10). Such an intent may be implied by law where the very nature of the several remedies is so inconsistent that following one necessarily means abandonment of the others. Here there is nothing of that kind. There is nothing to suggest that the complainant intended by what it did in pursuit of William F. Conway to abandon its right of appeal from the other portion of the decree. There is nothing in that pursuit that necessarily implies any such abandonment. The complainant has not gone any farther in the pursuit of William F. Conway than was necessary to make the money judg-

ment effective. Here was a judgment given by the Court of Chancery against a self-confessed defrauder, of whom there was every reason to believe that if he could defeat the money judgment he would. The complainant has gone far enough to prevent any such attempt but no farther. No execution has been issued on the judgment at law. No sale has been made under the Chancery levy (except the sale of the Annie L. Conway tracts). No proceedings have been taken in the New York attachment suit farther than to perfect the lien.

We have shown that property was held in trust for James Conway's creditors, that the trustee deliberately planned a breach of trust and we confidently ask the Court's assistance in the righting of this wrong. If this Court shall find that Isabelle E. McGrath Conway was a party to the breach of trust or that the circumstances put her on inquiry or charged her with notice of it, she ought to be made to give up the property conveyed to her by the trustee. If the Court shall find that she was not guilty of participation nor chargeable with notice, though in fact innocent of guilty intent, she can ask no more. She ought not to be permitted to escape a review of her participation by the suggestion that the complainant appellant in going after the admittedly guilty trustee has impliedly agreed that she was innocent. With William F. Conway sitting back smilingly admitting to this Court that he has tried to accomplish a fraud and is confident that he has succeeded, the many circumstances to be referred to later, tending to show that Isabelle E. McGrath Conway was not the innocent purchaser that she says she was, invite the closest scrutiny of the defendant's title, and this Court will not take kindly

to the suggestion that such scrutiny be limited to the Court of Chancery, over whose decrees this Court sits in review.

We are before this court as a court of equity, a court of conscience, and this court, we believe, will say that the complainant appellant ought to have as many different kinds of relief as are in the power of the court to grant, all looking to the one end, that the complainant's judgment shall be paid but all controlled by the court to make certain that the complainant gets nothing more than this one end.

This court is without the aid of any expression from the learned Vice Chancellor who tried the case, of the views on which he based the money judgment against William F. Conway. This is because the application for such money judgment came at the time of the settlement of the decree and after the opinion had been filed. Vice Chancellor Stevens' opinion showed clearly that he regarded the transfer to Isabelle E. McGrath Conway as a fraud upon the complainant, and that William F. Conway knew that it was a fraud when he made the transfer. It was the testimony of William F. Conway, his attitude on the stand, and the fact that the learned Vice Chancellor was so emphatic in his condemnation of the fraud that first suggested the thought that there was a personal liability. Investigation disclosed abundant authority to support this. *Post* v. *Stiger,* 29 N. J. Eq. 554 (opinion by Vice Chancellor Van Fleet in 1878), is one of the leading cases. This case, together with *Jones* v. *Davenport,* 44 N. J. Eq. 33 (another decision by Vice Chancellor Van Fleet); 20 Cyc. p. 670; *24 Century Digest, Caption Fraudulent Conveyances,* Section 568; *Clements* v. *Moore,* 6 Wall. 299, 18 L. Ed. 786; *Central*

Improvement Company v. *Cambria Steel Company,* 210 Fed. 696 (Circuit Court of Appeals for the 8th Circuit, 1913); *Waite on Fraudulent Conveyances,* 3rd Edition, Section 180, page 327; *Bigbee* v. *Warnock* (Ga. 1902), 57 L. R. A., p. 754, at p. 757, were all brought to the attention of the Vice Chancellor, and no doubt his conclusion was based upon *Post* v. *Stiger.*

Post v. *Stiger* authorizes a personal judgment against a grantee of property conveyed in fraud of creditors, who has disposed of it so it cannot be reached. The *Cambria Steel Company* case holds that such personal judgment may be given where the property has not been put out of reach but may be applied to the payment of the creditor's claim.

It is reasonable that a court of equity confronted by proof that a trustee for creditors has tried to put the property beyond the reach of creditors by successful fraud shall hold such trustee liable for the property transferred, while at the same time it pursues that property into the hands of the purchaser with notice of the fraud.

The defendant respondent argues that we cannot appeal from the decree below because it was entered at our request. It is said that a party cannot appeal from an order procured by himself, and this court so held in *Ewald* v. *Ortynsky,* 76 Eq. 291. But that was a case where an order was entered in favor of the appellant and on his motion. Later he applied for a re-argument and obtained a different order from which he appealed. The court was unwilling that a party should on his own motion substitute an order for the mere purpose of appealing from it. The reasoning of this case has no application to the present case where

the decree is prepared by one of the two contending parties for submission to the Vice Chancellor after he has decided the case, and that too perhaps adversely to some of the contentions of the complainant. In such case the preparation of the decree is in aid of the court, the motion for entry of the decree does not in any sense nor to any extent imply an acceptance of its terms that will bar the complainant so presenting it from appeal. Strictly speaking, in such case the words "On motion of" are purely formal and have no other purpose than to indicate to the clerk to whom to charge the fee for filing.

See *3 Corp. Jur.*, page 670, section 543:

> "The mere fact that a judgment or order was formally entered on the motion of appellant is not a recognition of its validity and does not affect his right to appeal therefrom, such entry being necessary for appeal."

We take up now the grounds upon which the complainant appellant contends the part of the decree appealed from should be reversed.

II.

The admission of the fraud sought to be accomplished by the conveyance in question, together with the relationship (of marriage) between the grantor and the grantee, cast the burden of proof upon the defendant-respondent.

> "*Transfers between relatives.* The fact that the parties to a conveyance are related to each other, either by blood or marriage, does not of itself establish fraud in the transfer; but the fact of relationship may properly be considered in connection

with other evidence tending to impeach the transaction. In some states it is held that the transaction will be more closely scrutinized than if it were between strangers, and that it may be shown to be fraudulent by less proof than in cases where such relationship does not exist; and that the party claiming the benefit of such transaction is held to a fuller and stricter proof of its justice, and the fairness of the transaction, after it is shown to be *prima facie* fraudulent, than would otherwise be required."

20 Cyc., p. 601. See also 20 Cyc., p. 603.

Many cases are cited in the courts where the relationship varied, husband and wife, brothers-in-law, step-daughter and step-mother, cousins, etc.

"*Husband and wife.* * * * The general rule is that in a contest between the creditors of the husband and his wife, if the wife claims ownership of the property by a purchase during coverture, the burden of proof is on the wife to show that the purchase was for a valuable consideration paid by her out of her separate estate or by some person other than the husband."

20 Cyc., p. 754. New Jersey cases are cited under this proposition. In all of them the relationship was that of husband and wife. The principle is applied alike to all relationships and is equally capable of application to a conveyance where the relationship between the grantor and the grantee was that of engagement to marry and a settlement in anticipation of marriage.

When it is shown that a conveyance was made by a grantor to accomplish a fraud, was advised by the lawyer (Darrow), as a means of accomplishing fraud, was followed by no immediate

change of possession, and that by the conveyance the property did not get very far away from the grantor, it is natural that the fraud that pollutes the transaction should affect the mind of the court. It is only common sense that it should look to the grantee by whose cooperation the fraud was sought to be accomplished, and should require convincing proof of innocence before it would conclude that the fraud must succeed.

Let us admit that marriage is a valuable consideration. Not even a valuable consideration will support the conveyance if the purchaser did not act in good faith. The law goes farther than that and says that even though the person really acted in good faith, such actual innocence will not protect if the facts surrounding the transaction should have brought to the mind of the purchaser knowledge of the fraud. We believe that Mrs. Conway was not really innocent; that her story is too far fetched to be accepted; that her ignorance and innocence were at best artificial, that is, that she understood that it was best that she should not know and should not ask questions, so as to be in a position to say that she did not know. But we further believe that even though she was actually innocent, and actually rather than artificially innocent, there were circumstances that should have put her to inquiry; we believe that in the eyes of the law she should have known the facts and is therefore not entitled to protection. When we speak of her innocence as being artificial, we mean that state of mind where ignorance is planted, where the party understands that for some reason perhaps not explained to her, it would be better that no questions be asked, and that some hidden purpose is being worked out.

In Miss McGrath's testimony we say that although everything may have happened as she said it did, she must have understood that something was behind it all and that she was not to ask questions. We know this is a case where cunning was at work, and the line of its work has been to work fraud through truth, therefore even the truth will be scrutinized, and if Miss McGrath, now Mrs. Conway, swears that she did not see this or that, or did not know this or that, the court may conclude that that is only literally true; that the reason she did not see is that she in some way knew that it was not expedient that she should. It may be true that she did not give her promise of marriage until after she had received the offer to convey, nor until after she had made the tour of inspection of the property, and therefore it may be true, so far as literal truth goes, that she made the promise of marriage in consideration of the conveyance, and yet, notwithstanding all this, if there was a hidden purpose and she knew of or expected its existence, if there was anything working on her mind to cause her to refrain from inquiry, the effect would be the same as if she had known the fraud. It may be true that she did not know that any fraud was to be accomplished by the conveyance. It may be true that she did not know of any interest of ownership in the property in anybody other than the grantor, William F. But if she attained that state of innocence artificially by not asking questions where questions were natural, by not drawing inferences where inferences were to be drawn, the result would be the same as if she had known.

III.

Marriage may be a good consideration, and yet a deed made in consideration of marriage may be void as against creditors.

In *Cadogan* v. *Kennett,* 2 Cowp. 432; 98 Reprint 1171 (King's Bench 1776), Lord Mansfield held an ante-nuptial promise good as against creditors, but at page 434 he says:

> "But if the transaction be not bona-fide the circumstance of its being done for a valuable consideration will not alone take it out of the statute. I have known several cases where persons have given a fair and full price for goods and where possession was actually changed; yet being done for the purpose of defeating creditors the transaction has been held fraudulent and therefore void."

It is doubtless unnecessary to cite other authorities in addition to this leading case. We should perhaps, however, call attention to *Colombine* v. *Penhall,* 1 Smale & Gifford, 228; 65 Reprint, 98, and *Acraman* v. *Corbett,* 1 Johnson & Hemming, 410, 70 Reprint, 807, at the conclusion of the opinion.

In *Colombine* v. *Penhall,* at page 255, Vice Chancellor Stewart said:

> "But where there is evidence of an intent to defeat and delay creditors and to make the celebration of a marriage a part of the scheme to protect property against the rights of creditors, the consideration of marriage cannot support such a settlement."

It is natural that we should find in the English cases expressions of the court showing that marriage as a consideration was in high favor with the courts. This was due to the system of land tenure, the existence of an aristo-

cracy so thoroughly woven into the life and law of England. But even at that, the courts did not let it be a channel through which fraud might pass unchecked. In *Bulmer* v. *Hunter,* L. R. 8 Eq. 46; 38 L. J. Ch. 543, Vice Chancellor Malins says:

> "The fact is that the doctrines of this court upon this subject have been much modified in recent times; it is clearly settled in my opinion that marriage cannot be made the means of fraud and if that consideration is merely got up for the purpose of defeating creditors, the intending wife being a party to the fraud, it will not be supported."

We have so far considered the attitude which a court may properly take to a case of this kind where fraud is admitted, and have seen that although marriage is a valuable consideration, the court may properly scrutinize severely the testimony of the parties to the program by which the fraud was to be accomplished and attempt now to establish the innocence of one of the participants of that program. We now proceed to call the court's attention to various phases of the case which, in our judgment, justify the court in concluding that Isabelle E. (McGrath) Conway did know of the fraudulent purpose that was sought to be accomplished by the conveyance to her, or in concluding that without knowing what the purpose was, she nevertheless knew that there was some hidden purpose, and thinking so should have inquired, or that even if she did not know or suspect, she should have, and that there were facts and circumstances which in contemplation of law put her upon inquiry, and on her failing to show that she made due inquiry, charge her with knowledge.

IV.

The testimony of William F. Conway and William H. Darrow should be discarded.

It seems to go without saying that these two are utterly discredited witnesses. They are both lawyers by profession who now appear in court, admitting an intent to perpetrate a fraud, and that the plan by which they sought to accomplish their purpose was the conveyance to Isabelle E. McGrath. We say that the Court ought not to give any consideration or weight to their statement that Miss McGrath was innocent.

William F. Conway is the one who had the most to do with Miss McGrath in bringing about the transfer, and whose testimony is most relied upon to support her own statement of her good faith. The court must have noticed the hardihood with which he told how conveyances were made by his father, James Conway, to members of his family and to college friends of William F.; but all these conveyances, with their lying statements of "valuable consideration," were without any consideration. It was his hand that guided his father through the making of these conveyances. It was his cunning that framed the pretenses of consideration that are set forth in the answer solemnly filed by him in the Court of Chancery for several of the defendants. It was he that felt the uncertainty as to the success of all his guile and sought the advice of a craftier mind. Now he comes to the witness stand and apparently expects, by a fine show of candor to gain some credence for his statement that his wife did not know or suspect the fraud.

V.

Mrs. Isabelle E. Conway either knew of the fraudulent purpose or is chargeable with notice.

(a) *The story told by Mrs. Conway (Isabelle E.) imputes to her a mercenariness that is unnatural and improbable.*

We do not doubt that Mrs. Conway impressed the court as a young woman of intelligence and refinement. Her story that she was induced to marry William F. Conway by his promise to convey the property in question to her, is not such as might be expected from a young woman of her apparent character. She had received his attentions for a long time, presumably she loved him. True she was giving up a business of her own, which, though small, afforded her a living. But marrying William F. Conway did not mean that she was going to live in poverty. She would have us believe that she thought her husband was the owner of all this property that she knew was worth a large sum of money and brought in a handsome income; she knew that he was a lawyer, practicing in his profession. She must have had some faith in his ability to earn a living for her. Why should she demand $100,000 worth of property out of his name and into hers? Thousands of girls every year entrust their lives and happiness and their future comfort to the keeping of some man, without exacting a money or property consideration. Her story that she exacted such a consideration is unnatural and improbable and imputes to her a cold-bloodedness and a mercenary disposition, not borne out by her appearance as she presented herself before the court.

(b) *There was no notification of the change of ownership.*

Here is a grantee that would have us believe that she was such a woman of business that she would not give herself to the man of her choice until she had received conveyance from him of property of great value. The businesslike thing to have done would have been to have caused notice to be given to every tenant, that rents should thereafter be paid to her. Nothing of that kind was done. Was it because Miss McGrath was unbusinesslike, or because she did not know any better, or was it because she had not in fact received the property as the consideration for her marriage and in the way that she has described? We think that all the probabilities and all that we have seen of Miss McGrath on the witness stand point to this last as the true solution.

(c) *The secrecy surrounding the engagement and marriage.*

We do not know from the family of William F. Conway that they were ignorant of his engagement and marriage. None of them comes forward to testify. But he says so and so does his wife. It was natural for her to expect that before marriage she would be introduced to her fiancee's parents as his intended wife. It was unnatural not to do so. Why was this unnatural course taken? We are not given the slightest explanation except the calm statement that it was as they wished. It was natural for her to wish to have at least her own immediate family and that of her husband present at the wedding. But they were not there nor were they asked. This was unnatural. We do not attempt to account for this. We do say that the explanation given

by Mr. and Mrs. Conway does not sufficiently account for it, and that justifies the belief that it was in some way a part of the plan formed by William F. Conway. Perhaps it was because he wanted to have the conveyance under such circumstances that his father would know nothing about it and would be able to say that he knew nothing about it, depending upon his ability to reconcile him to it when later he should boast of his success in putting the property beyond the reach of his father's creditors.

Mrs. Conway (Isabelle E.), tells us that she and William F. became engaged, married and came home from the honeymoon to live in his former home with his parents. It would have been natural for her to want to have a home of her own away from the father-in-law and mother-in-law and the aunt, but she says that she expressed no such wish, said nothing about a home of her own, and that her husband just said they would go back to the old home and she acquiesced without a word of inquiry and without any explanation of the circumstances which permitted him to do it. It would have been natural for her to want to know whether her husband's father and mother and aunt were living with him or he with them. But she seems to have had no concern about this. When William F. and his bride came back to the Conway residence and took up their home there, it would have been natural to expect that the bride would have had something to say to her husband's parents in reassurance to them that the marriage should make no difference and that they should continue to make that their home, or that William F.'s father or mother would have wanted some assertion or would have suggested moving out, but we are told that nothing was said. William F. brought his bride home with about the same stir

and comment as would attend the arrival of the morning paper. The unnaturalness of Mrs. Conway's behavior casts discredit upon her profession of innocence. The story taxes credulity. If James and Bridget Conway did talk to their new daughter about the plans for the future as to whether they should live together, Mrs. Isabelle E. Conway is not telling the truth now. If they said nothing and she said nothing, that silence is itself very suspicious, and can only be explained on the theory that all, including Isabelle E., understood that nothing was to be said until William F. had worked out some plan as to which it was important that no one should ask any questions and all should know as little as possible. Both she and her prospective husband were Catholics and it is customary for those of that faith to have the marriage announced in advance by the publication of the banns. She would have the court believe that though there was no reason for secrecy or haste, the fact that these banns were omitted by special dispensation excited no suspicion and did not prompt her to ask any quesions.

(d) *Mrs. Isabelle E. Conway carries her profession of innocence too far.*

Not content with the story that she saw nothing to excite her suspicion in the fact that the engagement was being kept secret from everyone, and the marriage as well, until after it was performed, and all the rest of her story about the circumstances surrounding the ante-nuptial contract and the engagement, she goes further and says that she saw nothing after her marriage to excite any suspicion in her mind about her husband's ownership of the property that had been conveyed to her. How could she have

gone into that household and seen the tenants pay the rents, sometimes to James Conway and sometimes to his wife, Bridget Conway; how could she have seen James Conway going around and looking after the property, discussing alterations and repairs, without wondering whether her husband really owned the property?

We will shortly consider this continued possession and exercise of dominion over the property by James Conway as showing that there was some understanding to which Mrs. Conway was a party, that she was not a purchaser in good faith, that she had not contracted in marriage upon the consideration of a bona fide conveyance of the property. But just now we are referring to it as showing the unnaturalness and improbability of her story and as casting discredit upon all of her testimony. We say that if her story of innocence after marriage to a few weeks before she appeared in court is discredited, her story at the time of marriage must also be discredited.

(e) *The statement made to her by William F. Conway that he owned the property that he proposed to convey was of itself sufficient to excite her suspicion and put her upon inquiry.*

Here was a household composed of an elderly retired contractor and his wife, with his sister and son. We do not know just how much Miss McGrath knew of her husband's family, but in the course of his long continued attentions to her and from their many mutual friends, as well as from him, she must have learned that his father had been a fairly successful contractor. There was apparently nothing in all William F. Conway's young life that would justify any expectation on her part that he had $100,000 worth

of property of his own. When she saw this household it would be natural for anyone to look upon William F. Conway as the son in the home of his parents, and to expect to find that that home belonged to his parents.

We make two applications of this situation. First, we say that when Mrs. Conway says it did not excite her suspicion she is not to be believed, and disbelief on this point justifies disbelief of other parts of her story. But further, we point to these facts of possession and dominion over the property by James Conway at the time of the ante-nuptial agreement as sufficient to put her on inquiry, even though they did not excite her suspicion.

Clementine McLoughlin, tenant in one of the properties conveyed to Isabelle E. McGrath (now Mrs. Isabelle E. Conway), says that she rented the property seven years before the hearing in this case, of James Conway. She has never been notified of any change of ownership (pages 64-65); she paid the rent to him up to the time of his death, April 4th, 1913, ten months after the conveyance to Isabelle E.

Another tenant, Charles H. Kolb, occupying Nos. 468-470 Warren street, says that he rented of James Conway (page 70), about four and a half years before; that he used to send his rent over to the Conway house, occasionally taking it himself.

"And sometimes Mrs. Conway was at home," meaning Mrs. Bridget Conway, wife of James. That after Mr. Conway's death he made out checks to William F. Conway at his wife's request (pages 73-74), but that he never received any notice of change of ownership (pages 72 and 74). William F. Conway was married July 1st, 1912 (page 138). Mr. Kolb tells us that in Jan-

uary, 1912, he paid rent and obtained a receipt signed James Conway, per W. F. C. (page 76). He says that his conversation with Mrs. Isabelle E. Conway, when she requested him to pay the rent to her husband, William F. Conway, was he thinks, after James Conway's death (p. 86), but later he states that he is not clear on this point and places it as before James Conway's death. However uncertain he may be as to whether it was before Mr. Conway's death, it is clear that he says it was months after he saw Mrs. Conway in the Conway home or knew of her as married to William F. Conway (page 86).

Catherine Byrne, tenant of No. 478 Warren street, says that she rented about twelve years before of Mrs. James Conway (page 83), and that she has never been notified of any change of ownership (page 89, lines 20-30), and has had no dealings about the property with Mrs. Will Conway (page 90, line 39).

Mary Sheldon, tenant at No. 484 Warren street, says that she rented in November, 1913 (page 90), that she rented of Mrs. James Conway. This was after the conveyances to Mrs. Isabelle Conway. That she never had any dealings at all about the property with the latter (page 90).

Elizabeth Howell, tenant of No. 478 Warren street, says that she rented fourteen or fifteen years before of Mrs. James Conway and paid the rent to her, "until they got the agent." That she never had any dealings with Mrs. Will Conway nor had she any notice of any change of ownership following the conveyance to Mrs. Will Conway (pages 94-95).

David Lan, of No. 486 Warren street, made his bargain for renting with Mr. and Mrs. James

Conway twelve years before. He says that the groceries he supplied to his landlord were offset against his rent with adjustment of the difference (pages 98-99). He says that later he had some dealings with Mrs. Will Conway, but that was while James Conway was sick and in the last month or two of his life (page 103). That would place it several months after the marriage.

Mary O'Leary rented part of No. 478 Warren street, of James Conway, about thirteen years before; she testifies that while Mr. Conway was alive he was the one that she saw about any repairs, except that the last time that occurred her dealings were with Mrs. James Conway who said that she would see about having the repairs made (page 106). She had never been notified of any change of ownership of the property, never had any dealings about the property with Mrs. Will Conway, and that her most recent dealings with Mrs. James Conway were only a couple of weeks ago (pages 106-107). See also pages 107 and 108.

Kate Washington rented a part of No. 480 Warren street of Mrs. James Conway in November, 1914. This was sixteen months after the marriage. She made all arrangements with Mrs. James Conway and never had any dealings with Mrs. Will Conway (page 110); she says that if she wanted any repairs or wanted to have the rooms cleaned she asked Mrs. James Conway and it was done (page 110, line 39 to page 111, line 5).

We submit that these dealings with the tenants show that James Conway continued to exercise dominion over the property after the conveyances to Mrs. Will Conway, that Isabelle E. Conway who now claims to have been a bona fide and innocent purchaser of the property,

knew of these acts of dominion, and we point to these facts as not only showing that Mrs. Conway did not get title, but as showing that she is not to be believed when she says that she had no suspicion that Will Conway's ownership was not absolute and unquestioned up to a few weeks before this trial. If her testimony is shown to be unworthy of belief in that respect it ought not to be accepted as establishing her innocence at the time of the conveyance to her.

(f) *The fact that she thought that William F. Conway was conveying to her all that he owned is alone sufficient to charge her with notice.*

At page 281, under cross examination, Mrs. Conway admitted that she did not know that William F. owned other property than that conveyed to her, and adds, "I took it for granted that is all he had."

Simpson & Davidson v. *Graves,* Riley Eq. 232, (*S. C.* 1828), is an interesting case where the conveyance of *all* of a man's property to his intended wife upon the alleged consideration of marriage, was held to be void as against creditors. On account of the similarity of the facts in many respects, we feel it necessary to quote at considerable length from the opinion.

It should be distinctly understood, however, that we do not ask this Court to go to the limit reached in *Simpson & Davidson* v. *Graves.* An understanding of the above case we believe to be essential for a better appreciation of the effect of *McGowan* v. *Hitt,* 16 S. C. 602, 42 Amer. Rep. 650, which followed it. The latter case, discussed *infra,* we believe states a sound rule which has never been questioned in any other court and which, we believe, this Court

may safely adopt as controlling in the present case.

Simpson & Davidson v. *Graves* came up on appeal from a decree of Chancellor Thompson, the opinion in the Appeal Court being by Mr. Justice Nott.

The complainants were British creditors of Admiral Graves and his son, Samuel C. Graves. The object of the bill was to set aside certain deeds made by Admiral Graves and his son as being fraudulent and void as against creditors. One of the questions was whether a deed by Samuel C. Graves, professing to be a marriage settlement, by which he transferred all the property in this country, belonging either to himself or to his father, to trustees for the benefit of himself and his intended wife and their issue, should be considered as a marriage settlement; and if so, whether the marriage was such a consideration as to protect the property against the claims of any existing creditors.

Said Mr. Justice Nott:

> "And the question now is, whether a person largely in debt, can be permitted to pay off the whole by a single stroke of the pen, by transferring all his property to an intended wife under the name of a marriage settlement. * * * I agree that it is now settled beyond all controversy, that marriage is a good consideration, and I am not disposed to controvert the doctrine; yet there is no subject, perhaps, on which the English decisions ought to be received with more caution. Marriage settlements in that country are usually amongst the wealthy or higher classes of society only, with whom a marriage contract is in the nature of a bargain and sale—in which the marriage is the consideration on the one hand, and the settlement on the other. The treaty is usually carried on by the parents or guardians, in which

> the inclinations of the contracting parties are never consulted. Family wealth and family pride alone are to be promoted. * * * We have not yet arrived at that high degree of refinement in this country. * * * I am not aware of any case, either in England or this country, where the settlement of the whole of a man's property has been maintained against the claims of existing creditors. Such an inference has been attempted to be drawn from some equivocal expressions in the case of *Nairn* v. *Prowse,* 6 Vesey 752 (31 Rep. 1291). But the case does not authorize such a conclusion."

He then distinguishes *Tuno* v. *Trezevant,* 2 Desaus, 264, and continues near the bottom of page 236 as follows:

> "But there is no case, that I have seen, where a man has been permitted to make an intended wife a mere stock to graft his property upon, in order to place it above the reach of his creditors. A marriage settlement must be construed like every other instrument. The question may always be raised, whether it was made with good faith, or intended as an instrument of fraud. Even though marriage may be a part of the consideration, fraud may be mingled with it; and that may as well be inferred from internal evidence, as from circumstances aliunde. Can any one believe, that a man largely in debt, would make over the whole of his property, particularly an immense estate like this, to a woman with an ample estate of her own, with any other view? Marriage is put on the footing of a pecuniary consideration, and it is said if a person sell his property for a full consideration and squander the money, his creditors have no redress, from whence it is inferred that marriage will afford the same protection; but in the case of a bona fide sale, the seller has parted with his property, the purchaser

> has parted with his money, and the law will presume the object was the payment of his debts. But the purchaser is not answerable for the misapplication of the money. It is not so with a marriage settlement. The seller does not, in fact, part with his property. It is still intended for his own enjoyment; neither does he receive in return anything which will satisfy his creditors. His wife will not be received in payment of his debts. It is not to be understood that because marriage is equivalent to a pecuniary consideration, it is to be considered in the nature of an actual purchase. * * * I am prepared to lay down one rule, in the exercise of which there will be no difficulty. That is, that wherever a person settles the whole of his property, the very fact of his including the whole shall be considered of itself as conclusive evidence of fraud upon his creditors."

In the case of the same name, reported in Riley's Equity, 219, Chancellor Desaussure refers to the decree of Mr. Justice Nott, founded upon the above opinion "as a very luminous decree." We have no doubt that he had in mind the opinion, as well as the decree.

There is little doubt that Mr. Justice Nott, in holding that the transfer of a man's estate under the circumstances set forth, is *per se* void, went too far. Nevertheless, we think that the reasoning evidently in Mr. Justice Nott's mind, though not definitely stated, that the conveyance of *all* a man's property is enough to put the intended wife upon inquiry is compelling. This is the position squarely taken in *McGowan* v. *Hitt, infra.* It makes no difference that in the present case William F. Conway did not convey to Isabelle McGrath all the property the record title to which then stood in his name,

but only a portion thereof. If Miss McGrath believed that it was all the property that William F. Conway owned, she, as a woman of intelligence, should have at once suspected wrongdoing of some sort. Perhaps she did ask, and was lulled to quiet by the statement that disclosure of the reason of the conveyance would spoil some project as to the property that William F. Conway had in mind; or, perhaps, before opening the subject at all, he told her that he was going to make a proposition that might seem extraordinary, but that she must ask no questions.

McGowan v. *Hitt,* 16 S. C., 602; 42 Am. Report 650.

In this case a man in consideration of intended marriage, but with intent to defraud his creditors, conveyed to his intended wife his entire estate. She was ignorant of his fraudulent purpose but knew that the deed conveyed his entire estate. Held that the wife was affected by the fraud and the deed was void. The court says:

> "The very contents of such a settlement are, at least, sufficient notice of fraud to make it the imperative duty of the wife to inquire whether it could be honestly made. * * * The wife is, therefore, regarded as having the knowledge which proper inquiry would have given her, and she is, therefore, affected by the fraud involved in the settlement."

The learned Vice-Chancellor, who heard the present case below, has totally misapprehended our argument as to *Simpson & Davidson* v. *Graves* and *McGowan* v. *Hitt, supra.* (See opinion, state of case, page 509, lines 19-27.) If our position was that the transfer of *all* makes the

transaction *per se* void, then, of course, the fact that all was not conveyed would demolish our argument. Such is very far from our position. We say that if the prospective wife knows that she is getting all, or believes that she is getting all, it amounts to exactly the same thing, as far as putting her on her inquiry is concerned. In other words, *McGowan* v. *Hitt,* in our view, states exactly the correct principle. There was an imperative duty on the part of Isabelle to inquire whether such a transfer to her could be honestly made. While *Simpson & Davidson* v. *Graves* has been commented upon by certain authorities as going too far, we challenge our opponents to produce any sound criticism whatever of *McGowan* v. *Hitt* either by later judges or text writers. We are confident that counsel for the defendants respondents, with all their ability and ingenuity, will be unable to convince this Court that *McGowan* v. *Hitt* is not sound or not controlling in the present situation.

In *Colombine* v. *Penhall,* above cited, notice to the wife was largely predicated upon the fact that the whole of the debtor's estate was being transferred to her.

In *Ex Parte McBurnie,* 1 D. G. M. & G., 441; 42 Reprint, 623, an ante-nuptial settlement to a wife was upheld as against the husband's creditors, but Lord Justice Knight Bruce says, at the bottom of 446:

> "How the case would have stood if the intended wife had been implicated in any design to defraud creditors of the intended husband, it is not necessary to say, nor is it necessary to say what would have been the result if the settlement had been grossly out of proportion to the station and circumstances of the husband."

Lord Justice Cranworth says:

> "I give no opinion upon the case of a settlement containing on the face of it something so extravagant as that it ought to awaken inquiry. I guard myself against pronouncing an opinion that such a settlement could be insisted upon."

In *Gordon* v. *Worthley,* 48 Ia., 431, an antenuptial settlement upon a wife was set aside, one of the grounds being that it was grossly out of proportion to the husband's station and circumstances.

20 Cyc., on page 449, discussing fraudulent conveyances, says:

> "The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially, is a badge of fraud."

At page 507 in foot note 83, under the heading "Marriage as Consideration," the learned author says:

> "The fact that the conveyance transfers the whole property of the grantor is sufficient to charge the grantee with notice of fraud." Citing McGowan *v.* Hitt, *supra,* and other cases.

At page 484 the learned author cites as suspicious circumstances:

> "Great haste in making the sale or the fact that the sale is of all the debtor's property."

Bradley v. *Bufort,* 2 Ky., 12; 2 Am. Dec. 703. Here the head note says:

> "A conveyance of all the vendor's property and choses in action, especially when secretly made, will be considered fraudulent as to creditors."

The court said at page 704:

> "A conveyance of all a person's property such as the one in question has always been considered fraudulent as to the creditors, both in the vendor and vendee, and when such a conveyance is secretly made the fraudulent combination is thereby rendered more certain as well as more dangerous."

On the point of secrecy it will be remembered that Mrs. Conway (Isabelle E.) testified she was never in conversation with any of her husband's family about the conveyance to her (pages 283 and 293).

Wait on Fraudulent Conveyances, Third Edition, 1897, page 536, says:

> "Marriage settlements are always watched with considerable jealousy owing to the relations of the parties and the chances of fraud on creditors. If the amount of property settled is extravagant or grossly out of proportion to the station and circumstances of the husband, this has been regarded as of itself sufficient notice of fraud."

He then goes on to quote at some length from what he calls the *able opinion* of Justice Nott in *Davidson* v. *Graves.*

Hunt on Fraudulent Conveyances (English Edition, 1872, page 10), in speaking of an antenuptial settlement upon the wife, says:

> "She would probably be deemed guilty of participation in the fraud if the settlement was grossly out of proportion to the station and circumstances of the husband, or if it contained on the face of it something so extravagant that it ought to have led to inquiry."

We urge this point upon the court, that Isabelle E. McGrath, who now seeks to hold this property from the creditors of her husband's

father, though she knows that it did not belong to him, believed that she was getting all the property that her husband owned, and she must have known that it was both large in quantity and valuable, because he took her around and showed it to her and told her what the income was, taxes, etc. (See pages 271, 272). We say that this fact of itself alone and if not, then together with other circumstances we have referred to, was sufficient to put her upon inquiry and to justify the court in charging her with knowledge of the fraud that William F. Conway was attempting to work.

Some idea of the value of the property deeded to Isabelle E. McGrath in 1912 may be obtained from Exhibit C. 19, tabulation of the Newark City Assessments. At page 5 of the Exhibit the total assessed value (less, of course, than the market value) of the twelve tracts mentioned in the bill, is shown to have been $64,000 in 1912 (page 409). Of these the first tract, assessed for $300, and the eleventh tract, assessed for $600, went to Annie L. Conway. $900 is therefore to be deducted from the $64,000, leaving $63,100 as the total value of the ten tracts that went to Isabelle E. McGrath and are described in the bill. Isabelle E. McGrath also received with the ten tracts above referred to, Tract B., namely, the premises at No. 21 Arlington street. Though assessed for $1,800 (page 409) in 1912, see page 6 of Exhibit C. 19, this property was shortly afterwards sold to the City for the Branford Place Opening for $8,700 (page 205).

On the proposition that where a sale is not followed by change of possession, the burden of showing good faith is on the defendant, see 20 *Cyc.*, page 762, where it is also stated:

> "Where there is concurrent possession by the debtor and the purchaser the bur-

den is on the purchaser to rebut the presumption of fraud arising therefrom."

William F. Conway corresponds with the debtor in the above sentence, and Mrs. Conway with the purchaser; that there was concurrent possession by them after the marriage and after James Conway's death, was established.

See also *Runyon* v. *Groshon,* 12 N. J. Eq., page 86, where the fact that possession remains in a mortgagor of personal property is regarded as *prima facie* evidence of fraud, and shifts the burden of proof from the creditor to the vendee or mortgagee. See also 20 *Cyc.,* page 759, under the heading "Consideration."

VI.

The present attitude of Mrs. Conway (Isabelle E.) and the silence of all the other Conway's is of itself sufficient to demolish the structure that is being attempted to be erected by Mr. and Mrs. Conway upon the supposed innocence of Mrs. Conway.

We spoke just now of Mrs. Conway's willingness to keep the property. Now that she knows the facts, she knows that the $100,000 and more of property conveyed by her husband to her did not belong to him; that in conveying it to her he was committing a double wrong and fraud upon his father's creditors and upon his father himself and his widow and heirs at law. Does not this put Mrs. Conway in a different light and give a different impression of her than that obtained when she was upon the stand testifying to her innocence and good faith?

Now consider the silence of the rest of the family. Bridget Conway, we are told, was an invalid, and had been so for years, but neverthe-

less she was able to look after this property, and undoubtedly, her testimony could have been taken by deposition. Annie Conway was in court but was not called as a witness. Mrs. Mason and Mrs. Kelly, sisters of Mr. William F. Conway, have been wronged as well as their mother; their alleged valuable services to their father (see the answers) have gone entirely unrequited. The property in question is worth many thousands of dollars more than enough to pay James Conway's creditors. Why is it that no complaint is made about the wrong done these people by William F. in his conveyance to Isabelle E.? Why is it that they are apparently content to have Isabelle E. own the property? Is it likely that they would feel that way, if it is true, as Isabelle now says, that this property was conveyed to her in consideration of marriage; that she took the title in good faith, gave up her happy home and her millinery business on the strength of it? And so from their silence and her willingness to keep the property in face of the wrong that she is doing, we are justified in concluding that she and they have some understanding; that all want to see the wrong succeed, see the creditors defeated, and after that is done they will work out some distribution of James Conway's property among themselves. Mrs. Conway (Isabelle E.) would have this Court believe that she took this property innocent of any thought of fraud, with no suspicion at all as to how it was that the young man practically commencing his money-earning career had so much, and the old man, practically ending a successful money-making career had nothing, without seeing anything unnatural in the fact that the property that had been pointed out by Will as the homestead (page 246, lines 28-30) where he lived with his father and mother, be-

longed to him and not to either of his parents, nor anything unnatural in her being "dropped down" into the family occupying as they were her property; without anything being said between them as to their continued occupation; and she would have this Court believe that she remained in this state of innocence until a few weeks before the commencement of this suit. Taken together, we contend that this constitutes too much of a strain upon the credulity of the court, and that this pleasant appearing woman now shown to be willing to retain the proceeds of a gross and undisputed fraud ought not to be believed when she says that she was innocent of the fraud; that of all the witnesses that might support her only two are called, and that she, as well as the other two witnesses who support her, admittedly discredited by their admission of participation in the fraud, ought not to be believed. But if you find that out of the mouths of these two men who committed fraud and apparently gloat over it in the face of the court, and out of the mouth of this young woman who is now willing to keep the fruits of known fraud, there has come enough truth to satisfy you that Mrs. Conway was innocent of any active or passive share in the fraud, we submit most earnestly that that innocence was either artificial and consisted in shutting eyes and ears so that she might neither see nor hear, or it was, nevertheless, such an innocence as ought to have been dispelled by inquiry, and that there were facts and circumstances that put her upon such inquiry.

In *Atwood* v. *Impson,* 20 N. J. Eq., 150, the court said:

> "This knowledge * * * will be inferred from the knowledge by the pur-

chaser of facts and circumstances sufficient to raise such suspicions as to put him upon inquiry."

The same thing was held in *Tantum* v. *Green,* 21 Eq., 364, where the Court of Errors said:

"Though Dr. Tantum may not have had such knowledge of the intended fraud as to make his denial thereof perjury yet he had notice of suspicious, unusual and extraordinary circumstances which should have put him on inquiry. That he paid full consideration for the assignments will not suffice. He must not only be a purchaser for value but a bona fide purchaser without notice of the fraudulent intent of the assignor or of circumstances which should have put him on inquiry and which were equivalent to notice."

See also *Merchants National Bank of Newton* v. *Northrup,* 22 Eq. 58, and top of page 60.

Horton v. *Bamford,* 79 Eq. 356, page 375, where the court said:

"It is true that a man cannot shut his eyes to avoid the responsibility occasioned by seeing what he would otherwise see, and that such circumstances as put one upon inquiry charge him with the responsibility of what he would learn if he properly pursued such inquiry."

VII.

The ante-nuptial agreement was not based upon the conveyance as a consideration.

In the scrutiny that the court will no doubt give to the story of the trio, William F. Conway, William H. Darrow and Isabelle E. Conway, and with all the circumstances of improbability and unnaturalness to move to discredit

the story told by them, the court will be justified in concluding that although everything else told by Mrs. Conway may be true, it is not true that she was moved to enter into the ante-nuptial contract by the promise of the conveyance of this property, for we find that the engagement ring was purchased weeks ahead of the ante-nuptial contract (page 230, lines 20-40). This does not tally with the story that she and William F. both tell, that his attentions and devotions had been unavailing until he offered to settle these properties upon her. Then notice too, that the plan for the conveyance was concocted by Darrow and Conway some time before the ante-nuptial agreement (page 158).

VIII.

Isabelle E. Conway is chargeable with notice that the marriage settlement was intended to defraud James Conway's creditors through the knowledge of her agent, Darrow, that such was its purpose.

That William H. Darrow knew of the proposed fraud before the ante-nuptial contract was entered into by Mrs. Conway, is admitted. It was he that had advised William F. Conway that a conveyance in consideration of marriage would be good against creditors (bottom of page 155). He admits that he then knew that Conway intended to ask Miss McGrath to marry him; that he was thinking of having a conveyance made to her in consideration of marriage in order that it might be a shield against creditors (pages 159-161). That he was Miss McGrath's agent and attorney at the time of the drawing of the ante-nuptial agreement and through some of the negotiations that preceded it is evident

by his own story, which is not contradicted by either William F. Conway or Isabelle E. Conway. He says Miss McGrath called him on the 'phone, making an appointment, and later in the same day came to his office, told him that she was going to marry Mr. Conway, and that Mr. Conway had stated to her that it was necessary to have a legal document drawn, and she requested him to draw the paper. He then advised her as to the effect of such a contract. She was not sent to him by William F. Conway. William F. Conway's own story is: "Now I said this is a legal matter and it has to be attended to in legal fashion. Now you had better call on some attorney and have him draw the necessary papers" (page 140, lines 30-40). Again, "She said she would consider the proposition and I told her, as I said before, she better have some attorney other than myself draw up the papers. She replied she knew nobody except it would be one Mr. William H. Darrow, of New York City, an attorney who was a personal friend of mine, and whom I had met with her on a couple of social occasions, so she said she didn't know anybody else but Mr. Darrow. I said I would suggest him; if you want me to suggest a man I suggest Mr. Darrow and you can call on him" (page 142). Mrs. Conway's story is that Mr. Conway said: "And Mr. Conway said, as near as I remember, Mr. Conway said, 'well, if you make up your mind to accept me you know we have to have this in legal form,' or writing or something like that, and he said, 'of course we have to have a lawyer,' and I said, 'well, anyone you want to suggest' and he said, 'well, Mr. Darrow.' He said, 'I know Mr. Darrow and you know Mr. Darrow.' I had met Mr. Darrow probably twice maybe three times

with Mr. Conway and I said, 'well, that is agreeable to me.'" This might indicate that Darrow was the attorney for both of them, but even so he was then her attorney (page 246). See also *Losey* v. *Simpson,* 11 Eq. 246, at bottom of page 251. When she called upon Mr. Darrow the next day it was to request him to draw the papers. When the paper was ready for execution and she and Mr. Conway called for that purpose, she did not sign it because she said she changed her mind, and they left without signing the paper, but later called together, executed the agreement in duplicate and Mr. Darrow took their acknowledgment as a notary public. On cross examination, he was asked why he did not, at the time of execution, tell Miss McGrath that Will Conway had consulted him as to whether a conveyance to her would be a sufficient shield against creditors, and he replied he "didn't consider it necessary."

> "Q Wasn't she consulting you?
> A She was. Well—I don't know—yes, she was consulting me" (page 160, line 40; page 161, lines 1-2).

In *Willard* v. *Denise,* 50 Eq. 482, the Court of Errors held that:

> "Where any information is casually obtained by an agent for a corporation the corporation is not charged with notice from the mere fact of its agent's knowledge, but if the corporation act through such agent in the matter, where the information possessed by him is pertinent, the knowledge of the agent will be imputed to the principal."

In *State* v. *Sooy,* 41 L. 394, the same court held:

> "The more just principle would seem to be one that aimed to award to each (the

> principal and the third party) the benefits and burdens which would have arisen if the business had been transacted by both in person. Such a result would follow if the rule to be adopted were that whenever the principal, if acting in the matter for himself, would have received the notice, the knowledge of his agent shall be chargeable to him."

Then in *Vulcan Detinning Co.* v. *American Can Co.*, 72 Eq. 387, *Willard* v. *Denise* was overruled and *State* v. *Sooy* affirmed. So in *Boice* v. *Conover*, 71 Eq. 269, the Court of Errors and Appeals said the rule adopted in *State* v. *Sooy* was the settled law of this State.

The statement of the rule as given in *State* v. *Sooy*, is too narrow in its terms to fit all cases. Especially is it incapable of fitting such a case as the one at bar where both the third party and the agent are the only two persons who know of the fraudulent plan, that is, Conway and Darrow realized it would defeat their plan to have Miss McGrath informed of the fraud. The rule only contemplates cases where discovery by the principal would be the natural result of acting for himself. However, it is plain that the court did not intend that the statement of the rule in three or four lines, as contained in *State* v. *Sooy*, should be the whole content of the law on that point, because later in the case the court says, speaking of the rule as it has just formulated it:

> "This would ordinarily restrict the binding force of the agent's knowledge to those cases where it was acquired in the transaction of his principal's affairs; but it would also include the case (which was that of *Hart* v. *Farmers & Mechanics Bank, ubi supra*, 33 Vt. 252) where the party relying

> upon the notice refrained from giving the agent express notice because he knew that the agent was already aware of the facts, and also the case (which was that of *Dresser* v. *Norwood, ubi supra,* 17 C. B. N. S., 466), where the third party contracted with the agent on the basis of the facts known to the latter. In both cases it was fair to assume that express notice would have been given if it had not been known to be unnecessary."

In *Hart* v. *Farmers & Mechanics' Bank,* Cook, Lane & Company held title to certain land in trust for one Scribner, and Klasson who had acted as Cook, Lane & Company's attorney knew of this fact. Later a creditor of Cook, Lane & Company, the Farmers & Mechanics Bank, employed the same Klasson as attorney and levied on this land. The court held that the bank, through Klasson, had notice of Scribner's title, and Hart, Scribner's assignee, was entitled to the land.

Applied to the case at bar, Isabelle E. McGrath, corresponding to the Farmers Bank, employed Darrow, corresponding to Klasson. William F. Conway, holding the title in trust for James Conway and his creditors, stands in the place of Cook, Lane & Company, and Scribner in the place of James Conway and his creditors. The position of the American Surety Company as the judgment creditor of James Conway is in equity the same as that of Hart in the case cited, and as in that case the bank was held to have notice through Klasson of the title of Schribner and his assignee, so in this case Isabelle E. Conway should be held to have notice through Darrow of the title of James Conway and his creditor, the American Surety Company.

In *Dresser* v. *Norwood,* the plaintiff Dresser shipped deals to Holderness (now bankrupt) his *del credere* agent to be sold. The defendant, Norwood, bought the deals of Holderness through Norwood's agent, Chaplin (also now a bankrupt). Chaplin, as Holderness was aware, knew that the deals belonged to Dresser, from information obtained prior to the purchase while he was Holderness' clerk. The defendant had no actual notice of Dresser's ownership, and claimed that he was not chargeable with the notice which his agent Chaplin had, but the court held that he was. Pollock, *C. B.,* delivering the opinion of the court said:

> "It seems to be conceded that if at the time of the sale the factor of the seller had expressly told the agent of the buyer that the goods were not his property, but the property of his principal, it would have been a case for a set-off; but why should the factor tell the buyer's agent that which he was well aware that the agent already knew?"

In the case at bar Darrow occupies the position of Chaplin; Isabelle E. Conway the position of Norwood; William F. Conway that of Holderness, and James Conway and his creditors the position of Dresser, and applying the reasoning and rule of that case to this, Isabelle E. Conway is charged with the knowledge of her agent, Darrow. If in the *Dresser* case, Holderness had meant to wrong Dresser by selling the goods as his own, concealing from Norwood the fact that they really belonged to Dresser, surely that would not make any difference in the application of this rule. If William F. Conway or anyone else had brought word to Darrow after he had been consulted by her, that William F. Conway did not really own the property to be con-

veyed, but that it belonged to James Conway, surely Miss McGrath would be charged with that notice. The reasoning of the *Farmers Bank case* and the *Dresser case* is that it is unnecessary to communicate to the agent that which he already knows, and his principal's liability is to be determined as if he were then told.

In the case of *Hanford* v. *Duchastel,* 87 L. 205, the Court of Errors and Appeals while restating the rule of *State* v. *Sooy,* seems willing to concede that a principal is chargeable with notice of information received by his agent while acting within the scope of his authority. (See to the same effect *McCormick* v. *Ocean City Association,* 45 Eq., 561, affirmed 47 Eq. 599; *Martin* v. *Jersey City Insurance Co.,* 44 L. 273; *Stanley* v. *Chamberlain,* 39 L. 565). It is obvious that many cases may arise where the agent would receive the information when acting within the scope of his authority, while if the principal were to act for hmself he would not receive it. If, when the marriage settlement was drawn, Will Conway had told Darrow of the fraud, we would have such a case. It is absurd to think that a principal by employing an agent *who is dishonest in his principal's interest* can gain more than by acting for himself. Darrow plainly was acting dishonestly in the interest of his principal, Miss McGrath, when he concealed from her his knowledge of the fraudulent purpose. Then too, the limitation in the Hanford case to knowledge acquired by the agent while acting in the scope of his employment, as well as to such knowledge as the principal if acting for himself would have received is flatly opposed to the *Detinning case* where the principal was charged with notice of information received by the agent before the relationship of agency

began. In the *Detinning case* it seems clear that the real reason which operated in the mind of the court was the fact that the agent had used the knowledge, which he had previously acquired, in his principal's business and for his principal's interest. In our case Darrow concealed instead of using the knowledge, but did it in his principal's interest. We cannot see how the principal, Miss McGrath, can get the benefit of that deception and escape all responsibility for it. It is settled that a principal is liable for the fraud of his agent committed while that agent is acting within the scope of his authority, whether or not the principal would benefit by the fraud. This is settled in this State by the cases of *Mick* v. *Corporation of Royal Exchange,* 87 L. 607; *Corona Kid Co.* v. *Lichtman,* 84 L. 363, at pages 368-370; *Lund* v. *Equitable Life Assurance Society,* 31 Eq. 355. This last was a case of the foreclosure of a mortgage. Naum S. Lund claimed to be a bona-fide purchaser on an execution sale under a judgment on a mechanics' lien which attached before the execution of the mortgage. Naum S. Lund was the father of the mortgagor, and the mortgagor had arranged for the execution sale in order to defeat the complainant and his other creditors. He had the land struck off in his father's name. Naum S. Lund was ignorant of any fraud and accepted what was done for him. The court held that he was chargeable with his agent's knowledge. This case bears a very close analogy to the Conway case, in that it was a case where the agent attempted to defeat creditors of the owner of land by a sale, in which his principal, the buyer, set up the defence of ignorance of his fraud. The court did not allow such a transaction to stand. There are many other cases which might be

cited, all showing that where an agent has been guilty of fraud, the principal can in no case reap any advantage from that fraud.

IX.

Isabelle Conway is chargeable with whatever information she would have acquired by inquiring of the tenants who were in possession of James Conway's land at the time of the marriage settlement.

See *Baldwin* v. *Johnson,* 1 Eq. 441; *Warner* v. *Sisson,* 29 Eq. 141; *Hodges Exrs.* v. *Amerman,* 40 Eq. 99; *Wood* v. *Price,* 79 Eq. 620 and 79 Eq. 1.

If Isabelle E. Conway had inquired of the tenants in possession at the time of the marriage settlement she would have learned that they had rented the premises of James Conway, and that they had received no notice of change of ownership. In *Baldwin* v. *Johnson,* at page 454, the court said:

> "The tenants were in possession in February, 1820, when the mortgage was taken, and it is evident that inquiry from any of them would have given sufficient information to put her on inquiry."

In *Essex County National Bank* v. *Harrison,* 57 Eq. 91, at page 96, the court says:

> "The effect of the constructive notice due to possession is a notice of everything which a party interested in the premises would get by inquiring of the party in possession. In other words the actual possession of the premises puts any person having a claim, or seeking to acquire title thereto to an inquiry of such person as to what his title actually is."

It is not disputed that at the time of the ante-nuptial settlement the premises in question were in the possession of James Conway. He occupied the homestead with his family as his home, and there was nothing in the fact that his son, William F., was one of his family living there that would suggest to any one that the father was not in possession. As to the other properties, James Conway was collecting the rents and making the leases and looking after the repairs, was in fact the owner, though the legal title was in Will, his son, and was exercising all the incidents of ownership. But no inquiry was made by Isabelle E. McGrath. Moreover James Conway continued in possession after the ante-nuptial agreement and the deed, and up to the time of his death, as we showed by a number of witnesses that we produced, and this fact of itself alone is enough to show that Isabelle E. McGrath was not a purchaser in good faith upon the consideration of marriage. Though she may be in a position of a purchaser for a valuable consideration, that of marriage, she was not a purchaser in good faith.

We submit that the complainant is entitled to the relief sought in the bill.

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