

Vol 414-1907

## New Jersey Court of Errors and Appeals.

Between	}	<i>On Appeal from Chancery.</i>	10
BRIDGET SMALL, ET AL.,			
<i>Complainants, Respondents,</i>			
AND			
CATHERINE PRIOR,	}		20
<i>Defendant, Appellant.</i>			

### BRIEF FOR RESPONDENTS

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On the twenty ninth day of May, Nineteen hundred and four, John Prior departed this life, intestate, leaving him surviving, his widow, the appellant, his niece, Bridget Small, and a sister, Mary Hogan, as his only heirs at law. He was seized in fee simple of the property mentioned in the bill of complaint, and known as No. 217 Spring Street, Elizabeth, New Jersey; which was conveyed to him in his lifetime, by deed of William F. Day	40

and wife, dated January 15th, 1870, and recorded in the office of the Clerk of Union County, on January 19th, 1870.

After his death his niece, the respondent, filed a bill of complaint, in the Court of Chancery, for the partition of said property, against the appellant and the sister, Mary Hogan. The appellant, the widow of the decedent, filed an answer and cross-bill, setting up that the property was purchased in January, 1870, with money belonging to her, excepting the sum of Five hundred and fifty dollars, which she raised by giving a mortgage to her aunt, and that the mortgage was subsequently paid off with money earned by said defendant, from her own individual efforts; that the name of John Prior was inserted in said deed by a mistake, that it was the intention to have the deed taken in the name of Catharine Prior, and that she earned the money paid upon the property for taxes and other expenses, and prayed that the deed should be reformed, and that the complainant should be decreed to deliver to her a deed of conveyance for said premises. Subsequently the appellant acquired by deed the interest of Mary Hogan, who was thereupon dismissed from the suit.

Upon the issue, so raised, a hearing was had before Honorable Vice-Chancellor Emery, and resulted in his filing conclusions, dismissing the cross-bill, and advising a partition; holding that the evidence adduced by Mrs. Prior was not sufficient and satisfactory to establish that the property was purchased with moneys belonging to her separate estate, or that there was a mistake in the deed, as originally executed. After the filing of such conclusions the matter was referred to a Special Master, and a stipulation entered into by the respective counsel, agreeing upon the rental value, and that the complainant should have one-third of the rents and Mrs. Prior two-thirds; upon the filing of the report of the Special Master, a decree for sale was made, and from this decree Catherine Prior has taken an appeal to this Court. Practically the only questions for consideration are, whether the legal

estate, vested in Bridget Small should be construed as a resulting trust, by reason of the contention that the moneys used for the purchase thereof, was the separate estate of the wife; and that a mistake had been made when the deed was originally executed.

### THE FACTS.

#### I. THE PROPERTY WAS NOT PURCHASED 10 WITH MONEYS BELONGING TO THE WIFE'S SEPARATE ESTATE.

The wife is perhaps the only person living who could tell the exact and full circumstances relating to the original purchase of the property from William F. Day, in January, 1870, and therefore the testimony which she gave must be very critically examined.

She says that at the time of her marriage to John Prior in 1865, she was a laundress, and that he was work- 20  
ing for the Pennsylvania Railroad, getting One dollar and a half per day, (page 15); that she started again working, as laundress, nine months after her marriage, and earned ten shillings a day; that she put it in Halsey's Bank; that she continued working for three years, saved Five hundred dollars, and bought the ground upon which the house is built (page 16); that after she bought the lot, she continued working until she cleared the mortgage of Five hundred and fifty dollars, which had been given to her aunt, Mary Rafe (page 17, l. 12). That she put the 30  
money in the bank as she could afford it, until she put in Five hundred dollars; that her husband drew it out for the purpose of buying the ground (page 17, l. 25); that she told her husband to go and buy a lot, and build a house, and that she would borrow the money from her aunt to build on it (page 17, l. 37); that he said it would be in both names (l. 40). On page 18 objection was made to the testimony, relating to conversations held by the defendant with the decedent. That she kept the bankbook 40

herself, which was offered in evidence, as bankbook No. 166 in the Union County Savings Bank, Elizabeth, commonly called Halsey's Bank (page 19, l. 16). The exhibiting of the bankbook shows that the account was opened in the names of John and Catherine Prior, on January 2d, 1884, 14 years after the purchase of this *locus in quo*, and closed on September 10th 1887. The deed from Frederick K. Day, for the adjoining property, (not involved in this suit), in which John Prior and his wife are the grantees, bears date on the tenth day of September, 1887 (page 19). The evidence which we thus have is that prior to the taking of the deed in 1870, both husband and wife were working; the wife claims that the money which she earned was placed in the bank, which she designates as Halsey's Bank. On cross-examination, she says that when they married neither of them had money (page 39); that she only had the one bankbook, which was offered as Exhibit "D. 2." (page 29). From all this it is indisputable that she is greatly mistaken in her version, that the money which paid for the original deed was saved by her, and deposited in Halsey's Bank; she was a woman sixty years old, and in the excitement of the hearing before the Vice-Chancellor, must have confused the transaction of 1870 with the one of 1887. The bankbook offered in evidence, appearing by the exhibit set forth on pages 71 and 72, shows conclusively that the account was closed, and money drawn out on the very same day when they got the deed for the adjoining lot from Mr. Frederick K. Day, the son of the gentleman who made the original conveyance to John Prior in 1870.

Without making reference here to the law upon this subject, the facts are more than sufficient to show that Mrs. Prior did not, from her separate estate, purchase the lot from William F. Day, in January, 1870.

II. THAT THE FIVE HUNDRED AND FIFTY DOLLAR MORTGAGE MADE TO MARY RAFE WAS PAID BY THE EARNINGS OF CATHERINE PRIOR.

This is the contention which she set forth in her answer and cross-bill, and she insisted upon the hearing that such was the fact; she says: "That Judge McCormick attended to the legal part for them." (page 24, l. 3).

On cross-examination she says: "That she signed the mortgage in Judge McCormick's office (page 29, l. 21); that Judge McCormick drew the deed and searched the title, and attended to all of the business for her husband. That there was about five years between the time of the drawing of the deed and the giving of the mortgage (page 27). The bond offered in evidence was made by John Prior alone (page 24); which was dated on February 17th, 1870, and made payable three years after its date; the mortgage, however, was signed by both the husband and wife. On the bond under date of August 17th, 1871, we find a receipt as follows: "Received from Mr. John Prior \$357.75, in payment of principal \$300, \$57.75 for interest to above date," signed by Mary Rafe, her mark, witness Samuel Tinsdale; on February 19th, 1876, the following receipt: "Received full satisfaction of the within bond and mortgage. The Clerk of the County of Union will please cancel the same of record." She further says that when she first saw her aunt about procuring the loan her husband was not with her, and that when the mortgage was being drawn by Judge McCormick, she only went there once; that some times her husband would go with her (page 25). In answer to a question of the Vice-Chancellor, she said that she drew the money out of Halsey's Bank to pay the mortgage off, seven dollars to the hundred, in six years (page 26, l. 30). The house was built by her raising the money by the mortgage (page 28, l. 37). It cost about Eight hundred dollars, and was built by a man named Plum, her husband made the bargain (page 29). The money was put in the

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bank in both names (page 30, l. 37). That her husband was a good man, and did not waste any money, and that she saved the money for him (page 32). The payment of the mortgage seems to stand upon the same footing as her contention that she advanced the money with which the lot was originally purchased, and her statement made to the Vice-Chancellor that she drew the money out of the bank to pay the mortgage seems to be erroneous. (The mortgage was paid in 1876 and the account was not  
 0110 opened until 1884). Her testimony is not corroborated by any of the surrounding evidence, but is in fact flatly contradicted. Had it ever been the intention to take the property in her name, and that the mortgage should be raised by her, the lawyer who was attending to the transaction certainly would have had the deed made in her name, and she would have been obliged to sign the bond; the bond being only signed by the husband, whereas the wife joined in the execution of the mortgage. The first  
 0220 receipt on the bond says, that the money was paid by John Prior, and I am sure if it were not the intention of all the parties that John Prior should be the owner of the property, something would have happened in some part of these various transactions to have informed Mrs. Prior how the title stood. As pointed out in the first subdivision she did not commence depositing money in Halsey's Bank until 1884; the first payment was made on account of the mortgage on August 17th, 1871, and the mortgage was paid in full on February 19th, 1876, so  
 0330 there could absolutely be no foundation for holding that Mrs. Prior borrowed the Five hundred and fifty dollars from her aunt and re-paid it out of her separate estate.

### III. MRS. PRIOR CLAIMS TO HAVE PAID FOR THE TWO ADDITIONS TO THE BUILDING.

The evidence upon this point is very meager and not in the least satisfying and convincing. On the direct examination of the witness not one question was asked her regarding these two additions, and nothing appears  
 0440 until the cross-examination. The witness was asked:

Q. Then afterwards when you started the saloon, he built a large house on it? A. Yes, he shoved it back and built in front. Q. Who made the bargain with him to build the front? A. My husband; it wasn't me who was expected to. (page 32). The witness did not know what it cost, but estimated the value of the addition at Twelve hundred dollars; she did not know what bargain her husband made with the carpenter, who had since died (page 33). In reference to the second addition, she testified that it was built about fifteen years ago, at a cost of about Six hundred dollars, consisting of two rooms, which were built by James Hageman; that her husband made the bargain, but she could not say whether she or her husband paid the money; that her husband purchased the lumber and materials (page 33). On re-direct examination the witness was asked if she went out and raised the money for the first addition; her answer was: "About three years steady until I cleared the debts of that property." She also said that she paid for the other addition, that she got the money by working at the wash-tubs (page 37, l. 30, page 38, l. 1).

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It seems to me that the witness, by reason of the questions not fixing any times, was as much confused in this testimony as in the testimony relating to the original purchase and the manner in which the Rafe mortgage was paid. There is nothing to show that a mortgage was raised to pay for the Twelve hundred dollar addition, and, in answer to a question about this Twelve hundred dollar addition, she said it took her three years steady to pay off the debts. This does not seem plausible, because it would not seem likely that anybody, who had performed the work of erecting the addition, would wait the period of three years for their money, and it is undoubtedly from savings made out of the first building, upon the property, that the addition was erected. John Prior was operating the saloon from 1880 until the time of his death, in 1904, and it is more than likely that the moneys came from his saloon business. The defendant's own witnesses testified that the license was in John Prior's name, and the witness

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named Bauer, representing the Krueger Brewing Company, says that he took the husband's signature to the note, and not the wife's (page 49); that he generally got there in the morning and found Mrs. Prior behind the bar (page 50). On cross-examination he says that the merchandise was charged to the husband; that the husband signed the note, chattel mortgage and that he did a pretty fair business (page 52). That their business was principally toward evening (page 53). Seymour, representing Frolich and Koehler, testified that the goods were billed to John Prior (page 55). The evidence discloses that Mrs. Prior opened the store in the morning, and that the husband was in the store in the evenings when the greater business was done, that he kept the saloon open until eleven or twelve o'clock in the night (page 36, l. 10). John Hageman, a witness produced on rebuttal by the complainant, testified that about twenty years ago a kitchen was built on the property, for John Prior, that it was one room up and one room down, that his bargain was made with John Prior, to do the labor, for either Sixty-five or Seventy-five dollars, that Prior furnished the materials himself, and that the witness went with Prior to the lumber yard, and told him what lumber to buy (page 56). That he often visited Prior's saloon, and never noticed that Prior's leg much interfered with his attending to business (page 57). From all this it appears beyond any question that while Mrs. Prior may have saved some money from her own labor, it was not such as would have enabled her, within such a short period, to have erected structures costing, as she estimates Eighteen hundred dollars. The source from which this money was derived must have been other than her working as a laundress and it is indeed too uncertain to defeat the right of the heir to the property.

#### IV. TAXES AND INSURANCE.

In her claim, as made by the pleadings and evidence,  
40 Mrs. Prior does not even overlook the taxes and insur-

ance, but makes the broad assertion that she always paid them out of her own money. There is not much doubt that Mrs. Prior saved her husband's money, and out of the fund, which she thus accumulated, paid the bills of the business, the taxes, insurance and probably numerous other bills; but the mere fact of her paying bills is not sufficient to entitle her to any relief, which she claims; she does not show that the money used was of her separate estate. In fact she admits the property was insured in her husband's name alone. When asked: Q. Who told you to insure it? A. I told him it was John Prior's property, and when it belonged to him, it belonged to me. (page 35, l. 39). In reference to the taxes when asked in whose name were the tax bills, she said: "John Prior's; they wouldn't want two names to it, would they?" She admitted that in all the years the property was taxed in John Prior's name, and insured in John Prior's name (page 35). She does not, however, make any pretense of offering any substantial evidence of payments. The bankbook in Halsey's Bank shows conclusively her earnings were joined with her husband's, and deposited in the bank in the joint names, as she says, so that her husband could draw it, without her, or that she could draw it without him.

#### V. THERE WAS NO MISTAKE IN THE DEED.

In the answer to the bill of complaint, Mrs. Prior contends that she did not know that the deed was in John Prior's name, but supposed it to be in her name, that it was her money that bought the property, and that it was the intention of all parties that she alone should be the owner of the property; this contention, however, is not borne out by her sworn testimony; that the evidence shows that she merely thought her name was in the deed with her husband's name. She knew for years that the property was insured in her husband's name alone, and she, in fact, told the agent it was John Prior's property.

She knew that the tax bills were in his name alone. The husband had often gone bail for other people; she says she always supposed that the deed belonged to her as well as her husband. (Page 23, l. 25). This supposition or idea, which had been impressed upon her, was merely one of the laity, and what that is, is clearly interpreted when she speaks about the insurance of the property; she says: "I told him it was John Prior's property, and when it belonged to him it belongs to me." (Page 35, l. 39). That was the whole length and breadth of her supposition, she thought that what was her husband's, by reason of their being no children of the marriage, was as much her own property. She says that she never asked her husband about the deed, and that he never said anything (Page 33, l. 31). She said that she told her husband to go and buy a lot, and to build a house, and that she would borrow the money from her aunt to build on to it. (Page 17, l. 37). When asked if anything was said about in whose name the lot was to pass in, she said: "Well, himself and myself." (Page 17, l. 40). On cross-examination, she testified that her husband went to see Mr. Day, that she was not with him. That her husband got the deed (page 27). That she was not present when her husband got the deed from Mr. Day (page 28). That it was almost five years when she saved Five hundred dollars to buy the ground the house was built on (page 28). That the money with which Mr. Day was paid for the lot, was drawn out of Halsey's Bank (page 31). All of these facts taken together can lead but to one conclusion, and that is emphasized by the deed from Frederick K. Day to John Prior and wife, in 1887; the two transactions, which took place at intervals of seventeen years, being with father and son, that is, William F. Day, in 1870, and Frederick K. Day in 1887, this witness being sixty years of age, has so conflicted matters, when asked the question in regard to the transaction of 1870, gave answers which exactly fitted the situation, as it occurred in the purchase of 1887. There can be no doubt that by reason of our law, Mrs. Prior is now the absolute owner

of the land, which was purchased from Frederick K. Day, in 1887, and that she also has, or claims to have, the entire sum of Two thousand dollars, which was deposited in the Building and Loan Association, and which she says was her money, and deposited in the joint names (page 30).

She never considered the moneys which she was earning, as a laundress, as her separate estate, because she said, on her direct examination: "I worked for him, and if he lived for forty years, I would work for him" (page 22, l. 19); and again on her re-direct examination she reiterated the same statement, and said: "If God left my husband live for forty years more, I would work for him." (Page 40, l. 10). She admits that in a quarrel her husband once said, or that she told Mrs. Cecilman that her husband said that he would cut her off with a child's share. Mrs. Cecilman reluctantly admitted the same; but says that Mrs. Prior told her that in a joke (page 60 and 63). The saving qualities and industrious characters of both John Prior and his wife are testified to by the wife, and by John Prior's cousin, Michael Prior. The grantor in the deed of 1870, or his heirs are not made parties to the suit; there is nothing to show except Mrs. Prior's bare statements that the title was to be taken in both names. No one testifies as to what took place between William F. Day and John Prior, and to substantiate the deed, as made to John Prior alone, we have the silent assent of Mrs. Prior year after year, to the property being insured in John Prior's name alone; the name of John Prior alone appearing on the tax bills; the bond to Mary Rafe for the loan of Five hundred and fifty dollars, and the receipt for Three hundred dollars on account of the principal of said mortgage was in his name alone. In face of all these facts the uncorroborated testimony of Catherine Prior contradicted, as it is in many other important aspects of this case, by the variance between her own evidence and the written documents, which she offers, more than indicate that she has not produced a case where the evidence is so satisfactory, and so con-

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vincing as to take the title from the legal heir, and place it in the widow.

### THE LAW.

The legal questions which arise in the solution of this case are so interblended that I will consider them all together; those questions are, what would constitute a wife's separate estate; what character of evidence is  
 10 necessary to impress a resulting trust in favor of the wife, upon lands held in the name of the husband, and under what circumstances a Court of equity will decree reformation of a deed upon allegation of mistake.

In the answer and cross-bill of the appellant, she contends that the property in question was purchased with her money, and that it was the intention that the deed should be taken in her name; further that moneys which  
 20 paid the Five hundred and fifty dollar mortgage, were earned by her, from her own individual efforts, and that the taxes and other expenses, against the property, were paid by her earnings, and that the property rightfully belongs to her, and that the deed should be reformed and decreed to be in her name instead of the name of her deceased husband.

As is more fully and particularly set forth under the statement of facts, the property was purchased in January, 1870, and the appellant claimed that such purchase was made from money belonging to her, by reason of  
 30 being her earnings, and she said, that such money was deposited in Halsey's Bank, and withdrawn therefrom at the time of the purchase.

At common law the husband had the absolute right to the services and earnings of his wife, and this condition existed, notwithstanding the Married Woman's Act of 1852, until the passage of the Act of 1874.

*Peterson vs. Mulford*, 7 Vr., 481.

*Skillman vs. Skillman*, 2 Beas., 403.

*Affirmed 2 McCart.*, 478.

40 *Quidort vs. Pergeaux*, 3 C. E. Green, 472.

It is true, however, that the husband may settle upon his wife her earnings, or may make a gift of them to her, if not to defraud creditors.

*Johnson vs. Vail*, 1 *McC*art., 423.

*Stall vs. Fulton*, 1 *Vr.*, 430.

*Peterson vs. Mulford*, (*Supra*).

But in the case at issue the answer does not allege a gift of the wages, or a settlement, but, on the contrary, the evidence tends to show a possibility that some of the wife's earnings were contributed to the savings of an amount, sufficiently large to make the original purchase; but there is no evidence that any accounts were kept between the husband and wife, so it is impossible to say how much, if any, of her money went into the property in question, but under the decisions above cited, it does not seem that it would make any difference, unless the claim of the appellant arose originally from a settlement or gift to her of her own earnings, and that the proofs support such contention. In all of the evidence there is not one word showing that the husband ever consented that the wife should have her earnings, as her separate property and estate. In fact, everything in the case negatives such intention. The bank deposit was not opened until 1884, yet it is the source from which the wife claims that she procured the money to make the purchase. While this is fictitious and erroneous, yet the bankbook itself, shows that the deposit was not in the wife's name, but in the joint names of husband and wife, and undoubtedly it contained their joint savings, after deductions were made for ordinary living expenses.

The wife also contends that it was her money which paid the Five hundred and fifty dollar mortgage, and she also insists that the money came from Halsey's Bank, where she had deposited the earnings which she made from the wash-tub. This falls in the same category as the original purchase, and the same law is applicable.

To give effect to the claims of the wife, it would be tantamount to impress upon the husband's land, as

against the heirs, a trust resulting, in favor of the wife.

In *Quidort vs. Pergeaux (Supra)*, it was held that, while the husband may give his wife the proceeds of her own labor, the *actual* gift must be clearly proved.

The evidence relied upon to establish a resulting trust, must be distinctly proved, by full, clear and satisfactory evidence.

*Cutler vs. Tuttle*, 4 C. E. Green, 549.

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*Midmer vs. Midmer*, 11 C. E. Green, 299.

*Parker vs. Snyder*, 4 Stew., 164.

*S. C. 5 Stew.*, 827.

*Read vs. Huff*, 13 Stew., 335.

*Krauth vs. Thiele*, 18 Stew., 407.

The cases of *Skillman vs. Skillman* and *Persons vs. Persons* are exactly in point with the case at issue, I will therefore cite fully from them.

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In the case of *Persons vs. Persons*, the husband claimed to have advanced the money, and the wife took title in her own name. On filing a bill to decree that the wife held the lands as trustee for him, her defense was that he never had any money, and the property was bought by her, from her own savings, which she had earned by her own individual efforts as a lundress. The evidence showed that it was the husband, who made the original payment to bind the bargain. The court held: "If indeed part of the money with which the farm was paid for was earned by her, as she says, by her labor during her coverture, she has no claim either against him, or against the property or proceeds thereof, for or in respect of it."

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The evidence showed that the purchase was made by the complainant, and that the defendant acted as his agent, in disbursing the money, and took title in her own name; and the conclusion was that this created a resulting trust in his favor; and a decree was made in favor of the complainant.

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*10 C. E. Green*, 250.

The leading case, however, seems to be

*Skillman vs. Skillman*, 2 *Beas.*, 403.

*Affirmed* 2 *McCart.*, 478.

In that case, as represented before the Chancellor, the complainant, with the knowledge and consent of her husband, who was a man of small means, and dependent upon his labor for support, purchased a small lot in New Brunswick, with the design of erecting thereon a dwelling, for herself and family. The husband paid the purchase money of the lot, and it was conveyed to him, a dwelling was erected and a mortgage given by husband and wife, upon the house and lot. For a number of years she paid the interest on the mortgage and One hundred dollars of the principal, from her own earnings; a new loan was then procured from a Building and Loan Association, and she paid out of her earnings nearly all of the monthly payments. She derived her earnings from keeping boarders and washing and ironing. The husband died, and after his death the property was advertised for sale, under an execution, upon a judgment confessed by him, to his brother. The bill prays an injunction restraining the judgment creditor, and prays that the wife's equitable interest may be protected from such judgment.

Her claim was not that she owned any separate property, exclusive of the earnings made by her own industry, and as such earnings, acquired during coverture, at common law belong to the husband, the complainant could not acquire any separate property in her earnings, unless by gift from the husband; that the fact of the making of the gift, and that it was intended for the use of the wife, as her separate property, must be clearly established. To constitute a valid gift there must be some clear and distinct act by which the husband has divested himself of the property, and engaged to hold it as trustee for the separate use of the wife.

The Court held: "That applying such principles there was nothing to justify the claim of the wife to have the property treated as her separate estate; that if a clear

case of gift were alleged and proved, there might be serious difficulty in ascertaining upon the case, as made by the bill, the precise extent of the wife's interest in the land." The learned Chancellor then goes on to argue, that if it is conceded that the wife paid the entire cost of the land and building, from the avails of her industry, with the knowledge and approbation of the husband, her case would not be materially strengthened; because the question is: "Did the husband intend that that property should  
 10 become the separate property of his wife?" Her bill was dismissed and the injunction dissolved.

Upon appeal to the Court of Errors and Appeals it was held that the wife's earnings belonged to the husband and they did not become the property of the wife even in equity, without a clear express, irrevocable gift or some distinct affirmative act of the husband divesting himself of them, or setting them apart for her separate use.

2 *McCart.*, 478.

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In the case of *Belford vs. Crane*, the complainant recovered a judgment against Crane, and levied upon lands, the title of which was in Crane's wife. The bill prayed that the deed to the wife be decreed void, as against creditors. The answer of the wife avers that she was a tailoress, and that by her labor and exertions, in addition to keeping boarders, during a course of years, she earned a large sum of money, and that the real estate  
 30 was purchased in the years 1857 and 1858, and the title taken in the name of the wife. The husband was then indebted only upon current bills, and Two hundred and seventy-five dollars in addition. In 1859 the house was erected at a cost of Seventeen hundred dollars, of which Seven hundred dollars was paid, and One thousand dollars raised by mortgage. In 1860 a judgment was recovered against the husband, and the property sold to the attorney of the plaintiff, and again reconveyed to the wife. Held, that the husband's right to the wife's  
 40 services, and to the avails of her skill and industry is abso-

lute, and that the wife can acquire no separate property in her earnings, except by gift from her husband. Even where she carries on business in her own name the avails of the business are the property of the husband. The answer contains no averment of a settlement or gift, and further alleges that no account was kept of the earnings of the wife, nor were they kept separately, but they were united with the earnings of the husband, and the surplus, after defraying the expenses of the family, were laid up and invested by the husband. These facts prove incontrovertibly that the land was purchased with the property of the husband and the title taken in the name of the wife; and a decree was entered against her. 10

1 *C. E. Green*, 265.

Under these decision there can be no doubt that the wife has not established that the property was purchased with her separate estate, or that her separate estate was used to pay the Five hundred and fifty dollar mortgage. 20

In 1880 the husband commenced the saloon business, and the wife assisted him therein, but from the assistance, so rendered, she cannot claim any part in the proceeds of that business.

In *Quidort vs. Pergeaux (Supra)* the wife claimed to own the business, from the profits of which, the property in question was purchased, but it was there held that as the earnings of the wife were mixed with the earnings of the husband, so that they cannot be separated, the husband cannot make a clear, distinct gift of her own earnings to his wife, and they remain, as at common law, his property. 30

The avails of a wife's labor in the business of the husband belong to him, and the property purchased therewith, in the name of the wife, cannot be held by her against his creditors.

*Clinton Co., vs. Hummell*, 10 *C. E. Green*, 45. 40

Where a wife carries on a separate business, without the assistance of the husband, he may give her the earnings, but where the skill and labor of both contribute, and are mixed up, the business would be considered that of the husband, and the proceeds will not be protected to her against his creditors.

*National Bank vs. Spray, 5 C. E. Green, 13.*

10       The wife also contends that she paid taxes and insurance against the property, and paid Twelve hundred dollars for the first addition, and Six hundred dollars for the second addition, out of her own personal estate, and in support of this allegation, she has her own evidence, and the evidence of two people to show that she was in John Prior's saloon, quite often, and paid the bills. On the other hand, however, the title to the property was in John Prior's name, and she knew the tax bills were in his own name alone, and she knew the insurance policy was in his name alone, and she even said to the agent, that it was John Prior's property, and what belonged to him, belonged to her. From 1880 to 1904 the license was in John Prior's name, and on numerous occasions he went bail for people. It is true that in 1874 the Legislature gave to married women their earnings under a statute in the following language: "That the wages and earnings of any Married Woman acquired, or gained by her, after the passing of this Act, in any employment, occupation, or trade in which she is employed, and which she carries on separately from her husband, and all investments of such wages, earnings, money, or property, shall be her sole and separate property, as though she were a single woman." (Revision, page 2013, Section 4).

30       The final payment of the principal of the Five hundred and fifty dollar mortgage was not until after this Act went into effect, but the statement made by Mrs. Prior that her earnings paid this mortgage is contradicted by the bankbook, which she offers in evidence, and as she, herself, does not state a proper source from which

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the money was derived, but testifies to an impossibility, she cannot expect relief in a Court of equity.

The savings of the husband and wife, were joined and while Mrs. Prior does not say it, it can clearly be gathered from the evidence that she was the financial officer of the small company, consisting of herself and her husband, for whom she says she paid all the bills of the business, and in this she is corroborated by Newbauer and Seymour, but it is too clear to admit of argument that the saloon was the husband's business, and the assistance which Mrs. Prior rendered therein, was not such as would entitle her to claim a share of the profits for herself; she acted as a good, honest and industrious wife should have acted. The evidence in regard to the payment for the additions out of her separate earnings, is wholly unsatisfactory, and not in the least satisfying or convincing, as it should be under the decisions above cited; on the other hand every intendment is in favor of the fact that such additions were paid for, and that the taxes and insurance premiums were paid for by the proceeds derived from John Prior's saloon business. It is conclusively shown that he, himself, made all the agreements for the erection of the additions, and Mrs. Prior says: "Why I wouldn't be expected to do it, would I?" and the whole case is most clearly and concisely summed up in the opinion of the Vice-Chancellor, where he says that the possibility that these moneys came from the saloon business is not overcome by the wife's sole evidence.

MISTAKE IN THE DEED.

To warrant reformation the proof in demonstration of mistake must be clear and satisfactory, such as produces a strong conviction of its truth. The Courts will not change what is written, upon loose, doubtful or equivocal evidence.

*Hendrickson vs Wallace*, 4 Stew., 604.

Reformation of a conveyance of lands will not be decreed, except on clear proof, that by mutual mistake

of the parties thereto, it expresses something which they did not intend, or omits to express something that they did intend.

*Alles vs. Crouter, 19 Dick., 381.*

In the case now before the Court, Catherine Prior alleges in her answer and cross-bill that the property was bought with her money, and that it was the intention of all parties that the deed should be in her name, and not in the name of her husband, John Prior. Her evidence does not wholly support this statement as appears by her answer to the question: "What was said, if anything, about in whose name the lot was to be placed in?" A. "Himself and myself." (Page 17). That is indeed the only evidence in the case tending to show a mistake in the deed. She does say, however, that she always believed, until the time of her husband's death, that her name was in the deed. To controvert this we have the following facts; that she was not present when her husband negotiated with Mr. William F. Day; that the bond to secure the loan from her aunt was signed by the husband alone; that the receipt on the bond is to the husband; that they had a lawyer employed to attend to the legal end of the transaction of purchasing the property and perfecting the loan; that the property was taxed in the husband's name, insured in his name; that she told the insurance agent, it was his property, and that the license was in his name for almost a quarter of a century; all which demonstrates that her evidence is not of the character which the decisions describe as necessary to procure a reformation.

In conclusion we will say that Mrs. Prior was named as a grantee with her husband, in the deed from Frederick K. Day, for two lots, adjoining the premises in question, and is also entitled to the whole or at least one-half of a sum of money amounting to Two thousand dollars. It appears from the evidence at the time of John Prior's death the above sum was deposited in the joint names of husband and wife. This deed from Frederick K. Day,

entirely explains the great discrepancies, which are apparent upon the testimony of Mrs. Prior, and it will take but a casual observation to ascertain, by reason of her advanced age, which is made greater by reason of the strenuous occupation, which she pursued in the earlier years of her life, she was greatly confused in giving her testimony, and stated the facts of the purchase of 1887, but applied them to the situation of 1870.

It does not seem possible that this magic washtub brought the various amounts of money necessary to purchase the premises, and paid for the taxes, insurance and the two additions. In the face of the evidence that the saloon of John Prior was a fair paying business, it is more than likely that the moneys for the additions, the taxes and insurance came from the revenues of the business. 10

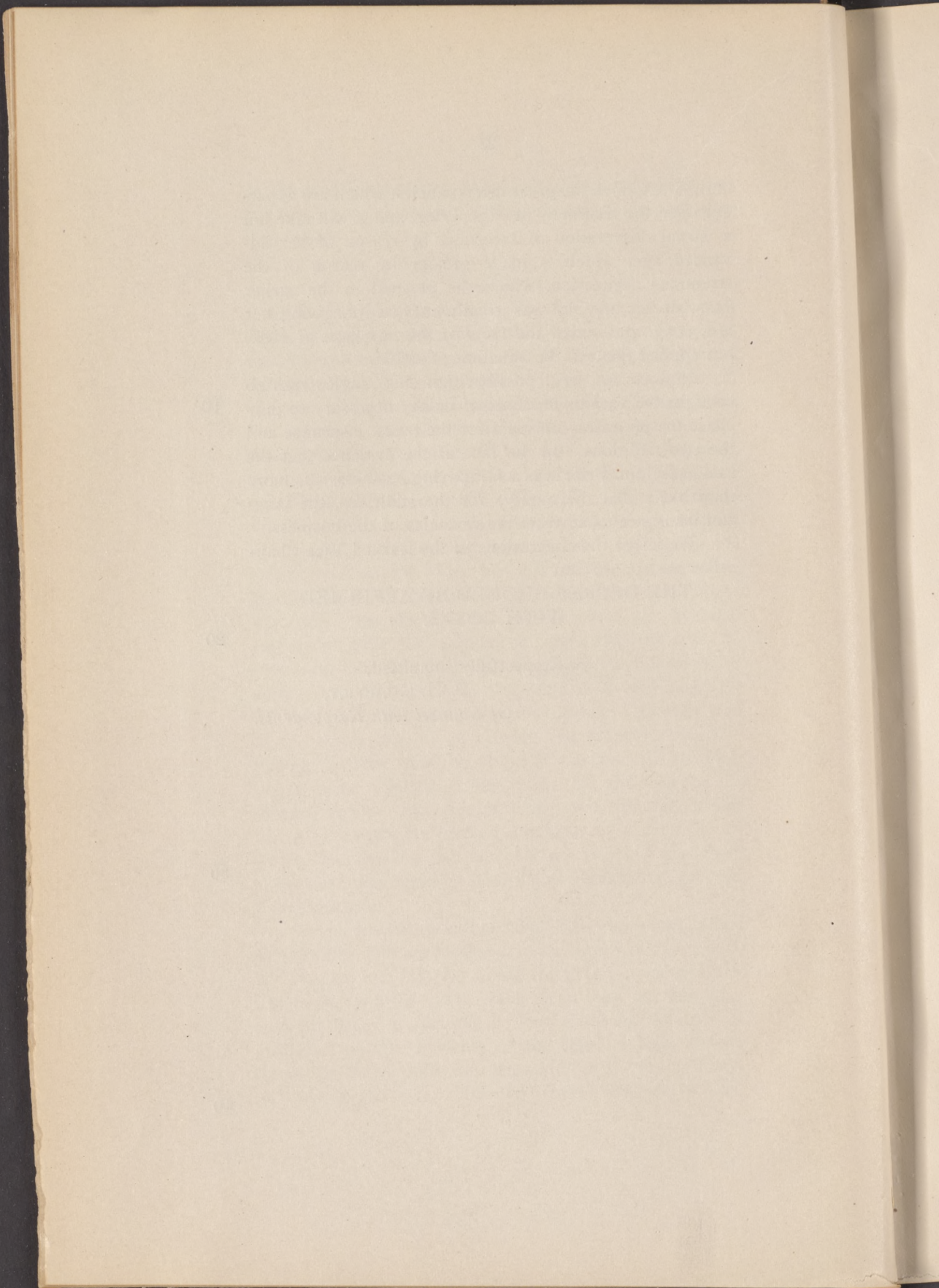
Therefore the conclusions of the learned Vice-Chancellor are correct and

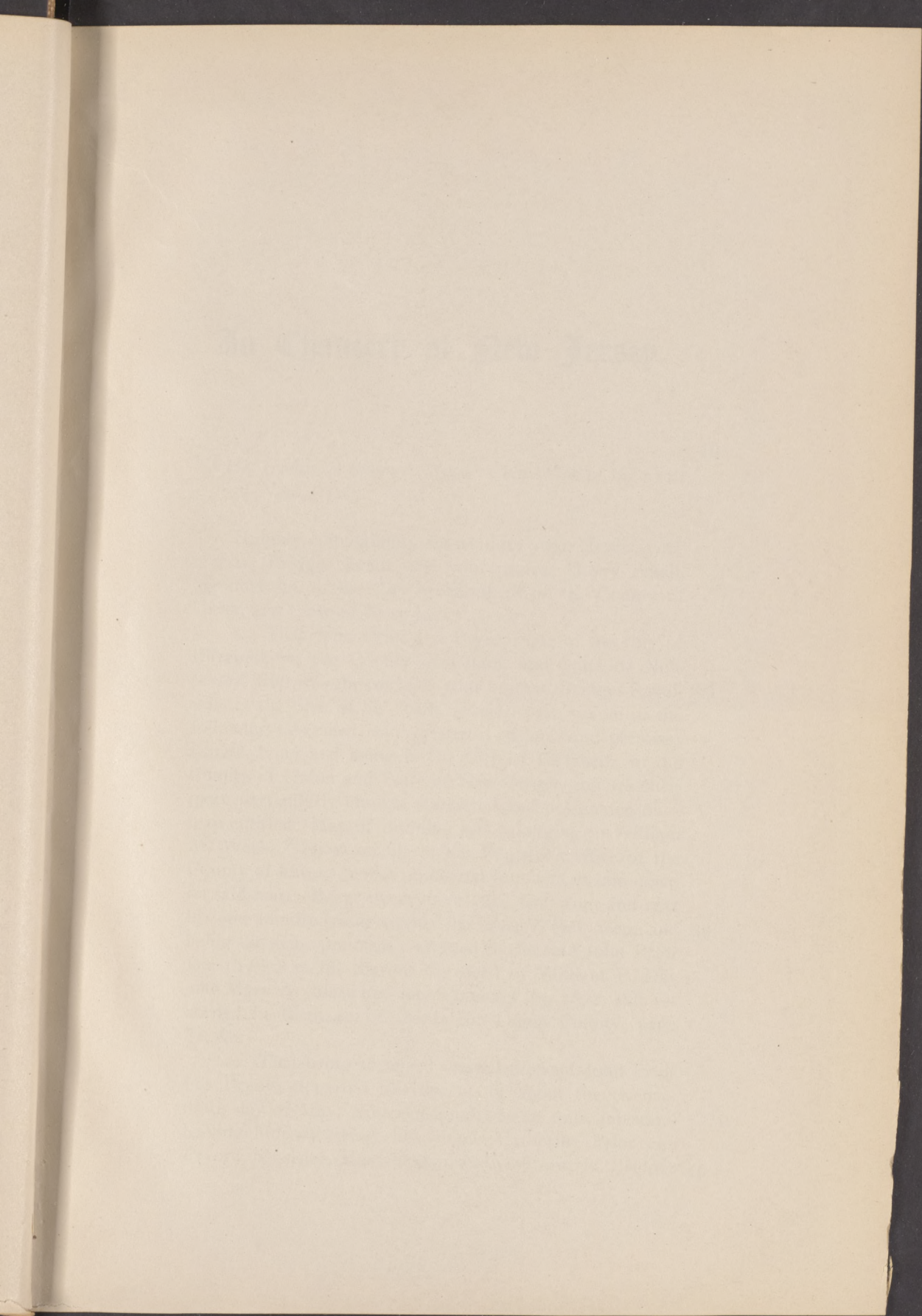
THE DECREE SHOULD BE AFFIRMED.  
WITH COSTS. 20

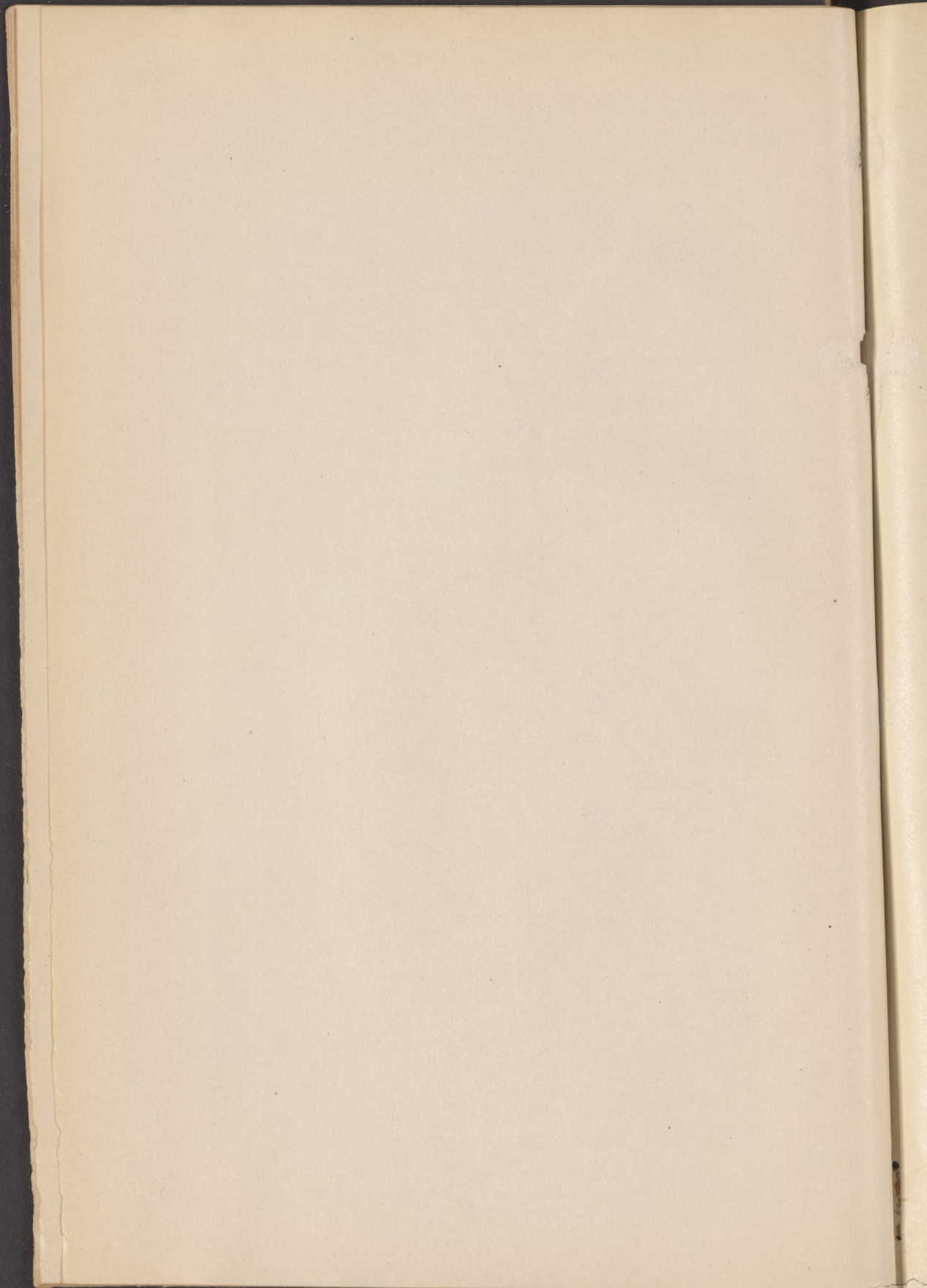
Respectfully submitted,  
P. H. GILHOOLY,  
*Of Counsel with Respondents.*

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## In Chancery of New Jersey.

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*To His Honor, William J. Magic, Chancellor of the State  
of New Jersey:*

Humbly complaining, shows unto your Honor, your oratrix, Bridget Small, and your orator, Henry Small, her husband, of the City of Elizabeth, in the County of Union and State of New Jersey.

1. That John Prior (or Pryor), late of the City of Elizabeth, in the County of Union, and State of New Jersey, who was the uncle of your oratrix, Bridget Small, 20  
was, at the time of his death, seized in fee simple of the following described tract or parcel of land and premises situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey, and which is more particularly known, numbered and designated on a map entitled "Map of Building lots belonging to William M. Weeks," (now on file in the Register's office of the County of Essex), as lot numbered four (4) as laid down on said map. Being twenty-five (25) feet front and rear 30  
by one hundred and twenty-five (125) feet deep, and being the same premises conveyed to the said John Prior (or Pryor) in his lifetime, by deed of William F. Day and Mary A., his wife, dated January 15, 1870, and recorded in Book 44 of Deeds for Union County, page 81, &c.

2. That being so seized thereof the said John Prior (or Pryor) departed this life on or about the twenty-ninth day of May, Nineteen hundred and four, intestate, leaving him surviving, his widow, Catherine Prior (or Pryor), his sister, Mary Hogan, and your oratrix, Bridget 40

Small, the only child of Catherine Leahy, a deceased sister. That by reason of the death of the said John Prior (or Pryor), intestate as aforesaid, the said premises have descended to the said Mary Hogan, and your oratrix, Bridget Small, as tenants in common, in fee simple, subject, however, to the dower right of said Catherine Prior (or Pryor), the widow of said John Prior (or Pryor), deceased.

3. That Catherine Leahy, the mother of your oratrix, Bridget Small, was married to one Jeremiah Leahy, and that both the mother and father of said Bridget Small had departed this life before the death of the said John Prior (or Pryor), and by reason thereof your oratrix is seized of the same interest in said premises which would have vested in the said Catherine Leahy had she survived her brother, the said John Prior (or Pryor); that the said Mary Hogan is married and that her husband's name is John Hogan, and that by virtue of said marriage the said John Hogan has or claims to have a right of courtesy initiate in the share or interest of his said wife in said premises; and your oratrix, Bridget Small, is married and her husband's name is Henry Small.

4. That on or about the Fifteenth day of June, Nineteen hundred and four, administration of all and singular the goods and chattels, rights and credits which were of John Prior (or Pryor), deceased, was granted to Catherine Pryor by the Surrogate of the County of Union, but your oratrix charges and insists that besides the said lands and premises hereinabove mentioned the said John Prior (or Pryor), in his lifetime, owned a large amount of personal property, and that said personal property is more than sufficient to pay all the debts, if any, of the said John Prior (or Pryor), deceased.

5. That upon said lands and premises hereinabove described is erected a large building which produces a large income; that since the death of the said John Prior (or Pryor) the said Catherine Prior (or Pryor) has been in possession of said lands and premises and the building thereon, and has continually collected the rents, issues and profits thereof, and your oratrix prays that the said

Catherine Prior (or Pryor) may account for the rents, issues and profits of the said premises to your oratrix and orator and the other parties interested in said premises.

And your oratrix and orator further show unto your Honor that your oratrix is seized of and entitled to one equal undivided half part of said premises, subject to the right of dower of said Catherine Prior (or Pryor) therein; and that the said Mary Hogan is seized of and entitled to the other one equal undivided half part of said premises, subject to said dower right of said Catherine Prior (or Pryor), and subject also to the right of courtesy initiate of her husband, John Hogan, therein. 10

And your oratrix and orator further show that they are desirous that a partition or division of the said tract or parcel of land and premises should be made among your oratrix and orator and the several parties seized of and entitled thereto, according to their said several and respective rights, estates and interest therein; or in case (as your oratrix and orator believe and aver the fact to be) that the said tract of land and premises cannot be divided among the owners thereof, without great prejudice to their respective interests, then that the same may be sold and the proceeds thereof divided among your oratrix and orator and the other parties entitled thereto as aforesaid, according to their respective rights and interests. 20

But your oratrix and orator are advised that no valid or effectual partition, division or sale of the said premises can be effected without the aid and interposition of some competent court, and that this honorable court has full and complete jurisdiction in the premises. 30

In tender consideration whereof and to the end that the said Catherine Prior (or Pryor) individually and as administratrix of the said John Prior, deceased, Mary Hogan and John Hogan, her husband, may without oath, full, true, direct and perfect answers make to all and singular the charges and matters aforesaid, as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated; and that a fair partition and division of the above described premises may be made according to the course and practice of this 40

court, if the same be practicable and consistent with the rights of all the parties interested therein, among your oratrix and orator and the other parties entitled to shares of the said premises, according to their respective rights and interests therein, and that the liens, if any, on the undivided estates or interest of any of the parties hereto, be decreed to be a charge only on the share assigned to such party, such share to be first charged with its just proportion of the costs of these proceedings in preference to any such liens; and in case such partition and division in fact of the said premises shall be found impracticable, or if it should appear that the same cannot be made without great prejudice to the owners of said premises, that the said tract or parcel of land and premises may be decreed by this honorable court to be sold, including the right of dower of the said defendant, Catherine Prior (or Pryor); and that the proceeds thereof, after paying the costs and charges of this suit, be divided among your oratrix and orator, and the said several parties interested therein, according to their respective rights, shares and interests; and that the portion of the moneys arising from said sale of the estate. share or interest of any party against whom there are existing any liens or encumbrances held by any creditor of such party, who is a party defendant to this suit, be brought into this court by the Master or Commissioner, as the case may be, who shall make sale of said premises after deducting the costs, charges and expenses to which it shall be liable, to the end that the Chancellor may make such order therefore as the circumstances of the case may require; and that the defendant, Catherine Prior (or Pryor) may be decreed to render unto your oratrix and orator, and the other defendants entitled thereto, an accounting of the rents collected by her from the said premises since the time of the death of said John Prior (or Pryor); and that upon such accounting that she may be ordered to pay to your oratrix and orator and the other persons entitled thereto whatever may be found to be due to them; and that your oratrix and orator may have such further and other relief in the premises as the nature and

circumstances of the case may require and as shall be agreeable to equity.

May it please your Honor, the premises considered, to grant unto your oratrix and orator the State's writ of subpoena to be directed to the said Catherine Prior (or Pryor) individually and as administratrix of all and singular the goods and chattels, &c. of John Prior (or Pryor), deceased, Mary Hogan and John Hogan, her husband, commanding them and each of them, at a certain day and under a certain penalty, 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 decree therein as to your Honor shall seem meet. 10

And your oratrix and orator will every pray, &c.

P. H. GILHOOLY,  
*Solicitor for and of Counsel with Complaints.*

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IN CHANCERY OF NEW JERSEY.

BETWEEN	}	
BRIDGET SMALL, <i>et al.</i> , <i>Complainants,</i>		
AND		
CATHERINE PRIOR, <i>et al.</i> , <i>Defendants.</i>		<i>On Bill, etc.</i> 30
		<i>Answer of Catherine Prior, Defendant.</i>

The answer of Catherine Prior, to the bill of complaint of Bridget Small, et al. 40

This defendant answering the said bill of complaint, says:

First: That she is advised that the property mentioned in the first paragraph of the bill of complaint was in the name of John Prior, the husband of this defendant, at the time of his death. That this defendant charges and insists that she believed that said property was in her name, that the same was purchased in January of the year Eighteen hundred and seventy, from William T. Day and Mary A., his wife, and that the consideration of the said deed was paid by this defendant. That part of the consideration, the sum of Five hundred and fifty dollars (\$550.00), was borrowed by this defendant from Mary Rafe, of the City of New York, State of New York, who was an aunt of this defendant, and that said Five hundred and fifty dollars was repaid to the said Mary Rafe, and the bond and mortgage which was given as security for same was cancelled.

20 This defendant further answering says that she always believed that said property was in her name, and that the money used to purchase said property and pay off said mortgage was money that this defendant accumulated by means of her own individual effort and which she herself earned, and that the deed for said premises was made to said John Prior by mistake, and that it was the intention of the parties to have said deed made in the name of this defendant, Catherine Prior.

30 And this defendant further says, that it is true that the said John Prior departed this life on or about the Twenty-ninth day of May, Nineteen hundred and four, intestate, leaving him surviving this defendant, his widow, his sister, Mary Hogan, and Bridget Small, the daughter of Catherine Leahy, the deceased sister of said John Prior.

This defendant further answering says that it is true that she was appointed administratrix of all and singular the goods and chattels, rights and credits which were of John Prior, deceased, by the Surrogate of the County of  
40 Union.

And this defendant further answering says that the said complainants, Bridget Small and Henry Small, her husband, the said defendants, Mary Hogan and John Hogan, her husband, have no right, title or interest in the said property.

This defendant further answering says that the taxes upon said premises have been paid by her with the money earned by her individual efforts.

This defendant further answering charges and insists that said property should be decreed and declared to be the property of this defendant in fee, and she prays that this Honorable Court may decree the said lands and premises to be the property of this defendant. 10

Wherefore she prays to be hence dismissed with her reasonable costs and charges most wrongfully sustained.

And this defendant by way of cross-bill exhibited against the complainants Bridget Small and Henry Small, her husband, and the defendants, Mary Hogan and John Hogan, her husband, shows that the said John Prior died on or about the Twenty-ninth day of May, Nineteen hundred and four, that she is informed and advised that the property mentioned and described in the bill of complaint was in the name of the said John Prior, that this defendant shows unto your Honor that at the time this property was purchased in January, Eighteen hundred and seventy, the money used for the purchase of said property was the money of your oratrix, with the exception of the sum of Five hundred and fifty dollars (\$550.00), which your oratrix borrowed from her aunt, Mary Rafe, of the City of New York, for which a bond and mortgage was given to the said Mary Rafe, by the oratrix and the said John Prior, deceased, and that said deed was made out in the name of said John Prior by mistake, as it was the intention of the parties to have said deed made in the name of and to your oratrix. 20 30

And your oratrix further shows that said sum of Five hundred and fifty dollars (\$550.00) was repaid to the said Mary Rafe, and the said mortgage cancelled of record, and that the money so paid to the said Mary Rafe 40

by your oratrix was the money earned by your oratrix from her own individual efforts.

And your oratrix further shows that she always was led to believe and given to understand by the said John Prior, deceased, that the property was in her name, and that she did so believe until the death of the said John Prior, deceased.

10 And your oratrix further shows that she, by her own efforts, has always earned the money that has been paid upon said property for taxes and other expenses, and that said property rightfully belongs to her.

20 And your oratrix further shows that she is greatly wronged and injured by reason of the mistake in said deed whereby the premises mentioned and described in the bill of complaint in this cause was conveyed to John Prior, deceased, and not to your oratrix, and that the facts herein set forth must carry conviction to every mind of the mistake in said deed, and that the said deed should be reformed and decreed to be in the name of your oratrix, and that the said complainants, Bridget Small and Henry Small, and the defendants, Mary Hogan and John Hogan, their attorney or agents be restrained by an order of this Honorable Court from prosecuting their said suit for the partition of said premises, until the determination of the claim of your oratrix in the premises.

30 All of which acting and doings on the part of the said complainants, Bridget Small and Henry Small, and the said defendants, Mary Hogan and John Hogan, are contrary to equity and tend to the manifest wrong and injury of the complainant, Catherine Prior, in the premises.

In consideration whereof, and for as much as the complainant, Catherine Prior, has no adequate remedy except in this Honorable Court.

To the end therefore, that the said premises may be decreed by this Honorable Court to be a property of this complainant, and that the said Bridget Small and Henry Small, her husband, and Mary Hogan and John Hogan, her husband, may answer the premises according to law, 40 and may be decreed to deliver to this complainant a deed

for the premises described in the bill of complaint filed in this cause, and may be decreed to pay to this complainant her costs and charges to be taxed in this suit, and that your oratrix may have such other and full relief in the premises as the nature of the circumstances of the case may require and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena issued out of and under the seal of this Honorable Court, 10 directed to the said Bridget Small and Henry Small, her husband, and Mary Hogan and John Hogan, her husband, therein and thereby requiring and commanding them and each of them on a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises and to stand to, abide and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 20

And your oratrix as in duty bound will ever pray.

EDWARD NUGENT,  
*Solicitor for and of Counsel with Catherine Prior, answering defendant, and complainant in cross-bill.*

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

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Catherine Prior, the defendant named in the foregoing answer, and the complainant in the cross-bill, being duly sworn on her oath says, that the said answer and cross-bill have been read to her and the matters and things therein contained so far as they relate to her own 40

acts and deeds, are true, and so far as they relate to the acts and deeds of others, she believes them to be true.

Sworn and subscribed to before me this sixth day of December, 1904.

her  
CATHERINE X PRIOR.  
mark

10 EDWARD NUGENT,  
M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

20 BRIDGET SMALL, *et als.*,  
*vs.*  
CATHERINE PRYOR.

MARCH 17, 1905.

30 BRIDGET SMALL, complainant, sworn.

*Direct Examination* by JUDGE GILHOOLY:

Q. You are married?  
A. Yes.  
Q. And your husband's name?  
A. Henry Small.  
Q. You live where?  
A. 924 Bond Street, Elizabeth.  
40 Q. You are the complainant in this suit?

A. Yes, sir.

Q. Were you related to John Pryor, deceased, mentioned in the bill of complaint in this suit?

A. I am his niece.

Q. And he is dead?

A. Yes, sir; he is dead.

Q. Do you know the date of his death?

A. He died the 30th of May, 1904.

Q. The application that has been presented here, says the 29th of May; it was about the 30th of May, 1904? 10

A. Yes.

Q. Where did he live at the time of his death?

A. 217 Spring Street, Elizabeth.

Q. Is that the property mentioned in this suit in the bill of complaint?

A. Yes.

Q. Did you attend his funeral?

A. I did.

Q. Did he have any children?

A. No. 20

Q. Did he leave a widow?

A. Yes.

Q. Who is the widow?

A. Catherine Pryor.

Q. She is one of the defendants in this suit?

A. Yes.

Q. Who are his heirs?

A. Well, only myself and my aunt in Philadelphia.

Q. He left one sister?

A. Yes. 30

Q. What was her name?

A. Mary Hogan.

Q. She lived in Philadelphia?

A. Yes; she is dead.

JUDGE GILHOOLY: She died since this suit began and the bill has been revised. Mary Hogan conveyed her interest to the widow before this suit began. 40

- Q. That was your aunt and yourself. Was it your father or mother who was related to Mr. Pryor?
- A. My mother was his sister.
- Q. What was your mother's name?
- A. Catherine Lahey.
- Q. Did she have any children but yourself?
- A. No; not living.
- Q. You are the only child?
- A. Yes.
- 10 Q. How long ago did your mother die?
- A. She was dead a year last November.
- Q. November, 1903?
- A. Yes.
- Q. Is your father living?
- A. Not that I know of. My father went out of his head, and we haven't heard from him in years; whether he is living or dead, I cannot say.
- Q. For how long?
- A. When I was six months old.
- 20 Q. What does the property consist of, 217 Spring Street?
- A. Just one house, and there is a store and saloon in it.
- Q. A city lot?
- A. Yes.
- Q. Who has occupied it since your uncle's death?
- A. My aunt kept it until a short time ago, and some other person is running it now; I don't know who he is.
- Q. But she still lives in the house. You don't
- 30 know whether she rents the store or not?
- A. No; I don't know anything about that.
- Q. But she still occupies the house?
- A. Yes.
- Q. You haven't had any rent of the property since your uncle's death?
- A. No, sir.

JUDGE GILHOOLY: In our bill we pray an accounting for the rents, but I presume that will be a matter for a Master.

THE COURT: If the parties cannot agree, I will go into that. I will first decide the rights of the parties, and pass on the other question afterwards.

JUDGE GILHOOLY: I offer in evidence deed from Mary Hogan and John Hogan, her husband, to Catherine Pryor, widow, dated July 6, 1904, acknowledged June 30, 1904, recorded July 13, 1904. 10  
(Marked Exhibit C 3).

*Cross Examination by Mr. NUGENT:*

Q. Mrs. Small, your father, you say, you have never had any visit from prior to his death?

A. No, sir; I cannot give you any proof of it. I was only six months old when he lost his mind, and he went away and I have never seen him, to my knowledge; don't know whether he was dead or alive. 20

Q. When have you last heard from any person who knew the whereabouts of your father?

A. I cannot tell.

JUDGE GILHOOLY: Objected to.

THE COURT: Has the father any interest at all?

MR. NUGENT: No, sir. 30

Q. Have you ever lived with the deceased, John Pryor?

A. I have.

Q. When did you first reside with him?

A. When I was about seven or eight years of age, going to school; I lived with my aunt for a couple of years; my mother was living out and I lived with my aunt.

Q. Weren't you married from your aunt's house? 40

A. No, sir; I was married from my own home, Bond Street.

Q. What did you do about the house; any of the work?

THE COURT: What difference does that make?

Q. Were you living there when they kept a saloon?

A. Yes.

10

JUDGE GILHOOLY: I object to this line of cross examination. Counsel must confine himself to my case.

THE COURT: So far the complainant has only proved title.

Q. What year were you there?

A. I told you I was going to school. I was 7 or 8  
20 years of age, and I am now 30 years of age; I was there a couple of years.

Q. You know nothing about anything concerning the purchase of the property?

A. No; I know nothing about the buying of it.

JUDGE GILHOOLY: I object to this line of examination.

THE COURT: It is not cross examination.

30

Q. (BY THE COURT) How old are you?

A. At the present time, 30 years of age.

MRS. CATHERINE PRYOR, defendant, sworn.

*Direct Examination by MR. NUGENT:*

Q. Mrs. Pryor, you are the defendant in this suit and the widow of John Pryor, are you not?

40

A. Yes.

Q. Where do you reside, Elizabeth?

A. Yes.

Q. Are you able to read or write?

A. No, sir.

Q. When were you married?

A. Well, I am forty years married.

Q. After your marriage where did you reside?

A. Rector Street.

Q. Were you married in Elizabeth?

A. Yes.

10

Q. And since then you have continued to reside at Elizabeth, have you not?

A. Yes.

Q. What was your business when you were married?

A. To go to the washtub.

Q. What was your husband's business?

A. Railroading.

Q. For whom did he work?

A. For the Pennsylvania Railroad; Stewart was 20 the boss over him.

Q. Do you know what wages he received?

A. \$1.50 a day.

Q. What was his work?

A. Railroading on the railroad.

Q. Trackman?

A. Yes.

Q. What was his physical condition?

A. My husband wasn't well; he had a very bad leg.

Q. Did that condition exist when you were married?

A. Yes.

Q. How long did it last?

A. Until he died.

Q. What was the nature of the ailment?

A. He worked in Pennsylvania when he came to the country and he was lifting a rail up and the rail struck the joint of his leg and cut it. Well, he didn't go to a doctor; he only bandaged it up and left it go; and that leg always came against him. Then it was black, 40

and after it was healing up it turned into a running sore, and it never healed up until he died.

Q. Was that condition noticeable by his walk?

A. Yes, sir; he was not able to walk or to do work either.

Q. After you were married did you continue to work?

A. Yes, sir; right away.

10 Q. To be exact, about how soon after you were married to your husband did you start to work?

A. Nine months to the day.

Q. Can you tell us for whom you worked?

A. I worked with Mrs. Henry W. Baker for fifteen years at laundry work, and I worked for Mrs. Rutan, Mrs. Lyons, Mrs. Sadler, Mrs. Bowman, Mrs. Brody and Mrs. Value.

Q. What sort of work did you do?

A. Laundry work.

Q. At your house or at their house?

20 A. I went out by the day and I brought home afterwards washing in the evening and washed until 12 o'clock in the night; got up at 4 in the morning and put them on the line, and went out again and did another day's work.

Q. What wages did you receive?

A. Ten shillings a day and my board.

Q. About how many days in a week did you work for those people?

30 A. The full week; worked in the night too, and worked for my husband.

Q. Can you tell us about how much a month you earned during this period?

A. Well, I earned about \$40 a month at laundry work.

Q. What did you do with the money?

A. I put it in Halsey's Bank.

Q. How long did you continue that work and the saving of this money?

40 A. Three years I saved \$500 and bought the ground that my house is built on.

Q. You say you worked three years. You said you worked for 15 years for Mrs. Baker?

A. I worked with other families.

Q. How long after you bought the lot did you continue at this work?

A. Well, until I cleared the mortgage I raised to build the house.

Q. What mortgage?

A. \$550 from my aunt and \$7 to the hundred for that. 10

Q. Who was your aunt and where did she live?

A. Mary Rafe, New York.

Q. Do you recollect where you got the money from that bought the lot?

A. I earned it.

Q. The \$500.

A. The \$500 in three years.

Q. When you got this \$500, you say you put that into Halsey's bank?

A. That money was put in and it didn't come back 20 neither; it went in according as I could afford it, until I put in \$500.

Q. Who drew out this money?

A. My husband did.

Q. For what purpose?

A. To buy the ground.

Q. You mean this ground that the saloon is located on?

A. The ground that the saloon is on.

Q. Do you know from whom your husband bought 30 the property?

A. From Lawyer Day.

Q. Did you have any conversation with your husband about the purchase of the lot, and if so, what was it?

A. Yes, sir; I told my husband to go and buy a lot and to build a house, and that I would borrow money from my aunt to build onto it.

Q. What was said, if anything, about whose name the lot was to be placed in?

A. Well, himself and myself. 40

Q. You are positive of that?

A. Positive of that; I cannot write nor read.

Q. Was all your property bought that way?

A. All my property was bought in that manner.

Q. Do you know anything about the account in the bank; did you ever find out how the account was placed in Halsey's bank, whether it was in your name and in his name, or in your name alone?

10 A. His name and my name; what money I put in the bank, I put my husband's name to it; he had a right to it as well as me.

JUDGE GILHOOLY: I make an objection to this testimony. This is a case where she appears against a deceased person. The suit is not against her representative, but I would like to have a formal objection to this evidence as to conversations with her husband in respect to this matter.

20

THE COURT: You should have objected before. I will admit the evidence subject to your objection as made at this time. The evidence of this witness as to statements or transactions with the intestate are objected to at this time, and the objection is overruled, and the testimony admitted subject to objection.

30

JUDGE GILHOOLY: I would like to place upon the record an objection to all this testimony.

THE COURT: This will cover all objections to testimony with intestate from this time.

Q. Can you read or write?

A. No.

Q. Were you ever able to read or write?

A. No; I left home too young to get education, and  
40 then I got plenty of work.

MR. NUGENT: As she cannot read or write, I will offer the bank book.

Q. (BY THE COURT) Did you have your bank book yourself; did you keep it or your husband?

A. I kept it.

Q. Would you be able to tell it if you saw it—the bank book you kept yourself?

A. Yes; it was under his hands and my hands; it was in the bureau. 10

Q. It was in the bureau where you could get it?

A. Yes.

MR. NUGENT: I offer book No. 166 in the Union County Savings Bank, Elizabeth, commonly called Halsey's Bank.

(Marked Exhibit D 2).

THE COURT: What does that show? 20

MR. NUGENT: That shows an account opened between the bank and John and Catherine Pryor, beginning January 2, 1884, and closing September 10, 1887.

Also offer deed from Frederick K. Day, et al., to John Pryor and wife, dated September 10, 1887, acknowledged September 12, 1887, recorded in Book 192 of Deeds, pages 20, &c., being deed for another lot, consideration \$900. 30

(Marked Exhibit D 3).

Q. (BY MR. NUGENT) Where is that lot?

A. Two lots adjoining the tract in question, corner of Spring Street and Broadway, Elizabeth.

Q. (BY THE COURT) You spoke of the lot or property that is in suit, what is the size of that; is it one or two lots where the saloon is located?

A. One lot. 40

THE COURT: These two lots adjoin the saloon?

MR. NUGENT: They are vacant lots, but there is a 25-foot lot in between.

Q. (BY MR. NUGENT) After this lot in question was bought, did you continue to work, or did you stop work after you bought the lot where the saloon was located?  
10

A. Yes; I worked.

Q. Until when?

A. Until he died.

Q. What did you do?

A. I was 18 years a laundress and 20 years a bartender.

Q. Where did you tend bar?

A. In my own house, 217 Spring Street.

Q. Who opened the saloon as a rule in the morning?  
20

A. I did.

Q. Who closed it?

A. My husband did.

Q. Were you actually engaged behind the bar, serving and mixing?

A. Yes, sir; and doing all the dirty work.

Q. What do you mean by doing all the dirty work?

A. Tapping beer, scrubbing and cleaning, and waiting on people.

30 Q. Who did your housework?

A. Myself.

Q. During the years that the saloon was kept, was Mr. Pryor in that condition that you have described, with his leg?

A. Yes, sir.

Q. As a result of that, did that prevent him from getting about the saloon to any extent?

A. Sometimes it did; he was not able to go any. The doctor told him to keep off of his leg, and I kept him  
40 off of his leg as long as I could.

Q. Who attended your husband?

A. Dr. Quinn and Dr. Sweet, of Newark, has got a small fortune I have given to him for his leg.

Q. What is your idea of a small fortune?

A. Since I have been married he is doctoring with his leg. He had to give up the railroading, because he couldn't do it, and then he started a saloon and I worked in the saloon for him.

Q. Did he have any difficulty in getting around, or did he need any assistance? 10

A. No; of course I done all the work; I done all I could for my husband.

Q. Who waited upon him when he required medical attention?

A. I did; I did everything for him.

Q. Was there any nursing to be done?

A. No; only what I could do myself and tend saloon and do everything. I done everything for him.

Q. Can you tell us the names of some of the people that you did business with while you were in the saloon 20  
—the wholesale dealers, the brewers?

A. Mr. Frelix.

Q. What is his business?

A. Liquor Association.

Q. What brewery?

A. Mr. Krueger and Mr. Frelix.

Q. Who called upon you on behalf of Mr. Frelix to collect and attend to the business?

A. Collector from their house.

Q. Do you know the name of the collector who 30  
came from Krueger's?

A. Mr. Newbauer.

Q. How many years were you doing business with this man?

A. About 17 years with Mr. Newbauer and 28 years, I think, with Mr. Frelix.

Q. Who paid the bills?

A. I paid the bills, and if my husband happened to pay a bill, I gave the money to him to pay the bill.

Q. From your husband's earnings on the railroad, 40

do you know whether any of that money went for doctor's bills?

A. Well, I guess it did, and if it didn't, my earnings went for doctor's bills. I didn't give my husband all my money, and if he lived for forty years, I would work for him.

Q. Why did you have to give your money for his doctor bills; didn't he have some money for his own bills?

10 A. Only what he earned; and when he didn't work how could he get money.

Q. How many years before his death did he do any work, if any?

A. Before he died?

Q. Yes. Was he able to do any work?

A. Well, I think to the best of my belief, he was about 12 years on the railroad working for \$1.50 a day, and then he had to give up. From the day I married, I worked for him, and if he lived for 40 years I would  
20 work for him.

Q. When did you find out that the deed for this property was not in your name?

A. Not until he died.

Q. How did you find it out?

A. From you. I never knew nothing about it, because my husband went out to buy the ground and I knew nothing about it; I don't know how to write.

30 Q. You are positive, are you, that you never knew that the deed for this property was in your husband's name, until after his death?

A. Never knew it.

Q. Could he read or write?

A. No; not at the time I married.

Q. About how many years after you were married did he learn to read and write?

A. When he got into the saloon business.

Q. Was he able to read?

A. Well, a little; yes, he could read a book.

40 Q. Did you ever know of his conducting any cor-

respondence, or was he able to do any more writing than to sign his own name?

A. No more; he couldn't write a letter, or he knew nothing about the deed no more than myself.

Q. Previous to the death of your husband where was the deed of this property?

A. In the bureau, I had it.

Q. Do you know where the deed was for some time?

A. You had it. 10

Q. How many years?

A. And the Judge had it up to six years.

Q. It was in my office?

A. Yes.

Q. And before that where was it kept?

A. In the bureau, under my hands, but I cannot read.

Q. Did you ever have any conversation with your husband before the property was bought or afterwards, that gave notice to you that the deed was not in your name? 20

A. No, sir; my husband never deceived me.

Q. Did you always suppose that it was in your name?

A. Always supposed that the deed belonged to me as well as my husband; I earned it and he earned it.

Q. Tell us about the mortgage that you have referred to. You say you borrowed some money on a mortgage. From whom was that money borrowed?

A. My aunt. 30

Q. What is her name?

A. Mary Rafe.

Q. Where did she reside?

A. New York.

Q. When you paid the money for the mortgage to cancel it, who did you pay it to?

A. To my aunt.

Q. Do you remember when you made the last payment?

A. No; I do not. 40

Q. Who attended to the legal part of it, the law end of it, at that time; what lawyer represented you?

A. Lawyer Judge McCormick.

10 MR. NUGENT: Witness not being able to read or write, I produce a bond of John Pryor to Mary Rafe, dated February 17, 1870, in the sum of \$550, payable three years from date, in the penal sum of \$1,100, signed by the mark of John Pryor in the presence of John McCormick. (Marked Exhibit D 4).

Also offer in evidence mortgage accompanying said bond from John Pryor and Kate, his wife, to Mary Rafe, same date and amount, executed by John Pryor and Kate Pryor, his wife, both by their mark, in the presence of Judge McCormick.

20 I also note that there is a receipt on the said mortgage, as follows: "August 17, 1871. Received from Mr. John Pryor \$357.75 in payment of principal, \$300, \$57.75 for interest to above date." Signed by Mary Rafe, her mark; witnessed by Samuel Tinsdale.

I also offer a receipt dated Elizabeth, February 19, 1876. "Received full satisfaction of the within bond and mortgage. The Clerk of the County of Union will please cancel the same of record."

30 We produce that as being among the papers of Mr. John Pryor.

Q. Mrs. Pryor, when this loan was made, who went to New York to Mrs. Rafe to see about it, did you or your husband?

A. I did.

Q. Who requested the mortgage to be signed?

A. I have.

40 Q. When you went to your aunt to borrow the money, what did she say?

A. She is going to let me have it—

Objected to.

Q. Who borrowed the money?

A. I did.

Q. How did you get it; was it paid to you by check or cash, or what do you remember about the transaction?

A. By cash.

Q. Where was it paid?

A. New York.

Q. Who was with you at the time?

10

A. My husband.

Q. When you first went to see your aunt about borrowing the money, was he with you or did you go alone?

A. No; he wasn't with me.

Q. While the mortgage was being drawn up and prepared by Judge McCormick, do you remember how many times you went over to see about the loan, about the money, did you go once or twice?

A. Once, only once.

Q. How was this mortgage paid off, if you know, who paid it?

20

A. \$7 to the hundred; I paid it myself.

Q. Where?

A. I took it in to her; the last payment was \$55 I paid her of interest money.

Q. And where was that paid, in New York?

A. In New York.

Q. Was there anybody with you when you paid it?

A. Sometimes my husband would go with me, and more times he wouldn't.

30

Q. You have told us that you saved \$500 from washing, to purchase the lot?

A. Three years.

Q. For three years?

A. Yes.

Q. Can you tell us what particular person you worked for that enabled you to save the \$500; which of these women that you have described, was it Mrs. Baker or Mrs. Lyons or the other one?

40

A. I have been fifteen years at the laundry work with Mrs. Henry M. Baker.

Q. The three years you saved the \$500?

A. With Mrs. Rutan, Mrs. Lyons, Mrs. Sadler, Mrs. Value, Mrs. Judge Green, that I saved \$500 in three years that bought the ground my house is on.

Q. Do you know whether any of those people are living or around Elizabeth yet?

A. I don't know; I don't believe they are.

10 Q. Have you tried to find out whether they are living in Elizabeth?

A. Some of them are South and some dead.

Q. Where did you get the money that you paid the mortgage off with, where did that come from?

A. I worked for it.

Q. For whom?

A. Mrs. Baker.

Q. How often did you make payments on account of the mortgage, weekly or monthly?

20 A. Every half year and then I gave her the interest of it.

Q. Do you know whether you paid off any on the principal when you paid some of the interest?

A. No.

Q. What did you do with the money that you had in Halsey's Bank?

A. I put it there; I raised it and paid her off.

30 Q. (By THE COURT) The money you had in Halsey's Bank you used to pay off this \$500 mortgage, is that what you say?

A. Yes; at \$7 to the hundred; and I drew the mortgage out in six years.

*Cross Examination by JUDGE GILHOOLY:*

Q. When you bought this property, you say your husband attended to all the business, is that right?

A. Himself and I done it.

40 Q. I understand you to tell Mr. Nugent, that your

husband went and saw Mr. Day and made all the arrangements about the lot?

A. Yes.

Q. You were not with your husband when he went to see Mr. Day?

A. No.

Q. So you don't know what your husband told Mr. Day?

A. No.

Q. Nor what Mr. Day told your husband? 10

A. No, sir.

Q. Your husband got the deed from Mr. Day?

A. Yes, sir.

Q. And Judge McCormick was employed to look after the business?

A. Judge McCormick drew the deed.

Q. He searched the title for you, did he not?

A. Yes.

Q. And attended to all the business for your husband? 20

A. Yes.

Q. And it was he who drew the mortgage at the same time?

A. Yes.

Q. And the giving of the mortgage and the taking of the deed was all done at one time?

A. No, sir; not at one time.

Q. How much difference was there?

A. About five years between.

Q. You had the deed five years before you gave 30 the mortgage?

A. Before I built the house; before I got the mortgage.

Q. You are sure you had a deed five years before you gave a mortgage?

A. Yes; because it took me three years to save \$500, and then I was a year before I worked after getting married.

Q. (By THE COURT) What do you mean by you had the deed five years before you gave a mortgage? 40

A. I worked five years before I got the mortgage.

Q. Before you gave the mortgage—you gave a mortgage to you aunt. When did you do that, as soon as you got the deed for the property, or five years after?

A. Right after.

Q. You gave the mortgage to your aunt right after you got the property?

A. Yes.

Q. (BY JUDGE GILHOOLY) What do you mean by  
10 five years?

A. Well, it was almost five years when I saved \$500 to buy the ground the house was built on.

Q. How soon after you got the deed did you give your aunt a mortgage; how soon after your husband got the deed?

A. Five years.

Q. Your husband went to Mr. Day and got a deed for the land, didn't he?

A. Yes.

Q. And you were not there when he got the deed?  
20

A. No, sir.

Q. How soon after your husband got the deed did you go to see your aunt to get the money for the mortgage?

A. Well, about two years.

Q. You owned the land some time before you borrowed the money to build with?

A. Yes; I owned the land before I built on it.

Q. How long did you own the land before you  
30 built on it?

A. Well, about a year or two, I think, before I built on it.

Q. (BY THE COURT) When the land was bought was there nothing on it at all?

A. No.

Q. After you bought it, a house was built?

A. Yes; the house was built by my raising the mortgage to put the house on it.

Q. Is that the mortgage you got from your aunt?

A. Yes.  
40

Q. (By JUDGE GILHOOLY) Do you know how much the house cost?

A. At that time, about \$800, without the lot.

Q. Who built it?

A. A man named Mr. Plum.

Q. Who made the bargain with Mr. Plum?

A. My husband did, and I was there too, hearing to the bargain.

Q. You say you got the money from your aunt to pay for this house? 10

A. Yes.

Q. Wasn't the money paid by your aunt in Judge McCormick's office?

A. No, sir; we took it to her and paid her the interest onto it.

Q. When you first got the money, how did this money come from your aunt?

A. My husband and me went right in and she gave us the money by my giving her the mortgage.

Q. Where did you sign the mortgage? 20

A. In Judge McCormick's office.

Q. Was your aunt there when the mortgage was signed?

A. No.

Q. Did you take the mortgage into your aunt?

A. Yes.

Q. Gave it to her?

A. Yes; she brought it out and put it in the court house; Judge McCormick attended to all that business.

Q. Were you in Judge McCormick's office? 30

A. Yes, sir.

Q. This bank book that you have shown here is a bank book of the Union County Savings Bank. Is that the bank that you call Halsey's Bank?

A. Yes.

Q. And this is the bank book that you have mentioned in your evidence?

A. Yes.

Q. And that is the only bank book you ever had?

A. I had no more, only that; only the Building & 40

Loan book, and I put that money in my own name. The Building Loan money is in my own name.

Q. Has it always been in your own name?

A. All in my own name.

Q. Why didn't you put it in your husband's name?

A. When I drew it out, I put it Catherine and John Pryor's name, and if I died he could have it, and if he died, it come to me.

Q. What is the Building Loan money; it that the  
10 way it is now, in John Pryor's name?

A. No, sir; it is out; I have it out.

Q. It was in John Pryor's name when he died?

A. Yes.

Q. And you as administrator, took it out?

A. Yes.

Q. You have it now?

A. Yes.

Q. How much was that money?

A. \$2,000.

Q. And why was it in John Pryor's name when he  
20 died?

A. I was putting it in, I was working very hard; I put it in my own name first, until the loan ran out, and I raised the money and put it in the bank and I put John and Catherine Pryor's name to the bank book, in case anything happened to me he could have it.

Q. Where is that bank book?

A. I guess Mr. Nugent has it.

Q. You never had any bank book in Halsey's bank  
30 but the one you produced?

A. No, sir; all my labor went in my property, all I earned and worked.

Q. I see you put in here this money in John and Catherine Pryor's name. Why did you put it in that way in this bank book?

A. Well, that way he could draw it as well as me, and I could go and take it out as well as he could do it.

Q. You say it is out of this bank book you drew the money you paid for the lot?

40 A. Yes; they was the only two books I got.

Q. Out of this bank book the money was drawn that paid Mr. Day for the lot?

A. Yes.

Q. You are sure about that, are you?

A. I told you perhaps maybe the whole amount wasn't in that book, but I may have the money that I put to it to pay for the ground.

Q. You said that you worked for five years for the money to buy the land?

A. Three years I worked. 10

Q. You did say three years, when you put that money in Halsey's Bank?

A. Yes.

Q. And you drew your money out of Halsey's Bank and it was used to buy the lot?

A. Yes.

Q. And this is the book you drew it from, you had in Halsey's Bank, is that right?

A. Yes; that was the book that was there.

Q. And that is the only book you had that money 20 deposited in?

A. I had no other book.

Q. You are sure that the money was drawn out of Halsey's Bank to pay for the lot?

A. Drew it out of Halsey's Bank.

Q. To pay Mr. Day for the lot.

A. The old gentleman; he is dead now.

Q. After you were appointed administrator of your husband, you went down to the Building & Loan and drew that money out, didn't you? 30

A. Yes.

Q. As administrator?

A. Yes.

Q. Because it was in his name?

A. No, sir; that is not the reason.

Q. It was in his name?

A. When I put it in his name; the money belonged to me.

Q. At the time of his death the money was there in his name, but you say it belonged to you? 40

- A. Yes.
- Q. And you have got it?
- A. Yes; because I put it in.
- Q. Your husband worked for how many years for the railroad?
- A. About 12 years on the railroad.
- Q. After you were married?
- A. Yes; after I was married.
- Q. He was a pretty steady worker, wasn't he?
- 10 A. Yes; he was a good man, but of course my husband wasn't a healthy man.
- Q. He was a good man?
- A. Yes.
- Q. And didn't waste his money?
- A. No, sir; he did not; he couldn't waste a great deal out of \$1.50 a day.
- Q. He saved his money?
- A. Yes; saved it; I saved it for him.
- Q. You first built a little house on this lot, that cost
- 20 about \$800?
- A. About \$800 without the lot.
- Q. Then afterwards, when you started the saloon, he built a large house on it?
- A. Yes; he shoved it back and he built in front. When he built that front, then I gave up laundry work; I was tired. I gave it up and went right back again to Mrs. Henry M. Baker and worked three years until I cleared the front again.
- Q. Who built the front building?
- 30 A. A carpenter; I forget his name; he is dead.
- Q. Who made the bargain with him to build the front?
- A. My husband; it wasn't me who was expected to.
- Q. Do you know what that cost?
- A. Well, I don't know exactly what that cost.
- Q. You don't know what it cost?
- A. No.
- Q. What did you think it cost?
- A. Well, I valued it at about \$1,200 to put the front
- 40 up.

Q. You don't know what bargain your husband made with the dead man?

A. It is so long I never kept a memorandum of it; I never thought I would come to this.

Q. There was another addition built to the house, was there not?

A. Yes, sir.

Q. How long ago was that?

A. About fifteen years, the last one.

Q. What did that cost? 10

A. About \$600.

Q. That was for what?

A. Two rooms.

Q. Do you know who did that work?

A. I don't know his name.

Q. Didn't Mr. James Hageman do that?

A. Yes.

Q. Didn't your husband make the bargain?

A. Yes.

Q. Didn't your husband pay that money? 20

A. I cannot tell you whether I did or my husband.

Q. Didn't your husband buy the lumber and material?

A. Yes.

Q. You say that you never knew what was in that deed that your husband got?

A. Never knew; I didn't know how to write nor read and I never looked at the deed.

Q. Did you ever ask your husband? 30

A. Never asked my husband about it, and my husband never said a thing; he didn't know but my name was to that deed.

Q. And he never said anything to you?

A. Never to me about it; he never knew my name wasn't in the deed; it was under my hands.

Q. Hadn't your husband said to you, in the presence of witnesses, that he intended to leave that property away from you, and he intended to leave it to his— 40

MR. NUGENT: Objected to; he should name the person.

Q. Didn't your husband at the time you and he had a dispute, had a quarrel, in the presence of Mrs. Small, say: "I am going to cut you off with a child's share; I will only leave you a child's share of this property?" Didn't he say that to you?

10 A. To me?

Q. Yes.

A. Well, can you have a man drunk, can you, can you, if a man is drunk; my husband would explain matters in that manner.

Q. He was drunk when he said it?

A. Yes; my husband never cut me off with nothing.

Q. But your husband was drunk when he said it?

A. Yes.

Q. He did say it?

20 A. No; he did not say it.

Q. What did he say?

A. "To give my property to his niece," no, sir.

Q. Didn't he say to you that he would cut you off with a child's share?

A. What does any man say when they are drunk to a wife, when he thinks a wife ought to slash beer into him when he is drunk.

Q. Didn't he say he was going to cut you off with a child's share?

30 A. No, sir; he did not; because I was too good a wife to him.

Q. Didn't you tell this to a lady named Mrs. Cecilman, you know her?

A. Yes.

Q. Didn't you tell Mrs. Cecilman that your husband said to you that he would leave everything to his niece, Mrs. Small, provided she didn't marry Mr. Small, didn't you tell Mrs. Cecilman that?

40

Objected to. Objection sustained.

A. No, sir.

Q. You did not tell Mrs. Cecilman that?

A. No, sir; the lady lived in the house with me. I did not tell her.

Q. In whose name was that house insured?

A. John Pryor, and I paid the insurance.

Q. It was insured in John Pryor's name?

A. Yes. I paid the insurance every time it was due.

Q. In whose name was the tax bill? 10

A. John Pryor. They wouldn't want two names to it, would they?

Q. All these years that property was taxed in the name of John Pryor?

A. John Pryor.

Q. And in all these years it was insured in the name of John Pryor?

A. John Pryor, my husband.

Q. Didn't you get it insured yourself sometimes?

A. After his death I put it right in my name. 20

Q. But didn't you while he was alive, get insurance yourself sometimes?

A. Insurance?

Q. Yes.

A. I never meddled with that property. How did I know but that was my property that was there; when my husband bought that ground, I never looked at the deed.

Q. From 1870 until your husband died in 1904, 34 years, did you ever get it insured yourself? 30

A. No, sir.

Q. Your husband always attended to that?

A. Yes; and I gave him the money to pay for it. I saved the money and gave it to him.

Q. You never got it insured once?

A. Yes; I have often paid the insurance; I went often.

Q. Who told you to insure it?

A. I told him it was John Pryor's property, and when it belonged to him, it belonged to me. I thought the 40

deed belonged to me too. I was ignorant in the deed, in the writing, but not in labor; I worked very hard.

Q. Now, then, you say that you opened the saloon in the morning?

A. Yes; at 5 o'clock I opened it and done all the dirty cleaning.

Q. Who closed the saloon at night?

A. My husband did.

Q. What hour did he close it?

10 A. Eleven o'clock, half past ten and twelve o'clock.

Q. So that he attended to the saloon during the day and in the evening?

A. Well, I may be being in it four or five weeks alone without any one in it, doing all the work.

Q. I asked you if your husband didn't attend to the saloon in the evening?

A. When he would be able he would be there, and when he wouldn't, he would be in bed.

Q. So that he had to sleep late in the morning?

20 A. Yes.

Q. And you opened it in the morning?

A. Yes; and cleaned up all the dirty work. I done all the dirty work. I had the dirty work, and my husband led a gentleman's life.

*Re-direct by MR. SCHLEIMER:*

Q. Who attended bar during the day?

30 A. I attended bar until dinner time. Then he would lay down and take a nap, then he would come in again after awhile and attend to his business, and I will be opening that place in the morning, and pay all the bills to every one; I paid every bill that was paid over the bar.

Q. Who was in charge of the place and tended bar while he was—

A. I was; I was never out of it.

Q. During the years that you conducted this saloon did you ever hire a bartender?

40 A. No, sir; only one for about five weeks, and I paid him \$7 a week.

- Q. Who paid him?  
 A. I did, and I discharged him, too.  
 Q. Who was the man?  
 A. Eddie Voss; and I discharged him, too.  
 Q. Who collected the rents for this property?  
 A. I have.  
 Q. From what tenants?  
 A. From all the tenants I had.  
 Q. Tell us who they are?  
 A. Mrs. Cecilman; I collected rent from her for 10  
 four years and two weeks.  
 Q. Who else?  
 A. Mrs. Gilligan; 11 years I collected rent from  
 her.  
 Q. Who else?  
 A. Mrs. Voss; 14 years I collected rent from her.  
 Q. Anyone else?  
 A. Mrs. Howard, two years and a half I collected  
 rent from her.

20

THE COURT: Was that rent of this property?

MR. SCHLEIMER: Yes; this particular house.

- Q. You haven't any other property beside this?  
 A. No, no more; only the house you are talking  
 about.  
 Q. You told us that when there was one addition  
 put on the house, costing so much money, you went out  
 and raised the money?  
 A. Three years steady until I cleared the debts of  
 that property.  
 Q. Was that the large addition, the \$1,200 addition?  
 A. Yes; the front.  
 Q. There was another addition put to it; who paid  
 for that?  
 A. I did.  
 Q. How did you get that money?  
 A. I worked for it.  
 Q. Where?

30

40

A. At the washtub.

Q. Did people ever bring their wash to you at the house?

A. Yes, sir.

Q. You made a business of it?

A. Yes; and went out to do it.

Q. All this time the saloon was being conducted, too, was it?

A. Yes; I washed until 12 o'clock in the night,  
10 family's washing; got up at 4 o'clock in the morning and put it on the line.

Q. Can you recall how soon after you bought the lot you moved into the house?

A. About half a year, I think.

Q. Where did you get the money then to build the house?

A. My aunt, and what I saved at the washtub; I was putting it away.

Q. How soon after you built the house did you go  
20 to your aunt to borrow the money?

A. Just as soon as the house was raised I got the first payment to pay onto it.

Q. Before you actually got the money you had to go to see your aunt about getting it?

A. Yes.

Q. How soon after you bought the lot did you go to your aunt to make arrangements to borrow the money?

A. I think about a year it was, I went in to her to see if she would let me have the money. She said she  
30 would if I gave her security for it. I said yes; and I came out and got the mortgage from Judge McCormick, and me and him went in with it and she gave it to me for \$7 the hundred.

Q. Have you anything that would help you to fix the exact date when you went over there?

A. No; I never thought I would need it.

Q. Since this house was built—when the house was built, the grade of the street was level with the house, wasn't it?

40 A. Yes.

Q. Some years ago the grade was changed, wasn't it?

A. Yes.

Q. As a result of the change of grade, was the property improved or damaged?

A. Damaged.

Q. By whom?

A. By the Railroad Company.

Q. They elevated its tracks and depressed the streets and damaged this property? 10

A. Yes.

Q. Since the grade of the street was changed how many steps are there necessary to lead up to the store?

A. About seven, I think.

Q. Did you ever receive anything for the damages to this property?

A. No, sir; only the paving they put in front.

Q. Try and refresh your memory and tell us whether you ever received any money from your husband 20 for what you had put into this property. Did you ever receive anything from John Pryor for the money that you had put into this property?

A. No, sir, I did not; what could he give me; he had no money. When he married me he had no money, nor I had no money, and we went to work for it; he couldn't give me money.

Q. Why did you put your money into this, and what security did you have?

A. I wanted a home. When I got married I did 30 not want to rent rooms; I was bound to get a home.

Q. Did you get any security?

A. No.

Q. What made you feel that your money put into that house was still there?

A. I knew that the deed would belong to me, I worked for it, my husband didn't deprive me of it, but he was in debt to it as well as me. My husband didn't deprive me of this deed. 40

JUDGE GILHOOLY: I have given notice to produce all the Building Loan books. The book produced says, "New book given in the name of John Pryor."

THE COURT: The book offered by Mr. Nugent may go in, but whether that leaves him at liberty to draw the inferences without showing about the other book, is another thing.

10 MR. NUGENT: I offer Building Loan book 586 of the Loan & Building Association of Elizabeth, in the name of Catherine Pryor, first entry dated March 31, 1891, and runs to April 28, 1903, with a memorandum showing transfer to new book, which we will try and get.

(Marked Exhibit D 5).

*Re-cross By* JUDGE GILHOOLY:

20 Q. You say that when the small house was built, that you went over to your aunt and got the first payment, is that right?

A. Yes, sir; that is right.

Q. How much was the first payment?

A. \$550, at \$7 to the hundred.

Q. How much was the first payment on the house when it was raised? He was to have his first payment; how much was that first payment?

30 A. I raised \$550, and I don't know exactly how much me or my husband gave; I guess I paid it, but I forget it.

Q. You say that was when the house was raised?

A. \$550 I raised.

Q. When the house was raised?

A. Yes.

Q. The contractor got the first payment?

A. Yes.

Q. And when he had some more work done?

40 A. I guess my husband gave the whole of that up to him when the house was raised, the first payment.

*Re-direct by MR. SCHLEIMER:*

Q. Then you had this money in your possession while the house was being built, from your aunt?

A. Yes; at \$7 to the hundred, and I paid my aunt it.

Q. And about six months after you bought the lot you moved into the house?

A. I moved into the house.

Q. (BY MR. NUGENT) How old are you?

A. Sixty years old; and if God left my husband live 10 for forty years more, I would work for him.

MICHAEL PRYOR, sworn for defendant.

*Direct Examination by MR. SCHLEIMER:*

Q. Do you know John Pryor, the husband of Mrs. Pryor, who just left the stand?

A. I ought to know him. 20

Q. Were you related to him?

A. Yes; first cousin of his.

Q. Did you know him before his marriage to Mrs. Pryor?

A. I knew him in the old country; he was married here.

Q. Were you living here at the time he married her?

A. No.

Q. How long after he married her did you come 30 here?

A. He was only a year married or a year and a half when I came here.

Q. What was he employed at when you came here?

A. He was a railroad man.

Q. Do you know what railroad he worked for?

A. I did, well enough.

Q. What was it?

A. He worked for the old New Jersey Transportation Railroad before the Pennsylvania leased it. 40

Q. That was on the same tracks that the Pennsylvania now use?

A. That the Pennsylvania has now.

Q. Do you know what he did on the railroad?

A. I do.

Q. What?

A. He was track walker for a good stretch; he worked for \$40 a month.

10 Q. After he stopped working on the railroad, what did he do?

A. He started a saloon.

Q. Do you know of any injury that Mr. John Pryor had?

A. No; not that I know of. He had a kind of a bad leg before he started this saloon, right in his own shanty, when he bought it and put up that shanty there, and between them there, they made the money between them; she attended the place in the morning and he attended it at night.

20 Q. You know that Mrs. Pryor attended the place in the morning?

A. She attended in the morning, but he made the money at night.

Q. Do you know of Mrs. Pryor doing any washing before the saloon was run?

A. I did well.

30 Q. Do you know as a matter of fact whether or not she worked for numerous people in Elizabeth at taking in washing?

A. Yes; over in Westfield avenue; many a night I went home with a basket of clothes; he was working too at the same time, and that was made in this shanty.

Q. Then it is a fact that both Mr. and Mrs. Pryor worked?

A. They both worked hard together.

Q. All their married life?

A. Yes.

Q. And were saving people?

40 A. Sure; all the time.

Q. And Mrs. Pryor continued to work, did she, up to the time of her husband's death?

A. Oh no; not a number of years that woman didn't work.

Q. When did she stop work?

A. She worked in her own place; she had work enough. She done all the work in her own saloon; that was enough for her.

Q. And as far as you know, did she keep any help in the house? 10

A. She did all the housework; she had girls there of course.

Q. What girls? She had Mrs. Small there?

A. Yes; and she had a girl after that.

Q. You don't know anything about the circumstances?

A. She had her own niece there, too.

Q. You don't know anything about the circumstances of their private transactions?

A. No. 20

*Cross Examination By JUDGE GILHOOLY:*

Q. Was Mr. Pryor, your cousin, an industrious man?

A. That is what he was.

Q. Did he lose any time?

A. Never did, that I remember.

Q. Did he save his money? 30

A. He saved his money, certainly; only for he saved his money he wouldn't be worth so much today. If I had saved my money, I would have had as much.

Q. Do you remember when he bought the lot from Mr. Day and built the house?

A. Yes; I think I do remember the time; about 38 years ago, I think, when he bought that lot. It was him and an uncle of him he bought another one, and old man Diamond, they bought the lots together; they paid \$500 down. 40

Q. Pryor and Pryor's uncle, a man named Diamond, bought three lots and paid \$500 down?

A. Yes.

Q. Do you know whether it was Pryor's money that paid for that lot?

Objected to.

Q. What do you know about that?

10 A. It was both of their money that paid for it; Mr. Pryor and Mrs. Pryor.

Objected to.

Q. How do you know it was both of their money?

A. I am sure of it. She was working at the same time and he was working, so I know well enough it was both of their money.

20

Objected to.

THE COURT: Strike all that out.

Q. She got the balance of the money then from her aunt to put up the house. Did you visit the family often; were you at the house often?

A. I was a boarder there with her at the time.

Q. At the time they bought the property?

A. Yes.

30 Q. Then you did know whose name it was in?

A. I do.

Q. Did you know in whose name the house was bought?

A. I know it was bought in his name.

Q. Bought in John Pryor's name?

A. The property was bought in his name.

Objected to.

40 Q. How did you know it was bought in his name?

A. Because I am sure of it.

Objected to.

THE COURT: I will take evidence of any conversation that took place in the presence of Mrs. Pryor.

Q. Mr. Pryor, you say you were boarding with John Pryor and his wife at the time they bought the lot?

A. I was. 10

Q. You were a single man?

A. Yes?

Q. Did you hear them talking about buying the lot?

A. I did often.

Q. Heard the two people talking about it?

A. I was often listening to them talking about it, when they went down and bought the three lots together.

Q. Did you hear Pryor and his wife talk about it?

A. Yes. 20

Q. What did you hear either of them say?

A. His uncle bought one besides.

Q. You heard Pryor and his wife talk about buying this lot?

A. Yes.

Q. Did you hear anything said as to who was to be the owner of this lot?

A. Well, I didn't hear anything said who was the owner of the lot, but Pryor had everything in his own name. He could not go to work and get a man out of prison unless he was boss. 30

Q. Do you know that he went bail for people?

A. I do.

Q. Did Mrs. Pryor know that he went bail for people?

A. I do not know.

Q. How long did you board with them?

A. I didn't board there any more when I got kind of fast when I was a couple of years here, right in Rector Street. 40

Q. You say that Mrs. Pryor attended the saloon in the morning and your cousin—

A. That is what she done.

Q. Your cousin, in the afternoon and evening?

A. Yes.

Q. How do you know that?

A. Because I used to resort around there.

Q. You said that the money was made in the evening?

10 A. That is where the money is made.

Objected to.

JUDGE GILHOOLY: The witness has testified on his direct examination to a question propounded to him by Mr. Nugent, that the most of the money was made in the evening. That is the witness's judgment and I am now going to ask him how he knows that.

20

Q. When was the most business done in that place?

Objected to.

THE COURT: That is a fair question, so far as he saw.

Q. In the morning or evening?

A. At night, and well you know that.

30 Q. The most of the business was done in the evening?

A. That is what I think.

Q. I asked you if your cousin was able to attend to his business up to the time of his death?

A. He was always well able to attend to it.

Q. Mrs. Pryor said that for some years before his death he was very feeble with his leg, is that true?

A. He was bothered with his leg, but he was always able to get around anyhow.

40 Q. Always able to attend the business?

A. Yes.

*Re-direct by MR. SCHLEIMER:*

Q. Could you notice any defect in his leg when he walked?

A. Oh, yes.

Q. He walked with considerable limp, didn't he?

A. Yes.

Q. And at times was that limp more noticeable 10  
than at other times?

A. (No answer).

Q. You spoke about Mr. Pryor saving his money;  
Mrs. Pryor saved her money too?

A. They both saved it.

Q. All the property was in his name, wasn't it, in  
John Pryor's name?

A. Yes, sir; I believe so.

Q. You work yourself, do you not?

A. Sure I work myself. 20

Q. You work in the day?

A. I did, and I worked for that man, and me and  
him worked together.

Q. You continue to work today, steady every day?

A. Yes.

GEORGE NEWBAUER, sworn for defendant.

*Direct Examination by MR. NUGENT:*

Q. Were you acquainted with Mr. John Pryor in  
his lifetime? 30

A. Yes.

Q. And with Mrs. Pryor?

A. Yes.

Q. You were a collector for the Gottfried Krueger  
Brewing Company?

A. Yes.

Q. How many years did you know John Pryor, or  
Mr. and Mrs. Pryor? 40

A. I know Mr. Pryor since 1869 or 1870.

Q. What business were you then engaged in?

A. I had a barber shop at the time.

Q. Did you see much of Mr. Pryor?

A. I shaved him about twice a week.

Q. Know anything about where he worked, or what he earned?

A. He worked on the railroad.

Q. At what sort of occupation?

10 A. I don't know; I never asked him.

Q. Back in 1869, can you tell us whether or not Mr. Pryor had anything the matter with any of his limbs, that you noticed?

A. I don't remember anything as late as that.

Q. About when did you first begin to notice that Mr. Pryor had something the matter with his limbs?

A. About the time I got into the collecting business, that is, for Krueger; I went there, I think, about twenty years ago, for the first time, to collect the beer bill, and then after that I found out that he sometimes limped, that he had great trouble with one of his legs; I don't know which one, but he often asked me to do errands for him to the City Clerk's office, because he couldn't walk; that is, when his license came up, to look for signers for his application, &c.

20

Q. Complained to you about it?

A. Yes.

Q. The license was first granted in 1880 to John Pryor; I forget when you said you started to collect?

30 A. About 19 or 20 years; about 19 years ago anyhow.

Q. Tell us briefly with whom you did business when you called there to collect?

A. With Mrs. Pryor. They dealt with Krueger before I was a collector, and my predecessor collected there before me.

Q. Do you know who the preceding collector was?

A. Yes; Robert Sadler; he is dead.

Q. How many times during those years that you  
40 collected at Pryor's place, did you ever have any business

transactions with John Pryor himself, during all those years?

A. During the time I collected there; well, I don't think I had any business transactions with him more than about four or five times, at such times as he needed signers for his license and to take the application to the City Clerk, and when he borrowed money to pay for the license off of the Krueger Brewing Company, I generally brought him a note to sign, otherwise I done the business through Mrs. Pryor; she always asked me for those loans when it was necessary. 10

Q. She did?

A. She did; but I took John's signature, because the license was in his name.

Q. She asked you for the loans, but you took John's signature, because the license was in his name?

A. Yes.

Q. Who bought the goods from your place, Mr. or Mrs. Pryor?

A. I think Mrs. Pryor did. 20

Q. (BY THE COURT) Did you sell the goods; did you have anything to do with selling the goods?

A. Another man sells the goods; they order the goods from the driver and he delivers it, and I collect the money.

Q. You called once a week to collect?

A. Yes.

Q. (BY MR. NUGENT) And there was only that space between the sale of the goods and collection?

A. Yes. 30

Q. And the business that you transacted there, except the four or five times with John, were all with Mrs. Pryor?

A. Yes.

Q. Who paid you?

A. Mrs. Pryor.

Q. Did she pay by check?

A. No; cash.

Q. Did you ever see her sign papers; did you ever know she could read or write? 40

A. No.

Q. Did she ever say anything to you about it?

A. I asked her once about signing driver's slips, and she says she lets the driver sign it, and she puts a mark on it; she always did by mark; she told me that she couldn't read nor write.

Q. When you went there and transacted business with Mrs. Pryor, did you ever notice whether she tended bar or not?

10 A. I generally got there early in the morning when there was nobody there, but she was always behind the bar, and if she wasn't she came out from the kitchen with her money. Whenever any customer came in, during my presence, of course she tended bar.

Q. Did you ever notice her cleaning or scrubbing about the place?

A. Yes, often; very often when I went there.

Q. How often?

A. I didn't pay particular attention to it, but often  
20 when I got there she was cleaning up, or maybe had cleaned out before.

Q. Did you ever notice during the years that you went there, whether there was a bartender outside of Mr. or Mrs. Pryor in the place?

A. She had a young fellow there for a few weeks only; I don't know who he is; they only had him about three or four weeks.

Q. Did you ever get any orders from Mrs. Pryor for goods?

30 A. I never solicited orders.

Q. Do you remember ever getting an order of Mrs. Pryor?

A. If she ran short of beer, she told me to tell the driver, or sometimes her beer connections were out of order and she asked me to send to fix it, because I never done any business with John, except to get him to sign a note, for instance, when he borrowed money to pay his license.

Q. Whenever there was anything necessary to be  
40 done about getting fixtures repaired, who transacted

that part of the business?

A. She did for me.

Q. With you?

A. Yes.

Q. Did she ever go with you over to the brewery to transact that kind of business?

A. No, sir.

Q. Always done at the store?

A. Yes.

Q. Is there any reliance upon the husband by you 10 about these matters when she dealt with you?

A. If her husband wanted anything done, I took it he would tell her to tell me.

Q. That is the way the business was done?

A. Yes.

Q. (BY THE COURT) You got there early in the morning?

A. Between seven and eight in the morning.

Q. Before John was up?

A. Yes; I never saw him in his saloon but perhaps 20 six times in all my life.

Q. (BY MR. NUGENT) In the five or six times you saw him in the saloon, was she there?

A. Oh, yes. When I went there to see him, it was on special occasions.

Q. And they were both there these five or six times?

A. Yes.

Q. And other times in the day than the morning?

A. That was generally in the afternoon when I 30 saw him.

Q. When you transacted the business with John the five or six times, Mrs. Pryor was there of course?

A. I cannot say that she was there every time; she was there perhaps half of the time, because she wasn't required.

Q. Did she act in the presence of her husband in the same manner as she did when she transacted business with you in the morning?

A. Always.

Q. When you came there on these occasions, when you transacted business with John, do you remember what the occasions were, what brought them about?

THE COURT: He told you, it was when he asked him to get him signers for his license, or when he had to get him to sign a note for borrowed money.

10 *Cross Examination by JUDGE GILHOOLY:*

Q. How was that merchandise charged that your firm sold?

Objected to. Objection overruled.

A. To John Pryor.

Q. You had the bill?

A. I had the bill. It simply said Pryor on top of  
20 my bill, but in their books I suppose they had John Pryor.

Q. Did you have a chattel mortgage on his place?

A. Yes.

Q. Who gave the chattel mortgage?

A. John Pryor.

Q. His wife didn't sign that?

A. No.

Q. And the notes were all signed by John Pryor?

A. Yes.

Q. Not by his wife?

30 A. No.

Q. (BY THE COURT) Was there quite a considerable business done there?

A. Yes; there was at times, especially in the summer time; in the winter time, the business was rather slack, but they done a pretty fair business.

Q. It was a place where both these people, this man and his wife, doing all the work themselves, it was a place where they could make money, was it?

A. It was a place where they could make a com-  
40 fortable living. I don't know whether they made an

awful lot of money, because I guess their business was principally towards evening, or evenings, and Pryor naturally was never there to attend to business when he should have attended to it, because he depended on his wife.

Q. You mean he was never there when he should be to attend to it?

A. Sometimes he was in bed; wasn't fit.

Q. That was early in the morning?

A. Sometimes he wasn't fit to attend to his business. 10

Q. What do you mean; by reason of his habits?

A. Excessive drink at times.

JOHN SEYMOUR, sworn for defendant.

*Direct Examination by MR. NUGENT:*

Q. You are a representative of Frolich & Kahler, the whiskey people?

A. Yes. 20

Q. Did you ever collect or do any business at the saloon of Pryor's in Elizabeth?

A. I did.

Q. How many years did you transact business there?

A. About 17 years.

Q. What was your business?

A. As a collector for the firm of Frolich & Kahler, selling whiskey, liquors.

Q. Did you sell goods and collect for them? 30

A. Yes.

Q. You made both the sales and collections?

A. Exactly.

Q. Did you ever notice Mrs. Pryor behind the bar?

A. Always.

Q. Did you ever transact any business with Mrs. Pryor?

A. In fact, you can safely say 95 per cent. of the time that I went there, the business was transacted with Mrs. Pryor. 40

Q. Did you ever notice her scrubbing and cleaning and working about the place?

A. Always.

Q. Did you ever notice her tend bar?

A. She was always there pretty much.

Q. How many times did you transact business with John Pryor during your 17 years?

A. As I said before, I should say that about 5 per cent. of the time in 17 years; I called there every two  
10 weeks, but he very rarely was there.

Q. Did you ever notice him about there enough to know whether he had any physical deformity or not?

A. Yes.

Q. What did it consist of?

A. He was very lame, and he complained to me at times about his leg being in bad condition.

Q. Did he say whether it was such as to prevent him from going about the place, or doctor with it?

A. No; only that he had to lay down a great deal  
20 of the time.

Q. Did Mrs. Pryor ever give you orders?

A. Yes; always.

Q. Who paid you?

A. She paid me.

*Cross Examination by JUDGE GILHOOLY:*

Q. You still sell goods to Mrs. Pryor?

A. No; she is out of business; there is another  
30 party in the place.

Q. You sell to the party that is in the place?

A. Yes; sell some goods to Mr. O'Brien.

Q. Don't you know that the license is in Mrs. Pryor's name?

Objected to.

A. I don't know anything about that.

Q. To whom did you bill your goods?

40 A. All these goods?

Q. Yes.

A. To John Pryor.

*Re-direct by MR. SCHLEIMER:*

Q. You did that why?

A. The account came to me in that way and I done it for that reason.

JAMES E. HAGEMAN, sworn in rebuttal for complainant. 10

*Direct Examination by JUDGE GILHOOLY:*

Q. What is your age, Mr. Hageman?

A. Sixty-three.

Q. And what is your business?

A. Carpenter work.

Q. How long have you worked at that occupation? 20

A. Since I was twenty; I was in a different business for seven years.

Q. Where do you live?

A. 1071 Magnolia Avenue, Elizabeth.

Q. How near is that to 217 Spring Street?

A. It is a couple of blocks.

Q. How long have you lived there?

A. Four years.

Q. How long have you lived in Elizabeth?

A. About over 35 years. 30

Q. Do you know John Pryor, who is mentioned in this suit; did you know him in his lifetime?

A. I knew him the last thirty-five years; maybe more.

Q. Did you know him intimately; were you closely acquainted with him?

A. Yes; when I was in Elizabeth I was in the produce business and he worked on the railroad, and I was selling him potatoes by the barrel; that was the first I got acquainted with him. 40

Q. How often did you see him after you became acquainted with him?

A. Well, while I was in that business, near about every day.

Q. Afterwards, when you went out of that business, how often did you see him?

A. I used to stop in there every once in a while, according to where I was working; sometimes I might be in there half a dozen times in a week, and then it would  
10 be a month before I would be in there.

Q. Did you ever do any work for him?

A. I built a kitchen.

Q. How many rooms?

A. It is so long ago I forget now, but I think one up and one down.

Q. Do you know about how long ago it was?

A. Somewhere near twenty years or over; somewhere around that time.

Q. Who made the bargain with you?

20 A. John Pryor.

Q. Do you know what the price was?

A. I took it by contract for the labor; I think it was \$65 or \$75 for the labor, and he found the stuff himself the material.

Q. Do you know who bought the material?

A. He bought it. I made out the bill and went along with him to the lumber yard and ordered it.

Q. Who made the plan of the kitchen?

A. There wasn't no plan; I made all the plans.

30 Q. Did you have any talk at all with Mrs. Pryor about it, his wife?

A. She was there when we were talking about it, and she was about making the bargain; she was there—when we made the bargain, I think both of them was there.

Q. Who paid you?

A. John Pryor.

Q. You say you have been in his saloon off and on, sometimes half a dozen times a week, and then some-  
40 times not so often?

A. Yes.

Q. Up to what time?

A. Well, the year before he died; I don't believe I was in there more than two or three times in the saloon.

Q. But before that year how often were you in there?

A. I cannot tell.

Q. Who attended to the business of the saloon when you were there?

A. Sometimes one and sometimes the other. 10

Q. What do you mean by sometimes one and sometimes the other?

A. At night he was generally there, and sometimes in the daytime the woman would be there.

Q. Was he able to attend to his business?

A. Not always that he was able to attend to it; I never seen him out of the way.

Q. Did you ever see him under the influence of liquor?

A. No, sir; not drunk or anything of that kind. 20

Q. Did his leg interfere with his attending to his business?

A. I never knew there was much the matter with his leg.

Q. Did his leg interfere with his attending to his business?

A. Not the last I seen him it didn't seem to.

*Cross Examination by MR. NUGENT:*

Q. You know that he was lame, don't you? 30

A. I knew he is kind of lame?

Q. And didn't you know that he had a running leg that required constant attention?

A. I didn't know anything about it.

Q. You don't know how bad that leg became at times?

A. No.

Q. It is a fact, is it not, that Mrs. Pryor took part in the discussion regarding the bargain for this addition? 40

A. Well, yes; talked over a few things there.

Q. She talked with him about it, didn't she, when he was there?

A. Talked about it. I was considering the bargain made by Pryor, and considered he was to pay me.

Q. But Mrs. Pryor was there and talked about it with him, discussed it together?

A. Yes.

10 Q. She had a few words to say?

A. Yes.

Q. You said that generally when you went there in the evening, Mr. Pryor was tending bar. Did you ever see Mrs. Pryor tending bar in the evening?

A. I don't know as I ever did in the evening.

Q. Did you ever see him in the afternoon tending bar?

A. Yes.

20 Q. You say that you never saw Mr. Pryor drunk, when the Judge asked you whether he drank much. What do you mean by that?

A. What I mean, a man gets drunk so he don't know what he is doing; but I never seen him much out of the way.

Q. But you had often seen him when you could tell he had been drinking?

A. I have seen him drink.

Q. Have you seen him drunk?

A. I haven't seen him so he would stagger and fall down.

30 Q. But you have seen him when it was noticeable to you that he had been drinking?

A. Yes.

Q. How long did you know Mrs. Pryor?

A. Pretty near as long, not quite as long. I didn't know her when I first knew him.

Q. Do you remember Mrs. Pryor when she took in washing?

A. No, sir.

40 Q. Did you see Mrs. Pryor cleaning the saloon, scrubbing?

A. No.

Q. Did you see Mrs. Pryor tending bar?

A. I have seen her once in a while in the day time.

Q. She has waited on you from behind the bar?

A. Yes.

Q. A number of times?

A. Several times.

Q. And when you saw her behind the bar, didn't you see her transact whatever business that was to be transacted in the saloon? 10

A. She would wait on customers, that is all I seen.

Q. And you think it was twenty years ago that that addition was put on?

A. I think it was all of twenty years ago.

Q. And that is the only thing you did regarding that property?

A. Yes.

MRS. CATHERINE CECILMAN, sworn in rebuttal for complainant. 20

*Direct Examination by JUDGE GILHOOLY:*

Q. Where do you live?

A. Magnolia avenue, number 956.

Q. How long have you lived there?

A. Three years next May.

Q. How long have you lived in Elizabeth?

A. About fifteen or sixteen years.

Q. You knew Mr. John Pryor in his lifetime? 30

A. Yes; I knew him four years; I lived in his place.

Q. You lived in Mr. Pryor's place four years?

A. Yes.

Q. And of course you knew Mrs. Pryor?

A. Yes.

Q. And Mrs. Pryor talked to you sometimes about her affairs?

A. Well, once or so; the remark was made in a joke, in a laugh; it was a laughing joke with Mrs. Pryor. Mr. Pryor didn't say it at all to Mrs. Pryor; it 40

was as if kindo' heard it said—kindo' heard it said to Mrs. Small—she wasn't Mrs. Small then, and the word, the way I could hear it, if she didn't marry Small, that is, the title he got, that he would give her.

Q. What would he give her?

A. Give her, I suppose, his property like.

MR. NUGENT: I object.

10 Q. Who told you that?

A. I heard it in a joke, in a kind of a laugh from Mrs. Pryor.

Q. Mrs. Pryor told you that?

A. She spoke it in a kind of a laugh.

Q. Mrs. Pryor did tell you that?

A. In a simple kind of a way.

Q. Just what did she say?

Q. (BY THE COURT) What did Mrs. Pryor tell you in this kind of a laugh; you tell me now what she said?

20 A. Well, I cannot remember it very well because I don't know the year.

Q. It don't make any difference about the year. Where was she when she had this talk, you and she alone?

A. It was up in my kitchen, in Mrs. Pryor's house.

Q. What did Mrs. Pryor say to you?

A. Well, Mr. Pryor was sick in bed and his niece like was by, and she told me she never heard it, and this is the truth of it, she told me she never heard it.

Q. Who is "she?"

30 A. Mrs. Small there; she wasn't Mrs. Small then, but the day that she come in to me, quizzing me, I didn't know what she was up to, and she was putting me about a great deal on account of it.

Q. What did Mrs. Pryor say to you?

A. Mrs. Pryor said in a joke, that if she wouldn't marry Small, that he would give her what he was worth, only to see to Mrs. Pryor. Now, I have no more to say.

Q. If who wouldn't marry Small?

A. His wife.

40 Q. Whose wife?

A. Mr. Small's wife.

Q. If his niece wouldn't marry Small, he would give the niece all his property?

A. Not at all.

Q. What would he do?

A. He said if she wouldn't marry Small, that he would give only to her something like, as if it was his property, to see to Mrs. Pryor.

Q. (BY JUDGE GILHOOLY) The niece was to see to Mrs. Pryor? 10

A. Yes.

Q. Mrs. Pryor says she didn't tell you that?

A. It was said in a joke anyhow, so it was.

Q. You said you didn't want to come here to court?

A. I did.

Q. Have you been subpoenaed to come here?

A. Mr. Small come with it.

Q. To serve it on you?

A. Yes.

20

*Cross Examination by MR. NUGENT:*

Q. How old are you?

A. I am 58.

Q. You think whatever was said at that time was said in a joke and laughing way?

A. Well, it was said in a laughing way.

Q. Was Mrs. Pryor laughing when she said it?

A. She was half laughing like.

Q. Where was Mr. Pryor; how far away was he? 30

A. Mr. Pryor was in his sick bed.

Q. And where was this sick bed from where she said this; how far away was it?

A. I don't know; the second room.

Q. The next room or two rooms; how far away?

A. Two rooms from Mrs. Pryor's kitchen.

Q. Did he say that if she didn't do this, as you say—

A. I don't know whether he said it or not.

Q. That he wouldn't leave her what he was worth?

What was it Mrs. Pryor said?

40

A. Mrs. Pryor said in a joking way that, that he said to his niece that if she wouldn't marry Small.

Q. What?

A. That he would leave her his property like; I suppose that is what he meant.

Q. That is what you thought?

A. Yes.

Q. Do you remember now actually what was said?

A. Well, I don't remember not one word more or  
10 better than I have told you.

MRS. BRIDGET SMALL, recalled in rebuttal.

*Direct Examination by* JUDGE GILHOOLY:

Q. Were you at one time living with your uncle, Mr. Pryor?

A. Yes, I was.

20 Q. How long did you live there?

A. For about two years.

Q. Did you uncle and Mrs. Pryor have any disputes and quarrels while you were there?

A. Once in a while.

Objected to as not rebuttal.

Q. On cross examination, I asked Mrs. Pryor if on the occasion of one of those quarrels your uncle, John  
30 Pryor, didn't say to her—

MR. NUGENT: Don't lead the witness.

THE COURT: Tell what took place.

Q. Was there anything said at any of those disputes between your uncle and aunt, as to what he would do with this property?

A. At one time—I heard it several times, the last  
40 time I heard this remark was two years—he told her he

would leave her one-third, a child's share, and I come to the conclusion from that—

Q. Never mind. He told her he would leave her one-third, a child's share?

A. Yes.

Q. What did he say he would do with the rest of the property?

A. Didn't say.

Q. What did she say?

A. She told him she worked just as hard for the 10 property as he did.

*Cross Examination by MR. NUGENT:*

Q. Was the exact language that he used, he would leave her one-third, or a child's share?

A. Yes.

Q. And that was all he said?

A. That was all he said.

Q. And in reply to that she said: "I worked just as hard for the property as you?" 20

A. Yes.

Q. At what age did you stop going to school?

A. Fourteen.

Q. At what age did you begin going to school?

A. Six.

Q. Then you were going to school when you were with Mrs. Pryor from 7 to 9?

A. I didn't stay with her all that time; only with her for two years.

Q. During that time you were going to school? 30

A. Yes.

JUDGE GILHOOLY: I rest my case, except I want that book that I have called for put in evidence.

MR. NUGENT: Yes, sir; and the insurance policy.

(BOTH SIDES REST).

THE COURT: The complainant is to file brief within ten days after receiving copy of testimony, and the defendant must reply within five days, so that briefs on both sides will be in within fifteen days.

10 WILLIAM F. DAY AND WIFE,  
 TO  
 JOHN PRIOR.

THIS INDENTURE, made the fifteenth day of January, in the year of our Lord One thousand eight hundred and seventy, BETWEEN William F. Day and Mary Almirer, his wife, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the first part, and John Prior of the City of Elizabeth, in the County of Union, and State of New Jersey, of the second part. Witnesseth that the said party of the first part, for and in consideration of the sum of Five hundred dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part and to his heirs and assigns forever.

ALL that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey.

40 Which is known, numbered and designated on a map

of building lots belonging to Wm. M. Weeks and others, situated in the Township of Elizabeth, Essex Co., N. J. (now on file in the Clerk's office of the said County of Essex) as lot number (4) four, being twenty-five feet front and rear by one hundred and twenty-five feet deep, and are of the lots conveyed to said Day by William M. Weeks and wife by deed recorded in Book 213 of Deeds for Essex County, page 58, &c.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in any-wise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part, of, in and to the same, and of, in and to every part and parcel thereof; to have and to hold; all and singular the above described tract or parcel of land and premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever, and the said William F. Day doth for himself, his heirs, executors, and administrators, covenant and grant, to and with the party of the second part, his heirs and assigns, that he, the said William F. Day, now is the true, lawful, and rightful owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging, and that the said land and premises or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated, in any way whatsoever. And also, that the said parties of the first part now have good right, full power, and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid; And also, that the said William F. Day will warrant, secure and forever defend the said land premises unto

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the said John Prior, his heirs and assigns, forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In Witness Whereof, the said William F. Day and Mary Almirer, his wife, have hereunto set their hands and seals the day and year first above written.

10 Signed, Sealed and De- }  
 livered in the pres- } WILLIAM F. DAY, [L. S.]  
 ence of } MARY ALMIRER DAY, [L. S.]  
 )

SAMUEL S. MOORE.

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

20 Be it remembered that on this seventeenth day of January, in the year One thousand eight hundred and seventy, before me, a Commissioner of Deeds, in and for said County, personally appeared William F. Day and Mary Almirer, his wife, who I am satisfied are the grantors mentioned in the within deed of conveyance named, and I having made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed: And the said Mary  
 30 Almirer being by me privately examined separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of or from her said husband.

SAMUEL S. MOORE,  
*Commissioner.*

Revenue Stamp, 50 cents.

Received in the office, Jan'y 19, 1870.

## UNION COUNTY REGISTER'S OFFICE.

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

I, FRANK H. SMITH, Register of the County of Union, do hereby certify that the foregoing is a true and correct copy of the record of a certain deed made by WILLIAM F. DAY AND WIFE to JOHN PRIOR, and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 44 of Deeds for said County on pages 81, &c. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 13th day of March, A. D., 1905.

FRANK H. SMITH,  
 Register. 20

*To the Surrogate of the County of Union:*

Catherine Pryor, of 217 Spring Street, Elizabeth, N. J., of the City of Elizabeth, in the County of Union and State of New Jersey, applies for administration of the estate of John Pryor, late of the County of Union, who died intestate on May 29, 1904, and shows: That his widow and the next of kin and heirs at law of the said deceased, together with their respective residences or Post Office address, so far as the same are known or this applicant has been able to ascertain, are as follows: This applicant, his widow, of Elizabeth, N. J., Mary Hogan, wife of John Hogan, a sister, of Philadelphia, Pa.; Bridget Small, wife of Henry Small, of Elizabeth, N. J., only child of Catherine Leahy, a deceased sister. That the next of kin of said deceased will renounce in writing their right of administration, and request that the 30 40



THIS INDENTURE, made the sixth day of July, in the year of our Lord One thousand nine hundred and four, (1904), BETWEEN Mary Hogan and John Hogan, her husband, of the City of Philadelphia, in the County of Philadelphia, and State of Pennsylvania, of the first part; AND Catherine Pryor, (widow), of the City of Elizabeth, in the County of Union, and State of New Jersey, of the second part:

WITNESSETH, that the said party of the first part, for  
 and in consideration of the sum of One hundred (\$100) 10  
 dollars, lawful money of the United States of America,  
 to them in hand well and truly paid by said party of the  
 second part, at or before the sealing and delivery of these  
 presents, the receipt whereof is hereby acknowledged,  
 and the said party of the first part being therewith fully  
 satisfied, contented and paid, have given, granted, bar-  
 gained, sold, aliened, released, enfeoffed, conveyed and  
 confirmed, and by these presents do give, grant, bargain,  
 sell, alien, release, enfeoff, convey and confirm unto the  
 said party of the second part, and to her heirs and assigns, 20  
 forever, all the right, title, share and interest of said  
 party of the first part of, in and to that certain tract or  
 parcel of land and premises, hereinafter particularly  
 described, situate, lying and being in the City of Eliza-  
 beth, in the County of Union, and State of New Jersey,  
 which is known, numbered and designated on a map of  
 building lots belonging to Wm. M. Weeks and others,  
 situated in the Township of Elizabeth, Essex County,  
 N. J., as lot numbered four (4), being twenty-five (25)  
 feet front and rear by one hundred and twenty-five (125) 30  
 feet deep; and is of the same lots conveyed by William  
 M. Weeks et al., to one William F. Day by deed recorded  
 in Book 213, page 53, &c., of deeds for the County of  
 Essex; and by said Day conveyed to John Pryor, now  
 deceased, by deed recorded in Book 44, page 81, of deeds  
 for the Co. of Union. Second. That certain lot of which  
 is laid down, known, numbered and distinguished on the  
 map of said Weeks property above referred to, as lot  
 numbered three (3) on said map, and being the same  
 premises conveyed by one Wm. F. Day to Hugh Dia- 40

mond by deed recorded in book 44, page 83, &c., of deeds for Union County.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every  
 10 part and parcel thereof, to have and to hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever: in witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

20 her  
 MARY X HOGAN.

mark.  
 JOHN HOGAN.

[SEAL.]

AGNES HOGAN,  
 J. P. KELLY,  
 as to Mary Hogan.

30 EDWARD NUGENT,  
 as to both parties.

State of New Jersey, }  
 County of } ss.

Be it remembered, That on this 30th day of June, in the year of our Lord one thousand nine hundred and four (1904), before me the subscriber, a master in chan-  
 40 cery of New Jersey, personally appeared Mary Hogan

and John Hogan, her husband, who, I am satisfied, are the grantors mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Mary Hogan, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. 10

EDWARD NUGENT,  
Master in Chancery of New Jersey.

Union County Savings Bank, in account with John and Catharine Prior.

1884.		
Jan. 2, seventy dollars and thirty-one cents .....	\$ 70.31	20
Jan. 10, four dollars and ninety-one cents .....	4.91	
Feb. 28, one dollar and thirty-two cents .....	1.32	
April 29, seventy-five dollars .....		\$75.00
July, int. ....	.01	
1885, Jan., int. ....	.02	
July, int. ....	.01	
July 3, fourteen dollars and seventy-five cents .....	14.75	
1886, Jan., int. ....	.24	
Jan. 13, sixty-four dollars and seventy-five cents .....	64.75	30
Feb. 16, twenty-five dollars .....	25.00	
May 26, fifty dollars .....	50.00	
June 24, forty dollars .....	40.00	
July, int. ....	1.40	
Aug. 17, fifty dollars: .....	50.00	
Aug. 17, nine dollars and eighty-four cents .....	9.84	
Oct. 25, fifty dollars .....	50.00	
Nov. 20, fifty dollars .....	50.00	40

	1887, Jan., int.....	2.95	
	Feb., 15, fifty dollars.....	50.00	
	Mar. 15, fifty dollars.....	50.00	
	May 21, three hundred dollars.....		\$300.00
	June 15, fifty dollars.....	50.00	
	July, int.....	2.40	
	July 12, fifty dollars.....	50.00	
	Sept. 10, two hundred and sixty-two dollars and ninety-one cents.....		\$262.91
10			<hr/>
			\$637.91 \$637.91

This indenture, made the seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy, between John Prior and Kate, his wife, of the city of Elizabeth, in the County of Union and State of New Jersey, of the first part, and Mary Rafe, of the City of New York, in the County of New York, and State of New York, of the second part, witnesseth, that

20 the said party of the first part, for and in consideration of the sum of five hundred and fifty dollars, money of the United States of America, to them in hand well and truly paid by the said party of the second part, at, or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented, and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do give,

30 grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to her heirs and assigns forever, all that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, which is known, numbered and designated on a map of building lots belonging to Wm. M. Weeks and others, situated in the Township of Elizabeth, Essex Co., N. J. (now on file in the clerk's office of said County of Essex, as lot number (4) four, being

40 twenty-five feet front and rear by one hundred and twen-

ty-five feet deep, and being the same property conveyed to said Pryor by Wm. F. Day and wife by deed dated January 15th, 1870, and recorded in Book 44 of Deeds for Union County, pages 81 and 82.

New York, Aug. 17th, 1871, received from Mr. John Prior three hundred and fifty-seven dollars and seventy-five cents, in payment of principal. Three hundred dollars and fifty-seven cents for interest to above date.

her

X

10

MARY RAFF.

mark.

Witness:

SAML. G. TINSDELL.

Elizabeth, February 19th, 1876.

Received full satisfaction of the within bond and mortgage. The Clerk of the County of Union will please cancel the same of record.

20

Received the entire payment,

her

X

MARY RAFF.

Cross X

Together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: to have and to hold, all and singular, the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns, forever. Providing always, and it is agreed by and between the parties to these presents, that if the said John Prior, his heirs, executors, or administrators, do and shall well

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and truly pay, or cause to be paid, to the said party of the second part, or to her certain attorney or attorneys, heirs, executors, administrators, or assigns, the sum of five hundred and fifty dollars with interest according to a certain bond bearing even date herewith in three years from date of this mortgage without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever; then, and from thenceforth, these presents and said obligation, and everything herein and therein contained; shall cease and be void; anything herein and therein contained to the contrary in any wise notwithstanding; and the said John Prior, his heirs, executors and administrators doth covenant and grant to and with the said party of the second part, her heirs and assigns, that the said party of the second part, her heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said John Prior, his heirs or assigns, or of any other person or persons whatsoever.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of  
 30 T. F. McCORMICK.

his  
 JOHN X PRIOR.  
 mark.

her  
 KATE X PRIOR.  
 mark.

All is paid.

State of New Jersey, }  
 40 County of Union, } ss.

Be it remembered that on this seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy, before me, a commissioner duly authorized to take the acknowledgment and proofs of deeds, personally appeared John Prior and—who, I am satisfied, are the grantors mentioned in the within indenture, and whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. And the said Kate, his wife, being by me privately examined, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. 10

T. F. McCORMICK,  
Com. of Deeds.

Application of John Prior (or Pryor) for license, 20  
217 Spring street.

Board of Excise Minutes.

Meeting held when application passed.	
Dec. 14, 1880.....	P. 137 bot.
Nov. 22, 1881.....	P. 149
Nov. 20, 1882.....	P. 162
Feb. 21, 1884.....	P. 228
Oct. 3, 1885.....	P. 306 top. 30
Sept. 15, 1886.....	P. 349 bot.
Oct. 5, 1887.....	P. 394 bot.
Sept. 15, 1888.....	P. 431 bot.
Oct. 14, 1889.....	P. 20 top.
Sept. 13, 1890.....	P. 56 mid.
Oct. 3, 1891.....	P. 119 bot.
Sept. 15, 1892.....	P. 183 bot.
Sept. 21, 1893.....	P. 250 mid.
Sept. 6, 1894.....	P. 312 mid.
Oct. 3, 1895.....	P. 24 bot. 40

- Sept. 17, 1896.....P. 84 top.  
 Oct. 7, 1897.....P. 136 mid.  
 Oct. 20, 1898.....P. 188 top.  
 Sept. 7, 1899.....P. 232 top.  
 Oct. 14, 1900.....P. 290 mid.  
 Oct. 3, 1901.....P. 332 mid.  
 Oct. 2, 1902.....P. 372 top.  
 Oct. 1, 1903.....P. 2 mid.  
 Nov. 17, 1904 (P. 51, bot.) Catharine Prior applied for  
 10 license at 217 Spring (Inn and Tavern) and same was  
 granted.

Know all men by these presents, That J. John Prior, of the City of Elizabeth, County of Union and State of New Jersey, am held and firmly bound unto Mary Rafe, of the city, county and State of New York, in the sum of eleven hundred dollars, lawful money of the United State of America, to be paid to the said Mary Rafe or her certain attorney, executors, administrators or assigns; for  
 20 which payment well and truly to be made, I bind my heirs, executors and administrators firmly by these presents. Sealed with my seal and dated the seventeenth day of February in the year of our Lord one thousand eight hundred and seventy.

The condition of this obligation is such, that if the above bounden John Prior, his heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid, unto the above mentioned Mary Rafe,  
 30 or her certain attorney, executors, administrators, or assigns, the just and full sum of five hundred and fifty dollars, lawful money aforesaid, in three years from date first above mentioned, with interest for the same at the rate of seven per cent. per annum, payable semi-annually, together with all National, State, County, and City taxes which may be assessed upon the money now loaned and hereby secured to be paid, or upon this obligation, or the indenture of mortgage given to secure the payment of the same, and bearing even date herewith; with  
 40 out any fraud or other delay, then this obligation to be

void, or else to be and remain in full force and virtue.

Sealed and delivered in the presence of  
T. F. McCORMICK.

his  
JOHN X PRIOR.  
mark.

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IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">BETWEEN</p> <p>BRIDGET SMALL, <i>et al.</i>,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;">AND</p> <p>CATHARINE PRIOR, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p><i>On Bill; etc.</i></p>	20
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Heard on bill, answer, cross bill, replication and proofs.

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Mr. P. H. Gilhooly for complainants.

Mr. Edward Nugent and Mr. Schleimer for defendant, Catherine Prior.

CONCLUSIONS.

Emery, V. C. John Prior (or Pryor) died intestate on May 29, 1904, seized in fee of a lot of land in Elizabeth, upon which was subsequently erected a building used as a saloon and for dwelling purposes. He left

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surviving him a widow, the defendant, Catherine Pryor, and a sister, Mrs. Mary Hogan, and also a niece, Bridget Small, the complainant, the child of a sister who predeceased him, as his heirs at law. Mrs. Small filed a bill for partition of the premises against Mrs. Hogan and the widow, claiming an undivided half interest in the premises, subject to the widow's dower. After the filing of the bill, Mrs. Hogan and her husband conveyed to the widow their estate and interest in the premises, and Mrs.

10 Hogan, having subsequently died, the suit has been revived and now proceeds against the widow as the sole defendant. Mrs. Pryor files an answer and cross bill admitting complainant's legal title, but alleging that in equity it is held in trust for her, upon the ground that the property, which was purchased in January, 1870, was bought with her money, and that the deed was made out in her husband's name by mistake, it being the intention of the parties that it should be made in her name. A mortgage to secure \$550 was given to one Mrs. Rafe,

20 an aunt of Mrs. Pryor, shortly after the purchase, to secure the money borrowed by Mrs. Pryor to make or assist in making the purchase, or putting up the building, and the cross bill alleges that the mortgage was subsequently paid by Mrs. Pryor with her own money, earned by her own work. She further alleges that until the death of her husband she supposed the property was in her name. The complainant denies these allegations and claims that the money used for the purchase was the husband's money, that there was no mistake in making

30 the deed in the husband's name, and that the money raised to pay the mortgage was the husband's money. The issues of fact in the case made by the cross bill and replication, are whether the land was purchased with the money of the wife, and whether the deed was made to the husband by mistake. The principal question relates to the source of the money, for if it is clearly proved that the property was purchased with money belonging to the wife as her separate estate, and there is no satisfactory proof that a gift to the husband was intended, the husband, or his estate, must account to the wife for the

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principal at least. *Cole vs. Lee*, 18 *Stew. Eq.* 779, 785 (Err. & App., 1889); *Adone vs. Spencer*, 17 *Dick.*, 782, 793 (Err. & App., 1900). And if the entire purchase money was paid from the wife's separate estate, a resulting trust in her favor would arise in the absence of proof that a gift or loan was intended, and the legal title will be considered to have been taken in trust for the wife, whether the title to the husband was taken intentionally or by mistake. If a trust is satisfactorily established by the proofs, it may be decreed under the general prayer 10 for relief on the cross bill, even though the charge of mistake is not proved. The evidence relating to the circumstances of the purchase and the source of the money comes from the widow herself, and is not satisfactorily corroborated in any important particular. The competency of her evidence on this point, relating, as it did, mainly to statements or transactions with the intestate, was objected to as inadmissible under the statute. *Evidence Act*, Rev. 1900, sec. 4, p. 363. Under the previous 20 decisions controlling the question in this court, and examined by me at some length in *McKinley vs. Coe*, 57 *Atl.* 1030 (1904), it was admitted following *Crimins vs. Crimmins* 16 *Stew.* 86 (Van Fleet V. Ch. 1887), approved by the Court of Errors and Appeals in *Smith vs. Smith* 23 *Vroom* 207, 210 (1889). But, although admissible, evidence of this character which has the effect of disinheriting the heir, must be clear and satisfactorily, and under ordinary circumstances should be corroborated. In the present case, the defendant's evidence is not sufficient to establish a case of trust, by reason either of the 30 purchase of the property, or the subsequent payment of the encumbrance with her own money. The parties were married in the early sixties, the husband at the time of his marriage being an employee of a railroad company, earning about a \$1.50 a day. The wife was a woman earning her own living as a servant or in domestic labor. Neither she nor the husband had any money at the time of the marriage. After the marriage she worked as a laundress for \$1.25 a day. She says that by the time of the purchase she had earned \$500, which she saved, and 40

most of it she put into a bank called "Halsey's Bank." With this money her husband, as she says, bought the lot. The deed is dated January 15, 1870, was recorded January 19, 1870, and the consideration price named in the deed is \$500. Her statement as to the money for the purchasing coming from Halsey's Bank fails wholly of support, and would seem to be altogether a mistake, for it appears by the deposit book, which is produced, that this deposit (amounting in all to (\$637.91) was not made  
 10 until years later (1884-1887), and was closed out on September 10, 1887, about the time when another lot was purchased in the joint names of herself and husband, for \$900. This evidence of the wife that all of the money which went into the purchase was money earned by her and saved, is too indefinite and unsatisfactorily to be made the basis of a decree that her separate estate alone purchased the property, even if money earned by her own labor was, at the time of the purchase, her separate estate. But the purchase of the lot and also the pay-  
 20 ment of the mortgage of \$550 was previous to the statute of 1874, *Genl. St.* 2013, *sec.* 4, giving to a married woman her wages and earnings as her separate property. At the time when these earnings, or any of them, were so invested, the rule of the common law prevailed, and even in equity the earnings of the wife belonged to the husband, unless he had invested himself of them by some clear and distant act, by which he held or engaged to hold them as trustee for the wife's separate use. *Skillman vs. Skillman*, 2 *Beasl.*, Ch. 403, 407, 409; *Green*, Ch. 1861, *addf.* 478, 481 (1863). Payment of her earnings to the wife and her retention of them by her husband's consent, or the investment of them in her name, might, if satisfactorily proved, be sufficient evidence of a gift to divest the husband of his right. *Peterson vs. Mulford*, 7 *Vroom*, 481, 487 (*Err. & App.*, 1873). But in several cases decided in equity while this rule of the common law was in force, it was held that the investment by the wife of money received by her for her earnings, in the purchase of property in the husband's name, or in  
 30 40 the payment of encumbrances on such property, tend to

show that the earnings were not held as her separate estate, but as the common fund for the husband's use or payment of his debts. *In Skillman vs. Skillman*, supra, p. 481, the wife's earnings were used to pay off the mortgage on property in the husband's name, and in *Persons vs. Persons*, 10 C. E. Green, 250, 259 (Zabriskie Ch., 1874), to purchase property in the husband's name.

In the present case the purchase of the lot was undoubtedly made with the intention of building on it a home, and a loan of \$550 for the purpose was procured in February, 1870, from Mrs. Pryor's aunt. To secure this loan the husband gave his bond, the wife not joining, and a mortgage was executed by both. On August 17, 1871, \$375 for principal and interest was paid, the receipt of Mrs. Rafe (the mortgagee) stating it to have been paid by John Pryor. On February 19, 1876, full satisfaction was acknowledged, but the receipt does not state from whom it was received. After Pryor commenced keeping a saloon, in 1880, additions were made to the building, and portions of the premises were rented. The wife says that she earned all the money to make the large addition (about \$1,200) by working out, but there is no corroboration of this, and it seems more probable that the money for the additions came from the business, which was carefully and industrially carried on. The wife's sole evidence is not sufficient to overcome this probability. She assisted the husband in the saloon apparently during the whole time it was carried on, and herself collected the rents. She seems for the most part to have taken charge of the money and to have paid the bills, but the business was the husband's, and her services and assistance of her husband in the business cannot be considered as making the subsequent additions the proceeds of her separate estate. The claim of mistake in the deed is not all made out. The husband from the year 1880 to his death carried on a saloon in the premises, took license annually in his own name, himself made the contracts for additions to the buildings, and purchased the material, insured and was taxed for the property in his own name, and his wife paid both insurance and taxes. I do not give much

- credit to the wife's present statement that she did not know the property stood in her husband's name, especially after he commenced keeping a saloon. The method and exigencies of this business carried on in the husband's name probably required, as both of them knew, that the property also should be in his name. Giving all proper weight to the wife's evidence, I think the case is one which shows that the earnings of both husband and wife contributed to the original purchase of the property
- 10 and the erection of the first building upon the premises, and that after the saloon business was commenced the profits of that business, which was carried on mainly, if not altogether, by the persons alone, was the principal source of their further earnings. The husband, as well as the wife, up to the latter part of his life, at least, appears to have been industrious and saving. A later purchase, made in 1887, was taken in their joint names, and had the purchase now in question been taken in the same manner, it would probably have been more equitable.
- 20 But the question for decision now is, whether when the purchase in question was made, it was made solely with the money or separate estate of the wife, and is therefore equity property held in trust for her by the husband's heirs.

I do not think that there is in this case any such clear and satisfactory proof as will justify finding such trust to exist. The cross bill will therefore be dismissed and a decree for complainant advised on the bill for partition.

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## IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">BETWEEN</p> <p>BRIDGET SMALL, <i>et al.</i>,  <span style="padding-left: 150px;"><i>Complainants,</i></span></p> <p style="text-align: center;">AND</p> <p>CATHERINE PRYOR, <i>et al.</i>,  <span style="padding-left: 150px;"><i>Defendants.</i></span></p>	<p style="text-align: right;">10</p> <p><i>On Bill; etc.</i></p> <p><i>Notice of Application for Decree for Sale.</i></p>
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To Mr. Edward Nugent,  
 Solicitor of Defendants. 20

Dear Sir.

Please take notice that on Wednesday, the eighth day of November, next, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Chancery Chambers, in the City of Newark, I shall apply to his Honor, John R. Emery, the Vice-Chancellor, to whom the above stated cause has been referred, to sign and settle the decree for sale, in the above stated cause. 30

The copy of the proposed decree is herewith submitted to, and served upon you.

Dated October 25, 1905.

Yours respectfully,

P. H. GILHOOLY,  
 Solicitor of Complainants. 40

## IN CHANCERY OF NEW JERSEY.

10	BETWEEN BRIDGET SMALL, <i>et al.</i> , <div style="text-align: right;"><i>Complainants,</i></div>	} <i>On Bill; etc.</i> <i>Decree for Sale.</i>
	AND 	
20	CATHERINE PRIOR (OR PRYOR), <div style="text-align: center;"><i>et al.</i>,</div> <div style="text-align: right;"><i>Defendants.</i></div>	

This cause coming to be heard in the presence of P. H. Gilhooly, of Counsel with the complainants, and it appearing that by a decree and order of this Court it was on the twenty-fifth day of July, nineteen hundred and five, ordered, adjudged and decreed that the complainant, Bridget Small, is seized in fee of and entitled to the undivided one-half part of the lands and premises described

30 in the complainants' bill with the appurtenances subject to the right of dower of Catharine Prior (or Pryor), widow of John Prior (or Pryor), deceased, in the whole premises, and that the defendant, Catharine Prior (or Pryor), is seized of and entitled to the equal and undivided one-half of said premises, and is entitled to dower in the whole of said premises, and it was

And it was further ascertained, declared and adjudged that the complainant, Bridget Small, is entitled to share and participate in the rents, issues and profits of

40 said premises accruing since the twenty-ninth day of

May, nineteen hundred and four, and that by said order and decree it was, amongst other things, ordered that Edward S. Atwater, Esq., one of the Special Masters of this Court, should make his report on the twenty-ninth day of August, nineteen hundred and five, at ten o'clock A. M., at the State House in Trenton, of the matters referred to him by said order, which time of making said report, was duly extended by the order of this Court, to the third day of October, nineteen hundred and five, at ten o'clock in the forenoon, at the State House in Trenton; and said Master having made report accordingly, by which it appears that said lands and premises are so situated that a partition thereof cannot be made without great prejudice to the owners of the same; and that in case of a sale of said premises, under all the circumstances of the case, regard being had to the interests of all the parties, the estate of the defendant, Catharine Prior (or Pryor), as tenant in dower ought not to be excepted from the sale thereof, but that in case of the sale of said premises, her said dower estate or interest should be sold; and that a fair monthly rental of said premises is the sum of twenty dollars, and that the amount chargeable against and due and owing from the defendant, Catharine Prior (or Pryor), unto the complainant, Bridget Small, for her share of the rents, issues and profits of said premises is the sum of one hundred and six dollars and sixty-six cents, and due notice of an application for a decree for the sale of said premises free and discharge from the estate of dower thereinof the said Catharine Prior (or Pryor) having been given to the said Catharine Prior in the manner provided by law and the rules of this court, and no cause being shown or appearing against confirming said report.

It is thereupon, on this twenty-fourth day of October, nineteen hundred and five, by his Honor, William J. Magie, Chancellor of New Jersey, ordered, adjudged and decreed, and the said Chancellor does, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said Master's report in the matters and things therein contained, stand ratified and con-

firmed; and that the parties to this suit hereinafter named are seized of and entitled to the lands and premises described in the complainants' bill, with the appurtenances; and that their respective rights and interests therein are, and they are hereby ascertained, adjudged and declared to be as follows, to wit:

The complainant, Bridget Small, is seized in fee of and entitled to the one undivided one-half part of said premises subject to right of dower of Catharine Prior (or Pryor), widow of John Prior (or Pryor), deceased, in the whole premises.

The defendant, Catharine Prior (or Pryor) is seized in fee of, and entitled to the one undivided one-half part of said premises and dower in the whole of said premises.

And it is further ordered, adjudged and decreed that the defendant, Catharine Prior (or Pryor) is chargeable in favor of the complainant, Bridget Small, and that there is due and owing from the defendant, Catharine Prior (or Pryor) to the complainant, Bridget Small, for her share of the rents, issues and profits of said premises the sum of one hundred and six dollars and sixty-six cents, and that said amount is a lien in favor of the complainant, Bridget Small, against the share of the proceeds of sale which shall accrue to said defendant, Catharine Prior (or Pryor).

And it is further ordered, adjudged and decreed that all and singular the premises mentioned in said bill of complaint and therein described as follows, to wit:

All that tract or parcel of land and premises situate, lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, and which is more particularly known, numbered and designated on a map entitled "Map of Building Lots belonging to William M. Weeks," (now on file in the Register's Office of the County of Essex) as lot numbered four (4) as laid down on said map. Being twenty-five (25) feet front and rear by one hundred and twenty-five (125) feet deep, and being the same premises conveyed to the said John Prior (or Pryor) in his lifetime, by deed of William F. Day and Mary A., his wife, dated January 15, 1870, and

Recorded in Book 44 of Deeds for Union County, pages 81, &c., including the interest in dower of the defendant, Catharine Prior (or Pryor), widow of John Prior (or Pryor), deceased, in the said premises, together with all and singular the hereditaments and appurtenances to the said premises belonging and anywise appertaining, be sold at public vendue to the highest bidder in the presence and under the direction of

one of the special masters of this Court.

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And it is further ordered, that the said master sell the same in such portions as to him may seem most for the interest of the parties; and that he give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statutes in such case provided; and he forthwith, after such sale, make report thereof to this court, and after his report of sale shall have been confirmed by this court, make and execute unto the purchaser or purchasers good and sufficient conveyances in the law for the said real estate; upon their complying with the conditions of such sale; and that such sale and conveyance, or conveyances, duly executed as aforesaid, be valid and effectual forever, and operate as an effectual bar, both at law and in equity, against the said parties, complainants and defendants, and all persons claiming by, from or under them or any of them.

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And it is further ordered that the said parties, or either of them, be at liberty to apply to this court for further directions, if occasion shall require.

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## IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;">• BETWEEN</p> <p>BRIDGET SMALL, <i>et al.</i>,</p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;">AND</p> <p>CATHARINE PRIOR, <i>et al.</i>,</p>	} <i>On Bill; etc.</i> <i>Stipulation.</i>
20	<p style="text-align: right;"><i>Defendants.</i></p>	

Whereas, the defendant, Catharine Prior, has been in the exclusive possession and occupancy of the premises mentioned and described in the bill of complaint, from the twenty-ninth day of May, 1904, until the present time. The building upon said premises consists of a saloon or store on the first or ground floor, and the remainder of said building being dwelling apartments.

And whereas, the said Catharine Prior is the owner of an undivided one-half interest in said premises, and of dower in the entire premises, and the complainant is the owner of an undivided one-half interest in the said premises subject to the dower right of the said Catharine Prior in the entire premises. And whereas a fair and reasonable monthly rental of said premises is the sum of dollars, and the said Bridget Small is entitled to one-third thereof, and the defendant, Catherine Prior is entitled to two-thirds thereof.

It is thereupon stipulated and agreed by and between the said Bridget Small and Catharine Prior as follows:

1. That the said premises mentioned in the bill of complaint in the above stated cause consists of a lot of land on Spring street, in the City of Elizabeth, New Jersey, having a frontage of twenty-five feet and a depth of one hundred and twenty-five feet, upon which tract of land is erected a single building, the ground floor of which was occupied as a saloon and is suitable for store purposes, and the remainder thereof being dwelling apartments. 10

2. That the said Catharine Prior has been in the exclusive occupancy and possession of said premises from the twenty-ninth day of May, 1904, to the present time, and that a fair monthly rental of said premises is the sum of \_\_\_\_\_ dollars.

3. That the said Catherine Prior is chargeable and accountable for the rental of said premises from May 29th, 1904, to September 19th, 1905, being the sum of \_\_\_\_\_ dollars. That of said sum of money the complainant, Bridget Small is entitled to a one undivided third part, and that the said defendant, Catharine Prior, is entitled to two undivided third parts. 20

4. That said premises are so situated that an actual partition or division thereon cannot be made without great prejudice to the owners, and that the same should be sold in one parcel. 30

5. That the decree for sale of said premises shall state that the interest of the defendant, Catharine Prior, is subject to the payment to the complainant, Bridget Small of the sum of \_\_\_\_\_ dollars, and that said sum in money shall be chargeable against the share of the proceeds of which the said Catharine Prior is entitled.

6. That Edward S. Atwater, Esq., the Special Mas- 40

ter, to whom the above stated cause has been referred, shall use the foregoing stipulation without other formal proof of the facts therein stated.

P. H. GILHOOLY,  
Solicitor of Complainant,

EDWARD NUGENT,  
Solicitor of Defendant.

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IN CHANCERY OF NEW JERSEY.

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<p style="text-align: center;">BETWEEN</p> <p>BRIDGET SMALL, <i>et al.</i>,</p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;">AND</p> <p>30 CATHERINE PRIOR (OR PRYOR),</p> <p style="text-align: right;"><i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p><i>On Bill; etc.</i></p> <p style="font-size: 3em; line-height: 1;">}</p> <p><i>Notice of Appeal.</i></p>
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The defendant, Catharine Prior (or Pryor), hereby appeals to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court in the above stated cause, as declares and decrees as follows, namely:

40 That the defendant, Catharine Prior (or Pryor), has

wholly failed in the proof of the matters and things alleged in her answer and cross bill, and that the estate of the complainants in the premises therein described is not subject to the trust in said answer and cross bill set forth, but is good and valid in law and equity.

And ordered, adjudged and decreed that the cross bill of the defendant, Catharine Prior, be and the same is hereby dismissed, that the parties to this suit hereinafter named, are seized of and entitled to the lands and premises described in the complainant's bill, with the appurtenances; and that their respective rights and interests therein are, and they are hereby ascertained, adjudged and declared to be as follows, to wit: The complainant, Bridget Small, is seized in fee of and entitled to the one undivided half part of the said premises, subject to the right of dower of Catharine Prior or Pryor), (widow of John Prior, deceased) in the whole premises. The defendant, Catharine Prior (or Pryor), is seized of and entitled to the one equal undivided half part of said premises, and is entitled to dower in the whole of said premises; and it is further ascertained, declared and adjudged that the complainant, Bridget Small, is entitled to receive as her share in the rents, issues and profits of said premises accruing since the twenty-ninth day of May, nineteen hundred and four, being the date of the death of said John Prior, the one-half part thereof, being the sum of one hundred and six dollars and sixty-six cents, together with the one-half part of the rents, issues and profits of said premises accruing between the date of this decree and the sale of said premises hereunder, at the rental value of twenty dollars per month; and it is further ordered, adjudged and decreed that the sums of money due as aforesaid unto the complainant Bridget Small, for the rents, issues and profits of said premises are a lien upon the proceeds of sale of the share of the said Catharine Prior (or Pryor), in the said premises, and that the same be paid thereout.

And it is further ordered, adjudged and decreed that all and singular the said premises mentioned in the said bill of complaint, and therein described as follows,

to wit: All that tract or parcel of land and premises situate, lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, and which is more particularly known, numbered and designated on a map entitled "Map of Building Lots belonging to William M. Weeks," (now on file in the Register's office of the County of Essex) as lot numbered four (4) as laid down on said map. Being twenty-five (25) feet front and rear by one hundred and twenty-five (125) feet deep, and being the same premises conveyed to the said John Prior (or Pryor) in his lifetime by deed of William F. Day and Mary A., his wife, dated January 15, 1870, and recorded in Book 44 of Deeds for Union County, page 81, &c., including the estate and interest in dower of the defendant Catharine Prior (or Pryor), widow of John Prior (or Pryor), deceased, in the said premises, together with all and singular the hereditaments and appurtenances to the said premises belonging or in anywise appertaining, be sold at public vendue, to the highest bidder in the presence and under the direction of George T. Parrot, one of the Special Masters of this Court.

And it is further ordered, that the said Master sell the same in such portions as to him may seem most for the interest of the parties; and that he give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statutes in such case provided; and that he forthwith after such sale, make report thereof to this court, and after his report of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers good and sufficient conveyances in the law for the said real estate, upon their complying with the conditions of such sale; and that such sale and conveyance or conveyances, duly executed as aforesaid, be valid and effectual forever, and operate as an effectual bar, both at law and in equity, against the said parties complainant and defendant, and all persons claiming by, from and under them, and that he bring into Court and pay to the clerk thereof the portion of the moneys arising from the sale of the estate, share and interest of the defendant, Catharine Prior (or

Pryor), which is subject to the payment by said defendant to the complainant, Bridget Small, of her share in the rents, issues and profits of the said premises amounting to one hundred and six dollars and sixty-six cents, together with the rents thereof accruing from the date of this decree to the sale hereunder of said premises, at the rental value of twenty dollars per month, after deducting the portion of the costs, charges and expense to which it shall be liable.

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Dated December 19, 1905.

SAMUEL SCHLEIMER,  
Solicitor of Defendant, Catharine Prior (or Pryor).

EDWARD NUGENT,  
Of Counsel.

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

EDWARD NUGENT, 20  
Of Counsel with defendant, Catharine Prior (or Pryor.)

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

The petition of Catharine Prior (or Pryor), the ap- 30  
pellant in the above stated cause, respectfully shows:

That your petitioner finds herself aggrieved by a  
final decree made in the Court of Chancery by his Honor,  
William J. Magie, Chancellor of New Jersey, bearing  
date the twenty-fourth day of October, in the year one  
thousand nine hundred and five, wherein the said Bridget  
Small, et al., were complainants, and the said Catharine  
Prior (or Pryor) were defendants, in this respect, to wit:

That the defendant, Catharine Prior (or Pryor), has  
wholly failed in the proof of the matters and things alleged 40

in her answer and cross bill, and that the estate of the complainants in the premises therein described is not subject to the trust in said answer and cross bill set forth, but is good and valid in law and equity.

And ordered, adjudged and decreed that the cross bill of the defendant, Catharine Prior, be and the same is hereby dismissed and that the parties to this suit hereinafter named, are seized of and entitled to the lands and premises described in the complainant's bill, with the appurtenances; and that their respective rights and interests therein are, and they are hereby ascertained, adjudged and declared to be as follows, to wit: The complainant, Bridget Small, is seized in fee of and entitled to the one undivided half part of the said premises, subject to the right of dower of Catharine Prior (or Pryor), (widow of John Prior, deceased) in the whole premises.

The defendant, Catharine Prior (or Pryor), is seized of and entitled to the one equal undivided half part of said premises, and it entitled to dower in the whole of said premises; and it is further ascertained, declared and adjudged that the complainant, Bridget Small, is entitled to receive as her share in the rents, issues and profits of said premises accruing since the twenty-ninth day of May, nineteen hundred and four, being the date of the death of said John Prior, the one-half part thereof being the sum of one hundred and six dollars and sixty-six cents, together with the one-half part of the rents, issues and profits of said premises accruing between the date of this decree and the sale of said premises hereunder, at the rental value of twenty dollars per month; and it is further ordered, adjudged and decreed that the sums of money due as aforesaid unto the complainant, Bridget Small, for the rents, issues and profits of said premises are a lien upon the proceeds of sale of the share of the said Catharine Prior (or Pryor) in the said premises, and that the same be paid thereout.

And it is further ordered, adjudged and decreed that all and singular the said premises mentioned in the said bill of complaint, and therein described as follows, to wit:

40 All that tract or parcel of land and premises situate,

lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, and which is more particularly known, numbered and designated on a map entitled "Map of Building Lots belonging to William M. Weeks," (now on file in the Register's office of the County of Essex) as lot numbered four (4) as laid down on said map. Being twenty-five (25) feet front and rear by one hundred and twenty-five (125) feet deep, and being the same premises conveyed to the said John Prior (or Pryor) in his lifetime by deed of William F. Day and Mary A., his wife, dated January 15, 1870, and recorded in Book 44 of Deeds for Union County, page 81, &c., including the estate and interest in dower of the defendant, Catharine Prior (or Pryor), widow of John Prior (or Pryor), deceased, in the said premises, together with all and singular the hereditaments and appurtenances to the said premises belonging or in anywise appertaining, be sold at public vendue, to the highest bidder in the presence and under the direction of George T. Parrot, one of the Special Masters of this Court.

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And it is further ordered that the said Master sell the same in such portions as to him may seem most for the interest of the parties; and that he give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statutes in such case provided; and that he forthwith after such sale make report thereof to this Court, and after his report of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers good and sufficient conveyances in the law for the said real estate, upon their complying with the conditions of such sale; and that such sale and conveyance or conveyances, duly executed as aforesaid, be valid and effectual forever, and operate as an effectual bar, both at law and in equity, against the said parties, complainant and defendant, and all persons claiming by, from and under them, and that he bring into Court and pay to the clerk thereof the portion of the moneys arising from the sale of the estate, share and interest of the defendant, Catharine Prior (or Pryor), which is subject to the payment by said

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defendant to the complainant, Bridget Small, of her share in the rents, issues and profits of the said premises amounting to one hundred and six dollars and sixty-six cents, together with the rents thereof accruing from the date of this decree to the sale hereunder of said premises, at the rental value of twenty dollars per month, after deducting the portion of the costs, charges and expenses to which it shall be liable.

10 And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that it did not appear by the pleadings and proofs in said cause that the said Bridget Small is seized in fee of and entitled to one undivided half part of said premises, subject to the right of dower of Catharine Prior (or Pryor), widow of John Prior (or Prior), deceased, in the whole premises.

20 And the defendant, Catharine Prior (or Pryor), is seized of and entitled to the one equal undivided half part of the said premises, and is entitled to dower in the whole of said premises, and that the said Bridget Small is entitled to receive as her share in the rents, issues and profits of said premises accruing since the twenty-ninth day of May, nineteen hundred and four, being the sum of one hundred and six dollars and sixty-six cents, together with the one-half part of the rents, issues and profits of said premises, accruing between the date of this decree and the sale of the said premises hereunder at the rental of twenty dollars per month, and that the said sums  
30 of money due to the complainant, Bridget Small, for the rents, issues and profits of said premises are a lien upon the proceeds of said sale, and the share of the said Catharine Prior (or Pryor), in the said premises, and that the same be paid thereout.

And that the said premises be sold at public vendue to the highest bidder, and that said decree should not have adjudged that the cross bill of the defendant, Catharine Prior (or Pryor), be dismissed and should not have decreed that the said Bridget Small is seized of and entitled to any right and interest in said premises, and that  
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the said decree should not have directed that the said Bridget Small receive from said premises any sums of money, or that any sum of money is due her, and is a lien upon the same.

And for that said decree should not have directed that the said premises be sold and out of the proceeds thereof part of the same, or any part thereof be paid to the said Bridget Small.

Your petitioners 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 petitioners may have such relief in the premises as to this Honorable Court shall seem meet. 10

SAMUEL SCHLEIMER,  
Solicitor of Appellant.

EDWARD NUGENT,  
Of Counsel with Appellant. 20

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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10	<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">CATHARINE PRIOR (OF PRIOR), <i>Appellant,</i></p> <p style="text-align: center;">(Defendant below),</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">BRIDGET SMALL, <i>et al.,</i> <i>Respondents,</i></p> <p style="text-align: center;">(Complainants below),</p>	<p style="text-align: center;">} <i>On Appeal.</i></p> <p style="text-align: center;">} <i>Answer to Petition of Appeal.</i></p>
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The answer of Bridget Small, one of the above-named respondents, to the petition of appeal of the above-named appellant.

30 This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the twenty-fourth day of October, A. D. nineteen hundred and five, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes, that the said decree is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

P. H. GILHOOLY,  
Solicitor for and of Counsel with Respondents.

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