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Notice of Appeal.

(Filed July 13, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,
and
WILLIAM KINNAUGH and CATHERINE V. CLARK,
Defendants.

On Bill, etc.

The complainant, James Clark, appeals to the Court of Errors and Appeals in the Last Resort in All Causes, from so much of the final decree made in the above entitled cause on the 21st day of July, nineteen hundred and twenty-four, as orders, adjudges and decrees that the bill of complaint be dismissed, and from so much of said final decree as orders, adjudges and decrees that the defendant William Kinnaugh, convey to the defendant, Catherine V. Clark, the lands and premises described in the bill of complaint in this cause upon release of the said William Kinnaugh from all obligations assumed by him by way of bond and mortgage.

Dated, July 6, 1925.

ALEX. SIMPSON,
Solicitor for and of Counsel with Complainant.

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

ALEX. SIMPSON,
of Counsel with Complainant.

Petition on Appeal.

(Filed July 13, 1925.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

JAMES CLARK, Complainant-Appellant, v. WILLIAM KINNAUGH and CATHERINE V. CLARK, Defendants-Appellees.	On Appeal from Court of Chancery.

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of James Clark, the appellant, in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Hobert Walker, Chancellor of the State of New Jersey, bearing date July 21, 1924, in a certain cause in said Court of Chancery, wherein said James Clark was complainant and the said William Kinnaugh and Catherine V. Clark, were defendants, in this respect, to wit, that the said decree orders, adjudges and decrees that the bill of complaint be dismissed and orders, adjudges and decrees that the defendant, William Kinnaugh convey to the said Catherine V. Clark, the lands and premises described in the bill of complaint in this cause, upon release of the said William Kinnaugh from all obligations assumed by him by way of bond and mortgage.

And petitioner appeals from the decree of the

Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the complainant's bill of complaint should not have been dismissed and it should not have been adjudged and decreed that the defendant, William Kinnaugh convey to the defendant, Catherine V. Clark, the lands and premises described in the bill of complaint in said cause upon release of the said William Kinnaugh from all obligations assumed by him by way of bond and mortgage but that it should be adjudged and decreed that the defendants, William Kinnaugh and Catherine V. Clark hold the lands and premises described in the bill of complaint in trust for the said complainant and be directed to convey the said lands and premises to complainant and to account to complainant for all of the rents, issues and profits thereof for all of the period during which said lands were so held in trust by the said defendants or either of them.

Petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this court shall seem proper.

ALEX. SIMPSON,
Solicitor for and of Counsel with Appellant.

Answer to Petition of Appeal.

(Filed July 21, 1925.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

JAMES CLARK, Complainant-Appellant, v. WILLIAM KINNAUGH and CATHERINE V. CLARK, Defendants-Appellees.	On Appeal from the Court of Chancery.

The answer of William Kinnaugh and Catherine V. Clark, the above named appellees, to the petition of appeal of James Clark, the above named appellant.

These appellees, not admitting the truth of all or any of the matters in said petition of appeal contained for answer thereto nevertheless admit that a decree was on the 21st day of July, 1924, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purpose of said petition mentioned and as therein set forth; but as to the substance and form of said decree these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be confirmed with costs to be taxed in favor of these appellees.

PORTER, ZINK & LAFFERTY,
Solicitors for and of Counsel with Appellee,
William Kinnaugh.

LINDABURY & STEELMAN,
Solicitors for and of Counsel with Appellee,
Catherine V. Clark.

Bill of Complaint.

(Filed May 24, 1923.)

IN CHANCERY OF NEW JERSEY.

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

The complainant, James Clark, of Hoboken, New Jersey, respectfully shows that:

1. On June 25, 1919, and prior thereto, complainant was the owner and seized in fee of the following described tracts of lands and premises in the City of Hoboken, in the County of Hudson and State of New Jersey, to wit:

ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken in the County of Hudson and State of New Jersey,

FIRST TRACT—All that certain lot, tract or parcel of land and premises hereinafter particularly described situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which is known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors New York" and filed in the office of the Clerk of the County of Hudson, as lot number thirty-one (31) in Block number one hundred and two (102) fronting and facing on the westerly side or line of Madison Street as shown on

said Map, and being twenty-five feet wide in front and rear and one hundred feet deep on each side, as by reference to said map will more fully appear.

Being the same premises conveyed to the said James Clark by Ellen Cavanagh and husband by deed dated March 13, 1917, and recorded in Book 1252 of Deeds for Hudson County, on page 137.

SECOND TRACT.—All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, which upon a certain map entitled "Map of property, situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, and laid out into lots November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York" on file in the office of the Clerk (now Register) of the said County of Hudson, is known, laid down and designated as lot number six (6) in Block number twenty-one (21).

Being the same premises conveyed to the said James Clark by Joseph Jeger and wife by deed dated May 1st, 1917, and recorded in Book 1257 of Deeds for Hudson County, page 280.

THIRD TRACT.—All that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, is known and described as follows: Commencing at a point in the northerly line of Newark Avenue distant

fifty-five feet westerly from the northwesterly corner of Newark Avenue and Willow Avenue (formerly called Willow Street, and running northerly and parallel with Willow Avenue (formerly called Willow Street) forty-three feet eight inches; thence westerly and at right angles to Willow Avenue (formerly called Willow Street) ten feet; thence northerly and parallel with Willow Avenue (formerly called Willow Street) nineteen feet; thence westerly and at right angles to Willow Avenue formerly called Willow Street) fifteen feet; thence southerly and parallel with Willow Avenue formerly called Willow Street) seventy-four feet one inch, to the northerly line of Newark Avenue; thence easterly and along the northerly side of Newark Avenue twenty-seven feet and six inches to the point or place of beginning.

FOURTH TRACT.—ALSO: All that certain lot, tract or parcel of land and premises situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which is known and distinguished upon a certain Map entitled "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, surveyed and laid out into lots by Daniel Ewen, Austin D. Ewen, City Surveyors, New York, Nov. 1860", on file in the office of the Register of said County of Hudson as the front part of lot number 4 (four in block number 21 (twentyone) and more particularly described as follows, viz:

BEGINNING at a point in the northerly line of Newark Street distant eighty-two (82) feet

and six (6) inches westerly from the northwesterly corner of Willow Avenue and Newark Street, running thence westerly and along the northerly line of Newark Street, twenty-seven (27) feet and six (6) inches; thence northerly and parallel with Willow Avenue eighty-five (85) feet and five (5) inches; thence easterly at right angles to Willow Avenue twenty-five (25) feet; and thence southerly and parallel with Willow Avenue seventy-four (74) feet and one (1) inch to the northerly line of Newark Street to the point or place of beginning. Said third and fourth tracts being the same premises conveyed to the said James Clark by Celia Rosenberg and husband by deed dated September 27, 1917, and recorded in Book 1267 of Deeds for Hudson County, page 146.

FIFTH TRACT.—All that certain tract, piece or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey and which is known and distinguished upon a certain map entitled "Map of property situate, at Hoboken, Hudson County, New Jersey, belonging to John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen, Austin D. Ewen, City Surveyors, New York", filed in the office of the Clerk of the said County of Hudson, and being part of lot number six (6) in block number two (2), and which said lot is bounded and described as follows: that is to say:

BEGINNING at a place in the southerly line of Newark Avenue distant two hundred

and sixteen (216) feet northeasterly from the corner formed by the intersection of the southerly line of Newark Avenue by the northerly line of Ferry Street and running thence southerly and at right angles to Newark Avenue eighty-five 60/100 feet more or less to the line of land of the Hoboken Land and Improvement Company, thence easterly and Improvement Company twenty-five (25) along the line of land of said Hoboken Land feet more or less to the easterly line of said lot number six (6); thence northerly eighty-five 28/100 feet more or less to the southerly line of said Newark Avenue, and thence southwesterly along the said southerly line of Newark Avenue twenty-five (25) feet to the place of beginning. Being the same premises conveyed to James Nealon by Peter Kerrigan and Catherine, his wife, by deed dated April 8th, 1880; and recorded April 12, 1880, in Deed Book 345, page 243, &c., Hudson County Register's office; and also: ALL that certain piece, or lot of land, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, described as follows, viz:

COMMENCING at a point in the northerly line of Ferry Street which point is there the line dividing lots numbered six (6) and seven (7) in Block Number Two (2) on the "Map of the property of the Estate of John G. Coster, decd. if it were continued southerly in a straight line could strike the northerly line of Ferry Street, and from said point of commencement running thence westerly along the northerly line of Ferry Steet about twenty-seven (27) feet and forty-five hundredths

(45/100) of a foot to where the line dividing lots five and six in said Block if continued southerly in a straight line would strike said northerly line of Ferry Street; thence Northerly in range with said line between said lot five (5) and six (6) about eight feet and fifty-eight one hundredths of a foot (58/100) more or less to the line of property now or late of John C. Coster, decd., thence easterly along said Coster line twenty-five (25) feet; thence southerly and in continuation of line between lots six (6) and seven (7) twenty (20) feet and six (6) inches more or less to the northerly line of Ferry Street and the point or place of beginning. Being the same premises conveyed to the said James Clark by Caroline W. Clarke and husband, by Deed dated March 25, 1918, and recorded in Book 1276 of Deeds for Hudson County, page 370.

2. On said June 25, 1919, complainant and his wife, Catherine V. Clark, were and still are the owners as tenants by the entirety of the premises known as street number 120 Park Avenue, in the City of Hoboken, aforesaid.

3. On said June 25, 1919, complainant was the owner of a garage business conducted by him on the premises known as Nos. 413 and 415 Newark Street, in the City of Hoboken aforesaid. The title to a portion of said premises, to wit, No. 413 Newark Street, was vested in complainant, being the same premises described as the Fifth Tract in paragraph 1 of this bill of complaint. The title to the premises No. 415 Newark Street was then vested in Swift & Company, a corporation from whom complainant leased the same with an option

to purchase for the sum of $4,000, which option was still in force on June 25, 1919, and which lease and option to purchase was, as hereinafter set forth, further extended.

4. Prior to June 25, 1919, complainant had been convicted in the District Court of the United States, for the District of New Jersey, of an offense against the federal laws, and had been sentenced to be confined in the Maryland Penitentiary, in Baltimore, for a term of five years, and on June 25, 1919, was confined in the Essex County (New Jersey) Jail awaiting transfer to said penitentiary.

5. Complainant, after the aforesaid prison sentence, and while he was confined in the Essex County Jail awaiting transfer to the Maryland Penitentiary at Baltimore, Maryland, was frequently visited by his wife, Catherine V. Clark, who on several occasions, discussed with him the several mortgages and other encumbrances against his real estate, and suggested that while he was serving his aforesaid prison sentence it might become necessary to renew said mortgages and look after the discharge of the various encumbrances against his said property, and inquired of him as to whether he would be willing to transfer his said property to her, and he informed her that he would not do so. Complainant, shortly thereafter, while confined in said jail, was visited by an attorney at law, who stated that he called in behalf of complainant's wife, and who inquired of complainant as to whether he would be willing to convey his property to his said wife, and complainant informed said attorney, as he had previously informed his wife, that he would not do so. Shortly thereafter complainant's wife and his son Frank

Clark inquired of complainant as to whether he would be willing to convey his aforesaid property to William Kinnaugh, in trust for complainant, and complainant having been quite intimately acquainted with the said William Kinnaugh for a period of more than twenty years, and believing that he could place implicit trust in him, made known to his said wife and son that he would be willing to convey his aforesaid property to said William Kinnaugh, in trust for him, under conditions whereby said William Kinnaugh could, while complainant was serving his aforesaid prison sentence, look after complainant's real estate, renew mortgages thereon whenever necessary, and generally to care therefor in the same manner as complainant might do if he were free to look after his business affairs. Shortly thereafter complainant was visited by a representative of the aforesaid attorney who made inquiry of complainant as to the conditions under which he desired to convey his property to said William Kinnaugh. Complainant thereupon made known to said representative that he could not make a conveyance to said William Kinnaugh of the property Nos. 304 and 306 Newark Street, in the City of Hoboken, aforesaid, for the reason that said properties were in litigation, and in the hands of a receiver; and that he could not make a conveyance of the property known as No. 120 Park Avenue, Hoboken, New Jersey, for the reason that the title thereto was vested in the names of complainant and his said wife, Catherine V. Clark, but complainant informed said representative that it was his purpose to convey to said William Kinnaugh the properties known as No. 310 Newark Street, Hoboken, New Jersey, No. 1102 Madison Street, Hoboken, New Jersey, and No. 413 Newark Street,

Hoboken, New Jersey, to hold in trust for complainant, and to collect the rents, issues and profits thereof and pay therefrom all taxes, water rents, fire insurance premiums, interest on mortgages, and other proper charges against said real estate, and to keep said property in a good state of repair, and to reconvey the said premises to complainant upon complainant's release from the Maryland Penitentiary, and in the event of complainant's death prior to his release from said penitentiary, to convey the said property to complainant's four children, to wit, Mary Clark, Margaret Clark, Frank Clark and Rita Clark. Complainant further informed the said representative that it was his purpose and desire that the said William Kinnaugh should conduct complainant's garage business at Nos. 413 and 415 Newark Street, Hoboken, New Jersey, during the term of his imprisonment, and pay from the rents, issues and proceeds of complainant's said real estate, and the receipts from the aforesaid garage business, the sum of $20.00 per week to complainant's wife, Catherine V. Clark, towards her support and maintenance. Complainant further informed said representative that he had a lease from Swift & Company for a portion of the premises upon which complainant's garage business was being carried on, with an option to purchase the lands and premises mentioned in said lease for the sum of $4,000. On the day following the date upon which complainant gave the aforesaid instructions to the representative of the aforesaid attorney, the said representative again called at the Essex County Jail and presented to complainant a typewritten paper reciting, as complainant presumed, the aforesaid purposes, which paper, at the request of said representative, complainant signed. Com-

plainant thereupon requested that said representative furnish him with a copy of said paper writing, and said representative agreed to furnish complainant therewith. Complainant, however, has never received a copy thereof, although he has often made demand upon the aforesaid parties therefor. Thereafter, on the 27th day of June, 1919, the aforesaid attorney again visted complainant at the Essex County Jail, and at this time presented to complainant a paper writing, purporting to be a deed of conveyance from complainant to said William Kinnaugh, of his aforesaid real estate, which complainant presumed was conditioned as aforesaid, and which complainant signed and acknowledged before said attorney. Complainant, at said time, was unacquainted with legal forms, and unskilled in legal matters, and was ignorant of the legal effect of the papers signed and executed by him as aforesaid, and believed the aforesaid paper writing effected the purpose of complainant transferring to said William Kinnaugh complainant's aforesaid real estate, under the aforesaid conditions of trust. Complainant, in the aforesaid transactions, was without the aid, assistance or advice of counsel or of any person or persons skilled in the law and acted entirely without independent advice. While complainant was confined in the Maryland Penitentiary he received by mail a letter from his wife's aforesaid attorney informing him that the aforesaid William Kinnaugh was about to exercise, on complainant's behalf, the aforesaid option to purchase from Swift & Company the premises No. 415 Newark Street, Hoboken, New Jersey, for the aforesaid sum of $4,000, and that in order to effectuate such purpose, it would be necessary for complainant to execute an assignment of his aforesaid lease and option to said William Kin-

naugh, and complainant in accordance therewith executed an assignment of the aforesaid lease and option to purchase (which instrument had been forwarded to him by said attorney for execution) to the said William Kinnaugh, and forwarded the same to the aforesaid attorney.

6. Complainant was released from the Maryland Penitentiary on March 7th, 1921, and upon his return to the City of Hoboken was informed by said William Kinnaugh that he, the said William Kinnaugh, had on or about August 4th, 1919, executed a certain paper writing wherein, among other things, it was declared that upon complainant's release from the Maryland Penitentiary that he, the said William Kinnaugh would convey complainant's aforesaid property, and the premises acquired by purchase from Swift & Company under complainant's aforesaid option of purchase, to complainant's wife, Catherine V. Clark, and complainant then and there remonstrated with said William Kinnaugh and charged him with being unfaithful to the trust which he had confided in him.

7. Complainant thereupon caused an examination to be made of the records of the Register's Office of the County of Hudson, and as a result thereof was informed that there was recorded in said office, on August 5th, 1919, in Book 1326 of deeds for Hudson County, on page 17, a certain paper writing bearing date June 25th, 1919, purporting to be a deed made by complainant, and Catherine V. Clark, his wife, to said William Kinnaugh, conveying in fee, to said William Kinnaugh, all of the premises described in paragraph 1 of this bill of complaint, and said deed purports to have

been acknowledged by complainant on June 25th, 1919, and by complainant's aforesaid wife on August 4th, 1919, before one of the Masters in Chancery of New Jersey, as appears by the record of the certificate of acknowledgment to said deed. Complainant was further informed that there was recorded in the Register's Office of the County of Hudson on March 8th, 1921, in Book 1392 of Deeds for said county on page 428, a certain other paper writing signed and acknowledged by the aforesaid William Kinnaugh, bearing date August 4, 1919, purporting to be a declaration of the trusts and purposes for which the conveyance was made by complainant to said William Kinnaugh, while complainant was confirmed in the Essex County Jail, as aforesaid, and as hereinabove mentioned. Complainant was further informed that said paper writing contains the following recital:

> "At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term or imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, *of* the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the *tents,* issues and profits received by me on account of the properties herein mentioned and referred to."

A copy of said paper writing is hereto annexed and made part hereof and marked Exhibit "A".

8. Complainant is advised by counsel that the deed of conveyance executed by him to said William Kinnaugh, for the purposes and trusts hereinabove mentioned, should have contained therein an express recital of the purposes and trusts which served as the basis for such conveyance, or, in lieu thereof, that the aforesaid purposes and trust, which served as the basis for such conveyance, should have been expressly declared in a paper writing made contemporaneously with complainant's aforesaid deed of conveyance, and executed by the said William Kinnaugh contemporaneously therewith, and forthwith recorded in the Register's Office of the County of Hudson.

9. Complainant says that the aforesaid pretended declaration of trust, executed by the said William Kinnaugh, and recorded in the Register's Office of the County of Hudson, does not truly set forth the purposes and trusts which served as the basis and consideration for the conveyance by complainant to said William Kinnaugh, of complainant's aforesaid property.

10. Complainant further says that he has been advised by counsel that an examination of the records of the Register's Office of the County of Hudson decloses a certain deed made by John Magner, Sheriff of the County of Hudson, to the aforesaid William Kinnaugh, bearing date July 12th, 1920, recorded July 28th, 1920, in Book 1364 of deeds for Hudson County on page 548, conveying to said William Kinnaugh the premises described as the Second Tract in paragraph 1 of this bill of complaint, for the consideration therein expressed of the sum of $2,000, which said deed was made as therein recited by virtue of a writ of ex-

ecution issued out of the Court of Chancery of New Jersey in a certain foreclosure suit wherein one Mina Immen was complainant and this complainant, James Clark, and Catherine V. Clark, his wife, and others, were defendants. That said records disclose also a certain mortgage for the sum of $5,000 made by the said William Kinnaugh to Steneck Trust Company, dated July 12th, 1920, and recorded in Book 1015 of mortgages for Hudson County on page 388, covering the premises mentioned and described in the aforesaid deed made by John Magner, Sheriff of the County of Hudson, to William Kinnaugh. The said records also disclose a certain other deed made by William Kinnaugh to Catherine Clark, bearing date July 12th, 1920, recorded July 28th, 1920, in Book 1364 of deeds page 552, conveying the same premises mentioned in the aforesaid mortgage and deed, in which said last mentioned deed it is recited that the conveyance is made subject to a mortgage of $5,000 held by the Steneck Trust Company. That said records also disclose a deed made by Swift & Company, a corporation of the State of Illinois, to William Kinnaugh, bearing date August 2nd, 1920, and recorded September 23rd, 1920, in Book 1378 of deeds, on page 161, of the following described premises:

"All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Hoboken, County of Hudson and State of New Jersey, and which on a certain map entitled "Map of property situated in Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, surveyed and laid out into lots 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New

York", and laid down and designated as lot No. 5 in block 2 and extending through the block from Newark Avenue to Ferry Street."

11. Complainant is advised by counsel that the records of the Register's Office of the County of Hudson evidence that the title to the First Tract, Third Tract, Fourth Tract and Fifth Tract of lands and premises described in paragraph 1 of this bill of complaint are still vested in the aforesaid William Kinnaugh, and that the title to the lot of land purchased from Swift & Company, hereinabove mentioned, is also vested in the aforesaid William Kinnaugh, and that the title to the Second Tract of land and premises described in paragraph 1 of this bill of complaint is now vested in the name of Catherine Clark, under and by virtue of the conveyance thereof to her by said William Kinnaugh, as hereinabove mentioned.

12. Complainant, after his release from the Maryland Penitentiary, since his return to the City of Hoboken, and his discovery of the provisions of the aforesaid paper writing purporting to be a declaration of trust made by the said William Kinnaugh, and his discovery that the title to the lands and premises as the First Tract, Third Tract, Fourth Tract and Fifth Tract in paragraph 1 of this bill of complaint, and the title to the lands and premises conveyed by Swift & Company to said William Kinnaugh, as hereinabove set forth, are of record in the name of said William Kinnaugh, has, by himself and his agents and attorneys, frequently, and in a friendly manner, made demand upon the said William Kinnaugh, to convey to complainant the aforesaid lands and premises, but that the said William Kinnaugh has hitherto re-

fused and still refuses to convey same to complainant, and the said William Kinnaugh claims that said lands and premises are held by him in trust for the uses and purposes set forth in the aforesaid paper writing, purporting to be a declaration of trust, bearing date August 4th, 1919, a copy whereof is hereto annexed and marked Exhibit "A", and said William Kinnaugh has threatened to convey said lands and premises to complainant's wife, Catherine V. Clark.

13. Complainant, since his discovery that the title to the tract of land and premises described as the Second Tract in paragraph 1 of this bill of complaint, is of record in the name of complainant's wife, Catherine V. Clark, by means of a deed of conveyance made to her by said William Kinnaugh, has by himself and his agents and attorneys, frequently and in a friendly manner requested the said Catherine V. Clark to convey to complainant the said lands and premises, but said Catherine V. Clark has hitherto refused and still refuses so to do.

14. From about June 27th, 1919, to about November 1, 1921, the aforesaid William Kinnaugh conducted for complainant, by arrangement made with him therefor as hereinabove mentioned, complainant's garage business at Nos. 413 and 415 Newark Street, in the City of Hoboken aforesaid, and collected and received all of the income and profits of said business, and throughout the aforesaid time the said William Kinnaugh, and complainant's wife, Catherine V. Clark, acting as agent for said William Kinnaugh, have collected all of the rents, issues and profits of all of the lands and premises described in paragraph 1 of this bill

of complaint, and since November 1, 1921, have collected all of the rents, issues and profits of all of the lands and premises described as the First Tract, Second Tract, Third Tract and Fourth Tract of paragraph 1 of this bill of complaint, and have paid therefrom certain judgments against complainant which were liens upon said lands and premises, and have also paid certain taxes and water rents assessed against said lands and premises, and have also paid interest on certain bonds and mortgages which were liens upon said lands and premises, and have also paid the operating charges and expenses and disbursements incident to the conduct of complainant's aforesaid garage business, the amount and particulars whereof, however, being unknown to complainant.

15. The conveyance hereinabove mentioned, recorded in Book 1326 of deeds for Hudson County on page 17, which purports to have been made by complainant and Catherine V. Clark, his wife, to the aforesaid William Kinnaugh, was wholly without consideration, and is void and of no force and effect.

16. The lands and premises described in the aforesaid deed made by Swift & Company to William Kinnaugh, dated August 2nd, 1920, and recorded in Book 1378 of Deeds for Hudson County on page 161, were acquired by the said William Kinnaugh with moneys borrowed by him therefor from one David Gross, the payment whereof was secured to be paid by his bond, and a mortgage to secure the same covering the premises so acquired and other premises in said mortgage bearing date September 20th, 1920, and recorded in Book 1019 of Mortgages for Hudson County on page 472, more

particularly mentioned. And complainant says that said William Kinnaugh has no beneficial right, title or interest in or to said lands, and that he holds the same in trust for this complainant.

17. Complainant on or about November 1, 1921, took over from the said William Kinnaugh the conduct of the aforesaid garage business and continued to conduct the same and collected and received the profits thereof until June 1, 1922, when complainant sold said garage business to one Daniel J. Wright for the consideration of $5,000 which was paid as follows, to wit: $1,500 thereof was retained by the said Daniel J. Wright for the purpose of making the following repairs to the garage premises: New concrete on garage floor and driveway; $3,500, by a series of 70 promissory notes in the sum of $50.00 each made by the said Daniel J. Wright to complainant and payable on the first and fifteenth days of each month. Upon complainant making sale of said garage business to the said Daniel J. Wright, complainant executed and delivered to said purchaser a lease of the premises Nos. 413 and 415 Newark Street, Hoboken, New Jersey, whereon said garage business is conducted, for the term of five years from June 1, 1922, at the yearly rental of $3,000 payable in semi-monthly payments of $125,000 each on the first and fifteenth days of each month, which said rental the complainant has since collected and received from said Daniel J. Wright.

18. The sale of the aforesaid garage business by complainant to said Daniel J. Wright, and the execution and delivery by complainant to said Daniel J. Wright of the lease of the lands and premises whereon the said garage business is conducted, and

the collection of the rents by complainant from said Daniel J. Wright, as hereinabove mentioned, were with the knowledge of said William Kinnaugh and complainant's wife, Catherine V. Clark.

19. Since complainant took over the conduct of the aforesaid garage business in November, 1921, and since the sale of said garage business and the lease of the premises whereon such business is conducted, the complainant has paid in principal and interest on account of the aforesaid mortgage of $5,500.00 made by said William Kinnaugh to David Gross, the sum of $2,443.92, the sum of $2,300.00 representing principal, and has also paid to the City of Hoboken arrears of water rents on said garage premises amounting to $91.00, and has also paid fire insurance premiums on the buildings Nos. 413 and 415 Newark Street amounting to $92.10.

20. Complainant has been informed and verily believes that there are arrears of taxes against the aforesaid lands and premises which have not been paid by the said William Kinnaugh or the said Catherine V. Clark, from the rents, issues and profits of said lands and premises, and complainant fears that if the said arrears of taxes are not promptly paid, the City of Hoboken will, pursuant to the authority of the statute in such case made and provided, make sale of said property to satisfy the amount of such tax arrears.

21. Complainant, since his release from the Maryland Penitentiary, and his return to the City of Hoboken, as aforesaid, has repeatedly sought an accounting from the aforesaid William Kinnaugh of the moneys received by him, as complainant's

trustee, in the conduct of the aforesaid garage business, and of the disbursements made in connection therewith, but said William Kinnaugh, although promising, from time to time, to make an accounting therefor with complainant, has not done so. Complainant has also sought an accounting from said William Kinnaugh and from complainant's wife, Catherine V. Clark, of the rents received by them and each of them from the aforesaid lands and premises hereinabove mentioned, and of their disbursements therefrom for taxes, water rents, insurance premiums, repairs and other proper charges, but the said William Kinnaugh, and the said Catherine V. Clark, although repeatedly promising to render such accounting to complainant, have not done so. A pretended accounting therefor was submitted to complainant's counsel on or about March 27th, 1923, but because of the insufficiency thereof, complainant's said counsel, by letter bearing date March 30th, 1923, addressed to the attorneys of said William Kinnaugh and Catherine V. Clark, made known to said attorneys complainant's dissatisfaction with said accounting, and requested a further and more complete accounting, which has not been submitted to complainant or his counsel up to this time.

22. Complainant verily believes that the aforesaid William Kinnaugh and complainant's said wife contracted considerable debts for the repair and alterations of the aforesaid garage premises, the full particulars whereof complainant has been unable to ascertain, but complainant has been informed that his said wife on May 22nd, 1923, paid to David Gross the sum of $500.00, which complainant is informed is the balance of a loan of $1,100.00 made by said David Gross to complain-

ant's said wife, and which moneys she claims to have expended for defraying the cost of a steam heating plant installed in and upon said garage premises.

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

1. That William Kinnaugh and Catherine V. Clark, who are the defendants to this suit may answer this bill of complaint and each statement therein made.

2. That they may set forth and discover the real estate belonging to the said complainant, and conveyed to the said defendants or either of them as hereinbefore mentioned, and what disposition has been made of or encumbrances put upon, the same, fully and particularly, and in whose possession said real estate has been since the 25th day of June, 1919, and whether the same is encumbered, and if so, in what manner, in whose favor, by whom, and to what amount, and whether such conveyances as before mentioned were made of the said real estate, and if so, for or upon what consideration, and to whom, when and by whom, the same was paid, and who has possessed and occupied said premises, and received the rents, issues and profits thereof since June 25th, 1919.

3. That an account may be taken of the rents, issues and profits of the said lands and premises collected by the said William Kinnaugh and Catherine V. Clark or either of them, or their or either of their agents or representatives and of all moneys paid and disbursed by them or either of them for taxes, water rents, insurance premiums, and interest on mortgage or mortgages of said

lands and premises and for repairs to said lands and premises, and of all moneys paid by them or either of them, if any, in satisfaction of any judgment liens or mortgage encumbrances on said lands and premises, and that the said defendants or some or one of them may be decreed to pay to complainant all moneys that may be found to be due and owing from the said defendants to the said complainant upon said accounting.

4. That an account may be taken of all moneys collected and received by the defendant William Kinnaugh in the conduct of the garage business of complainant at 413-415 Newark Street, Hoboken, New Jersey, from the 25th day of June, 1919, to November 1, 1921, and all moneys paid and disbursed by the said William Kinnaugh in the conduct of the said business during said period, and that the said William Kinnaugh may be decreed to pay to complainant all moneys that may be found to be due and owing from the said William Kinnaugh to complainant upon said accounting.

5. That the said William Kinnaugh and Catherine V. Clark be decreed to hold the lands and premises described in paragraph one of this bill of complaint and also the lands and premises described in paragraph ten of this bill of complaint in trust for this complainant and be directed to convey the said lands and premises to complainant.

6. That a decree or order for an injunction shall be made restraining the said defendants or either of them from conveying, encumbering or in any manner disposing of the lands and premises described in this bill of complaint or any part thereof, and from collecting or receiving any of the

rents, issues or profits thereof, and from paying over to any person or persons any of the rents, issues or profits of the said lands and premises now in the hands of the said defendants or either of them to any person or persons except by the order and decree of this Honorable Court.

7. That pending the determination of this cause one or more proper person or persons may be appointed to receive the rents, issues and profits of the lands and premises described in this bill of complaint, for the benefit of complainant and all persons interested therein.

8. That complainant may have such further or other relief as to this Honorable Court shall seem meet.

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

FALLON & FALLON,
Solicitors for and of
Counsel with Complainant.

Exhibit "A."

James Clark, et ux to William Kinnaugh.	AGREEMENT DATED AUG. 4th, 1919.

WHEREAS, by Deed dated June 25th, 1919 JAMES CLARK and wife have conveyed to me five

(5) certain tracts of land situate in Hoboken, Hudson County, New Jersey, and

WHEREAS, said land were conveyed to me in trust for certain purposes as hereinafter set forth.

THEREFORE, BE IT KNOWN, that the said lands and premises so conveyed to me, WILLIAM KINNAUGH of Hoboken, Hudson County, New Jersey, by said Deed as aforesaid, are held by me in trust for the following uses and purposes, that is to say:

1. To collect the rents, issues and profits from said lands and premises and pay all taxes, interest on mortgage encumbrances, fire insurance and repairs on said premises, and also on the premises at No. 120 Park Avenue, Hoboken, New Jersey, now occupied by the wife and family of said James Clark.

(a) Out of the excess, if any there be, to pay the sum of Twenty Dollars ($20.00) per week to CATHERINE V. CLARK, wife of the said James Clark.

(b) Out of the excess, if any there be, to pay any indebtedness other than mortgage indebtedness, of the said James Clark.

(c) Out of the excess, if any there be, to use the same for the protection of said property by the payment of mortgage principal, or otherwise.

2. I further agree, that I will supervise and manage the Garage business conducted upon the premises situate on Newark Street, heretofore conducted by the said James Clark, receiving the moneys that may accrue from the conduct of said business, and any profits resulting therefrom to be used on account of payments provided for in the preceding paragraph.

3. I further agree, that I will endeavor to refund any mortgages on any of the properties so conveyed to me, or the property at No. 120 Park Avenue, Hoboken, New Jersey, payment of which is demanded by the mortgages; and further, that I will endeavor to purchase the premises adjoining said Garage business on Newark Street, now held under lease from Swift and Company, with option to purchase, and for that purpose will endeavor to borrow the consideration moneys by mortgage loans upon said premises and the premises adjoining upon which the Garage building stands, or otherwise.

4. At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term of imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, if the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourth day of August, 1919.

WILLIAM KINNAUGH. (L. S.)

Signed, sealed and delivered
in the presence of
H. P. LINDABURY.

(No Stamps)

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

BE IT REMEMBERED, That on this fourth day of August in the year of our Lord one thousand nine hundred and nineteen before me, the subscriber, a Master in Chancery of New Jersey personally appeared William Kinnaugh who, I am satisfied, is the declarent mentioned in the within Declaration of Trust, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HARRISON P. LINDABURY,
Master in Chancery of New Jersey.

Received in the Office and Recorded Mar. 8th, 1921, at 3:39 P. M.
No. 2060.

State of New Jersey, }
County of Hudson, } ss.:

James Clark, the above named complainant, being duly sworn according to law, on his oath says that:

1. I have read the above bill of complaint and know the contents thereof and the same is true of my own knowledge, except as to the matters that are therein stated to be on information and belief, and as to those matters, I believe them to be true. On June 25, 1919, and prior thereto I was the owner and seized in fee of the lands and premises particularly described in paragraph one of the bill of complaint.

2. On June 25, 1919, my wife, Catherine V. Clark and I were and still are the owners as tenants by the entirety of the premises known as street number 120 Park Avenue, in the City of Hoboken, aforesaid.

3. On said June 25, 1919, I was the owner of a garage business conducted by me on the premises known as Nos. 413 and 415 Newark Street, in the City of Hoboken, aforesaid. The title to a portion of said premises, to wit, No. 413 Newark Street, was vested in me, being the same premises described as the Fifth Tract in paragraph one of the bill of complaint. The title to the premises No. 415 Newark Street was then vested in Swift & Company, a corporation, from whom I leased the same with an option to purchase for the sum of $4,000, which option was still in force on June 25, 1919, and which lease and option to purchase was, as hereinafter set forth, further extended.

4. Prior to June 25, 1919, I had been convicted in the District Court of the United States, for the District of New Jersey, of an offense against the federal laws, and had been sentenced to be confined in the Maryland Penitentiary, in Baltimore, for a term of five years, and on June 25, 1919, was confined in the Essex County (New Jersey) Jail awaiting transfer to said penitentiary.

5. After the aforesaid prison sentence, and while I was confined in the Essex County Jail awaiting transfer to the Maryland Penitentiary at Baltimore, Maryland, I was frequently visited by my wife, Catherine V. Clark, who on several occasions discussed with me the several mortgages and other encumbrances against my real estate, and sug-

gested that while I was serving my aforesaid prison sentence it might become necessary to renew said mortgages and look after the discharge of the various encumbrances against my said property and inquired of me as to whether I would be willing to transfer my said property to her, and I informed her that I would not do so. Shortly thereafter while I was confined in said jail, I was visited by an attorney at law, who stated that he called in behalf of my wife, and who inquired of me as to whether I would be willing to convey my property to my wife, and I informed said attorney, as I had previously informed my wife, that I would not do so. Shortly thereafter my wife and son Frank Clark inquired of me as to whether I would be willing to convey my aforesaid property to William Kinnaugh in trust for me and I, having been quite intimately acquainted with the said William Kinnaugh for a period of more than twenty years, and believing that I could place implicit trust in him, made known to my said wife and son that I would be willing to convey my aforesaid property to said William Kinnaugh, in trust for me, under conditions whereby said William Kinnaugh could, while I was serving my aforesaid prison sentence, look after my real estate, renew mortgages thereon whenever necessary, and generally to care therefor in the same manner as I might do if I were free to look after my business affairs. Shortly thereafter I was visited by a representative of the aforesaid attorney who made inquiry of me as to the conditions under which I desired to convey my property to said William Kinnaugh. I thereupon made known to said representative that I could not make a conveyance to said William Kinnaugh of the property numbers 304 and 306 Newark Street, in the City of Ho-

boken, aforesaid, for the reason that said properties were in litigation and in the hands of a receiver; and that I could not make a conveyance of the property known as No. 120 Park Avenue, Hoboken, New Jersey, for the reason that the title thereto was vested in the names of myself and wife, Catherine V. Clark, but I informed said representative that it was my purpose to convey to said William Kinnaugh the properties known as No. 310 Newark Street, Hoboken, New Jersey, No. 1102 Madison Street, Hoboken, New Jersey, and No. 413 Newark Street, Hoboken, New Jersey, to hold in trust for me, and to collect the rents, issues and profits thereof and pay therefrom all taxes, water rents, fire insurance premiums, interest on mortgages, and other proper charges against said real estate and to keep said property in a good state of repair and to reconvey the said premises to me upon my release from the Maryland Penitentiary, and in the event of my death prior to my release from said penitentiary, to convey the said property to my four children, to wit, Mary Clark, Margaret Clark, Frank Clark and Rita Clark. I further informed the said representative that it was my purpose and desire that the said William Kinnaugh should conduct my garage business at Nos. 413 and 415 Newark Street, Hoboken, New Jersey, during the term of my imprisonment, and pay from the rents, issues and proceeds of my said real estate, and the receipts from the aforesaid garage business, the sum of $20.00 per week to my wife, Catherine V. Clark, towards her support and maintenance. I further informed said representative that I had a lease from Swift & Company for a portion of the premises upon which my garage business was being carried on, with an option to purchase the lands and premises mentioned in said

lease for the sum of $4,000. On the day following the date upon which I gave the aforesaid instructions to the representative of the aforesaid attorney, the said representative again called at the Essex County Jail and presented to me a typewritten paper reciting, as I presumed, the aforesaid purposes, which paper, at the request of said representative, I signed. I thereupon requested that said representative furnish me with a copy of said paper writing, and said representative agreed to furnish me therewith. I, however, have never received a copy thereof, although I have often made demand upon the aforesaid parties therefor. Thereafter, on the 27th day of June, 1919, the aforesaid attorney again visited me at the Essex County Jail, and at this time presented to me a paper writing, purporting to be a deed of conveyance from me to said William Kinnaugh, of my aforesaid real estate, which I presumed was conditioned as aforesaid, and which I signed and acknowledged before said attorney. At said time, I was unacquainted with legal forms, and unskilled in legal matters, and was ignorant of the legal effect of the papers signed and executed by me as aforesaid, and believed the aforesaid paper writing effected the purpose of my transferring to said William Kinnaugh my aforesaid real estate, under the aforesaid conditions of trust. In the aforesaid transaction I was without the said, assistance or advice of counsel or of any person or persons skilled in the law and acted entirely without independent advice. While I was confined in the Maryland Penitentiary I received by mail a letter from my wife's aforesaid attorney informing me that the aforesaid William Kinnaugh was about to exercise, in my behalf, the aforesaid option to purchase from Swift & Company the prem-

ises No. 415 Newark Street, Hoboken, New Jersey, for the aforesaid sum of $4,000.00, and that in order to effectuate such purpose, it would be necessary for me to execute an assignment of my aforesaid lease and option to said William Kinnaugh and I in accordance therewith executed an assignment of the aforesaid lease and option to purchase (which instrument had been forwarded to me by said attorney for execution) to the said William Kinnaugh, and forwarded the same to the aforesaid attorney.

6. I was released from the Maryland Penitentiary on March 7th, 1921, and upon my return to Hoboken, I was informed by said William Kinnaugh that he, the said William Kinnaugh, had on or about August 4th, 1919, executed a certain paper writing, wherein among other things, it was declared that upon my release from the said penitentiary that he, the said William Kinnaugh would convey my aforesaid property, and the premises acquired by purchase from Swift & Company, under my aforesaid option of purchase to my wife, Catherine V. Clark, and I then and there remonstrated with said William Kinnaugh and charged him with being unfaithful to the trust which I had confided in him.

7. I thereupon caused an examination to be made of the records of the Register's office of the County of Hudson, and as a result thereof was informed that there was recorded in said office on August 5th, 1919, in book 1326 of Deeds for said County on page 17, a certain paper writing bearing date June 25, 1919, purporting to be a deed made by me (James Clark) and Catherine V. Clark, my wife, to said William Kinnaugh, convey-

ing in fee, to said William Kinnaugh, all of the premises described in paragraph one of the bill of complaint, and said deed purports to have been acknowledged by me on June 25th, 1919, and by my aforesaid wife on August 4th, 1919, before one of the Master's in Chancery of New Jersey, as appears by the record of the certificate of acknowledgment to said deed. I was further informed that there was recorded in the Register's office of the County of Hudson on March 8th, 1921, in book 1392 of Deeds for said County on page 428, a certain other paper writing signed and acknowledged by the aforesaid William Kinnaugh, bearing date August 4, 1919, purporting to be a declaration of the trusts and purposes for which the conveyance was made by me to said William Kinnaugh, while I was confined in the Essex County Jail, as aforesaid, and as hereinabove mentioned. I was further informed that said paper writing contains the following recital:

> "At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term or imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, *of* the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the *tents,* issues and profits received by me on account of the properties herein mentioned and referred to."

A copy of said paper writing is hereto annexed and made part hereof and marked Exhibit "A".

8. I am advised by counsel that the deed of conveyance executed by me to said William Kinnaugh, for the purposes and trusts hereinabove mentioned, should have expressly contained therein an express recital of the purposes and trusts which served as the basis for such conveyance, or, in lieu thereof, that the aforesaid purposes and trusts, which served as the basis for such conveyance, should have been expressly declared in a paper writing made contemporaneously with my aforesaid deed of conveyance, and executed by the said William Kinnaugh contemporaneously therewith, and forthwith recorded in the Register's office of the County of Hudson.

9. The aforesaid pretended declaration of trust, executed by the said William Kinnaugh and recorded in the Register's office of the County of Hudson does not truly set forth the purposes and trusts which served as the basis and consideration for the conveyance by me to said William Kinnaugh, of my aforesaid property.

10. I have been advised by counsel that an examination of the records of the Register's office of the County of Hudson discloses a certain deed made by John Magner, Sheriff of the County of Hudson, to the aforesaid William Kinnaugh, bearing date July 12th, 1920, recorded July 28th, 1920, in Book 1364 of Deeds for Hudson County on page 548, conveying to said William Kinnaugh the premises described as the Second Tract in paragraph 1 of the bill of complaint, for the consideration therein expressed of the sum of $2,000, which said deed was made as therein recited by virtue of

a writ of execution issued out of the Court of Chancery of New Jersey in a certain foreclosure suit wherein one Mina Immen was complainant and I, James Clark, and Catherine V. Clark, my wife, and others were defendants. That said records disclose also a certain mortgage for the sum of $5,000 made by the said William Kinnaugh in Book 1015 of mortgages for Hudson County on page 388, covering the premises mentioned and described in the aforesaid deed made by John Magner, Sheriff of the County of Hudson, to William Kinnaugh. The said records also disclose a certain other deed made by William Kinnaugh to Catherine V. Clark, bearing date July 12th, 1920, recorded July 28th, 1920, in Book 1364 of deeds page 552, conveying the same premises mentioned in the aforesaid mortgage and deed, in which said last mentioned deed it is recited that the conveyance is made subject to a mortgage of $5,000, held by the Steneck Trust Company. That said records also disclose a deed made by Swift & Company a corporation of the State of Illinois, to William Kinnaugh, bearing date August 2nd, 1920, and recorded September 23, 1920, in Book 1378 of Deeds on page 161, of the following described premises:

> "All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Hoboken, County of Hudson and State of New Jersey, and which on a certain map entitled 'Map of property situated in Hoboken, Hudson County, New Jersey, belonging to the estate of John G. Coster, Deceased, surveyed and laid out into lots 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York' and laid down and designated as lot No.

5, in Block 2, and extending through the block from Newark Avenue to Ferry Street."

11. I am advised by counsel that the records of the Register's office of the County of Hudson evidence that the title to the first tract, third tract, fourth tract and fifth tract of lands and premises described in paragraph one of the bill of complaint are still vested in the aforesaid William Kinnaugh and that the title to the lot of land purchased from Swift & Company, hereinabove mentioned is also vested in the aforesaid William Kinnaugh, and that the title to the second tract of land and premises described in paragraph one of the bill of complaint is now vested in the name of Catherine Clark, under and by virtue of the conveyance to her by said William Kinnaugh as hereinabove mentioned.

12. After my release from the Maryland Penitentiary and since my return to the City of Hoboken, and my discovery of the aforesaid paper writing purporting to be a declaration of trust made by the said William Kinnaugh and my discovery that the title to the lands and premises known as the first tract, third tract, fourth tract and fifth tract in paragraph one of the bill of complaint and the title to the lands conveyed by Swift & Company to said William Kinnaugh as hereinabove set forth, are of record in the name of the said William Kinnaugh, I have, by myself, and my agents and attorneys, frequently, and in a friendly manner, made demand upon the said William Kinnaugh to convey to me the aforesaid lands and premises but that the said William Kinnaugh has hitherto refused and still refuses to convey the same to me, and the said William Kinnaugh claims

that said lands and premises are held by him in trust for the uses and purposes set forth in the aforesaid paper writing purporting to be a declaration of trust, bearing date August 4th, 1919, a copy whereof is hereto annexed and marked Exhibit "A", and said William Kinnaugh has threatened to convey said lands and premises to my wife, Catherine V. Clark.

13. Since my discovery that the title to the tract of land and premises described as the second tract in paragraph one of the bill of complaint is of record in the name of my wife Catherine V. Clark, by means of a deed of conveyance made to her by said William Kinnaugh, I have by myself and my agents and attorneys frequently and in a friendly manner requested the said Catherine V. Clark to convey to me said lands and premises, but said Catherine V. Clark, has hitherto refused and still refuses so to do.

14. From about June 27th, 1919, to about November 1, 1921, the aforesaid William Kinnaugh conducted for me, by arrangement made with him as hereinabove mentioned, my garage business at Nos. 413 and 415 Newark Street, in the City of Hoboken, aforesaid, and collected and received all of the income and profits of said business, and throughout the aforesaid time the said William Kinnaugh, and my wife, Catherine V. Clark, acting as agent for said William Kinnaugh, have collected all the rents, issues and profits of all of the lands and premises described in paragraph one of the bill of complaint, and since November 1, 1921, have collected all of the rents, issues and profits of all of the lands and premises described as the first tract, second tract, third tract and fourth

tract of paragraph one of the bill of complaint, and have paid therefrom certain judgments against me which were liens against said lands and premises and have also paid certain taxes and water rents assessed against said lands and premises, and have also paid interest on certain bonds and mortgages which were liens upon said lands and premises, and have also paid the operating charges and expenses and disbursements incident to the conduct of my aforesaid garage business, the amount and particulars whereof, however, being unknown to me.

15. The conveyance hereinabove mentioned recorded in book 1326 of Deeds for Hudson County on page 17, which purports to have been made by me and my wife Catherine V. Clark to the aforesaid William Kinnaugh, was wholly without consideration and is void and of no force and effect.

16. The lands and premises described in the aforesaid deed made by Swift & Company to Willian Kinnaugh, dated August 2, 1920, and recorded in book 1378 of Deeds for Hudson County on page 161, were acquired by the said William Kinnaugh with moneys borrowed by him therefor from one David Gross, the payment whereof is secured to be paid by his bond, and a mortgage to secure the same covering the premises so acquired and other premises in said mortgage bearing date September 20, 1920, and recorded in book 1019 of Mortgages for Hudson County, on page 472 more particularly mentioned. Said William Kinnaugh has no beneficial right, title or interest in or to said lands and he holds the same in trust for me.

17. On or about November 1, 1921, I took over

from the said William Kinnaugh the conduct of the aforesaid garage business and continued to conduct the same and collected and received the profits thereof until June 1, 1922, when I sold said garage business to one David J. Wright for the consideration of $5,000 which was paid as follows, to wit: $1,500 thereof was retained by the said Daniel J. Wright for the purpose of making the following repairs to the garage premises: New concrete on garage floor and driveway; $3,500 by a series of 70 promissory notes in the sum of $50.00 each made by the said Daniel J. Wright to me and payable on the first and fifteenth days of each months. Upon my making sale of said garage business to the said Daniel J. Wright I executed and delivered to said purchaser a lease of the premises 413 and 415 Newark Street, Hoboken, New Jersey, whereon said garage business was conducted for the term of five years from June 1, 1922, at the yearly rental of $3,000 payable in semi-monthly payments of $125.00 each on the first and fifteenth days of each month, which said rental I have since collected and received from said Daniel J. Wright.

18. The sale of the aforesaid garage business by me to the said Daniel J. Wright and the execution and delivery by me to the said Daniel J. Wright of the lease of the lands and premises whereon the said garage business is conducted, and the collection of the rents by me from said Daniel J. Wright as hereinabove mentioned, were with the knowledge of said William Kinnaugh and my wife Catherine V. Clark.

19. Since I took over the conduct of the aforesaid garage business in November, 1921, and since the sale of said garage business and the lease of the

premises whereon such business is conducted, I have paid in principal and interest on account of the aforesaid mortage of $5,500.00 made by said William Kinnaugh to David Gross, the sum of $2,443.92, the sum of $2,300.00, thereof representing principal, and have also paid to the City of Hoboken arrears of water rents on said garage premises amounting to $91.00 and have also paid fire insurance premiums on the buildings Nos. 413 and 415 Newark Street amounting to $92.10.

20. I have been informed and verily believe that there are arrears of taxes against the aforesaid lands and premises which have not been paid by the said William Kinnaugh or the said Catherine V. Clark, from the rents, issues and profits of said lands and premises and I fear that if the said arrears of taxes are not promptly paid, the City of Hoboken, will, pursuant to the authority of the statute in such case made and provided, make sale of said property to satisfy the amount of such tax arrears.

21. Since my release, from the Maryland Penitentiary, and my return to the City of Hoboken, as aforesaid, I have repeatedly sought an accounting from the said William Kinnaugh of the moneys received by him, as my trustee, in the conduct of the aforesaid garage business, and of the disbursements made in connection therewith, but said William Kinnaugh although promising from time to time to make an accounting therefor with me, has not done so. I have also sought an accounting from said William Kinnaugh and my wife, Catherine V. Clark of the rents received by them and each of them from the aforesaid lands and premises hereinabove mentioned, and of their disburse-

ments therefrom for taxes, water rents, insurance premiums, repairs and other proper charges, but the said William Kinnaugh and the said Catherine V. Clark, although repeatedly promising to render such an accounting to me, have not done so. A pretended accounting therefor was submitted to my counsel, on or about March 27th, 1923, but because of the insufficiency thereof, my said counsel, by letter bearing date March 30th, 1923, addressed to the attorneys of said William Kinnaugh, and Catherine V. Clark, made known to said attorneys my dissatisfaction with said accounting, and requested a further and more complete accounting, which has not been submitted to me or my counsel up to this time.

22. I verily believe that the aforesaid William Kinnaugh and my said wife contracted considerable debts for the repair and alteration of the aforesaid garage premises, the full particulars whereof I have been unable to ascertain but I have been informed that my said wife on May 22nd, 1923, paid to David Gross the sum of $500.00 which I am informed is the balance of the loan of $1,100.00 made by said David Gross to my said wife, and which moneys she claims to have expended for defraying the cost of a steam heating plant installed in and upon said garage premises.

JAMES CLARK.

Subscribed and sworn to before me this
24th day of May, A. D., 1923.

LOUIS F. BEACHNER,
Notary Public,
of New Jersey.

Answer and Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,

and

CATHERINE V. CLARK and
WILLIAM KINNAUGH,
Defendants.

On Bill, &c.

The defendant, William Kinnaugh, answering the bill of complaint, says that:

1. He admits Paragraph 1 of the complaint.

2. He admits Paragraph 2 of the complaint.

3. He admits Paragraph 3 of the complaint.

4. He admits Paragraph 4 of the complaint.

5. He denies Paragraph 5, except that it is admitted that complainant's wife, Catharine V. Clark, his son, Frank Clark, and the defendant, William Kinnaugh, visited him at the Essex County Jail and discussed with him his property, consisting of real estate and a garage business, and that complainant was asked to convey said property to his wife, which request he refused, but that finally complainant agreed to convey said property to the said William Kinnaugh for the purpose, among other things, of collecting the rents, issues and profits of said real estate, operating the

garage business, paying the carrying charges of said property and paying to complainant's wife $20 per week out of the net profits therefrom; that the deed conveying said real estate to the said William Kinnaugh was made and executed by complainant on the 25th day of June, 1919.

5-A. Paragraph 5-A is admitted, except that it is denied that the option to be exercised was to be exercised on complainant's behalf, but that it was to be exercised and the property held subject to the declaration of trust dated August 4, 1919, a copy of which is attached to the bill of complaint.

6. Paragraph 6 is admitted.

7. It is admitted that certain instruments are on record in the office of the Register of Hudson County as alleged in said paragraph.

8. Defendant has no knowledge or information sufficient to form a belief as to whether complainant was advised by his counsel, as alleged in the 8th paragraph.

9. Paragraph 9 is denied.

10. It is admitted that there is on record in the Register's office of Hudson County certain instruments as alleged in the 10th paragraph of the bill of complaint.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted, except that at no time has it been intended to transfer the real estate in question to Catherine V. Clark in pursuance of the declaration of trust of August 4, 1919, until the personal liability assumed by the defendant,

William Kinnaugh, in protecting the properties by mortgage or otherwise has been discharged.

13. Paragraph 13 is admitted.

14. Paragraph 14 is admitted, except that it is denied that complainant has not been informed as to the amounts and particulars of the receipts and disbursements referred to in said paragraph.

15. Paragraph 15 is denied.

16. Paragraph 16 is admitted, except that it is denied that said land is held in trust by William Kinnaugh for the complainant.

17. On information and belief, Paragraph 17 is admitted.

18. Paragraph 18 is admitted.

19. Defendant is informed and believes that complainant has made payments on account of the Gross mortgage as alleged in Paragraph 19 of the complaint, but does not know the amount of such payments and has no knowledge of the other payments alleged to have been made in said paragraph.

20. Paragraph 20 is admitted.

21. Paragraph 21 is denied, in that the said Catharine V. Clark has furnished a statement of receipts and disbursements to the said complainant, and the said William Kinnaugh has submitted his books and records of all receipts and disbursements of all moneys received and disbursed by him, but that complainant refused to examine said books and records.

22. Paragraph 22 is admitted.

23. This defendant in further answering, says that he has, with the aid of the defendant, Catharine V. Clark, managed and cared for the real estate conveyed to him by the deed of June 25, 1919, and has exercised the option in the lease from Swift & Company, all pursuant to the declaration of trust dated August 4, 1919, and with the understanding that upon the discharge of the complainant from prison the real estate so conveyed to this defendant and purchased from Swift & Company was to be conveyed to the defendant, Catharine V. Clark, and this defendant would have been unwilling to expend the time and effort so expended by him in managing and protecting said real estate, except to aid and benefit the said Catharine V. Clark and her children, who were left destitute by complainant when in prison.

24. Defendant in further answering, says that at the time the real estate was conveyed to him in June, 1919, it had practically no value to the complainant. The second tract described in Paragraph 1 of the bill of complaint was in a badly run down condition; needed repairing; taxes were in arrears; was subject to mortgage, payment of which had been demanded, and in fact foreclosure proceedings were instituted on the mortgage covering these premises about August 1, 1919. The third and fourth tracts described in Paragraph 1 of the bill of complaint were heavily mortgaged; were in a badly run down condition; the taxes were in arrears and payments demanded of the mortgage encumbrances or some of them on the tracts designated as 2, 3 and 4 in said Paragraph 1 of the bill of complaint. At that time complainant was obli-

gated on a number of recognizances aggregating, as this defendant is informed and believes and therefore says, over $130,000 open of record in the courts of Hudson County and over $30,000, open of record in the United States District Court of the United States for the District of New Jersey, and there recognizances had to be discharged before any new mortgage loan could be obtained. There were also sundry judgments against the complainaint, which were a lien on said property, and these judgments also had to be disposed of by payment or otherwise before any new mortgage could be obtained.

The property described in Paragraph 1 of the complaint as the 5th tract was occupied by a garage building, which garage building extended over on the adjoining lot under lease from Swift & Company; there was no mortgage encumbrance on said fifth tract; the lease from Swift & Company was acquired on August 1, 1919, and under the terms of the lease it was necessary to give thirty days notice of the exercise of the option to purchase, prior to the determination of the lease; the purchase price was $4,000 less certain credits for rent to be made under the terms of the lease. Defendant had no money with which to meet said purchase price and could not exercise the option, and could not raise the amount due by a mortgage because said fifth tract was subject to the lien of said recognizances and judgments which were open of record.

Prior to August 1, 1919, at which time said lease expired, the defendant, Catharine V. Clark, negotiated an extension of said lease for a period of six months, and later obtained a further extension of six months, said second extension expiring on August 1, 1920, including the option of purchase. Before said second extension expired the said

Catharine V. Clark had obtained the discharge of all of said recognizances aggregating over $180,000 as this defendant is informed and believes and therefore says, and had obtained, through payment or otherwise, satisfaction of the judgments of record against the complainant, so that this defendant was able to obtain a mortgage loan of $5,500, from one David Gross, out of the proceeds of which the purchase price was paid under the option title obtained to the premises adjoining the fift tract and known as No. 415 Newark Street. A part of the proceeds of this mortgage was used to repair and improve the garage premises, among other things, installing a heating plant, whereby defendant was able to conduct said garage business successfully, particularly during the cold weather, and that the business became a profitable and successful business.

The first tract described in Paragraph 1 of the bill of complaint was not subject to any mortgage encumbrance, but was subject to the lien of said recognizances and judgments against the complainant. At the time these properties were so transferred to this defendant they had little, if any, equity and would not have produced enough money if sold to pay the mortgages, taxes and judgments, which were liens against the property. In the opinion of this defendant there would not have been any excess moneys left which could have been applied to the payment of the other existing debts of the complainant or the recognizances under which he was obligated.

25. In an effort to meet the charges against the real estate necessary to be paid and satisfied in the course of protecting the properties, more funds were needed than were produced by said proper-

ties, and in order that the properties might be protected and saved for the benefit of Catharine V. Clark this defendant advanced, out of his own funds, upwards of $1,100, of which there is now due and owing to this defendant over $700. This defendant is also entitled to compensation for his services.

26. Defendant has no beneficial interest in the properties, legal title to which stands in his name, and is ready and willing to convey the same to whomsoever the court may direct. While it was the intention of this defendant to convey said properties to the said Catharine V. Clark, pursuant to the declaration of trust of August 4, 1919, copy of which is attached to the bill of complaint, this conveyance has not been made, because there is due defendant the moneys he so advanced in protecting the properties, and defendant is also obligated on two bonds, one to the Steneck Trust Company for $5,000 and the other to David Gross for $5,500. On the latter mortgage there is a balance due of about $700, and the said Catharine V. Clark has not demanded the conveyance of said properties to her pursuant to said declaration of trust, and such transfer cannot be made until such time as this defendant is relieved of the obligations so assumed by him and there has been paid to him the amount of moneys so advanced by him out of his own funds, as well as compensation for his services.

The defendant prays that the bill of complaint may be dismissed, with costs.

By way of counterclaim against the complainant and the defendant, Catharine V. Clark, this defendant, William Kinnaugh, says that:

1. He repeats the allegations of the answer as hereabove set forth.

This defendant therefore prays:

1. That said complainant and the defendant, Catharine V. Clark, may answer this counterclaim and each statement herein made.

2. That the said complainant and defendant, or one of them, may be decreed to pay to this defendant, William Kinnaugh, the amount of moneys advanced by him, and reasonable compensation for his services.

PORTER, ZINK & LAFFERTY,
Solicitors for the defendant,
William Kinnaugh.

Affidavit.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,

and

WILLIAM KINNAUGH and
CATHARINE V. CLARK,
Defendants.

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

William Kinnaugh, being duly sworn according to law on his oath deposes and says:

That he is the person named as defendant in the

above entitled action; that he is well acquainted with James Clark, the complainant in said action, and has known him for many years; that he is also acquainted with Catharine V. Clark, wife of the said James Clark, and has known her as the wife of the said James Clark for many years, but was not well acquainted with her, merely knowing her to speak to and pass the time of day until the month of June, 1919, since which time deponent has seen Mrs. Clark on many occasions in connection with the property interests which are the subject matter of this litigation.

In the month of June, 1919 (as near as deponent can recall the 20th of that month), he went to the Essex County Jail on Newark Street, in the City of Newark, at the request of Frank Clark, son of James Clark, and accompanied by the said Frank Clark, to see James Clark, the complainant, who was then confined in said jail, having been convicted of a criminal offense in the United States District Court for the District of New Jersey, and was temporarily confined in said jail at Newark until such time as he, the said James Clark, would be transferred to the penitentiary to which he had been sentenced for a term of five years for the crime of which he had been convicted. On this visit deponent saw the said James Clark and talked with him about the garage business which he (Clark) owned and had conducted in the City of Hoboken at Nos. 413-415 Newark Street.

Deponent was asked by the said James Clark if he would assist Frank Clark, the son, in the conduct of said garage business while he, the said James Clark, was serving his sentence in the penitentiary. There was no discussion at that time with reference to the real estate, so far as deponent recalls, the entire conversation relating to the garage business as stated.

A few days later (the exact date deponent does not recall), he again went to the Newark Jail to see James Clark, going at the request of the son, and again saw James Clark at said jail; at that time he had a conversation with James Clark relating to the property interests of the said James Clark and his approaching transfer to the penitentiary to serve his sentence; that deponent told James Clark he should make some arrangement concerning his property and make some provision for his family while he was away, and deponent understood from the conversation then held with said James Clark that the said Clark intended to convey his real estate to his wife, Catharine V. Clark, but that nothing was said at that time concerning the transfer of the real estate to this deponent as trustee. During the same week (so far as deponent can recall), the said Catharine V. Clark informed this deponent that James Clark intended to or had already conveyed his real estate to this deponent as trustee, and later deponent received a deed which was executed by James Clark and acknowledged on the 25th day of June, 1919, conveying certain pieces of real estate to deponent as stated in the deed. Deponent had no beneficial interest in said real estate and has held the property as trustee, and has executed a declaration of trust which was signed by deponent on August 4th, 1919, which states the terms upon which he understood from Mrs. Clark were the terms of the trusteeship. Deponent agreed to act as such trustee when the conveyance to him was mentioned by Mrs. Clark, but does not know whether his agreement to act as such trustee was prior or subsequent to the execution of said deed by James Clark, but it was at about the same time.

From the time of James Clark's departure for the

penitentiary, deponent assisted by Frank Clark, the son, in the conduct of the garage business, and assisted Mrs. Clark in the management of the real estate; Mrs. Clark collected the rents from the real estate, and the rentals from people who stored cars at the garage by the month or for any extended period of time were collected by this deponent and turned over to Mrs. Clark.

This deponent collected the current revenue from the sale of gasoline, oil and day storage, and paid some of the current running expenses from the moneys so received by him.

When James Clark was paroled and returned to Hoboken, the garage business was turned over to him, together with about $1,000 of accounts receivable. The garage business was not turned over to James Clark immediately upon his parole; to the best of deponent's recollection he was paroled about March 27, 1921, and he took over the garage business about October 24th, in that year, and from that time deponent has had nothing to do with the conduct of the garage business.

At the time of James Clark's departure for the penitentiary, he was indebted to a number of people; some of his properties were mortgaged; one of the mortgages was under foreclosure at that time and a receiver appointed who was receiving the rents from the property; the property then under foreclosure was Nos. 304-306 Newark Street, Hoboken. A short time after (about August 1, 1919, to the best of deponent's recollection), a foreclosure proceeding was begun on No. 310 Newark Street. Deponent states he has not personally examined either of these proceedings and his statement as to the foreclosure proceedings is made on information and belief. None of the papers in the proceeding were ever served on de-

ponent, and deponent's information was received from Mrs. Clark.

Later the property at No. 310 Newark Street was put up for sale under decree and execution thereon, and this deponent purchased the property at sheriff's sale, and immediately after transferred the same to Mrs. Clark. The reason for making this transfer to Mrs. Clark at this time was because she had arranged with the Steneck Trust Company to take a mortgage on this property, but deponent was informed they would not make the mortgage unless the title was in the name of Mrs. Clark, and therefore deponent made this deed in order that the mortgage loan might be secured and the property protected. Deponent was informed at the time that the mortgage taken by the Steneck Trust Company was for $5,000. More money was needed to pay the amount of the decree, and Mrs. Clark borrowed money from other sources, which was used, together with the mortgage money, to pay off the decree under which the property was sold by the sheriff.

With reference to the property at Nos. 304-306 Newark Street, which was in the hands of the receiver, deponent is informed that Mrs. Clark secured a mortgage from the Second National Bank of Hoboken, and this deponent signed a mortgage and a bond covering that property which ran to said Bank, and the proceeds of the new mortgage were used to pay some of the charges which were on the property at that time it was transferred to deponent. At this time there are three mortgages; one held by the Citizens Building & Loan Association of Jersey City, covering No. 304 Newark Street; one held by the Hoboken Bank for Savings, covering No. 306 Newark Street; and the third made by this deponent, which covers the two

properties and is a second mortgage subsequent to the mortgages mentioned.

Deponent says he is personally obligated upon the bond made to accompany this mortgage so executed to the Hoboken Bank and this mortgage has not been paid nor satisfied.

Deponent further says that the property at Nos. 413 and 415 Newark Street known as the "Garage property" consists of two tracts, one of which was owned by James Clark and transferred to this deponent by deed of June 25, 1919; the other was at that time owned by Swift & Company and was leased to James Clark with an option to purchase the same; the lease on the property expired August 1, 1919, and deponent succeeded, through the efforts of Mrs. Clark, in obtaining an extension of this lease to January 1, 1920, and a further extension to July 31, 1920, with the option to purchase, and on August 2, 1920, deponent exercised this option and on that date obtained a deed from Swift & Company conveying to deponent that part of the property under leasehold occupied by the garage building. The amount paid for acquiring this property was $3,520. The sale was carried through according to the terms of the lease and option; allowance was made for the rents according to the terms of the lease which made the consideration the amount stated, $3,520. The moneys to pay this consideration, or purchase price, was obtained by the making of a mortgage on the two lots to Davis Gross of Hoboken, New Jersey, who accepted a mortgage for $5,500 to be paid back in monthly instalments. The balance of the money raised on this mortgage which was not required to pay the purchased price was used on account of the heating plant and some taxes in arrears on No. 413 Newark Street, and searching title of same property.

Deponent personally signed the bond to David Gross. Payments have been made on account of this mortgage by instalments according to its terms as they occurred from time to time until Mr. Clark took over the garage property.

Deponent is informed that James Clark has since made payments on account of this mortgage, and deponent is informed and believes that the balance now due on this mortgage is about $700.

The condition of James Clark's affairs was such that there was not enough money to make the necessary disbursements in settling his debts and obligations as payment was from time to time demanded by various persons to whom he was indebted on mortgages, notes, judgments or open accounts, and in order to assist in working out the situation deponent from time to time advanced his own funds to meet payments. Moneys so advanced by this deponent were advanced to the amount of about $517.00 to meet the incidental expenses of conducting the garage business. In addition to this, deponent also advanced a total amount of something over $700.00 the exact figure deponent cannot give without referring to his memoranda, which he has not got with him, which moneys were advanced to make the necessary repairs on certain of the real property. $427.00 has been paid, and the balance is now due and owing to him.

Deponent has no beneficial interest in the properties transferred to him, and is ready and willing to turn these properties so conveyed to him over to whomsoever the court may direct, upon the payment to him of the moneys so advanced out of his own funds, and upon the discharge of his liability on the bonds and mortgages so executed by him in carrying out the purpose of his trusteeship, and for services.

Deponent's attention is called to the fact that James Clark stated in June, 1919, that he was indebted to this deponent in the sum of $325.00. Deponent says that James Clark was not indebted to him at this time.

WILLIAM KINNAUGH.

Subscribed and sworn to before me this
14th day of June, 1923.

MAUD A. HORNER,
Notary Public,
of New Jersey.
Commission expires April 30, 1928.

Replication and Answer to Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between JAMES CLARK, Complainant, and WILLIAM KINNAUGH, et al., Defendants.	On Bill, etc.

The complainant joins issue on the answer of the defendant William Kinnaugh.

As to the counterclaim contained in said answer complainant says:

1. He denies all of the allegations of the answer which are repeated by the said defendant by way of counterclaim excepting such portions of the said answer as admit the allegations in the complainant's bill of complaint.

Complainant says that the said counterclaim may be dismissed with costs.

FALLON & FALLON,
Solicitors for and of Counsel with Complainant.

Answer and Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,
and
CATHARINE V. CLARK and
WILLIAM KINNAUGH,
Defendants.

On Bill, &c.

The defendant, Catharine V. Clark, residing at No. 120 Park Avenue, Hoboken, New Jersey, answering the bill of complaint says that:

1. She admits Paragraph 1 of the complaint.

2. She admits Paragraph 2 of the complaint.

3. She admits Paragraph 3 of the complaint.

4. She admits Paragraph 4 of the complaint.

5. She denies Paragraph 5, except that it is admitted that complainant's wife, Catharine V. Clark, his son, Frank Clark, and the defendant, William Kinnaugh, visited him at the Essex County Jail and discussed with him his property, consisting of real estate and a garage business, and that complainant was asked to convey said property to his wife, which request he refused, but that finally complainant agreed to convey said property to the said William Kinnaugh for the purpose, among other things, of collecting the rents, issues and profits of said real estate, operating the garage business, paying the carrying charges of said property and paying to complainant's wife $20 per week out of the net profits therefrom; that the deed conveying said real estate to the said William Kinnaugh was made and executed by complainant on the 25th day of June, 1919.

5-A. Paragraph 5-A is admitted, except that it is denied that the portion to be exercised was to be exercised on complainant's behalf, but that it was to be exercised and the property held subject to the declaration of trust dated August 4, 1919, a copy of which is attached to the bill of complaint.

6. Paragraph 6 is admitted.

7. It is admitted that certain instruments are on record in the office of the Register of Hudson County as alleged in said paragraph.

8. Defendant has no knowledge or information sufficient to form a belief as to whether complainant was advised by his counsel, as alleged in the 8th paragraph.

9. Paragraph 9 is denied.

10. It is admitted that there is on record in the Register's office of Hudson County certain instruments as alleged in the 10th paragraph of the bill of complaint.

10

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted, except that at no time has it been intended to transfer the real estate in question to Catharine V. Clark in pursuance of the declaration of trust of August 4, 1919, until the personal liability assumed by the defendant, William Kinnaugh, in protecting the properties by mortgage or otherwise has been discharged.

20

13. Paragraph 13 is admitted.

14. Paragraph 14 is admitted, except that it is denied that complainant has not been informed as to the amounts and particulars of the receipts and disbursements referred to in said paragraph.

15. Paragraph 15 is denied.

16. Paragraph 16 is admitted, except that it is
30 denied that said land is held in trust by William Kinnaugh for the complainant.

17. On information and belief, Paragraph 17 is admitted.

18. Paragraph 18 is admitted.

19. Defendant is informed and believes that complainant has made payments on account of the
40 Gross mortgage as alleged in Paragraph 19 of the

complaint, but does not know the amount of such payments and has no knowledge of the other payments alleged to have been made in said paragraph.

20. Paragraph 20 is admitted.

21. Paragraph 21 is denied, in that the said Catharine V. Clark has furnished a statement of the receipts and disbursements to the said complainant, and the said William Kinnaugh has submitted his books and records of all receipts and disbursements of all moneys received and disbursed by him, but that complainant refused to examine said books and records.

22. Paragraph 22 is admitted.

23. Defendant in further answering says that in the month of June, 1919, complainant was confined in the Newark Street Jail, Newark, New Jersey, awaiting transfer to the Maryland Penitentiary to begin a term of imprisonment imposed upon him in the United States District Court on conviction of having violated a Federal statute, and this defendant visited complainant there on several occasions during his period of confinement there, which was for a period of about two weeks, and conveyed to him certain personal belongings, and discussed with him the question of this defendant's maintenance and support during complainant's term of imprisonment, this defendant being without property and having no means of support, and at that time there was one child four years of age requiring her care and attention, as well as three other children of more mature age.

24. The complainant was at that time the owner of five parcels of real estate, as described in the

first paragraph of the bill of complaint, as well as a property known as No. 120 Park Avenue, Hoboken, owned by the complainant and this defendant by an estate in the entirety, and he also had a lease on the property at No. 415 Newark Street, from Swift & Company, which lease contained an option of sale at a price of $4,000.

25. Complainant's properties were subject to mortgages, some of which were past due and payment of which had been demanded; taxes were in arrears; recognizances were open of record in the County of Hudson in the amount of over $150,000 and in the United States District Court for the District of New Jersey in an amount of over $30,000, all of which were liens against the real estate so owned by complainant. Complainant had also been fined the sum of $5,000 as a part of the judgment of the court upon his conviction under which he then stood committed to the Newark Street Jail.

26. This defendant requested complainant to make some disposition of his property, so that it could be managed and protected during his imprisonment and the income collected and some provision made therefrom for the maintenance of herself and children. In the course of these conversations with the complainant and from information received from other sources defendant learned of the condition of the property as to mortgages, and also learned that certain judgments had been recovered against the complainant, payment of which had been demanded, and that the properties were in danger of being lost to complainant, and that they could not be protected against execution and sale except through earnest and hard work

forebearance on the part of persons to whom complainant was and indebted, and thereupon this defendant became unwilling to undertake the maintenance and care of the properties unless they were conveyed to her so that she might be possessed of something as the result of her efforts towards the maintenance of herself and children and to protect her against the improvidence and neglect of the complainant.

27. At first the complainant refused to convey his property to any one, particularly refusing to convey to this defendant, but later, at about the 25th day of June, 1919, complainant agreed to transfer his real estate to this defendant, and requested the defendant, William Kinnaugh, to manage and conduct the garage business heretofore conducted by complainant at Nos. 413-415 Newark Street, Hoboken, the rents, issues and profits from the garage business and the real estate to be used to pay the charges against the properties and the debts and obligations of the complainant, and the sum of $20 per week to this defendant for the maintenance of herself and children.

28. Defendant communicated this decision of complainant to Harrison P. Lindabury, attorney for complainant, at that time, and informed said attorney that a deed was to be drawn to be executed by complainant, but was advised by Mr. Lindabury that it would be better to transfer the real estate to a third party for convenience in management, and it was arranged that the transfer should be made to William Kinnaugh, and it was so arranged and a deed was drawn and executed by said complainant on the 25th day of June, 1919.

29. After said deed had been executed, a declara-

tion of trust was prepared (copy of which is attached to the bill of complaint), which sets forth the arrangement which complainant informed this defendant he was willing to make, except that the real estate was transferred to William Kinnaugh to be held by him until the complainant should be discharged from his term of imprisonment, and was then to be conveyed to this defendant. This declaration of trust was signed by the defendant, William Kinnaugh, on August 4th, 1919, and then this defendant executed the deed which had theretofore been executed by the complainant of June 25, 1919.

30. The properties were managed and cared for in accordance with the terms of said declaration of trust, and, as a result of a great deal of work, have been protected, and are now producing a substantial revenue; mortgages have been refunded as necessary; judgments and claims against the complainant have been paid, with the exception of one judgment of $825.00 and some small amount of taxes which are in arrears. Taxes in arrears have not been paid because the complainant has deprived this defendant and the defendant, William Kinnaugh, of practically all of the receipts from the garage business, and the premises in which the garage business is conducted for upwards of a year last past. All of the recognizances which were open of record in June, 1919, have been discharged, and the properties are now in a condition where they are not subject to loss or forfeiture if the current charges accruing against the same are paid. The current revenue of the real estate is much in excess of the carrying charges of the property, and will produce a substantial excess which can be used to pay off the principal of the mortgage en-

cumbrances to an amount which will leave the real estate free and clear in a period of the next few years.

31. The property under lease from Swift & Company has been purchased by the exercise of an option therein, the purchase price being obtained through a mortgage made to one David Gross, which mortgage was an instalment mortgage made and executed by William Kinnaugh, the defendant. Since the complainant has collected and received the income from the premises at Nos. 413-415 Newark Street, which he has done against the will of defendant, he has not paid the instalments on said mortgage so held by David Gross, and there is now an unpaid balance of about $700 of principal which is past due under the terms of the mortgage, and taxes for the years 1921, 1922 and the first half of 1923 have not been paid, although the income from the property occupied by said garage which has been so collected by complainant has been substantially in excess of the amount of taxes and mortgage instalments so past due.

32. That about the first of June, 1919, complainant had endeavored to sell the garage business as then conducted by him on Newark Street aforesaid, and had offered the same for sale at $1,800, as this defendant is informed and believes and therefore so states, but was not able to effect a sale at that price; that through the efforts of this defendant and the defendant, William Kinnaugh, and Frank Clark, complainant's son, the garage business was conducted during complainant's confinement in the Maryland penitentiary, and the business was built up and made a successful and prosperous business; that the business has been returned to complainant,

and he has since sold the same for the sum of $5,000.00 as he alleges in the bill of complaint; that the said garage business was retained and made valuable for the complainant as aforesaid in accordance with the express desire of the complainant as set forth in the declaration of trust as annexed to the bill of complaint, and the complainant has received the benefit and fruit of the labor of this defendant and the defendant, William Kinnaugh, and Frank Clark, who have relieved other obligations aggregating a large sum of money amounting to several thousand dollars in the form of open accounts and judgments, besides being relieved of the obligation of recognizances in the amount of over $180,000 on record against complainant in the courts of Hudson County and the United States District Court for the District of New Jersey, all through the efforts of this defendant and the defendant, William Kinnaugh, and Frank Clark, and the effort and labor expended as aforesaid in bringing about this result was made according to the agreement and in consideration of the transfer of said properties to this defendant, Catharine V. Clark, according to the terms of the declaration of trust aforesaid, and to deprive this defendant of the properties so to be conveyed to her under the terms of said declaration of trust would create a great fraud and hardship upon her, and would deprive her of the benefits for which she and the said William Kinnaugh and Frank Clark have labored in the confidence and belief that the conveyance would be made to this defendant as therein provided.

This defendant prays that the bill of complaint may be dismissed with costs.

By way of counterclaim against the complainant, and the defendant, William Kinnaugh, the defendant, Catharine V. Clark, says that:

1. She repeats the allegations of the answer hereinabove set forth.

The defendant, Catharine V. Clark, therefore prays:

1. That the complainant, James Clark, and the defendant, William Kinnaugh, may answer this counterclaim and each statement herein made.

2. That the said William Kinnaugh may be decreed to convey to this defendant the property set forth and described in Paragraphs 1 and 10 of the bill of complaint, or such of them as has not already been conveyed to her.

3. That the said complainant may be decreed to account for all moneys received by him by way of income from the premises at Nos. 413-415 Newark Street, Hoboken, New Jersey.

4. That the complainant may be decreed to pay to this defendant the amount found due on such accounting.

LINDABURY & STEELMAN,
Solicitors for the defendant,
Catharine V. Clark.

Affidavit of Catherine V. Clark.

IN CHANCERY OF NEW JERSEY.

Between JAMES CLARK, Complainant, and CATHARINE V. CLARK and WILLIAM KINNAUGH, Defendants.	On Bill, &c.

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

Catharine V. Clark, of full age, being duly sworn according to law, on her oath deposes and says:

1. That she is one of the defendants in the above entitled cause, and is the wife of the complainant, James Clark; that prior to the month of June, 1919, the said complainant, James Clark, had been convicted of receiving property of the United States, which had been stolen, and had been sentenced to serve a term of five years in the Penitentiary in Baltimore, Maryland; an appeal was taken from said conviction to the Circuit Court of Appeals for the Third Circuit, and the case on appeal had been argued and the conviction affirmed. After the conviction had been so affirmed, the said plaintiff was arrested on a bench warrant and confined in the jail on Newark Street, in the City of Newark, Essex County, New Jersey, awaiting his transfer to the Maryland Penitentiary.

2. This deponent was without means and was dependent upon the complainant for her maintenance and support; the family of complainant was also dependent upon him for maintenance and support to some extent, particularly one child, a daughter, at that time (in June, 1919), four years of age.

3. The complainant held title to five tracts of land in the City of Hoboken, mentioned and described in the bill of complaint, and in addition the complainant and this deponent owned an estate in the entirety of premises at No. 120 Park Avenue, Hoboken, in which they resided and now reside. With the exception of the first tract described in the bill of complaint, all of said property was subject to encumbrances; taxes were in arrears; interest payments due on mortgages were in arrears, and there was immediate danger of these properties being lost.

4. The second tract described in said bill of complaint was subject to a mortgage on which interest was in arrears, and payment of the mortgage was demanded. About August 1, 1919, foreclosure proceedings were instituted and the property ultimately went to sale and was sold at sheriff's sale to William Kinnaugh, the defendant in this cause. Through the assistance of Patrick Griffin, Mayor of Hoboken, deponent had succeeded in getting a new mortgage from the Steneck Trust Company for $5,000, but thus loan could not be obtained unless title to the premises was transferred to this deponent, so that in order to obtain this loan the premises were transferred by the said William Kinnaugh to this deponent and she now holds legal title thereto. $5,000.00 was not enough to satisfy

the amount of the claims against this property by way of principal, interest on mortgages, taxes and costs, and deponent was forced to obtain moneys from other sources, and borrowed on her note from William O'Neill the sum of $2,500, which sum, with the $5,000 of mortgage moneys so obtained from the Steneck Trust Company were applied on account of the amount due for mortgage, principal, interest and taxes on said premises. The foreclosure proceedings referred to went to a decree. The amount due against this property which had to be paid in order to make the mortgage a first lien is as follows:

Decree on foreclosure	$6,457.00
Court costs	196.75
Water bill in arrears	227.13
Taxes for the year 1918	210.75
Taxes for the year 1919	212.50
Taxes for the year 1920 (one-half)	167.25
Judgment of Henry Miller	161.00
Total	$7,632.38

The amount borrowed on mortgage from the Steneck Trust Company and the amount borrowed on note from William O'Neill was not quite enough to pay the amounts which had to be paid as shown above, besides the expenses incident to the mortgage loan which had to be paid to the attorney of the Trust Company. The amount of the shortage was borrowed, $200, from Mr. David Gross, and the balance from Mr. William Kinnaugh.

This property to which reference has been made as the Second Tract is premises located at No. 310 Newark Street, Hoboken.

5. The third and fourth tracts were purchased by complainant from Celia Rosenberg and husband, and are known as Nos. 304-306 Newark Street, Hoboken. Both of these properties were mortgaged at the time of purchase and the mortgages assumed by the purchaser, as well as a third mortgage covering both tracts held by one Moskowitz, so that at the time title was acquired by James Clark No. 304 Newark Street, was subject to a mortgage for $4,000 held by the Hoboken Bank for Savings, and No. 306 Newark Street was subject to a mortgage originally made for $3,200 but reduced by payments which was held by the Citizens Building and Loan Association of Jersey City, and there was a third mortgage made by one Moskowitz which was held by the Second National Bank of Hoboken; foreclosure of the mortgage held by the Hoboken Bank for Savings was threatened, and the Second National Bank of Hoboken demanded payment of the mortgage held by it under threat of foreclosure, so that it was necessary for deponent to make some satisfactory adjustment of this mortgage in order to avoid foreclosure proceedings. There was also a proceeding instituted by Esther Moskowitz claiming ownership of this mortgage covering both tracts, stating that her husband had improperly transferred it to the Second National Bank of Hoboken without authority, and seeking to recover same. There was also a receiver appointed who was collecting the rents from Nos. 304-306 Newark Street. This was the state of affairs with reference to the Third and Fourth Tract described in said bill of complaint in June, 1919.

Deponent was finally able to avoid foreclosure proceedings on these mortgages through a settlement of the taxes in arrears which were paid by

the receiver out of the rents collected by him; by the settlement of interest in arrears on the mortgag held by the Hoboken Bank for Savings; by the payment of interest and instalments in arrears on the mortgage held by the Citizens Building and Loan Association, and by William Kinnaugh making a new mortgage to the Second National Bank of Hoboken for the sum of $5,000, the proceeds of which were used to satisfy the Moskowitz mortgage, interest and other charges which had occurred on account thereof. It took a long time to bring about this adjustment, and it was not finally concluded until on or about December 3, 1921.

6. The Fifth Tract described in the bill of complaint was not subject to any mortgage encumbrance. This property is No. 413 Newark Street. There were, however, several years taxes in arrears on this property running from 1912. These taxes, with interest and penalties, were paid. A garage building had been erected on this lot by complainant, the building extending over on the adjoining lot, No. 415 Newark Street, although the complainant did not own No. 415 Newark Street. This lot (415 Newark Street) was leased to complainant by Swift & Company, with an option to purchase same for the sum of $4,000, less certain deductions to be made from the purchase price on account of rents paid. This lease was dated July 31, 1918, and ran for a period of one year, and called for the payment of rent of $480 per annum, payable in monthly instalments of $40. There was an option of purchase to be exercised at any time during the period of leasehold upon the giving of thirty days' notice in writing, the purchase price to be $4,000 cash, but any rents paid to be applied on account of the purchase price, so that complainant had

erected a building partially on property owned by him and partially on property leased by him with an option to purchase. This lease expired on August 1, 1919, and according to the terms of the lease notice of the intention to exercise the option was required to be given on or before July 1, 1919. The rent was in arrears three months, and therefore in order to exercise this option within the period limited in the lease it was necessary to pay on or before August 1, 1919, $4,000 of the purchase price, less $360 rents paid, or a net sum of $3,640. The complainant did not have this money, and because of the condition of his property, the moneys could not be raised from other sources, nor could the property at Nos. 413-415 Newark Street be mortgaged for a sum sufficient to pay this purchase price, owing to the judgments against complainant, unpaid taxes on No. 413 Newark Street, and bail bonds open of record in the County of Hudson and in the United States District Court for the District of New Jersey.

7. There were open of record recognizances or bail-bonds in the County of Hudson aggregating, to the best of deponent's recollection, over $150,000, and there were also recognizances or bail bonds open of record in the United States District Court in the amount of about $30,800, in all of which cases the complainant was either principal or surety, and these recognizances all had to be discharged before any mortgage encumbrances could be placed on any of the properties owned by complainant as above stated for the purpose of paying off any existing encumbrances or to obtain money necessary in satisfying any of the charges or claims against him.

8. The only other property owned by complain-

ant at this time (June, 1919), was the garage business conducted on the premises at 413-415 Newark Street. The complainant had been negotiating for the sale of this garage business, and deponent was informed at the time that he was offering to sell it for the sum of $1,800, and persons unknown to this deponent called at deponent's home, 120 Park Avenue, the day after complainant was arrested and placed in the Newark Jail after losing his appeal in the Court of Appeals.

9. Having some knowledge of this condition of complainant's property, deponent was very much worried about the support and maintenance of herself and her children while complainant was in the penitentiary serving his sentence; even the home at No. 120 Park Avenue was mortgaged, and the mortgage past due. Deponent called upon complainant at the Newark Jail on several occasions and talked with him about the situation and asked him to make some disposition, or try to make some disposition, of his property, so as to provide for the support and maintenance of herself and children while he was serving his sentence. Deponent at that time knew that the properties were heavily mortgaged and that demand had been made for the payment of some of the mortgages and that some arrangement would have to be made so that these properties could be cared for during complainant's absence, or all would be lost. Deponent first suggested to complainant that these properties be transferred to her and she would do all she could to save them; complainant refused to entertain this proposition; deponent then asked complainant to transfer the properties to the children, and he also refused to do this, and stated he would not transfer them at all. At the time of these conver-

sations at the Newark City Jail, complainant was laboring under the belief that this deponent had caused his arrest and was responsible for his then being in the Newark City Jail. This was not true, and deponent informed complainant that it was not true, and that she had nothing whatsoever to do with his arrest. Deponent visited complainant at the Newark City Jail daily (with possibly one or two exceptions), during the entire time he was confined there awaiting transfer to the Maryland Penitentiary, these visits being made to take complainant clothing and other things complainant required as well as to talk with him about his property and affairs. Finally, complainant told deponent to go to the office of H. P. Lindabury, who had been his attorney, and who had represented complainant in various matters, and for her to ask Mr. Lindabury to go to the jail and talk with complainant; at that time deponent talked with Mr. Lindabury concerning the properties and informed him (so far as deponent then knew), about the condition of the property as to mortgages, &c., and that foreclosure had been threatened. Thereafter Mr. Lindabury sent a letter to Mr. Clark, as this deponent was informed at the time, suggesting some plan for the care of his properties while complainant was in the penitentiary. In the course of these conversations with complainant concerning the properties this deponent learned that there was danger of losing them all; at one time deponent called upon a Mr. Kruse concerning the sale of the premises at Nos. 304-306 Newark Street, who stated to this deponent that he desired to sell the properties before the sheriff could sell them. Finally, realizing that the properties were in very bad shape and that it would be difficult to save them and that it would involve a great deal of hard work

on the part of this deponent if the properties were saved, this deponent became unwilling to enter into the effort of saving the properties unless the real estate was conveyed to her to become her's, and she so informed complainant. Some days later (possibly two or three days), complainant agreed to transfer the real estate to this deponent. Deponent agreed to do all she could to save the garage business so that complainant would have that business when he was released from his term of imprisonment. The complainant then requested this deponent to ask Mr. Lindabury to call on him at the jail to arrange the details for the transfer.

10. Deponent did call at the office of Mr. H. P. Lindabury and informed him that complainant was willing to transfer the real estate to deponent, and was advised by Mr. Lindabury that the transfers should be made to a trustee to hold the property while complainant was in the penitentiary, as the situation was such that it would probably be necessary to make some new mortgages, possibly deeds, of properties that could not be saved, and any such deeds or mortgages that had to be made while complainant was in the penitentiary would have to be signed by him if the real estate was transferred to this deponent, and that it would be much more convenient if title was put in a third party for the time being so as to avoid the necessity of sending any such instruments to Maryland for signature by complainant.

11. Deponent is informed that Mr. Lindabury visited complainant at the Newark Jail, and thereafter drew a deed to William Kinnaugh, which is the one referred to in the bill of complaint as conveying the five tracts of land therein described.

12. While it was the understanding of this deponent that the real estate would be transferred to her, at that time it was entirely satisfactory that the property should temporarily be transferred to a trustee for convenience, and she so informed Mr. Lindabury at the time a trustee was suggested, but upon the condition that when complainant had served his term of imprisonment or been discharged therefrom that the real estate would be transferred to this deponent and that she was not willing to go to the trouble and effort necessary in order to save the properties unless this was done. Deponent had had one home sold under foreclosure and she felt that if through her efforts these properties were saved and protected against foreclosure that they should be transferred to her, so that she and her children would be assured of some income or other benefits therefrom to safeguard them against the neglect of the complainant.

13. The deed having been signed by complainant (on June 25th, 1919), transferring the real estate to William Kinnaugh and a declaration of trust having been prepared setting forth the terms upon which said real estate was held by William Kinnaugh, which was signed on August 4, 1919, by said William Kinnaugh, this deponent at the same time signed the deed conveying said premises to William Kinnaugh and thereupon took on the task of protecting the properties, paying and discharging the debts and obligations of the complainant in the form of mortgages upon the real estates, taxes, judgments, and other claims, as the same appeared and became known to her, obtaining the discharge of all the recognizances open of record in the United States District Court and in the courts of Hudson County which were liens against

the real estate, paying such amounts as were necessary to be paid in order to obtain the discharge of said recognizances, surrendering such of the defendants was necessary in order to obtain the discharge of said recognizances, in one case, recognizance #18108 filed October 4, 1917, in the case of The State against Peter Cazazza in which the bail was $2,000 deponent obtained a process from the court in order to have the said Cazazza arrested, and finally deponent was personally obliged to go to New York and make an investigation in an effort to locate said Cazazza. As a result of her efforts said Cazazza was arrested and placed in the Tombs Prison, New York City, and later transferred to New Jersey, surrendered, and the bail discharged. Also in the case of the State against James McAndrews, bail bond $500 entered February 4, 1918, and the bail forfeited resulting in a judgment of $500. Deponent made an investigation and found that said defendant had served in the Army in France, returned and had died. Deponent had no information as to the man's address, and it was only as the result of a great deal of effort and investigation, and correspondence with many persons, that deponent learned finally that McAndrews had died on March 11, 1919, had been attended by Dr. F. L. Briel, of Netcong, New Jersey, and upon such proof submitted to the court the forfeited bail was reopened and the bail bond discharged. These two cases are referred to as indicating the amount of labor involved in clearing up these various matters.

14. Deponent further says that she succeeded in obtaining an extension of the lease made by Swift & Company with a continuation of the option to purchase from August 1, 1919, to January 31,

1920, and a further continuation from January 31, 1920, to July 31, 1920. Before the expiration of the second continuance deponent was able to arrange fo the exercise of the option, title being taken in the name of William Kinnaugh, as trustee, the purchase price being obtained by a mortgage upon two lots No. 413-415 Newark Street. It was possible to obtain this mortgage, because deponent had in the meantime obtained the discharge of all of the recognizances of record, so that the property at No. 413 Newark Street was free and clear except for taxes. A mortgage was obtained from David Gross for $5,500, the proceeds of this mortgage being sufficient to pay the expense incident to take title and pay taxes in arrears and the purchase price of $3,640. William Kinnaugh executed the mortgage and the bond accompanying the same and personally obligated himself thereon. This mortgage was an instalment mortgage, payable in instalments of $230 and interest each month. The amount of the mortgage was made necessary in part because of a heating plant which had to be installed in the garage.

15. In the course of the management of the real estate, deponent has paid all of the taxes in arrears as well as the current taxes, up to the present time, with the exception of the taxes on the garage property; has repaid all new loans which she obtained with the exception of the balance due on the garage property mortgage and the mortgage made to the Second National Bank of Hoboken for the purpose of refunding the Moskowitz mortgage; has paid all of the open accounts due and owing by the complainant in June, 1919, and also all of the judgments of record against him at that time, with the exception of one judgment held by Mr.

Grinello and Charles Van Brook, originally in the amount of $825. This judgment has not been paid because there has not been sufficient funds out of which to make payment of all of the debts and the holder of this judgment has permitted it to run along in order that deponent might be assisted in her efforts to save the situation.

16. The complainant was paroled in March, 1921; in October, 1921, he took over the garage business and from that time collected the rents from that business which has reduced the amount of moneys available to this deponent for the discharge of debts, judgments, and other charges against the property.

17. Since taking over the business, complainant has paid some of the instalments due on account of the Gross mortgage, but deponent is informed there is now due on account of this mortgage about $700. If all of the instalments had been paid according to the terms of the mortgage, this mortgage would have been fully paid and satisfied at this time.

18. The taxes on the garage property are in arrears and unpaid for the years 1921, 1922 and for the first half of 1923. Deponent has been unable to meet these taxes because she has not had the revenue from the garage property. Although legal title to said garage property is in William Kinnaugh, the complainant did, on June 1, 1922, make a lease for said garage property at Nos. 413-415 Newark Street to Daniel J. Wright for a term of five years commencing on June 1, 1922, at an annual rental of $3,000 per year payable in semi-monthly instalments in advance. This lease was

made without consultation with this deponent or William Kinnaugh and without the consent of either. On the contrary, it was made against the objection of this deponent and the said William Kinnaugh, and deponent is being deprived of these rent moneys in violation of her legal rights in the premises.

19. Deponent has not insisted on the transfer of the real estate to her, although she is now entitled to have the legal title to the same, and has been so entitled since March, 1921. She has not insisted on such transfer because William Kinnaugh, the trustee, has personally obligated himself on two bonds, secured by mortgages, as hereinbefore mentioned, assuming this obligation voluntarily and without benefit to himself in order to assist this deponent in saving this situation, and it did not seem fair to this deponent that the property should be transferred to her until he could be relieved of his obligation thereon.

20. Out of the rents and other income from the real estate and from the garage business during the continuance of the trust, deponent was to receive $20 per week for the support and maintenance of herself and children. Deponent has received this amount weekly, and it is the only money she has received for the support and maintenance of herself and children, the balance of the income having gone into the protection of the property and the payments of the charges as aforesaid.

21. Since the parole of said complainant, he has lived at No. 120 Park Avenue, and obtains his meals there. Since about August 1, 1922, he has paid deponent an additional sum of $15 per week toward the maintenance of the household and family, in addition to the $20 per week above men-

tioned. Deponent is now deprived of the $20 which she has heretofore received and is now without means of support and maintenance of herself and family other than the $15 per week paid to her by complainant. The amount of $20 per week so received by deponent was not sufficient to maintain the family, and it would have been impossible for her to maintain and clothe them if it had not been for the assistance given by one of deponent's daughters who is employed and boards at home paying $10 per week board, and deponent cannot now maintain her household on the $15 per week and the $10 per week so received at this time.

22. Deponent further states that in addition to maintaining the household she has paid the interest on the mortgage covering the premises at No. 120 Park Avenue in the amount of $180 per year, out of the $20 per week so received as aforesaid.

23. Deponent further says that Frank Clark, son of the complainant and this deponent, worked in the garage looking after the business during the entire time that complainant was confined in the penitentiary, and although he was to receive $25 per week compensation for his services he has only received a small portion of this sum, he having taken only such amount as his absolute necessities required in order that there might be available the largest amount of moneys from the garage business with which to save and protect the real estate and pay the debts of complainant which existed in 1919.

24. Deponent further says that the complainant has informed her that she must move out of the house at No. 120 Park Avenue, although complainant has not provided any other place for deponent and the children to live.

25. The collections made by this deponent of rent, and the disbursements made by her, have all been made with the knowledge and approval of Mr. Kinnaugh, as reported to him.

26. Deponent further says that the taxes have not all been paid and there are some taxes now in arrears on some of the properties for which she has no money to pay, and has not had any money to pay, as well as water bills, and it is important that some disposition be made of this matter so that these charges may be met out of the rents, as rapidly as possible.

27. Deponent further says that it has not been possible to pay all of the taxes and other charges accruing against the real estate because of her having been deprived of all the income from the garage property since October, 1923.

28. Deponent further says that since this matter has been pending a stoppage occurred in the gas pipes at Nos. 304-306 Newark Street, and the houses were left in darkness; that deponent was obliged to communicate with the Public Service Corporation, who sent a man to correct the trouble, and deponent is informed that he found some cotton in the pipes which had obstructed the flow of gas. Deponent was obliged to do this in order that the tenants might have light, as well as avoid the danger to life which might result from this condition.

CATHARINE V. CLARK.

Subscribed and sworn to before me at
Newark, this 11th day of June, 1923.

MAUD A. HORNER,
Notary Public,
(L. S.) of New Jersey.
Commission expires April 30, 1928.

Affidavit of Harrison P. Lindabury.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,

and

CATHARINE V. CLARK and
WILLIAM KINNAUGH,
Defendants.

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

Harrison P. Lindabury, of full age, being sworn according to law on his oath deposes and says:

That he is an attorney and counsellor-at-law of the State of New Jersey, duly admitted to practice in the courts of this State and of the United States in the State of New Jersey. That the complainant was indicted in the United States District Court for the District of New Jersey charged with two offenses, the first for receiving property stolen while being transported in interstate commerce and the second for receiving property of the United States which had been stolen. One Herbert Davis of Hoboken represented the complainant in this matter, and it came on for trial in the latter part of the year 1918, before Judge Thomas G. Haight and a jury, in the post-office building at Newark. A day or two before the cause was to be moved for trial, complainant called to see this deponent, and requested this deponent to represent him in the trial. Deponent was unable to do so because

of other court engagements, but did agree to attend and participate in the trial so far as he was able, and did in fact attend and participate in the trial one day. The trial resulted in a verdict of "Guilty" on the charge of receiving property of the United States which had been stolen, and the defendant was sentenced to serve five years in the Maryland Penitentiary. The matter was carried to the Circuit Court of Appeals for the Third Circuit on writ of error, and this deponent attended to the preparation of the record on appeal; the cause was argued by William A. Cavanagh, an attorney of Hoboken. The conviction was affirmed. After the conviction had been affirmed and mandate sent down from the Circuit Court of Appeals, a bench warrant was issued by the District Attorney for the District of New Jersey and the complainant was arrested and lodged in the Newark Street Jail in the City of Newark pending his removal to the Maryland Penitentiary to serve the sentence so imposed. While the complainant was so confined in the Newark Street Jail, his wife, Catharine V. Clark, called to see this deponent (to the best of deponent's recollection), three or four times concerning the various matters in which the complainant was interested, among other things, inquiring why complainant had been arrested; whether bail had been given, and stating that complainant believed that she (his wife) had caused his arrest, and finally concerning the property of the complainant. Some time during one or more of the visits of complainant's wife, this deponent was informed of the properties which complainant owned and received information as to the condition of said properties, that is, that there were mortgages, taxes in arrears, interest payments due on mortgages in arrears, and that she (complainant's wife)

was in destitute circumstances and did not know how she was going to support herself and her children, particularly a daughter who was then four years of age, while complainant was serving his sentence.

Some time prior to June 21, 1919, deponent was told that complainant desired to see him and discuss his properties with him, particularly as to making some disposition of them while he (complainant) was confined in the penitentiary. The information communicated to deponent indicated that by reason of the mortgages, unpaid taxes, judgments and open accounts owing by complainant, with threats of execution sale on judgments and foreclosure of mortgages, there was great danger of some or all of these properties being lost, and the amount of the charges was so great that it would require a great deal of hard work to retain them and get them in shape so as to prevent loss, and so as to produce some income from them which might enable complainant's wife to live while complainant was away. There was also a fine of $5,000 which had been imposed by the court as a part of the sentence against complainant, and it was thought by this deponent that if this fine were collected it would surely exhaust the properties and prevent any equity being realized or any rents being collected therefrom of which a part might be obtained by complainant's wife for the support of herself and children.

Deponent thereupon visited Thomas G. Haight, United States District Court Judge, who imposed the sentence, and communicated to him the circumstances in which complainant's wife found herself, and that she was practically destitute; deponent was informed by said Judge that he would be glad to do anything he could to help save the situation,

provided it was for the benefit of Mrs. Clark and her children, but that he was unwilling to do anything to relieve the defendant, James Clark, whom he, the court, thought should be severely punished, in fact that the sentence of five years was less than Judge Haight thought the defendant deserved, but this was the maximum which could be imposed on the conviction. This was communicated to defendant's wife.

When this matter was first brought to the attention of this deponent by complainant's wife, it was her desire that some arrangement be made for the maintenance and support of herself and children, if possible, but as she learned of the condition of the property and was informed that the mortgages, taxes, interest, and other charges would have to be paid or the property would be sold, and that a great deal of hard work would have to be done in managing the properties, refunding mortgages, paying off debts, etc., with the possibility (and apparently at the time with the probability), that the properties could not be saved, she became unwilling to make any effort unless the properties were secured in such a way that she and her children would not again be subjected to the danger of being left destitute through the neglect and improvidence of complainant after his release from the penitentiary, and that therefore she insisted that the real estate was to be conveyed to her, to become her property, so that any salvage which might result through her efforts would be secured to her free from the danger of being squandered by complainant upon his release from the penitentiary.

This deponent was finally informed by complainant's wife that complainant was willing to make a conveyance to her of these properties

which are set forth and described in the bill of complaint. This was not considered advisable by this deponent at that time, owing to the probable necessity of refunding mortgages by obtaining new mortgage loans or possibly the making of deeds to cover such equity as might be in the property if the same could not be held, and if the property were conveyed to complainant's wife no such instrument could be made and delivered without being executed by complainant, and that this would be very inconvenient, would cause serious delays and possibly prevent the consummation of plans otherwise possible. Thereupon deponent wrote to complainant under date of June 21, 1919, in relation to the matter, advising that the property be transferred under a declaration of trust. (A true copy of this communication is affixed hereto and made a part of this affidavit.) Deponent was not able to visit complainant at the jail and therefore wrote this communication and sent it up to the jail by James L. R. Lafferty, a New Jersey attorney, who was then in deponent's office. Deponent was informed that complainant received and read this communication but refused to entertain any suggestion of a transfer of his property either to a trustee or to his wife or to any one else. A few days later deponent was informed by complainant's wife that he (complainant) was ready to make a transfer of his property as she had requested, and desired this deponent to prepare the necessary deed conveying the real estate. Complainant's wife then furnished deponent with the deeds for the real estate owned by complainant, from which a deed was prepared. Upon receiving this word, deponent visited complainant at the Newark Street Jail and obtained the execution of a deed to William Kinnaugh, who was to hold the

property as trustee under the terms of a declaration of trust subsequently signed by the said William Kinnaugh.

Deponent visited the Newark Street Jail on the 25th day of June, 1919, to discuss the matter with complainant and verify the arrangement as had been reported to deponent by complainant's wife. Deponent took with him a deed which had been prepared, which complainant signed and acknowledged and which is the deed referred to in the bill of complaint. The deed was prepared in advance of the conference with complainant because deponent had been informed that complainant was to be removed to the Maryland Penitentiary, perhaps that day, and the matter was urgent, therefore deponent prepared the deed and as same was completed at once went to the jail. Deponent did not prepare a declaration of trust in advance of the execution of the deed because he had not talked with complainant and did not know what the terms of the trust were to be, except in the most general way, as communicated by complainant's wife.

In the discussion which this deponent had with complainant, the entire situation was gone over. Deponent found that complainant was of the opinion that his wife had caused his arrest, which seemed to be the most important factor in the position complainant had taken theretofore against conveying this property to her. Deponent informed complainant that his wife had had nothing to do with his arrest; that she had no control over the matter and could not have prevented it; that she had not known of his arrest or of any intention on the part of the District Attorney to cause complainant's arrest until the arrest actually occurred, and that the District Attorney had issued a bench warrant and he (the District Attorney) was absolutely responsible for the arrest. This seemed to

put complainant in a better frame of mind toward his wife.

Deponent also discussed with complainant the possibility of saving the property, and informed complainant that by reason of the fine, the mortgages, judgments, unpaid taxes, etc., it would be necessary to obtain forbearances on the part of the people to whom money was due, and the assistance of Judge Haight in voiding the fine and preventing its collection out of the property; that Judge Haight had said he would be glad to do anything he could to assist complainant's wife in the way of helping save the property by relieving it of the fine imposed, and that deponent thought the people to whom he (Clark) was indebted would be much more friendly toward his wife and more disposed to assist her if it were known that she was to have the beneficial interest in these properties; that he, the complainant, had so conducted himself that he had lost his friends; that he had neglected his obligations, and that conditions were such that he (complainant) seemed to be almost without friends; that it was doubtful whether complainant's wife would be able to save the property, but that it would be easier to accomplish this if people knew the properties were to become her's than if they knew the properties were to continue his and he receive the benefits from any concessions made or forbearances given. In any event, the complainant seemed to have made up his mind to a definite plan, and desired that the properties be conveyed to his friend, William Kinnaugh, to hold and manage the same; that the said William Kinnaugh was to conduct the garage business and the income from the garage business and the real estate was to be used to satisfy the liens and charges against the property as rapidly as possible, all of the proceeds to be so used except $20 per week which was to be

paid to complainant's wife for the maintenance of herself and children.

The option contained in the lease on the property at No. 415 Newark Street was to be transferred, so that it could be exercised by Mr. Kinnaugh if he was able to finance it at such times as complainant had served his term in the penitentiary or been discharged therefrom by parole or otherwise. The garage business was to be turned back to the complainant and the real estate to be transferred to his wife. A memorandum was made of the arrangement as stated by complainant, and from this memorandum a declaration of trust was prepared to be signed by William Kinnaugh, and was so prepared in conformity with the instructions received from the complainant. When dictating the declaration of trust, deponent realized that there had been no transfer of the lease given by Swift & Company. Inquiry was made, and it was found that the complainant was still at the jail, and Mr. Lafferty was sent immediately to the jail with a lease, on which had been endorsed an assignment of that interest to Mr. Kinnaugh. This occurred on June 27th, 1919. The deed did not contain any trust terms, and this was intentionally so. It was thought that if a trust was disclosed it might raise some question in the minds of persons with whom it might be necessary to deal in connection with the real estate, and that it would be better to have William Kinnaugh appear as the owner. The trust declaration was to protect the complainant and his wife against any possible claim of beneficial ownership on the part of others, in the event of death of the trustee or otherwise. The complainant stated he had implicit faith and confidence in William Kinnaugh and was perfectly willing to transfer his properties to him by deed, which would make Mr. Kinnaugh the owner in fee of the benefi-

cial interest in the property so far as appeared by the instrument. After the declaration of trust had been drawn, deponent notified Mrs. Clark and asked her to attend at deponent's office with William Kinnaugh for the purpose of executing the declaration of trust. There was some delay in arranging an appointment; finally about the middle of July, 1919, deponent was notified that said William Kinnaugh and Mrs. Clark would call at deponent's office as requested, but the date suggested being inconvenient to deponent, the appointment was not made, and the declaration of trust was not in fact signed by William Kinnaugh until August 4th. Mrs. Clark did not execute the deed until the same date, and after the declaration of trust had been so signed by William Kinnaugh.

Deponent further says that Catharine V. Clark, complainant's wife, called at his office frequently, in the opinion of deponent as often as twice a week, for a period of many months, in the course of her efforts to clear up the record by obtaining the discharge of the recognizances in the United States District Court and the courts of Hudson County, seeking advice as to the best method of securing loans, extensions of time for payment, and such other matters as arose in the course of her work in connection with the property, being untiring in her efforts, and her success would not have been possible if it had not been for the sympathy aroused in the people with whom she had to deal, and whose assistance was obtained in the belief that they were aiding Mrs. Clark, and that any salvage of the properties would inure to her benefit.

HARRISON P. LINDABURY.

Subscribed and sworn to before me,
this 16th day of June, 1923.

MAUD A. HORNER,
Notary Public
of New Jersey.
Commission expires April 30, 1928.

June 1, 1919.

Mr. James Clark,
Newark, N. J.

Dear Mr. Clark:

Mrs. Clark has called to see me concerning the Hoboken property. It is too bad that this matter could not be concluded before.

The properties are all mortgaged with the exception of the Garage, and perhaps the Madison Street property. The mortgagees are becoming restless and it would appear that something will have to be done or the property will be lost. In addition, the fine imposed is a judgment of record against you and a lien on the property, and while Mrs. Clark can probably obtain assistance in refunding these mortgages, nothing can be done so long as this $5,000 fine stands against the property.

With reference to the Garage, as I understand, you have erected a building partly on property owned by you, and partly on property on which you have an option contained in a lease which expires August 1st, 1919, and which, under its terms, requires a written notice of an intention to purchase to be given on or before July 1st. This purchase will involve the expenditure of a little over $3,500 in cash, and the money will have to be raised somewhere, if you have not got it which I understand you have not.

It is a rather difficult situation and I am sorry we will not have more time to work it out, but I will do the best I can with it in the time we have, as soon as a plan approved by you is devised. I have to suggest the following plan:

First, that you transfer all of your real estate under a Declaration of Trust to collect the rents,

issues and profits, pay the carrying charges and mortgages and generally empowering to deal with the property as you might do, with power of sale and to mortgage. It would I think be wise to give the Trustee the power to dispose of the property if an opportunity for a good sale offers, also necessary to give him power to mortgage, as it is now necessary to take care of one mortgage and it may be necessary to make new mortgages, from time to time, to pay off existing mortgages.

He should also be authorized to complete the transfer of the property from Swift & Company, so that you will not lose this option, or the value of the building you have erected thereon.

I do not think this property should be transferred to Mrs. Clark, as any mortgage or deed that it is necessary to make in connection with the property, could not be made by her without your joining, and we would be in much the same position as we are now.

If any income over and above the carrying charges is derived from this property, or from the operating of the Garage, it should be paid to Mrs. Clark so that she may have something to live on while you are away. As this is the only source of income, I should endeavor to have the fine remitted, that is, if the property is trusteed upon such terms as she will receive the benefit of the income.

This letter will be handed to you by Mr. Lafferty, and I wish you would give the suggestion herein consideration and advise Mr. Lafferty if you approve. If you approve, please advise who you would wish to make the Trustee, so that I may make the deeds to him and prepare the necessary trust agreement for that person to sign.

Yours truly,

L/S

Affidavit.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,

and

WILLIAM KINNAUGH and
CATHARINE V. CLARK,
Defendants.

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

James L. R. Lafferty, being duly sworn, according to law on his oath says, that he is an attorney and counselor at law in the State of New Jersey.

That in the month of June, 1919, he visited James Clark, the complainant in the above entitled cause, at the Newark Street Jail at the request of Harrison P. Lindabury, the said Harrison P. Lindabury having acted as attorney for the said James Clark in matters and just before that time had participated in the trial of the criminal cause in the United States District Court, in which the said James Clark had been convicted of a criminal offense in the United States District Court and had been sentenced to the Maryland Penitentiary for a term of five years. An appeal had been taken from said conviction to the Circuit Court of Appeals, Third Circuit, and the conviction affirmed, and the said James Clark had been arrested on a bench warrant, issued by the District Attorney, on mandate coming down from the court; and the said James Clark arrested on said bench warrant was confined in the Newark Street Jail and was

awaiting removal to the Penitentiary to which he had been committed.

Deponent visited the said James Clark at the said Jail several times. One of said visits was made on June 21st, 1919, at which time he delivered to the said James Clark a letter written to him by Harrison P. Lindabury, in reference to the properties of said Clark, which had to be protected and provided for during his absence.

Deponent has read a copy of said letter attached to the affidavit of Harrison P. Lindabury submitted herewith and remembers discussing with the said James Clark the contents of said letter; that said Clark refused to entertain any suggestions contained in that letter, because the plan suggested involved the transfer of his properties, and this Clark was entirely unwilling to do. It had been suggested to him, by somebody, that he transfer his properties to his wife, but this he refused to do, and his refusal seems to be based upon the belief that his wife, Catharine V. Clark, had caused his arrest and his confinement in the Newark Jail, where he then was. He indicated at that time that he might convey his property to his children, to one or more of them, but nothing definite was stated by him. It was suggested in the letter that the conveyance should be made to a Trustee. Mr. Clark read the letter and retained it, and did not indicate that he would consider conveying the properties to a Trustee at all, but stated that he wanted Mr. Lindabury to call to see him.

Deponent later visited Mr. Clark at the Jail, on June 27th, 1919, and to the best of deponent's recollection at that time he called to have Clark execute the assignment of a lease from Swift & Co. to William Kinnaugh, which leasehold interest had not been transferred by the deed executed by Clark on June 25th, 1919. Mr. Clark executed this assign-

ment of the lease, which assignment is endorsed at the foot of the original lease, to which reference is made.

Deponent further says that he had had to do with the affairs of James Clark and that it was thought that he was seriously involved, owing considerable sums of money, and that he had been informed that the people were pressing him for payment, and that on the visit made to the Jail on June 27th, 1919, referred to, deponent endeavored to ascertain just what Clark's debts were with the idea of trying to devise some plan for Clark's protection. A list of his indebtedness was given to deponent at that time, as follows:

Weller & Lichtenstein, Judgment,	$200.00
Stover (Lawyer), Judgment,	150.00
Flax (Tinsmith), Judgment,	150.00
Wm. O'Neill	550.00
Wm. Kinnaugh	325.00
Von Brouck & Grinelly	825.00

The list of debts as given above is a true copy of the memorandum made at the time by this deponent.

Deponent further says that he has seen and read the bill of complaint filed in this cause, particularly certain paragraphs thereof, and understands from the reading of the bill that the person referred to in Paragraph 5 as an attorney at law representing complainant's wife, was Harrison P. Lindabury, of No. 31 Clinton Street, Newark, New Jersey, and that the person referred to as the representative of said attorney, Harrison P. Lindabury, is this deponent. With this understanding, deponent says that the allegations contained in paragraph 5 as to statements made to deponent as the representative of Harrison P. Lindabury by complainant are absolutely untrue, other than the delivery of the

letter of June 21, 1919, heretofore referred to; that deponent made no inquiry of complainant as to the condition upon which he desired to convey his property and did not know of complainant's intention to covey his property to William Kinnaugh until after the deed was made; that complainant never stated to this deponent that he desired to convey certain properties to William Kinnaugh as in said paragraph 5 mentioned, nor did complainant inform deponent of his desire that William Kinnaugh should conduct the garage business at Nos. 413-415 Newark Street, Hoboken, nor did complainant inform deponent about the lease which he held made by Swift & Co.

Deponent further says he has never prepared a typewritten paper nor presented a typewritten paper to the complainant such as alleged in paragraph 5 of the bill of complaint, and deponent further says that the only paper ever submitted to complainant for signature by this deponent was an assignment of the Swift & Company lease endorsed on the original lease, which was submitted to complainant and signed by him on June 27, 1919, after the deed of June 25th, 1919, had been executed by complainant, at which time complainant gave to deponent a list of debts of complainant which he desired paid, as heretofore set forth, and this was the only discussion deponent had with complainant concerning his property or affairs, and the only information which complainant gave to deponent concerning the same.

JAMES L. R. LAFFERTY.

Subscribed and sworn to before me
this 16th day of June, 1923.

MAUD A. HORNER,
Notary Public,
of New Jersey.
Commission expires April 30, 1928.

Replication and Answer to Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between JAMES CLARK, Complainant, and WILLIAM KINNAUGH, et al., Defendants.	On Bill, etc.

The complainant joins issue on the answer of the defendant Catherine V. Clark.

As to the counterclaim contained in said answer complainant says:

1. He denies all of the allegations of the answer which are repeated by the said defendant by way of counterclaim except such portions of the said answer as admit the allegations in the complainant's bill of complaint.

FALLON & FALLON,
Solicitors for and of Counsel with Complainant.

Memorandum of Opinion.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,
and

WILLIAM KINNAUGH and
CATHARINE V. CLARK,
Defendants.

On Bill, &c.

April 22, 1924.

FALLON & FALLON, Esq'rs, for the Complainant.
PORTER, ZINK & LAFFERTY, Esq'rs, for the Defendants.

BENTLEY, V. C. (orally):

This is a bill to set aside a conveyance and for several auxiliary reliefs filed by the complainant against his wife and a man named William Kinnaugh.

In the month of June, 1919, the complainant was in custody in the Essex County jail, by reason of his conviction of a crime against the Federal Government, awaiting transportation from that place to the penitentiary in Maryland where he was to serve his sentence. He had been convicted in December of the preceding year and had been released on bail after being in custody for a considerable time pending the determination of his appeal to the United States Circuit Court of Appeals. At the time of his trial under the Federal indict-

ment he was represented by an attorney named Herbert Davis, and for about one and one-half days of his trial he was further represented by counsel in the person of another attorney named Harrison P. Lindabury. After his conviction he was unable to retain Mr. Lindabury to argue his appeal because he was without pecuniary means. It appears that his appeal was perfected excepting for the briefing of it by Mr. Lindabury and such guidance as could be given by the latter was imparted to a third attorney, Mr. Kavanaugh, who actually argued the appeal. The appeal was dismissed, or the conviction was affirmed, as I recall it, in the month of May, but that is of no moment,—sometime in the spring or early summer of 1919; whereupon, as I have said, this man was lodged in the Essex County Jail.

At this time he was the owner of a number of parcels of real estate, all situate in the City of Hoboken, and of a garage business from which he appears to have made his living. His wife, knowing that he was to go to prison, importuned him to convey and transfer to her all of his property for her protection and that of the children. This he certainly, and without contradiction, refused to do. He has given the reason that he says he advanced for such refusal, but I am not at all concerned with that, except as it may serve to shed some light on their present dispute.

It also appears from the testimony of Mr. Davis that at the solicitation of the complainant's wife he went to the complainant and urged him to make such a conveyance to Mrs. Clark. The defendant Kinnaugh, as I recall his testimony, also strongly urged the complainant to make such a conveyance to his wife. But in the face of all these people he refused, until his wife issued to him the ultimatum

that unless he would turn over his property to her she would refuse to assist him any further in his affairs. He did, and I believe for that reason, ultimately agree that while he would not convey to his wife he would convey to his friend at that time, the defendant Kinnaugh; and, as a result of a visit by Mr. Lindabury to him, he did execute a deed conveying all the property that he possessed to the said Kinnaugh.

The deed was absolute on its face, expressed a consideration of one dollar, and was executed by him in a great hurry on the morning of the 25th of June when it was expected that he would be immediately conveyed to the Federal prison. Mrs. Clark did not join in the deed at the time that it was executed by her husband. As to when she did affix her signature to it there is a great divergence in her own testimony. In fact, as I said, during her cross-examination she rendered her position such upon this point that it is impossible to place any credence in what she may say. Either she has made a mistake or she has most shamefully falsified in her testimony. I am inclined to think, however, that the more charitable view is the correct one, that she foolishly made a mistake in her testimony on the second day of the trial, and then this morning, realizing that she had done so was not sufficiently alert to realize that the thing to do was to come out in the open and say so. But on that point there are two powerfull pieces of evidence, to the effect that she did not execute the deed until the 4th of August following the execution of it by her husband. The first is the certificate of Mr. Lindabury as Master in Chancery who took her acknowledgment and that of her husband; and, secondly, his testimony is unquestionably true. Trial counsel for the defendant has said as much in

his testimony. I want to say right here that he took the stand to prove a formal matter, sought my advice upon it before doing so, and I saw no impropriety then and I see no impropriety now in his having testified, and no point is made of it by his very alert adversary who I feel would make a point of it if there were any impropriety. Mr. Lafferty admits that Mr. Lindabury was not a lawyer who paid much attention to his office routine. It is also true that Mr. Lindabury has been unable to corroborate his testimony by any records from his office or by producing his stenographer, or carbon copies of letters, entries in diaries, or anything else; and yet there are very able and upright lawyers who are often caught in the same predicament. Now, it is absolutely unbelievable on my part that a lawyer of the standing of Mr. Lindabury could have consciously entered into a fraud upon this complainant in his then helpless position and, in fact, complainant's counsel concedes as much. Nor do I believe it possible that he could have been mistaken as to when he executed the certificate of acknowledgment to the deed or conveyance from the complainant to Kinnaugh. Unquestionably,—and it isn't denied by anybody—the deed was signed by the complainant on the 25th day of June. It is clear that Mr. Lindabury did not then fill out the certificate of acknowledgment, but did fill it out at the time and on the day that it was executed by Mrs. Clark. The certificate itself bears the date of August 4, 1919, and was recorded on the following morning at 10:30, and at the same time Kinnaugh executed a declaration of trust to hold the proping of the deed, its execution by the complainant but for the latter's wife. Mr. Lindabury has explained, I think, the long delay between the drawing of the deed, tis execution by the complainant,

and the execution by the defendant wife. He says that he was busy. We all know it was the summertime when lawyers become more or less lax in the conduct of their offices, and he did not want her to execute that deed for fear it might find its way into the hands of Kinnaugh in such a way as to indicate delivery until he had something to protect Mrs. Clark from any action by, or misfortune that might occur to, Kinnaugh, such as death. Therefore, he held the execution of the deed by her until the 4th day of August, on which day he had Mr. Kinnaugh in his office, and where simultaneously, she executed that deed and Kinnaugh executed the declaration of trust, and a copy thereof was given to her, and the deed was delivered to Kinnaugh who, in turn, turned it over to Mrs. Clark who procured the necessary revenue stamps and, as I have said, had it recorded.

The case of the complainant is that he conveyed to the trustee, Kinnaugh, upon no such condition as the defendants have alleged but, instead, upon these conditions: That he was to conserve the property during the complainant's term of imprisonment, pay to the complainant's wife a weekly sum for her support, and upon the complainant's release from prison to return the property to him; otherwise, if he should die during his imprisonment, to divide it among his four children. And that, of course, presents the one single issue that is raised in this case, as to the conditions upon which this trust was created. I find it impossible to believe that the latter were the true conditions, and for a number of reasons: In the first place, this man was in a situation where unless he did something, his property would be swept away. Much of it was encumbered with mortgages and there were some judgments against it, and a large

number of liens against it represented by recognizances. Those recognizances have been cleared away by his wife during his imprisonment. Had nothing of that sort been done, I am convinced, notwithstanding what he says, that he would have returned to Hoboken to have found himself without any of his property; secondly, I can well see the situation in which he might have seen himself if his wife, against whom at that time he had the feeling that she was disloyal to him, had come into the open and was disloyal. And, in the next place, it would have been an advantage to him to have this property completely out of his possession when he undertook to get the remission of the $5,000 fine that accompanied the prison sentence. All of these things make it seem natural to me that he did what was natural for him to do, that is, for the property to be turned over to his wife upon his release from prison and not to be turned back to him. Furthermore, I must confess that I am not favorably impressed by the man's general bearing and attitude, and his manner of giving his testimony. It was a most signficant thing that, in the face of his affidavit supporting his bill, in the face of the whole theory of his case as he saw it develop in his examination here, that he should have testified on cross-examination that the signature to the deed that I have mentioned was not his signature when, in fact, it was; and it is not until I think the very last question was asked in the entire hearing and when that was asked by me, that he then admitted that it was his signature and that he was excited at the time he made it, and he wrote a little larger than usual, but he thought it was his signature.

Furthermore, I don't want it to be understood that this is in line of punishment but I feel that it is my duty, in weighing his testimony, to take

into account what the legislature has said I should, and that is, that this man has been convicted of a serious offense, in view of the testimony that he was sentenced to prison for five years and to pay a fine of $5,000. All of those things incline me to the belief that the condition of the trust was the condition that has been testified to by Mr. Lindabury.

I also am not able to follow the argument of counsel in his behalf, that this conveyance was void because made without any independent advice. Assuming for the moment that Mr. Lindabury was not his attorney; could be he said to have been in such a position as to require independent advice? I don't think the doctrine applies to the facts in the case. That doctrine is exemplified in Haydock v. Haydock; Post v. Hagen; Slack v. Rees, and all the other cases along that line. In those cases the fact was that the deed of gift was a purely voluntary conveyance. In this case, I don't so judge it, and I so flatly decide. It seems to me that the conveyance here was made for the purpose of protecting some of his interest in that property because, clearly, it was better for this man to feel that when he came back his wife or his family should be in the enjoyment of his property rather than that it should have been swept away. If it had done nothing else it would have relieved him completely or *pro tanto* of the duty of furnishing support. Therefore, for that reason, briefly stated, I don't think that this comes within the doctrine of independent advice.

I should have said before that there has been a great deal of discrepancy developed in the testimony here. I have been greatly interested in the cross examination by the complainant's counsel; but I feel that a great deal of that is more in form

than substance. Astute cross examining counsel can always put the most intelligent witness in a false position; but I don't feel that, with the exception of Mrs. Clark, there has been any real disclosure of falsehood or mistake on the part of any of the other witnesses.

In addition to the foregoing conclusions announced at the close of the hearing, I have given some attention to the questions of law raised by the complainant directed, first, to the validity of the deed from the complainant to Kinnaugh, and, secondly, the construction of the language in the declaration of trust:

> At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined by the expiration of the term of his imprisonment, or parole, or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift & Co., if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the garage business conducted on a part of said premises, if the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to.

There is not, so far as I know, any authority or rule of law that requires a declaration of trust to be executed simultaneously with the conveyance of the legal title. In Seibold v. Zieboldt (93 N. J. Eq., 327); Collins v. Collins (63 N. J. Eq., 602); White v. White (60 N. J. Eq., 104); Mulock v. Mulock (31 N. J. Eq., 594), and many other cases of a

similar nature, there was neither any reservation in the deed nor independent instrument to express the same. So that these authorities are no guide to the instant case. On the other hand in Smith v. Powell (11 N. J. Eq., 349) and Iauch v. Socarras (56 N. J. Eq., 538), declarations of trust made long after the conveyance were held to be valid. It is apparent that such instruments not contemporaneous with the deed that calls them into being should be carefully scrutinized; but I am so convinced, not only from the testimony but even more from the surrounding circumstances of the transactions in the case at bar, that I have no hesitancy in finding as a fact that the declaration of trust under consideration faithfully disclosed the conditions upon which the complainant conveyed to Kinnaugh, the one person in whom he had confidence. So far as the attack made upon the certificate to the acknowledgement is concerned, I know of no case that holds that the uses upon which a conveyance is made must be expressed in that instrument, and none are brought to my attention by counsel.

In contruing the language of the covenant to return the garage business quoted above, little if any assistance is to be found from an examination of authorities, as was pointed out by Mr. Justice Black in Coyle v. Donaldson (91 N. J. Eq., 138), cited by complainant's counsel in his brief. In that case it was determined that the construction of the will, giving to one of the parties "the coal business now owned by me," required a broader meaning than the mere good-will, lease, and ordinary equipment; but this was said to be so because of the context and not by "fixing the attention on single words". Just so here. When Kinnaugh agreed to return the garage business to the complainant upon his liberation from prison, it followed an agree-

ment to convey the lands that had passed from the complainant to him to the complainant's wife, "and will turn over the garage business *conducted on a part of said premises*". If he was to convey the land to Mrs. Clark, it is difficult to understand how he could have likewise given it to the complainant, and the whole frame of the declaration of trust and the conditions under which it was given, render it absurd to suppose that the conveyance of the real estate was to be to both of them as joint tenants or tenants in common. Therefore, my construction of the language under consideration is, for reasons I have already touched upon, that it was the complainant's intention to completely strip himself of all his tangible property, but to retain against his return to his home a going business, to be operated by his son assisted by the defendant Kinnaugh, at the complainant's exhortation.

The bill of complaint should be dismissed.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,

and

WILLIAM KINNAUGH and
CATHERINE V. CLARK,
Defendants.

On Bill, &c.

This cause coming on to be heard in the presence of Fallon & Fallon, Solicitors of Complainant, and

Porter, Zink & Lafferty, Solicitors of the Defendants; and the court having examined the pleadings and taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon;

It is on this 21st day of July, 1924, ORDERED, ADJUDGED and DECREED that the bill of complaint be dismissed, subject to the provisions hereinafter contained

And it is further ordered, adjudged and decreed that Henry J. Gaede be appointed Master to take an account of all moneys received by the complainant by way of income from premises known as Nos. 413 and 415 Newark Street, Hoboken, N. J., and of all moneys paid by the complainant on account of the liens against the said premises or for other benefits to the said real estate, and to take an account of all moneys received and disbursed by the defendant William Kinnaugh in his conduct of the garage business at Nos. 413-415 Newark Street, the result of said accounting to await the further order of this court.

It is further ordered, adjudged and decreed that William J. Stack, the Reeciver of the lands and premises described in the bill of complaint in this cause heretofore appointed in this cause, forthwith account in this court for his administration as such Receiver.

It is further ordered, adjudged and decreed that William J. Stack be continued as Receiver of the lands and premises described in the bill of complaint until the further order of this court, and that as such Receiver he take charge of the lands and premises mentioned and described in the bill of complaint and manage the same, with power to sue for, collect and receive rents, issues and profits

thereof, to let the said premises or any part thereof from time to time, and to do all things necessary for the proper care and management of said premises.

And it is further ordered that the said Receiver shall apply the said rents, issues and profits as follows:

FIRST.—To the payment of the sum of $20 per week to the defendant Catherine V. Clark.

SECOND.—To the payment of fire insurance premiums that may be necessary to keep the said premises properly insured against loss or damage by fire.

THIRD.—To the payment of interest and installments on mortgages on the said premises as the same shall become due and payable.

FOURTH.—To the payment of the cost of necessary repairs to said premises.

FIFTH.—To the payment of arrears of taxes, water rents or other municipal liens assessed against said premises or any part thereof.

SIXTH.—To the payment of current taxes, water rents or other municipal liens assessed against said premises.

SEVENTH.—To such purposes as this court may by its further order direct.

And it is further ordered that the bond provided for in the original order of this court appointing said receiver be continued in effect until said receiver be discharged by this court.

It is further ordered, adjudged and decreed that the defendant, William Kinnaugh, convey to the defendant, Catherine V. Clark, the lands and premises described in the bill of complaint in this cause upon release of the said William Kinnaugh from all obligations assumed by him by way of bond and mortgage.

It is further ordered, adjudged and decreed that William J. Stack, the Receiver heretofore appointed in this cause, pay to Porter, Zink & Lafferty out of the funds now in his hands, the costs of this suit to be taxed, including a counsel fee of $1,000, which is hereby allowed to said Porter, Zink & Lafferty, as Solicitors of the Defendants, Catherine V. Clark and William Kinnaugh, and that said William J. Stack, Receiver, pay to Fallon & Fallon out of the funds now in his hands as Receiver the sum of $500, which is hereby allowed to said Fallon & Fallon as Solicitors of the complainant, James Clark, and that William J. Stack, Receiver as aforesaid, pay to William Kinnaugh out of the moneys now in his hands as such Receiver the sum of $330.65/100 as compensation for his services in the management and control of the real estate described in the bill of complaint in this cause, said payments to be postponed, however, to payments necessary to save the premises mentioned in the bill of complaint from sales or foreclosure for non-payment of taxes, water rents, municipal liens, interest or principal of mortgages.

Respectfully advised,

JOHN BENTLEY,
V. C.

Transcript of Testimony.

IN CHANCERY OF NEW JERSEY.

Between

JAMES CLARK,
Complainant,
and
WILLIAM KINNAUGH, et al.,
Defendants.

On Bill &c.

Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Wednesday, December 19, 1923, at 10 o'clock in the forenoon, before His Honor

JOHN BENTLEY, Vice-Chancellor.

APPEARANCES:

FALLON & FALLON, by John Fallon, Esq., and Maurice J. Breen, Esq., for the complainant.

PORTER, ZINK & LAFFERTY, by James LeRoy Lafferty, Esq., for defendant Kinnaugh.

LINDABURY & STEELMAN, by Harrison P. Lindabury, Esq., for defendant Catherine V. Clark.

Mr. Fallon: I offer in evidence a deed, bearing date June 25th, 1919, made by James Clark and Catherine V. Clark his wife, to William Kinnaugh, covering all of the tracts of land in question; and I want to call your Honor's attention to the fact that this deed has the usual habendum clause in it. I want also to call attention to the acknowledge-

ment in this deed, which reads: "On the 25th day of June"—

The Court: What is the use of reading that into the record.

Mr. Fallon: Well, I merely offer the deed in evidence.

(Admitted and marked Exhibit C-1.)

Mr. Fallon: For the purpose of the record, before Mr. Clark is sworn, I just want to call attention to the fact that the pleadings admit that Mr. Kinnaugh claims no beneficial interest in the property in question; that he holds the same in trust, whatever that trust may be.

JAMES CLARK, sworn in his own behalf, testified as follows:

Direct Examination by Mr. Fallon:

Q. Mr. Clark, where do you live? A. 120 Park Avenue.

Q. How old are you? A. Fifty-one.

Q. What business are you engaged in? A. I am a plumber by trade.

Q. Who lives in the house with you at 120 Park Avenue? A. My wife and family.

Q. What does your family consist of? A. Three girls and one boy.

Q. What are their names and ages? A. Mary I think is 28; Margaret is 24, or 23; Frank is going on 22, and Rita is 9.

Q. Mr. Clark, you were confined in the Essex County jail in June, 1919? A. Yes, sir.

Q. And on what date did you leave the Essex County jail to go to the Maryland penitentiary? A. The 27th day of June.

Q. You were convicted of an offense in the Federal court? A. Yes, sir.

Q. And sentenced to what period of time? A. Five years and $5,000 fine.

Q. Who was your attorney in that case when you were convicted? A. Mr. Davis and Mr. Lindabury. For about a day and a half I believe Mr. Lindabury was there.

Q. The case was appealed? A. Yes, sir.

Q. Who represented you in the appeal? A. Mr. Lindabury was going to represent me, but because I could not produce a thousand dollars cash two days before—

Q. I am not concerned about that; I just want to know who represented you. A. Mr. Kavanaugh.

Q. Did Mr. Lindabury represent you as attorney at any time while you were confined in the Essex County jail? A. He represented me in regards to getting bail. That was in December previous.

Q. I am speaking about June, 1919. A. No, sir.

Q. How long a time were you in the Essex County jail in June, 1919; how long a period of time? A. About 10 days, I think.

Q. Now, during any of that time that you were there confined was Mr. Lindabury your attorney? A. No, sir.

Q. How long before that was it that Mr. Lindabury had ceased to be your attorney? A. About six or seven weeks before that.

Q. And who, at the time you were in jail, was acting as your attorney? A. Nobody.

Q. Well, you mentioned Kavanaugh. A. Well, I had no lawyer when I was in jail. Mr. Kavanaugh served me in Philadelphia on my appeal; he acted as my counsel, but in Essex County jail I had no lawyer at all.

Q. All right. Now, while you were confined in

the Essex County jail did your wife visit you there? A. Yes, sir.

Q. How many times did she visit you there? A. Oh, she visited me five or six times.

Q. And did others visit you there?—your son, or daughters, or any members of the family? A. Yes, Mr. Kinnaugh visited me, my son Frank, my daughter Rita and Marjorie.

Q. Did you converse with your wife or did she converse with you at any time that you were confined in the Essex County jail in June, 1919, with respect to our property, real estate? A. Every time she came there she wanted me to transfer it to her.

Q. Tell us the first conversation you had with her, and what she said and what you said in return. A. She asked me, would I sign over the property to her, and I said, "What's the reason; why should I sign over the property over to you?" She says, "It would be better taken care of". "Oh, not with you, kid; I wouldn't have a nickel when I came home". Then the second time she came out I had a talk with her, and I told her I would assign it to my son Frank.

Q. The second time had she asked you anything about assigning it? A. Yes.

Q. Please tell us the conversation. A. The second time she came she says, "Are you going to sign the property" and I says no, I would not; and she says, "Good bye." It was a very short visit and the officer said—

Q. Don't tell us what the officer said. A. It lasted about two minutes and she walked right out.

Q. Did she have other conversations with you about transferring the property to her? A. Yes, a couple of times, and I always refused.

Q. Tell us what your conversations were be-

tween the conversations you have given us. The court wants to hear these conversations. A. She just asked me—

Mr. Lafferty: Fix the time.

Q. Can you fix the times when she called? A. No, sir; the second day I was there she came.

Q. Was that the first visit? A. Yes.

Q. About how long after that was the second visit? A. The next day.

Q. When were the other visits? Try and tell tell us when they were if you can. A. Well, every other day, I guess, she was out there.

Q. How many times was she there in all? A. I should say about six times during my ten days there.

Q. Now, go on and tell us the conversation. Don't tell us anything but the conversation. A. She asked me to sign the property over to her, and I says, "Under no circumstances would I 'sign my property to you, because if I did I would be a pauper when I came home"; and the next time she came out there she again asked me to 'sign the property to her, and I says, "No, I will not, but I will 'sign it to my son Frank".

Q. Did she explain to you any reason why she wanted you to sign it over? A. She says "It will be taken care of".

Q. Tell us the whole conversation. You say she said it would be taken care of; can't you give us as best you can from memory, what you said to her and she said to you? A. All I know is—

Q. I want the conversation as you remember it. A. It is four years ago, you know.

Q. I know, but this is an important matter. A. She pleaded with me.

Q. You say she pleaded with you; tell us what she said. A. What else can I say, only she asked me to sign over the property to her, and I said I wouldn't do it.

Q. Did she tell you why? Why don't you tell us the whole conversation? A. That's the conversation.

Q. If you can't give it to me, why say so and I will not press it. I want you to tell the court what conversations passed between you and your wife with respect to your property and your turning the property over to her. Please bear in mind that I am asking you to tell us what she said and what you said in reply. A. She asked me if I would turn my property over to her and I told her "no". Then she acted funny.

Q. Can't you go from one visit to the other and tell us what happened? A. The first time when she came in she says, "Will you sign over the property to me". I says "No". In fact, previous to that—

Q. Never mind about that; I am asking you about the conversation now at that time. If there was anything previous to that I will bring it out; I am asking you now about this conversation. It is a simple matter for you to tell us what she said and what you said. A. She asked me if I would sign it over; she says, "Why don't you sign it over to me?" I says, "No, kid, I can't sign anything over to you."

Q. Did you tell her why? A. Yes, because—

Q. You are now going to tell something that you claim you said; is that right? A. The first time she came there she asked me if I would sign the property over; and I says, "No, kid, I can't sign the property over to you; if I do when I came out I would be a pauper. What is the reason you want

me to do it?" "No," I says, it will be better taken care of as it is. You are my wife".

Q. What did she say then in reply to that? A. She didn't say nothing at all. Then the second time she came there she again asked me.

Q. What did she say. You say she asked you; what did she say. A. She asked me if I would sign the property over to her, and I says, "I will tell you what I will do; I will 'sign it to my boy Frank". She deliberately walked right out.

Q. Did she call again and see you about it again? A. She called again, and I think in the meantime Kinnaugh came.

Q. I want you to tell us your wife's talk first. A. After I refused her the second time Mr. Lindabury came there.

Q. Now tell us what happened. A. Mr. Lindabury asked me—he told me that he represented Mrs. Clark, and if I would sign the property over to her he thought it would help a good deal in getting my fine cut off. I says, "Mr. Lindabury, I can't sign that property over to my wife." "What's the reason", he says. "My wife is a drunkard. It is only six weeks ago that my wife went to Newark to visit my wife's mother's grave, and she came home at 11 o'clock at night with her hair down and no hat on, and she couldn't walk." I told Mr. Lindabury the following day that she was in bed all day.

Q. This conversation that you are detailing is conversation that you say you had with Mr. Lindabury? A. Yes, sir.

Q. At the time when you say Mr. Lindabury called to see you in the Essex County jail? A. Yes, sir.

Q. And that visit of his you say was after the two visits that your wife made to you? A. Yes, sir.

The Court: This is what he says he said at that time to Mr. Lindabury?

A. Yes. I then told Mr. Lindabury that my daughter told me that she went to see Mr. Lindabury on a Tuesday afternoon, and she said her mother told her she had received a letter from Mr. Lindabury, and Mr. Lindabury denied sending her any letter. I didn't hear from my wife then.

Q. I am not asking you that. A. I am telling you what I told Mr. Lindabury. This is the story I told Mr. Lindabury as a reason for refusing to assign this property over to her. The next day Mrs. Clark began telephoning to my bondsman, Mr. Glasser, Mr. O'Neill and Mr. Cerventi.

Q. Now all of this you say you stated to Mr. Lindabury? A. Yes, as my reason for refusal. The following day they all laughed at it and took no stock in her. The situation became desperate. She goes to the lawyer's office in Newark and hired a clerk as an attache of the Department of Justice—

Tht Court: All of this is the story you told Mr. Lindabury?

A. Yes. She then hired the lawyer's clerk to represent himself as an attache of the Department of Justice, to notify my bondsmen that the Department of Justice wanted me arrested, as I was going to jump my bail bond. They sent down detectives and brought me up here. I went up there with them. A man by the name of Garry and a man by the name of O'Neill came in and counsellor Garvin came in, but Mr. Glasser and Mr. Cerventi wasn't there, and I asked the chief if I could go up with Detective Christie, and we went up to Mayor Garvin's office, and Mayor Garvin came down, and

he says, "Mr. Cerventi, What is the matter?" He says, "I have been notified by the Department of Justice to turn Mr. Clark over, as he is going to jump his bail bond, and the moment Mr. Clark is turned in I will telephone back." "Have you got the telephone number?" He says, "Yes, here it is", He hands the card to him, to counsellor Kavanaugh, and he told Mr. Kavanaugh "If you represent him ring that party up." Kavanaugh rang up this lawyer's clerk, and he says, "I am counsellor Kavanaugh, and I want to know what can be done with this Clark matter?" The boy then got confused, and he says, "I don't know". "Aren't you the attache of the Department of Justice?" "No, sir; I was hired by Mrs. Clark.

Q. All of this you say you told Mr. Lindabury? A. Yes. He says he was hired by Mrs. Clark. "You see that woman can send me to state's prison to get my property. That woman, in order to get money, went to Newark and drew my mother's insurance, and paid only $50. on account of the undertaker.

Q. Is this what you said to Mr. Lindabury? A. I said that to Mr. Lindabury.

Q. (By Mr. Lafferty). You told all that to Mr. Lindabury? A. Yes, sir; every word of it.

Q. Go ahead. You are talking about insurance now. You say you told Mr. Lindabury that she did something with the insurance. A. She drew my mother's insurance and paid $50 on account to the undertaker and went on a ten days' drunk.

Q. Well, is it a fact or is it not a fact that your wife was away from you for ten days? A. Ten days before she came home.

Q. When was that that she was away 10 days; about when? A. About six weeks before I lost my appeal.

Q. Was it while you were at liberty? A. While I was at liberty, yes; but she tried to get me back there as quick as she could.

Q. Now then, that statement that you have made here today you say is the statement that you made to Mr. Lindabury in undertaking to explain to him the reason why you would not transfer the property to your wife? A. Yes.

Q. What did Mr. Lindabury say in reply? A. Shook his head; says, "It is too bad".

Q. And then did you ever see Mr. Lindabury after that? A. On the day I went away, yes. Mr. Lindabury got there about 8 o'clock, I think, in the morning.

Q. What day was it you went away? A. On the 27th of June.

Q. Yes; all right. A. Mr. Lindabury got there before 8, I think it was, and he had a power of attorney which I was to sign, to give William Kinnaugh the right to collect my rents and to pay my bills, and collect all debts owing me, and, if necessary, to take care of the mortgage on my property.

Q. Did you sign a paper at that time? A. I did; I signed it.

Mr. Fallon: I ask the other side if they have such a paper as a power of attorney, as he calls it.

Mr. Lafferty: We have no power of attorney.

Q. Why do you refer to that paper as a power of attorney? Who told you it was a power of attorney? A. Mr. Lindabury.

Q. What did he say? A. He says it gives Kinnaugh power.

Q. Just tell us what he said to you when you

went in that morning or when he came there. A. He brought me this paper and says, "I want you to sign this power of attorney giving William Kinnaugh the right to collect bills, pay bills, and assume mortgages"; and I told him who I owed money to.

Q. Did Mr. Lindabury call upon you more than those two occasions that you have just mentioned? A. That's all I can remember.

Q. You say you left on the 27th of June? A. Yes.

Q. Now, Exhibit C-1 that is offered in evidence bears the date of June 25th; do you recall having signed a paper for Mr. Lindabury on June 25th? A. This gentleman here, I think it was (pointing to counsel) came with a letter about conveying my property to William Kinnaugh, and I told him no. I says, 304 and 306 Newark Street is in the hands of a receiver and I can't assign that to anybody. I says 310 I can assign; 413 Newark Street I can assign; 415 I got an option from Swift & Company; 1102 Madison Street, I can assign that. That is the first piece of property I bought; I bought it in my wife's name to protect her so that she would have a home.

Q. After you told him that what did he do? A. He asked me how I wanted it done, and I told him in case I died during my imprisonment I wanted the property turned over to my four children, mentioning them. Then he brought the paper there.

Q. What about your garage business? A. Nothing at all; Kinnaugh was to run that.

Q. Who said Kinnaugh was to run it? A. That was arranged previous to that.

Q. Whom did you have a talk with previous to that? A. This man.

Q. You are referring to Mr. Lafferty? A. Yes.

Q. How many times did Mr. Lafferty call there? A. I think three times. The first papers he brought I refused to sign.

Q. What about the second? A. The second paper he brought, it was, as I say, a transfer of 310 Newark Street, 413 Newark Street and 1102 Madison Street to William Kinnaugh. He also inserted another clause that if I died during my term of imprisonment that property would be equally divided between my four children. At that stage he asked me if I could spell the name of "Kinnaugh", and I told him "no", but I told him "you can go to the telephone book and find out." He says, "Mr. Kinnaugh will be at the office to get a copy and I will bring a copy of this back when Mr. Kinnaugh signs it."

Q. Was there anything said about what was to be done with the property if you did not die? A. The property was to be turned over to me the following day after I came home.

Q. Who said that? A. This gentleman here (pointing to Mr. Lafferty).

Q. Did you have any talk with anybody else other than Mr. Lafferty as to the terms on which you were to turn over the property? A. Yes, with Mr. Kinnaugh.

Q. How many times did he come to see you? A. Once or twice.

Q. When he first came to see you was he sent for, or how did he happen to come? A. His name was suggested to me.

Q. Who suggested it? A. My wife says to assign it to William Kinnaugh; she says "I have known him for 20 years", and I told her I would.

Q. And then he came to see you? A. He came with my son Frank.

Q. What conversation did you have with him?

A. I told him I was signing three pieces of property over to him and my garage business, and he was to run it and when I came home it was to be turned over to me.

Q. Was there anything said as to what was to happen if you didn't come home? A. Yes; it is in the paper.

Q. I want the whole conversation. A. If I should die during my term of imprisonment this property is to be equally divided between my four children.

Q. You also said something about your garage business. A. I told him, I says, "Bill", I says, "as soon as you get custody of the business, go and get a rent-book for the houses and a book for the garage", and I also inserted in that thing that my wife was to receive $20 a week during my term of imprisonment.

Q. You say you inserted that in it; what do you mean by that? A. I told him to put that in it.

Q. Told whom? A. This gentleman here.

Q. Mr. Lafferty? A. Yes.

Q. Did you say anything to Mr. Kinnaugh about it? A. I told Bill Kinnaugh the same thing.

Q. Now, then, was there some other paper that Mr. Lafferty brought to you afterwards before you went away—something about the Swift lease? A. There was no necessity for that, because that option ran only to August, and Mr. Aclerly, of Swift & Co., the head man, came to the Essex County jail and told me not to worry about that property.

Q. Did you tell that to Mrs. Clark? A. Mr. Aclerly left me and went and saw Mr. Lindabury and explained it to him.

Q. How do you know he explained it to him? A. He told me that is what he would do.

Q. Did you have a talk with him about it? A. Yes.

Q. While you were away in the Maryland penitentiary you did receive a paper from Mr. Lindabury, asking you to sign it, didn't you? A. I received two, I believe.

Q. Or from your wife, whoever it was. I show you a paper bearing date September 3, 1920, on the letter-head of Harrison P. Lindabury, addressed to Mr. James Clark, Maryland penetentiary, Baltimore, Md., and ask you if you received that letter through the mail? A. Yes, sir.

Q. When you received this letter was there a paper accompanying it? A. Yes, sir.

Q. Did you sign and return the paper which accompanied this letter? A. I signed and returned it.

Q. To whom did you return it? A. To Mr. Lindabury; and it seems to me the clerk down there, or the notary public, didn't put the seal on and they had to send the paper back again to put the seal on.

Q. He did something else in connection with the paper? A. Yes.

Mr. Fallon: I offer the paper in evidence.
(Admitted and marked Exhibit C-2.)

Q. Did you receive from Mr. Lindabury, or Mr. Lafferty, or any other person, a paper, or a copy of a paper, which mentioned the terms which you have stated or had mentioned to Kinnaugh and to Mr. Lafferty, upon which you desired to turn the property over to Mr. Kinnaugh? A. That was the paper I signed, yes, and I have no copy of it.

Q. What do you mean by saying that was the paper you signed? A. The paper I signed for this gentleman was to convey the three parcels of property to Mr. Kinnaugh, and also my wife was

to get $20 a week during my term of imprisonment, and if I died during my term of imprisonment the property was to be equally divided between my four children, and the day after my release it was to be turned over to me. This gentleman here (referring to Mr. Lafferty) could not spell the name of Kinnaugh when he brought the paper, and he promised me when he got Mr. Kinnaugh to the office he would bring me a copy.

Q. You say you signed a paper which he submitted to you, embodying these points? A. Yes; that is the paper I signed.

Q. After your release from imprisonment did you make a demand upon Mr. Lindabury for a copy of that paper which you are now referring to? A. Yes, I went right out there.

Q. Did you also go to see Mr. Lafferty in person? A. Yes, sir.

Q. Do you recall directing me as your attorney to write to Mr. Lindabury, requesting a copy of that paper? A. Yes, sir.

Q. And you went personally, you say, to ask for a copy of that paper, did you? A. Yes.

Q. Do you recall my dictating a letter to Mr. Lindabury in your presence, wherein I requested in your behalf that that copy of the paper be submitted to me, or to me as your attorney? A. Yes.

Q. Do you recall my having signed your name to the bottom of that letter? A. Yes, sir.

Mr. Fallon: I ask that the defendant produce a letter, bearing date May 18, 1920.

(Paper is produced and handed to Mr. Fallon.)

Mr. Fallon: I offer in evidence a letter bearing date May 18, 1921, addressed to Harrison P. Lindabury, Esq., Essex Build-

ing, Newark, N. J., signed "John J. Fallon", to which there is attached a sort of a memorandum signed by James Clark.

(Admitted and marked Exhibit C-3.)

Q. Did you ever receive from Mr. Lindabury a copy of the paper which was requested by that letter or by your personal visit to his office? A. No, sir.

Mr. Fallon: Would it be conceded by counsel that no such paper was sent to Mr. Fallon?

Mr. Lafferty: Certainly. No such paper exists.

Mr. Fallon: I ask that that be stricken out as being improper and a conclusion.

The Court: It may be stricken out.

Q. Upon what date were you released from the penitentiary? A. On March the 7th.

Q. What date did you get to Hoboken? A. On March the 7th.

Q. What year? A. 1921, wasn't it?

Q. And upon your return to Hoboken how soon thereafter did you talk to Kinnaugh about your property? A. I went in the garage and Kinnaugh shook hands with me, and I says, "How is everything?" He says, "You think there is a lot of money here, but there ain't." "What do you mean"? I says. He says, "You imagine there is a lot of money here." I says, "How's everything else?" "Oh, everything is all right." And somebody went up to the house and told my wife.

Q. Don't tell me anything that somebody else did. A. I went right up home then.

Q. You saw your wife then, did you? A. I saw my wife, yes.

Q. Before you went away to the penitentiary did you conduct your garage business yourself? A. I was just starting in business.

Q. How long had you been in business? A. Oh, about four or five months, I guess.

Q. Was it a profitable business while you were operating it? A. Just starting in, yes.

Q. When you came back from the penitentiary, how soon after you returned to Hoboken did you resume the conduct of your garage business? A. About seven or eight months afterwards.

Q. After you conducted it yourself was it profitable? A. Yes, sir.

Q. During the eight months between the time you returned from prison and the time you resumed the conduct of the garage business were you about the garage? A. All the time.

Q. Did you assist in its conduct? A. I was there and had a night man there.

Q. Was Kinnaugh there? A. He was there for awhile, and I had an argument with him about the property.

Q. But I am trying to find out how long you were there. How long was he in charge of the conduct of the property after your return from prison? A. Eight months.

Q. During those eight months were you also assisting in the conduct of the business? A. Between that and doing painting and plumbing and everything on my house. Everything went to pieces. They hadn't spent a dollar on anything.

Q. Who else was there? A. Kinnaugh was there, and my son Frank was there—two men on a one-man job.

Mr. Lafferty: I ask that that be stricken out.

The Court: The last part of the answer may be stricken out.

Q. When did you find out, after your return from the Maryland penitentiary that a paper was said to have been made by Kinnaugh to Mrs. Clark, containing conditions under which Kinnaugh was holding the property? A. Two or three days afterwards.

Q. And tell us, please, the circumstances of how you heard it and what you said to Kinnaugh about it and what he said in reply. A. Two or three days afterwards a friend of mine came down from the court house—

Q. You mustn't tell what your friend said; tell us what you said. A. I asked him what about that paper that was filed the other day.

Mr. Lafferty: This is—

Mr. Fallon: It is conversation with Kinnaugh with respect to this particular paper. Go on, Mr. Clark.

The Court: That, of course, is important on the point of laches.

A. I asked Mr. Kinnaugh why he signed that paper. He said, "I understood from Mrs. Clark that I was to assign the property over to her." He only understood it from Mrs. Clark.

Q. When you talked with Mr. Kinnaugh did you have in your possession and show him a paper which you said you found out had been signed by him and which you obtained from the record? A. Yes.

Q. I show you this paper and ask you to look at it and tell us if this is the paper which you then had and which you talked to Kinnaugh about and showed to him? A. (After reading paper.)

Q. You can glance it through; can't you tell me? A. Yes, that's the paper.

Q. Well, did you give me this piece of paper? A. Yes.

Q. And did you talk with Kinnaugh about this paper? A. Yes.

Q. Tell us what you said to him. A. I told him— I said, "That's an outrage to do anything like that." He says, "I understood from Mrs. Clark that it was so; I understood from her that it was to be that way; I understood it that way, that I was to assign that over to her."

Mr. Fallon: Now, I offer in evidence this paper, not for the purpose of proving the statements contained therein are correct, but for the purpose of proving that he had a conversation with Kinnaugh relating to this paper.

Mr. Lafferty: I object to that.

Mr. Fallon: In other words, he is attempting to give a conversation with respect to the paper, and I ought to show him the paper.

Mr. Lafferty: If you wish to offer the paper you may do so for what it is worth.

The Court: Well, of course Mr. Fallon is only stating the ground upon which he is offering it, and that doesn't limit him in making use of it.

Mr. Fallon: I am offering it for the purpose that I have stated, just to connect up the conversation between this witness and Kinnaugh, and it is not by any means an official paper.

The Court: He has to state some ground upon which he makes the offer. That does

not limit you in making use of it in the case. I will overrule the objection.

(The same is marked Exhibit C-4.)

Mr. Fallon: That is a copy of the articles of Declaration of Trust, not a certified copy.

Q. When did you get this paper, Mr. Clark, C-4? A. Up in the County Register's office.

Q. From whom? A. Mr. Coyne.

Q. And after you obtained it you talked with Mr. Kinnaugh about it? A. Yes.

Q. Did you after that then talk with Mrs. Clark about it or Mr. Lindabury? A. I never spoke to Mr. Lindabury since the time I was in Newark.

Q. What conversation did you have with Kinnaugh after your return, with respect to his accounting to you for the conduct of the garage business while you were away? A. He always kept putting it off.

Q. What did you say to him? A. I says, "give us a statement? Haven't you got any rent-books; haven't you got anything; didn't you keep a book account of your business or anything?" "No", he said; "it is all right." I says, "Give me an account of it."

Q. Do you recall meeting Kinnaugh in my office? A. Yes.

Q. When was that, about? A. About eight months after I came home.

Q. What conversation did you have with Kinnaugh there in my office? A. I said to Kinnaugh the night before that, "I am going to take this business over tomorrow, that day". I says, "Come on up to Fallon's office". He came up to your office and he told you that there was $1,037 standing out and half of that was his.

Q. Half of what, did he say, was his? A. Money he invested in there. He took the garage business without a dollar.

Q. I am asking you what he said. A. He said, "You know that I invested money in the garage business, and I told him he didn't have $500 in his life.

Q. Did he make an accounting of it? A. No. I kept at him all the time; in fact, he kept promising to make an account.

Q. Did you ask him, through me as your attorney, that he or Mrs. Clark make an accounting? A. Through you for Mrs. Clark to make an accounting.

Mr. Fallon: I want to avoid the necessity of my going on the witness stand. I will ask counsel if they will concede that this paper that I have now was received by me through the office of Julius Lichtenstein, who was acting as the attorney for Mrs. Clark at the time; and I state now to the court that I received from Mr. Lichtenstein a letter bearing date March 27, 1923, addressed to me, signed "Julius Lichtenstein, and to which is attached what purports to be a statement of account. And it is endorsed on the outside: "Account of Mrs. Clark and Mr. Kinnaugh, July, 1919, to December, 1922; and I ask counsel if they have the original copy of that.

Mr. Lafferty: I don't appear to find it in our papers. I am willing to accept it, if you state in open court that you received that.

Mr. Fallon: Then I offer this letter to identify the copy of the account thus received.

(Admitted and marked Exhibit C-5.)

Q. Now, Mr. Clark, do you recall meeting Mr. Lichtenstein at my office with respect to your business troubles with Kinnaugh and Mrs. Clark? A. Yes.

Q. Did you meet him there more than once? A. Only once, I think.

Q. And do you recall a talk then had between you and Mr. Lichtenstein and myself, wherein I requested Mr. Lichtenstein in your behalf to have Mr. Kinnaugh and Mrs. Clark make an accounting to you? A. Yes, sir.

Q. Do you recall that Mr. Lichtenstein said that he was representing Mrs. Clark? A. Yes, sir.

Q. I show you another paper, Mr. Clark, which purports to be a copy of a deed, dated June 25, 1919, made by James Clark, et ux., to William Kinnaugh, recorded in the Hudson County Register's office, in Liber 1326, page 17 on August 5, 1919, and ask you if you recall having delivered that paper to me? A. Yes.

Q. Where did you get that paper? A. In the Register's office.

Q. How soon after your return from Maryland? A. I think about two weeks afterwards; I think it was.

Q. And did you have this paper in your possession at the time you talked with Kinnaugh with reference to the other paper that was just spoken of? A. Yes, sir.

Mr. Fallon: I offer that in evidence, just for the purpose of identifying the paper that he spoke to Kinnaugh about, that is, a copy of the original, as Exhibit C-1.

(Admitted and marked Exhibit C-6.)

Q. Did you, Mr. Clark, at any time before you

saw this paper which I have just called your attention to, have any knowledge that you had conveyed to Kinnaugh any properties other than the properties which you mentioned here before that you said were to be conveyed to him? A. No, I have no knowledge at all of that until I went to the Register's office.

Q. And when you got this paper your attention was then called, was it, to the fact that this paper purports to convey all of the property that you owned? A. Yes, sir.

Q. And did you have any talk with Kinnaugh then about this paper containing a recital of your having conveyed to him the property 304, or whatever it was, Newark Street, which you said you could not convey because it was in the hands of a receiver? A. I told him that this paper was all I owned; I only had three parcels.

Q. What did he say to that? A. He shrugged his shoulders and said, "I don't know about that".

Q. Before you went away to the penitentiary, Mr. Clark, was any of your children working? A. My oldest daughter was a piano teacher and earns a very large salary. My next oldest daughter had a position in the National Park Bank in New York; and besides that, we had a girl boarding with us, and my son Frank was down in the garage.

Q. Now, what income came into the house, if you can tell us from the earnings of those children? A. They all earned good salary. They didn't let me know nothing about that.

Q. Was your wife, at the time you went away to Maryland, in destitute circumstances? A. She was drawing the rent from the garage.

Q. Can't you answer my question? A. No, she was not.

Q. Had she any financial means, and from what source? A. Yes.

Q. And if so, from what source? A. Well, she was getting money from my daughter Mary; she was getting money from Marjorie; she was getting money off the girl that boarded with us; drawing rent from 1102 Madison Street, 310 Newark Street and the garage.

Q. Now, how much were the receipts from the garage, if you recall, about that time, net receipts? A. Well, at that time it was about $300 a month.

Q. Net or gross? A. Net.

Q. What were the rents of 1102 Madison Street? A. That was about $14 at that time.

Q. What were the rents of these other properties that you mentioned? A. 310 Newark Street must have brought in about $80 a month, I should judge, or something like that.

Q. Do you recall having a talk with Kinnaugh about this paper which was said to have been a trust deed, that you had conveyed the property to him under, mentioning that he should collect the rents and apply the rents to the upkeep of the property, and that you intended that he should have done that? Do you remember saying that? A. Yes, sir.

Q. Did he say whether or not he had collected the rents or who had? A. He said Mrs. Clark was collecting the rent of 310 and 1102 Madison, and as the rents came in from the garage she collected that rent also.

Q. Did you say anything about why he should not have complied with your direction? A. I said, "I left everything in your charge; why didn't you carry it out?" He said, "It will be all right; I will have the property paid for.

Q. Now, you conducted the garage, you say, after you took it over from Mr. Kinnaugh, for a period of time before you sold it to Mr. Wright? A. Seven months, yes.

Q. For how much did you sell it to Wright? A. $5,000. $1,500 of that was to go for repairs, at a rental of $250 a month, under a lease of five years.

Q. Did your wife know and did Kinnaugh know, of your having made that arrangement with Wright? A. They knew it; it was filed in court and it is in the paper.

Q. Did you ever talk to your wife about it? A. She went down to Wright and said something; didn't say anything to me about it.

Q. How long ago was this property sold by you, or the business sold by you to Mr. Wright? A. One year the first of last June.

Q. You mean June, 1922?

The Court: Yes, that agrees with what he said before.

Q. And ever since that time have you been receiving the rents of that property? A. Yes, sir.

Q. Has Mr. Kinnaugh in any wise objected to your receiving the rents for that property? A. None at all.

Q. Has your wife in any way objected? A. Not to me.

Q. Now, the moneys that you derived from the sale of that business and from the rents of that property, have you applied it to the mortgages and other claims on the property? A. I have paid $3200 off on the $5500 mortgage. This property that has got a $5500 mortgage I bought for $3600.

Q. What property is that? A. 415 Newark Street.

Q. You mean by that that the property was bought on your option for $3600? A. Yes, sir.

Q. And you have paid off $3700? Is that the

amount? A. Thirty-two, I think, or something like that.

Q. You paid off a considerable sum on that mortgage? A. I paid it off before the case went into the Court of Chancery, and I paid it off from the moneys that I received from rents.

Q. Did you pay any other claims off, such as water rents and the like? A. I have paid the water rents right up to date, yes,—five years' water rent was standing on it and that I paid.

Q. When you came out from the Maryland penitentiary did you go to the City Hall to ascertain whether or not the taxes and water rents, taxable against your property, had been paid? A. Yes.

Q. Did you find out whether they had been paid? A. They had not.

Q. Did you remonstrate about that? A. Yes.

Q. To whom did you speak about it? A. It was two months afterward; I says—

Q. Whom did you say it to? A. Mrs. Clark and Kinnaugh. They were together three hours a day.

Mr. Lafferty: I move that that be stricken out.

A. (Continuing) I says, "Why hasn't that been paid".

The Court: Strike out, "they were together three hours a day".

Q. Now, what did you say to Mr. Kinnaugh and Mrs. Clark? A. Mr. Kinnaugh and Mrs. Clark was in a corner of the garage having a conversation, and they called me over and says—

Q. Can you tell us when this was? A. Two months after I came home. They says to me, "Can you get a $500 note?" I says, "How can I go on a $500 note."

Q. Who asked you that? A. They asked me.

Q. You say "they"— A. Mrs. Clark and Kinnaugh asked me if I could get anybody to go on a note for $500.

Q. Did they both say that or did one of them say it? A. I think it was Mrs. Clark that said it. I says, "Why should I get anybody to go on a note; you have got all this money; where is it?" And then Mr. Kinnaugh and Mrs. Clark, I believe, went into the—

Q. You mustn't say what you believe; I am asking you whether you spoke to them about the arrearage of water rents and taxes you found on your property, and if so what did you say.

Q. Asked them why it wasn't paid.

Q. What did they say? A. Said they didn't have the money.

Q. After you got out did you clear up any of the taxes and water rents from any of the moneys you received? A. I cleared up five years' taxes from the rent I received from Mr. Wright. I paid $150 a month to Gross who held the mortgage; I paid Mrs. Clark $65 a month, and that left me about $20 a month to live on.

Q. Did you pay the water rents? A. Five years' water rents.

Q. Were there any taxes paid out of that money? A. I couldn't pay any taxes out of it.

Q. I am asking you whether you did or not, not whether you could. A. No.

Q. Mr. Clark, I don't remember whether I asked you what the rent of the garage property was under the lease that you made with Mr. Wright. A. $250 a month.

Q. Now, at the time that you were convicted of the Federal offense to which you have referred, was Herbert Davis representing you as attorney also? A. Yes, sir.

Q. With Mr. Lindabury? A. With Mr. Lindabury.

Q. You said Mr. Lindabury was in it for a day and a half? A. Yes.

Q. Whom had you employed as your lawyer to represent you in that case? A. Mr. Davis.

Q. And after your conviction did Mr. Davis come to you and ask you if you would transfer your property to your wife? A. Three or four times.

Q. What did you say to him? A. No.

Q. And how long was that conviction, then, at the time you made that statement to Mr. Davis, before this June conversation in 1919 that you speak of? A. That was in December.

Q. December of the previous year, 1918? A. Mr. Davis came there, I think, three times, and then after I was out on bail Mrs. Clark told me that Mr. Lindabury wanted to see me. I went out to Mr. Lindabury's office, and Mr. Lindabury said that I should transfer my real estate to one of his clerks and he would then transfer it to Mrs. Clerk; and I said "no, there is one piece of property in her name to protect her and that is all I will transfer." That was right after Christmas in December.

Cross Examination by Mr. Lafferty:

Mr. Lafferty: May I see the copy of the deed which you have offered.

(Mr. Fallon produces it.)

Q. Referring to Exhibit C-6, I understand you to say that you first learned, upon reading that, that you had conveyed certain of these properties which you had not intended to convey; is that right? A. I conveyed three pieces of property.

Mr. Fallon: No, listen to the question.

Q. (The question is read by the stenographer.)

By the Court:

Q. Is that the first time you knew that you had conveyed more than you thought you had? A. When I came home, yes.

Q. Was it when you looked at Exhibit C-6 that you knew that? A. When I got it from the register's office.

Mr. Fallon: He wants to know if it is that paper.

A. Yes.

Q. And when you got it from the register's office did you read it? A. Yes.

Q. And did you discover this situation? A. Yes.

Q. You read it carefully and you understand that that was the effect of it, to convey 304 and 306 Newark Street? You understood when you read that paper that it did include those properties? A. I told Kinnaugh that I could not, when I read it. I said, "I can't sign that".

Q. You understood when you read it that it included those properties? A. Not the one that I signed.

Q. Mr. Clark, referring to Exhibit C-4, you say you obtained a copy of that and read it; is that correct? A. Yes, sir.

Q. You understood it when you read it, did you? A. Yes.

Q. You understand everything that this deed says now?

Mr. Fallon: I object to his referring to it as a deed. It is not a deed.

Q. You understood everything that is in Exhibit C-6?

Mr. Fallon: I object to that as calling for a conclusion, his understanding that everything that is contained in this paper is correct. The paper speaks for itself.

The Court: No, I will overrule the objection. Counsel is entitled to search his mind.

A. I never signed that paper.

Q. I show you Exhibit C-1 and ask you whether you signed that one.

Mr. Fallon: He just wants to know if it is your signature, Mr. Clark.

A. I don't think it is. Just let me look at it. (Witness examines paper) Give me time. Witness examines it again). I never signed that paper. The paper I signed for you also had on it something about my children. You couldn't spell Kinnaugh's name, and I asked you for a copy.

Q. You read the paper which you say I submitted to you, didn't you? A. I read it, yes.

Q. You read it carefully? A. Yes, sir.

Q. And did you understand everything that was in it? A. I can repeat it to you now.

Q. And if you signed Exhibit C-1 you also read that, didn't you? A. What's that?

Q. If you signed Exhibit C-1 you also read it before you signed it, didn't you? A. I didn't sign that.

Q. I say, if you, in fact, did sign it you read it first, didn't you? A. I never saw that paper.

Q. You read very carefully each paper that you signed while you were in the Newark jail, did you not? A. I signed two papers.

Q. Just answer my question: Did you read them carefully? A. The two papers I signed, yes.

Q. You understood them? A. Yes.

Q. I show you a lease, dated July 31, 1918, between Swift & Company and James Clark, and ask you whether that bears your signature.

Mr. Fallon: You don't have to look at the whole paper; he is only asking you if it bears your signature.

A. Yes.

Q. Does it bear your signature more than once? A. That ain't my writing; I don't think this bottom one is my writing. I never received a dollar or anything else. I signed two sets of papers. I know everything I signed.

Mr. Fallon: Don't look at the paper; just tell us whether it is your signature.

A. I just want to see if it is the paper I signed; I can't tell if I don't look. (Witness examines paper further.) Yes, I signed that.

Q. In both places? A. Yes.

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

(The same is marked Exhibit D-1 for Identification.)

Q. I show you what purports to be a renewal of lease between Swift & Co. and James Clark, dated August 5, 1919, and ask you if that bears your signature. A. Yes.

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

(The same is marked Exhibit D-2 for Identification.)

Q. I show you what purports to be a renewal of

lease, dated May 6, 1920, between Swift & Company and James Clark, and ask you if that bears your signature. A. Yes, sir.

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

(The same is marked Exhibit D-3 for Identification.)

Q. When were you tried in connection with the criminal matter to which you have referred? A. The 14th of December.

Q. What year? A. 1919, wasn't it?

Q. (By the Court) A year before you went to Maryland? A. Yes.

Q. (By the Court continued) That would be 1918. A. Yes.

Q. What was the charge? A. Receiving stolen goods.

Q. What kind of stolen goods?

Mr. Fallon: One minute; I don't see the purpose of it.

The Court: What is the purpose?

Mr. Lafferty: The purpose is to show that he denied it and went to trial and was convicted.

The Court: He has testified as to his conviction and that is all you are entitled to put in.

Q. When did you enter the Essex County jail? A. In the month of June, 1919.

Q. What day? A. I think it was on the 14th.

Q. Did Mrs. Clark call on you that day? A. No.

Q. Did she call on you the next day? A. The next day I think she did.

Q. Was it on that day that you say she asked you to transfer the property to her? A. Yes, sir.

Q. And you say you refused? A. Yes, sir.

Q. Was that all the conversation you had that day? A. We talked about the business in the garage, and money, and different things like that.

Q. Did she call on you the next day? A. I think it was the following day, afterwards; I'm not positive now.

Q. You say that you told Mrs. Clark you would not convey to her because she was a drunkard; is that correct? A. Yes, sir.

Q. You say that you told her that you believed the property could be handled just as well without any conveyance? A. Yes; there was no necessity of assigning it at all. If she was the right kind of a wife why should I assign my property to anybody? It was as much hers as mine. She had a right to take care of it; why should I sign it.

Q. What day did Mr. Lindabury call on you? A. I think about three days after I was there.

Q. You say about the 17th day of June? A. I don't know that.

Q. Can't you fix the date? A. I can't tell that, no.

Q. You recall every detail of the conversation? A. Yes, but I can't fix the date.

Q. You cannot fix the date? A. About three days afterwards.

Q. Are you sure that it was before the 20th day of June? A. Oh yes, I am most positive of that, before the 20th.

Q. How long was Mr. Lindabury there? A. About a half an hour.

Q. Did he give you any reason why he believed the property should be conveyed to someone? A. He says he thought it would help in getting the fine off.

Q. You had no interest in getting that fine disposed of? A. I was interested in the fine being taken off, but I wasn't going to leave myself a pauper for the purpose of having the fine taken off.

Q. What would you say was the equity that you had in these properties at this time? A. I couldn't say that. Every dollar that was in it was mine, that's all.

Q. Was there $5,000 in it? A. Oh yes; there was $25,000.

Q. $25,000 equity? A. If not more.

Q. Was there any mortgage on the property known as 1102 Madison St.? A. No, sir.

Q. What was the value of that property? A. 5,000 I bought it for $2500.

Q. As a matter of fact, had you not entered into a contract during March of 1919 to sell that property for $1800? A. Yes, sir; to pay Mr. Lindabury a thousand dollars to appear for me in Philadelphia.

Q. You were selling property worth $5,000 for $1800? A. I would sell it for any amount. I even offered to give him a first mortgage and he wouldn't do it, and he wanted cash, and I put the property up for sale.

Q. Didn't you also offer to transfer this property to Mr. Lindabury? A. I offered to give him a mortgage on it.

Q. Didn't you also offer to transfer it to him? A. I cannot recollect that.

Q. Don't you recollect that you came to his office and offered to transfer it to him and he refused to take it? A. He wanted cash. I don't know whether I offered to give him a mortgage on it; I offered to transfer it to him.

Q. Will you explain to us why you were selling

this property for $1800 when you say it had a value of $5,000? A. I paid $2500. Mr. Lindabury had to have 1,000 cash to save me from going away for five years.

Q. When did you buy this property? A. Six or seven years ago.

Q. Six or seven years ago figuring from this time; you had owned it, then, about one year prior to June, 1919? A. A couple of years.

Q. What kind of property is that? A. Two story and a half house.

Q. What does it rent for? A. It rented then for thirteen or fourteen dollars a month.

Q. How large a lot? A. The lot, I believe, is 25x100.

Q. Did you carry through this agreement of sale? A. Yes.

Q. You affected and carried through the agreement, did you? A. The house was put up at auction. It was bought by employees of the Erie Railroad. They consented to buy it at that price, and when the ten days came up they only put up a deposit on the house and the house was never sold. That deprived me of getting the money to pay Mr. Lindabury.

Q. What was the date of that auction? A. That I do not remember.

Q. Did you receive a deposit on the sale? A. Yes.

Q. What happened to that deposit? A. What happened to it? Why, I kept it.

Q. You kept it? A. Yes, it was mine.

Q. Never called upon to return it? A. No.

Q. Do you know Harry Williams? A. I think that was the man that bought it.

Q. Do you know him personally? A. No.

Q. Was there any mortgage on the property

known as 304 Newark Street? A. There was a building and loan mortgage on it, and I think another mortgage, too.

Q. How much was the building and loan mortgage? A. Pretty hard to tell, because it kept decreasing every month.

Q. What was the original amount of it? A. I couldn't tell you. The building and loan put up that money when the house was first built. They built the house for Mrs. Rosenberg.

Q. How much was the second mortgage that you refer to on this property? A. That I cannot recall.

Q. What was the value of 304 Newark Street? A. Property in Hoboken is up and down.

Mr. Fallon: That property.

A. That property is the same. I value it today $12,000.

Q. What was the property valued at in 1919? A. I bought those two parcels of property for $6,000.

Q. Referring to what two parcels? A. 304 and 306 Newark Street. I bought them for $16,000, paid $4,000 cash and assumed a mortgage for $12,000.

Q. Did you ever pay off that $12,000 mortgage, or had you paid it off prior to June, 1919? A. $33 a month to the building & loan. I was investing my money in other properties to accumulate something.

Q. Was there a foreclosure pending with reference to this property? A. I went to New York to pay this man that had the mortgage, a very clever Jewish man, and I think the interest was $125 and my wife says, "No, it is $175", and I says "I will

go down tomorrow to collect the $175." and he kept ducking me, and I was notified, by Mr. Davis, that the 30 day limit was up and he foreclosed on me.

Q. Had a receiver of rents been appointed for this property in June, 1919? A. Yes, Mr. (witness hesitates) A real estate dealer, Mr.—

Q. No need of giving the name. How long had the foreclosure been pending in June, 1919? A. Five or six months I think. I don't know.

Q. Have you tried to refinance this mortgage to save it from foreclosure? A. Have I tried it? I tried it at that time, yes.

Q. Did you have any success? A. None at all.

Q. Were there any mortgages on 310 Newark Street? A. Yes, there was a mortgage of $6,000 on that property when I left, and when the people called in that mortgage Mrs. Clark and Kinnaugh got a $7,500 mortgage on it to pay the $6,000 mortgage.

Q. What was the value of that property in June, 1919? A. I bought it for $7750.

Q. When did you buy it? A. About five years ago—six years ago.

Q. Were the taxes paid up to date in June, 1919, on this property? A. June, 1919?

Q. Yes. A. I would think so. I wouldn't say definitely whether it was or not.

Q. Was the interest paid up to date? A. June, 1919? No, it couldn't be, because I was away.

Q. Was there any mortgage on the property known as 413 Newark Avenue? A. No, sir.

Q. Were there any unpaid taxes in June, 1919? A. There may have been; I couldn't say.

Q. Don't you know, as a matter of fact, that the taxes have not been paid since 1912? A. I didn't buy it in 1912. I never knew that until Mrs. Clark came down and told me.

Q. When did you buy 413 Newark Street? A. About six years ago.

Q. From the present time? A. I think so.

Q. Did you have a search made when you bought it? A. Yes, I employed Fred Eberhardt to make a search and he never made it,—through Mr. Carey.

Q. You know now, as a matter of fact, that the taxes have been due on that property from 1912 to 1919, don't you? A. I didn't know anything about it.

Q. Do you know it now? A. Since Mrs. Clark told me I know it, yes.

Q. Referring again to 310 Newark Street, do you know how much money it required to satisfy that mortgage on foreclosure? A. No, I don't know that.

Q. Do you know that it took more than $6,000? You know that, don't you? A. All I know is that when I came home Mrs. Clark had a big desk there and every paper was in it, and it was locked up and sealed, and nobody could see anything but her and Kinnaugh. I was kept in entire ignorance of everything.

Q. Did you ever look in that desk? A. One day she left it open and I just glanced in, and I went down and told Kinnaugh to lock her desk.

Q. How long did it take you to glance in? A. I just pulled it up and shut it right down again.

Q. Was there any mortgage on 120 Park Avenue? A. $3,000.

Q. On the occasion of the second visit by Lindabury, that you say took place on June 27th, how long were you there? A. Who, Mr. Lindabury?

Q. Yes. A. I should judge about a half an hour. That is, the first conversation.

The Court: On June 17th.

A. The second conversation?

Q. Yes. A. I was there about 10 minutes. That was the morning that I went away.

Q. He was there only 10 minutes? A. Yes, and Mr. Lindabury hadn't left the institution more than a half an hour until the officials came and took me to Baltimore.

Q. Did you give him a list of your creditors at that time? A. Yes.

Q. Did you give him a list of whom they included? A. If I heard the names I could tell.

Mr. Fallon: You are asked if you recall.

A. I know some of them.

Q. Did you mention the name of Weller & Lichtenstein? A. That was a judgment, yes.

Q. Do you recall the name of Stover, a lawyer? A. Stover? Yes.

Q. Did you give him that name? A. That was the Powers' account.

Q. Did you give him the name of Flax? A. Yes, that account on the garage.

Q. Did you give him the name of O'Neil? A. Yes; $500 I borrowed of him to pay for the minutes.

Q. Did you give him the name of William Kinnaugh? A. In this way: I borrowed $325 off of William Hughes, and I asked William Kinnaugh to pay William Hughes, and I put his own name down instead of Hughes.

Q. Why didn't you put Hughes' name down? A. Because I knew if Mrs. Clark ever heard that Hughes loaned me that money she would never pay him.

Q. Why did you feel that way? A. I know as a fact that she never did pay him, and I asked Kinnaugh, "Will you pay Hughes $325". I had to pay $150 to the stenographer; I was late getting money that day.

Q. Did you tell Mr. Lindabury that this was a debt to Mr. Hughes? A. I wouldn't say whether I did or not.

Q. Did you give the name of Van Brook Grinell to Mr. Lindabury? A. That is not paid yet.

Q. Did you give him any other names? A. I can't recollect.

Q. On the occasion of Mr. Lindabury's first visit visit on June 17th, as you fix it, was there any discussion whatever as to the terms under which you might convey this property to someone? A. I don't recollect that date. It was when you came there that I think we brought up that discussion.

Q. What was the date that you say you gave me all the details? A. Of what?

Q. The date that you gave me all the information? A. Listen: I couldn't keep them dates at that time; I was going away for five years, maybe for life. The dates wasn't bothering me at that time; at that time it was whether I would ever come back alive.

Q. Your mind wasn't very clear at that time, was it? A. It was pretty clear, but not on dates. Everything else I kept in my memory, so that I would have it when I came back, and I was lucky in getting back. They had me dead and buried.

Q. Did you anticipate some trouble as to this when you came back? A. I could see it, yes. Why when that woman came down—

The Court: That is all; you have answered the question.

Q. With reference to Mr. Lindabury's first visit, when did he first call on you, before or after that? A. Well now, I don't recall that. I don't want to be mistaken. You came there with a paper with the whole thing and I absolutely refused to have anything at all to do with it.

Q. Was that before Mr. Lindabury had seen you or afterwards? A. I can't say that; I don't recollect.

Q. Did you tell me that you wished to have Mr. Lindabury call on you? A. No, sir.

Q. Did you ever tell me that? A. No, sir; Mr. Lindabury called through Mrs. Clark, not through me, and just when I needed Mr. Lindabury he quit me, and I wasn't going to have him quit me again.

Q. Did you ever get a letter from Mr. Lindabury while you were in the Newark jail? A. I can't recollect that.

Q. Do you know whether you did or not? A. I wouldn't say.

Q. Do you remember having had one delivered to you by messenger? A. That is the one I think you brought there.

Q. I am not speaking about that one. A. Never through the mail.

Q. Referring to that, did you receive that before Mr. Lindabury's first visit or afterwards? A. I cannot recollect that; I don't remember.

Q. Referring to the paper which you say I brought to you, is that the instrument that you say correctly sets forth the trust agreement? A. The paper that I signed for you sets forth that I was to 'sign three parcels of property to William Kinnaugh, 310, 413, and 1102 Madison Street; it also stated that if I died during my term of confinement that property was to be equally divided between my four children; and also that Mr. Kin-

naugh, if I lived during my confinement, was to deliver that property back to me the day I came home, and he was also to pay my wife $20. a week; and you also promised me a copy, which you never sent me.

Q. Was there any signature on it? A. Not at that time.

Q. Did I witness it when you signed it? A. Yes —Oh, I suppose you did.

Q. Did I ever present to you any other paper other than that one? A. I don't know.

Q. Did Mr. Lindabury ever present any paper other than the one you refer to as the power of attorney? A. The only one I remember was the one when I went home on the morning. That's the only one I remember.

Q. What was that paper? A. Power of attorney to William Kinnaugh, to pay bills and collect bills, and if necessary to give a mortgage on the property.

Re-direct Examination by Mr. Fallon:

Q. Can you tell us what the value of the premises 1102 Madison Street is at the present time? A. Well, it must be worth $6,000, with these new assessments on.

Q. How much does it rent for at the present time? A. I think $30.

Q. A month or when? A. $30 a month, yes.

Q. And you say there is no mortgage on that, or wasn't at that time? A. No.

Q. How about 304 Newark Street, and 306; are those the two that you say you paid $16,000 for? A. Yes.

Q. They have increased in value since you bought them? A. Yes.

Q. How much have they increased? A. I think they are worth $12,000 apiece today if fixed up right.

Q. Then the property 413 Newark Street; what is the value of that property today? A. I guess that property is worth $25,000 today.

Q. That is, 413 and 415? A. Yes.

Q. Did that property run through to Ferry Street? A. Yes, sir.

Q. How deep is the property? 53x113.

Q. Runs through from Newark Street to Ferry Steet? A. Yes.

Q. 310 Newark Street; what is the present value of that property? A. It is worth $12,000.

Q. 120 Park Avenue, what is the value of that property? A. Well, I paid $4,500 for it, and I guess I spent $1,500.

Q. What is the present-day value? A. I guess $6,500.

Q. Do you know what the rentals of these various properties are today? A. Yes.

Q. What is the rental of 304 Newark Street? A. From the time—

Q. I mean the monthly rental. A. $530 a month for those three houses, 310, 304 and '6 and 1102 Madison Street. They have been collecting $530 a month from them.

Re-cross Examination by Mr. Lafferty:

Q. I show Exhibit C-4; do you recall that? That is the paper which you obtained from the Register's Office, isn't it? A. I didn't file it.

Q. But that you obtained from the Register's office? A. Yes; that I got out of the Register's office, yes.

Q. Doesn't that state correctly, according to your understanding of what this trust arrange-

ment was to have been, everything except the ultimate disposition of the property?

Mr. Fallon: I object to that. That is for the court to determine on the inspection of the paper and the hearing of the testimony.

The Court: This is cross-examination of this witness, Mr. Fallon. It is for the purpose of determining what it means or doesn't mean, or to find out how it agrees with his idea. I will allow the question.

Q. (Question is read by the stenographer.)

The Court: In other words, what counsel means is this: You say that this property when you were to be released from prison was to be returned to you. That, of course, everybody understands, is the main matter in dispute between you and the defendants. Counsel means, excepting for that matter, is the paper accurate; does it describe what you intended to do and wanted to do except for that. Now, go on and answer the question and take your time.

A. I understand now that I have time to examine it. (Witness examines the paper shown him, being Exhibit C-4 and then answers): Yes, sir.

By Mr. Fallon:

Q. I am going to ask you whether or not you do understand this paper. The first clause of this paper says that Mr. Kinnaugh received this prop-

erty for this purpose, to collect the rents, issues and profits from the lands and premises and pay all taxes, interest on mortgages incumbrances, fire insurance and repairs on said premises, and also on premises 120 Park Avenue, and so forth; now did you have any understanding with anybody about that recital? A. No.

Q. This paper says, "Whereas, by a deed dated June 25th, 1919, James A. Clark and wife have conveyed to me five certain tracts of land in Hoboken, Hudson County, New Jersey"—is that true? Did you have any such talk with Kinnaugh? A. No.

Q. Did you ever agree with anybody that you would turn over these five tracts of land mentioned in this paper? A. No.

Q. This paper says, Whereas, said lands, mentioning five tracts, were conveyed to me, William Kinnaugh, in trust; did you have any agreement with Kinnaugh whereby you conveyed to him five tracts of land for any of the purposes mentioned in this paper? A. Why, no.

Q. And this paper says, And further agree, mentioning Kinnaugh, that I will supervise and manage his garage business, receive the moneys that may accrue from the conduct of the business, and any profits are to be accounted for; did you have any such agreement with Kinnaugh? A. No.

Q. Did you know anything about such a recital in any paper before this Exhibit C-4 was called to your attention? A. I never knew about that until I got it out of the Register's office.

Q. Did you agree with Kinnaugh, or with anybody else, about the matters mentioned in this paper? A. No.

Q. This paper says, clause 3, I will further agree, meaning Kinnaugh (reading clause 3); did you have any such talk with Kinnaugh? A. No.

Q. Did you have any such talk with anybody else as the result of any agreement that was entered into by you? A. No.

Q. Paragraph 4 says (Counsel reads paragraph 4); did you have any such talk? A. No.

Q. Did you at any time say to Kinnaugh that he was to transfer any of your properties after your liberation from prison to your wife? A. Absolutely not.

Q. This paper which we are referring to Exhibit C-4, bears date August 4, 1919; where were you at that time in August, 1919? A. Maryland.

Q. Had you given any instructions to Mr. Lindabury or Mr. Kinnaugh, or anyone else, to prepare a paper such as this one, C-4? A. No, sir.

Q. That is all.

By the Court:

Q. Mr. Clark, at the time you talked with your wife, or with Kinnaugh, in the prison at Newark, was there ever anyone else present except you and your wife, when you were talking with her, or you and Kinnaugh when you were talking with him? A. I only spoke to Kinnaugh once. My boy was out there, but I called Kinnaugh aside, as I wanted to tell him about the $325. which I owed to William Hughes, who mentioned it to me while the trial was going on. I called him aside and told him to pay that bill.

Q. Of course, you didn't want your son to know about that? A. No.

Q. When Mr. Lindabury came there to talk with you, was there anybody present besides you and him? A. We sat alone.

Q. And I suppose the same thing is true when Mr. Lafferty came to see you? A. Yes.

HERBERT E. DAVIS, sworn on behalf of the complainant, testified as follows:

Direct Examination by Mr. Fallon:

Q. Mr. Davis, you are an attorney at law? A. I am.

Q. And have been practicing as such for how many years? A. Since February, 1897.

Q. Did you represent James Clark in December, 1918, or thereabouts, when he was charged with a federal offense? A. I did.

Q. Was Mr. Lindabury associated with you in the defense of Mr. Clark? A. The first day, I think, of the trial; maybe a day and a half.

Q. Was he associated with you in the trial? A. Yes.

Q. Throughout the entire trial? A. No, no, just one day.

Q. How many days did the trial take? A. Six I think.

Q. Now, during any time that you and Mr. Lindabury were associated together did you and Mr. Lindabury and Mrs. Clark have a talk with respect to Mr. Clark's property, as a result of which you went to see Mr. Clark? A. Yes, after his conviction.

Q. That was before June, was it? A. That was in December.

Q. And where did you talk with Mr. Clark? A. In the Essex County jail.

Q. And what talk did you have with Mrs. Clark before you went to see Mr. Clark? A. Mr. Lindabury, Mrs. Clark and I talked over the matter of the $5,000 fine. That matter came up, and we talked it over, and we arrived at the conclusion that the only way to save the $5,000, that is, the

collection of it by the government, was to transfer the property. As a result of that conversation I went to see Mr. Clark.

Q. What conversation did you have with Clark? Did you ask him to transfer that property? A. I did.

Q. Did you say to whom he should transfer it? A. Yes.

Q. Please tell us what you said. A. I told Mr. Clark—I spoke about the matter with Mr. Lindabury and his wife—had talked it over on the 'phone, and I told him that we had arrived at the conclusion that the only way to prevent the collection of that fine by the government was to transfer the realty and also to protect the realty while he was in jail, and I asked him if he would not transfer his property to his wife, and he said no. I saw him, I think on three occasions all together. On one occasion, Mrs. Clark and a friend of hers accompanied her one evening.

Q. And was that same thing said at that time, that he wouldn't transfer the property? A. I think practically the same thing each time, or something similar.

Cross Examination by Mr. Lafferty:

Q. These conversations were conversations that occurred before the conviction was affirmed? A. Yes.

Q. And before the appeal was taken? A. Yes, immediately following the conviction, within two or three days after the conviction; the space of a week at the most.

Q. Where was the conversation between you and Mr. Lindabury and Mrs. Clark? A. On this transfer of the property?

Q. Yes. A. In the Essex County jail.

Q. And where did the second conversation take place? A. Essex County jail.

Q. (By the Court) He was there sometime, was he, after his conviction? A. Before he was let out on bail, yes.

Q. Do you know whether there was any difficulty at this time with reference to the mortgages and taxes?

Mr. Fallon: I object, on the ground that it is not cross-examination.

The Court: Yes, I think it is cross-examination to go into all the details.

A. I think that there were some mortgages overdue, or something—

Mr. Fallon: I object, unless the conversations were in the presence of Clark.

The Court: On what ground?

Mr. Fallon: That any conversations that were not had in the presence of Clark are not material. They can't make evidence for themselves to which we are not a party.

Mr. Lafferty: He testified as to the reason why a plan was suggested, and I think I have a right to cross-examine him as to whether there might not be some other reason.

Mr. Fallon: The suggestion came from Mrs. Clark, not from us. If Clark had delegated Mr. Davis as his attorney to go to these people and have some interchange of conversation, then I wouldn't object.

Mr. Lafferty: In reply to that I might say that they put in the direct testimony

certain conversations that took place, and I think I am entitled to see whether that is all the conversation.

Mr. Fallon: I will withdraw my objection, rather than to try to keep out anything.

Q. (Question read by the stenographer.)

The Court: To what time does this refer?

Mr. Lafferty: December, 1918.

The Court: The first conversation?

Mr. Lafferty: Yes.

A. It is my recollection there was some difficulty as to payments—payments were overdue for interest, and there were, I believe, taxes that were due; and I think there was certainly one mortgage about to be foreclosed, and I think there had been a receiver appointed on two houses, 301 and 306 Newark Street.

Re-direct Examination by Mr. Fallon:

Q. When you asked him to transfer the property to his wife did you say anything to him about the trouble regarding the mortgages and the like? A. No.

Complainant rests.

HARRISON P. LINDABURY, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. You are an attorney and counsellor at law for New Jersey? A. I am.

Q. How long have you been admitted to practice? A. Oh, about 25 years.

Q. Have you been practicing continually during that period? A. I have.

Q. Do you know James Clark, the complainant? A. I do.

Q. How long have you known him? A. I can't tell you exactly.

Q. When did you first meet him? A. I first met him in a business way in connection with a trial in which I represented him in the U. S. District Court, a criminal case in which I defended him after he was caught, and that was some time prior to 1918. I can't tell exactly the year, but I think it was in 1917.

Q. When did you again see him in a business way? A. A few days before the trial of the cause in which he was convicted and which has been referred to in his testimony.

Q. Did you take part in that trial? A. I did.

Q. To what extent? A. To the best of my recollection, I participated in that trial during one full day and perhaps part of one day and a following day; that is a full day and a half day.

Q. Did you ever see Mr. Clark after his conviction in that trial? A. On a number of occasions, I have.

Q. When did you first see him after the trial? A. After he had been released on bail, in taking the appeal, to the best of my recollection.

Q. Did you have anything to do with the appeal? A. Yes.

Q. What? A. I prepared the petition for the writ of error, the writ of error, the assignment of error, and the citation, and made application to the court for the necessary orders, and I obtained the order allowing the writ of error, and after that

I attended to the printing of the record, obtained the transcript of the testimony and other papers which have to be printed as a part of the record for review in the Circuit Court of Appeals.

Q. Did you consult with Clark from time to time during this period? A. Yes. I don't recall having gone to the jail where he had been committed after conviction; I don't recall how long he was in jail before he was released on bail pending the appeal. There was some difficulty getting the necessary bail.

Q. Do you know when he was released on bail? A. Yes, on a Christmas Eve, 1918. Well, I left the court house late in the evening and had taken care of the details of bail, and it was only a question of getting him down from the jail and signing some papers and being discharged, and it occurred sometime after—oh, maybe 10 or 11 o'clock in the evening that he was actually discharged so that he could go.

Q. Did you see Mrs. Clark, the wife of the defendant, during this time? A. Yes, Mrs. Clark was the one who obtained this bail. There was a great deal of difficulty in getting bail, but finally she got Mr. Cervanti, who agreed to obligate himself to the amount of $5,000, and Mr. Glasser who agreed to obligate himself to the amount of $5,000 and Mr. Alexander Clement who agreed to obligate himself to the amount of $5,000, and Mr. Glasser, who agreed to obligate himself to the amount of $5,000, and Mr. Alexander Clement, who agreed to assume a like obligation of $5,000; and then Mr. William O'Neill, as I recall the name, deposited Liberty bonds to the amount of $5,000 and thereby meeting the bail that had been fixed of, Judge Haight of $20,000; and these men were brought to my office by Mrs. Clark and I talked

with them and got a list of their property holdings, mortgages, encumbrances, etc. with valuations, for the purpose of ascertaining whether they could justify as bail for the amount; and I had one or two conferences with Judge Haight in connection with that, and finally these men were offered as bail and information given as to their property holdings, and the bail was accepted.

Q. Did you see Clark subsequent to the affirmance of the conviction and before he went to the Essex County jail? A. No, not before he went to the Essex County jail; after the conviction had been affirmed I saw him several times, between his release on the 24th of December, 1918, and the time of his re-arrest, after the motion had come down from the Circuit Court of Appeals affirming his conviction.

Q. During those meetings did you have any conversation with him in regard to his business and real estate matters? A. Yes.

Q. Approximately when? A. Oh, I couldn't tell you the date; sometime, I should say, along in January or February.

Q. And what conversations did you have with him in reference to those matters?

Mr. Fallon: I object as immaterial and irrelevant. It seems to me that no conversations at that time with respect to his property holdings can be material here.

The Court: Why not, as shedding light upon the directions that he gave.

Mr. Fallon: If they are going to follow it up by showing that Clark gave any instructions to Lindabury, this witness, then I have no objection.

The Court: What is your purpose, Mr. Lafferty?

Mr. Lafferty: He advised him as to what he should do with respect to his property.

Mr. Fallon: Suppose that advice was given?

The Court: How is it material?

Mr. Lafferty: He said that he did not have the advice of attorney, and Mr. Lindabury was his attorney and did advise him on these matters, which everybody agreed had been partially carried out.

Mr. Fallon: If counsel is going to connect this conversation with the making of this paper, I have no objection; but, as I understand the matter, there can be no connection between the matter in January and the matter in June, because I take this from the pleadings and the affidavit of Lindabury attached to the pleadings, in which he says that sometime in June, 1919, when he called to see Mr. Clark Mr. Clark refused to have anything to do with respect to his deeding his property over to Mrs. Clark. Now, if that is so, what relevancy can a conversation way back in January have?

The Court: This: You also claim this property on the ground that there was lack of independent advice, on the theory mentioned in Slack v. Reeves and the case of Haydock.

Mr. Fallon: If there is going to be any further argument, I will withdraw my objection.

Q. (Question read by the stenographer.)

A. Mr. Clark came to see me in connection with the pending appeal, and in discussing the situation with him I told him very frankly that I didn't

think he would succeed, and that it was a rather serious matter, and his property interests ought to be taken care of and some disposition made of his property so that it could be looked after while he was away, and he appreciated that that was necessary and that he would do something about it. I never advised him to convey to Mrs. Clark or not to convey to Mrs. Clark; I simply advised him that the property needed someone in authority to look after it and see that it was protected and insured and the rents collected and the garage business, and so on; and we had several discussions of that kind. I remember distinctly one visit that he made early in January. He came into the office without first making an appointment and at that time brought an umbrella which he presented to me with a turkey foot off of his Christmas dinner, which he had plated with copper in some way and then gold-plated, which he presented to me; and there were two or three visits after that, and our relations were friendly, and I told him I could not argue the appeal because he had not paid me a retainer, and he said that he would get some funds for me but did not do it, and I told him I would prepare his case on appeal but I would not brief it and argue it without he raised some funds; and at one time he wanted to convey to me what has been referred to here as the Madison Street property. That is the property that had been mentioned in the indictment proceeding, and I was more or less familiar with it in that way, and I refused to take title to the property, and he tried to convey the property but was unsuccessful. And that situation continued until the case had been argued by Mr. Kavanaugh. I communicated with Mr. Kavanaugh and gave him such points and information as I was able to do that would be help-

ful in preparing the brief, and I think Mr. Kavanaugh came to my office in connection with this matter. I know I saw him and talked with him somewhere about it. After the record had been printed I advised Mr. Clark and also Mr. Kavanaugh what action should be taken to preserve his right to an argument of the case in the Circuit Court of Appeals. They had no printed brief, had no written brief, and the District Attorney moved to advance the case for argument, and it was set down for argument at a time when there was no brief ready for filing, and Mr. Kavanaugh at that time appeared and stated to the court the situation and there was an extension of time obtained. So that they did ultimately argue the case on appeal before the Court of Appeals, and the conviction was affirmed; and immediately on coming down of the mandate from the Circuit Court of Appeals the District Attorney had a bench warrant issued and Mr. Clark was arrested and put in the Newark jail, and the date I am not acquainted with. He says it was the 14th of June, and I think that is probably correct.

Q. Did you receive what purported to be a message from Mr. Clark while he was in the Essex County jail? A. Yes, Mrs. Clark—

Mr. Fallon: I object to any statements made to the witness by Mrs. Clark out of the presence of the complainant.

The Court: Objection overruled. Go ahead.

A. Mrs. Clark called to see me several times while Mr. Clark was in the jail at this time.

The Court: Don't tell what she said.

—and finally, as the result of one of these calls from Mrs. Clark I wrote Mr. Clark a letter, under date of June 21, 1919, and sent it up to the jail for delivery to Mr. Clark, Mr. Lafferty taking it up. Mr. Lafferty was an attorney in my office at that time.

Mr. Lafferty: I give notice to produce the letter.

Mr. Fallon: I am satisfied with a copy if you wish to offer that.

Q. That is a copy of the letter, is it? A. Yes, that's a copy of the letter, except that my name was signed to it. This is a carbon copy.

Mr. Lafferty: I will offer the letter in evidence.

(Admitted and marked Exhibit D-4.)

Q. Did you ever call on Mr. Clark at the Essex County jail during his confinement there, during the month of June, 1919? A. Yes, I called at the jail to see Mr. Clark on the 25th of June, 1919.

Q. Did you have any conversation with Mr. Clark at that time? A. I did.

Q. What was said by you and by him. A. I had with me a deed which I had prepared that day, and I told Mr. Clark that I had called there; that Mrs. Clark had brought a message to me that he, Mr. Clark, wanted to see me and wanted to execute a deed to William Kinnaugh, and Mr. Clark said that was correct. And we discussed the situation at that time. I told him that his property was in serious danger; that there were mortgages against some of the properties and that the interest was in arrears and that foreclos-

ure proceedings were about to occur unless somebody was going to take care of them; that there was a fine of $5,000 standing against him which was subject to collection, which might be made a charge against that property by execution or some other proceedings for collection, and that it was very necessary that something be done; and he knew that, and he wanted to execute that deed which I presented to him and explained to him. He looked it over. I told him what the purport and effect of it was. It was a straight deed conveying a legal title to William Kinnaugh, and, so far as anything appearing on the face of the instrument was concerned, why it made William Kinnaugh the beneficial owner.

Q. You refer to Exhibit C-1? A. Yes, that's the deed in question. And William Kinnaugh was a satisfactory trustee to Mr. Clark; and I told him that the reason for making the deed to Mr. Kinnaugh, without reference to a trust in the deed, was to make it easier for Mr. Kinnaugh, as trustee, to refund mortgages, to sell property if necessary, because it was thought that it would be impossible to save these properties and it might be a case of selling them for as much as we could get in salvage. And if there was a trust in the deed or on record it usually made it less marketable and not so quickly disposed of. And that was entirely satisfactory to him, and he asked me what the conditions of the transfer were. I stated that I knew nothing except what he had told me and Mrs. Clark had told me. I told him that Mrs. Clark had said that he was willing to convey the property to her, and that I advised against a conveyance to her, because then any conveyance or instrument affecting the property would have to be executed by him and he would be away, and it

would be no easier to manage it that way than if he retained the title himself, and that by reason of these encumbrances and interest and taxes in arrears there would have to be a good deal of forbearance shown; that I had talked with Judge Haight with reference to the fine and whether we might get rid of that fine; and the Judge said he would do anything that he could to help Mrs. Clark but he wouldn't do anything to help Mr. Clark. And all those facts were made known to him, and he said that he was satisfied to make a conveyance to Mr. Kinnaugh; and I asked him the terms and he told me the terms, and I made some memorandum at the time. We discussed the matter at some length. Have you got my memorandum, Mr. Lafferty?

Q. (Mr. Lafferty producing paper) Did you make that memorandum at the time? A. I made that memorandum at the time, because I thought the defendant, Mr. Clark, was at the Newark jail the day I made the deed Exhibit C-1, in which specific reference is made to 304 and '6 Newark Street, and Mr. Clark said, in discussing the value of that property and the possibility of it being necessary to sell the property for such salvage, that it would be possible that the property was not worth $16,000, and he had $14,000 as the bottom figure that should be obtained and upon the sale of 310 Newark Street the value should be of $7,750; and the Madison Street property twenty-seven. To the best of my recollection he told me he had paid $2,700 for that property and that it ought not to be sold for less than $2,000. The garage property he considered it the better property of the entire holding, and that that was the one that should be kept if it wasn't possible to keep them all. He told me about the lease with Swift & Company,

and he mentioned "Dean". I have here "Dean" and Ackerly. I don't recall what the "Dean" refers to, but Ackerly is the attorney whom I since met, and the attorney in charge of Swift & Company's business with whom I afterwards dealt in obtaining an extension of the leasehold and option to purchase, which option was finally exercised in 1920 or 1921, I have forgotten which,—sometime later. Of that garage property Mr. Clark owned one lot and then had the leases on the adjoining lot, and had a garage that occupied both lots, but only owned the feet to half of it; and under the lease the option to purchase that lot expired, as I recall now, August 1st, 1919. The terms of the instrument would show the exact period. Notice of intention to exercise that option had to be given by July 1st, only a few days after I was talking with Mr. Clark, and that seemed to cause trouble. I remember that we discussed, incidental to the other matters the question of his sentence of five years, and I advised him about the right of parole; that after he had served one-third of his sentence he would be eligible for parole under the statute. I made a computation as to the time he would have to serve before he would be eligible to parole.

Then as to the income. The income was to be subjected to the payment of taxes, interest, repairs, and insurance, and then $20 a week to Mrs. Clark, and then to pay his debts. He owed some money the amount of which he did not give me; and any excess was to be used to reduce mortgages.

In reference to the garage: He mentioned the garage business that was to be run by the trustee, and there was to be an accounting, and the trusteeship was to end when Mr. Clark served his sentence or was paroled, or whatever it might be, and at that time the land was to be conveyed to Mr.

Clark. And Mr. Clark then signed the deed and I took his acknowledgment, and that is the instrument, I think C-1.

Q. You saw him sign it? A. I saw him sign it.

Q. And you explained the contents to him? A. I explained the contents to him, and I thought he understood it perfectly well.

Q. At that time did you have a conference with Mr. Clark? A. I did.

Q. Did you ever see Mr. Clark subsequent to that and while he was in the Essex County jail? A. That is the only time I ever saw him in the Essex County jail. I did not see him after that, to the best of my recollection. I did not see him before that in the Essex County jail. It had been indicated to me that he wished to see me, and I wrote the letter of June 21 but it was taken up by Mr. Lafferty.

Q. Did you ever have any meeting with him subsequent to his discharge from the Federal penitentiary? A. To the best of my recollection, he came into the office one day and asked for a paper which he had signed, or a copy of a paper which he had signed at the jail, and it was a paper other than this deed that is marked in evidence; and I told him that there was no such paper; that he had never signed any such paper.

Q. Acting upon the instructions of Mr. Clark, did you prepare a declaration of trust? A. I did.

Q. I show you a paper bearing date August 4, and ask you whether that is the paper which you prepared? A. It is.

Q. Did you see Mr. Kinnaugh sign it? A. I did, and it was acknowledged before me.

Mr. Lafferty: I offer it in evidence.

Q. (By Mr. Fallon) You say this was prepared

as the result of the direction of Mr. Clark? A. Yes, sir.

Mr. Fallon: That being so, I can't object to it now.

(The same is marked Exhibit D-5.)

Q. Did you tell Mr. Clark about the details concerning his arrest after the mandate came down? A. I did.

Q. Did he say anything to you as to what in his opinion caused it? A. He did.

Q. What did he say? A. Mr. Clark thought that he was in jail at that time because of some activity on the part of Mrs. Clark; that she had caused his bondsman to surrender him or to procure his arrest, and I advised him that that was not so at all; that the District Attorney, or Assistant District Attorney in charge of his case had caused the warrant to issue, and that was the reason that he had been arrested and his bondsman had nothing to do with it and Mrs. Clark had nothing to do with it.

Q. What did he say when you told him that? A. Why, it seemed to remove from his mind some feeling that he harbored against Mrs. Clark.

Mr. Fallon: I ask that that be stricken out.

The Court: What seemed, may be stricken out. (Addressing the witness) You may tell what he said or did.

Q. Was this before he signed the deed? A. This was in the general discussion that took place before he signed the deed. I couldn't tell you whether it was at the outset or what part of the conversation.

Q. Did Mr. Clark express any opinion to you with reference to Mr. Kinnaugh? A. Yes; he knew Mr. Kinnaugh and had every confidence in him.

Q. Do you know whether or not it was expected at that time that Mr. Clark would be transferred shortly? A. Yes, it was thought that he would be transferred that day. That was the 25th of June; and, as I said before, I had prepared this deed and went right up to the jail as soon as I could get there in order to see Mr. Clark before he left.

Q. What did you do with the deed after Mr. Clark signed it? A. Why, I kept it in my office until August—what is the date of the declaration of trust?

The Court: The 4th.

August 4th. It had not been executed by Mrs. Clark and I did not want Mrs. Clark to execute the deed until the declaration of trust was executed, and there was some delay in Mr. Kinnaugh getting over to the office.

Q. Did you consult with Mrs. Clark with reference to the management of the property, and the bail bond, and things like that? A. Yes.

Mr. Fallon: I object. The form should be "Did you say anything".

The Court: Yes; did you hear anything that passed between them and not in the presence of the complainant?

A. I forgot one or two things. Just before Mr. Clark was paroled—

Mr. Fallon: I submit there is no question pending. I don't know what this is going

to lead to, and I don't know that I have any right to object before I know what is coming.

The Court: I suppose you have the right to the witness giving testimony in the narrative form. The question was asked him whether any conference was had with Mrs. Clark by him.

Mr. Fallon: I am objecting to that, and I understood the court sustained the objection.

Q. Did you have any correspondence with Mr. Clark while he was in the Maryland penitentiary? A. Yes.

Q. In reference to what subject? A. With reference to the extension of the Swift & Co. lease and option, and also with reference to his transfer to the New Jersey state prison, and I think with reference to a petition for parole.

Q. What was the result of your correspondence with reference to the transfer to the Trenton prison?

Mr. Fallon: I object to that on the ground as immaterial and irrelevant.

Mr. Lafferty: I will withdraw the question.

Q. What was the result of your correspondence with reference to the Swift option? A. Why, the papers were signed from time to time as necessary.

Q. Do you know whether that option was exercised eventually? A. It was.

Q. By whom? A. Mr. Kinnaugh.

Cross Examination by Mr. Fallon:

Q. Mr. Lindabury, in the letter that you wrote to Mr. Clark, under date of June 21, 1919, Exhibit

D-4, you stated that Mr. Clark, as you understood it, was to transfer all of his real estate under a declaration of trust to collect the rents, issues and profits, pay the carrying charges, mortgages, and generally empowering him to deal with the property as he might do, with power to sell and to mortgage; and you also say in there, "it would, I think, be wise to again transfer the power to dispose of the property if the opportunity for a good, fair price arises, and also to give the power to mortgage the property to pay off existing mortgages", and so forth. Now, that information was communicated to you prior to June 21, wasn't it, by Mr. Clark; that is, Mr. Clark seemed to be willing to do that? A. No.

Q. Where did you get the information from that you embodied in this letter as to Mr. Clark doing these things, the making of a declaration of trust and the like? A. I had talked with Mr. Clark prior to this time about his property.

Q. When? A. During the period immediately following his release from the jail after conviction.

Q. There was nothing ever said, then, about transferring his property to Kinnaugh?

The Court: Aren't you and the witness talking at cross purposes? My recollection is that in that letter Mr. Lindabury made a suggestion of a modus vivendi. I didn't understand that he was repeating one that somebody else suggested, but that was a creature of his.

Mr. Fallon: I will withdraw that.

Q. Then, Mr. Lindabury, the matter that is suggested in this letter of June 21, 1918, addressed to Mr. Clark, is that that was your idea of what Mr.

Clark should do with respect to the property? A. Absolutely.

Q. And you had in mind, then, when you wrote that letter, that there should be a declaration of trust to some person? A. Yes, sir.

Q. And Kinnaugh's name was mentioned to you, had it? A. Yes.

Q. When was it first mentioned to you? A. His name was first mentioned to me as the trustee on the day that I drew the deed.

Q. Who mentioned it to you? A. Mrs. Clark.

Q. What talk did you have with Clark, or did you talk with Clark about Kinnaugh? A. None whatever until I went up to the jail that day.

Q. Had you talked with Kinnaugh? A. Yes. I never saw Kinnaugh until August 4th.

Q. Then on June 25th, as the result of some statement made to you by Mrs. Clark, you understood that Clark was to convey his property to a William Kinnaugh as the trustee? A. Exactly.

Q. And did Mrs. Clark, then tell you what the purposes of the trust were to be, that is, what Kinnaugh was to do with the property as trustee? A. Only as to one feature of it. Mrs. Clark—I have got to go back and tell the whole story to make this clear, if your Honor please: Mrs. Clark had asked Mr. Clark to convey the property to her, and I advised against doing that, even though she might ultimately get the benefit of it. I advised against doing it, and Clark himself was opposed to doing it, and I did not advise Clark to convey the property to his wife; I refrained from doing so. I at no time advised him to convey it to his wife. But finally Mrs. Clark came in. She had been to see me and told me a number of things that I am not permitted to repeat here; but she had been in three or four times during this period, and then she came on the

day the deed was drawn or executed and told me that the property was to be conveyed to her.

Q. Who told you how to spell Kinnaugh's name? A. I don't know.

Q. From whom did you obtain it? A. Mrs. Clark.

Q. And you received that on the morning of the 25th, you think? A. Yes.

Q. What time of the day did you go to see Mr. Clark in the jail? A. I think it was Tuesday afternoon.

Q. How long had Mrs. Clark been at your office before you went to see Mr. Clark? A. I couldn't tell you that. She was in the office and told me what was to be done. I drew the deed and did it as quickly as I could, as it was expected that Mr. Clark was going away that day.

Q. Did you draw the deed or have it drawn under the direction of anyone while she was in the office? A. No.

Q. Did you, at the time the deed was drawn, have in mind some information derived through some source that Kinnaugh was to be the trustee of this property? A. Yes, sir.

Q. And did you have in mind the terms upon which Kinnaugh was to act as trustee? A. No.

Q. Who gave you that information upon which Kinnaugh was to act as trustee? A. Mr. Clark.

Q. What did he say to you? A. He said to me what I have just testified to. Do you want me to repeat it?

Q. Can you repeat it without looking at this paper? A. I think possibly I can. The property was to be held by Kinnaugh; he was to collect the rents, issues and profits, and he was to pay certain carrying charges of the property. He was to pay to Mrs. Clark $20 a week. He was to run the garage business. The trust was to terminate at such time

as he got out of jail, and at that time the land was to be conveyed to Mrs. Clark and the property was to go back to her.

Q. You knew Clark had been refusing, from time to time, when requests were made upon him to turn the property over to Mrs. Clark; do you recall the conversation you had with Mr. Davis in January, 1919? A. I have no recollection of discussing that matter with Mr. Davis, but I might have done so. I remember discussing the question with Mr. Clark —that I know—soon after he was released from jail, and we got nowhere that day.

Q. Do you know when Mr. Davis and Mr. Clark and you had a conference in the office and talked about the condition of the property, the mortgages which were then in process of foreclosure and the possible jeopardy that the property was in? A. I can't recall the details of the conversation.

Q. Well, do you recall the subject matter? A. I do recall being present at one time and discussing things, and as matters went on I got acquainted with the condition. I might have spoken to Mr. Clark in January, at a meeting in which Mr. Davis was present. I do not recall it, but I have no doubt it occurred.

Q. Didn't Mr. Davis report back to you that he had been over to the Essex County jail, and that Mr. Clark had been importuned to turn the property over to his wife and he refused to do so? A. I am not clear whether he did or not, but that would probably would be more nearly what happened. I do not recall distinctly that Mr. Lafferty, who took this letter of June 21, up to the jail, had a talk with Mr. Clark about conveying the property to his wife and he wouldn't do so, and the result of that caused me some surprise when Mrs. Clark told me on the 25th of June that Mr. Clark was willing to convey the property to her.

Q. Well, do you recall Clark telling you the reason why he wouldn't transfer his property to his wife? A. Well, he was angry with her, and the only thing that he said which gave me that impression was that she had been instrumental in having him put in jail at that time.

Q. And you undertook to satisfy him that he was in error in that respect? A. I told him he was in error in that respect.

Q. Didn't he say to you that he wouldn't turn it over to her because he didn't consider her a proper person to have the property? A. He did not.

Q. Did he tell you about the insurance that she obtained, $50? A. He did not.

Q. Can you tell us the conversation you had with him at that time? A. The conversation I had with him at that time is as I have stated,—the conversation which Mr. Clark testified to about having previously never occurred.

Mr. Fallon: I object to that statement and ask to have it stricken out, as characterizing the testimony of Mr. Clark as being incorrect or untrue.

The Court: Everything may be stricken out after the word "stated."

Q. Is there any further conversation that you may have had with Clark at that time which you do not now recall? A. Well, I don't pretend to be supreme. This happened a long while ago, and I know I recall distinctly the general substance of our conversation and what we were discussing, and I have my memorandum here to refresh my memory as to the details, and it brings back to me some of the things that happened at that time. I recall very

distinctly that we discussed Mrs. Clark in connection with Mr. Clark's belief that she was responsible for his arrest, and I know that we discussed also that Mrs. Clark had taken a definite position and that he wouldn't do anything with these properties unless some provision was made for him.

Q. Did Mrs. Clark make known to you before the 25th when you went to see Clark at the jail what the terms of trust were to be? A. She did not, except in that one particular in this way. She says, "Mr. Clark says he will sign a deed conveying the property to me and wants you to come up there."

Q. And then when you went there he told you he would not sign it? A. Not in those words, no.

Q. You asked him whether he was agreeable to assigning the property over to his wife and he told you no, didn't he? A. No, that is not so.

Q. What did he tell you? Did he express a willingness? A. I had prepared a deed to William Kinnaugh as trustee.

Q. I will withdraw my question and ask you this: Do you recall making an affidavit in this case, in which you say "Deponent did not prepare a declaration of trust in advance of the execution of the deed because he did not talk with the complainant and did not know what the terms of the trust would be except in a general way as communicated by complainant to you? Do you remember that statement? A. Yes.

Q. What were the terms communicated? A. He was willing to convey to Kinnaugh as trustee, but with the ultimate benefit of the land going to her.

Q. Is that all she said to you that she said to him? A. That is all; that is the substance of what she said to me.

Q. Didn't it occur to you as a careful lawyer that it would be a proper thing to put in writing, con-

temporaneous with the execution of that deed, the trust which you say he was agreeable to make? A. In the light of what has happened right here since I think it would have been very desirable to have done so.

Q. Don't you know that courts have held, time and again, that when a trust was created, at the time of making the deed if the trust was not in the deed the trust would not be valid? A. That is perhaps correct.

Q. Then can you state to the court any reason why you did not prepare the declaration of trust at or about the time you made this deed? A. Yes.

Q. Please state it. A. The only reason why a declaration of trust was not presented to Mr. Clark at the time the deed was executed was because word had come to me that he was to be taken away that day and it was necessary for me to get up there promptly if I wanted to see him. I was busy; I drew the deed and went right up there just as soon as I got the deed ready and could get up there.

Q. Had you in mind on June 21st, when you wrote to Mr. Clark, what the terms of the trust might be? A. I had in mind what I thought they should be, substantially.

Q. Why didn't you prepare, between that and the 21st, the declaration of trust and have him sign it? A. Because Mr. Clark had not indicated that he was going to put the property in trust or otherwise.

Q. Mr. Clark never authorized you to prepare the deed, either, did he? A. I suppose he did.

Q. I mean, he never authorized you to prepare that deed? A. He did.

Q. Isn't it true that Mrs. Clark made the statement and you talked with Clark and explained the deed and told him that that would carry into effect

what he said to his wife? Isn't that so? A. Everything came to me through Mrs. Clark, and I understood—

Q. I don't care what you understood from Mrs. Clark; did Mr. Clark communicate with you, before you prepared that deed, and tell you to prepare it? A. In the way in which I have said.

Q. I am speaking about you direct. A. No.

Q. So that any information you got was through Mrs. Clark? A. Yes.

Q. And you got through Mrs. Clark some information that Clark was willing to convey to Kinnaugh? A. Yes.

Q. And you knew that it was to be conveyed to Kinnaugh, if at all, as trustee? A. Yes.

Q. Then why didn't you prepare a declaration of trust at the time you prepared the deed? A. Just the haste in carrying the thing through; that's all.

Q. There was no particular difficulty in preparing this paper, D-5, which contains only two typewritten sheets? A. No particular difficulty, excepting I don't know what the term should be.

Q. Why didn't you try to find out from Clark what they were to be? A. I did.

Q. You did after the deed was signed? A. Exactly.

Q. Why didn't you find out before the deed was made, when you knew that it was to be made in trust? A. Simply I didn't do it, that's all. I had to go up to the jail and see Clark. I took the deed along, hoping that I had prepared a proper instrument. I saw him and the deed was proper, and I explained it to him and I tried to do so faithfully and fully, and he then told me what the details of the trust were.

Q. Why didn't you that day prepare the declaration of trust? A. Because I didn't have time to do it.

Q. You knew it was an important matter? A. It was, in a way, yes.

Q. You knew it was important to Mrs. Clark, too, didn't you? A. It was important to Mrs. Clark, yes.

Q. You knew if Kinnaugh died and this deed got into his possession the Clarks would lose their property, didn't you? A. Exactly.

Q. And you knew if this deed got into Kinnaugh's possession without Mrs. Clark's signature that Kinnaugh would have whatever title Mrs. Clark had, subject to Mrs. Clark's dower? A. Yes.

Q. Now, evidently you allowed the time to lapse between June 25th and August 4th before you prepared this declaration of trust; is that right? A. No, that isn't entirely right.

Q. Well, when did you prepare that declaration of trust? A. I can't tell you exactly, but a few days after the 25th of June, maybe a week.

Q. You then prepared the declaration of trust? A. Yes.

Q. How came you to date it August the 4th, then? A. There was some delay in getting together with Mr. Kinnaugh. Mrs. Clark was to arrange for his attendance, and, to the best of my recollection, there was one or two efforts made to get together, which were not convenient to me or not convenient to Mr. Kinnaugh, and it wasn't until August 4th that we finally got together; but in the meantime I had held that deed, which had not been executed by Mrs. Clark, and I purposely held it in that way, and she executed it contemporaneously with the signing of the deed of trust; and what I had in mind and was keeping in mind was that it was important on account of the trusteeship and what might happen to Mr. Kinnaugh rather than because of any necessity of setting down in writing what the purpose of Mr. Clark might be to his wife.

Q. Who requested you to record this Exhibit D-5, which is referred to as the trust agreement? A. I don't know that I got any particular request from anybody.

Q. Will you explain why it was not recorded until the 8th day of March, 1923? A. Yes.

Q. Explain it, please. A. I think Mrs. Clark recorded that instrument. I don't think I did.

Q. Have you got in your office a book which will show when this instrument left your office and when it was delivered? A. No.

Q. Have you got any memorandum which will show when this paper was delivered to Mrs. Clark, if it ever was done? A. I don't know.

Q. You know that this paper was recorded the day after Mr. Clark got back and was liberated from prison, don't you? You knew that through some means or other? A. Yes, I gave positive instructions to hold it off the record until Mr. Clark got back.

Q. Then what was the reason for recording it the day after he got back rather than later? A. I don't know of any reason why it should have been recorded the exact day after he got back. I know why it was kept off the record before he got back, and the reason for that was to indicate to the world through the record, that he had legal title to the property and could do with it as he pleased.

Q. Exactly; and yet you knew that it wasn't safe for him to own it? A. Yes.

Q. You didn't mean to perpetrate a fraud upon the public by keeping from the record that he didn't own it? A. No, sir.

Q. Do you mean to say that you didn't believe you were perpetrating a fraud upon some bona fide people that might deal with him? A. I had no such thought. The intending purpose was to give Mr.

Kinnaugh the appearance of being the absolute owner of that property, and that was the purpose of giving him the fullest freedom in selling or mortgaging it, or for any purpose in managing the property.

Q. You know and knew then that it was not to be the intention to give him the legal title to the property? A. Yes.

Q. And the equitable title also? A. The intent was to put him in possession of it so that he would be able to sell or mortgage the property just as completely as Mr. Clark could do it.

Q. You knew when this deed, Exhibit C-1, was made while it purported to be an absolute conveyance in itself to Mr. Kinnaugh that it nevertheless was not such in fact? A. Yes.

Q. And yet you, in this acknowledgment that appears upon it say both Clark and his wife acknowledged to you that this deed was executed for the uses and purposes therein expressed? A. Yes.

Q. You know that this deed has the usual habendum clause the same as if it gave absolute title to the property? A. Yes.

Q. And yet you knew that the recital was untrue in that regard? A. No.

Q. Is it untrue? A. It is not.

Q. You made the deed in this manner wherein Kinnaugh is given absolute title to this property, to have and to hold for his own use, and yet you knew, as a result of the talk you had with these people you were dealing with, that that was not the fact? A. I knew that the legal title was vested in Mr. Kinnaugh by that deed, so as to give him control of the property but the beneficial title or interest was to be in Clark and his wife.

Q. What would there be to indicate that on the record? A. There was nothing to indicate that on the record.

Q. Was there anything, contemporaneous or otherwise, to indicate it? A. Yes.

Q. What? A. The declaration of trust of August 4th.

Q. But you don't know when that was made. A. I do know. It was made and acknowledged August 4th.

Q. I understood you to say that you prepared it quite some time before August 4th. A. I prepared it sometime between June 25th, when the deed was signed and acknowledged by Clark and August 4th when it was signed by Mrs. Clark and the declaration of trust signed by Mr. Kinnaugh.

Q. Have you in your office a record which will show the date when your stenographer typewrote this paper called the Declaration of trust? A. I have not.

Q. Have you the same stenographer in your employ that you had when the declaration of trust was dictated, if it was dictated? A. That is a problem. Stenographers come and go. I can find out about it.

Q. Have you got upon your books in your office a charge account, evidencing the date upon which a charge was made for this instrument? A. No, I have not.

Q. You never sent a bill to Clark for this paper? A. No.

Q. You stated to counsel that you considered that you were representing Mr. Clark in this matter? A. Yes.

Q. If you did so, isn't it a fact that it looks very strange that you never sent a bill for it and never made a charge? A. I don't think so.

Q. But it is a fact that you have got a charge on your books against Mrs. Clark for services? A. No.

Q. You mean to say you have no charge against Mrs. Clark for services? A. I mean to say that, yes.

Q. Have you ever submitted a bill against Mrs. Clark? A. No.

Q. Have you ever made up a bill? A. I have not. She is not able to pay me anything.

Q. But you do consider that she is indebted to you if she is ever able to pay you? A. Mrs. Clark has talked with me about that matter and told me her condition, and said that she couldn't afford to pay anything and that it was something that would have to be left open, and I told her if it worked out so that she felt she could pay me for my services she could do so; otherwise I had no charge against her.

Q. How could you, in view of your talk with Mrs. Clark, have any idea that you were representing Mr. Clark? A. I came into the thing originally representing Mr. Clark in the criminal case and I ceased to represent him when I refused to argue the case in the Court of Appeals.

Q. Didn't you spend more than a day and a half in the trial of the case? A. Yes.

Q. The case took five or six days to try, didn't it? A. I don't think it took as long as that, but it took longer than a day and a half.

Q. Were you in the case on the first day? A. No.

Q. What part of the trial did you take part in? A. Middle of it, and then at the end.

Q. And then you quit because he didn't pay you? A. No.

Q. Why did you quit? A. Clark came to see me about two days before this case was to be tried, or was to be moved for trial, and wanted me to try the case for him, and I had other court engagements; I had a case in the United States District

Court on the first day, and I had some other court matter, to the best of my recollection, the third day of the trial, and I told Mr. Clark of this engagement, but I thought that I could be there the second day, but I would be there and give him whatever time I could, and I finished up my case in the United States District Court the first day, perhaps before the end of the day, and then went into the Clark case, and I was there one full day; and perhaps at the end of the second day or a part of the second day before, I was to go in another case, and that prevented me from taking any further part in the trial of the case.

Q. You refused to continue as Clark's attorney after his conviction because of the non-payment to you of a fee? A. That hardly states it fairly. Mr. Clark wanted me to argue the case in the Circuit Court of Appeals, or to brief it, and he hadn't paid me any money; he had made two or three promises, which he had failed to keep for some reason or other, and I finally told him that I could not go on with the case; that I had to have some money; that I had to earn my living and I couldn't afford to serve him when he couldn't pay me, as long as I had other work to do; but that I didn't want him to be prejudiced in his case and that I would go ahead with the preparation of the record to perfect his appeal and did so, and the transcript was obtained from the stenographer, and, as I remember it, I prepared the petition for the writ of error and all the other preliminary papers necessary for a review, and then had the transcript of the record printed, and somewhere Mr. Clark was able to dig up money enough to pay for that record, and, as I remember it, it was a record that cost five or six hundred dollars; it was a big record and the money was obtained from some source,

but all the money that he obtained was needed to print that record and was used for that purpose. Now, Mr. Kavanaugh—I think is his name—finally took care of the case in the Court of Appeals, and I did give him such information and suggestions as I could to help him in the preparation of the brief and to get ready for the argument; so that all I did was to get ready for the argument and prepare the brief in the Court of Appeals.

Q. The reason you did that was his refusal of payment of your fees? A. Absolutely not. I had no money—I had no money except what was needed to print this record.

Q. He testified that he offered to give you a mortgage on his property. A. I think he is mistaken. He offered to give me a deed to the Madison Street property and I refused to do it.

Q. If you refused any further to assist Mr. Clark in his case because of his not paying you will you tell us why you undertook to represent him thereafter in the preparation of this deed without any compensation? A. Well, I suppose for the same reason that I prepared the record for appeal without any compensation.

Q. But when you prepared the record you had been expecting he would pay you; he promised to pay you? A. He has never paid me. I always believe some day that Clark would settle up with me.

Q. I say, you prepared this case on appeal expecting he would pay you, but you had no talk about his paying you any money for preparing that deed or any other papers? A. Absolutely not.

Q. Now, do you recall an affidavit that you made in this case, wherein you stated that it was Mrs. Clark's desire that this property of Mr.

Clark's be so arranged that the property could be managed while he was in prison? Do you remember that? A. Yes.

Q. That information was given you by Mrs. Clark; that is, she told you that was her desire? A. Oh, she had seen me a number of times and I started to tell you but wasn't permitted to testify to hearsay.

Q. Do you remember saying in this affidavit: "And therefore she insisted that the real estate was to be conveyed to her to become her property"; do you remember that statement? A. Absolutely.

Q. And that Clark refused to accede to her insistment? A. Absolutely, and that is why I was surprised when word came to me on the 25th that Clark was willing to agree to that.

Q. Mr. Lindabury, you knew the necessity of the making of this trust agreement as the result of visits made to you by Mrs. Clark, that Mr. Clark was collecting the rents of this property and making payments on mortgages and the like, didn't you? A. I don't know that I knew that, Mr. Fallon.

Q. Weren't you talking with her about the property and didn't she make known to you the various troubles she was having about getting recognizances and bail discharge and perhaps to mortgage the property and devise ways whereby the property could be protected? A. She had told me about the property in some respects. She told me about mortgages, and she had talked about the necessity of taxes being paid that were in arrears; but so far as the recognizances were concerned I did not know it at that time, that is, so far as I can recall. That is something that came up later. When it was necessary to refund one of these mortgages Mrs. Clark found there was something like, to the

best of my recollection, $200,000 upon recognizances in which James Clark was either principal or surety. That was something that came up later; I didn't know it at the time.

Q. Inasmuch as you prepared the declaration of trust, which you say was executed by Kinnaugh, referring to Exhibit D-5, which obligated him to collect the rents, issues and profits and apply them in discharging certain obligations, didn't it occur to you if you considered yourself to be Clark's lawyer that you should see to the collecting of those rents, issues and profits and apply them to the uses mentioned, inasmuch as you did not record the declaration of trust for a period of two years? A. I can't say that it occurred to me that way. I wasn't the trustee; I didn't select the trustee.

Q. But you were Clark's attorney in the preparation of the declaration of trust? A. Yes.

Q. And you kept the declaration of trust off record for some reason? A. Yes.

Q. And you know it was off the record for a period of approximately two years? A. Yes.

Q. And you knew that the declaration of trust required Kinnaugh to collect the rents on the property? A. Yes.

Q. And you know that it required his applying those rents to certain uses on the property? A. Yes.

Q. And to pay the $20 a week to Mrs. Clark? A. Yes.

Q. Didn't it occur to you as Clark's lawyer that you should see that the trustee was doing that which was expected of him? A. Well, it didn't occur to me that it was necessary for me to follow up Mr. Kinnaugh and see that he was doing what the declaration of trust required him to do, if that's what you mean.

Q. The reason you didn't do it was because Mrs. Clark reported to you that she was collecting the rents; isn't that the fact? A. I knew that Mrs. Clark was collecting the rents.

Q. Well, then you knew— A. (Interrupting) That was what was expected to happen at the very beginning.

Q. That is so, is it? A. Absolutely.

Q. You prepared the trust agreement that said that Kinnaugh should collect the rents? A. Yes.

Q. And now you say you knew that Mrs. Clark was collecting the rents. A. Was going to do the actual work for the trustee.

Q. Then what was your purpose in preparing this paper which required Kinnaugh to do the thing that you say Mrs. Clark was doing? A. Because the trustee was in control and if Mrs. Clark had not been a satisfactory agent he could have employed some other agent.

Q. Why didn't you make Mrs. Clark the trustee in the first instance? A. I will tell you why: If Mrs. Clark had been the trustee, any instrument that had to be executed in connection with this property would have required Mr. Clark's signature.

Q. If Mrs. Clark was made a trustee and she declared that she was holding the property in trust for her husband, do you think that his signature would be required? A. This declaration of trust not being on the record, I think all instruments signed by her would have been void if not executed by Clark.

Q. You sent papers, you say, to Baltimore to be executed by Clark, relating to the lease of Swift & Co.? A. Yes.

Q. So that you knew when you prepared the declaration of trust you would be obliged there-

after to have Clark's acknowledgment to papers relating to Swift & Co., didn't you? A. I didn't know it, no.

Q. Well, you knew that Clark had a lease with an option to purchase? A. Yes.

Q. You knew, or at least you sent to Clark a paper to be executed by him relating to that matter, didn't you? A. I certainly did.

Q. Didn't you know at the time you prepared that declaration of trust that if the option was to be exercised Clark would have to execute a paper to exercise it? A. Why yes, of course I knew that, if I understand your question.

Q. It was not, then, because it was to obviate the necessity of execution of papers by Clark while he was in prison that this declaration of trust was made? A. Yes, it was for that purpose.

Q. Why did you omit the Swift & Co. portion from the Declaration of Trust? A. Well, it wasn't omitted from the declaration of trust.

Q. Is it in the declaration of trust? A. Yes, there is a specific reference to it.

Q. Well, did you consider that Kinnaugh could exercise any option with reference to the Swift & Co. property? A. After the execution of a paper by Clark I did not.

Q. Why did you not have Clark execute whatever paper you thought it was advisable for him to execute to Kinnaugh before he went to Baltimore? A. I did.

Q. Before he went to Baltimore? A. I did.

Q. What was the occasion of your sending the paper to Baltimore with your letter of September 3, 1920, referred to as Exhibit C-2? A. Well, in a word, that was necessary because of the different views lawyers take of what is necessary in making title. To the best of my recollection, although we

had endorsed an assignment on the original lease which Mr. Clark signed, which has been marked for identification Exhibit D-4 for identification—I have it in my hand—which is the original lease made by Swift & Co. to James Clark, and after the deed, Exhibit C-1, had been made it occurred to me that it was necessary for Kinnaugh to have an assignment of that lease in order to protect that property held under lease from Swift & Co., and I telephoned to the jail to find out whether Mr. Clark had gone; I was mixed up on that; I thought he was really in Maryland, but I found he was still there. This was on the 27th, and then this assignment endorsed on D-1 was prepared, and Mr. Lafferty took it up and Mr. Clark signed it, and that was thought by me to be a sufficient assignment to permit us to get, if possible, an extension of the lease, an option out of the Swift people; and ultimately we were able to do it. There was rent in arrears which had to be paid, and those rents were paid and an extension of the lease obtained containing some provisions with reference to the purchase of that property.

Q. You sent Mr. Lafferty to see Mr. Clark, as a result of the talk you had with Mrs. Clark, and you gave him the letter of June 21, 1919? A. Yes, sir.

Q. Mr. Lafferty reported to you, did he not, that Clark refused to transfer the property, as requested in that letter? Do you remember that? A. Well, he reported the refusal, to the best of my recollection to make a transfer such as I suggested in this letter, but I think, if my present recollection is correct, it was more definite than that in this respect: While not in reply to my letter, because I did not suggest a conveyance to Mrs. Clark or for Mrs. Clark's benefit in any way, Mr. Lafferty

reported back that Mr. Clark would not transfer to his wife. Now, why he did that I don't know, but I do know that Mrs. Clark had suggested it, because it was so reported to me that she would ask Mr. Clark to transfer the property to her; and while I had no objection to Mr. Clark disposing of his property in any way he wanted to, in my letter of June 21 I advised him to make a conveyance to Mrs. Clark, as I recall it. If you will pardon me just a moment (witness looking at papers) Yes, this contains this paragraph: "I do not think this property should be transferred to Mrs. Clark as any mortgage on it that is necessary to make in connection with the property could not be made by her without his joining, and we would be in much the same position as we are now.

Q. Do you recall this statement you made in an affidavit with respect to Mr. Lafferty's visit with your letter of June 21, 1919: "Deponent was informed that complainant received and read this communication but refused to entertain any suggestion of a transfer of his property, either to a trustee or to his wife or to anyone else". Do you remember that? A. I think that is practically what I just stated.

Q. That had been Mr. Clark's persistent attitude, so far as you know, that he wouldn't transfer it to his wife or to anyone else; that he thought he was capable of taking care of his own property? A. So far as I know, that was the situation at that time.

Q. Now, in this same paper that I called your attention to, this affidavit, you say: "Upon receiving this word, deponent visited complainant at the Newark St. jail" (copy affidavit to and including) "subsequently signed by the said William Kinnaugh". Didn't you know at the time the deed was

signed what the terms of the trust were to be? A. Yes, because I had conversations with Mr. Clark before I drew the deed and found out what he wanted to do with his property.

Q. Didn't it occur to you or think it at all strange, when Mr. Clark refused persistently to transfer his property to his wife that he should make a declaration of trust wherein upon his liberation from jail the property should go to his wife? A. Why, it didn't strike me as strange, Mr. Fallon, for several reasons. In the first place, the property was in such a condition that, in my opinion, there was practically no equity there. He was so involved with mortgages, interest, and taxes which were in arrears and the only property that was at all free was the Madison Street property, which was free and clear but of small value. There was the property on Newark Street that was free and clear, as I understood it, but it had been built on an adjoining lot on which he had merely a lease, and the time to exercise his option expiring. Then he had been subjected to a fine of $5,000 in the U. S. District Court, and I didn't see where Mr. Clark had any property to think about. In addition to that, there were judgments pending and open of record against him, and although I didn't know it at the time, there were all these recognizances against him.

Q. Those conditions prevailed at the time he was being importuned to transfer the property? A. Yes.

Q. And yet he persistently refused to do it? A. He refused to do it until it got about the 25th of June—well, maybe a day or two days before, I don't remember, and that was confirmed when I visited Mr. Clark about it.

Q. In your talks with Mr. Clark he manifested

bitterness against his wife? A. No, but I had heard things which convinced me that he did have bitterness against her.

Q. Wasn't it manifest to you that it was quite a strong unfriendliness on his part? A. Not in his talk with me, no.

Q. Well, did he give any reason to you why he wouldn't transfer the property to his wife? A. No; he was willing to transfer the property so that his wife would get the benefit of it.

Q. But you say he refused to transfer the property to his wife? A. Not to me.

Q. He did it to you a couple of times, didn't he? A. No.

Q. Never told you? A. To the best of my recollection he never told me personally that he would not convey the property to his wife, or in such a way that she would get the benefit of it. All that there was to indicate to me in the one case or Mr. Lafferty in the other case, was that Mrs. Clark wanted me to go up to the jail and see if I couldn't influence him in doing it, and I finally did write this letter of June 21, in which I outlined to him a plan which I thought he ought to adopt as the best way of taking care of his property while he was away, but in that I refrained from advising him one way or the other.

Q. Now, are you not mistaken when you say that Mrs. Clark visited you only five or six times during the period between his conviction and his being sent away? Didn't she visit you as much as twice a week? A. I said four or five times during the time that he was in jail—Newark jail.

Q. How many times in all did Mrs. Clark visit you during the period when you had any dealings about the property? A. I don't know. When we were trying to get bail to get Mr. Clark out for his

Christmas dinner I almost had the feeling that she was living in my office; she was running, and running and running there, and she was telephoning and she came to see me; she did nothing else but try to get bail for Mr. Clark for a period of—I don't know how many days, as much as twice a week for a period of something like months. And during this Christmas period in 1918, before we got Mr. Clark out of jail on bail, I think she was in there every day.

Q. Your only reason that you can assign for not preparing this declaration of trust at the time the deed was prepared, or shortly thereafter, in order to have it executed, was because you were busy? A. I was busy, yes. That was the only reason, Mr. Fallon. You must remember this: I went up to the jail in a hurry, because my information was that Mr. Clark was being taken, as I thought at the time, to Atlanta, Georgia, to serve his sentence, and I went up there on the 25th with the understanding that Mr. Clark would be taken away that day. He expected he would be taken away that day, and just as soon as the deed was prepared I went up there immediately, and when I came back to my office I suppose I might have sat down and prepared the declaration of trust that afternoon and gone back in the evening. I assumed that he was going away that day, and a few days, more or less, wouldn't make any difference as it would have to go to Atlanta, Ga. to be submitted to him anyway, and I didn't do anything with it. Within the next few days, I gave it consideration and realized that we had nothing that permitted Kinnaugh to deal with the lease, and I spoke to Mr. Lafferty about it, and just on the chance that he might not have gone, I asked Mr. Lafferty to telephone and he did so and found Mr. Clark was there, and he

went right up personally. I had to go to the Orphan's Court that morning and Mr. Lafferty went up, and Mr. Clark said he was to be taken away within a half an hour after Mr. Lafferty was there.

Q. Mr. Lindabury, as a matter of precaution why didn't you prepare this declaration of trust on the 27th and have Mr. Clark execute that? A. No reason why I should do it.

Q. You never presented this paper, the declaration of trust, to Mr. Clark? A. I never did.

Q. Didn't you think it was the proper thing for the lawyer to submit a paper of that kind to his client, to see if it embodied what he wanted in it? A. I should have done so if I had had the opportunity to do so.

Q. You didn't have it executed until the 4th of August; why didn't you mail it to him? A. I might have done that.

Q. Why didn't you do it? A. No particular reason for not doing it. The fact of the matter is it wasn't expected that the declaration of trust wouldn't be executed until August.

Q. You say what? A. There was no anticipation that the execution would be delayed until August.

Q. Inasmuch as it was delayed, I am asking you why you didn't get the paper to him more promptly in order that he might advise you whether or not it properly expressed his views? A. It simply didn't occur to me, that's all; no reason why I shouldn't have done so.

Q. So that, as Clark's lawyer, you had him sign this deed which conveyed to Kinnaugh title, absolute on its face, when you knew at the time that that was not so, that it was never intended to give absolute title to him but a title in trust by which he was to hold the property in trust, and the trust,

you say, although made known to you by Clark as to the terms of it, had not been reduced to writing whereby you could have Kinnaugh sign it, and you did not prepare the declaration of trust until sometime thereafter, and you didn't have it executed until August 4th, and you never submitted it to Clark before it was executed to see whether or not it expressed his views? A. No, I never did.

Q. Didn't that seem peculiar on the part of a lawyer? A. It didn't occur to me to do so.

Q. You weren't expressing your own views in that paper? A. Not at all; I was giving expression to what Mr. Clark told me he wanted.

Q. Of course you are human; you are liable to err? A. Not infallible.

Q. Did it not occur to you that you might have erred in the matters you did in that declaration of trust and it might be well for you to submit the paper to Clark to see if it met his views before being executed? A. It would have been a very good thing to have done; it would have avoided all this controversy; but this is the situation, Mr. Fallon, which was a very unusual situation: Mr. Clark had made arrangements with Kinnaugh with reference to the garage business. Kinnaugh was to run the garage business. There was no document of any kind executed with reference to the garage business.

Q. Isn't that in the declaration of trust that he was to conduct the garage business and render an account of it? A. Yes, because in talking with him I got this information. But there was no bill of sale, no power of attorney, or anything given to Mr. Kinnaugh. Mr. Clark had just told him to go down there and take hold of the thing and run it with Frank, and that was an arrangement that had been made by Mr. Clark before this other question came up at all.

Q. But you knew that one of the arrangements was that Kinnaugh was to operate this garage for Clark, paying $20 a week to his wife, and account to him for what was due when Clark had gotten out of prison? A. Yes.

Q. Why didn't you reduce that to writing? A. Well, I have reduced it to writing there, the entire arrangement as Mr. Clark gave it to me.

Q. But you say you didn't prepare any paper whereby Clark invested in Kinnaugh this garage business? A. Absolutely none; he had disposed of it before consulting me.

Q. And yet you knew that Kinnaugh was exercising his right to conduct that garage business? A. Yes.

Q. And you knew that Kinnaugh was exercising that right in trust for Clark? A. Yes.

Q. And you being Clark's lawyer, you say it did not occur to you to have Kinnaugh sign any paper to indicate what authority he had in the conduct of that business; is that right? A. Absolutely.

Q. Didn't it occur to you that, Kinnaugh being in possession of that garage business, might have sold it if he wanted to to anybody that came along? A. I suppose he might have done so.

Q. Didn't that suggest to you the propriety of having some paper to indicate what kind of arrangement between him and Clark was? A. Mr. Clark wanted to see me—

Q. Answer the question first. A. I wouldn't go to Mr. Clark or anyone else and volunteer that "I would do this, that, or the other thing".

Q. But you say you were his lawyer. A. Because he hadn't come in there and consulted me about that specific thing.

Q. I will ask that my question be read by the stenographer. (The question is read.) In other

words, a trust agreement as to the garage business. A. I have prepared a declaration of trust here which referred to the garage business as well.

Q. I understood you to say that the garage business arrangement between Clark and Kinnaugh was made before you made this declaration of trust and before you had the talk with Clark about the advantage it was to him, Clark, and he then made known to you that he had arranged with Kinnaugh whereby Kinnaugh was to conduct his garage business? A. He told me that.

Q. And you as a lawyer knew if Kinnaugh was in control of that business he had, to outward appearances, the ownership of the business and could have sold it to anybody that came along? You know that? A. I would have possibly known it if I had thought about it.

Q. That being so, inasmuch as you knew that Clark had got Kinnaugh in the indicia of ownership of this garage business whereby it might be sold out to anyone that came along, didn't it occur to you that you ought to have some paper writing between him and Kinnaugh to indicate what the actual arrangement between the parties was? A. I don't know whether any such thing occurred to me or not, Mr. Fallon.

Q. Well, what do you think of it now? A. Mr. Clark had asked me to come up there, through Mrs. Clark; that he wanted to make a deed, and I went up there to draw a deed. I was surprised when I found that he wanted to make this deed, after having been informed that the purpose of it was to benefit Mrs. Clark in certain respects, and I went up and talked with him about this deed, explained it to him, got his instructions, came back and prepared a declaration of trust, which was later executed by Kinnaugh, in which he declared

that he held the property in trust. Mr. Clark didn't consult me with reference to the garage business—as to the transfer of the garage business; he had already put Kinnaugh and Frank in charge there, and I only talked with him just what he wanted to talk with me about. I was very glad to help, I was willing to help Mr. Clark out and he hadn't compensated me, and I felt that it was a question whether I would ever be compensated, and I naturally didn't go any further than I had to in order to do what seemed necessary.

Q. Now, Mr. Lindabury, have you a docket or other book in your office, which will indicate to this court the date upon which this so-called declaration of trust was prepared? A. No, I haven't, Mr. Fallon.

Q. Haven't you got some record which will indicate what service you rendered in your office for either the benefit of Mr. and Mrs. Clark in the preparation of that so-called declaration of trust, and the date of its preparation? A. No, I haven't.

Q. Have you any record in your office which will show the date of the preparation of that deed? A. I have not, except—I have no record; I simply recall that the deed was drawn the same day that it was executed.

Q. Have you in your office a book or record which will show the preparation of any deed at any time and the date of its preparation? A. I have a record which I keep now—I don't remember just what, but it shows the movement of the heads and girls and so forth in the office.

Q. Did you dictate this declaration of trust? A. I did.

Q. Do you recall to whom you dictated it? A. I do not.

Q. How many stenographers did you have in your office at that time? A. Two, I think.

Q. Can you tell me their names? A. I cannot.

Q. Are they still in your employ? A. I think not, Mr. Fallon, but I'm not sure. Around that time we were having a great deal of trouble with stenographers. I haven't thought to inquire whether either of those girls were there in 1919. Mr. Lafferty may be able to help me; do you know, Mr. Lafferty?

(Mr. Lafferty does not respond.)

Q. Mr. Lindabury, in the conduct of your office don't you keep a record of the work done during a particular day, the preparation of papers for clients and their payment, giving the nature of the paper and what the charge is? A. I generally do, yes.

Q. Have you any record of these papers, either the deed or the declaration of trust? A. No.

Q. Have you any record, then, of the preparation of this assignment, the portion that is written upon that lease? A. No.

Q. Well, how is it you didn't make any record of these things if it is customary in the conduct of your business to keep records of work for other people? A. Well, I don't keep a detailed record of what I do from day to day. Take this criminal case in which I appeared for Mr. Clark; there is no record of services rendered in that case. I have made no charge for the thing. Now, I do keep a record from which I can make up my charges. I am very lax in that and always have been.

Q. Did you pay for the recording of the so-called declaration of trust? A. I did not, sir.

Q. Did your office pay for it? A. I don't think so.

Q. Was it returned to your office after it was

recorded? A. I don't know; I don't think so; might have been.

Q. Have you in your office a book which will show that this paper was sent to the Register's Office to be recorded, from your office, and when it was returned? A. I have such a book. Let's see, 1919—when did I form a partnership with Steelman? No, I did not.

Q. Have you any book— A. I have a book now in which we keep a record of all those things, but I didn't at that time.

Q. You have no record in your office to indicate when this paper bearing date August 4, 1919 left your office after execution? A. Not to the best of my recollection.

Q. Do you recall whether you delivered it to William Kinnaugh or mailed it to him? A. I didn't deliver it to William Kinnaugh at all.

Q. To whom did you deliver it? A. To Mrs. Clark.

Q. Did you mail it to her or deliver it in person? A. I think I delivered it in person.

Q. Why didn't you send a copy of it to James Clark? A. I didn't think about it; that is the only reason.

Q. You have endorsed it "Agreement between James Clark and Catherine Clark his wife, and William Kinnaugh"; if you gave this paper to Mrs. Clark why didn't you send a copy of it to Mr. Clark? A. Just thoughtlessness, that's all. I thought that Clark and his wife were in perfect accord; I thought their differences had been buried. The only thing that stuck out at that time that Mr. Clark seemed to be displeased about was that he thought Mrs. Clark was responsible for his being in jail. I explained that to him and he seemed to understand it, and I thought that every-

thing was all right, and the declaration of trust was drawn more with the idea of having something to hold Kinnaugh than it was in being necessary between Mr. Clark and his wife.

Q. I would like to have you, Mr. Lindabury, produce whatever record you have in your office relating to the execution of these papers, showing the date it was delivered, between now and tomorrow morning. You might look and see if you have any such papers. A. I have got everything here, and the only office record would be in the form of carbon copies of letters by mail, which would indicate the date it was sent.

The Court: Will you see if you can find anything further in the way of records or copies? A. Yes.

Mr. Fallon: Tomorrow I have a hearing in the United States Court at 2 o'clock, and would like if possible to conclude tomorrow at 1 o'clock; and in order to do that I am willing to continue with Mr. Lindabury here for awhile.

Q. Mr. Lindabury, you knew before you prepared this deed that some of the Newark Street property was in process of mortgage foreclosure? A. Yes. Well, I won't be as definite as to that. I knew that there was some court proceeding.

Q. Appointment of a receiver? A. No, I didn't know there was a receiver appointed, but I knew there was a foreclosure started or pending.

Q. Then didn't it occur to you that you ought to inquire as to whether or not Clark had any interest in that property which was subject to mortgage foreclosure which he might have conveyed by the deed to Kinnaugh? A. Why, it didn't occur

to me at the time, Mr. Fallon, no. I knew that mortgages were in arrears, and I knew that there were foreclosures likely to occur, and it is my recollection I knew that something had been done with reference to one of the properties, but I didn't know of anything that might prevent Clark from making a deed and, as a matter of fact, when word came that he wanted a deed prepared I didn't have time to look into it.

Q. Did you ever talk with Mr. Clark at any time after you declined to represent him in the argument of the appeal in the Federal case, other than the one visit that you made at the jail on June 25th, 1919 and the visit he made at your office in which he asked you for a paper? A. Oh, yes.

Q. When? A. After I had refused to further represent Mr. Clark in that criminal case, as it has been termed "refusal", why I went ahead and prepared all of the appeal papers and the record.

Q. I am speaking about after that—I say after that, after the time of that appeal. A. That isn't what you said; you said after I had refused to represent him.

Q. I will put it this way: Did you ever talk to Mr. Clark on any matter whatever after the time when you withdrew, if I could use that expression, from the argument of the appeal in the Federal case, other than the one talk that you had with him on June 25, 1919 at the jail? A. Yes.

Q. When? A. I can't give you the dates; I only know it by events.

Q. What was the event that brings it to your mind? A. Mr. Clark, as I have said before, had failed to give me—

The Court: Mr. Fallon, Mr. Lindabury has said time and again that after he and

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Mr. Clark couldn't get together on his fees for his argument on appeal he continued to do a great deal of work on the perfecting of the appeal, and I assume that it was during the time that you were perfecting the appeal that you saw him?

A. Oh, yes.

Q. After the perfecting of the appeal and after your conference with Mr. Kavanaugh on the argument of that appeal did you have a talk with Mr. James Clark on any business matter with him, other than the talk that you had with him at the Essex County jail in June, 1919? A. Of course, the last time I saw him before I again saw him at the jail, there was an interval in there when I didn't see him, but the last date on which I saw him before seeing him in the Essex County jail in June, I can't tell you. It wasn't until we had perfected—obtained a writ of error in December that Mr. Clark could be at large on bail, assuming that he could get it, and then after he got out of the jail on bail pending appeal he had to get some money to buy the transcript of the record from the stenographer. He also had to get some money to pay for the printing of the record, and it was necessary to enlarge the time for printing this record several times.

Q. My question relates to the time after the appeal. A. What I am trying to get down to is this: I can't be positive at this moment, Mr. Fallon—I believe that it was sometime in April before that record was finally ready to deliver, and I had charge of it up to that time.

Q. Mr. Clark has said that you ceased to represent him as his attorney when he was unable to make tender of payment to you of $1,000; now I

ask you, did you have any talk with Clark thereafter, at any time, other than the talk you had with him at the jail on June 5th, 1919? A. Well, "thereafter"; I don't know what you mean by that.

Q. After the time he says you refused to go on with his case because he couldn't give you the $1,000. You said you wouldn't argue the appeal unless you got a thousand dollars? A. Yes, and wouldn't brief the case.

Q. After you said that and up to this present day did you have any talk with Clark about his business matters, other than the one talk you had with him at the Essex County jail in June? A. Absolutely.

Q. In what respect? A. After I told him that, that I couldn't go on with the thing because he hadn't kept his engagement to pay me some money, I told him that I would go on with the preparation of the record so that he wouldn't be prejudiced in that regard, and that was a matter of probably two months or more that the preparation of that record was in process, during all of which time I was working for Mr. Clark, and during all of which time Mr. Clark saw me from time to time, and I would say for two months or more before I told him that.

Q. Then I will put the question this way: Laying aside the question of the record and all the proceedings you took for the prosecution of the appeal, what other business did you attend to other than the preparation of this deed which you say you prepared for him on the 25th of June, 1919. A. The only two things is the letter which I wrote on June 21st, which I wrote instead of going to the jail to talk with him—

Q. You wrote that because of a talk you had with Mrs. Clark? A. Yes.

Q. And you sent that by Mr. Lafferty? A. Yes.

Q. And Mr. Lafferty reported to you that Clark would not consider the matter that you had written him about in your letter, didn't he? A. Yes.

Q. Entirely distinct from the time you say you saw him again, as I understand it? A. Mrs. Clark told me that Mr. Clark wanted to see me at the jail—

Q. That isn't what I am talking about.

The Court: This is cross-examination, Mr. Lindabury and counsel is entitled to categorical answers to questions.

A. He has asked the straight question whether the deed in question for Mr. Clark was all the business I did for him. My recollection is that I wouldn't consider conveying to Mrs. Clark, but I do recall distinctly a refusal to draw anything that was mentioned to that effect. You seem to have centered on that one question, that was conveying to Mrs. Clark. There was a general refusal, Mr. Fallon, if that is what you are aiming at.

Q. I called your attention before when we were on this matter to a recital contained in an affidavit made by you in this case on the date of June 16, 1923, wherein you said, "Deponent was informed that complainant received and read this communication"— A. Yes.

Q. —"but refused to entertain any suggestion of a transfer of his property, either to a trustee or to his wife, or to anyone else." Now, that is a true statement, isn't it, as to what Mr. Lafferty reported to you? A. I believe it to be. I wrote this letter as the result of a message brought to me by Mrs. Clark that Mr. Clark wanted to see me about the property.

Mr. Fallon: That I want stricken out, because any message he got from Mrs. Clark was not binding on Mr. Clark.

The Court: I think that is only fair, Mr. Fallon. You have asked him if this letter, D-4 was not written as a result of a call made upon him by Mrs. Clark. He now explains why he wrote that letter.

Mr. Fallon: He says it was written as a result, as I understand it, of a call from Mrs. Clark.

The Court: Message delivered to him by Mrs. Clark. That doesn't vouch for the accuracy or truthfulness of the message that Mrs. Clark delivered. I think he is entitled to that; I think the question otherwise puts him in a position which requires such explanation.

Mr. Fallon: Which question? I don't want to put him in such a position.

The Court: The question as to whether this letter was written as a result of a call made upon him by Mrs. Clark. Now, he says it was.

Mr. Fallon: Information communicated to him by Mrs. Clark?

The Court: Yes.

Mr. Fallon: My suggestion is, that any information Mr. Lindabury received with respect to what Mr. Clark was willing to do was communicated to him by Mrs. Clark and not by Mr. Clark.

The Court: That is true, isn't it, Mr. Lindabury?

A. Yes. I thought what Mr. Fallon was getting at was whether I did any work for Mr. Clark sub-

sequent to completing the record on appeal, and what I am trying to say is, that I wrote this letter instead of going to see Mr. Clark, and then I drew the deed and the declaration of trust as a result of the conference with him on the 25th. That is the only work that I have done for Mr. Clark.

Q. You don't pretend that the writing of that letter D-4 was at the instance of Mr. Clark? A. I do.

Q. Why? A. Because the message that came to me was that Mr. Clark wanted to talk to me about his property and wanted me to come up to the jail.

Q. And then you wrote this letter? A. And then I wrote this letter, giving my idea of what Mr. Clark ought to do.

Q. And Mr. Lafferty, by whom you sent this letter, reported to you that Mr. Clark wouldn't do it? A. Absolutely.

Q. So I say again, you do not wish to tell this court that in writing that letter you were acting for Clark? A. I absolutely do.

Q. Did Clark ask you to write the letter—personally? A. No.

Q. Did you have any personal talk with Clark before you wrote the letter? A. No.

Q. Did you have any personal talk with Clark at any time before writing that letter about the transfer of this property, after the appeal we have been referring to? A. No, not after the appeal case was completed.

Q. Did you have any talk, then, with Clark personally, other than the one of June 25, 1919, when you sent this deed up, other than the talk which you had in your office in which he requested you to give him a paper and which you said you would not? A. That is all.

Q. Why do you say to the court that you con-

sidered you were attorney for Clark when you prepared that deed? A. Because when Mrs. Clark came in with the message of what Clark wanted done with this property I believed it was a message from Mr. Clark. If he didn't send that message then I am mistaken in representing Clark; so that I believe I was when I wrote it.

Q. And when you presented the matter to Mr. Clark he said he was unwilling to do it? A. Yes.

Q. Then Clark refuted that which you suggested in the letter to him; didn't that look to you then as if Clark hadn't sent for you and didn't want you? A. No.

Q. Did you make any effort then to see Mr. Clark or communicate with him, to find out whether that statement made to you by Mrs. Clark was true, that he, Clark, wanted to see you? A. I did not.

Q. So that when you failed to see Clark on June 25th you went there with this prepared deed, the deed having been prepared as the result of the communication made to you by Mrs. Clark? A. That's right.

Q. You then say that you discussed that with him and had him sign it? A. Yes.

Q. When did you take the acknowledgment of the deed, on that day or subsequently? A. You mean my certification?

Q. Yes. A. That day as far as Mr. Clark was concerned, and Mrs. Clark acknowledged it at a later date.

Q. Take a look at the acknowledgment and let us know whether that is so, or whether you are mistaken. Doesn't this acknowledgment indicate to you that you wrote that entire acknowledgment at one time? A. Yes, it does.

Q. So that you are mistaken in saying that you

wrote in his acknowledgment on June 25th? A. Yes, I may be mistaken as to that. It looks very much so.

Q. That paper indicates to you that the entire matter was written on August 4th? A. Yes, it looks as if the entire acknowledgment was written on the 4th of August.

Q. Now, when was this date, 25th, inserted in this deed? A. Whatever day it was signed by Mr. Clark.

Q. Wasn't that put in in typewriting when you prepared that deed, to wit, June 25th, the day you say you went over to see Clark, believing that he was going away that day? A. There is no reason why it shouldn't have been put in typewriting, excepting that it is a practice in the office not to put in the date without express instructions, but the person who drew it left it out.

Q. On this occasion you say there was a real necessity of a hurried preparation of this deed, C-1, and you expected that Clark was going to execute this deed when you went over to see him, didn't you? A. Yes. Well now—I expected he would, yes; but from what had gone before I was very much surprised at the message Mrs. Clark had brought to me.

Q. You expected he was going away that day? A. Yes.

Q. Is that your writing "the 25th"? A. Yes, my writing.

Q. Isn't it a fact that that "25th" was not in there the day the acknowledgment was taken? A. No, it is not a fact.

Q. You are quite sure? A. My recollection is not the only thing that guides me. I went up there that day, and it being the instrument that Mr. Clark was signing, I wouldn't fill in the date before he signed it.

Q. You wouldn't consider it very strange if the date was left out? A. I wouldn't consider that it would invalidate the deed at all.

Mr. Fallon: I think that is all.

Mr. Lafferty: I will reserve my re-direct examination until tomorrow.

The further taking of testimony is laid over until tomorrow, Thursday, December 20, 1923, at 10 o'clock in the forenoon.

Hearing of Thursday, December 20, 1923, 10 a. m.

Defendants' Case (continued).

All counsel present as before.

LEWIS A. ACKLEY, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. Mr. Ackley, you know James Clark? A. I do.

Q. Did you ever see him at the Essex County jail in Newark? A. I did.

Q. Do you recall the date? A. It was in June, 1919.

Q. At whose request did you call to see him there? A. At his request.

Q. How was that request communicated to you? A. By a letter addressed to me.

Q. Have you that letter? A. I have.

Q. Produce it, please. A. (Witness produces paper).

Q. What is the date of the letter? A. The letter is dated June 22, 1919.

Q. To whom is it addressed? A. Mr. A. J. Ackley.

Q. Did you receive that letter through the regular course of the mails? A. I did.

Mr. Lafferty: I offer it.

Mr. Fallon: This letter is not written by Mr. Clark, but he says he had somebody write it for him, so we have no objection.

(The same is marked Exhibit D-6.)

Q. In response to that letter, Mr. Ackley, did you call on Mr. Clark, or one of the other gentlemen mentioned therein? A. On Mr. Clark.

Q. Did you have a conversation with Mr. Clark? A. I did.

Q. At that time? A. Yes, sir.

Q. To what did it relate? A. It related to a lease between Swift & Company and Mr. Clark, covering property in Hoboken, New Jersey.

Q. I show you Exhibit D-1; is that the lease to which you refer? A. That is the lease.

Q. What conversation did you have with Mr. Clark at that time? A. Mr. Clark told me that he was going to be sent from the Essex County jail to a penitentiary in Baltimore, I think, or some Federal prison, and as that lease contained an option to buy the property he wanted to know what arrangement could be made about extending the option.

Q. What did you tell him? A. I told him that that was a matter for Swift & Co. to decide and I could not say then what action they would take.

He told me, "Well, it is only going to be a matter of a short time when this matter will be fixed up and I will be out of prison within a very short time and the matter can be held over until I am out." He also told me that if any question came up about renewing the option I should get in touch with Mr. Lindabury, his lawyer, or that a man by the name of—well, it is the name mentioned in the letter—Kinnaugh I think the name is.

Q. Was the option and lease subsequently renewed? A. Yes, it was.

Q. I show you D-2 for identification and ask you whether that is the renewal. A. Yes, that's the renewal.

Q. I show you D-3 for identification and ask you whether that is a further renewal. A. Yes, that's the second renewal.

Q. Was the option eventually exercised? A. It was.

Mr. Lafferty: I offer in evidence D-1, 2 and 3 now marked for identification.

Mr. Fallon: No objection.

(The same are now designated Exhibits D-1, D-2, and D-3.)

Q. At the time you talked with Mr. Clark in June, 1919, do you know whether the rent was paid up to date? A. Prior to the time I talked with him—

Mr. Fallon: I object to that as immaterial.

The Court: What is the purpose of that?

Mr. Lafferty: To show that there were arrearages of rent, taxes and other matters, making the equity in this matter less than the complainant stated it was.

Mr. Fallon: Assuming all that to be true, what relevancy would it have to the question at issue here? I submit, it is immaterial.

The Court: Mr. Lafferty, what difference would that make in determining the conditions of the trust?

Mr. Lafferty: The claim made by the complainant is, that in carrying out this scheme he was deprived of this property. Reference has been made to acts of which Your Honor has knowledge. Now, if there was nothing, we were depriving him of nothing. We say the condition of the property at that time was such that it was a burden rather than a benefit. We were not taking advantage of him if we took upon us the burden of saving the property for him.

The Court: Well, I suppose that is so. It may be of some importance in the final determination of the case, as to whether or not this case comes within the doctrine set forth in Slack v. Reeves, Pose v. Hagen, and the other cases of this state. I will overrule the objection.

A. The rent was not paid up to date.

Q. How much rent was due under the lease at that date? A. May I refer to my records here? It is quite a while ago.

Mr. Fallon: Unless this witness was the rent-collecting agent and, therefore, had dealing with Clark, as the result of which he would know of his own knowledge, I object.

Mr. Lafferty: I withdraw the last question.

Q. Did you collect the rents from Clark under this lease? A. I did.

Q. Now I ask you what rent was due at the time of the conference in June, 1919 under this lease. A. The rent for the months of April, May, and June.

Cross Examination by Mr. Fallon:

Q. Well, you had no objection to the rent being in arrears; you were satisfied to let it run? A. No.

Q. The rent was payable monthly, wasn't it? A. Payable monthly.

Q. After the April rent became due you didn't exercise your right under the lease, whatever it might be, to avail yourself of that right? A. What right?

Q. I say, whatever right you had under the lease you didn't exercise it? A. No, because—

Q. Never mind. Then when the rent for the month of April or May became due, thus making two months for which he owed you, you didn't avail yourself of any rights you had under the lease to put an end to the lease? A. No.

Q. So that when the rent for June came due and he owed the rent for April, May and June, you did not exercise any rights you had under the lease? A. No.

Q. When were the rents that were due in April, May and June paid to you? A. On July 7, 1919, Mrs. Clark paid me $100 on account of the rent of the months of April and May and June, 1919.

Q. Yes, when were the entire arrearages paid? A. On August 6, 1919, Mrs. Clark paid the balance of $60 on the rent for those three months.

Q. Now, you knew Mr. Clark for quite some time, didn't you Mr. Ackley? A. I did.

Q. And Clark did work for Swift & Co. in the way of obtaining options and the like for them, didn't he? A. No, sir.

Q. He did some work for them, to your knowledge? A. He was working for himself.

Q. Well, he did some work for them; he made some negotiations for Swift & Company? A. Yes.

Q. What were those negotiations? A. He had some negotiations in reference to the purchase of a piece of property on the corner of Henderson and —I have forgotten what the other street was now.

Q. The place known as Heine's Hall corner? A. Yes, I think it was.

Q. He was negotiating for the purchase of that property for Swift & Company? A. Yes, or some subsidiary.

Q. I mean, he was doing that, to your knowledge, anyhow? A. Yes.

Q. So that it was mutual business dealing between Clark and your company, and for that reason you didn't press the payment of those rents? A. No, because those negotiations had terminated. When this prosecution came out against Mr. Clark we dropped the matter immediately.

Q. Was there any reason why you didn't press the payment of the rent? A. The reason why was because Mr. Clark came to the office one day and showed me the clipping about this indictment and his picture on the front page of the newspaper and said, "This thing is just a temporary matter; it will all blow over; I am using a lot of money now in this matter and just as soon as I can get it straightened out I will take care of the rent".

Q. You were content to extend the credit to him, weren't you? A. Oh, yes.

Q. Now, you say that Mr. Clark told you when you went to visit him in July, if there was any

trouble about the option you would see Mr. Lindabury, his attorney? A. His attorney.

Q. He didn't tell you that Mr. Lindabury was no longer his attorney? A. No.

Q. You corresponded with Mr. Lindabury, didn't you, considerably? A. I don't think—

Q. Take a look at some of your letters. A. I don't think I corresponded with Mr. Lindabury after my interview with Mr. Clark.

Q. You corresponded with Mr. Lindabury as the attorney for Mrs. Clark, didn't you? Just look at your letters and refresh your recollection, please that you have before you. A. Just a second. (Witness looks at letters.) The first letter that I apparently wrote to Mr. Lindabury was July 16, 1919.

Q. And at whose request did you write that letter? For what purpose? A. The first part of the letter refers to the payment of the rent and the back taxes by Mrs. Clark, and then the latter part of the letter refers to an option agreement between Mr. Clark and Swift & Company.

Q. Have you any letter that in any wise indicates that you wrote Mr. Lindabury in the interest of James Clark? A. That letter was in the interest of James Clark as far as the renewal of the option is concerned.

Q. At the time you wrote that letter you had already been informed that the option was to be turned over to Mr. Kinnaugh were you not? A. I don't recall that.

Q. What is the date of the letter? A. The date of the letter is July 16.

Q. Don't you say there you would like to have them send that paper to Mr. Clark, the assignment of the option? A. No, that was an extension of the option.

Q. Extension of the option sent to Mr. Clark. Do you remember on August 5th you extended the option? A. Well, the original document is in evidence here.

Q. What refreshes your recollection today as to the conversation which you had with Mr. Clark in the Essex County jail in 1919? A. By reviewing my files very carefully and recalling the day and the place and the circumstances.

Q. And by conversing with some of the attorneys in court here for Mrs. Clark? You were conversing with them about this matter? A. Yes.

Q. And you exhibited your files to them before you took the witness stand? A. Only the letter that I have put in evidence.

Q. And you discussed with them this conversation which you were said to have with Clark in June, 1919? A. I told them the conversation that I had with Mr. Clark.

Q. Had you made any memorandum of that? A. No.

Q. You are a busy man. What is your business? A. I am an attorney.

Q. And you devote your time exclusively to Swift & Co.? A. Not exclusively.

Q. Where do you practice law in this state? A. Not in the state.

Q. Where? A. In Jersey City.

Q. You have an extensive business outside of Swift & Co.? A. No, not very much.

Q. Do you believe you can state, with any degree of accuracy, the conversation you had with Mr. Clark in 1919 in the Essex County jail? A. I think I can.

Q. You didn't make any memorandum of it? A. No.

Q. Do you remember any other conversation

with Mr. Clark at any other time? A. Prior or subsequent to this?

Q. Prior to that. A. Yes.

Q. You had a conversation about the option on the Heines property? A. He used to come to our office once in a while.

Q. Can you tell us about the option on the Heines property? A. I can if I have my files. (Witness referring to files.)

Q. Is there anything in this file that refers to June, 1919? A. Oh, yes. I reviewed that file last night.

Q. What is there in that file that relates to Mr. Clark in 1919? A. The fact that Mr. Clark wrote to me.

Q. Is there anything in that letter there that says Mr. Lindabury is Mr. Clark's attorney? A. No.

Q. Then you don't base your recollection of the conversation you had with Mr. Clark in the Essex County jail in 1919, wherein you say he referred to Mr. Lindabury as his attorney, upon any statement contained in that letter, D-6? A. Yes, because I knew Mr. Lindabury was representing him at that time.

Q. How did you know it? A. By the conversations which Mr. Clark had had with me prior to that time.

Q. And notwithstanding that you say that Mr. Clark, in conversations that he had with you prior to that time, told you that Mr. Lindabury was his attorney, yet you say he told you in the Essex County jail if you had any trouble about this matter to see his attorney Mr. Lindabury and Mr. Kinnaugh? A. Absolutely.

Q. Did he tell you that Kinnaugh was an attorney, too? A. No.

Q. Did you ask him about that at that time? A. I didn't ask him about anything.

Q. What is there other than this letter that you base your recollection of that conversation upon? A. When I went into the jail it was a beautiful June day. I remember that. I never had been in the Essex County jail before. I went into the lobby of the jail, as they call it, and asked for Mr. Clark, and the keeper said, "Well, he is in back of the cage", and he called out the name "Jimmy Clark" and Mr. Clark came to the front, and he said "Here is a man to see you." I then met him and said, "I want to see you". He says, "I can't talk to you here, I will go outside, and he told the keeper that I was an attorney, and I remarked to him at that time, "Well, Mr. Lindabury is your attorney". He says "Yes, but that's all right; I can get outside if you say you are an attorney".

Q. Did the keeper hear this conversation? A. No.

Q. You say he told the keeper that you were an attorney? A. No, I beg pardon; that was my first conversation with him; he said he couldn't get out, but he said, "you tell the keeper that you are an attorney," and I told the keeper that I was an attorney, and he said "All right, Mr. Clark" and opened the door, and instead of sitting in the room where there are seats he walked right on out in front and sat down, and then we started the conversation.

Q. Tell us what he said. A. He told me that he was to be sent down to a southern penitentiary, and, as I recall it, it was Baltimore. He says, "You know this option agreement will be up within a month or more; what can you do about it?" Well, I told him that that was a matter for Swift & Company; I had nothing to say, one way or the

other; that I would do all I could for him. "Well," he says, "if you get into trouble about this matter you see my lawyer Mr. Lindabury or Mr. Kinnaugh". And then we talked about general matters.

Q. What date in June was this? A. Well, this was two or three days after the date of this communication to me. It was in the afternoon.

Q. What is the date of the communication? A. That is dated June 22.

Q. You say two or three days after? A. Yes, a few days after; I wouldn't be able to tell you the exact date.

Q. You don't think it was a day after? A. I don't think so. That was sent to my New York office.

Q. Well, it was received by you on the 23rd and you went the following day, the 24th? A. Well, it might be. It was within a day or two after the receipt of that communication. I am not able to fix that exact day.

Q. Let me refresh your recollection by referring to some parts of this letter and see if that will help you any: It says, and the letter is dated 6-22-19: "If you cannot see me see Mr. Lindabury or Mr. Kinnaugh whom you will find at the garage, as I have made him trustee." Does that refresh your recollection any? A. Which part of it?

Q. What I have just read to you. A. Refreshes my recollection as to what?

Q. I am reading this to you now: "If you cannot see me see Mr. Lindabury or Mr. Kinnaugh whom you will find at the garage as I have made him trustee". Now, that language that I have read to you, does that refresh your recollection in any way as to the date when you called at the jail? A. No, it does not.

Q. Well, this letter requests you to call in to see him Monday or Tuesday morning; do you recall whether it was Monday or Tuesday morning that you called to see him? A. No, but it was not in the morning; it was in the afternoon.

Q. Was it Monday or Tuesday? A. Well, I wouldn't say. It was either one of those days.

Q. Haven't you some office record which would indicate what day you were there, or some other record? A. No, I don't think I have.

Q. When you left there that day did you communicate with Swift & Company as to the subject matter of your talk with Kinnaugh or Clark? A. I think I did after that but not with reference particularly to that.

Q. Would that communication indicate the day that you went there? A. No, it would not.

Q. Haven't you got a day-book, or a docket, or diary of some kind in your office which would indicate what time you talked with Mr. Clark? A. No.

Q. Did you make a charge against Swift & Company for that work? A. No.

Q. Did you make a charge against Clark for it? A. No, I did not.

Q. Then you made that visit, and had that talk, and did whatever you did in connection with it, gratuitously? A. No, I did not.

Q. How do you explain that? A. Because I handle all of Swift & Company's work on a general yearly basis.

Q. Then when you do work for Swift & Company don't you make a record of it? A. On matters of cases.

Q. You mean to say you make no record of visitations? A. No.

Q. And you made no record on the subject of

having the option extended with Clark? A. Subsequently I wrote to Chicago about it, but I can't fix the date.

Q. When did you write to Chicago about this matter? A. On June 24.

Q. That very likely was the day you called to see Clark, isn't it; this letter is dated June 22nd. A. It may be possible that that was the day or very near that day.

Q. This letter bears date June 22nd, and you say it was addressed to your New York office? A. Yes.

Q. And your recollection is that you received it the 23rd in due course of mail? A. Yes.

Q. And your recollection is that you called to see Clark the day following? A. Well, it was the early part of the week following. I think there was a Sunday intervening between that, if I'm not mistaken. If we had a calendar—

The Court: We could check that up.

Q. Anyhow, you said you wrote to Chicago office on the 24th? A. 24th of June.

Q. Is there anything to indicate that you called to see Clark after that? A. No.

Q. Did you write to Chicago about the talk you had with Clark? A. No.

Q. Why did you refer to the letter of June 24th, written to your Chicago office when I was inquiring of you about this matter? A. Because I wrote them in reference to the renewal of this option.

Q. Doesn't that refresh your recollection as to whether or not that letter was written as the result of your talk with Clark? A. No, it does not, because this refers to a prior conversation or talk about three weeks ago.

Q. Did the letter of June 24th refer to a previous option? A. Mr. Clark never wrote any letter to me except the one I got when he was in jail.

Q. There was correspondence between the agencies with reference to the Clark option? A. Yes, sir.

Q. And it was realized that the date for the exercise of that option was about to expire, and it was desired to extend it? Your letters so indicate, don't they? A. Desire upon the part of Clark.

Q. And your letters indicate that a man named Dean had something to do with this matter? A. Dean had nothing to do with this matter at that particular time; that is, the actual negotiations with Mr. Clark. That was all in my hands.

Q. Who is Mr. Dean? What position did he have? A. Mr. Dean at that time was the credit man for the company.

Q. And as such he had dealings with Clark, to your knowledge? A. Only prior to the time that I came into the matter.

Q. Doesn't your letter of the 24th of June to the company mention some letter of June 17th, written in connection with that matter? A. That has reference to a letter from Chicago.

Q. Have you here the letter from Chicago dated June 17th? A. Well, I am just trying to locate that, because I did have it.

Q. That has reference to the option, has it? A. Yes, it has.

Q. So that this option was the subject of correspondence between the representative of Swift & Co., prior to your visit to Clark at the Essex County jail? A. Oh, yes.

Q. Then the first intimation that you received about Clark's desire to extend the option was not that which you received in your conversation with Clark at the Newark jail? A. No.

Q. And you assured Clark that you would do what you could to see that his rights were protected and the option extended? A. I told him I would do as much as I could on that matter.

Q. You were friendly with him? A. Yes.

Q. And Mr. Dean was friendly with him? A. I think Dean knew Clark quite well. I don't know what the relationships were.

Q. Did Mr. Clark tell you anything about his property matters other than the Swift option? A. No.

Q. Mr. Clark didn't say anything to you about wanting to transfer that option to anybody; that is, I mean he wanted it continued in his own behalf—extended in his own behalf? A. He never raised any question about that.

Q. Didn't that statement where he stated that he had made Kinnaugh his trustee prompt you to inquire of him as to what that statement meant in his letter? A. No, I never raised that question with him; we didn't discuss it at all.

MATTHEW J. TACKELLA, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. You are a member of the bar of this state? A. I am.

Q. How long have you been? A. Since 1912 or 1913.

Q. Do you handle any matters for the Steneck Trust Co. A. I do, yes.

Q. Do you know Mrs. Catherine V. Clark? A. I do.

Q. Did you handle any matters for the Steneck Trust Co. in which she was interested?

Mr. Fallon: I object to the statement "in which she was interested". It calls for a conclusion.

Mr. Lafferty: I withdraw the question.

Q. Did you have any matters for the Steneck Trust Co. in which you had occasion to communicate with Mrs. Clark? A. I did.

Q. What was that matter?

Mr. Fallon: I object, on the ground as immaterial. How can it in any wise bind Clark thus far. I don't know what is coming afterwards.

The Court: I don't, either. What is the purpose of this line of testimony?

Mr. Lafferty: It is to show that this gentleman was attorney for the Steneck Trust Co. which placed a mortgage on 310 Newark Street property, which became the subject of a foreclosure, and that he had to do with the search and examination and disclosed the condition of the title and the amount of money necessary in order to place a new mortgage on it, and what other things had to be done; and shows the general condition of the property.

The Court: Isn't it for the same purpose as the discussion over the lease question that you asked Mr. Ackley about?

Mr. Fallon: We have no objection to that if they will confine it to Kinnaugh; but I want to object to any conference with Mrs. Clark which may be binding upon Clark.

The Court: Yes, of course I shall not permit any such self-serving declarations.

Q. (Question read by the stenographer.) What was that matter?

The Court: I don't see the purpose of that.

Mr. Fallon: I will withdraw the question.

Q. Did you make an examination of the premises 310 Newark Street, Hoboken, N. J.? A. That property was searched by my office. I don't recall whether I made the search or somebody else.

Q. Did you check up the report of the searcher in regard to that matter? A. I did.

Q. When was that search made? A. I will have to refer to my records.

Q. You may refer to your records. A. (After referring to paper.) Sometime in May, 1920.

Q. What was the amount of the money necessary to be paid in order to discharge the lien then against this property?

Mr. Fallon: I want to object to that, on the ground that it is immaterial, because I don't know what it is leading to. I can surmise, but I don't want to be put in the position of surmising. This is an occurrence in 1920 and, as I understand it, between William Kinnaugh and the Steneck Trust Company, and if that is so I can't see the materiality of it. What benefit is it to this issue to know how much was put on the property in 1920.

The Court: I think it is permissible, of

course. But I don't know what use I can make of it unless it is subsequently shown how much of that did or did not exist the preceding year at the time the complainant was taken South.

Mr. Fallon: If counsel wants to put on the record any incumbrances against the property, and the fact that the property was sold under a foreclosure of mortgage, I have no objection to that.

Mr. Lafferty: That is exactly our purpose.

Mr. Fallon: I say I have no objection to that going on the record, so as to indicate what the value of the property was, but what I want to object to is anything that will in any wise bind Clark as the result of negotiations between Mrs. Clark and the Steneck Trust Company.

The Court: Or anyone else.

Mr. Fallon: Or anyone else that my client does not know about.

The Court: Well, I don't see how this can have any effect, because, certainly, the situation would be the same the year before as in the spring of 1920. However, I suppose that an answer to the question would be harmless and for the purpose of protecting your position I will overrule the objection and permit the witness to answer. As I recall it, the question was, how much in May, 1920, was necessary to liquidate the liens against this property.

A. (Referring to papers) Do you want it in blanket form or each item?

Q. Yes, give us the items? A. There was a judg-

ment of Thomas D. Knight $151.21, December 8, 1905, against James Clark. I might state at this time that I don't recall whether this James Clark is the complainant in this suit.

Mr. Fallon: Then, of course—

A. There is nothing in here to indicate it at all unless I can find something.

Mr. Fallon: I may be pardoned for interrupting: If you had the closing statement—

A. No, the closing statement wouldn't show this, because all the bonds were taken care of at the time of the closing.

Mr. Fallon: I ask to have that stricken out as being a conclusion and in the nature of hearsay.

The Court: Yes, it may be stricken out. (Addressing the witness) Well, suppose you go on. What you mean to say now is that you don't know that the judgment debtor whom you just mentioned is the same James Clark here. Go on with the statement.

A. Judgment of John F. Powers against James Clark, entered September 12, 1908 for $216.55.

The Court: Now, the same thing applies to that.

A. Yes, all of these items here; I don't know whether they are against this James Clark.

Mr. Fallon: Unless it is going to be con-

nected up in some way, may I not suggest that we are losing time in going over this matter.

Mr. Lafferty: We will show that they were against this James Clark and show payment of them.

Mr. Fallon: All right.

A. Judgment of Agnes Powers against James Clark, entered October 7, 1908 in the Hudson County Common Pleas Court for $222.65. This judgment was assigned to James F. Powers.

Mr. Fallon: Is that the same judgment you mentioned a moment ago?

A. No, for different amount. Another judgment of Thomas P. Knight Company against James Clark, in the Hudson Common Pleas, entered October 12, 1908 for $281.47. Judgment of Charles Von Bloock and Anthony Grinelli against James Clark, Hudson County Circuit Court, February 25, 1909, $831.48. Judgment of Christian Gallarico (or Fallarico) against James Clark, Hudson Common Pleas, May 27, 1909, $221.52. Judgment of the State of New Jersey against James Clark, Hudson Common Pleas, June 11, 1909, $500. Judgment of Henry Moller against James Clark, Hudson County Common Pleas, July 18, 1909, $161.

Q. Have you any other judgments? A. I have a letter which I wrote to Mr. Clark.

Mr. Fallon: I object to any letters that might have been written to Mr. Clark being exhibited.

A. Yes, that appears to be all the judgments.

Q. Did you find any recognizances or bail bonds? A. I did, in the Hudson Circuit Court, filed in the Hudson County Clerk's office.

Q. Have you the amounts of those recognizances? A. No, I can't give the amounts, but I have the total.

Q. Give us the total. A. Seventeen bonds against James Clark as bail, and my notes do not show whether he was the defendant or it was just given for bail. $10,350. is the total.

Q. Was there a mortgage on the property? A. There was.

Q. What is the amount? A. You mean as of the day of the making of this search or of closing?

Q. The day of closing. A. The amount of the decree was $6,457 and interest from March 8, 1920 to July 28, 1920, $150.62, taxed costs $222.48, interest on costs $3.11, Sheriff's charges $107.84, total of $6,941.05.

Q. What was the amount of the principal of that mortgage? A. $6,000.

Q. Did you have a search made for water bills for water? A. Yes, I did.

Q. What is the date of it. A. March 22, 1920.

Q. What was there then due? A. Half year, February 1, 1918 to Feb. 1, 1920, $227.13.

Q. Did you have a tax search made ? A. I did.

Q. What is the date of it? A. Taxes of 1918 amounting to $190.69 and interest at the rate of 7% per annum to be added from December 20, 1918 and also tax of 1919 amounting to $203.37, with interest at 7% to be added from June 1, 1919, for one-half, and from December the 1st on the other half, to date of payment.

Q. Do you know the dates on which the foreclosure of this mortgage was started? A. I do not know.

Q. Did you have a search made in the office of the Clerk of the United States District Court? A. I did.

Q. Have you that search? A. I have.

Q. What is the date of it? A. That doesn't appear to be among the papers, but it was made, because attached to my search I have a list of the bonds that were found in that court. I have the original search.

Mr. Fallon: I have no objection excepting the materiality. I don't object to the accuracy of it.

Mr. Lafferty: I offer the original search made by the Clerk of the United States District Court, under his seal, bearing date April 23, 1920, and attached to it is a certificate of the search of the Clerk, under seal, showing disposition of all the recognizances which were on this property at the time of the original search.

Mr. Fallon: My objection to its materiality is based particularly upon the ground that it appears in the date stated in this paper and also by the witness, that this mortgage proceeding was initiated sometime in the latter part of 1919 after the so-called making of this declaration of trust, which required Kinnaugh to apply the rents, issues and profits to the payment of this mortgage and other mortgages, and because of his noncompliance of that at that time the foreclosure was brought about. I can't see that there is any charge against Clark.

The Court: What is the date?

Mr. Fallon: My papers indicate 1919, November.

Q. (By the Court) Does that refresh your recollection? A. No, I never looked up the date.

Q. (By Mr. Fallon) Were Gaede & Gaede the solicitors of the complainant? A. That's right; yes.

The Court: What date is that?

Mr. Lafferty: This pleading is November 10, 1919. So far as that is concerned—that which I offered just now under consideration—the search shows the existence in 1920 of a large number of recognizances in the Federal court, and shows a later discharge. Now it brings us right back to the question we discussed before, whether it is material to show the conditions under which we took this property, and that is the purpose for which it is offered. It shows when they were created.

The Court: And that was before July, 1919?

Mr. Lafferty: Yes.

The Court: I overrule the objection.

(The same is marked Exhibit D-7).

Q. Do you know anything about the transfer of title to this property from William Kinnaugh to Catherine D. Clark? A. I believe I drew a deed for that. I'm not certain about it, but I think I did.

Mr. Fallon: We will admit it.

Mr. Breen: It is set out in the pleadings and admitted. We allege in the bill that that property was taken by Kinnaugh, and that Kinnaugh immediately conveyed it to Mrs. Clark.

Q. Can you tell us whether or not the Steneck

Trust Company required that transfer as a condition for granting a loan?

Mr. Fallon: I object to that as calling for a conclusion. How can he tell what the Steneck Trust Company required?

Mr. Lafferty: I asked him whether he knew.

The Court: All right; he may answer yes or no.

A. Yes, I knew.

Q. Did they require it?

Mr. Fallon: I object to it now, upon the ground that the question calls for a conclusion and would be in the nature of hearsay.

The Court: Why isn't that so, Mr. Lafferty? His testimony is not the best evidence of what they required. Objection sustained.

Mr. Lafferty: He was the attorney for the Steneck Trust Co.; he acted under their instructions. He says that he prepared the deed transferring the title.

Mr. Fallon: The rule of law clearly is that a corporation can act only through its Board of Directors, and even if a director or the president made a statement the corporation can only act by its board of directors in effecting a particular purpose.

The Court: Of course, that has been departed from very, very materially. Estoppel and labor come in.

Mr. Fallon: Oh, yes, I appreciate that.

The Court: I understand that, today, a corporation, whether private or municipal,

can hold out an agent by reputation just as much as an individual can. That is decided in Frank v. Board of Education. I sustain the objection.

Q. Did you tell Mr. Clark and did you tell Mr. Kinnaugh that the Steneck Trust Company required the transfer of the property as a condition of granting the loan to Mrs. Clark?

Mr. Fallon: I object to that.

The Court: Objection sustained.

Mr. Lindabury: You see the charge here is that this conveyance made to Mrs. Clark was not pursuant to the terms of the trust, and this is merely offered for the purpose of showing that it was not voluntary. It was in connection with the refunding operation which had to do through that course before they agreed to loan the money. They wouldn't do it unless this conveyance was made. I think that was set up by the bill. I think it is proper for this man to show that he did what they compelled him to do, which only goes to the good faith of his doing what they required him to do.

I would say in reply that, that no matter what the negotiations were amongst themselves, it has no binding effect upon Clark. Furthermore, it seems to me now that whatever declarations were made by the Steneck Trust Co. must have been due to some talk between those parties themselves, because they couldn't get anything from the record because the declaration of trust wasn't recorded until 1921 and this occurrence took place in 1920.

The Court: I confess I can't see the purpose of it. This offer is not for the purpose of binding your client but to explain away the charge of mala fides against the trustee and the other defendant. Now, the only thing that bothers me is the objection made by the complainant as to the method of proof; that is to say, a statement made by the attorney for the bank, that it was only under such circumstances that they would make a loan if necessary to save this property. I am going to reverse myself. I think it is better to have illegal testimony admitted where there is no jury than to keep out testimony that should be considered. The complainant is protected by his objection if I make any fatal error against him, and I will overrule the objection and permit the witness to tell what he knows about the requirements of the Steneck Trust Company as a prerequisite of their making the loan that has been under discussion. (Addressing the witness) Now, did the bank require any conveyance first to Mrs. Clark. (Addressing counsel) Was that the purport of the question?

Mr. Lafferty: Require a conveyance to her as a condition of granting this loan.

The Court (addressing the witness): Then did the bank require, as a condition of making the loan, a conveyance by the trustee, Kinnaugh, to Mrs. Clark?

A. No. I might state that I never knew Mr. Kinnaugh as the trustee in the matter when I was handling it.

Q. What do you mean by saying you didn't

know Mr. Kinnaugh was trustee? A. I never knew that he was acting in any capacity excepting as a purchser of this property at the Sheriff's sale.

Q. Did you have any instructions from the Steneck Trust Company with reference to whom the loan had been made? A. Yes.

Q. What were they?

Mr. Fallon: I object to that, because the papers would evidently show to whom the loan was made—the mortgage would show that. I don't think there is any dispute that a mortgage was made to the Steneck Trust Company. If that is the fact I submit this witness cannot make any reference to it to the contrary, that is, over my objection.

The Court: Why isn't that true? The best evidence is the mortgage itself.

Mr. Lafferty: I withdraw the question.

Q. At the time of preparing the mortgage from Kinnaugh to the Steneck Trust Company did you first prepare a deed from Kinnaugh to Mrs. Clark? A. My recollection is that I prepared that deed, but I am not certain about it.

Q. Did you record both mortgage and deed at the same time? A. I don't know; I can't answer that with any degree of certainty that we did record the deed. I remember the deed was given; I recall the transfer to Mrs. Clark, but I don't recall whether I recorded it.

Q. Who instructed you to draw the deed? A. Just a minute and I will look at my search. (Witness refers to paper). Yes, my search shows the deed and the mortgage were dated and recorded and acknowledged on the same day.

Q. Who instructed you to draw that deed?

Mr. Fallon: This is all over my objection, if the court please.

The Court: Yes.

A. That transfer was made at the request of Mrs. Clark.

Q. As far as you know, it was not required by the Steneck Trust Comany? A. It was not.

Cross Examination by Mr. Fallon:

Q. Mr. Tackella, I want to refer you to the judgment you have you read off here a little while ago, for $831.48, Charles Von Bloock and Anthony Grinelli against James Clark, in February, 1909; just see if you are not in error in that, and see if the date should not be 1919. A. I think I said 1919—February 25th, 1919.

Q. Now, then, the water bills that you read off, they weren't for arrearages of the water rent prior to June, 1919, were they? A. Water bills for half year from Feb. 1, 1918.

Q. So that it wasn't due until 1920? A. I don't know what he means by that. He says to that date. I don't know what he means by that.

JAMES L. LAFFERTY, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lindabury:

Q. What is your age and occupation? A. I am 33; attorney and counsellor at law.

Q. How long have you been practicing? A. Five years.

Q. And during the month of June, 1919 were you practicing law? A. Yes, sir.

Q. Where were you located at that time? A. I was employed by Harrison P. Lindabury.

Q. And do you know James Clark, the complainant in this case? A. Yes.

Q. Did you know him at that time? A. Yes.

Q. When did you first get acquainted with Clark? A. I first saw him coming in the office to visit Mr. Lindabury, and knowing him then in a casual way I spoke to him.

Q. Did you know anything about the Federal proceedings against Clark that were going on in 1918? A. Yes, from discussions with Mr. Lindabury and work that I did in connection with court records.

Q. In June, 1919, did you see Mr. Clark? A. Yes.

Q. Where? A. At the Essex County jail in Newark.

Q. And do you know when you saw him there? A. I know that I saw him on June 21st, 1919.

Q. What refreshes your recollection as to the 21st of June? A. I have a copy of a letter which I delivered to him and the letter bears that date.

Q. Where is that letter? A. I shall have to look for it. (The witness produces paper.)

Q. I show you Exhibit D-4 and ask you if that is the letter that you refer to of June 21, 1919? A. Yes, that's a copy of the letter.

Q. What did you do with that letter? A. I delivered it to James Clark at the Essex County jail.

Q. Did you have a conversation with Mr. Clark at that time concerning the subject matter of the letter? A. When I first met him I said, "Here's a letter which Mr. Lindabury has sent to you". He took it and he read it. I recall some of the details

of those circumstances. At that time when he was reading it he had a pair of small glasses with a white metal rim. I remember his taking those out and putting them on and very carefully reading the letter, and he then said: "I want to see Mr. Lindabury. I said "Mr. Lindabury is very busy and is not able to come up at this time" and I told him I would take whatever message he might have. He says, "I am not willing to do this; I'm not willing that Mrs. Clark should have my property; I won't do anything". He then considered it some more and said, "I might transfer it to one of my children;" He didn't say which one; and finally before I left he said, "I won't do anything at this time; I want to see Mr. Lindabury."

Q. That is the entire conversation? A. That is the entire conversation. It was very short.

Q. And what did you do with reference to the message? A. I returned to Mr. Lindabury's office and delivered the message.

Q. What message? A. That he would do nothing at this time; that he wanted to see Mr. Lindabury.

Q. Do you know whether Mr. Lindabury went up to see him? A. Yes, I know that Mr. Lindabury went later.

Q. Do you know when? A. Only by refreshing my recollection from the records we have in this case; that is, by referring to the deed which is in evidence in this case.

Q. Referring to Exhibit C-1, I think it is? A. Yes, referring to Exhibit C-1.

Q. Did you see Mr. Clark at the jail more than once? A. Yes, I saw him subsequently to my first visit.

Q. And do you know when that was? A. Yes, that was on June 27th, in the morning.

Q. And did you see Mr. Clark that day? A. Yes, I saw him.

Q. What was the purpose of your visit at that time? A. I went there at that time with an assignment endorsed at the foot of a lease between Swift & Company and James Clark.

Q. I show you Exhibit D-1 and ask if that is the instrument that you refer to? A. That is.

Q. And did you see him sign that? A. I did.

Q. Did you have any further conversation with him at that time? A. Yes, I did, at that time.

Q. What was the conversation at that time? A. I asked him to give me a list of his creditors at that time, as far as he could.

Q. And did he comply with your request? A. Yes, he did.

Q. And what information did he give you concerning them? A. He named a number of people and gave me the amounts that he owed them, and I wrote down the names and the amounts.

Q. What were those names and amounts? A. I can recall them only by seeing the memorandum which I made at that time.

Q. Have you got the memorandum with you? A. Yes. (Witness producing paper.)

Q. Made at the time? A. Yes.

Q. I show you a paper and ask if that is the memorandum you made at the time? A. Yes.

Q. And were the names which are written there the names which Mr. Clark gave you at that time? A. They are.

Q. What did he tell you were the names of the creditors that he owed? A. He said that he owed Weller & Lichtenstein $200 on a judgment; he owed Stover, a lawyer, $150 on a judgment; he owed Flax, a tinsmith, $150 on a judgment; he owed William O'Neil $550; he owed William Kin-

naugh $325.; he owed Van Brock & Kingsley $825.

Q. Is that all the conversation you had with him that day? A. That was all that I had with him that day.

Cross Examination by Mr. Fallon:

Q. Are you sure that was all the conversation you had with him that day? A. Yes, I am sure, because of the fact that he was expecting to leave the Newark jail any moment.

Q. You knew when you went there on the 27th of June that Clark had already signed the deed to Kinnaugh, didn't you? A. Yes, I knew that.

Q. And had you anything to do with the preparation of that deed? A. No, I did not prepare the deed.

Q. What record did the office of Mr. Lindabury have, at that time, of papers prepared daily? A. Oh, we had no definite system of keeping records at that time of the work that he did. Mr. Lindabury was more careless about keeping charges, and I frequently took it upon myself of going to him.

Q. Did you know that he had drawn this deed of June 21st? A. Yes.

Q. Did you make a record at that time of the drawing of the deed? A. No, I didn't.

Q. Whose duty was it to do that? A. It was done this way: We had little slips and put the date at the top, and we wrote upon those slips what we recalled we did that day. Sometimes we forgot a great deal, and I have gone over it many times Saturday afternoon.

Q. But you got the paper prepared on July 27th? A. I did.

Q. Did you make a record of that? A. I did not.

Q. Why not? A. I thought it was a small detail.

Q. It was a small detail although he was preparing to go away to Baltimore. A. I mean the time.

Q. This conversation that you are talking of occurred in 1919? A. Yes.

Q. There was nothing that made any particular impression on your mind at that time which would warrant your remembering the conversation, was there? A. Yes, I think there was.

Q. And do you think you can remember the whole conversation you had with Clark at the house, how to spell the word "Kinnaugh"? A. No.

Q. Do you remember his telling you that he did not know but that you could telephone to a man named Gross and find out in that way? A. He didn't tell me that.

Q. Well, then, how did you know how to spell the name Kinnaugh? A. He spelled it for me.

Q. How did he spell it for you, if you remember? Don't look at the paper. A. I tell you I remember this situation because of the record made at that time, and he told me to spell it as it is spelled on the paper.

Q. You had seen the deed before that time? A. I don't know that I had seen the deed.

Q. You were interested in seeing that any transaction with Mrs. Clark and Kinnaugh was properly done? A. I didn't have control of the whole situation, either.

Q. You were familiar with it? A. Yes.

Q. And you wanted to see it done right? A. I don't think it was my job. I did such things as Mr. Lindabury told me.

Q. Had you read the deed before? A. No; I knew there was a deed, but I didn't know the details.

Q. Never saw the name Kinnaugh before? A. No, I hadn't seen it before.

Q. Don't you know that Mr. Kinnaugh called at Mr. Lindabury's office before the 27th of June? A. If he did I didn't see him.

Q. Was there a record kept at that time in Mr. Lindabury's office of the daily calls of clients and people? A. No, there was not.

Q. How was any record of charge made against clients if there was no such record?

Mr. Lindabury: If your Honor please, this has been gone into. It is not cross-examination; it is a great waste of time; it is wasting time.

Mr. Fallon: Oh no, it is very important.

The Court: It may be a waste of time, but that is one of the things courts have to put up with. Oh, I think that it is cross examination for the purpose of testing the credibility and recollection of Mr. Lafferty as a witness.

Mr. Fallon: I withdraw the question.

Q. Mr. Lafferty, when you went to see Clark on June 21st, and delivered to him the letter which Mr. Lindabury had given you to deliver to him, he afterwards really told you, did he not, that he wouldn't entertain any of the suggestions contained in the letter, because it suggested the transfer of his property, and that he was entirely unwilling to do? A. Yes, he said he wouldn't do it.

Q. And he also said to you that it had been suggested to him that he transfer his property to his wife but that he would refuse to do so, didn't he? A. Yes, he said he wouldn't convey it to his wife.

Q. And he told you also that somebody had sug-

gested to him to transfer it to his wife? A. Yes, I think he told me that Mrs. Clark had suggested it. Yes, that's right.

Q. Did he say or did he not just what I am repeating? What did he say in that regard? A. He said he would not transfer it to Mrs. Clark.

Q. What did he say to you about having had somebody suggest that he transfer it? A. He said Mrs. Clark had been to see him and he would not transfer it to her, and he would not transfer it in accordance with the suggestion contained in this letter.

Q. Did he say that Mrs. Clark had been to see him and suggested having it transferred to her? A. Yes, he said it was Mrs. Clark.

Q. Didn't he tell you that it was somebody else that made that request of him? A. No, he did not.

Q. I call your attention to a statement made by you in an affidavit bearing date June 16, 1923, wherein you said it had been suggested to him by somebody that he transfer his property to his wife, but this he refused to do; do you remember making that statement? A. Yes.

Q. Is that a truthful statement? A. Yes.

Q. Who was that "somebody"? A. I recall now it was Mrs. Clark.

Q. Why didn't you say so in this affidavit? A. I can't tell. Possibly I didn't go into it with the same detail that I do now.

Q. Your recollection must have been more clear in June of this year than it is today. A. I can't agree with you in that. I think recollection is often more clear when the circumstances are brought out.

Q. Tell me any circumstances brought out now that give you a better recollection today than you had then of that talk, other than that. A. The trial of this case.

Q. I know, but you are not depending upon somebody else? A. No, I am not depending upon somebody else, but it does refresh my recollection.

Q. You told us before that you remembered particularly the conversation you had at that time in July. A. Yes.

Q. Do you still say so? A. Yes, sir.

Q. Tell me what conversation you had with respect to somebody having asked him to transfer his property? A. He said that Mrs. Clark had been at him, or been to see him, to transfer his property to her and he said he wouldn't do it.

Q. So that, when you made this affidavit in June, 1923, instead of saying as you did that it had been suggested by somebody that he transfer his property to his wife and this he refused to do, why didn't you say that it had been suggested by his wife to transfer it to her? A. I don't know why I didn't say it.

Q. Did you remember it then on June 16th? A. That may have been recalled to my mind by something that has happened since; I can't say.

Q. Having called this to your attention, the statement you made in your affidavit of June 16, wherein you say Clark said it has been suggested to him by somebody that he transfer his property to his wife but this he refused to do, and your statement today that he said that Mrs. Clark had told him that, doesn't that suggest to you that you are not clear as to what the real transaction was at that time? A. No, it doesn't.

Q. Which statement is true, that Clark said to you at that time in that conversation he had with you that somebody had suggested the transfer of his property to his wife or that his wife had suggested that he transfer his property to her? A. I don't wish to be technical, but I think both are

true. Somebody had said it, and I now recall he said it was Mrs. Clark.

Q. So when you made your affidavit you were not giving the true facts but that you intended to say that it had been suggested by Mrs. Clark that he transfer this property to her? A. I didn't mean to say any such thing.

Q. When you said it was suggested by somebody did you remember it was suggested by Mrs. Clark, until I mentioned it to you a few moments ago. A. I may have had it in mind.

Q. Then your recollection was not clear when you made the affidavit? A. I mean in regard to that detail.

Q. You knew you were making that affidavit for the purpose of impressing upon the mind of this court the truthfulness of the statement which would be used to base his determination upon? A. I did.

Q. You remember that he indicated at that time that he might be willing to convey his property to his children—to one or more of them, but nothing definite was stated by him? A. I think so.

Q. What did you mean by saying in your affidavit that he was willing to transfer the property to one or more of them when today you say that he was willing to transfer it to one of them? A. I don't recall whether I said today "one or more" or "just one".

Q. If you said today that he told you that he would transfer his property to one of his children was that statement true? A. The statement that I did make referred to—

Q. I want you to answer my question first. If you testified here today that Mr. Clark, in his conversation with you, indicated that he was willing to transfer his property to one of his children, is

that statement true, or do you wish to correct it? A. That is subject to the qualifications contained in my prior answer.

Mr. Fallon: I submit, if the court please, that this witness is capable of answering the questions. It is a very clear question. I want to gove him a chance to correct it if it is incorrect, and if it is incorrect I want to give him a chance to say what is true.

The Court (addressing the witness): Can you answer the question?

A. No, because the question does not include my whole reply to the prior question.

Q. Then I will ask you this question: If the statement made by you in your affidavit of June 16, 1923, wherein you said he indicated at that time that he might convey his property to one or more of his children but nothing definite was stated by him, is that statement true? A. That statement is true.

Q. Then if you stated here in your testimony today that he said to you that he was willing to convey it to one of his schildren is that statement also true? A. Yes, I think that statement is also true.

Q. Now, Mr. Lafferty, before answering this last question you hesitated and thought a great deal before you gave your answer; isn't it a fact that you are answering at this time that he was willing to transfer his property to one or more of his children because I called your attention to your affidavit? A. No, because I was thinking of the form of your question, whether I could answer it yes or no.

The Court: I suppose, to be frank about it, the witness fears that he might be be-

trayed into some technical discrepancy between his statement contained in the affidavit and his statement on the stand. I understand why he wants to be very careful.

Q. Then I ask you this question, Mr. Lafferty: Will you tell the court what statement you say Mr. Clark made to you on the occasion of your visit to him June 21, with respect to his purported willingness or intimation that he might transfer his property to his children or one of his children. I want to know what is your best recollection today as to what that statement was. A. He said that he would like to do that if he could by conveying it to one or another of his children, but he couldn't depend upon them and he was afraid they would assign it to Mrs. Clark, and he was untilling to do it, for that reason.

Q. Now, Mr. Lafferty, I asked you before when you detailed your conversation with Mr. Clark to Mr. Lindabury, if you had told the whole conversation and you said "yes". I asked you if there was anything more, and you said "no". Now you are telling us another part of the conversation that you didn't detail before, in respect to his lack of confidence in his children. I now ask you, in view of that, are you not uncertain as to all the conversation you had with Mr. Clark on that day? A. No.

Q. Then why didn't you say it before? A. Why, when I mentioned it before I may have said it only generally; I didn't attempt to quote the exact statement he made in my answer to the question that he might convey to one of his children. Now you are asking me for details, referring to a particular matter, and I now recall them and am giving them to you.

Q. Do you remember my asking you distinctly whether there was any other conversation you had with Clark and if so to detail it, and you said no, you had detailed it all; do you remember that? A. I think probably you did ask that.

Q. Mr. Lafferty, you recall my having asked you whether you had stated all the conversation you had had with Mr. Clark? A. Yes.

Q. Will you explain why, in answering Mr. Lindabury, you did not mention anything about the statement which you have just made which you say Clark said to you, that he had a disinclination to convey to one or more of his children because they might favor his wife or their mother. Now I want to know what reason you have for not stating that to Mr. Lindabury when he asked you to detail all the conversation? A. I don't think Mr. Lindabury put the question that way. I don't think he asked me to detail all the conversation.

Q. Will you answer my question? A. Yes.

Q. His purpose in having you take the witness stand was to detail the conversation you had with Clark, wasn't it? A. To detail the general conversation, yes.

Q. Didn't you intend to detail all the conversation you had with Clark? A. I don't think I was asked to detail it all, only generally.

Q. Didn't Mr. Lindabury intend that you should detail all the conversation you had with Clark? A. No, I don't think he intended that I should detail everything that passed between us.

Q. Did you intend to withhold any of the conversation you had with Clark? A. No, I didn't.

Q. Was it not your purpose to detail the entire conversation you had with Clark, with a view of giving the court a full statement of what was said between you? A. It was my purpose to give the

court the substance of the conversation I had with Clark.

Q. Now, Mr. Lafferty, you knew that the court didn't want the substance; the court wanted all the facts; you knew that, didn't you? As a lawyer, you appreciate that, don't you? A. Yes, I suppose so.

Q. As a lawyer, don't you appreciate the fact that it was your purpose in taking the witness stand to detali all the conversation you had with Clark? A. I can see that I do now.

Q. Isn't it your idea that if you didn't detail all the conversation you had with Clark you were giving an imperfect version of it to the court? A. I haven't given that matter thought.

Q. Will you tell me why, in answer to my question if you had detailed the full conversation you had with Clark and you said you had, you did not make some mention of this recital with respect to Clark having some hesitation in transferring his property to his children for fear they might favor their mother? Do you understand that question? A. No, I don't understand it.

Q. I will repeat it: Can you explain to the court why, when I asked you if you had detailed the whole conversation you had with Clark and you answered yes, you did not recollect and make mention of the statement which you have just made, wherein you say that Clark said that he might be willing to transfer his property to his children, or to one or more of them, only he was afraid that they might favor their mother? A. I think because your further question suggested more details to me; it recalled more details.

Q. Now, Mr. Lafferty, can you tell us now what conversation you had with Clark on the day that you went to see him on the 21st of June, 1919.

Tell us the whole of it. Don't look at the paper, please. A. No, I want to be sure. You refer to June 21?

Q. June 21; that's the date. A. I went to the jail on June 21st—

Mr. Lindabury: May I susggest here that he has a perfect right to look at the letter which he delivered to Clark at that time, which may help him in answering the question.

The Court: I don't see that the date is of very much materiality.

Mr. Fallon: I will withdraw the question. That's all.

CATHERINE V. CLARK, one of the defendants, called in her own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Lafferty:

Q. Are you one of the defendants in this case? A. Yes.

Q. Where do you live? A. 120 Park Avenue, Hoboken.

Q. How old are you? A. Forty-seven.

Q. How long have you been married to James Clark? A. Twenty-nine years.

Q. How many children have you? A. Four living and two dead.

Q. Will you give us their names and ages? A. Mary; she is 26—27, I should say; Margaret, 22 or 23, and Frank is 22; and Rita, 9.

Q. Do you know what real estate James Clark

owned in June, 1919? A. 120 Park Avenue, 304 and 306 Newark Street and the receiver is collecting the rent there; and 310 Newark Street, under foreclosure proceedings; and there was one side of the garage on 413 Newark Street; and 1102 Madison Street.

Q. Do you know when foreclosure proceedings were started with reference to 310 Newark Street? A. Started right after Mr. Clark went away. They wanted to get their money right away.

Q. Referring to 310 Newark Street, do you know whether there is any mortgage on that? A. $6,000 mortgage.

Q. Do you know whether that mortgage was due in June, 1919? A. In 1919—

Mr. Fallon: I want to object unless she says how she knows. She can say, "Yes, I knew" but she has got to detail how she knows it.

The Court: The question is whether or not she knows.

Mr. Fallon: A further objection I urge is, that the paper itself might be the best evidence of whether or not it is due.

The Court: If that objection is made, Mr. Lafferty, how can you justify this question?

Mr. Lafferty: That the paper is the best evidence?

Mr. Fallon: Might be. It might be a past-due mortgage and might be various things.

Mr. Lafferty: I don't think it is necessary to produce what might be the vest evidence if we can show by the witness the absolute facts.

Mr. Fallon: If it was Clark himself on the stand, the owner of the property I might not be so strenuous in my objection; but suppose I was on the stand and they asked me the same question.

The Court: Yes. This defendant, Mr. Lafferty, must have learned from some source whatever she thinks she knows about the falling due of that mortgage. Of course, the best evidence is the source, or, rather, better evidence than her word is the source from which she obtained it. If she read it in the mortgage then the mortgage is the evidence. There is no foundation for secondary evidence.

Mr. Lafferty: My question is if she didn't know it.

Mr. Fallon: The question presupposes something.

The Court: I suggest that you frame the question this way: "Do you know when that mortgage was due?"

Mr. Lafferty: I will withdraw that question and reframe it.

Q. Do you know when the mortgage on the property 310 Newark Street became due?

The Court: Answer that "yes" or "no".

A. No.

The Court: You have wasted considerable time on that to no purpose.

Q. Referring to the property known as 304 and 306 Newark Street, was there a mortgage on that

property? A. Yes, there was a mortgage on that property.

Mr. Fallon: I object to that, too, because the answer must necessarily be based on a conclusion, because if there was a mortgage that mortgage is the best evidence. I submit, the witness can't state that. Let the mortgage be produced; and, in order that we lose no time, as I read this deed it says, the deed is made subject to a mortgage of $2,300.

The Court: What is the purpose of it?

Mr. Lafferty: The purpose is to show the condition of the property; that there were mortgages due.

The Court: Go ahead and examine her.

Q. Do you recall when Mr. Clark was committed to jail, after his conviction, during the month of December, 1918? A. It was a few weeks before Christmas, around three weeks, I guess. I don't happen to remember the date.

The Court: You weren't asked the date; you were asked if you remember.

A. Yes, I remember.

Q. Do you know on what day he was released on bail? A. Released Christmas Eve—Christmas night.

Q. Who furnished the bail?

Mr. Fallon: I object to that as well. I don't see how this witness is going to enlighten us in any respect.

Mr. Lafferty: It is charged that Mrs. Clark was not loyal to him, and this is—

Mr. Fallon: We are not trying the question of his loyalty here; we are trying the question whether this was a lawful transaction, this making of the deed and this declaration of trust. I am not going to impugn this woman's character in any way.

The Court: The whole reason was that you would not make the conveyance to her, and consequently would not make her the ultimate beneficiary by the execution of the deed of trust on account of her personal habits and on account of her intention to railroad her husband to jail. It is a most important thing to know that.

Q. Who furnished the bail? A. Incenzo Cervanti, $5,000 and $5,000 of Liberty Bonds from Mr. O'Neil.

Q. Is that all? A. Yes.

Q. What was his first name? A. William O'Neil.

Q. Who got those people to act in giving bail?

Mr. Fallon: I object as immaterial.

The Court: Objection overruled.

A. I did, and I had to work hard to get it, too.

Q. How long did it take you to do that? A. I guess I was at it the whole time from one time to the other getting it. I went to Mr. Lindabury's office nearly every day trying to get him out, and finally Mr. Lindabury got them to accept the bail.

Q. When was that? A. That was in December, 1919.

Q. What day? A. It was on a Christmas Eve, 11 o'clock at night.

Q. Are you sure that that was 1919? A. December, 1919.

The Court: She is clearly mistaken in that.

Mr. Lafferty: It was 1918.

Q. (By the Court) How many years ago was it that he was bailed out on Christmas Eve? A. Five years.

The Court: Then it must have been 1918.

Q. After Mr. Clark was released on bail did you have anything to do with the preparation of his appeal. A. I paid for the stenographer $410 in writing the testimony.

Q. Was that your own money? A. No, I had to pawn my ring for that, and $50 I borrowed from another party, and $40 from another, to make up the amount.

Q. Did you pay any other money, or borrow any other money? A. For the appeal?

Q. Yes. A. Not that I can remember.

Q. After the case was decided upon appeal did you say anything to his bondsman about surrendering him, or tell him to surrender him? A. No.

Q. Did you have anything to do with his arrest? A. No.

Q. During this period while his appeal was in preparation did you see Mr. Lindabury frequently? A. Yes, I did.

Q. In connection with what matters? A. Trying to do all I could for Mr. Clark.

Q. Did you pay Mr. Lindabury any money? A. I never paid Mr. Lindabury one cent, because I didn't have it to pay.

Q. Do you recall a conversation between Mr. Lindabury, Mr. Davis and you in reference to the property? A. I never had any conversation with Mr. Davis.

Q. Did you ever suggest to Mr. Clark that he convey the property to you when he was in the Newark jail? A. Not at first I didn't, but afterwards I did; I asked him to turn it over to the children; I made two or three visits there for that purpose, and he said he would turn his property over to nobody; and then I found out different things and went to Mr. Kalisch's office.

Mr. Fallon: I object, if your Honor please to what she found out, as being hearsay.

Q. As the result of what you learned, did you request a transfer of the property to you? A. From Mr. Clark to me?

Q. Yes. A. I certainly did. After I made a couple of visits I went out and it was determined —he wouldn't give me an answer one way or the other, and I lost one home before on account of his going around with women and buying her diamonds and I made up my mind he wasn't going to do it again.

Q. What was your attitude with reference to the transfer of the property to you for your children after you learned these things that he told you about it? A. I went into the jail to see Mr. Clark and I was really mad, and I first did ask him to transfer it to the children, but he refused, and when I went back the next time I told him that he ought to assign it to me as I was determined to look out for myself and my children, but he wouldn't do it.

Q. What did he say? A. I went away mad, but didn't say anything, and the next day I didn't go near him, and I was then visiting him every day.

Q. What did you then say? A. He told the boy

to come out, and I went out, and on my way out he said for me to step in to Mr. Lindabury's and tell him to stop in as he wanted to see him.

Q. Can you tell what date that was? A. No, I went to the jail to see him first that day and then I went to Mr. Lindabury's afterwards, and I thought it was funny business to make a fool of my going up there—

Mr. Fallon: I ask that what she thought be stricken out.

The Court: Yes. Don't tell what you thought.

Q. After you had seen Mr. Clark did you go to see Mr. Lindabury? A. Yes, I did, and I told Mr. Lindabury about it, and he said he didn't know—

Mr. Fallon: I object to her conversation with Mr. Lindabury.

The Court: Objection sustained.

Q. Did you show a letter or message to Mr. Lindabury?

Mr. Fallon: I object to that. I submit that the question ought to be, "What did Mr. Clark request you to say to Mr. Lindabury.

The Court: You have a perfect right to cross examine her on it. She now says that she delivered the message and she is bound by it, and if you can show any discrepancy in her testimony on cross examination you may do so.

Q. Did you tell Mr. Lindabury that Mr. Clark—

Mr. Fallon: I object; that is leading.

The Court: Objection sustained.

Q. What did you tell Mr. Lindabury? A. I told Mr. Lindabury that Mr. Clark wanted to see him; that he was going to turn the properties over to me.

Q. What did Mr. Lindabury say?

Mr. Fallon: I object, on the ground that it was not in the presence of Mr. Clark.

Mr. Lafferty: I won't press it.

Q. When did you again see Mr. Clark? A. I saw him every day, I guess, while he was there.

Q. When did you again see Mr. Lindabury?

Mr. Fallon: I object, unless her seeing Mr. Lindabury again was in the presence of Mr. Clark; on the ground that that wouldn't be material, so far as Clark is concerned.

The Court: I will permit it, for the purpose of showing her activities at that time.

A. I guess I saw him the day I went up to see Mr. Clark.

(Recess until 2 o'clock.)

Q. Do you recall how long, during the month of December, 1918, Mr. Clark was confined in jail?

A. In 1918?

Q. Yes, December. A. About three weeks.

Q. Did you visit him in jail at that time or during that time? A. That was the first time he was away?

Q. Yes. A. Yes, I was there nearly every day.

Q. What was your purpose in going at that time? A. Well, to take him clean clothes and anything he needed. He always needed something.

Q. Did he spend Christmas day at home with you? A. Yes, at 11 o'clock at night they let him out, Christmas Eve.

Q. Did you have Christmas dinner the next day? A. Yes, we had Christmas dinner.

Q. With reference to the arrangements you mentioned in raising money and getting bondsmen to go on his bail, did you pawn your rings? A. Yes.

Q. Did you get those back? A. No.

Q. Did you get the tickets? A. I got the tickets, and Mr. Clark told my young daughter—

Q. No, no—

The Court: Unless you heard him say it.

A. We heard him down in the kitchen. He said he had the rings in the safe deposit vault, and the diamond pin he wore it a week ago Sunday, and a couple of days afterwards he pawned it again. He wore it for a pin.

Mr. Fallon: I ask to have that stricken out.

The Court: Yes, strike it out. (Addressing the witness) Mrs. Clark don't tell what you think but tell just what you actually know.

Q. During the period beginning June, 1919, were your children working, or any of them? A. Yes, the boy was working in a garage, and Margaret she was working in the Park National Bank for $10 a week. I got five out of that; and Mary was a music teacher, and I got $7 a week from her, and $5 a week from a boarder, a friend of Mr. Clark's.

Q. Did you get anything from Frank? A. Well, I was supposed to have $15 a week. I had to buy clothes and feed him, and I figured $15 a week was little enough.

Q. Referring now to June, 1919, you stated that you visited Mr. Lindabury, I think you say about

the 20th of June. A. About the 20th of June. I was there so often—

Q. What did you tell him on that occasion that Mr. Clark had told you to tell him? A. Mr. Clark told me to tell Mr. Lindabury to come up; he was going to turn the properties over to me.

Q. Did you visit Mr. Lindabury again shortly after that? A. Yes.

Q. Do you recall the date of that visit? A. No. I was there very often at that time, I know.

Q. Did you ever take any other message from Mr. Clark to Mr. Lindabury? A. No, not that I remember.

Q. Subsequent to the 25th of June, 1919, did you pay any judgments which had been entered against the complainant, James Clark? A. Yes.

Q. Do you recall what judgments you paid?

Mr. Fallon: I object to that upon the ground that it is immaterial. It doesn't seem to me it is material here. It is matters subsequent to the making of this trust agreement.

The Court: I suppose it is to show liens against the property.

Mr. Fallon: Yes, but after the declaration of trust Kinnaugh was to pay them from the rents. If she means she paid judgments exclusive of that I have no objection to showing it; but she had nothing to do with the rents.

The Court: I assume this is for the purpose of showing, along the line that counsel has pursued today, the fact that there were liens that reduced the equity in this property.

Mr. Lafferty: That is carrying out my

promise to connect up the testimony of Mr. Tackella of certain judgments about which he has some doubt.

The Court: All of which is for the purpose of showing the equity which the complainant had in this property.

Mr. Lafferty: Yes.

The Court: For that purpose I will permit it.

Q. (Question read by the stenographer.) A. Yes.

Q. Will you give us the names and amounts. A. Mr. Flack; I paid him $110. The bill was $149 and the work wasn't finished, and I had been after him time and again to finish it and he didn't finish it. There was a balance due him and I told him when he finished it I would pay it; but, so far, he hasn't finished it yet.

Then there was the Bayonne Steel Ceiling Co. There was a judgment of $256.55.

There was Mr. Cahrico, $230.51.

Mr. Moller, painter, $161.20.

Jefferson Trust Co., $500.

Levy Brothers, $58.75.

Condro LeProse, $117.88. This was a bail bond and I couldn't get him out, and I had been week after week going to court house every day trying to get that bond. I went to different people trying to get it, and I finally got Judge McGrath, and I paid $117.88 for the costs of the court.

Then there was Mr. and Mrs. John Powers, $222.21.

And then there was the McKenzie case, a judgment of $500 against the estate, and I had a lot of trouble. This man had gone over seas and he came back, and I found out he was dead, and I

had to get different papers and doctors' certificates; and then all this trouble I had before I got things ready, and it was brought into court before Judge Stuhr who brought it into court; and I had a lawyer there from Lichtenstein's office, and finally I got that taken off after a lot of trouble. I wrote to Washington and to the Red Cross and all over trying to get this man off.

Q. Were those all the judgments? A. There was one of the Hudson Trust Company for $500. That was an assignment and I had a copy of the assignment made.

Q. Did you pay that judgment? A. No, I didn't pay that. There was an assignment there and that was all fixed up. Mr. Clark fixed it up, and when he came out he drew $180 of it, and I tried to get the money.

Q. Were those all the judgments you paid? A. That's all I can think of.

Q. Did you pay any other debts of Mr. Clark other than judgments, taxes and water rents? A. There was taxes and water rents for 9 years.

Q. Did you pay any debts that had not been reduced to judgments? A. I paid running bills that he refused to pay.

Q. What was the amount of them? A. John F. Ahrens was one; I guess it was $17 and something. He refused to pay that.

Q. Did you pay the judgment of Weller & Lichtenstein in the amount of $200? A. That is the Calirico case.

Q. Did you pay the judgment in favor of Stover amounting to $120? A. Yes, that was Mr. and Mrs. Powers, and I got two releases from them of that judgment.

Q. Did you pay William O'Neill $550? A. I paid William O'Neill $500.

Q. Did you pay Barkley & McLee any money? A. No, I didn't pay them because Mr. Barkley was satisfied to wait.

Mr. Fallon: I object to what Mr. Barkley said. He is dead now.

Q. (By the Court) You didn't pay it? A. I didn't pay it.

Q. Well, that is enough.

Q. Do you know whether that was a judgment? A. That was a note. Mr. Clark had a thousand dollars of him and he paid $200 back, and this was the $800 left.

Q. Did you pay the taxes which were due in June, 1919, on any of these properties? A. I paid $170.19 taxes; I paid the taxes for 1912.

Mr. Fallon: I am willing to have put in the record any moneys that were actually paid for taxes and water-rents if you can state what they are without bothering her.

Q. I show you a bill and ask you whether you paid that bill? A. I paid that bill.

Mr. Lafferty: This is a bill from the city for taxes, amounting to $310. I offer it in evidence.

(Admitted and marked Exhibit D-8.)

Q. I show you a number of tax bills from the City of Hoboken relating to property 120— A. I paid them, too.

Mr. Lafferty: I offer these as one exhibit.

(Admitted and marked Exhibit D-9.)

Q. I show you a package of bills relating to 413

Newark Street, and ask you whether you paid those? A. Yes, I paid those bills, too for 1912.

Mr. Lafferty: I offer those.
(Admitted and marked Exhibit D-10.)

Q. Did you have anything to do with the exercise of the option on 413 Newark Street? A. 413 Newark Street.

Q. Yes—415 Newark Street. A. Yes, I borrowed the money to buy it in.

Q. From whom did you borrow it? A. From Mr. Gross.

Q. How much? A. $5500.

Q. For what purpose did you use that money? A. $3540 went to Swift & Co.; then there was $650 that went to Mr. Gross toward a steam-heating plant that I put in there, around $1200; and there was $150 for search to Abe Levenson, and the balance went toward taxes. Then I paid $500 for the loan of that money.

Q. Did you obtain money to pay off the mortgage on 310 Newark Street? A. Yes, I obtained that money.

Q. Where did you get that money? A. $5,000 I got from the Steneck Trust Co.

Q. Did you borrow any more money? A. $2500 from William O'Neill.

Q. Was a mortgage given to secure the payment of the Steneck Trust Co. loan? A. Yes, sir.

Q. Was any mortgage given to secure the O'Neill loan? A. No, he gave me the money on a note.

Q. Did you borrow any other money to get it straightened out? A. I know I needed around $8,000 to get it straightened out.

Q. Do you recall whether you borrowed any money for that purpose? A. I borrowed $200 I think from Mr. Gross.

Q. Referring to 304 and 306 Newark Street, did you borrow money to pay off the mortgage on that property? A. Well, that was in the hands of a receiver, but I got money from the Second National Bank to pay the second mortgage there of $5,000.

Q. What was the money you got there used for? A. To pay off the mortgage on 304 and 306; the mortgage was being foreclosed.

Q. I show you a document which bears date April 3, 1919, and ask you whether you know what that is. A. Yes, I know what this is.

Q. What is it?

Mr. Fallon: I object. The paper speaks for itself and I object to her stating what it is.

The Court: I will sustain the objection.

Q. Where did you find this instrument, bearing date April 3, 1919; how did it get into your possession?

Mr. Fallon: Unless counsel will state the relevancy or materiality of this document I want to object to it. I understood him to say April, 1919.

Mr. Lafferty: Mr. Clark has testified on his examination with reference to the proposed sale of the property on Madison Street. This instrument relates to that, and is a deed which was prepared and delivered. It goes to show that he did attempt to sell it, although he says he did not.

Mr. Fallon: I submit that this paper was never delivered and is not evidence. The mere fact that a person has a paper in her possession wouldn't indicate anything.

The Court: Didn't he try, as a matter of fact, to sell the property? Didn't he testify

to that, and in his efforts to sell it he then offered to Mr. Lindabury a mortgage upon it?

Mr. Fallon: He said he offered it at a sacrifice to get Mr. Lindabury the $1,000. He said it was to be put up at auction and bid in by the Erie Railroad Company and the matter fell through.

Mr. Lafferty: My recollection of the testimony is that the prospective purchaser failed to exercise their rights. My purpose in offering this is to show that he went further than that and that I prepared a deed, and that was in April; and that was prepared and ready for delivery. My other offer would be along the same line, being the offer to sell the property.

The Court: He concedes that.

Mr. Fallon: And he states what the purpose was.

The Court: Yes, to pay Mr. Lindabury for arguing the appeal. No, there is no question about that, Mr. Lafferty; that is as clear in my memory as anything could be. He went at great length in that, and Mr. Lindabury said that his recollection was that there was nothing about the mortgage, but the complainant did try to make a conveyance of it, either in payment of his fee or to secure the payment of it, I don't know which.

Mr. Lafferty: This will show her effort in trying to sell the property and the reason why she retained these parties, to protect herself.

The Court: There is no controversy over the fact that she tried to protect herself. She testified and he has testified that she

importuned the complainant to convey his property to her, many times.

Mr. Lafferty: She says it was necessary so that he would not dispose of his properties and leave himself and herself without anything.

Mr. Fallon: I submit that it is not evidence of anything. The mere fact that a person makes out a paper intending to use it is not evidence.

The Court: I will overrule the offer of this deed. I see no relevancy or materiality in it at all.

Q. Mrs. Clark, I show you an instrument, dated the 29th day of June, 1919; when did you first come in possession of that? A. Well, he wanted Mr. O'Neill to take the property—

Mr. Fallon: I object, unless she is going to tell us that Mr. Clark told her this.

The Court (addressing the witness): You can say what he said to you, but don't say what he thought or wanted.

A. He didn't say anything about this deed. Mr. O'Neill told me about this.

The Court: You mustn't tell what Mr. O'Neill said.

Q. Did Mr. Clark ever show you that deed? A. He did, when Mr. O'Neill wouldn't accept it.

Q. Did he say anything else? A. He wanted me to sign it and I refused.

Q. Did he say anything more than that? A. No.

Q. Did he ever show you a deed bearing date April 3rd? A. No, he never showed me that deed.

Q. Did he ever ask you to sign it? A. He asked me to sign it.

Q. What did you tell him? A. I told him no. And then he went up to Police Headquarters and he brought the inspector—

Mr. Fallon: I object and ask that that be stricken out.

(No ruling.)

A. —and he brought Inspector Tyler down to see if I would sign it and I told him I would refuse to sign it.

Mr. Fallon: I want this stricken out, unless it was in the presence of Mr. Clark.

A. Mr. Clark was there.

Mr. Lafferty: I offer in evidence a deed, bearing date April 3, 1919, between James Clark and Catherine V. Clark to Harry James and others.

Mr. Fallon: I object to it for two reasons: First of all, there is no evidence that it is a deed and I object to his characterizing it as such; and, next, that it clearly appears that the paper wasn't delivered, and therefore I object to it upon the ground that it is immaterial. It antedates the time in issue in this cause.

The Court: I will overrule the offer, on the ground that it is incompetent.

Mr. Lafferty: I offer the instrument bearing date the 29th of April, 1919, between James Clark and Catherine C. his wife, and William O'Neill.

Mr. Fallon: I would like to inquire the

purpose for which that is offered. I object to it if it is offered as a deed, because it may not be such.

Mr. Lafferty: It is offered for the purpose of supporting the testimony of Mrs. Clark.

Mr. Fallon: I don't object to it if he merely wishes to use it to corroborate this witness, but, certainly, it is not a deed and I object to its being characterized as such.

The Court: Be careful, to say "instrument" and not "deed".

Mr. Fallon: It is an unexecuted instrument. I submit that it is incompetent and immaterial and I object to it as such.

The Court: For the purpose of corroborating the testimony of this defendant I will permit it to be marked.

(The same is marked "Exhibit D-11".)

Q. Mrs. Clark, do you recall a recognizance against Paul Morrison and James Clark? A. Yes.

Q. Did you have that discharged? A. Yes.

Q. What did you find it necessary to do to have that discharged?

Mr. Fallon: I object, on the ground that it is immaterial and irrelevant. What is the purpose of the testimony?

Mr. Lafferty: The purpose of the testimony is to show the amount of services necessary to save this property.

Mr. Fallon: I will concede that this witness went about and did everything she could to save this recognizance. The details are not important.

The Court: I think that is so. I will sustain the objection.

Mr. Lafferty: It has a very great bearing on the question of the property, showing what was required to redeem these liens. In other words, it was—

Mr. Fallon: I am willing to concede that she did all that was necessary, whatever it might be, to effectuate the discharge of these liens, it doesn't make any difference what.

Mr. Lafferty: It shows the amount of work she did.

The Court: I don't see that it aids us in this hearing. It might have required considerable work, but it didn't make the amount for which the property was liable any more.

Mr. Lindabury: It shows how serious that situation was—something not readily cleared up and not something that was easily wiped away. It shows the necessity, and the extent of the necessity, of the situation, with this man in jail at the time these things were being done.

The Court: What great difference does it make, Mr. Lindabury? It seems to me it makes no difference how great or slight the efforts of the conservators of that property might be.

Mr. Lafferty: It seems to me that the difficulty of the situation and the amount of running that had to be done is very enlightening on the question of the position that she felt she had to discharge this extensive service that was involved in the work she was undertaking in order that the property should be secure, so that she could get the benefit out of it.

The Court: What she was interested in was how much she was going to be able to

save, whatever the amount may have been, and of course she was willing to bend every effort for her own benefit. I will sustain the objection.

Cross Examination by Mr. Fallon:

Q. When you stated that you borrowed money on mortgages from the Steneck Trust Company you had that in mind, had you? A. The mortgage to the Steneck Trust Company was made.

Q. You are assuming that because of what interest you considered you had in the property, what Kinnaugh did with the Steneck Trust Company was your act? You didn't sign any papers in the way of mortgage; it was Kinnaugh who did that, was it not? A. (The witness pauses.)

Q. Or do you remember? A. I know the Steneck Trust Company wouldn't give anything in Mr. Clark's name.

Mr. Fallon: I move to have that stricken out.

The Court: It may be stricken out.

Q. Who signed the mortgage to the Steneck Trust Co., you or Kinnaugh? A. Mr. Kinnaugh.

Q. And that was on July 12, 1920, or around that time? A. Yes.

Q. And the amount was for $5,000? A. Yes.

Q. And that mortgage was for lot 6, block 21? A. Yes.

Q. That was the mortgage that was foreclosed under the mortgage proceedings? A. Yes.

Q. And that was bid in by Kinnaugh in Kin naugh's name? A. (Witness pauses).

Q. That's the fact, isn't it? You didn't bid it in in your name? Wasn't it bid in by him at the

sheriff's sale? A. Well, they made the deed to him, yes, but it was turned over to me.

Q. You say that, but the court will determine that later. I mean, when the property was sold by the sheriff it was sold to Kinnaugh? A. No, Mr. Gaede bought it in.

Q. But he bought it in in the name of William Kinnaugh? A. Yes; and then William Kinnaugh conveyed it to me.

Q. But Mr. Kinnaugh made a mortgage on that property for $5,000? A. (Witness pauses).

Q. If you are in doubt I don't want you to say "yes" or "no"; but I am trying to clear up that statement where you said you made a mortgage to the Steneck Trust Co. A. I made a mortgage?

Mr. Fallon: She says she borrowed $5,000 from the Steneck Trust Co., and it wasn't made by this woman, and that is the reason I am trying to clear this thing up.

The Court: It is clear that Mrs. Clark did not execute the mortgage, nor did she, in contemplation of law, borrow the money.

Mr. Fallon: I just want her to say so, if she will say so and that is a fact.

Q. (By the Court) Why do you hesitate about saying that, Mrs. Clark? You didn't have title to the property when the Steneck Trust Company made the loan, did you? A. I put in the application.

Q. You didn't own the property? A. No, Mr. Kinnaugh.

Q. And Mr. Kinnaugh was the one that got the loan? A. Yes.

Q. Now, the mortgage to the Second National Bank of $5,000 which was made on December, 1921, that was also made by Kinnaugh? A. Yes.

Q. You didn't make any mortgage to the Second National Bank? A. I didn't make it, but I went and got the money.

Q. I am asking you, you did not make the mortgage? A. (No answer.)

Q. You do not mean to have the court understand here today in answer to my question that you borrowed any money from the Trust Company on a mortgage you made? A. I got the money.

Q. But you didn't sign the mortgage; you mean you arranged the loan to Kinnaugh? A. Yes.

The Court: What I understood from her testimony, Mr. Fallon, was that she was the one that did most of the running around, the work.

Mr. Fallon: I appreciate that as true, but counsel asked her whether she borrowed $5,000 from the Steneck Trust Company.

Q. You did not borrow $5,000 from the Steneck Trust Co. to which a mortgage was given by you? A. No, the Steneck Trust Company wanted to have it made in my name—

Mr. Fallon: I ask that that be stricken out.

The Court: Strike it out.

Q. You never got $5,000 in your hands from the Second National Bank of Hoboken? A. No, I didn't.

Q. But you knew Mr. Kinnaugh did? A. I went there with Mr. and Mr. Clark.

Q. Now, then, you say there was $5500 borrowed by Kinnaugh or borrowed, rather, from a man named Gross, on a mortgage on the Newark Street property? A. I borrowed that.

Q. When you say you borrowed it, you mean you negotiated the proceedings between Kinnaugh and Gross? A. Yes.

Q. Hasn't that $5500 mortgage been paid off, all excepting $500? A. Yes.

Q. You didn't pay any of that $5,000? A. Twenty-five or twenty-six hundred dollars.

Q. From whom did you get that money? A. Mr. Kinnaugh.

Q. While I am on that subject: Mr. Kinnaugh turned over to you from time to time the moneys that he received in the conduct of the garage business, didn't he? A. Yes.

Q. And you collected the rents of all the other properties? A. There was only 310.

Q. Whatever there was, you collected the rents? A. Yes.

Q. And you collected the rents beginning in July, 1919? A. Yes.

Q. And up to what time did you collect them? A. Up to March, 1922.

Q. To December, 1922, wasn't it that you collected it, or did you collect after that? A. To March.

Q. March, 1923? A. Oh, no, 1922. The receiver collected it.

Q. You collected it up to the time that the receiver was appointed in this suit? A. Yes. You mean Mr. Stack as receiver?

Q. Yes. A. No, I didn't collect it up to then.

Q. Up to what time did you collect the rents? A. March, 1922, sometime.

Q. (By the Court) It is nearly two years ago now? A. Yes.

Q. I want to see if you are not mistaken, Mrs. Clark: You remember you made an accounting, through Mr. Lichtenstein's office, of the amount of

rents you received and the amounts you spent? A. I tried to make some kind of an accounting.

Q. Here's a paper that is endorsed "Accounts of Mrs. Clark and Mr. Kinnaugh, July, 1919, to December, 1922". A. I collected the rents to March, 1922.

Q. Who collected the rents after March, 1922? A. Mr. Kinnaugh.

Q. Mr. Kinnaugh never collected a dollar of the rents himself, did he? A. Yes, he did collect the rents of the garage.

Q. I am not speaking about the garage; I am speaking about all the rest of the property. A. I collected 304 and 306 and 310 Newark Street up to March, 1922.

Q. Did you collect the rents, then, of this property that you have just mentioned before March, 1922? A. Yes.

Q. Well, why did you stop collecting them in March, 1922? A. Kinnaugh was taking over the other two houses at that time—Madison Street house.

Q. So that you knew that Mr. Kinnaugh in 1919 took over all of the property and collected the rents, don't you? A. He collected the rents of the garage.

Q. Now, didn't you collect the rents of all the property excepting the garage? A. No.

Q. What? A. 310 and Madison Street; those are the only ones.

Q. You say he collected the rents of 304 and 306 Newark Street? A. Yes, at the time he got that mortgage. After that he got that mortgage in December or January.

Q. Well now, did Mr. Kinnaugh make any payments on the property personally? A. Any payments? Yes. Yes, he paid lots of bills.

Q. Did he pay bills on any of the property excepting the garage? A. Yes.

Q. What bills did he pay? A. On all the property.

Q. You paid the bills, didn't you? A. I know he paid those two.

Q. Well, tell me what bills he paid? A. All the repairs.

Q. Did you pay any bills for repairs? A. I did some, yes.

Q. Aren't all the bills for repairs set out in this account that you made through Mr. Lichtenstein? A. (Witness pauses.)

Q. If you don't remember don't say yes or no; I don't want to mislead you. A. Well, all I know is that we both paid them.

Q. Did you keep books of account showing what moneys you received and moneys you paid? A. I have my bills.

Q. Did you keep any books? A. Receipt book.

Q. Where is that book? Have you such a book? A. (Witness pauses.)

Q. I am not trying to be offensive to you; I am trying to bring out the facts. Don't think I am trying to mislead you. Are these the books you kept which I now show you, which were handed to me by Mr. Lafferty? A. No, Mr. Clark took the books and done away with them, and got keys made to fit every drawer, and we have got to go up and downstairs.

Q. Tell us how you know Mr. Clark did these things. A. Because I know he did.

Q. Tell us how you know? A. Because we have got to keep watching him.

Q. Tell us what you know about what he did that leads you to know that? What did you see Mr. Clark do that leads you to believe that? A. He said he was going to take away all the books.

Q. Did you see Mr. Clark take any books? A. I know he took them.

Q. Did you see him take them is my question? A. I didn't see him, no.

Q. Then tell us how you know he took them away? A. They were in a certain drawer and he took them.

Q. How do you know that he took them? A. He must have taken them.

Mr. Fallon: I ask to have all of her testimony stricken out about Clark's having taken these books, where she says he must have taken them.

Q. You didn't see him taking any of these books; you simply believe he did it? A. I believe he did it and there was no one else to take them.

Q. Even though you believe it you don't know that that is a fact? A. I know it is a fact; I saw him carrying them out day after day.

Q. What did he carry out? A. Receipt book.

Q. Tell me of a receipt book that he carried out, and when. A. I don't know just when, but a long time ago.

Mr. Fallon: I think I ought to have this testimony stricken out, which is mere guesswork of hers.

The Court: Yes, I think the testimony as to his taking the books out is merely a matter of conjecture on the part of the witness, and it may be stricken out.

Q. These books that you have referred to as receipt books, did they show the moneys that were received from the collection of rents? A. No, I had to make the books from copies showing a list of the rents every month.

Q. In whose handwriting are these stub-books? A. In my handwriting.

Q. And then the receipts were written out by you from these books and given to the tenants, were they? A. No, I told you I had to copy these, because he done away with the books and he knows it.

Mr. Fallon: I ask that that last remark of the witness be stricken out, in which she says that he did away with the books and he knows it.

The Court: It may be stricken out.

Q. What property did you say you collected the rents of? A. 310 Newark Street and 110 Madison Street.

Q. And Mr. Kinnaugh collected 304 and 306 Newark Street; is that right? A. Yes.

Q. All the bills paid for repairs on the property and for taxes and water rents, insurance and otherwise, were paid from the receipts of the property, weren't they? A. Yes.

Q. And this Gross mortgage of $5500 was used to pay off taxes and the installation of a heating plant and some other things in connection with the property, wasn't it? A. I told you $3500 went to Swift & Co. and $500 to Mr. Gross, and $150 to Abe Levenson.

Q. It was all spent on the property? A. Yes.

Q. What was this $500 that you say you paid to the Jefferson Trust Co.? A. The $500 that Mr. Clark borrowed of Mr. O'Neill and he didn't pay him, and the note went to protest. I didn't know anything about it and Mr. O'Neill sent for me.

Q. Did you pay it to the Jefferson Trust Company? A. I did.

Q. And the Hudson Trust Company for $500; what was that? A. That was the assignment that

Mr. Clark had with Mr. Kavanaugh. You know about that case.

Q. You mean that was a note that he endorsed to Kavanaugh? A. Yes.

Q. The judgment of $800 in the Van Brook and Cornelia transaction; that is a judgment that you called at Mr. Fallon's office at one time with somebody? A. Yes.

Q. And I referred you to Mr. Breen in my office to deal with you in that connection, didn't I? A. Yes.

Q. That was the time you came to Mr. Fallon's office in the Immen foreclosure proceeding? A. Yes.

Q. And the Immen mortgage foreclosure proceeding was the proceeding that related to the property mentioned by Mr. Tackella here today? A. Yes.

Q. Now, do you recall mentioning to Mr. Breen when you were at our office, as a reason for asking some consideration from Van Brook whereby he would defer his payment, that the properties of Clark were of certain values that you mentioned to Mr. Breen at that time? Do you recall that? A. You asked me about it, but I didn't say anything.

Q. Didn't say anything or don't recall it, which? A. I never spoke to Mr. Cornell myself.

Q. Didn't you mention to Mr. Breen the value of the property at 120 Park Avenue as $4500? A. Park Avenue? Not that I know of.

Q. That is the house you live in? A. Yes.

Q. Didn't you tell him it was a two-story and basement one-family residence? A. I don't remember.

Q. And that the value was $7500 and the mortgage against it $3,000? A. I may have, but I don't remember.

Q. Do you remember Mr. Breen making any writing while you were there? A. Yes.

Q. And do you remember saying to Mr. Breen that the premises 1102 Madison Street consisted of a two-story frame two-family building, and that there was no mortgage upon it, and that the value of that property was $2700 because that was the amount that your husband had paid Kavanaugh for it? A. $2500.

Q. Did you tell Mr. Breen at that time there was a floor there rented for $14 a month, and that there was a lease to April 20th? A. Yes, I think I did.

Q. Do you remember saying to him that the premises 413 and 415 Newark Street, which is the garage property, was a property that you had been offered $22,000 for? A. No, I was offered $30,000.

Q. And didn't you tell Mr. Breen that it was worth $22,000? A. No, I didn't mention anything about it; I didn't know what it was worth.

Q. You do recall saying to me at the time you talked with me, that you were offered $30,000 for it? A. Yes.

Q. And do you remember telling me at that time that you wouldn't sell it because it was a well-paying property and you were getting between four and five hundred dollars a month from it? A. At that time we didn't get—

Q. But do you remember telling me that, I mean? A. No.

Q. The fact is that you were, during the time that you held the property or were having something to do with it, getting through Kinnaugh rents between four and five hundred dollars a month from that property, didn't you? A. Well, I guess we were there for awhile.

Q. Now, do you remember telling Mr. Breen that the premises 304 and 306 Newark Street were two

four-story and store frame buildings and 8 apartments for dwellings? A. I don't remember that.

Q. And do you remember telling him that it was in process of foreclosure, and that Wedner was the receiver? A. I know that Wedner was the receiver at that time.

The Court: The question is, did you say that to Mr. Breen?

A. I don't recall.

Q. Did you tell Mr. Breen that Ben Lichtenstein was acting as your attorney in that matter? A. Ben Lichtenstein?

Q. Yes. A. Ben Lichtenstein had been taking care of this property before Mr. Clark went away?

The Court: No, that isn't the question: Did you tell Mr. Breen that he was acting as your attorney?

A. No, I did not.

Q. Did you tell Mr. Breen at that time that the property was bought for $16,000 and that there was a mortgage of about $11,000 against it? A. No.

Q. Do you mean that you didn't tell him that or you don't remember now; which is it? A. I don't remember telling him.

Q. Do you remember telling him that the property 310 Newark Street was a store and three stories, six family frame house of the value of $8,000? Do you remember that? A. I don't remember that, no.

Q. Do you remember telling him at that time there were two years' water rents and taxes due on that property? A. I don't remember telling anything only what Mr. Levenson told him about Cornwall.

Q. You talked to me about this property and you wanted our office to get Van Brook and Cornwall to hold off on his claim, and didn't I tell you that Mr. Breen or my office would suggest to Mr. Cornell and Van Brook that they should not bother you? A. Mr. Breen sent me a letter and I went to see him.

Q. You do remember my speaking to you about it several times, don't you? A. Not that I know of; but I know Mr. Van Brook wouldn't bother me and Mr. Cornell wouldn't bother me.

Q. Didn't you come to me and say that Van Brook referred you to me, saying that I was his attorney, and that a judgment has been entered and that you were arranging to get a mortgage loan from the Steneck Trust Company, and didn't you ask me if I wouldn't ask Van Brook to keep off and not bother you; that you would see that it was paid? Do you remember that? A. I may have but I don't remember.

Q. Well, you were arranging, as you say, a mortgage loan from the Steneck Trust Company for Kinnaugh; that is, Kinnaugh was to make a mortgage? A. Yes.

Q. And through the Steneck Trust Company you did get some money to clear up the debts? A. No, that was for the mortgage.

Q. What purpose was that mortgage gotten for? A. About $2,000 was to go as I told you.

Q. What was to be done with the rest of it? A. Back taxes and water rents.

Q. Aren't you confused about foreclosures? Do you recall that there was a mortgage foreclosure by a party named Moskowitz? A. That was on 204 and 206.

Q. Was that mortgage put on 304 and 306 before 310, or afterwards? A. Oh it was long before; over a year, I guess.

Q. Was that while Mr. Clark was away? A. That was before he went away.

Q. But it wasn't settled, was it? A. It wasn't settled.

Q. That was the property that the Second National Bank had some interest in? A. Yes.

Q. And Robert S. Hudspeth had some interest in it? A. Yes; he brought me in to sign something about the mortgage. He had to pay $500. That was the second time they foreclosed.

Q. You and your husband haven't been on good terms for a long time, have you? A. No.

Q. How long a time is it that you haven't been on good terms? A. Since about a year last March.

Q. Before that you were on good terms, were you? A. Yes.

Q. Why, didn't you say here today because of some information that came to you about your husband that you went to the jail and you told him that you were determined to have him transfer the property to you and to nobody else? A. I said that here today.

Q. So that you did hear something about your husband that made you angry? A. I heard a lot of things about my husband.

Q. I mean before you went to see him in the Essex County jail you heard something about him that made you angry? A. Yes.

Q. So that when you went to the Essex County jail you were not in a very friendly state of mind? A. I was in a friendly state of mind, but I wasn't going to be fooled this time.

Q. And you went there with the firm determination that you were going to make him transfer that property to you? A. Yes; I told him I couldn't bother with him if he didn't transfer it to me, and he told me repeatedly before that that

he wouldn't transfer it, but he said he would then.

Q. Before that he said that he wouldn't? A. Before that he said that he wouldn't.

Q. And that very same day that he told you he wouldn't he didn't tell you he would, did he? A. Yes, he did.

Q. And didn't he tell you that he wouldn't turn it over to you, and didn't you then turn on your heel there and walk out? A. I walked out, yes.

Q. And you walked out before Mr. Clark had answered you whether he would transfer it to you; isn't that so? A. I walked out, yes.

Q. And then you went back again the next day, did you? A. I saw him the next day or the day following.

Q. And when you went back the next time, whatever the day was, you say you then had another talk with him, in which he then said he would transfer the property to you; is that right? A. No, the boy was up—the day I turned on my heel the boy went up, and then he told me to come back the next day and I went up there to see him and that is the day he said he would turn the properties over to me.

Q. Tell me what the conversation was that you had with Mr. Clark at that time? A. He told me—

Q. Tell what he said and what you said. A. He told me that he was going to 'sign the properties over to me.

Q. I want you to tell me what he said to you and what you said to him? A. He told me that he was going to 'sign the properties over to me.

Q. When you went in what did he say to you and what did you say to him? A. I told him that he was leaving the things in nice shape after after all the money he had made, and I told him

if he didn't do the right thing and turn the property over I would do nothing for him; no use sending for me, I wouldn't go near him, and I wouldn't do nothing for him.

Q. And, as he testified here today, he told you he wouldn't turn it over to you, but would leave it to his son? A. He did.

Q. When had you asked him that? A. Only a few days before, after he was in there a few days. He was in there only about 10 days in all.

Q. And what did you say to him about transferring it to your children? A. I asked him first to turn it over to the children, and he said no, he wouldn't turn it over to anybody.

Q. Did he say why he wouldn't do it? A. No, he didn't.

Q. Didn't you ask him why? A. No. I knew why, because he had a woman in the case.

Q. Never mind what you knew; tell us the conversation, not what you had in your mind. You didn't ask him why he would not do it? A. I knew why.

Q. But I am asking you, did you ask him? A. I did, yes.

Q. What did you say to him. A. I asked him if he was going to turn it over.

Q. Did he say "no"? A. He said "yes".

Q. I am speaking about turning it over to the children first. A. No, he said "no".

Q. The first suggestion of the turning over was that he didn't want to turn it over to anyone at all? A. That is what he wanted to do.

Q. And did you expect that that was going to help you if the property was in such bad condition as you say you found it in? How did you expect that was going to help you? A. I didn't know what he was going to do; I asked him to do it anyway.

Q. If your purpose was, as you say, to save the property from a wreck what good did you expect it would do you if he turned the property over to your children? A. (Witness pauses.)

The Court: It looks as though we are not going to finish today; how are you gentlemen circumstances for tomorrow?

Mr. Fallon: I will be glad to go on tomorrow.

Q. Can you answer the question? A. I didn't know whether it would do me any good or not.

Q. Your children were under age, most of them, weren't they? A. No.

Q. How many were under age in 1919? A. Mary, 27; Maud, 23, and Frank 22 now.

Q. Marjorie and Frank were not of age in 1919? A. No.

Q. So that Frank and Marjorie, and Rita— A. Rita is the baby.

Q. —those three children would be under 21 years of age? A. Yes.

Q. And Mary was the only one that was over 21 at that time? A. Yes.

Q. Didn't your husband say to you on one of your visits that he would turn the property over to your son Frank? A. No, never mentioned it to me.

Q. Didn't he offer to turn the property over to Frank on your presence one day? A. No.

Q. And didn't you say "no" in reply to that? A. No, he did not; he never mentioned it, or mentioned anything about Frank.

Q. Now, from the moneys that you say you received from your daughter and from the boarder it appears that you were getting $32 a week at the

time that he was in jail; that is, $5. from Margaret, $7. from Mary, $5. from the boarder, and $15. from Frank, making $32 a week; that's right, isn't it? A. Yes.

Q. Now, do you recall that you made an affidavit in this cause, in which you said that at the time your husband was in jail you were in destitute circumstances? Do you remember making that affidavit? A. Yes, I guess I did.

Q. And do you remember representing to Mr. Lindabury that you were in destitute circumstances? A. Yes, but I wasn't getting that $15. from Frank at that time.

Q. When did you begin to get $15 a week from Frank? A. (Witness pauses.)

Q. About when? If you can't remember the date tell me the occasion. I want to get some idea of it. A. I guess five or six months after he went away.

Q. Wasn't it immediately upon the asking of Kinnaugh to take charge that he asked Frank to go in and work with Kinnaugh? Isn't that so? A. (Witness pauses.)

Q. I will re-state it this way: Isn't it a fact that Frank went to work in the garage when Kinnaugh took hold of the conduct of the garage at the request of your husband? A. Frank was working in the garage before that.

Q. Well, when did Frank begin to get the $15 a week? A. Well, he didn't get it. I figured that at $15 a week for his clothing and for his spending money.

Q. As a matter of fact, you had $15 a week down on the list to pay to Frank? A. I had to feed him and clothe him. That is what I figured, $15 a week, was enough to feed him and clothe him.

Q. You say you kept the $15 a week that Frank

would otherwise receive; is that it? A. (Witness does not answer.)

Q. You took $15 a week out of the receipts of that business as though it was going to Frank, but you used that in feeding and clothing him? A. Yes.

Q. Why did you say, then, that you were in destitute circumstances? A. Because Mr. Clark hadn't given me a nickel for the house for months before he went away.

Q. But you were getting $32 a week, according to your own statement; your daughter Mary was earning considerable money at that time? A. Yes.

Q. As much as $35 to $50 a week? A. I don't know.

Q. And you say she only gave you $7 a week? A. That is what I got.

Q. And she never gave you any more? A. Oh yes, she loaned me lots of money.

Q. So that you weren't in destitute circumstances; any time you needed money you could get it of Mary? A. No, I could not.

Q. Mary is a good, frugal girl in saving money? A. You bet she is good and frugal.

Q. You pawned your rings on the 12th of October? A. No, I didn't; I pawned my rings in December.

Q. You did pawn something in October? A. Yes.

Q. What was it? A. October when?

Q. October, 1918. A. Oh yes, I did.

Q. Now, do you also say you pawned something in December, 1918? A. Yes.

Q. With whom did you pawn any of the goods in December? A. Mr. Finley.

Q. And with whom did you pawn them in October? A. I can't think of his name.

Q. David Meyer? A. Yes.

Q. Now, you say you got people to go on Mr. Clark's bail? A. Yes.

Q. And one of them was Mr. Alexander Clements? A. Yes.

Q. And Clark told you to go to Clements, didn't he? A. No; I went myself.

Q. You knew Clements? A. Yes, I knew him.

Q. And you also went to Mr. Frank? A. Yes.

Q. He was a lawyer and friend of Clark? A. No.

Q. Was he a friend of yours? A. No, he was not.

Q. How did you come to go to him? A. Because I couldn't get any other bail and I went to him.

Q. You went to Mayor Garven? A. Yes.

Q. Anyone else? A. No.

Q. You went to Clements? A. Yes.

Q. You knew him before? A. No, I didn't.

Q. You knew he was a friend of Clark's? A. Yes.

Q. And this man Glasser, is he the second-hand man in Hoboken? A. Yes.

Q. You knew he knew Clark and had business dealings with him? A. No, he had no business dealings with him.

Q. Does he know you? A. Yes.

Q. And you went in and asked him? A. Yes.

Q. And then Bill O'Neill put up $5,000 in Liberty Bonds? A. Yes.

Q. Now, you said in answer to your attorney's question that you did not ask Clark at first to turn the property over to you? A. No, I didn't in the first few days.

Q. You were at Mr. Lindabury's office with Herbert Davis, in January, 1919, weren't you? That was shortly after his conviction. A. Not me.

Q. I mean in December 1918, not January. A. I was to Mr. Lindabury's office but Mr. Davis wasn't with me at all; Mr. Davis was downstairs.

Q. Didn't you and Mr. Davis talk over the idea of asking Clark to turn over his property to you? A. Kinnaugh talked to Mr. Davis, and I never had no conversation with Mr. Davis in regard to the property.

Q. Mr. Davis at that time was your husband's lawyer, wasn't he? A. I don't know whether he was or not. Mr. Clark double-crossed him.

Q. That may be. If he wasn't your husband's lawyer how did you happen to be talking to him? A. Through Mr. Clark.

Q. You knew, then, that he was representing Mr. Clark in some way? A. Yes.

Q. What was the message that you say Mr. Clark told you to carry to Mr. Lindabury? You used the word "message". What was that message? A. He told me to tell Mr. Lindabury to come up; that he was going to turn the property over.

Q. That is all he said at that time, is it? A. And Mr. Kinnaugh will be trustee.

Q. And you went to Mr. Lindabury; and what did you say to him? A. I told Mr. Lindabury what he told me.

Q. And what did he tell you? A. That Mr. Clark wanted to see him.

Q. Now, when had you learned that Mr. Kinnaugh was to be the trustee? A. I learned it from Mr. Clark somewhere around the 20th or 21st, something like that.

Q. Did you know that Mr. Lindabury had written a letter January 21st that has been mentioned here—January 21st, 1919? A. (Witness pauses.)

Q. Did Mr. Lindabury tell you that he wrote

that letter, or did he dictate it while you were in his office? A. Yes, I knew he wrote that letter.

Q. Were you in his office when he dictated that letter? A. I was in his office so often that I couldn't tell you.

Q. Don't you know that Mr. Lindabury sent that letter to Mr. Clark by Mr. Lafferty? A. Yes.

Q. You were in Mr. Lindabury's office when that happened? A. No.

Q. How did you know? A. He told me of it.

Q. And did he tell you what he had asked Clark to do? A. No, he didn't tell me anything.

Q. Well, weren't you concerned about it? Didn't you ask him? A. I didn't ask him because I knew he was going to turn them over.

Q. You knew he was going to turn it over to Kinnaugh? A. I didn't say "Kinnaugh".

Q. You said Kinnaugh was going to be the trustee? A. Kinnaugh was going to be the trustee, but he was going to turn the property over to me.

Q. You just said you knew Clark was going to turn the property over. A. Mr. Clark said he was going to turn the property over to me.

Q. I asked you before the question and you replied that Clark said to tell Mr. Lindabury "I am going to turn the property over; I want to see him as he, Kinnaugh, is going to be the trustee— A. No, over to me.

Q. All you said to Mr. Lindabury was, "Mr. Clark wants to see you"? A. I told him Mr. Clark wants to see him.

Q. You were offered—at least, you knew that $30,000 could have been obtained for that garage property that was to be sold, didn't you? A. Yes.

Q. Who was it? A. I couldn't tell you.

Q. What was the highest offer that was made for it before he went away? A. $30,000.

Q. When was that $30,000 offer made, if you remember; what month; how long after Clark went away? A. I guess it was quite a while after that; I couldn't say just what month.

Q. In your counterclaim here in this suit you undertake to have Mr. Clark account to you for the rents taken in in the garage business while Mr. Clark was operating it; you think he should account to you for that? A. Yes.

Q. In an affidavit you made in this cause you have said that out of the rents and other income from the real estate and from the garage business, during the continuance of the trust, you were to receive $20 a week; do you remember making that statement? A. Yes.

Q. And what made you believe that there was anything in that so-called trust agreement that entitled you to any money from the garage business? A. Well, I needed something to live on; I couldn't live on nothing.

Q. Was it your understanding that there was something in the trust agreement that gave you a right to some moneys out of the garage business? A. I thought I should have $20 a week to live on.

Q. I am speaking about this so-called trust agreement; had your husband spoken to you about it? A. Yes.

Q. Did he tell you what he was attempting to do in the nature of a trust with Kinnaugh? A. Said I was going to get $20 a week.

Q. Did your husband say anything to you about the trusteeship that he was to hand over to Kinnaugh? A. Yes.

Q. What did he say about that? A. He said he was going to hand it over to Mr. Kinnaugh and that I was to get $20 a week.

Q. And is that all? A. Yes.

Q. Didn't he tell you that he was going to make Kinnaugh a trustee or the real estate, and that Kinnaugh was to pay the taxes, water-bills and insurance and other charges against the property from the rents of the property, and then from any excess pay you $20 a week? Isn't that what he told you? A. Yes.

Q. You and Clark live in the same house and you are living as friendly as a husband and wife might? A. No, separate rooms.

Q. Who else is in the house besides you and your husband? How many children? A. Four.

Q. Is there a boarder there yet, too? A. No.

Q. What is the name of the boarder that was there? A. Ella Larkin.

Q. How long has she been away from there? A. Over a year, I guess.

Q. Do you know that, by the terms of the so-called trust agreement, which Mr. Kinnaugh was to assume, that he was to collect the rents of the property, and to manage the property, and to pay from the rents the various charges against the property? A. Yes.

Q. Then, notwithstanding that, you yourself and not Kinnaugh assumed the duty of collecting considerable of those rents, didn't you? A. Yes.

Q. And you assumed the duty of paying considerable of the moneys against the properties, didn't you? A. Sure.

Q. Why didn't you let Kinnaugh attend to that? A. Because he was busy in the garage.

Q. But if he was holding this property in trust you considered that he was responsible under that trust agreement, wasn't he? A. He was responsible, but I wanted to do it if I could help him out. The man had his hands full.

Q. Why didn't you suggest that to Clerk that

he had all that he could do before this trust agreement to Kinnaugh was made, that it wouldn't be advisable because he had too much to do? A. I don't know why I didn't do it. I didn't know there was so much work attached to it when he started in to do it.

Q. When you say there was so much work you mean the clearing off of these taxes, water rents, and all that? A. Yes.

Q. Do you recall the date when you signed in Mr. Lindabury's office, the deed known here as Exhibit C-1? A. Around June 25th, I think.

Q. Well, I don't want to mislead you: The deed bears date June 25th; I want to know when you signed it. A. I don't know; in June sometime.

Q. If you don't know don't guess at it. A. No, I don't.

Q. I show you Exhibit C-1 and ask you to look at it and tell us whether you recall having signed that. A. I signed it.

Q. And when did you sign it, if you recall? A. I can't recall the date I signed it.

Q. Do you remember the day that Mr. Lindabury was to go Mr. Clark at the jail to speak about this deed? A. Yes.

Q. You knew that he was going to go there for this purpose? A. Yes.

Q. And did Mr. Lindabury report to you, then, that this deed had been signed by Clark? A. (Witness pauses.)

Q. Did he tell you that Clark signed the deed? A. Sure he did.

Q. When did he tell you that? A. Well, I couldn't just say the date. I was there most every day or every other day.

Q. Well, during any of the time that Mr. Clark

was in the jail had you signed this deed in Mr. Lindabury's office or in his presence? A. Did I sign the deed?

Q. Yes; look at it (handing paper to witness). A. I signed it in Mr. Lindabury's office.

Q. Did you sign that deed in Mr. Lindabury's office during the time that your husband was at the Essex County jail? A. Yes.

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

Q. Was that several days after Mr. Lindabury had reported to you that he had had Mr. Clark sign the deed? A. Yes.

Q. You are sure that Mr. Lindabury reported to you, before your husband went to Baltimore, that he had him sign this deed? A. Yes.

Q. You are sure, are you, that before your husband went away to Baltimore you signed this deed also, are you? A. Yes.

Q. Now, the deed bears date June 25, 1919; does that refresh your recollection in any way as to when you signed this deed? A. It was in June, but I don't know just the date.

Q. Now, did you know, at the time that deed was made, that it was an absolute conveyance to Kinnaugh? Did you know that? A. No, I thought it was conveyed to me.

Q. Why didn't Mr. Lindabury read the deed to you or explain it to you and tell you this was a deed whereby your husband and you were conveying to William Kinnaugh the property mentioned in the deed? A. Yes, he was going to make Mr. Kinnaugh trustee.

Q. Who said that? A. Mr. Clark.

Q. You misunderstand my question, then; I am asking you whether Mr. Lindabury, before you signed this paper, Exhibit C-1, did not explain to you that this paper was a deed whereby you and

your husband were conveying the properties mentioned in it to William Kinnaugh? A. Yes, I guess he did.

Q. And did you know at the time you signed this deed that this was an absolute conveyance to Kinnaugh? That is, a voluntary conveyance? A. No, I knew there was a declaration of trust got ready at the time.

Q. When did you first hear that the declaration of trust should be gotten ready? A. I think the day I signed it.

Q. Who used the term "declaration of trust"? When did you first hear that and by whom? A. Mr. Lindabury.

Q. Did Mr. Lindabury tell you that you were to sign it? A. No.

Q. You are saying that Mr. Lindabury told you that you and Mr. Kinnaugh should sign the declaration of trust; now I want to know if Mr. Lindabury ever said that to you. A. Yes, he did. He got the declaration of trust ready and Mr. Kinnaugh signed it.

Q. But Mr. Lindabury never said you were to sign it, did he? A. I don't know.

Q. But you said a moment ago that he did, and I am trying to find out what he said to you. A. I think we both of us signed it.

Q. What did Mr. Lindabury say to you about the declaration of trust? Perhaps I can get it that way. A. He told me that the property was going to be held in trust until such a time as Mr. Clark came home—until he came home—and the garage business turned over to him.

Q. All this is what Mr. Lindabury told you? A. Yes.

Q. Did he explain to you just as you have explained it to us now before you signed this paper

Exhibit C-1? A. Yes, he read the whole thing to me.

Q. You say he read the whole thing to you; there is nothing in this paper C-1 about any trust or turning over to you? A. I know that, yes.

Q. And had you asked Mr. Lindabury whether he prepared the other papers, the declaration of trust? A. He said he was going to prepare it and get it ready as soon as possible; he would like to have them ready before Mr. Clark went away, but the time was so short.

Q. After your husband went away to Baltimore in June, how many times had you gone to Mr. Lindabury's office within the next two months thereafter? A. So often I could not tell you.

Q. What was your purpose in going there so often? A. Trouble getting things straightened out, and I used to go to him for advice.

Q. Did you go to him with the trust agreement, or this deed, within two months after your husband went away? A. Yes, I was there when Mr. Lindabury was there.

Q. You did not go there according to any appointment— A. No, only a couple of times.

Q. And then you didn't find Mr. Lindabury? A. I think he didn't have it ready or some such matter.

Q. Were you in Mr. Lindabury's office at the time that Kinnaugh signed the declaration of trust, as it is called? A. Yes, I as there with William Kinnaugh.

Q. What time of the day was it that that was done? A. I think it was in the afternoon. I won't be positive.

Q. Did you and Kinnaugh go there together? A. No; he went alone and I went alone.

Q. You met him there by appointment, did you? A. (Witness pauses.)

Q. Will you be good enough to answer the question. A. I didn't make no appointment with him but I told him he should be there.

Q. You told him that he should be there the day he was there? A. I told him or the boy told him, I'm not sure which.

Q. Had you received a message from Mr. Lindabury that you should be there on that day? A. I think I received a message; I'm not sure now. I'm almost sure I got a letter.

Q. When you were at Mr. Lindabury's office and there met Mr. Kinnaugh what was said to Mr. Kinnaugh at the time this paper, the declaration of trust, was signed? A. I guess he read it.

Q. Do you know? I don't want you to guess. A. He read the declaration of trust.

Q. And you were there and heard what he read to him? A. (Witness hesitates.)

Q. Is that right? A. I think so. Yes, I was there with him.

Q. Did you hear what Mr. Lindabury said to Mr. Kinnaugh about that paper? A. He read the paper over to him.

Q. Were you there at the time he read it? A. Yes.

Q. And then Mr. Kinnaugh signed it, did he?

Q. And after it was signed did Mr. Kinnaugh or you receive any paper from Mr. Lindabury? A. Yes, I think we each received a paper.

Q. You each received a copy of the declaration of trust? A. Yes.

Q. And you kept your copy, did you? A. Yes, I guess I did.

Q. And you saw Mr. Kinnaugh take his away, did you? A. Yes.

Q. Did Mr. Lindabury say anything to you or to Mr. Kinnaugh to the effect that this paper, the

declaration of trust, should not be recorded? A. No.

Q. You knew that you and your husband had transferred by this deed, Exhibit C-1, to Mr. Kinnaugh, Mr. Clark's entire property excepting 120 Park Avenue? A. Yes.

Q. And you knew that this deed, whenever it was put on record, would enable Mr. Kinnaugh to sell that property to whom he pleased, didn't you? A. Yes.

Q. And you knew he could have mortgaged it to whom he pleased, didn't you? A. Yes.

Q. Then why did you not try to safeguard the interest of your husband and yourself by requiring the declaration of trust, which you say Kinnaugh signed, to be recorded? A. Well, I did actually record that myself. I simply took it up to the court house myself; Mr. Lindabury told me to when Mr. Clark was coming out.

Q. But I ask you, when you knew the effect of this deed, C-1, as you have stated, why you did not require the recording of the declaration of trust, which you say was signed by Kinnaugh in the presence of Mr. Lindabury and yourself? A. I don't know. He told me when to put it on the record.

Q. Mr. Lindabury handed the original of that paper to you for your signature and you kept it? A. I don't think so.

Q. Didn't he hand it to you, and didn't you keep it until the 8th of March when you put it on record? A. That is, when I put it on record.

Q. And you had it all the time until you did put it on record? A. No, I didn't.

Q. Who had it? A. I'm not positive, until I took it from Mr. Kinnaugh and put it on record.

Q. I want you to recall; I want to know if you

did not receive from Mr. Lindabury this paper referred to as the declaration of trust, afterwards signed by Mr. Kinnaugh, and if you did not keep it in your possesssion until the 8th of March, 1923, when you placed it on record? A. I know I placed it on record the 8th of March.

Q. And this paper that was placed on record by you was the paper you saw Mr. Kinnaugh sign in Mr. Lindabury's office? A. Yes.

Q. And it was handed to you by Mr. Lindabury, wasn't it? A. At that time?

Q. Yes. A. No, I had it in my possession.

Q. You must have gotten it from either Lindabury or Kinnaugh. Whom did you get the paper from? A. Mr. Lindabury.

Q. You knew the very day that Kinnaugh signed it? A. Yes.

Q. And Kinnaugh was handed a paper by Lindabury, too, at that time, wasn't he? A. I know they both looked alike; that's all I know.

Q. Kinnaugh didn't sign both? A. No.

Q. He only signed the one that you took away with you; isn't that so? A. The one I put on file.

Q. Who told you to keep that off the record for two years or thereabouts that it was kept off? A. Mr. Lindabury told me not to file it.

Q. If he told you not to file it he told you the day when it was signed, didn't he—the day that Kinnaugh signed it and he gave it to you; he told you not to file it is that right? A. I'm not positive.

Q. (By the Court) Why don't you speak a little louder; is there any reason? A. He talks so loud.

Q. Speak so that the stenographer and I can hear you.

Q. I am talking loud to you for the purpose of

trying to get you to talk loud. Now, then, Mrs. Clark, what was it that prompted you to record that paper on the 8th of March, 1923? A. Well, that same day I was in Mr. Lindabury's office—the same day Mr. Clark came home, and Mr. Lindabury asked me if I had it on record, and I says "no"; and he says "You had better put it on record.

Q. So that is how you came to put it on record? A. Yes.

Q. Hadn't Mr. Lindabury before that told you not to put it on record? A. I don't say that he told me not to.

Q. I don't want to mislead you, but didn't I understand you to say that Mr. Lindabury said "Don't file it just now"? A. No, not exactly that.

Q. Please tell me what he said about filing it. A. I remember his asking me if I put it on file.

Q. That was two years after it was made; I am talking of the time it was made in June, or whenever it was signed by Kinnaugh; what did he say to you then about filing it or not filing it? A. I don't know as he said anything. He told me I had a copy and Mr. Kinnaugh had a copy, and he kept his copy himself.

Q. When you say "keep" you mean the paper that you recorded? A. Yes.

Q. Now, did Mr. Lindabury tell you that you should not record that paper, because if you did Mr. Kinnaugh could not mortgage the property or could not do anything with it? Did he tell you anything like that? A. Well, he told me somethink like that.

Q. Tell us what he did tell you, if you remember it. A. He said it was better for Mr. Kinnaugh to get mortgages and all that.

Q. I am trying to find out why you did not put

that paper on the record when it was made and given to you. A. Because I didn't think I should put it on; I wasn't told to put it on.

Q. Your husband was released from the penitentiary on the 7th of March, 1921, and he returned home on the 8th of March, 1921? A. Yes.

Q. And upon his return home you went out to see Mr. Lindabury and you told him Mr. Clark was home from prison? A. No; I was in Mr. Lindabury's office just only an hour when Mr. Clark came back from Baltimore.

Q. When you were in Lindabury's office had you known that Mr. Clark was out of prison? A. I had been expecting him to come out because I had been working very hard to get him out.

Q. You got a telegram; is that right? A. Yes, I think so.

Q. And that telegram told you just when he was coming home? A. No.

Q. What prompted you to go down to Mr. Lindabury's office that day? A. I had expected him to come out, because I had been down to Washington.

Q. Was it because you expected him to come out? A. I had letters from the Washington authorities.

Q. I am asking you, was it because you expected him out that you went to see Mr. Lindabury? A. I didn't expect him to come out at all that day.

Q. Did you expect him to come out within a few days? A. I didn't expect him very soon; I didn't expect him so soon.

Q. Was it your expectation of his coming out that prompted you to go to Mr. Lindabury's office on the 8th of March? A. I was there before the 8th; I was in and out of Mr. Lindabury's office all the time.

Q. I understood you to say that Mr. Lindabury, on the 8th of March, told you to record the paper the day it was recorded—the declaration of trust, I am speaking about. A. I was in Mr. Lindabury's office on the 7th of March when he came home, and I was back in the house only about an hour when Mr. Clark came.

Q. Did Mr. Lindabury on the 7th of March tell you to record that declaration of trust? A. Yes, he did.

Q. How did he come to tell you that? A. Because I told him I had been to Washington and expected him to come back.

Q. And then Mr. Lindabury said "record that paper"; is that what he said? A. Yes.

Q. You didn't ask why you should record it at that time? A. No, everything he was doing for me he was doing right. That is how I considered him.

Q. Now, Mrs. Clark, you knew that your husband resumed the conduct of the garage business some months after he was released from prison, didn't you? A. Yes.

Q. And took the business over from Mr. Kinnaugh and ran it himself? A. Yes.

Q. And at that time that he took it over how much were the monthly receipts from that business, do you know? You had been receiving them up to that time? A. I guess I have a copy of them there.

Q. Well, if you have a copy of them I would be glad to have it. Mr. Kinnaugh turned over to you the receipts of the garage business when he was conducting it, as far as you know? A. Yes.

Mr. Lafferty: What do you refer to, Mrs. Clark, that accounting?

A. May I come down and see if I can find it?

Q. Never mind if you can't find it readily. I just want to ask you a few more questions and then I am through.

The Court: It is now time for adjournment, and we will resume the hearing tomorrow at 10 o'clock.

Defendants' Case (continued).

Hearing of Friday, December 21, 1923, 10 a. m.

All counsel present as before.

CATHERINE V. CLARK resuming the stand, testified as follows:

Cross Examination by Mr. Fallon (continued):

Mr. Fallon: I have no further questions.

Re-direct Examination by Mr. Lafferty:

Q. Mrs. Clark, while your husband was in the penitentiary in Baltimore, Maryland, did you communicate with him from time to time? A. From time to time I communicated with him, and I made ten visits there in twenty months.

Q. Did you ever send him any money? A. Yes.

Mr. Fallon: I object as immaterial except to show the friendly relationship.

Mr. Lafferty: It is for that very purpose to show that they were friendly and they continued to be so until June, 1919.

Q. Do you recall how much you sent him? A. I sent him about $20 every month; and I sent him clothing and everything he wanted.

Q. Mr. Clark made the statement to Mr. Lindabury that you were a drunkard; are you a drunkard? A. I am no drunkard.

Q. Did you ever get drunk? A. No, sir; he gets drunk himself.

Mr. Fallon: I ask to have that latter part of her answer stricken out, if the court please.

Mr. Lafferty: I consent that it be stricken out.

Q. Did you ever have anything to do with the preparation and presentation of the petition for the parole of Mr. Clark? A. The petition, I certainly did.

Q. What did you do in connection with that matter? A. I was in Mr. Henley's office and Mr. Lindabury's office, and I went to the Department of Justice in Washington to see Mr. Turner. I had a letter from Mr. Tackella to see Mr. Turner in regards to getting him out.

Q. Did you ever see Judge Haight in connection with that matter? A. I certainly did.

Q. When? A. After he went away; I couldn't tell just exactly the date. He would do nothing for him.

Mr. Fallon: I ask that that last part be stricken out.

A. (Continuing) But he aided me all he could.

The Court: It may be stricken out.

Q. Did you know anything about Mr. Kinnaugh

in the early part, prior to June, 1919? A. I knew he had been Mr. Clark's friend for years.

Q. Had Mr. Clark ever said anything about the trustworthiness of Mr. Kinnaugh? A. He said he was a good man—honestest man in Hoboken, to hear him talk.

Examination by the Court:

Q. Mrs. Clark, I haven't a very clear idea of what transpired between you and your husband in the Essex County jail in the few days that he was there before being taken to the penitentiary. I do understand that you had one or two rather unpleasant interviews over the property that he owned? A. Yes.

Q. Upon the occasions when he refused to give you his property—turn it over to you—did he give you any reason for it? A. No, sir; he just wanted to keep it for himself.

Q. Why do you say that? What did he say that indicated that he wanted to keep it for himself? A. He said he would be out in a few weeks, at the least a couple of months; he said he had it all fixed.

Q. Did he ever indicate to you that he thought that you wouldn't be able to attend to the property? A. No.

Q. Well, when was it—after how many times you had talked to him—was it that he finally agreed that it should be given to Mr. Kinnaugh as trustee and then turned over to you when he came out? A. I told him I wouldn't go back to see him any more for him; I was done with him.

Q. It was then that he agreed and told you to send Mr. Lindabury to see him? A. Yes.

Q. Then you delivered that message to Mr. Lindabury? A. Yes.

Q. Did you see your husband at all after that? A. Oh yes, I seen him before he went away.

Q. Did you talk with him any further about the property arrangements after you had delivered his message to Mr. Lindabury? A. No; he told me everything would be all right.

Q. Did he say what was to become of his property ultimately? A. He didn't know, as long as he was out of business; and he wrote a letter—

Mr. Fallon: I object to her stating anything contained in the letter.

Q. When you saw him, after delivering his message to Mr. Lindabury, you say that he told you that Mr. Kinnaugh was to be the trustee? A. Yes.

Q. And did he say what Mr. Kinnaugh was to do with the property? A. He didn't say anything. After he came out he would get the property and go in business.

Q. Do you remember how long that was before he was taken from the Essex County jail? A. Well, it might be a day or two days before he went away.

Q. After you delivered your husband's message to Mr. Lindabury, that he wanted to see him, when did you next see Mr. Lindabury? A. Maybe the next day. I know I saw him right off, either the next day or the day after.

Q. Where? Out in his office? A. Yes.

Q. What was the occasion of your going to his office then? A. I guess I had been there all the time. I was in and out of Mr. Lindabury's office all the time. I went there to know just how things were.

Q. How what things were? A. I was straightening things out.

Q. What? A. The property.

Q. Did your husband ever say what it was that changed his kind about giving you the property in the end? A. Changed his mind simply because I told him I wouldn't do nothing or have nothing to do with him.

Q. No, but did he say— A. Never said a word.

Q. Wait. As near as you can remember it, give me his language. What did he say to you when he told you that he was going to have Mr. Kinnaugh handle his property and later turn it over to you when he came back from the penitentiary? A. Mr. Kinnaugh was a good fellow and he trusted him, and he knew that he would be all right.

Cross Examination by Mr. Fallon resumed:

Q. Is that all that he said, just what you have stated now? A. Yes.

Q. You say you went to Mr. Lindabury's office after Clark gave you the message? A. Yes.

Q. That is the time you requested Mr. Lindabury to go and see Mr. Clark, and your purpose was for him to go there to settle up some of Mr. Clark's troubles; is that what you wish to convey to the court? A. Yes.

Q. Don't you know that you hadn't employed Mr. Lindabury at that time to do anything about straightening out any property troubles? A. I hadn't employed him at any time; I simply went there.

Q. Can you tell me any property trouble that Mr. Lindabury had to do with before Mr. Clark signed that deed, Exhibit C-1? A. Well, I know Mr. Clark wanted—

Q. No, I don't want you to guess at it; I want you to tell me what you know. A. I know he

wanted to 'sign over 1102 Madison Street to Mr. Lindabury.

Q. And you know his purpose was to secure Mr. Lindabury for the fee he wanted? A. No, I didn't know what he wanted.

Q. You know he wanted to give him a deed to the Madison Street property? A. Yes.

Q. How did you know that? A. How do I know it? Because he told me to go and see Mr. Burden and take him out there to Mr. Lindabury and take the deed with me.

Q. What did he say about that? A. Told me to take the deed of 1102 Madison Street, and when I went there there was no deed there; it was down at the Palace Hotel.

Q. I am asking you what he said about that Madison Street property. A. Take the deed over, which I did.

Q. Is that all he told you about it? A. Yes.

Q. If that is all he told you about it how do you know that he intended to turn the property over to Mr. Lindabury? A. He told me to take the deed out there.

Q. You have told us that he intended to turn the property over to Lindabury; now I want to know how you know that? A. He says "Go and get the deed for 1102 Madison Street and bring it out to Mr. Lindabury, and bring Billy Burden with you".

Q. Is that all he said about that property? A. Yes.

Q. What was your object or purpose in going to Mr. Lindabury's office the day after the deed C-1 was signed? A. I just went out there, that's all.

Q. Well, can't you tell us what you went there for? A. I was in Newark and I stopped in there, I guess, to see if it was necessary for me to sign anything.

Q. Well, what for, to get him out of jail? A. I suppose so.

Q. Is that the time you signed the deed, Exhibit C-1, the paper I showed you yesterday? A. No, I don't think so; I'm not positive.

Q. Well, you said yesterday you signed that deed in Mr. Lindabury's office before your husband left the Essex County jail; do you remember having said that yesterday? A. (Witness pauses.)

Q. Don't you remember having testified to that yesterday several times, in response to my questions? A. No, I don't remember that.

Q. I show you Exhibit C-1, which I showed you yesterday, and ask you to look at it and say again to this court whether you signed that paper before Mr. Clark left the Essex County jail. A. I think it was after.

Q. Why do you think it was after? A. I am almost sure it was after.

Q. Well, tell me why. A. It was after he went away.

Q. Tell me why if you know that. A. It was after he went away.

Q. You must tell me why. You say now it was after and I want you to tell me why it was after he went away. A. (The witness pauses.)

Q. Why do you hesitate so much? Can't you tell me? A. I am trying to think. (Witness pauses and then answers.) It was after he went away.

Q. You have said that several times, but I want you to tell the court why you say it was after he went away that you signed that paper? A. Because I know I was out there after he went away.

Q. Mrs. Clark, don't you recall my showing you this paper yesterday? A. Yes.

Q. Do you recall my calling your attention to your signture to this paper? A. Yes.

Q. Do you recall my asking you whether this paper was signed by you before Mr. Clark left the Essex County jail, and your saying "yes"; do you remember that? A. It was after he left the jail.

Q. Do you remember having so testified yesterday? A. No.

Q. You don't remember testifying about that? A. No.

Q. Do you remember my cautioning you, or saying to you at the time, that you had better think it over, that I wanted you to try to make sure as to when you signed that paper, and I again asked you then whether you felt sure that you signed that paper before Mr. Clark left the Essex County jail and you again said "yes"? A. No, it was after.

Q. I am asking you if you remember having testified yesterday in the way in which I have called your attention to now. A. I don't remember.

Q. Do you remember my calling your attention yesterday to this date, June 25th, on this paper, Exhibit? Do you remember that? A. Yes.

Q. And do you remember that I asked you whether that refreshed your recollection as to when this deed was signed by you? A. It was after he went away.

Mr. Fallon: I ask to have that last answer stricken out; it is not responsive.

The Court: It may be stricken out.

Q. (By the Court) Why don't you answer the question? Do you remember testifying the way Mr. Fallon says you testified? If you remember, say so; if you don't remember, say so. A. I might have been confused.

Q. No, that doesn't answer. Do you remember having said so? A. No.

Q. (Re-cross examination resumed) If you testified yesterday that you signed this paper before Mr. Clark left the Essex County jail was that statement true? A. No.

Q. It was not true? A. No.

Q. Whom did you talk this matter over with between yesterday and today, as to when you signed this paper? A. I didn't talk it over with anybody.

Q. Don't you remember that you testified yesterday that you did sign this paper before Mr. Clark left the Essex County jail? A. I don't remember.

Q. You don't remember? A. No. I might have been confused.

Q. Don't you remember that I asked you to be particular about it, and called your attention several times to the question that I was asking; do you remember that? A. No, I don't remember.

Q. But you do remember my questioning you about this very paper, don't you, the paper that is now before you, Exhibit C-1? A. Yes.

Q. And do you remember what I asked you about the paper? A. You asked me if that was my signature.

Q. What else did I ask you about the paper? A. (Witness doesn't answer.)

Q. Did I ask you when you signed it? A. (Witness doesn't answer.)

Q. (Question is read by the stenographer.) A. It was after he went away.

Mr. Fallon: I ask to have that stricken out. She has got that in her mind and persistently says the same thing.

The Court: It may be stricken out.

Q. Didn't I ask you when you signed it? A.

You got me confused a couple of times yesterday.

Q. Why didn't you tell the court you were confused, if you were confused? Did you realize yesterday that you were confused when you answered the questions? A. (Witness pauses.)

Q. Did you? A. (Witness pauses and then answers "no".)

Q. So that it is only today, now, that you believe you were confused yesterday in answering my questions? A. Oh no, I wasn't confused. I did get confused about that.

Q. Isn't it today that you just now say that you were yesterday confused in answering my questions? A. Not in all the questions, no.

Q. Were you confused when I was asking you questions about this paper C-1? A. (Witness pauses.)

Q. Answer, please. A. I don't know.

Q. Were you confused yesterday when I was interrogating you and questioning you about that paper, C-1? A. I may have been.

Q. I want to know whether you were or not; were you or were you not? A. (Witness pauses.)

Q. Why do you hesitate to answer that question?

Q. (By the Court) What is the trouble, Mrs. Clark? Why don't you answer these questions? A. I know it was after when I signed that paper.

Mr. Fallon: I ask to have that stricken out.

The Court: Strike it out.

Q. (By the Court) That is not an answer to the question, Mrs. Clark; you are here asking for the assistance of this court in what you claim to be your right; now, if you refuse to answer legal

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questions that are propounded by your husband's lawyer there is only one inference to be drawn, and that is that you want to conceal something. A. I don't want to conceal anything.

Q. Then why don't you answer Mr. Fallon's questions? There is nothing difficult about the questions; there's nothing that you can't understand about them, is there? A. No.

Q. Then why don't you answer them promptly and to the best of your ability? Is there any reason? A. No reason at all, no.

Q. Then why don't you do it? A. (The witness pauses.)

Q. You don't expect to come here and submit yourself to the court, asking for some assistance and relief, and then not be frank about disclosing everything connected with it, do you? A. No. Well, I remember I signed that after he went away.

Mr. Fallon: I ask that that be stricken out.

The Court: It may be stricken out.

Q. (By the Court, continued) You yesterday did say that you signed this paper, C-1, before your husband was removed from the Essex County jail to the Maryland penitentiary; you say now that it was after and not before his removal that you signed it. Now, what Mr. Fallon is attempting to do, and he has a perfect right to do so, is to find out why you said one thing yesterday and another thing today. The question is, were you or were you not confused yesterday. A. Well, I may have been at that time.

Q. The question is, were you or were you not? Now, there are only three answers that are possible, that you were or were not, or you don't know. A. Well, I don't know.

Q. (Examination by Mr. Fallon resumed) Don't you remember my asking you quite a number of questions about this paper, C-1, yesterday? A. (Witness pauses.)

Q. Answer that question. A. Yes, I remember.

Q. Don't you remember my asking you whether Mr. Lindabury had explained to you before you signed this paper the significance of it, that is, that you and your husband were conveying to Kinnaugh absolutely by this deed the property mentioned in the deed? Do you remember my asking you that? A. Yes.

Q. You weren't confused about that, were you? A. No.

Q. And do you remember my asking you about the date on the top of it where it says the 25th of June? A. (Witness pauses.)

Q. What is your answer? A. Yes, I remember that.

Q. You were not confused about that, were you? A. No.

Q. Do you remember my asking you if you signed the deed? A. Yes.

Q. You were not confused in any way about that, were you? A. No.

Q. Now, do you remember my asking you whether you signed that deed before Mr. Clark left the Essex County jail? A. (Witness pauses.)

Q. Do you remember my asking you that question? A. I think I do.

Q. You were not confused about that, were you? A. No.

Q. And do you remember my then saying to you that I would like to have you be sure of your answer and again asking you whether you were sure that you signed this paper, C-1, before Mr. Clark left the Essex County jail; do you remember my asking you that question? A. No, I don't.

Q. Do you remember my asking you more than once as to, whether you had signed that paper before Mr. Clark left the Essex County County jail? A. (Witness pauses.) I remember your asking me, yes.

Q. Do you remember my asking you more than once about having signed this paper before Mr. Clark left the Essex County jail? A. No, only once.

Q. You were not confused when I asked you that question, were you? A. Not that I know of.

Q. Were you confused when you answered the question? A. I said I signed the paper.

Mr. Fallon: I ask that that be stricken out as not responsive.

The Court: It may be stricken out.

Q. I am asking you whether you were confused when you answered the question that I have asked you and which you say you recall, as to whether you signed that paper before Mr. Clark left the Essex County jail. A. I don't know.

Q. Why don't you know whether you were confused in answering the question? A. Because I don't.

Q. Well, do you remember answering the question "yes" that you signed it before you left the Essex County jail? Do you remember that? A. No.

Q. Do you remember what answer you made to my question? A. I think I said that I wasn't positive.

Q. Now you say today that you think you signed this paper after Mr. Clark left the Essex County jail? A. Yes.

Q. Why do you say that? What brings that to

your memory today? A. Because I know Mr. Lindabury was trying to fix the papers up.

Q. Fix what papers? A. (Witness pauses.)

Q. Fix what papers? A. (Witness pauses.)

Q. Why do you hesitate? A. (Witness pauses.)

Q. Can't you answer my question? A. (Witness pauses.)

Q. I am waiting for your answer, Mrs. Clark. A. Well, I know it was after he went away.

Mr. Fallon: I ask that the answer be stricken out.

The Court: It may be stricken out.

Mr. Lafferty: It would be impossible for her to answer the questions Mr. Fallon has put.

The Court: I have never in my life seen a witness hesitate in answering questions as Mrs. Clark has. I can't understand it. His question was the simplest sort of question, what paper was referred to in her previous answer, and she sits here I should think three-quarters of a minute and has not replied yet. I am at a loss to understand it; I have never in my life seen such a thing.

Mr. Lafferty: He has asked two other questions.

The Court: The question to be answered is, what paper she referred to in saying there was so little time for Mr. Lindabury to prepare it. (Addressing the witness): You must have had something in your mind.

The Witness: The declaration of trust, I guess.

Q. You say you guess the declaration of trust; I want to know what the fact is, not what you are guessing at; what paper did you refer to in

making that statement of yours? A. (Witness pauses.) I guess the declaration of trust.

Q. I don't want you to guess; I want the fact. What is the fact? A. (Witness pauses.)

Q. Do you know what papers you refer to? A. The declaration of trust I was thinking of.

Q. Then if it was the declaration of trust you were thinking of why did you hesitate two minutes before telling me it was the declaration of trust? Tell me that. A. (Witness pauses.)

Q. What is your answer? A. (Witness pauses.)

Q. I am waiting for your answer, Mrs. Clark. I don't want to be pressing you too hard, but I am waiting for you to say something. A. I am sure I signed this paper after he went away.

Mr. Fallon: I ask that that be stricken out. She seems to be possessed—

The Court: It may be stricken out. You have said that a great many times, Mrs. Clark.

Q. Can't you answer this last question? A. I don't just remember.

Q. Do you remember my questioning you yesterday when I was calling your attention to this paper, C-1, and asking you why you did not have Mr. Lindabury prepare the declaration of trust, which you mentioned yesterday, at the time this deed, C-1, was signed; do you remember my asking you that? A. Well, he did prepare it at that time.

Q. You say he did prepare it at that time? A. He must have prepared it.

Q. I don't want you to get confused: You say he did prepare it and he must have prepared it; I am asking you if you remember my having asked

you yesterday why you did not ask Mr. Lindabury to prepare the paper which you described yesterday as the declaration of trust at the time you signed this deed C-1. I am only asking you if you remember my asking you that question. A. I think the papers were ready at that time.

Mr. Fallon: I ask to have that stricken out.

The Court: It may be stricken out.

Q. I am asking you if you remember my asking you that question. A. Yes—

Q. Yes, what? A. I don't remember.

Q. And do you remember the reply you made to that question? A. (Witness pauses and then answers): No.

Q. Do you remember that you said that Mr. Lindabury told you that he was too busy at that time? A. Yes.

Q. Do you also remember saying to me that the declaration of trust was prepared a few days thereafter, that is, a few days after you signed this C-1? A. No, I don't remember that.

Q. Now, I am going to give you another opportunity, Mrs. Clark, to tell this court why you say today that this paper C-1 was signed by you after Mr. Clark left the Essex County jail? A. I don't know. He was gone away at that time.

Q. I want you to tell the court what is in your mind or what recollection you have which indicates to you today that this paper, C-1, was signed by you after he left the Essex County jail? A. I know Mr. Lindabury was up there the following day and he went away.

Q. Well, Mrs. Clark, for your information I want to again call your attention to something:

This deed bears date June 25th, 1919; is that right? You say that, don't you? A. Yes.

Q. Now you say, the following day after Mr. Lindabury went to see Mr. Clark, Clark went away? Is that so, to the best of your recollection? A. A day or two after he did.

Q. You said a moment ago that Mr. Clark went away the next day; what did you mean by that? A. I meant after Mr. Lindabury was up there to see him.

Q. You mean the day that Mr. Lindabury was there to have him sign this deed, C-1; is that what you have reference to? A. I guess so, yes.

Q. And then you say the following day Mr. Clark went away, do you? A. The following day or the day after.

Q. But you said a moment ago he went away the following day. I want to know whether you mean that. A. It was either that day or a few days after.

Q. Don't you remember saying here now just a few moments ago that he went away the following day? Do you remember having said that? A. I know he went soon after.

Mr. Fallon: I ask to have that stricken out.

The Court: It may be stricken out.

Q. (The question is read by the stenographer.) A. A few days after.

Mr. Fallon: I ask that that be stricken out.

Q. Do you remember having said here to this court a few minutes ago that Mr. Clark went away the day this deed was signed by him? A. Yes, I remember saying that.

Q. Well, is that true? A. It may have been a few days after.

Q. Well, you remember saying—don't be looking at your counsel; look at me; you said here a moment ago that the day after this deed was signed Mr. Clark went away; now, I want to know from you whether that is true. A. I will say two days after he went away.

Q. Now you say he went away two days after? A. Two days after, on the 27th.

Q. What makes you now believe that he went away on the 27th? A. Because of a letter I received, dated the 28th—

Q. Now, Mrs. Clark— A. (Interrupting) Wait a minute. Yes, I have a letter dated the 28th; he wrote me then.

Q. You knew yesterday when you were testifying, the day he went away, didn't you? A. Not the exact day.

Q. But you know he didn't go away the day he signed the deed? A. Yes.

Q. And you knew he had been in jail about ten days, didn't you? A. Yes.

Q. And you knew that you were testifying that he signed before he left the Essex County jail? A. Yes.

Q. What did you mean by that, that he signed the deed before he left the Essex County jail when, today, you say you know now it was after he left? A. Well, I know it from a letter I received.

Q. I am asking you what you meant by saying that yesterday and today saying something else? A. Because I know the deed was signed on the 25th, and I know Mr. Clark went away on the 27th.

Q. And you know he was in jail about ten days? A. Yes.

Q. Now I ask you, why you said yesterday that he signed this deed, C-1, while he was in jail and now, today, say that you signed it sometime after he went away? A. I know Mr. Clark went away on the 27th and he signed it on the 25th, and I know it was after that that I signed it.

Q. Didn't you say yesterday that you signed it on the 25th? A. I don't remember.

Q. Do you remember saying that you signed it either that day or the following day? A. No.

Q. Well, what did you go to Mr. Lindabury's office for the day following the day when Mr. Clark signed this deed, C-1? Wasn't it to sign this deed? A. I just went out to see Mr. Lindabury. I was out in Newark, and I told him I would go in there.

Q. Didn't you go for the purpose of signing this deed C-1? A. No.

Q. Well, didn't you sign the deed, C-1, on that day? A. I don't think so, no.

Q. Do you know what day you did sign it—the date? A. No, I don't know exactly the date.

Q. Do you know that you signed it a day or two after Mr. Clark signed it? A. Maybe so.

Q. Well, you surely signed it within a week after he signed it, didn't you? A. I'm not positive; I think it was in July—sometime in July.

Q. What makes you think that? Tell me why you think it was sometime in July. A. Because I have so many things to think of. That's the reason I can't think of the date.

Q. This was an important thing to you; you were trying to get the property placed in a way in which you would be protected; you ought to remember something about this transaction? A. (Witness pauses.)

Q. Were you less confused yesterday than you are today? A. (Pause.)

Q. (By the Court) Do you understand that question, Mrs. Clark? Do you understand what Mr. Fallon means? A. Yes.

Q. You are not confused today, are you? A. No.

Q. Well, were you any more confused yesterday than you are today? A. I may have been.

Q. Well, don't you know whether you were or not? A. No, but I know you did get me confused a few times yesterday.

Q. Why didn't you say you were confused yesterday if I got you confused? A. I don't know.

Q. Well, were you confused yesterday when I asked the question about the declaration of trust and when that was signed? A. That was signed in August.

Q. No, I am asking you whether you were confused—

Mr. Fallon: I ask to have that stricken out.

The Court: It may be stricken out.

Q. Do you understand my question? A. (Witness pauses.)

Q. I just want to know whether you were confused yesterday when I asked you the question in respect to when the declaration of trust was signed? A. (The witness pauses a short time and then answers): No.

Q. Were you confused when you told me that the paper was signed by Kinnaugh; that Mr. Lindabury handed you the declaration of trust and handed Mr. Kinnaugh a copy of it? A. (Witness doesn't answer.)

Q. I just want to know if you were confused when you testified about that? A. We each had a copy of it; I know that.

Q. But you were not confused when you answered my question about that declaration of trust? A. I don't think so.

Q. You were not confused when you told me yesterday, in reply to a question, that the paper that Mr. Lindabury handed you, which you said was the declaration of trust, you kept in your possession until the 8th of March, 1921, when you put it on the record? You were not confused about that, were you? A. It wasn't in my possession.

Mr. Fallon: I ask to have that stricken out, about in whose possession it was. I will withdraw the question and put this one:

Q. Do you remember testifying yesterday that when Mr. Kinnaugh signed the declaration of trust you were then present in Mr. Lindabury's office? A. Yes.

Q. And that Mr. Lindabury handed you this paper, which you subsequently put on record yourself? A. (Witness pauses.)

Q. I am asking you if you remember that question being asked you. A. Yes.

Q. And do you remember your saying that you personally put that paper on record on the 8th of March? A. Yes.

Q. And do you remember having said that from the time Mr. Lindabury handed you that paper you had had it in your possession all the time? A. No, I did not have it in my possession; I had a copy of it.

Mr. Fallon: I ask that that be stricken out.

The Court (addressing the witness): That

isn't the question; the question is whether you remember what transpired yesterday.

Q. What I am asking you is, if I had not asked you the question whether you had that declaration of trust in your possession from the time Mr. Lindabury gave it to you until you put it on record. Didn't I ask you that question yesterday? A. (The witness pauses.)

The Court: Not whether you did or did not; the question is whether you remember saying that.

A. No, I do not.

Q. Do you remember that you stated to me that on the 7th of March you had it in Mr. Lindabury's office? A. Yes, I remember that.

Q. And do you remember saying that Mr. Lindabury told you to record the paper? A. I certainly do.

Q. And do you remember saying that you did record the paper the following day? A. I do.

Q. Where did you get that paper from in order to record it on March 8th? A. I got that off Mr. Kinnaugh.

Q. When did you get it from Mr. Kinnaugh? A. I got the original; I only had a copy.

Mr. Fallon: I ask that that be stricken out. I asked her when she got it and she says he had the original and she only had a copy. I submit it is not responsive.

The Court: That is not responsive. The question is, Mrs. Clark, when did you get the declaration of trust from Mr. Kinnaugh?

A. (The witness pauses.)

Q. When did you put it on record? A. I think I got it the same evening, the 7th of March.

Q. You say you had a copy of the paper? A. Yes.

Q. Have you got it now? A. No.

Q. When the paper was signed by Mr. Kinnaugh, on the day that it was signed, did he sign two papers or one? A. I'm not positive.

Q. I want to know whether he signed what you call the original and also a copy. A. He just signed the original, I think.

Q. And didn't you say yesterday that that original was handed to you by Mr. Lindabury after it was signed? A. No, not that paper.

Q. I don't know what the fact is; I want to know whether you didn't testify yesterday that Mr. Lindabury handed you that paper which Mr. Kinnaugh had signed. A. No.

Q. Didn't you take possession of that? A. No.

Q. Didn't you testify to that yesterday? A. No.

Q. Do you mean that you didn't testify to it or that you don't remember? A. Well, I don't remember.

Q. If you did testify to that yesterday was it true or not true? A. Mr. Lindabury handed the paper to Mr. Kinnaugh, not to me.

Mr. Fallon: I ask to have that stricken out.

The Court: It may be stricken out.

Q. I am asking you if you did not testify yesterday that Mr. Lindabury handed to you the paper which had been signed by Mr. Kinnaugh and which you refer to as the declaration of trust—whether that was your testimony yesterday or not? A. I told you each one had a copy.

Mr. Fallon: I ask that that be stricken out.

Q. If you don't understand the question say so. (The question is read by the stenographer.) A. I don't remember.

Q. Do you mean you don't remember whether you made that statement or whether it is true or not?

The Court: You are being asked, Mrs. Clark, if you said that yesterday, was it true?

A. I don't remember.

The Court: Well, that isn't the question; the question is, if you did say it was it true or not true?

A. Well, I know that Mr. Kinnaugh—

Mr. Fallon: No; I ask that that be stricken out.

The Court: Mrs. Clark, can't you listen to the question and answer it?

Q. I am not asking you whether you remember having said it; I am asking you, Mrs. Clark, if you did make that statement here yesterday as a witness before this court was that statement true or false? A. I don't think I made that statement.

Q. If you did make it is it true or not? A. No.

Q. What does "no" mean, that it is not true? A. Well, I know that I didn't have the—

Q. I want you to answer my question and nothing else; I want to know what you mean by that "no"; do you mean if you made that statement yesterday it is not true? A. I don't remember.

Mr. Fallon: I think this is important, if the court please, and I am going to ask Mr. Bailey to find those questions I asked her yesterday. I would like to have that testimony read.

Mr. Lafferty: I confess I can't see the importance of this; it is a waste of time.

Mr. Fallon: Counsel well knew that the testimony she gave yesterday is in direct contradiction of what she says today. I want to find out which is true, and it would be much better if the stenographer will turn to her testimony yesterday.

(The stenographer turns to the testimony taken yesterday and reads the testimony found on page 270 of this record, beginning with the question at the middle of the page: "Do you recall the date when you signed in Mr. Lindabury's office", etc.)

Q. Do you remember that question and that answer? A. Yes, I remember it now.

Q. When you made that answer was that your best recollection as to when you signed this deed, Exhibit C-1? A. Yes.

Q. And has anything occurred between yesterday and today to change your opinion in that respect? A. Nothing has changed it; I think now it was in July.

Q. Why did you think yesterday it was in June and today you think it was in July? A. Because I know it was the 25th.

Q. 25th of what? You mean to say it was the 25th of June? A. Yes.

Q. Well, you said yesterday that you believed it was the 25th of June when you signed this deed, C-1, and I ask you the question, is it now

your best recollection that you signed this paper in Mr. Lindabury's office about June 25th? A. It was after that. It was after June.

Q. If you now think it was after June why did you say yesterday that it was June 25th? A. I don't know.

Q. Well, you were trying to tell the truth yesterday? A. I told it as near as I could.

Q. And when you said yesterday you thought it was around June 25th you said what you thought was the truth? A. Yes.

Q. Has anything occurred between yesterday and today to change your opinion in that respect? A. No, but I think it was a little later.

Q. What has occurred between yesterday and today which suggests to you the idea that the statement made by you yesterday that it was about June 25th is not correct? A. Because I read a letter that I got from Mr. Clark dated the 27th, and I got it around the 28th, and I know it was after he was gone that it was signed.

Q. When did you read that letter? A. Last night.

Q. Have you the letter here? A. No. I may have it; I'm not positive. (Witness looks through papers.) I know Mr. Clark wrote me the night—

Mr. Fallon: I ask that that be stricken out.

The Court: Strike it out.

A. (Continuing) I am not sure whether I have or not, but I think I have. (Counsel brings a package of papers and hands it to the witness on the stand.)

Q. The package of papers you now have in your hand you had in court yesterday, too, didn't you? A. Oh yes; yes, I got it (witness producing paper.)

Q. Now, this letter that you show me is dated the 28th, you say? A. June 28th.

Q. And that letter, you say, refreshes your recollection now in what respect? A. That I signed that after he had gone away.

Q. Well, is there anything in the letter that indicates that you signed this paper after he went away? A. No, not in the letter.

Q. Well, you were at Mr. Lindabury's office several times between June 25th and June 28th, weren't you? A. Yes, I guess I was.

Q. Well, what was your purpose in going to Mr. Lindabury's office at those times? A. Well, I had to get the declaration of trust signed.

Q. And you also had to go about the signing of this deed? A. Yes.

Q. And it was during one of those visits that you made that you signed this deed? A. Yes.

Q. So that you signed that deed before the 28th of June, didn't you? A. No, I don't think so.

Q. Well now, yesterday you said it was about June 25th, and I asked you today, the previous question, as to whether you had not called at Mr. Lindabury's office several times between June 25th and 28th and you said "yes," and I asked you whether it wasn't on one of those occasions you signed that deed and you said "yes"; and I now ask you if that isn't true? A. I said on the 25th.

Q. Don't you remember my asking you a moment ago whether you had been at Mr. Lindabury's office between June 25th and 28th? A. Yes.

Q. And you remember my asking you what your purpose was in going there on those dates; do you remember those questions being asked? A. Yes.

Q. Do you remember your saying it was something about the declaration of trust; do you remember that? A. Yes.

Q. And do you remember my asking you whether it was not also in connection with this deed, C-1; do you remember that question? A. I don't remember that.

Q. You don't remember my asking you, then, if it wasn't on one of those occasions between June 25th and June 28th that you signed this deed C-1, and your answering "yes"? A. (Witness pauses.)

Q. I am asking you whether you remember that question being asked and your answering it in the way I have indicated. A. I remember your asking me about going out there, and I said "yes," I went there."

Q. I ask you again, do you remember my asking you the question just a few minutes ago, as to whether, on one of the visits you made to Mr. Lindabury's office, between June 25th and June 28th, you signed this paper C-1, and your replying "yes"? A. No, around—

Q. Do you remember my asking you that, whether it was on one of the visits you made to Mr. Lindabury's office, between June 25th and June 28th that you signed this deed, C-1; I am asking you if you remember my asking you that question. A. I remember, yes.

Q. Do you remember what your answer was? A. I said it was around the 25th.

Q. Do you remember answering me that it was on one of those visits between June 25th and 28th that you signed this deed, C-1? A. I don't remember.

Q. If you did so answer it to my question did you tell the truth? A. I don't want to tell any lies.

Q. I don't want you to tell any lies either; I am trying to give you a full opportunity to give all the facts. If you answered my question here

today and said to this court it was on one of the visits you made between June 25th and June 28th that you signed this deed, C-1, was that statement then made by you true? A. I can't tell the actual date.

Q. I am not asking you for the date. A. All I know is, that I signed it after the 25th, but I don't know the date.

Q. I am asking you, Mrs. Clark—and I will try to say it slowly so that you will understand it—if you testified here today, just a few minutes ago, that you signed this Exhibit C-1 on one of the visits that you made to Mr. Lindabury's office between June 25th and June 28th, was that statement true? A. Well, if I told you that all I know is that I signed it after.

Mr. Fallon: Now, I submit that she ought to be able to answer the question yes or no whether the statement is true or not. She is trying to say something else now that is not responsive.

The Court: Yes. (Addressing the witness). You have made two different statements, Mrs. Clark, about the time on which this deed, C-1, was signed; what counsel is trying to do is to get you to say if you were wrong on one occasion or the other.

A. Well, I may have made a mistake.

Q. Then I will ask you again, it is a fact that you went out to Mr. Lindabury's office several times between June 25th and June 28th, 1919? A. Yes.

The Court: 1919?

Mr. Fallon: Yes, 1919.

Q. And isn't it a fact that on one of those visits

between June 25th and June 28th, made by you to Mr. Lindabury's office, you signed this deed C-1? A. I think it was later than that.

Q. Well, tell me why you think it was later. A. I think it was two weeks later.

Q. Well, give me some reason for your thinking so. What makes you think it was later? What have you in your mind which makes you think it was later? A. Because I don't know just exactly the date, but I know it was after that.

Q. Then if you don't know the date how do you know it wasn't on the 25th of June? A. No, I didn't sign it on the 25th of June.

Q. But how do you know you didn't sign it on the 25th of June? A. I don't remember the date.

Q. Well, if you don't remember the date, I am asking you how do you know that you did not sign it on the 25th of June? A. (Witness pauses.)

Q. You are stating it as a fact that you didn't sign it on the 25th of June and yet you say you don't remember the day you signed it. A. I went there on the 25th of June.

Q. How do you know that? A. That is the time Mr. Lindabury went up to see Mr. Clark.

Q. And then the following day, that is, the day after Mr. Lindabury went up to see Mr. Clark, you called at Mr. Lindabury's office? A. Yes.

Q. And isn't that the day you signed this deed, Exhibit C-1? A. I don't think so; I'm not sure.

Q. Well, what is your present best recollection as to the date when you signed this deed, C-1? A. I think it was in July.

Q. What makes you think so? A. I don't know, but I know it was in July.

Q. If you don't know what makes you think it was in July? I am asking you if you are not sure it was in June? A. No, it was in July, I think.

Q. You are positive it was not in August, aren't you? A. No, I'm not positive either.

Q. So that you don't know whether it was in June, you think it was in July, and you are not positive it was in August? A. Yes.

Q. Well, do you think it was in August you signed it? A. (Witness pauses.)

Q. What is your answer? A. It may have been.

Q. Now, Mr. Clark, isn't it a fact that you signed that deed at least within one week after it was signed by Clark? A. I'm not sure.

Q. But your best recollection is that it was; is that so or is it not? A. I don't remember.

Q. Well, could you say it was more than two weeks after the deed was signed by Clark that you signed it? A. (Witness pauses.)

The Court: What is your answer?

A. I don't think that was the day.

Q. Why did you testify yesterday that it was around June 25th that you signed it? A. I said it was about June 25th.

Q. Didn't you testify yesterday that it was June 25th that you signed it? A. I might have.

Q. Well, if you did was that true? A. I'm not positive.

Q. Well, if you are not positive why did you testify yesterday that it was about June 25th if you were trying to tell this court the truth? A. Well, because I know it was the 25th when it was signed by Mr. Clark, and it was after that that I signed it.

Q. Do you remember my asking you yesterday when I was calling your attention to this Exhibit C-1 whether you signed this paper before Mr. Lindabury— A. I signed it.

Q. And don't you remember your looking at Mr. Lindabury's name and saying, "Yes, I signed it before Mr. Lindabury"? A. Yes.

Q. You did sign it before him, didn't you? A. Yes.

Q. Now, looking at this paper again, C-1, can you refresh your recollection and tell us when you believe you signed that paper? A. (The witness looks at the paper but does not answer.)

Q. What is your answer? A. Around August.

Q. Now you say it was around August? A. July or August.

Q. Now you say July or August. A. Yes, it was in August.

Q. Now, you are looking at some revenue stamps which have the dates upon them? A. Yes.

Q. And that is why you say it was in August? A. Yes.

Q. Until you looked at the revenue stamps you thought it was in June or July, didn't you? A. (Witness pauses.)

Q. Is that right? A. (Witness still pauses.) No, but I know it was after June 25th.

Q. You have said that several times, but I want to try and find out what is your best recollection as to when that paper was signed by you. A. I guess it was signed the day it was put on the record.

Q. What was signed the day it was put on record? A. The paper.

Q. It appears to have been put on record August 5th; do you mean that it was signed on that day? A. (Witness pauses.)

Q. What is your answer? A. Yes, I think that is the day.

Q. You think it was signed, then, the day it was recorded, on August 5th? A. Yes.

Mr. Lafferty: The revenue stamps you have been looking at have "Mrs. J. C. 8-5-19."

Mr. Fallon: I never opened it.

Q. You didn't write that upon there, did you? A. No.

Q. Did you pay for the stamps that went on this deed? A. Yes.

Q. Did you pay for them on that day, on the 5th of August? A. Yes.

Q. Did you record the date? A. Yes.

Q. Jim O'Neil was the one who recorded it and you gave it to him to record it for you? A. Yes.

Q. And the Jim O'Neil you refer to is employed in the County Clerk's office of Hudson County? A. Yes.

Q. Who told you how much stamps to put on that paper? A. He told me.

Q. Whose handwriting is that, "Mrs. J. C."? A. Not mine.

Q. Do you know whose handwriting it is? A. County Clerk's office.

Q. Do you know whose it is? A. No.

Q. Then those stamps were not on that paper when it was given to you by Mr. Lindabury, were they? A. (Witness pauses.)

Q. Well, were they or were they not? A. (Witness still does not answer.)

Q. What is your answer, Mrs. Clark? A. (After a short pause she answers): No.

Q. The stamps were not there when you signed the paper, were they? A. Oh, yes, sir—no.

Q. Did you give Mr. O'Neil the money for the stamps before he put the stamps on or afterwards? A. After he put the stamps on.

Q. Did Mr. Lindabury tell you that there should be some stamps put on this deed? A. Yes.

Q. When did he tell you that? A. When he gave me the deed.

Q. And what day did he give you the deed; do you know? A. The same day.

Q. On August 5th? A. Yes.

Q. Well, isn't that the day that you say you signed it, now, on August 5th? A. Yes, I think I signed it that day.

Q. Well, I want you to tell the court if you feel sure of it or not. I understood you to say that you signed that paper the day it was put on record. That is your present recollection. Now, is that so? A. Well, I'm not positive, but I think—

Q. Well, what makes you guess at these things? First, you say you think you signed it in June, then you think you signed it in July, and then when you see this paper and see the writing on the revenue stamps you say you think it was signed on the day it was recorded; now, what makes you differ in those statements? A. Because I'm not positive about it.

Q. Then you are positive that you didn't sign it on the 25th of June? A. I didn't sign it on the 25th of June.

Q. How do you know you didn't if you don't know when you did sign it? A. Because I know I didn't.

Q. Are you positive that you didn't sign it on the 26th of June? A. No.

Q. Then you may have signed it on the 26th of June? A. I may have.

Q. But you are positive that you didn't sign it on the 25th of June? A. I am not positive.

Q. Well when the paper was signed it was delivered by Mr. Lindabury to you; is that right? A. Yes.

Q. And you put it on record through Mr. James O'Neil? A. Yes.

Q. That paper has always been in your possession or the possession of Mr. Lindabury, hasn't it? A. Always?

Q. Yes, you have always had this paper in your possession? A. Yes.

Q. Mr. Lindabury has had it in his possession for the purposes of this suit, hasn't he? A. Yes; he has got all the papers.

Q. Now, then, yesterday when I was examining you about the signing of this paper do you remember my asking you why you had not asked Mr. Lindabury to prepare the declaration of trust which I mentioned to you, and your saying that he was busy and couldn't do it? A. Yes.

Q. Did Mr. Lindabury state to you that the reason you didn't do it then was because he was busy? A. Yes.

Q. And that was at the time you signed this deed, wasn't it, C-1, that he made that statement to you? A. I don't know.

Q. Well, on the day that you signed this deed Mr. Lindabury explained to you that, by this deed, all of the property mentioned in it was being conveyed absolutely to Jim Kinnaugh, didn't he? A. (Witness pauses.)

Q. He told you that, didn't he? A. As trustee.

Q. Oh, he told you "as trustee", did he? Just what did Mr. Lindabury say to you at the time you signed that deed? A. Told me that he wouldn't have the other papers ready yet because he was busy.

Q. I am asking you what Mr. Lindabury said to you at the time you signed the deed? Did he read the deed to you? A. He read the whole thing.

Q. Do you mean to say that he read every word of that paper to you? A. Yes.

Q. Well, then, if he did read every word of it do

you recall this clause being in it, that Mr. Kinnaugh was to have and to hold all and singular the above described land and premises, with the appurtenances thereunto belonging to the party of the second part, his heirs and assigns; do you remember that being read to you? A. Yes.

Q. Did Mr. Lindabury explain to you that that clause that I read to you meant that Mr. Kinnaugh was to have this property absolutely? A. No, he was getting the papers ready.

Q. Did Mr. Lindabury explain that the property was to be conveyed to Mr. Kinnaugh as a trustee? A. No.

Q. What did he say to you about a trustee? A. The property was to be turned over to me, or Mr. Kinnaugh was to be the trustee until such time as Mr. Clark came out.

Q. But you knew by that deed that Mr. Clark was not made trustee? A. There was a declaration of trust drawn up and things would be turned over to me as soon as Mr. Clark came back.

Q. Mr. Lindabury told you when you signed this paper that notwithstanding what was in it and how it read that it was only intended to go to Kinnaugh to hold in trust for you? A. Yes after Mr. Clark came out.

Q. Hold in trust for you after Mr. Clark came out? A. No, to pay off all the bills and taxes and all these things, and Mr. Kinnaugh was to account for the garage business and that was to go to Mr. Clark and I was to have the property. Mr. Clark was only to have the garage business.

Q. Mr. Lindabury explained that to you at the time you signed this deed? A. Yes.

Q. Did he explain just what you have stated now, before you signed this deed? A. Explained everything before we signed the deed.

Q. What do you mean by "we signed the deed"? A. Before I signed the deed.

Q. Do you mean that he explained it just before you put your name on this paper, or some days before? A. Before I put my name on the paper.

Q. You mean that that very day that you signed the paper he explained that to you as you have stated? A. No, because he said he was going to get the declaration of trust ready and then he would let me know about it.

Q. But didn't you just say when you signed this paper Mr. Lindabury explained to you that Kinnaugh was to be the trustee; that he was to collect the rents and pay all the bills and then after Clark came out the property was to be turned over by Mr. Kinnaugh to you, and the garage business was to go to Mr. Clark? A. Yes.

Q. You say Mr. Lindabury explained that to you? A. Yes.

Q. Now, you say you knew that before Mr. Lindabury explained it to you? A. Yes, I knew it from Mr. Clark.

Q. If you knew that then, that that was what Mr. Lindabury explained to you, why did you sign that deed by which you gave absolute title to the property to Kinnaugh, without having some trust agreement between you at that time? A. Because I took Mr. Clark's word that Mr. Kinnaugh was a good man and very trustworthy.

Q. Did you realize if Kinnaugh died the day after that deed was delivered to him without having executed a trust agreement to you that was placed on record that that property could be transferred away and you would be deprived of it? A. Yes I knew that.

Q. Who told you about it? A. Somebody told me; I don't know who told me.

Q. Then you knew during all of the time that this declaration of trust was kept off the record that Kinnaugh could have mortgaged the property or sold it to somebody else and deprived you and your husband of this property? A. Yes.

Q. And notwithstanding that, you kept the declaration of trust off the record, didn't you? A. Yes.

Q. Why did you do that? A. Because I trusted him the same as Mr. Clark did.

Q. Did you realize that if Kinnaugh died while that situation was in that way, without his having signed the declaration of trust, and this deed having been made to him and delivered to him, if it was, that his heirs could deprive you and your heirs of this property?

Mr. Lafferty: I object to that question.

Mr. Fallon: I will withdraw the question. It is a matter of argument, I suppose.

Q. Do you remember, Mrs. Clark, on what date Mr. Lindabury handed you that paper which you refer to as the declartion of trust? A. I don't remember exactly the date, but I remember putting it on file on the record.

Q. Well, that paper called the declaration of trust was handed to you quite some time after you signed the deed, wasn't it? A. It was after the deed.

Q. About two months after, wasn't it? A. Yes, I guess so; I'm not sure. I'm not sure of the date.

Q. Well, was it a considerable time after you signed the deed that the declaration of trust was signed by Kinnaugh? A. Yes, it was quite some time.

Q. Can you tell me about how long afterwards

it was? You say it was quite some time; can you give me the number of weeks or months? A. (Witness pauses.)

Q. Was it as much as four or five weeks afterwards? A. I think it was in August.

Q. You think in August? A. Yes.

Q. What makes you think, that? A. Well, I know that Mr. Kinnaugh couldn't get at Mr. Lindabury, or something to that effect.

Q. Don't you know that you have already testified that you and Kinnaugh were at Lindabury's office several times before the declaration of trust? A. But we didn't get Mr. Lindabury there; he was away.

Q. Then I ask you why you think it was in August that the declaration was signed? A. Because I think it was.

Q. Why do you think so? What refreshes your recollection? A. Because I had been there quite a few times.

Q. The fact that you were there quite a few times actuates you in saying that you think it was sometime in August? A. No, sir; I know it was quite sometime after.

Q. Quite some time after this deed C-1 was signed; is that what you say? A. Yes, it was after the deed was signed.

Q. And when you say "quite some time" was it as much as four or five or six weeks after the deed was signed?

Mr. Lafferty: Signed by whom?

Mr. Fallon: By Kinnaugh. I am talking about the declaration of trust all the way through.

Mr. Lafferty: The reason I object to this question is because you say "some months

or time after the deed was signed"; signed by whom?

Q. You understand, Mrs. Clark, that I am speaking about the declaration of trust signed by Kinnaugh; you mean after it was signed by you? A. Yes.

Q. Why do you say it was the beginning of August; that is what I am trying to find out. A. Because I know it was quite some time from the time—(witness hesitates).

Q. From the time, what? A. It was in the summertime.

Q. From the time, what? A. From the time I signed the deed.

Q. And why do you think it was in the beginning of August; why not the middle of August, or the latter part of August? A. I know it was in August.

Q. But you don't know whether it was the beginning of August, the middle or the latter part of August? A. The beginning.

Q. Are you sure it wasn't in July? A. No, I don't think it was in July; it was the beginning of August.

Q. What impresses that on your mind? Tell the court what makes you believe it was in August that the declaration of trust was signed by Kinnaugh? A. It refreshes my memory being I was out there and we went to see Mr. Lindabury when he wasn't there.

Q. Yes, but why mightn't it have been in July that you signed it? A. I think at that time Mr. Lindabury was away.

Q. Do you state that as a fact now? A. Yes, I remember there was something of that kind; I'm sure it was the beginning of August; I think it was the 5th.

Q. The deed was signed sometime in June, July or August, C-1; now, which do you think was the time when it was signed?

Mr. Lafferty: By whom?
Mr. Fallon: By Mrs. Clark.

Q. By you. When do you think this deed was signed by you, June, July, or August? A. August, I think.

Q. Well, then, if it was signed in August, as you now seem to think it was, why do you say the declaration of trust, now in your hands, was signed a considerable time after the signing of the deed? A. (Witness pauses.)

Q. You can't answer that, can you? A. I know the deed was signed on the 25th.

Q. You say that, but you can't give me any reason for saying it. A. Because I don't remember the date.

Q. You said before that you don't know whether or not you signed it on the 25th of June, didn't you? A. (Witness pauses.)

Q. The fact is, you don't know whether you signed this deed on the 25th of June or not, do you? A. (Witness pauses.)

Q. You don't know whether you signed this deed on the 25th of June or not? A. I know I didn't sign it on the 25th of June.

Q. Did you sign it on the 26th of June? A. No, I didn't sign it on the 26th.

Q. How do you know that? A. Because I signed it after Mr. Clark went away.

Q. Do you remember saying here, in response to my question, that you didn't know whether you signed it on the 26th or not? A. I can't be sure of the date.

Q. Is it your recollection that you signed it the first week after he went away? A. I'm not sure.

Q. But you are sure you didn't sign it in August?

Mr. Lafferty: If your Honor, please, Mrs. Clark has stated very definitely—gone over this thing time after time, and it is a mere repetition.

Mr. Fallon: I think I have a perfect right to get something definite from this witness in the interest of my client. I don't think you have any cause for complaint about that.

The Court: Well, I feel that any further cross-examination of Mrs. Clark on that subject would be unavailing, because, it seems to me, I can give no effect or credence to anything that Mrs. Clark says in regard to the date of the signing of the deed, C-1, by her, she has made so many statements, and her hesitancy in answering questions is pronounced.

Mr. Fallon: I have no further questions, your Honor.

WILLIAM KINNAUGH, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. How old are you, Mr. Kinnaugh? A. Sixty.

Q. Where do you live? A. In Hoboken.

Q. You know James Clark? A. Yes, sir.

Q. How long have you known him? A. Oh, I have known him 30 years, I suppose. I have been

intimately acquainted with him for 25 years at least.

Q. Do you know Mrs. Clark? A. Well, I know Mrs. Clark—sure, I know her.

Q. When did you first become acquainted with her? A. Well, I knew Mrs. Clark quite a number of years only casually, to pass the time of day or anything like that; I have known Mrs. Clark 20 years at least, that is, casually.

Q. In the early part of June, 1919 did you know her casually or well? A. Casually.

Q. In June, 1919, did you have occasion to visit James Clark in the Essex County jail? A. I did.

Q. Did you visit him more than once there? A. Twice.

Q. Do you recall the date of your first visit? A. I believe it was on the 20th of June.

Q. What prompted you to visit him there? A. Why, his boy Frank seen me and asked me would I go out there—

Mr. Fallon: I object to what the boy said.

The Court: Don't tell what the boy said, but as a result of what he said what did you do?

A. Mr. Clark—

The Court: His boy?

A. As a result of what Frank says to me I visited him at the county jail and seen him there?

Q. Did you have a conversation with him there? A. I did.

Q. And what did that conversation relate to? A. Well, he asked me would I help Frank run the garage—he says, "assist Frank in running the garage."

Q. What did you tell him? A. I told him I would.

Q. Did you have any further conversation with him? A. I asked him how he felt, and things like that. I had only a few minutes' conversation about things.

Q. Did you have any further conversation about the garage business? A. At that time?

Q. At that time. A. Well, I believe he says "Frank will get down there in the morning and I should be there in the afternoon and in the evening, and Frank is to get away in the evening.

Q. When did you visit him the next time? A. I don't know exactly the dates; two or three days after that.

Q. Did you have a discussion with him at that time? A. I did.

Q. What did that relate to? A. Well, I went out there and I spoke to him; I says, "Jim, I came out to see you about fixing up your property, to get it straightened up, 'signed over to your wife.' "

At first, he says "no."

And I says, "Now, you are going away for a long period of time, and in a place like that something may happen to you that will be serious, and you may not be able to get any advice, and you had better be reasonable and think things over."

He says, "I will do as you say, but I will tell you what I want you to do." He says, "I owe Mr. Hughes $325; I want you to pay that money and not tell my wife, because she won't pay what I owe him." And I had a few moments' conversation, and I asked him when he was going away, and he told me he did not know.

Q. Was Frank with you on either one of these visits? A. The first visit.

Q. Did Mr. Clark tell you why he wanted you

to pay the money to Mr. Hughes and that he didn't wish you to tell Mrs. Clark that he owed him the money? A. Yes, he told me that Mrs. Clark wouldn't pay Mr. Hughes the money and he wanted that money paid, and he wanted me to tell her that he owed it to me and then pay it to Mr. Hughes when I got it.

Q. Did Mr. Clark, on either one of these occasions, say anything to you about conveying the real estate to you? A. No.

Q. When did you first learn that the real estate was about to be conveyed to you? A. Well, I don't know exactly; it was a short period after that, maybe three or four days. Mrs. Clark came down to the garage one morning and she says—

Mr. Fallon: I object to any conversation with Mrs. Clark.

The Court: Yes, don't tell anything that was said by anyone unless Mr. Clark was present. Don't tell what Mrs. Clark said unless her husband was there.

Q. I show you a paper marked Exhibit D-5, and ask you whether that is your signature. A. Yes.

Q. I show you another paper entitled "Agreement," bearing the same date, and ask you whether that is your signature at the foot of that. A. Yes, sir.

Mr. Lafferty: I offer the second one, the copy of the trust agreement.

Mr. Fallon: I don't know what his purpose is unless it is evidential.

Mr. Lafferty: Some question was raised as to the original, and this is a copy of it or a duplicate.

(The same is admitted and marked Exhibit D-12.)

Q. I show you Exhibit C-1, being a deed; did you ever receive that from Mr. Lindabury? A. (The witness beings to read it audibly.)

The Court: No, don't read it.

Q. No, look at it and see whether you can tell by looking at it whether you received it into your possession from anyone. A. I think I did.

Q. From whom did you receive it? A. Mr. Lindabury, I believe.

Q. Do you recall the date on which you received it? A. There is only one day I could have received it from Mr. Lindabury and that was the 4th of August, as I recollect it.

Q. Do you recall the date on which you signed Exhibit D-5? A. The 4th of August.

Q. Did you assist Frank in running the garage business? A. Yes—well, I don't know as that is the right answer. I run the garage business and Frank assisted me.

Q. When Mr. Clark returned did you turn over to him the garage business? A. When he returned on the 7th of March?

Q. Yes. A. Not right away.

Q. Did you turn it over later? A. Yes, sir.

Q. Do you recall when? A. The 24th day of October, 1921.

Q. What did you turn over at that time? A. I turned over the outstanding accounts receivable for gasoline and oil in the sum of over a thousand dollars. I gave him the names of the people I have stationed there for rent, and I believe that's all.

Q. Had you put in any of your own money into the making of this business? A. Yes.

Q. Did you tell Mr. Clark that, when you turned the business over? A. I did.

Q. And did he say whether or not he owed it to you? A. He was satisfied he owed it to me.

Mr. Fallon: I ask to have that stricken out.

The Court: Never mind what you think about it; did he say whether he was satisfied?

A. Well, I will have to explain.

The Court: Well, explain.

A. When I turned the business over I made a statement out for him and showed it to him, and I told him I wanted him to go over my books; but he wouldn't go over them; he told I would have to go up to his lawyer.

I says, "All right; I will go up to your lawyer." So I went up to Mr. Fallon's office, and he says: "Bill says I owe him $517.

Mr. Fallon asked me about it, and I says, "I want him to go over my books."

Mr. Fallon asked him, and he says: "I am satisfied that I owe him $517" and I got a note or something like that. Then Mr. Fallon called someone in the office and they wrote the note; and he asked me if I wanted interest on that note, and I told him no. And I believe they asked him how he wanted to pay it, and he gave me a check for $67 the next morning and $50 each month until paid.

Q. Have you that note with you? A. I have.

Q. Will you produce it. A. (Witness produces paper.)

Q. Did you see Mr. Clark sign it? A. Yes.

Mr. Lafferty: I offer it.

Mr. Fallon: No objection.

(The same is marked Exhibit D-13.)

Q. Has anything been paid on account of that note? A. Yes, sir.

Q. How much? A. $427.

Q. Did you sign any bonds or mortgages to secure loans on any of the property owned by Mr. Clark at the time he went away in June, 1919? A. At the time or after?

Q. Did you ever do that? A. Yes; afterwards.

Q. How many? A. Well, I signed a mortgage with the Steneck Trust Co.

Q. On what property? A. 310 Newark Street.

Q. Any others? A. Yes; I signed a mortgage on 413 and 415 Newark Street.

Q. To whom did that run? Is that the Gross mortgage? A. That's the Gross mortgage.

Q. Any others? A. Yes; I signed another mortgage.

Q. What one was that? A. To the Second National Bank on 304 and 306 Newark Street, second mortgage.

Q. Do you recall the Swift lease on 413 Newark Street? A. No; it was 415.

Q. 415 Newark Street; what did you do in connection with that? A. With the lease?

Q. Yes. A. Well, I don't know much about that; Mr. Lindabury had that fixed up. I don't recollect much about that lease at all. You see, that was when I first got connected with the garage. That option had practically expired at that time. I really didn't know much about it until after it was all consummated, I guess.

Q. I show you Exhibit D-5, the so-called declaration of trust, and ask you whether, when you signed that, Mr. Lindabury explained to you what it meant (showing paper to the witness marked D-5). A. Yes; I believe he did.

Q. Did he tell you what you were to do? A. Yes.

Q. What did he tell you? A. He told me that I should secure any mortgages, bonds, and so forth that was necessary to sell the property and sell it, and so forth, and conduct the garage.

Q. Did he tell you what you were to do with the property eventually, at the end? A. Yes. He told me when Mr. Clark came home—

Mr. Fallon: I object to anything that Mr. Lindabury told him out of the presence of Mr. Clark. I can't see how it is in any way binding upon us. They cannot make evidence for themselves in that way. Clark was neither a party to this declaration of trust, and the first he knew of it was when he came out of jail.

The Court: I suppose it would be evidence if this witness should say that Lindabury gave him instructions that were not in conformity with the provisions of the declaration of trust.

Mr. Fallon: If the paper is to be regarded as a declaration of trust, I submit that they couldn't very well profit by the instructions which they now claim Lindabury gave him.

The Court: Well, these instructions were given at the time of the execution of that paper. I suppose it might almost come under the doctrine of res gestae, and there being no jury I am going to overrule the objection.

Mr. Fallon: I don't know as I stated the ground of my objection?

The Court: You object because it is a self-serving declaration.

Mr. Fallon: Yes; and also on the ground

that this isn't binding as against Clark unless it is connected up and shown that it was made by Clark's authority.

The Court: Go ahead, Mr. Kinnaugh, and tell us what else he said.

A. Mr. Lindabury told me that the property should be turned over to Mrs. Clark when Clark should come out, and the garage business should be returned to him.

Cross Examination by Mr. Fallon:

Q. Did Mrs. Clark tell you what the terms of this trust agreement were to be? A. Well, Mrs. Clark told me that her husband had left her the property, which he had turned over to her or would turn over to her when he came out and he should get the garage business.

Q. Did you know what the terms of the trust agreement were? Was that stated to you by Mrs. Clark? A. Oh, no; I didn't know, that is, at the time I called at Mr. Lindabury's office.

Q. I am going to call your attention to an affidavit made by you in this case, bearing date the 14th day of June, 1923, which says (Counsel reads from the affidavit what is said about the terms of the trusteeship): Do you remember that statement and is that true what I have just read to you? A. Yes.

Q. Then Mrs. Clark did say to you what the terms of the trusteeship were to be? A. Well, what I was trying to explain—

Q. No; tell us about the terms of the trusteeship. A. She says, "You go and take charge of the property and run the garage business and when Mr. Clark comes back I am to turn the property

over to her and give the garage business back to Mr. Clark.

Q. Did anybody tell you about that afterwards? A. Afterwards? Yes.

Q. Who told you? A. Mr. Lindabury.

Q. How long after Mrs. Clark made that statement to you did Mr Lindabury say anything to you? A. Oh, five or six weeks.

Q. Then the only ones that mentioned anything about the terms of the trusteeship, as mentioned in the declaration of trust, was Mrs. Clark and Lindabury? A. That's all I remember.

Q. Now, when the paper was signed by you, you realized that you were to collect the rents of the property, did you? A. Yes.

Q. But you didn't do that, though? A. No; I was too busy and I couldn't.

Q. Well, did you realize that you were going to be too busy when the trusteeship was accepted by you? A. No; I did not.

Q. You knew at the time you signed this declaration of trust you were to run the garage? A. I was assisting Frank.

Q. It took all of your time, didn't it? A. No.

Q. What time did you devote to it? A. Practically nothing. There was no business there. There wasn't any gas or oil there when I went there.

Q. But there were people renting space in the garage? A. They would go out and would be away all day.

Q. The rents amounted to about $500 a month? A. About $200 a month.

Q. Were they not more than $200 a month? A. I say at that time they were not.

Q. You mean the time when you went into possession of the place? A. Yes.

Q. And there were more trucks stored there than anything else? A. Not at that time.

Q. What was it? A. Pleasure cars and a commercial truck.

Q. Now, Mr. Kinnaugh, when you went to see Mr. Clark at the jail you told him that he should do something about his property while he was away, didn't you? A. Yes, sir.

Q. And you told him he should transfer it to his wife, didn't you? A. Yes.

Q. And he told you he wouldn't transfer it to his wife? A. When?

Q. The first time. A. Not the first time I went there; that was on the second visit.

Q. He told you on the second visit he would not transfer it to his wife? A. Yes.

Q. What reason did he give for not transferring it to his wife? A. This debt to Mr. Hughes that he owed and he knew his wife wouldn't pay it.

Q. What else did he say as a reason why he wouldn't transfer it to Mrs. Clark? A. He didn't give me any reason.

Q. Did he tell you he wouldn't? A. Yes; at last.

Q. Then you persisted in your talk with him, and you said that he should transfer it to Mrs. Clark? A. I told him that he should have his property straightened up and he should sign it over to Mrs. Clark.

Q. When he told you that he wouldn't do it why did you persist and tell him that he should do it? A. I don't know. I went out there to get him to straighten his property up and I thought his wife was the right one who should have control of it.

Q. Mrs. Clark asked you to speak to him and try to have him turn it over to her, didn't she? A. I don't know. When I saw her previous to that—

Q. I am asking you if Mrs. Clark didn't speak to you and ask you to have him turn the property over to her? A. No.

Q. Why did you take it upon yourself to suggest to him that he turn the property over to her? A. His boy Frank was asking me.

Q. Asking you what? A. Asked me if I wouldn't go out to see his father about having his father 'sign the property over to his mother.

Q. Then because Frank asked you to do that you went out and said to Clark something to the effect that he should transfer his property to his wife, and he told you he wouldn't do it? A. Yes.

Q. Then when Clark told you he would not transfer it to his wife did you persist in trying to influence him to transfer it to his wife? A. Well, I explained to him that he was going away, if that's what you have reference to.

Q. Don't you think he knew that? A. Certainly he knew it.

Q. When he told you he would not transfer the property to his wife why did you again attempt to influence him to transfer it to his wife? A. Well, I thought I was a good friend of his and I knew the property ought to be taken care of in some way.

Q. You knew that Clark was a pretty good business man, from your experience with him? A. I knew he was no business man.

Q. You knew that he had accumulated this property and did you not feel that he and his wife should get together and try to adjust their own matters? A. Well, they couldn't get together.

Q. You never tried to get them together? A. No.

Q. You were in business longer than Clark? A. No; I was not in business longer than Clark; he was in business for years.

Q. I want to know why you persisted in asking Clark to turn the property to his wife after he told you he wouldn't to it? A. I considered myself a friend of his and the family and I thought that the property should be taken care of, so that there should be something there if possible afterwards.

Q. What led you to believe that the property would suffer by continuing in his name? A. Why, the property was practically gone.

Q. Why, you knew nothing about the property at that time, did you? A. Yes, I knew a little about it.

Q. You only knew from what Clark told you? A. That's all.

Q. What did he tell you? A. He told me that 304 and 306 Newark Street was in the hands of a receiver and he had paid so much for them and he never expected to get a dollar back from them.

Q. What else did he tell you? A. Well, I don't know as he told me any more about the property.

Q. Now, you knew Mrs. Clark to be a very capable business woman? A. I knew nothing about Mrs. Clark, her business ability or anything.

Q. Why, you knew Mrs. Clark for many years; knew her very well? A. No, sir.

Q. You said you had a casual acquaintance with her; you knew her well enough for that for 20 years past? A. I wouldn't see Mrs. Clark maybe for six months, or maybe once in two months or three months.

Q. But you knew her to be the wife of James Clark? A. Yes.

Q. You knew Clark had a plumbing business in Newark Street and she was pretty much around the plumbing shop? A. No.

Q. Then you didn't know that Mrs. Clark was a woman with considerable business ability? A. I did not.

Q. Why did you want the property transferred to Mrs. Clark? A. Because I thought she was the proper person.

Q. Why? A. I didn't have any reason.

Q. You say that the reason you had for suggesting to Clark that he should transfer his property while he was away was because you thought she was the proper person, and yet you didn't know anything about Mrs. Clark's business ability; but what I'm interested in knowing is, why did you importune him to transfer it to Mrs. Clark? A. I had no reason at all. I didn't know anything that her business ability at all.

Q. When he told you he wouldn't transfer it to her why did you follow it up and continue to ask him to transfer it to her? A. I hardly followed it up; I just made a usggestion to him that he ought to do this because something might happen to him after he went away. I didn't know whether anything would happen or not, but I thought he ought to be on the safe side. I thought after he had gone away he wouldn't be able to get legal advice and the property wouldn't be taken care of.

Q. You told him that his son Frank had asked you to call and see him? A. No, sir.

Q. Did you tell him why you came there? A. Yes; I says, "Jim, I came out to see if you want to fix up your property and sign it over to your wife.

Q. And the reason you did that was because Frank had asked you to do it? A. Yes, sir.

Q. And Frank had told you that Mrs. Clark had asked you to speak to him and have him do that? A. Yes, I guess it was that way; I ain't sure, though.

Q. Well, Mr. Kinnaugh, you called to see Mr. Clark and he told you he would not transfer the property to his wife; what did you next say to him? A. I says, "Now, Jim, be reasonahle."

Q. Then what? A. "You are going away for a long time, down in a place—down in such a place as that; something might take place down there and you might get sick or die or something, and the property ought to be fixed up."

Q. He didn't say anything to you about transferring it to you, did he? A. No.

Q. So that it was a surprise to you when you learned through Mrs. Clark that you were the trustee of the property, wasn't it? A. It was.

Q. I understood you to say that you only saw Mr. Lindabury once, and that was on August 4th; is that right? A. No, I seen Mr. Lindabury since that time.

Q. But not before August 4th? A. No; that was the first time.

Q. So that you saw Mr. Lindabury August 4th, 1919— A. The first time, yes.

Q. Now, the only thing that Clark asked you to do when you went out to see him the first time was to assist Frank to run the garage; is that right? A. That's right; yes.

Q. And Frank was with you on that occasion? A. He was.

Q. And you say it was three or four days after the second visit that you made to Clark that you learned from Mrs. Clark that the property was conveyed to you? A. Well, I don't know whether it was three or four days but it was a short time after—a couple of days—two or three days—I don't know exactly.

Q. But Mrs. Clark was the one that conveyed the information to you? A. Yes.

Q. And where did she see you when she told you about it? A. At the garage.

Q. What papers did you sign in Mr. Linabury's office on August 4th; do you remember? A. Them papers that was shown me.

Q. Did you read the papers before you signed them? A. Yes.

Q. Did you understand fully their purport? A. Well, I did when Mr. Lindabury explained it to me.

Q. What did he say to you? A. Well, I disremember what he said exactly; about bonding and mortgaging the property and selling it, and so forth.

Q. You knew you were to pay Mrs. Clark $20 a week? A. Yes.

Q. And is it your understanding that you were to pay that $20 a week out of the receipts of the garage business, or how? A. My understanding was that it was to be paid out of all the receipts, no matter where it came from, so long as there was money there to pay that $20.

Q. Was that said to you, or is that your recollection of the paper as you read it? A. Well, I don't remember it being said to me. That was my understanding of the paper. That was my understanding, anyhow.

Q. Now, when the papers were signed by you, Mr. Kinnaugh, was this paper which I now show you, Exhibit D-12, given to you by Mr. Lindabury? A. (Witness reads paper and then answers): I believe that paper was given to me.

Q. Will you state as a fact whether that paper was given to you? A. Well, I can't state it as a fact; I had a paper similar to that. It was either that or one similar.

Q. Did you ever have this paper that I now show you in your possession before today? A. I can't tell you that.

Q. Why not? A. I had a paper similar to that in my possession; I'm not sure it was that paper.

Q. What became of the paper you had in your

possession? A. I had it down in the garage and Mr. Clark came and got it off of me.

Q. Well, at the time you were handed the paper by Mr. Lindabury Mrs. Clark was also handed a paper, wasn't she? A. I don't remember.

Q. Well, there were two papers signed by you at that time, weren't there? Look at D-15 and see if that wasn't signed by you also? A. Yes, that's my signature.

Q. Now then, this paper, D-15; will you look at that and tell us whether or not that paper was not delivered, after it was signed by you, to Mrs. Clark by Mr. Lindabury? And I will add to that question: And this other paper, D-12, handed to you by Mr. Lindabury? A. No, I couldn't tell you.

Q. But one paper was handed to you; do you remeber that? A. Yes.

Q. Are you sure of it? A. I'm sure I got one paper; I don't know which one.

Q. You don't know whether it was a paper like this one, D-12, that I am showing to you, do you? A. Well, I didn't read this. I think they are the same. I got either one of them, I'm not sure which one.

Q. What did you do with the paper when you got it? A. Took it down to the garage and put it in the desk.

Q. How long did you have it there before you parted with possession? A. Oh, a long time.

Q. And to whom did you give it afterwards? A. I believe I gave it to Mrs. Clark.

Q. And for what purpose? A. I don't really know. She came down and asked me for it; I don't know the purpose of it.

Q. How many months, if it was months, after you signed the paper was it that you gave it to Mrs. Clark? A. Oh, a long time.

Q. About how long; a year or six months? A. It was a year, anyhow. It was a long time. I don't know exactly how long, but I know it was a long time.

Q. Didn't you think you ought to keep that paper so as to inform you as to what your duties were under the agreement? A. I didn't think there was any necessity of it; I didn't think there would be any trouble at all. I thought that when Mr. Clark came out there would be no trouble; everything would be agreeable.

Q. You thought that because Mrs. Clark had said it to you? A. No, sir.

Q. What else made you think that? A. Because Mr. Clark told me he would turn over the property to his wife.

Q. He told you he would turn it over to his wife? A. Yes.

Q. And that is all he said to you, just what you are saying now? A. No, he said a lot more'n that.

Q. What else did he say? A. I asked him—I didn't know when he was going away and I asked him, and he told me he didn't know, but he expected in a short time.

Q. I mean, that is all he said to you about his property is what you are saying, that he would turn it over to his wife? A. He told me he would do as I say.

Q. You had asked him to turn it over to his wife and he said "All right; I will?" A. Yes, and then he told me about paying Mr. Hughes.

Q. That is all he said to you about his property? A. At that time.

Q. He never said anything to you at any other time about his property? A. No.

Q. Now, Mr. Kinnaugh, I show you Exhibit C-1, and ask you if it is not a fact that you never had

that paper in your possession? A. Yes, I had that in my possession.

Q. You say you had that in your possession? What is your answer? A. Yes.

Q. When did you come into possession of that paper? A. I think it was on the 4th of August.

Q. And from whom did you receive it? A. I think Mr. Lindabury.

Q. What did you do with it when you got it? A. Turned it over to Mr. Clark.

Q. Where did you turn it over to Mr. Clark? A. In Mr. Lindabury's office.

Q. What did you turn it over to Mr. Clark for? A. Well, I think it was to be put on record.

Q. Why didn't you put it on record? A. Well, I didn't have time.

Q. The deed is dated June 25th, and it does not appear to have been put on record until the 5th of August? A. Well, Mrs. Clark had to get the stamps. I don't know where she got them, but she put that on record. She bought the stamps, but where she got them I don't know.

Q. You don't know that she bought the stamps, do you? A. I don't know, but the stamps are on there, and somebody must have done it.

Q. One of the reasons why you suggested to Clark that he should transfer the property away from his own name was to prevent judgments being entered up against him, wasn't it? A. No.

Q. Don't you know that judgments were entered up against him? A. I knew there were some judgments.

Q. And didn't somebody tell you about the $5,000 fine? A. Oh, I knew about that.

Q. Wasn't that one of the reasons why he should transfer the property away from himself? A. No, he had no reason for that at all.

Q. Why didn't you take this deed and put it on record right away if, as you say, your purpose was so that Clark wouldn't transfer the property away from himself? A. I don't know.

Q. You seemed to be quite anxious to have him transfer the property to his wife. A. I wanted them to be protected. They had some property if it could be saved, at least until he came out.

Q. You seemed anxious to have Clark transfer the property to his wife? A. I thought she was the proper one to have it.

Q. If you thought that why didn't you, when this deed was given to you by Mr. Lindabury, see that the deed was recorded at once? A. No reason at all.

Q. You took the deed when it was delivered and immediately handed it over to Mrs. Clark? A. I did.

Q. (By the Court) When was that? A. The 4th of August.

Q. What impresses you so clearly that it was the 4th of August, Mr. Kinnaugh? A. Well, when Mrs. Clark first told me about this business, that the property was being turned over to me, she asked me would I go out to Mr. Lindabury's office to sign certain papers. We had went out there and Mr. Lindabury was busy, so we had to go out again, and we went out the following day, I believe it was or a short time after. Anyhow, Mr. Lindabury was still busy and Mrs. Clark after that came around to the garage and told me Mr. Lindabury went away on his vacation and we wouldn't have to go out there for four or five weeks—five weeks was the 4th of August.

Q. I want to know what it is that impresses it upon your mind at this time that it was the 4th of August you were out to Mr. Lindabury's office? A. That's all that impresses me.

Q. Tell me any other dates that you know of. A. I have been there this year, even.

Q. About the 24th of August? A. The 25th of June.

Q. Mrs. Clark didn't tell you that the deed was made after the 25th of June, did she? A. She didn't mention to me anything about it.

Q. Didn't Mrs. Clark tell you that Clark had made a deed to you? A. She didn't say anything about the deed, only the property was to be left to her and the business to Mr. Clark when he came home. She didn't say anything about it except that.

Q. When did she tell you that? A. Well, I guess it was about the 24th of June.

Q. And then a few days after that you went out to Mr. Lindabury's office with her? A. I guess we went out several times.

Q. Tell me the date that you went out there other than the 4th of August. A. Well, it must be around the 26th of June; I'm not so certain about that, but around there.

Q. I want to know why you know it was the 4th of August you went out there. A. It was five weeks after.

Q. After what? A. The first time I went there.

Q. You tell me that you were there on the 4th of August, on the day you signed the paper, the declaration of trust, but you can't tell me any other date when you were there other than the 4th of August? A. No.

Q. I want to know why it impresses itself upon your mind that it was the 4th of August that you were there? A. Mr. Lindabury was away on his vacation and we understood that he wouldn't be back for four or five weeks.

Q. How does that help you to remember today

that it was the 4th of August? A. Five weeks would be the 4th of August.

Q. I am asking you what impresses it on your mind that it was the 4th of August? A. It was around the last of June when he went there first, around the 28th.

Q. I thought you said the first time was the 24th of June? A. Yes, and then we were there after that several times, and they said he would return about four or five weeks.

Q. But how does that impress itself upon your mind the fact that you were there the 4th of August and signed the papers? A. It don't impress it upon me.

Q. Then I ask you how do you know it was the 4th of August? That's what I want to know. A. Well, I don't know, but I'm pretty positive that it was that time.

Q. Tell us why you are positive? I want to get your best recollection on that, that's all. A. I'm pretty sure it was the 4th of August.

Q. What do you base your opinion upon? A. Upon the fact that he came back in five weeks.

Q. The fact that he went away on his vacation and came back in five weeks helps you to place the date as of August 4th? A. He came back in four or five weeks, yes.

Q. How did that fact that he was coming back in four or five weeks from some date you don't remember fix it in your mind now that you were there the 4th of August? A. I don't know.

Q. Somebody told you it was the 4th of August? A. No, no.

Q. If they didn't tell you how do you remember that it was the 4th? A. I don't remember it now.

Q. Why don't you remember it? Are you sure it was not the 25th of June that you were there?

A. No, I ain't positive whether I was there the 25th or the 24th. I was there some one of those days.

Q. You were there about three days in all before the 4th of August? A. No, twice.

Q. You were there the 24th of June, you think, and then you were there about the 26th? A. No, I don't know exactly; somewheres along there the last week in June. I don't know exactly the day.

Q. On the second visit you made to Mr. Lindabury's office Mrs. Clark told you that Mr. Lindabury told her he was going away and would not be back for four or five weeks? A. No.

Q. Who told you that? A. Mr. Lindabury had a business engagement in New York, I believe.

Q. On what date? A. The second day we were there, and he didn't get back, or something, and he couldn't get back or something, and so that was the first day; and we went out there the second time—the second day I don't know exactly. He wasn't there, anyhow.

Q. Didn't you tell me that Mrs. Clark told you on the second visit that Mr. Lindabury had gone away and wouldn't be back for four or five weeks? A. No, she told me after.

Q. What reason was given you the second time you were out there why you didn't see Mr. Lindabury? A. That he was busy and had gone out of the office.

Q. Who told you that? A. Mrs. Clark told me and the fellow in the office told her.

Q. That he was busy and out? A. Yes.

Q. He told you both of those things, that he was busy and out? A. He was out and that he was busy. He wasn't in the office, anyhow.

Q. And then did you go again after that before the 4th of August? A. After the second time?

Q. Yes. A. No, sir.

Q. When after that was it that Mrs. Clark told you that Mr. Lindabury would be away four or five weeks? A. I think a couple of days after that—the next day or so—she told me she had got a letter or 'phone message from Mr. Lindabury and he had went on his vacation and he was liable to be away until the early part of August.

Q. You realized, did you not, when this deed was made there was being conveyed to you absolutely all of the property mentioned in it? A. No, sir.

Q. Was the deed explained to you as to why it was made to you? A. Yes.

Q. Who explained it? A. I don't know whether it was or not, to tell the truth; I don't remember.

Q. Well, did you not appreciate when this deed was made to you that by the terms of that deed all of the property of James Clark mentioned in it was being absolutely conveyed to you, subject to the mortgages that were mentioned in it? A. Yes.

Q. You knew that? A. Well, I realized it, yes.

Q. And you are unmarried, aren't you? A. Yes, sir.

Q. And you have brothers and some other members of your family, haven't you? A. Well, I have nephews and nieces.

Q. And brothers? A. Yes, sure.

Q. How many brothers have you? A. Three.

Q. And you have sisters, have you? A. All my sisters are dead.

Q. Some of your sisters have died leaving children surviving? A. Yes.

Q. You are 60 years of age, you say? A. Yes, sir.

(Recess until 2 o'clock.)

Q. Mr. Kinnaugh, if you thought Mrs. Clark's interests should be protected with respect to the real estate, realizing that you were at the time the deed C-1 was made to you 56 years of age and that you had brothers living, and nieces and nephews living, why did you not, immediately upon the deed being made to you, insist upon some writing being prepared for you to sign and deliver it to either Clark or Mrs. Clark which would protect their interest in the event of their death? A. I don't know; I didn't do it, that's all.

Q. You say that your understanding of the matter, as you gathered it from Mrs. Clark and also from the paper which you signed for Mr. Lindabury and his explanation of that paper was that after Clark's release from imprisonment you were to turn over the garage business to Clark and the real estate to Mrs. Clark; is that right? A. Yes.

Q. You knew that Clark was released on the 7th of March, 1921, don't you? A. Yes, sir.

Q. Why did you not turn over the real estate to Mrs. Clark if that was your understanding? A. Well, Mr. Clark came down to the garage—I don't know, a short time after he came out—and he asked me about it.

Q. What did he say to you? A. He says, "What is the situation in regard to my property?" I ain't sure about them exact words, something to that effect. So I told him what I thought about it, that the property should go to Mrs. Clark and the business should go to him.

Q. What did he say? A. Well, he told me that he was going to see a lawyer; for me not to do anything further about it but to hold it in my name.

Q. Didn't he immediately tell you that he never made any such arrangement and that you had

better not allow that property to go out of your hands? A. No, he didn't say anything about allowing the property to go out of my hands, but I think he said something about not signing the paper.

Q. Well, if you were so sure that the proper understanding of your trusteeship was that after his release from imprisonment you should turn the property over to Mrs. Clark, why didn't you do it? A. I had no reason to do it until they came together themselves.

Q. I am asking you why you didn't transfer the property to Mrs. Clark? A. I had no reason at all, only what Mrs. Clark asked me to do. I was willing to turn it over as soon as he came back. I got no interest in the property.

Q. But you say that you understood that your trusteeship was, that after Mr. Clark's release you should turn the property over to Mrs. Clark? A. Yes.

Q. Then why didn't you, in conformity with what you understood to be your duty under this trusteeship comply with that duty and turn the property over and convey it to Mrs. Clark? A. I had no reason. I told Mrs. Clark—

Q. I want you to answer my question. A. — that I was ready to turn that property over at any time, because I wanted to be released.

Q. You are telling your willingness, but I am asking you why you didn't do it? A. I didn't do it; that's all.

Q. Did you consult with Mr. Lindabury after Mr. Clark spoke to you after his release? A. No; I don't think so.

Q. Did you talk with Mrs. Clark and tell her what Clark had said? A. I don't know; I probably did, but I don't remember.

Q. Did what Clark said to you make any impression upon you, to indicate that you should not turn the property over to Mrs. Clark? A. No.

Q. You were still of the opinion that you were to turn it over to Mrs. Clark? A. I thought she ought to have it.

Q. Why did you think that? A. Because of the deed that was made.

Q. I am asking you, if you thought it was your duty under the declaration of trust, why didn't you do it? A. Well, I told Mrs. Clark I was ready to turn it over at any time.

Q. You have not turned it over up to this time? A. No; I have not.

Q. And you haven't been to any lawyer to have a paper prepared? A. No.

Q. You never went to Mr. Lindabury to consult him about it? A. Not about turning any property over.

Q. Now, Mr. Kinnaugh, after Clark spoke to you when he was released didn't Mr. Lindabury send for you, and didn't you go to him about the talk that Clark had made to you? A. No.

Q. You went to see Mr. Lindabury a few days after Clark's release? A. I don't know; I know it was very shortly afterwards.

Q. What was your purpose in visiting Mr. Lindabury then? A. Mr. Lindabury asked me to come up to see him.

Q. Isn't it a fact, after you got there, that Mrs. Clark had told him that Clark had spoken to you about the property? A. No, sir.

Q. Do you remember Clark asking you to come to Mr. Fallon's office with him? A. Yes.

Q. Didn't Clark then ask you why you had gone to Lindabury's office? A. Yes; he wanted me not to do it.

Q. But you went, notwithstanding? A. I went.

Q. And you told Mr. Clark that you had been requested to go to Mr. Lindabury's office? A. Yes.

Q. Did you tell Mr. Clark what you were to go to Mr. Lindabury's office for? A. No; I didn't know myself.

Q. Well, who requested you to go to Mr. Lindabury's office? A. Well, I don't remember now.

Q. Wasn't it Mrs. Clark? A. It may have been; I don't remember.

Q. You did receive a letter from Mr. Lindabury to go there, didn't you? A. No, sir.

Q. You didn't receive any telephone call from Mr. Lindabury to go there that you recall? A. Not that I remember.

Q. And you didn't go there voluntarily without somebody requesting you to go there? A. No.

Q. When you went to Mr. Lindabury's office what was the conversation between you and Mr. Lindabury concerning this property and about what Clark had said to you, if anything? A. Nothing. Mr. Lindabury asked me what was my recollection seeing Clark and how the property got turned over, and so forth.

Q. Well, what did you say to him in reply? A. I told him that Mr. Clark told me down to the jail he assigned the property over to his wife.

Q. Didn't it occur to you then that you should have told Mr. Lindabury that your trusteeship didn't conform to what Mr. Clark told you? A. No; I didn't say anything about it.

Q. But you say that Clark told you that he wanted the property to go to his wife; isn't that right? A. That is, when I seen him in the jail.

Q. And he never told you a word about your being a trustee, did he? A. Mr. Clark?

Q. Yes. A. No.

Q. The first that you heard about your trusteeship was what you heard from Mrs. Clark after the deed was made, after she told you the property was put in your name? A. I don't know that any deed was made.

Q. C-1, the deed that is in evidence now. A. I don't know whether that was the one that was made at that time or not.

Q. Didn't you testify that Clark had told you that a deed had been made conveying the property to you? A. I didn't say anything about a deed.

Q. Didn't Mrs. Clark tell you that a deed had been made conveying the property to you? A. She didn't say anything about it; she said the property was left to me while he was in jail, and when he would come out the property should be turned over to her and the business to him.

Q. Didn't it occur to you then, as a friend of Clark's that you should go to Clark and ask him if that was his understanding of the matter? A. No.

Q. Didn't it interest you? A. It might have interested me, but he was down in Baltimore and I couldn't go down to Baltimore.

Q. You could have written him a letter, couldn't you? A. Yes.

Q. But you didn't? A. No; because it was his place to write me a letter. I had the specification of everything.

Q. But your specification was gained from Mrs. Clark, or from what she had told you? A. No.

Q. What do you mean by "specification"? What specification are you talking about? A. The way the property was left.

Q. Where did you gain that specification from? A. Mrs. Clark.

Q. Whatever specification you had you gained from what Mrs. Clark told you? A. Yes.

Q. And when Mrs. Clark told you that that was the understanding, that the property was to be held by you for certain purposes, you never took it upon yourself to ask Clark if it was so? A. No; I did not, because I didn't see him.

Q. And then when Clark came out of jail, or a short time thereafter he asked you "what about the property"? A. No; I don't know that he put it in them words. He asked me something about his case or property.

Q. He asked you to turn his property back to him? A. No; he didn't.

Q. What did he say to you? A. "How does my case stand," or something to that effect.

Q. Don't you remember what he said to you? A. No; not in exact words.

Q. If you don't remember why do you say that he did not say that you should turn the property back to him? A. He didn't say anything about transferring the property back to him.

Q. Didn't he say something about turning the property back to him? A. Not according to my recollection, no.

Q. According to your understanding of your trusteeship, when he was released from prison you were to turn over the garage to him? A. That I was willing to do.

Q. You didn't do it until October, did you? A. No, sir.

Q. Was it October or August? A. October.

Q. So that from March to October you continued to hold the business which you understood from the trust agreement that you were to turn over the property to him immediately upon his release? A. (Witness shakes his head indicating "yes.")

Q. Now then, why did you do that? Why did you hold that business from March until October

when you knew it was your duty to turn it over immediately on his release? A. I offered to turn that over to Mr. Clark several times and he didn't seem to want to take it over.

Q. What did you say to him? A. I told him at the first interview I ever had with him when he came from prison: "This is your business and you can have it any time."

Q. Then why didn't you walk out and let him have it? A. I don't know why I didn't walk out; I simply didn't.

Q. Then on the first visit you made to him you said to him, "This is your business," and then every day after that until October you continued to assume the conduct of the business? A. No, sir.

Q. Didn't you stay there until October? A. I was there certain portions of the time.

Q. And didn't you collect the profits during all of that time? A. Yes, sir.

Q. And didn't you pay out moneys during all of that time? A. Yes.

Q. Why did you continue the conduct of the business when the very first words you said to him were "Here's your business"? A. He didn't seem to want to take the business.

The Court: What did he do or say that made you think that. I wish you would give a full explanation of that.

A. He says, "I am going down to see my lawyer and I don't want you to do anything until further notice; I'm going to file a suit, or something to that effect.

Q. He was around the place every day? A. Yes.

Q. And yet you stayed in the business? A. I used to come there in the evening.

Q. But why did you go there in the evening if you thought it was your duty to carry out the terms of the trust agreement and give the business back to him? A. He didn't seem to care to take the business back.

Q. He didn't ask you to stay there? A. Yes.

Q. What did he say? A. He says "You stay around.

Q. Were you paid to stay around? A. I didn't accept any money from him.

Q. Did he offer you any money? A. No, sir.

Q. Did you ask for any money? A. No.

Q. But you went there every evening just as you had done previously? A. Yes, and Sundays I spent all the afternoon.

Q. And yet Clark was about the business, too, wasn't he? A. Well, he was sometimes, the biggest part of the time.

Q. And his son Frank was there; is that right? A. I guess he was; Frank was there pretty near all the time, I guess.

Q. Now, you continued to collect the rents, didn't you—or did you—after Mr. Clark's release from prison? A. Yes.

Q. You didn't collect them all; you let Mrs. Clark collect them? A. She never collected any.

Q. Didn't Mrs. Clark collect the rent of 1102 Madison? A. Oh, I thought you were speaking of 310 Newark.

Q. Why didn't you do it? A. Well, I was pretty busy down there in the garage.

Q. How did you find time to collect the rent of 304 and 306 Newark Street? A. Well, it wasn't in my charge at that time. That was after I gave up the garage business altogether.

Q. When did you first start to collect rents from 304 and 306 Newark Street? A. January, 1922.

Q. Who collected the rents between June, 1919, and the time you gave up the garage business? A. 304 and 306?

Q. Yes. A. Mr. Widener, I believe; I'm not positive.

Q. Who collected the rents for 310 Newark Street at that time? A. After I gave up?

Q. After you gave up the garage business? A. I collected the rents for 310 Newark Street from April 1, 1922 until the receiver was appointed.

Q. Until Mr. Stack was appointed receiver? A. Yes.

Q. Why didn't you collect the rents of the property from March 7, 1920 when Clark was released from prison up to the time the receiver was appointed by this court if your understanding of the trusteeship was that upon his release the wife should have all the real estate? A. What do you mean; after I got out of the garage?

Q. Yes. Well, you and Mr. Lindabury had some agreement with Mr. Clark and Mrs. Clark— A. Yes, that I was appointed to collect them rents.

Q. Whom were you appointed by? A. I don't know; the agreement was between the whole lot of you that I should collect them rents. That's all I know.

Q. Who told you that? A. Why, Mrs. Clark told me.

Q. So that Mrs. Clark was the one you were relying upon all the time in conveying messages to you? A. No, I was in your office two or three times when the question came up about it.

Q. Did I ever authorize you, on behalf of Clark, to collect rents? A. No.

Q. Now, then, I repeat: If you understood the trust agreement to be, that after Clark was released from prison Mrs. Clark was to have all of

the real estate why did you continue to meddle with the real estate insofar as the collection of rents goes? A. I didn't continue. When I got out of the garage, from January 1st, 1922, I had nothing to do with it. 304 and 306 came out of the hands of the receiver at that time, and the Second National Bank, I believe they had a second mortgage at that time, and they understood—I don't know whether they understood, but I was appointed trustee, and they had Mr. Clark over there and Mr. Breen, I believe, seeking some papers. I don't know what they were.

Q. You continued to collect the rents for 304 and 306 up to the time of the appointment of the receiver? A. Yes, from January 1, 1922.

Q. And yet you knew the agreement provided that you should try to safeguard the property from waste for the Clarks, and after Mr. Clark's release from prison you were to turn over the real estate to Mrs. Clark? A. Yes.

Q. Why did you persist in collecting the rents after Clark's release? A. I persisted, in a certain sense, but I understood there was an agreement between you and Mr. Lindabury.

Q. Whom did you understand that from? A. Mrs. Clark.

Q. Why didn't you ask Mr. Clark, or Mr. Clark's attorney, when you knew he was acting as his attorney, whether that was so? A. I don't know.

Q. You do know that I was acting as Mr. Clark's attorney at or about that time, don't you? A. Yes.

Q. You didn't see fit to speak to me about it and ask me anything about it, did you? A. No, I didn't ask you about it.

Q. And you didn't ask Mr. Clark, either, as to whether you should continue to collect the rents? A. I don't believe I did.

Q. Well, why didn't you? A. I don't know; I thought there was an agreement between the whole lot of you that I should do it, that's all.

Q. And you also thought there was an agreement under this trusteeship whereby, upon Clark's release, you were to transfer the property to Mrs. Clarke? A. Yes.

Q. But you didn't do it. A. No.

Q. And nobody ever asked you to do it, did they? A. No.

Q. And up to this time the property continues in your name, doesn't it? A. Well, I don't know.

Q. I mean, subject to the receivership, the title is in your name? A. I believe so.

Q. You have never done anything in the way of transferring it to Mrs. Clark? A. No.

Q. How many times have you been out to see Mr. Lindabury since Mr. Clark's release from imprisonment? A. I don't understand that question.

Q. How many visits did you make to Mr. Lindabury's office since Clark's release from imprisonment? A. I don't know. I was out there shortly after Mr. Clark came home. I thing I was out there this June; I don't know exactly. I think it was in June.

Q. That is the time you made the affidavit? A. Yes, I think so; and I was out there last Thursday or Friday.

Q. Last Thursday or Friday what were you doing out there? A. I went out to have a conference with Mr. Lindabury.

Q. And you talked over what the facts were in this case? A. No.

Q. What did you say when you were out there? A. I hardly said nothing. Mr. Lindabury asked me to fetch all the papers out there.

Q. What did you say at that time? A. I don't

remember saying anything. Mr. Lindabury looked over the papers, and he and Mr. Lafferty practically did all the talking.

Q. Were you asked any questions? A. No.

Q. Did you make any statements there? A. No.

Q. Did Mrs. Clark make any statements in your hearing? A. No.

Q. So you went out there and you weren't asked any questions, and you didn't make any statement? A. I don't know; I don't remember.

Q. Don't you think it is rather strange that you were asked to come out there Thursday or Friday and you weren't asked any questions and you didn't make any statements? A. No; the case was coming up and Mr. Lindabury went over the papers and he and Mr. Lafferty discussed it.

Q. What do you mean, they were discussing these papers? A. These papers there.

Q. What papers are you pointing to? A. Some affidavit that you had sent to return to the court here or something to that effect.

Q. Now, then, the first visit that you made to Mr. Lindabury's office, after Clark's release from prison, you say Mr. Lindabury asked you what your recollection was of the understanding you had with Mrs. Clark as to why the property was turned over to you? A. No, not with Mrs. Clark; Mr. Clark.

Q. What did Lindabury say to you after Clark's release from imprisonment? A. He asked me what my recollection was of my visit with Clark in the jail.

Q. And you told him that your recollection was that Mr. Clark said that the wanted the property to go to his wife; is that it? A. (No answer.)

Q. I am asking you now what did Mr. Lindabury say? A. He asked me what my recollection was of my visit to Mr. Clark in the jail.

Q. What did you say to him in reply? A. I told him that my recollection was that Mr. Clark agreed to assign over the property to his wife.

Q. Anything else said on that visit, that you remember? A. Yes.

Q. What was it? A. Well, Mr. Lindabury said he didn't want to advise me; but he told me I had better see counsel.

Q. Didn't you tell Mr. Lindabury what you understood to be the purport of the trust agreement? A. No, I don't believe I did.

Q. Did Mr. Lindabury explain to you what the purport of the trust agreement was at that time? A. I don't think so; I don't remember.

Q. But you knew all the time after Clark went away that you were a trustee to collect the rents and apply the money to the payment of interest on mortgages, taxes and other charges, didn't you? A. Yes.

Q. And yet you told Mr. Lindabury that Clark's statement to you was that the property was to be turned over to Mrs. Clark? A. That was on my visit to jail.

Q. Did Lindabury tell you when the property was to be turned over? A. No.

Q. Was that all that Clark said to you that you remember, that he wanted the property turned over to Mrs. Clark? A. Yes.

Q. Clark didn't say to you that the property was to be turned over to him after he got out of prison? A. No.

Q. And he didn't say after he got out of prison you were to turn back the garage business? A. No.

Q. And he didn't say, "While I am in prison I want you to pay my wife $20 a week?" A. No.

Q. And he didn't say to you while he was in prison you could renew the mortgages on the property? A. He didn't say anything relating to me at all.

FRANK VINCENT CLARK, sworn on behalf of the defendants, testified as follow:

Direct Examination by Mr. Lafferty:

Q. How old are you, Frank? A. Twenty-two.

Q. Are you the son of James Clark? A. Yes.

Q. The complainant in this case? A. Yes, sir.

Q. And also of Mrs. Katherine V. Clark, one of the defendants? A. Yes, sir.

Q. Did you visit your father at the Essex County jail in Newark during the month of June, 1919? A. Yes, sir.

Q. Was anyone else with you at that time? A. I visited him on several occasions.

Q. How many times, do you suppose? A. Three or four times.

Q. Did you ever visit him there in company with Mr. Kinnaugh? A. Yes, sir; he told me to bring Mr. Kinnaugh out there.

Q. Did you hear a conversation between Mr. Kinnaugh and Mr. Clark, your father? A. They talked for awhile, and he told Mr. Kinnaugh would help me in the garage and take care of things there.

Q. Did you hear what they were talking about? A. No. He said to me, "Bill, come here," and I went over to him, and he says, "Bill will help you take care of the place, to assist in running the garage business." He says, "You do as he says," and I says, "All right."

Q. Where had you been during the other part of the conversation between your father and Mr. Kinnaugh? A. Well, he called Mr. Kinnaugh over to one side and let me stand over by the corner.

Q. Do you live with your mother at this time? A. Yes, sir.

Q. Is she a drunkard? A. No, sir.

Cross Examination by Mr. Fallon:

Q. Frank, you were out there to see your father with your mother, weren't you, at the time your mother was there? A. Yes, sir.

Q. And you were with your mother on one occasion when your mother asked your father to transfer the property to her, weren't you?

Mr. Lafferty: I object to this as not cross-examination.

Mr. Fallon: He said he was there and I want to know what was the time.

Mr. Lafferty: He testified to only one of these visits.

Mr. Fallon: I will withdraw the question if there is any objection to it.

(Miss) MARY MAGDALEN CLARK, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. Mary, how old are you? A. Twenty-seven.

Q. Do you live with your mother? A. Yes, sir.

Q. Where? A. 120 Park Avenue.

Q. How long have you lived with your mother? A. Where, at 120 Park Avenue?

Q. Yes. As long as we have been living in the house.

Q. We have no idea how long that is? A. It might be seven years, I don't know—six years.

Q. Is your mother a drunkard? A. No, sir.

No Cross Examination.

(Miss) MARGARET W. CLARK, sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. Lafferty:

Q. How old are you? A. 23.

Q. Where do you live? A. 120 Park Avenue.

Q. Do you live there with your mother? A. Yes, sir.

Q. How long have you lived there with her? A. Seven or eight years.

Q. Have you lived there all of that period of seven or eight years with your mother? A. Yes, sir.

Q. Is your mother a drunkard? A. No, sir.

Mr. Lafferty: That is all.

No Cross Examination.

Mr. Lafferty: Defendants rest.

COMPLAINANT'S REBUTTAL.

JAMES CLARK, recalled in his own behalf, in rebuttal, testified as follows:

Direct Examination by Mr. Fallon:

Q. Mr. Clark, did you tell Mr. Lindabury, on the occasion when he visited you in the Essex County jail, that it was your desire to have your real estate to be transferred to Mrs. Clark after your release from imprisonment? A. No.

Q. Did Mr. Lindabury explain to you the effect of the deed of June 25th, which you signed? A. No, sir.

Q. What did he say to you about that deed when you signed it.

Mr. Lafferty: I object.

Mr. Fallon: I withdraw the question.

Q. Did Mrs. Clark, on any of the occasions when she visited you at the Essex County jail, say to you that she would have nothing to do with you, and that she was through with you unless you transferred the property to her? A. No, sir.

Q. Did you say to Mrs. Clark on any occasion when she visited you at the Essex County jail, that she should make sale of the premises 306 Newark Street, Hoboken? A. Well, we tried—

Q. I am asking you whether you said that to her, not what you were trying to do.

Mr. Lafferty: I object to the question as not rebuttal.

Mr. Fallon: I understand that it is. The keeper of these notes tells me that Mrs. Clark made that statement.

Mr. Lafferty: I will not object to an answer yes or no.

A. 304 and 306 were in the hands—

Q. I am not asking you that? A. Yes.

Q. Yes what?

The Court: Wait a minute. (Addressing the witness) Do you remember the question?

Q. (The question is read by the stenographer.)

The Court: Answer that "yes" or "no" if you can, or say that you don't remember.

A. I can't remember that, your Honor.

Q. All right. Did you say to Mrs. Clark, at any time that she visited you at the Essex County jail, that after you came out of jail she was to have the real estate and you were to have the garage business? A. No, sir.

Q. Did you at any time say to Mrs. Clark while you were in the Essex County jail that she should go to Mr. Lindabury and make any such statement to Mr. Lindabury as I have just mentioned in the preceding question? A. No, sir.

Q. Did you ever say to Mrs. Clark while you were in the Essex County jail, upon your liberation from imprisonment she should have the real estate? A. No, sir; why should I?

Mr. Lafferty: I ask that that be stricken out.

The Court: Strike out "why should I."

Q. Did you, while you were confined to the Essex County jail say to Mrs. Clark that she should go to Mr. Lindabury and say to Mr. Lindabury that you wanted to turn your property over to her, Mrs. Clark? A. No, sir.

Q. Did you ever say to Mr. Kinnaugh, while you were confined in the Essex County jail, that you would transfer your property to your wife? A. No, sir.

Q. Did you say to Mr. Askley, concerning Swift & Co., when he visited you at the Essex County jail, that Mr. Lindabury was your attorney? A. No, sir.

Examination by the Court:

Q. Mr. Clark, you still say that is not your signature to that deed, marked Exhibit C-1? A. I guess it is, your Honor, because at that time I

was pretty nervous and my hand was very shaky; but I can say now that it is my signature.

No Cross Examination.

Mr. Fallon: Complainant rests.

The Court: Well, what do you gentlemen say about arguing it?

Mr. Lafferty: I am willing to argue it, but I would like an opening from Mr. Fallon.

Mr. Fallon: The bill of complaint is my opening and my bill for relief. I stand on that.

The Court: No, he is entitled to a little bit more than that. You must remember this is not a court of criminal jurisdiction, and I am familiar with the practice of some prosecutors of reading the indictment by way of opening, but that is hardly fair. This is a court of equity.

Mr. Fallon: All right. Then I will say, by way of opening, that it is the contention of the complainant that this deed, Exhibit C-1, which purports to be an absolute conveyance of the real estate, on its fact, cannot, in view of the testimony of all of the witnesses, stand as to that which it purports to be, notwithstanding the habendum clause which is in it.

(The case was argued on both sides, and at the close of the arguments the court rendered the following decision):

Oral Opinion.

BENTLEY, V. C. (orally):

This is a bill to set aside a conveyance and for several auxiliary reliefs filed by the complainant against his wife and a man named William Kinnaugh.

In the month of June, 1919, the complainant was in custody in the Essex County jail by reason of his conviction of a crime against the Federal Government, awaiting transportation from that place to the penitentiary in Maryland, where he was to serve his sentence. He had been convicted in December of the preceding year and had been released on bail after being in custody for a considerable time pending the determination of his appeal in the United States Circuit Court of Appeals. At the time of his trial under the Federal indictment he was represented by an attorney named Herbert Davis, and for about one and one-half days of his trial he was further represented by counsel in the person of another attorney named Harrison P. Lindabury. After his conviction he was unable to retain Mr. Lindabury to argue his appeal because he was without pecuniary means. It appears that his appeal was perfected excepting for the briefing of it by Mr. Lindabury and such guidance as could be given by the latter was imparted to a third attorney, Mr. Kavanaugh, who actually argued the appeal. The appeal was dismissed, or the conviction was affirmed, as I recall it, in the month of May, but that is of no moment, —sometime in the spring or early summer of 1919; thereupon, as I have said, this man was lodged in the Essex County jail.

At this time, he was the owner of a number of parcels of real estate, all situate in the City of

Hoboken, and of a garage business from which he appears to have made his living. His wife, knowing that he was to go to prison, importuned him to convey and transfer to her all of his property for her protection, and that of the children. This he certainly, and without contradiction, refused to do. He has given the reason that he says he advanced for such refusal, but I am not at all concerned with that, except as it may serve to shed some light on their present dispute.

It also appears from the testimony of Mr. Davis that at the solicitation of the complainant's wife he went to the complainant and urged him to make such a conveyance to Mrs. Clark. The defendant Kinnaugh, as I recall his testimony, also strongly urged the complainant to make such a conveyance to his wife. But in the face of all these people he refused, until his wife issued to him the ultimatum that unless he would turn over his property to her she would refuse to assist him any further in his affairs. He did, and I believe for that reason, ultimately agreed that while he would not convey to his wife he would convey to his friend at that time, the defendant Kinnaugh; and, as a result of a visit by Mr. Lindabury to him, he did execute a deed conveying all the property that he possessed to the said Kinnaugh.

The deed was absolute on its face, expressed a consideration of one dollar, and was executed by him in a great hurry on the morning of the 25th of June when it was expected that he would be immediately conveyed to the Federal prison. Mrs. Clark did not join in the deed at the time that it was executed by her husband. As to when she did affix her signature to it there is a great divergence in her own testimony. In fact, as I said, during her cross-examination she rendered her position

such upon this point that it is impossible to place any credence in what she may say. Either she has made a mistake or she has most shamefully falsified in her testimony. I am inclined to think, however, that the more charitable view is the correct one, that she foolishly made a mistake in her testimony on the second day of the trial, and then this morning, realizing that she had done so was not sufficiently alert to realize that the thing to do was to come out in the open and say so. But on that point there are two powerful pieces of evidence, to the effect that she did not execute the deed until the 4th of August following the execution of it by her husband. The first is the certificate of Mr. Lindabury as Master in Chancery who took her acknowledgment and that of her husband; and, secondly, his testimony is unquestionably true. Trial counsel for the defendant has said as much in his testimony. I want to say right here that he took the stand to prove a formal matter, sought my advice upon it before doing so, and I saw no impropriety then and I see no impropriety now in his having testified, and no point is made of it by his very alert adversary who I feel would make a point of it if there were any impropriety. Mr. Lafferty admits that Mr. Lindabury was not a lawyer who paid much attention to his office routine. It is also true that Mr. Lindabury has been unable to corroborate his testimony by any records from his office or by producing his stenographer, or carbon copies of letters, entries in diaries, or anything else; and yet there are very able and upright lawyers who are often caught in the same predicament. Now, it is absolutely unbelievable on my part that a lawyer of the standing of Mr. Lindabury could have consciously entered into a fraud upon this complainant in his

then helpless position and, in fact, complainant's counsel concedes as much. Nor do I believe it possible that he could have been mistaken as to when he executed the certificate of acknowledgment to the deed or conveyance from the complainant to Kinnaugh. Unquestionably,—and it isn't denied by anybody—the deed was signed by the complainant on the 25th of June. It is clear that Mr. Lindabury did not then fill out the certificate of acknowledgment, but did fill it out at the time and on the day that it was executed by Mrs. Clark. The certificate itself bears the date of August 4, 1919, and was recorded on the following morning at 10:30, and at the same time Kinnaugh executed a declaration of trust to hold the property, not for the beneficial use of the complainant but for the latter's wife. Mr. Lindabury has explained, I think, the long delay between the drawing of the deed, its execution by the complainant, and the execution by the defendant wife. He says that he was busy. We all know it was the summer time when lawyers become more or less lax in the conduct of their offices, and he did not want her to execute that deed, for fear it might find its way into the hands of Kinnaugh in such a way as to indicate delivery, until he had something to protect Mrs. Clark from any action by, or misfortune that might occur to, Kinnaugh, such as death. Therefore, he held the execution of the deed by her until the 4th day of August, on which day he had Mr. Kinnaugh in his office, and where, simultaneously, she executed that deed and Kinnaugh executed the declaration of trust, and a copy thereof was given to her, and the deed was delivered to Kinnaugh who, in turn, turned it over to Mrs. Clark who procured the necessary revenue stamps and, as I have said, had it recorded.

The case of the complainant is that he conveyed to the trustee, Kinnaugh, upon no such condition as the defendants have alleged but, instead, upon these conditions: That he was to conserve the property during the complainant's term of imprisonment, pay to the complainant's wife a weekly sum for her support, and upon the complainant's release from prison to return the property to him; otherwise, if he should die during his imprisonment, to divide it among his four children. And that, of course, presents the one single issue that is raised in this case as to the conditions upon which this trust was created. I find it impossible to believe that the latter were the true conditions, and for a number of reasons: In the first place, this man was in a situation where unless he did something his property would be swept away. Much of it was encumbered with mortgages and there were some judgments against it, and a large number of liens against it represented by recognizances. Those recognizances have been cleared away by his wife during his imprisonment. Had nothing of that sort been done I am convinced, notwithstanding what he says, that he would have returned to Hoboken to have found himself without any of his property; secondly, I can well see the situation in which he might have seen himself if his wife, against whom at that time he had the feeling that she was disloyal to him, had come into the open and was disloyal. And, in the next place, it would have been an advantage to him to have this property completely out of his possession when he undertook to get the remission of the $5,000 fine that accompanied the prison sentence. All of these things make it seem natural to me that he did what was natural for him to do, that is, for the property to be turned over to his wife upon

his release from prison and not to be turned back to him. Furthermore, I must confess that I am not favorably impressed by the man's general bearing and attitude and his manner of giving his testimony. It was a most significant thing that, in the face of his affidavit supporting his bill, in the face of the whole theory of his case as he saw it develop in his examination here, that he should have testified on cross examination that the signature to the deed that I have mentioned was not his signature when, in fact, it was; and it was not until I think the very last question was asked in the entire hearing, and when that was asked by me, that he then admitted that it was his signature and that he was excited at the time he made it and he wrote a little larger than usual, but he thought it was his signature.

Furthermore, I don't want it to be understood that this is in line of punishment but I feel that it is my duty, in weighing his testimony, to take into account what the legislature has said I should, and that is, that this man has been convicted of a serious offense, in view of the testimony that he was sentenced to prison for five years and to pay a fine of $5,000. All of those things incline me to the belief that the condition of the trust was the condition that has been testified to by Mr. Lindabury.

I also am not able to follow the argument of counsel in his behalf, that this conveyance was void because made without any independent advice. Assuming for the moment that Mr. Lindabury was not his attorney; could he be said to have been in such a position as to require independent advice? I don't think the doctrine applies to the facts in the case. That doctrine is exemplified in Haydock v. Haydock, Post v. Hagen, Slack

v. Slack, and all the other cases along that line. In those cases the fact was that the deed of gift was a purely voluntary conveyance. In this case, I don't so judge it, and I so flatly decide. It seems to me that the conveyance here was made for the purpose of protecting some of his interest in that property because, clearly, it was better for this man to feel that when he came back his wife or his family should be in the enjoyment of his property rather than that it should have been swept away. If it had done nothing else it would have relieved him completely, or *pro tanto* of the duty of furnishing support. Therefore, for that reason, briefly stated, I don't think that this comes within the doctrine of independent advice.

I should have said before, that there has been a great deal of discrepancy in the testimony here. I have been greatly interested in the cross examination by the complainant's counsel; but I feel that a great deal of that is more in form than substance. Astute cross examining counsel can always put the most intelligent witness in a false position; but I don't feel that, with the exception of Mrs. Clark, there has been any real disclosure of falsehood or mistake on the part of any of the other witnesses.

Additional Memoranda.

In addition to the foregoing conclusions announced at the close of the hearing, I have given some attention to the questions of law raised by the complainant, directed, first, to the validity of the deed from the complainant to Kinnaugh, and, secondly, the construction of the language of the declaration of trust:

"At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined by the expiration of the term of his imprisonment, or parole, or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift & Co., if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the garage business conducted on a part of said premises, if the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to."

There is not, so far as I know, any authority or rule of law that requires a declaration of trust to be executed simultaneously with the conveyance of the legal title. In Seibold v. Zieboldt (93 N. J. Eq., 327), Collins v. Collins (63 N. J. Eq., 602), White v. White (60 N. J. Eq., 104), Mulock v. Mulock (31 N. J. Eq., 594), and many other cases of a similar nature, there was neither any reservation in the deed nor independent instrument to express the same. So that these authorities are no guide to the instant case. On the other hand, in Smith v. Powell (11 N. J. Eq., 349) and Iauch v. Socarras (56 N. J. Eq., 538) declarations of trust made long after the conveyance were held to be valid. It is apparent that such instruments not contemporaneous with the deed that calls them into being should be carefully scrutinized; but I am so convinced, not only from the testimony but even more from the surrounding circumstances of

the transactions in the case at bar, that I have no hesitancy in finding as a fact that the declaration of trust under consideration faithfully disclosed the conditions upon which the complainant conveyed to Kinnaugh, the one person in whom he had confidence. So far as the attack made upon the certificate to the acknowledgment is concerned, I know of no case that holds that the uses upon which a conveyance is made must be expressed in that instrument, and none are brought to my attention by counsel.

In construing the language of the covenant to return the garage business quoted above, little if any assistance is to be found from an examination of authorities, as was pointed out by Mr. Justice Black in Coyle v. Donaldson (91 N. J. Eq., 138), cited by complainant's counsel in his brief. In that case it was determined that the construction of the will, giving to one of the parties "the coal business now owned by me", required a broader meaning than the mere good-will, lease, and ordinary equipment; but this was said to be so because of the context and not by "fixing the attention on single words". Just so here. When Kinnaugh agreed to return the garage business to the complainant upon his liberation from prison, it followed an agreement to convey the lands that had passed from the complainant to him to the complainant's wife, "and will turn over the garage business *conducted on a part of said premises*". If he was to convey the land to Mrs. Clark, it is difficult to understand how he could have likewise given it to the complainant, and the whole frame of the declaration of trust and the conditions under which it was given, render it absurd to suppose that the conveyance of the real estate was to be to both of them as joint tenants or tenants in com-

mon. Therefore, my construction of the language under consideration is, for reasons I have already touched upon, that it was the complainant's intention to completely strip himself of all his tangible property, but to retain against his return to his home a going business, to be operated by his son assisted by the defendant Kinnaugh, at the complainant's exhortation.

The bill of complaint should be dismissed.

Exhibit C-1.

THIS INDENTURE, made the twenty-fifth day of June, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

BETWEEN JAMES CLARK and CATHERINE V. CLARK, his wife, of the City of Hoboken, in the County of Hudson, and State of New Jersey, party of the first part;

AND WILLIAM KINNAUGH, of the City of Hoboken, in the County of Hudson, and State of New Jersey, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar ($1.00) lawful money of the United States of America, to him 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 being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bar-

gain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson, and State of New Jersey,

FIRST TRACT: All that certain lot, tract or parcel of land and premises hereinafter particularly described situate, lying and being in the City of Hoboken, in the County of Hudson, and State of New Jersey, and which is known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York" and filed in the Office of the Clerk of the County of Hudson, as lot number thirty-one (31) in Block number one hundred and two (102) fronting and facing on the westerly side or line of Madison Street as shown on said Map, and being twenty-five feet wide in front and rear and one hundred feet deep on each side, as by reference to said map will more fully appear.

Being the same premises conveyed to the party of the first part by Ellen Cavanagh and husband by Deed dated March 13, 1917 and recorded in Book 1252 of Deeds for Hudson County, on page 137.

SECOND TRACT: All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, which upon a certain map entitled "Map of prop-

erty situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, and laid out into lots November, 1860 by Daniel Ewen and Austin D. Ewen, City Surveyors, New York" on file in the office of the Clerk (now Register) of the said County of Hudson, is known, laid down and designated as lot number six (6) in Block number twenty-one (21). Being the same premises conveyed to the party of the first part by Joseph Jeger and wife by Deed dated May 1st, 1917, and recorded in Book 1257 of Deeds for Hudson County, page 280.

THIRD TRACT: All that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, is known and described as follows: Commencing at a point in the northerly line of Newark Avenue distant fifty-five feet westerly from the northwesterly corner of Newark Avenue and Willow Avenue (formerly called Willow Street), and running thence northerly and parallel with Willow Avenue (formerly called Willow Street), forty-three feet eight inches; thence westerly and at right angles to Willow Avenue (formerly called Willow Street) ten feet; thence northerly and parallel with Willow Avenue (formerly called Willow Street) nineteen feet; thence westerly and at right angles to Willow Avenue (formerly called Willow Street) fifteen feet; thence southerly and parallel with Willow Avenue (formerly called Willow Street) seventy-four feet one inch to the northerly line of Newark Avenue; thence easterly and along the northerly side of Newark Avenue twenty-seven feet and six inches, to the point or place of beginning.

FOURTH TRACT: Also; ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which is known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots by Daniel Ewen, Austin D. Ewen, City Surveyors, New York, Nov., 1860" on file in the office of the Register of said County of Hudson as the front part of lot number 4 (four) in block number 21 (twenty-one), and particularly described as follows, viz:

BEGINNING at a point in the northerly line of Newark Street distant eighty-two (82) feet and six (6) inches westerly from the northwesterly corner of Willow Avenue and Newark Street, running thence westerly and along the northerly line of Newark Street twenty-seven (27) feet and six (6) inches; thence northerly and parallel with Willow Avenue eighty-five (85) feet and five (5) inches; thence easterly at right angles to Willow Avenue twenty-five (25) feet; and thence southerly and parallel with Willow Avenue seventy-four (74) feet and one (1) inch to the northerly line of Newark Street to the point or place of beginning.

Said Third and Fourth Tracts being the same premises conveyed to the party of the first part by Celia Rosenberg and husband by Deed dated September 27, 1917, and recorded in Book 1267 of Deeds for Hudson County, page 146.

FIFTH TRACT: All that certain tract, piece or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of

New Jersey and which is known and distinguished upon a certain map entitled, "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen, Austen D. Ewen, City Surveyors, New York," filed in the office of the Clerk of the said County of Hudson and being part of lot number six (6) in block number two (2), and which said lot is bounded and described as follows: that is to say: —Beginning at a place in the southerly line of Newark Avenue distant two hundred and sixteen (216) feet northeasterly from the corner formed by the intersection of the southerly line of Newark Avenue by the northerly line of Ferry Street and running thence southerly and at right angles to Newark Avenue eighty-five 60/100 feet more or less to the line of land of the Hoboken Land and Improvement Company; thence easterly along the line of land of said Hoboken Land and Improvement Company twenty-five (25) feet more or less to the easterly line of said lot number six (6); thence northerly eighty-five 28/100 feet more or less to the southerly line of said Newark Avenue and thence southwesterly along the said southerly line of Newark Avenue twenty-five (25) feet to the place of Beginning. Being the same premises conveyed to James Nealon by Peter Kerrigan and Catherine, his wife, by deed, dated April 8th, 1880, and recorded April 12, 1880 in Deed Book 345, page 243, &c., Hudson County Register's Office; and also, ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, described as follows, viz:—Commencing at a point in the northerly line of Ferry Street which point is where the line dividing lots numbered six (6)

and seven (7) in Block number Two (2) on the "Map of the property of the Estate of John G. Coster deed, if it were continued southerly in a straight line would strike the northerly line of Ferry Street and from said point of commencement running thence westerly along the northerly line of Ferry Street about twenty-seven (27) feet and forty-five hundredths (45/100) of a foot to where the line dividing Lots five and six in said Block, if continued southerly in a straight line would strike said northerly line of Ferry Street; thence northerly in range with said line between said lots five (5) and six (6) about eight feet and fifty-eight one hundredths of a foot (8.58/100') more or less to the line of property now or late of John G. Coster deceased; thence easterly along said Coster line twenty-five (25) feet; thence southerly and in continuation of the line between lots six (6) and seven (7) twenty (20) feet and six (6) inches more or less to the northerly line of Ferry Street the point or place of beginning.

Being the same premises conveyed to the party of the first part by Caroline W. Clarke and husband by deed dated March 25, 1918, and recorded in Book 1276 of Deeds for Hudson County, page 370. Said tracts are conveyed subject to mortgage encumbrances and other liens aggregating $23,100 and subject to existing tenancies.

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 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, 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.

IN WITNESS WHEREOF, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

JAMES CLARK,
CATHERINE V. CLARK.

Signed, Sealed and Delivered
in the Presence of

H. P. LINDABURY.

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

BE IT REMEMBERED, That on this twenty-fifth day of June, in the year of our Lord One Thousand Nine Hundred and Nineteen, personally appeared James Clark and on August fourth, nineteen hundred and nineteen, personally appeared Catherine V. Clark before me, the subscriber, a Master in Chancery of New Jersey, and the said JAMES CLARK and CATHERINE V. CLARK, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, 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 CATHERINE V. CLARK, 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.

HARRISON P. LINDABURY,
Master in Chancery,
of New Jersey.

Exhibit C-2.

HARRISON P. LINDABURY
COUNSELLOR AT LAW
Essex Building
NEWARK, N. J.

Telephone Market 7720

September 3, 1920.

Mr. James Clark,
Maryland Penitentiary,
Baltimore, Md.

My dear Mr. Clark:

We are now about ready to take a deed for the property at Hoboken which you had your option agreement with Swift & Company. The deed is to be made to William Kinnaugh. Swift and Company desire an assignment from you to Kinnaugh so as to avoid any question about the propriety of making the deed to him, under an agreement which calls for a conveyance to you. Please sign this instrument opposite the seal and acknowledge it be-

fore an officer who can take acknowledgments in the State of Maryland. Please execute and return this paper in the enclosed stamped and addressed envelope as promptly as you are able.

Yours truly,

H. P. LINDABURY.

Exhibit C-3.

JOHN J. FALLON,
COUNSELLOR AT LAW,
Hudson Trust Building,
HOBOKEN, N. J.

Telephone: 348 Hoboken

May 18, 1921.

Harrison P. Lindabury, Esq.,
Essex Building,
Newark, N. J.

Dear Sir:

I wrote to you under date of May 11th, requesting that you forward to me a copy of a paper writing prepared in your office and submitted by one of your clerks to James Clark, while he was confined in the Essex County Jail, and which, at your clerk's request, was signed by Clark, and which refers to a conveyance of property by James Clark and his wife to William Kinnaugh. Not having received a copy thereof up to this writing I am again writing to request that you forward same to me. In Clerk's behalf I contemplate instituting a Chancery proceeding having for its purpose the

re-conveyance from Kinnaugh to Clark of the property to which the aforesaid paper writing relates. Prior to the institution of said suit I desire to have a copy of the aforesaid paper so that I may thereby be fully informed of the full import thereof. In order that there may be no misunderstanding as to my having Clark's authority to make this request of you, I am having Mr. Clark sign his name to the bottom of this letter.

Very truly yours,

JJF/LB J. J. FALLON.

Harrison P. Lindabury, Esq.,
Newark, N. J.

Dear Sir:

I hereby request you to forward to John J. Fallon, 51 Newark Street, Hoboken, N. J., a copy of the paper writing hereinabove mentioned.

JAMES CLARK.

Exhibit C-4.

JAMES CLARK, et ux To WILLIAM KINNAUGH.	AGREEMENT DATED AUG. 4TH, 1919.

WHEREAS, by Deed dated June 25th, 1919 JAMES CLARK and wife have conveyed to me five (5) certain tracts of land situate in Hoboken, Hudson County, New Jersey, and

WHEREAS, said lands were conveyed to me in trust for certain purposes as hereinafter set forth.

THEREFORE, BE IT KNOWN, that the said lands and premises so conveyed to me, WILLIAM KINNAUGH of Hoboken, Hudson County, New Jersey, by said Deed as aforesaid, are held by me in trust for the following uses and pusposes, that is to say:

1. To collect the rents, issues and profits from said lands and premises and pay all taxes, interest on mortgage encumbrances, fire insurance and repairs on said premises, and also on the premises at No. 120 Park Avenue, Hoboken, New Jersey, now occupied by the wife and family of said James Clark.

(a) Out of the excess, if any there be, to pay the sum of Twenty Dollars ($20.00) per week to CATHERINE V. CLARK, wife of the said James Clark.

(b) Out of the excess, if any there be, to pay any indebtedness other than mortgage indebtedness, of the said James Clark.

(c) Out of the excess, if any there be, to use the same for the protection of said property by the payment of mortgage principal, or otherwise.

2. I further agree, that I will supervise and manage the Garage business conducted upon the premises situate on Newark Street, heretofore conducted by the said James Clark, receiving the moneys that may accrue from the conduct of said business, and any profits resulting therefrom to be used on account of payments provided for in the preceding paragraph.

3. I further agree, that I will endeavor to re-

fund any mortgages on any of the properties so conveyed to me, or the property at No. 120 Park Avenue, Hoboken, New Jersey, payment of which is demanded by the mortgages; and further, that I will endeavor to purchase the premises adjoining said Garage premises on Newark Street, now held under lease from Swift and Company, with option to purchase, and for that purpose will endeavor to borrow the consideration moneys by mortgage loans upon said premises and the premises adjoining upon which the Garage building stands, or otherwise.

4. At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term or imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swife and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, of the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourth day of August 1919.

WILLIAM KINNAUGH (L. S.)

Signed, sealed and delivered
In the presence of
H. P. LINDABURY.

(No Stamps)

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

BE IT REMEMBERED, that on this fourth day of August in the year of our Lord one thousand nine hundred and nineteen before me, the subscriber, a Master in Chancery of New Jersey personally appeared William Kinnaugh who, I am satisfied, is the declarent mentioned in the within Declaration of Trust, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HARRISON P. LINDABURY,
Master in Chancery of New Jersey.

Received in the Office and Recorded Mar. 8th, 1921, at 3:39 P. M. No. 2060.

Exhibit C-5.

LAW OFFICES
LICHTENSTEIN & LICHTENSTEIN
HUDSON TRUST BUILDING

Telephone Hoboken 7

JULIUS LICHTENSTEIN
HARRY SCHWARTZ
DAVID FRIDENBERG

Hoboken, N. J., March 27, 1923.

John J. Fallon, Esq.,
Hoboken, N. J.

Dear Mr. Fallon:

Miss Gibbs has endeavored to make up Mrs. Clark's account as best she could and the result of her work is as per enclosed account of Mrs. Clark and Mr. Kanaugh.

I understand from Miss Gibbs that Mrs. Clark claims that there is a great deal of money she expended other than is shown on this account but that she has been unable to find the bills in some of these instances and in others that Mr. Clark has them.

Very truly yours,

JL/MWG. JULIUS LICHTENSTEIN.

Exhibit C-5.

ACCOUNTS

of

Mrs. Clark and Mr. Kanaugh

July 1919 to December 1922.

Total Disbursements by Mrs. Clark	$33,203.61
Total Receipts by Mrs. Clark	31,346.85
Deficit	$1,856.76

RECEIPTS BY MRS. CLARK

1919	
July	$364.00
August	370.00
September	318.50
October	402.00
November	475.00
December	453.00
1920	
January	476.00
February	489.00
March	521.00
April	566.00
May	601.00
June	623.00
July	573.00
August	687.00
September	642.00
October	642.00
November	710.00
December	667.00
1921	
January	696.00
February	558.00
March	522.00

April	479.00
May	503.00
June	503.00
July	433.00
August	400.85
September	419.00
October	379.00
November	180.00
December	175.00
1922	
January	145.00
February	174.00
March	201.00
1102 Madison St. 10 mos. @ $14	140.00
19 months @ $25	475.00
Gas money	584.00
Borrowed from D. Gross	1,100.00
Borrowed from Steneck Trust Company	5,000.00
Borrowed from W. O'Neill	2,500.00
Borrowed from D. Gross	5,700.00
Borrowed from Jefferson Trust Company	500.00
Total Receipts	$31,346.85

DISBURSEMENTS MADE BY MRS. CLARK.

Bayonne Steel Ceiling Co. (judgment)	$256.55
Mrs. Tallerico (judgment)	230.51
Mr. & Mrs. John Powers (judgment)	222.21
Mr. Miller (painter) (judgment)	161.21
Mr. Flax (roofer) (judgment)	110.00
Jefferson Trust Co. (judgment)	500.00
Levy Bros. (judgment)	58.75
Gandore Leproze (judgment bail bond)	117.88
Mr. McAndrews	20.00
David Gross (principal)	2,760.50

David Gross (interest)	254.70
William O'Neill (note)	2,000.00
William O'Neill (interest)	143.00
Mrs. Clark (support of self and child @ $20 per week from June 17, 1919 to April 1, 1922)	2,900.00
Mr. Ackerley (rent for Swift property & taxes)	900.37
Mr. Fielding (steam heat)	650.00
Money sent to Baltimore with groceries, clothing, etc.	765.30
Interest on Steneck $5,000 mortgage	504.17
Interest on Park Avenue house	630.00
Interest on Park Avenue house	51.56
Insurance on Park Avenue house	62.00
Abe Levenson (search fees on garage)	150.00
Mr. Tackella (services 310 Newark Street)	125.00
Mr. Brandt (lawyer)	20.00
Mr. Schmidt (insurance)	627.95
Mr. Radner (carpenter)	103.75
Horre Coal Co. (coal for garage)	146.50
Mr. Condon (undertaker)	167.00
Jack Roberts (tinsmith)	67.32
Thomas Devlin (painter)	24.00
Hoboken Metal Ceiling Company	47.50
Mr. Moller (locksmith)	4.55
Mr. Abgelo (electrician)	6.42
Estate of John Ahearn (plumbing)	17.08
Mr. Breckwolt (repairing range)	7.98
Telephone Co. (old bill junk shop)	8.82
Hoboken Floor Covering (310 Newark St.)	21.82
Charles Shultz (Mason)	43.85
Mrs. Andrew Clark (borrowed for Mr. Clark)	50.00
Mr. Neundorff (hardware)	60.13
Mr. Sles (plumber)	147.70
Mr. Geiger (plumber)	354.44
Public Service Electric (garage bill)	168.20
Public Service (310 Newark St.)	241.92
Mr. Goldstein (Printer)	643.00
James Clark (repairs)	86.13

	Sam Bloomberg (glazer)	1.40
	Marcy Stove Repairs	2.95
	Mr. Gottlieb (alcohol for garage)	30.00
	Recording deeds	8.00
	Cazza arrest (bail)	30.00
	Frank Clark (services in garage)	2,275.00
10	Taxes	2,270.19
	Water rents	333.66
	Bail Bonds (cost of discharging bonds)	7.00
	Insurance (310 Newark Street)	118.91
	Insurance (310 Newark Street)	118.91
	Levy Bros. (Repairs)	69.65
	Mayer (Pawn Broker)	125.00
	Cutting hedge in garden (5 times)	10.00
	Repairing grass cutter (twice)	2.25
	Amount paid sheriff on foreclosure of 310 Newark	
20	Street)	6,796.38
	Recording deeds (August 6, 1920)	11.00
	Ludwig Bauman (for carpets before Mr. Clark went	
	away)	43.90
	Cancelling 12 recognizances	22.56
	Vanderbilt (cement & sand)	50.00
	Estate of John Ahearn	17.08
	Purchase price of Swift property at 415 Newark	
	Street	3,520.00
	David Gross (bonus)	500.00
30	David Gross (account of loan)	200.00
	Total	$33,203.61

Receipts for 1922.		Expenses for 1922.	
From H. O. Weidner	$37.21		
January	280.00	January	$475.89
February	305.00	February	88.45
March	315.00	March	286.47
April	506.00	April	1,076.62
40 May	516.00	May	257.43

June	481.00	June	563.84
July	516.00	July	418.39
August	493.00	August	377.60
September	553.00	September	821.16
October	556.00	October	433.32
November	503.00	November	369.71
December	499.00	December	776.25
Total	$5,560.21	.....	$5,945.13

Total Disbursements by Mr. Kanaugh	$5,945.13
Total Receipts by Mr. Kanaugh	5,560.21
Deficit	$ 384.92

EXPENSES.

1922		
January 3—Hoboken Bank for Savings interest on on Mortgage 306 Newark Street	$	60.00
" 7—Repairing waste pipe, water pipes etc.		5.00
" "—Solder		.40
" 12—Plate Glass insurance 304 Newark St.		9.30
" 12—Citizens Building & Loan of J. C.		65.60
" 13—Public Service Gas Co. for 304-306 Newark Street		15.68
" 24—Taxes 304-306 Newark Street last ½ year 1921		313.66
" 28—Shaving waste pipes in toilets and shoveling snow from roof		6.25
Total	$	475.89
1922		
February 8—Lock & plate for door 304 Newark St.		1.25
" 9—Citizens Building & Loan Asso.		32.00
" 9—Public Service Gas Co. for 304-06		9.94
" 9—O'Neil Lumber Co.		.56
" 17—H. J. Weidner (Ins. plate glass)		21.64

February	18	—O'Neil Lumber Co.	1.04
"	20	—Levy Bros. (window 2nd floor west 304 and fanlight in barbershop)	6.00
"	28	—Neudorf & Parker (sash cord for windows & glazier's points	3.12
"	28	—Frank Clark (labor & putty)	12.90
		Total	$ 88.45

1922

March	1	—Second National Bank (interest)	75.00
"	6	—City of Hoboken (water rents)	47.00
"	6	—C. Muzzi (faucet for 1st floor West 306 Newark St.)	.25
"	9	—Public Service Gas Co. (bill 304-306 Newark St.)	8.96
"	9	—H. Silon (paint, brush, shellac etc., renovating room 3rd floor 304 Newark St.)	5.30
"	9	—Citizen's Building & Loan Asso.	32.00
"	16	—Neudorff & Parker (5 plaster boards)	1.75
"	"	—Neudorff & Parker (40 lbs. of plaster of Paris, 20 lbs. lime)	3.00
"	"	—Neudorff & Parker (½ lb. of nails)	.05
"	21	—O'Neil Lumber Co. (lumber)	30.90
"	23	—O'Neil Lumber Co. (lumber)	20.50
"	24	—Frank Clark (6 days labor)	18.00
"	25	—O'Neil Lumber Co. (lumber)	13.72
"	30	—O'Neil Lumber Co. (lumber)	12.04
"	13	—Frank Clark (6 days labor)	18.00
		Total	$ 286.47

1922

April	1	—Hoboken Bank for Savings (interest)	60.00
"	1	—H. Silon (shellace & turpentine)	12.00
"	1	—Steneck Trust Co. (interest)	75.00
"	3	—O'Neil Lumber Co.	4.13
"	4	—City of Hoboken (Taxes 1921 310 Newark)	388.86
"	4	—Christ Bonchen on account (carpenter)	25.00

April	4—O'Neil Lumber Co.	3.28	
"	4—Ed Geiger (plumbing 304 Newark St.)	12.85	
"	5—H. Silon (paint, turpentine, etc)	13.85	
"	6—O'Neil Lumber Co.	3.50	
"	7—Frank Clark (6 days labor)	18.00	
"	7—Mrs. Jas. Clark	20.00	
"	13—Citizens Building & Loan Asso. of J. C.	32.00	10
"	13—Public Service Gas Co. (304 to 310 Newark)	19.60	
"	14—Frank Clark (6 days labor)	18.00	
"	14—Mrs. James Clark	20.00	
"	14—Christ Bonchen (balance for work done)	32.75	
"	15—Jefferson Trust Co. (payment on note, interest and tax)	103.11	
"	17—H. Bunker putting in new sewer, etc	82.20	
"	18—Wm. Hallenhan (papering 2 rooms third floor West 310 Newark St.)	10.00	20
"	21—Frank Clark (5½ days labor)	16.50	
"	21—Mrs. James Clark	20.00	
"	27—H. Silon (paint, shellac & turpentine)	37.57	
"	27—Neudorff & Parker	28.42	
"	28—Mrs. James Clark	20.00	
	Total	$1,076.62	

1922

May	5—Mrs. James Clark	20.00	
"	8—J. I. Kislak (Ins. 3 years—310 Newark)	22.55	30
"	9—Public Service Gas Co. (304-310 Newark)	11.00	
"	11—Citizens Building & Loan Ass. of J. C.	32.00	
"	12—Mrs. Jas. Clark	20.00	
"	17—Trust Co. of New Jersey (payment on note, interest & tax	104.21	
"	19—Mrs. James Clark	20.00	
"	22—O'Neil Lumber Co.	2.42	
"	23—Levy Bros. glass put in 310 Newark St. & 306 Newark St.	5.25	
"	26—Mrs. James Clark	20.00	40
	Total	$ 257.43	

Exhibit C-5.

1922		
June	1—Second Nat'l Bank (interest)	75.00
"	2—Mrs. James Clark	20.00
"	8—Citizens Building & Loan of J. C.	32.00
"	9—Mrs. James Clark	20.00
"	15—Jefferson Trust Co. (payment on note interest & tax)	102.07
"	16—Mrs. James Clark	20.00
"	17—Christ Bonchen (carpenter work)	8.75
"	19—Public Service Gas Co. (304 to 310 Newark St.)	15.00
"	19—City of Hoboken (taxes 1921 on 102 Madison St. & 120 Park Ave.)	231.02
"	23—Mrs. James Clark	20.00
"	30—Mrs. James Clark	20.00
	Total	$ 563.84

1922		
July	1—Hoboken Bank for Savings (interest on mortgage 306 Newark St.)	60.00
"	1—Steneck Tr. Co. (interest on mtge.) 310 Newark	75.00
"	7—Mrs. James Clark	20.00
"	12—Neudorff (Plaster of Paris, boards, nails, 12 brackets and other material)	6.70
"	12—H. Bunker (plumbing work 306 Newark) ..	23.50
"	13—Citizens Building & Loan of J. C.	32.00
"	14—Mrs. James Clark	20.00
"	17—Trust Co. of N. J. (payment on note, Interest and tax)	103.21
"	"—Public Service Gas Co. (304 to 310 Newark St.)	13.50
"	21—Mrs. James Clark	20.00
"	26—H. J. Weidner (insurance)	24.48
"	28—Mrs. James Clark	20.00
	Total	$ 418.39

1922			
August	1—Levy Bros. (glass for fanlight 304 Newark St.)	4.75	
"	3—Mr. Bush ash can, wash tub covers and repairing cornice 304-310 Newark St.	30.50	
"	4—Mrs. James Clark	20.00	
"	5—City of Hoboken (water rents for 306 Newark St.)	40.39	10
"	10—Citizens Building & Loan Asso. of Jersey City	32.00	
"	11—Mrs. James Clark	20.00	
"	15—Jefferson Tr. Co. (note, interest, etc.)	102.03	
"	17—Public Service Gas Co. (304 to 310 Newark St.)	11.50	
"	17—H. Silon (3 cans of putty)	.30	
"	17—Wm. Parker (1 roll of tape)	.20	
"	18—Mrs. James Clark	20.00	20
"	23—Mrs. James Clark	20.00	
"	24—City of Hoboken (water taxes 304 Newark and 402 Madison St.)	49.05	
"	25—David Gross (payment a/c note)	5.62	
"	30—Fred Schmidt (Ins. on Glass 310 Newark)	21.26	
	Total	$ 377.60	
1922			30
Sept.	1—Second Nat'l Bank (inst. on mortgage 304-306 Newark St.)	75.00	
"	1—(Removing rubbish from 304-306) (310 Newark St.)	5.00	
"	1—(Frank Clark)		
"	1—H. J. Weidner (Liability Insurance 304-306 Newark St.)	12.54	
"	1—Mrs. James Clark	20.00	
"	2—J. Schultz (labor & lumber for 310 Newark St.)	144.36	
"	2—Mr. Bush (2 sets of wash tub covers)	5.00	40

Exhibit C-5.

Sept.	8—Mrs. James Clark	20.00
"	9—H. Bunker (blowing out water main plumber's time (July 22)	2.50
	Aug. 16 (Repairing leak 306 Newark, solder, gasoline, etc.)	4.10
	" 24 (Repairing leak 310 Newark St., solder, gasoline, etc.)	2.70
	" 30 (Cleaning out sink, etc. 2nd floor 310 Newark St.)	
	Sep. 1 (Repairing toilet tank in saloon, washers & labor)	2.55
	" 1 (Comp. washer, 1 candle, solder, gasoline, etc.)	2.90
"	12—Public Service Gas Co. for gas 304, 306, 310 Newark St.	7.25
"	13—Citizen's Building & Loan Asso. of J. C. ...	32.00
"	13—Fred Clark (2 days labor in store 310 Newark St.)	6.00
"	15—Mrs. James Clark	20.00
"	18—Fred Schmidt (Insurance 413-415 Newark St.)	153.50
"	22—Mrs. James Clark	20.00
"	29—City of Hoboken (Assessment for paving and sewer 1102 Madison St.)	190.76
"	29—Mrs. James Clark	20.00
"	30—Steneck Trust Co. (Inst. on mortgage) ...	75.00
	Total	821.16

1922

Oct.	2—Hoboken Bank for Savings (inst.)	60.00
"	4—Wm. O'Neil (payment on note & inst.)	102.07
"	6—Mrs. James Clark	20.00
"	7—Mrs. Muller (3 toilet seats)	5.25
"	11—Jake Goldstein (painting, etc., 310 Newark St.)	45.00
"	11—Public Service Gas Co. for gas 306-	2.00
	310 Newark St.	7.00

Oct. 11—Citizens Building & Loan Asso. of J. C.	32.00	
" 13—Mrs. James Clark	20.00	
" "—Jefferson Trust Co. (account of note, etc.)	100.00	
" 20—Mrs. James Clark	20.00	
" 27—Mrs. James Clark	20.00	
Total	$ 433.32	10
1922		
Nov. 3—Mrs. James Clark	20.00	
" 6—Wm. C. Neuendorff hardware and supplies Sept. 1 to and including Nov. 1st, 1922	16.82	
" 6—Blowing out sewer 304 Newark St.	5.00	
" 8—H. J. Weidner (Insurance 306 Newark)	73.44	
" 9—Citizens Building & Loan of J. C.	32.00	
" 10—Mrs. James Clark	20.00	
" 16—Public Service Gas Co. (304-06-19 Newark St.)	5.75	20
" 16—Levy Bros. for glass 304 Newark St.	5.75	
" 17—Wm. O'Neil Estate (inst. and payment on note)	101.05	
" 17—Mrs. James Clark	20.00	
" 17—O'Neil Lumber Co. for lumber for windows first floor west side 304 Newark)	5.39	
" 22—Fred J. Schmidt (plate glass insurance 310 Newark St.)	4.15	
" 24—Mrs. James Clark	20.00	
" 24—Henry Bunker (plumbing work 304 & 310 Newark St.)	21.00	30
" 25—Frank Clark (labor)	21.00	
Total	$ 369.71	
1922		
December 1—Second National Bank (Inst. on mortgage)	75.00	
" 1—Mrs. James Clark	20.00	
" 1—City of Hoboken (taxes 1102 Madison St.)	144.54	40

Exhibit C-5.

December	2	—Mr. Masarsky (papering, etc., 304 Newark St., 1st floor)	10.00
"	4	—Wm. C. Neuendorff (candle, nails, screws, plaster board, etc.)	1.70
"	4	—Mr. Bush (galvanized iron (2 pieces) 4 joint of 5 inch stove pipe for store 310 Newark St.)	2.25
"	4	—Mrs. Clark (gas fixtures from I. Gasman for 2nd floor 310 Newark St.)	3.75
"	8	—Christ Bonchen (2½ days carpenter work fixing closets 3rd floor west 310 Newark & 2 windows in 1st floor bed room 304 Newark St.)	8.75
"	8	—H. Silon (paint, plaster boards and other material for painting east store 310 Newark St., and east store 306 Newark St.; two kitchens top floor 304 Newark St., 2nd floor of 306 Newark St.; 3 rooms 2nd floor west, 2 rooms 310 Newark St.)	43.01
"	8	—Henry Bunker, Jr. 1 4¾ enamel iron trap corking lead, plaster bolts, etc.; repairing wash pipe in west store 310 Newark St., etc.	16.10
"	8	—Mrs. James Clark	20.00
"	12	—Public Service Gas Co. bills 304, 306, 310 Newark Street	11.00
"	14	—Citizens Building & Loan Asso. of Jersey City	32.00
"	14	—City of Hoboken (water taxes 306, 310 Newark Street)	194.40
"	15	—Mrs. James Clark	20.00
"	22	—Mrs. James Clark	20.00
"	27	—H. J. Weidener (Insurance 304 Newark St. plate glass, 304 Newark, liability insurance)	133.75
"	29	—Mrs. James Clark	20.00
		Total	$ 776.25

Exhibit D-1.

THIS INDENTURE OF LEASE made the 31st day of July, One Thousand Nine Hundred and Eighteen, between SWIFT AND COMPANY, an Illinois corporation, having its principal office at the City of Chicago, County of Cook and State of Illinois, hereinafter referred to as the Landlord, and JAMES CLARK of 120 Park Avenue, Hoboken, Hudson County, New Jersey- hereinafter called the Tenant.

WITNESSETH: That the Landlord hereby demises and leases to the Tenant the following described property:

ALL that certain piece or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson, and State of New Jersey, which on a certain map entitled "Map of property situated in Hoboken, Hudson County, New Jersey, belonging to the estate of John C. Coster, deceased," surveyed and laid out into lots November 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York, is laid down and designated as Lot numbered 5 in Block 2, and extending through the block from Newark Avenue to Ferry Street; being part of the same premises conveyed to John Axtmann by Peter McCall by deed dated the first day of March 1876, and recorded in the office of the Register of Hudson County on the 21st day of March 1876, and part of the premises conveyed to Mary Axtmann, widow of said John Axtmann, deceased, by Hoboken Land & Improvement Company by deed bearing date the 8th day of November 1895, and also conveyed by Mary

Axtmann, widow of John Axtmann, deceased, to Hoboken Beef Company by deed dated November 11th, 1893, and recorded on November 20th, 1893 in Book 584 of Deeds, Page 489 in the Register's Office of the County of Hudson, State of New Jersey, together with the singular and hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversions, the remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever to the party of the first part either in law or equity, of, in and to, the above bargained premises with the hereditaments and appurtenances.

Being the same premises conveyed to Swift and Company, a corporation of Illinois, by Hammond Company, a corporation of New York, by deed dated July 20th, 1912, and recorded in Book 1137 of Deeds, Page 120, and indexed under County Block 1770.

TO HAVE AND TO HOLD the said premises with the buildings and improvements thereon and the appurtenances thereunto belonging for the term of one (1) year, commencing on the 1st day of August, 1918, and ending at noon on the 1st day of August, 1919.

AND IN CONSIDERATION thereof so let, the Tenant agrees to pay rent for said premises at the rate of Four Hundred Eighty ($480.00) Dollars per annum, payable in equal monthly installments of Forty ($40.00) Dollars each and every month in advance in addition to the payment by the Tenant of water rents for water to be supplied to said premises during continuance of said lease and all taxes and assessments to be levied and assessed

against the said premises during the continuance of this lease.

IT IS FURTHER COVENANTED AND AGREED:

1. That said Tenant, without the prior written consent of the Landlord shall not under penalty of forfeiture and damages at any time during the term of this lease, sell, assign, transfer or make over this lease or any part of the term hereby granted and shall not sublet the premises or any part thereof.

2. The Tenant shall have the right at any time during the term of this lease and from time to time to make such alterations and additions or improvements to, or upon the demised premises as he shall deem necessary or advisable for the proper and economical conduct of the business by him as aforesaid, upon written consent from the Landlord. All alterations, additions and improvements made by either party to or upon the said premises shall immediately become and remain the property of the Landlord and shall remain upon the premises and at the expiration of this lease or upon its soon termination, as herein provided, all such alterations, additions, and improvements shall be left upon the premises by the Tenant and surrendered therewith, it being understood and agreed, however, that at the termination of this lease, the Tenant shall have the right to remove from said premises all movable fixtures, as well as all equipment, apparatus, appliances, furniture, machinery, tools or implements.

3. That the Tenant will keep said premises and every part thereof in a clean and healthy condi-

tion, in good order and unobstructed and all requirements of the Health, Police and other Public Authorities in respect thereto, promptly and fully complied with.

4. That the said Landlord shall not be liable for any damage occasioned by failure to keep said premises in repair, nor for any damage occasioned by or from plumbing, gas, water, steam, or other pipes or sewerage or for damage occasioned by the water or ice being upon or coming through the roof or otherwise, nor for any damage arising from acts or neglect of other Tenants or of the owner or occupant of adjacent or contiguous property.

5. That should the building or buildings on the demised premises be destroyed or damaged by fire or unavoidable casualty, the Landlord shall have the option to terminate this lease or to put said building or buildings in as good condition as same were before said casualty occurred. On failing to do so, within a reasonable time, this lease shall terminate, rent abating from the untenantable period.

6. The Landlord shall have the right to enter upon the demised premises at all reasonable times to view the said condition of said premises or to make needful repairs or alterations which said Landlord may see fit to make and that the Landlord shall have the right to place and keep in a conspicuous place upon the demised premises a "For Sale" sign, during the term hereof and shall also have the right to place and keep a "For Rent" sign in a conspicuous place upon said premises at any time within three (3) months before the expiration of this lease; the said Tenant to permit all persons having authority therefor to view the said premises at all reasonable hours.

7. That the said Tenant will not carry on or permit upon the said premises any trade or occupancy or suffer to be done any other thing which may render any increased or extra premium payable for the insurance on the said premises against fire or that may make void or voidable any policy for such insurance, nor will said Tenant permit the premises to remain vacant or unoccupied for more than fifteen (15) consecutive days.

8. That if and whenever any part of the rent hereby reserved shall be in arrear, whether the same shall have been legally demanded or not, or if and whenever there shall be a breach of any of the covenants by the Tenant herein contained, then and in such case, it shall be lawful for the Landlord to re-enter into and upon the demised premises or any part thereof in the name of the whole, and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made without prejudice to any right of action or remedy which might otherwise be used in respect of any antecedent breach of any of the covenants in this lease contained.

9. That if the same are taken under the power of eminent domain, this lease shall immediately terminate as of the date the Landlord is divested of its title to the said premises.

10. That said Tenant shall not during the term hereof, use the herein demised premises for the sale of dressed meats or provisions or any other product similar to those manufactured by the Landlord without the written consent of the Landlord first had and obtained.

11. It is further covenanted and agreed that on

or before the termination of this lease the Tenant shall have the exclusive right and option of purchasing the premises at the price of Four Thousand ($4,000.00) Dollars, cash and the Landlord agrees to convey the same to the Tenant by a good and valid deed, provided the Tenant shall have given thirty (30) days' notice in writing to the Landlord of his intention to exercise such right and option, any and all payments of rent to the Landlord to apply on account of the purchase price.

12. All repairs, both external and internal, to the premises and all repairs to any building or buildings now upon the said premises or that may hereafter be erected thereon, shall be made by and at the expense of the Tenant and the said Landlord shall not be called upon during the term of this lease to make any additions or alterations whether external or internal, and shall not be asked to contribute any sums of money whatsoever toward the making of such conditions, repairs or alterations.

13. The Tenant hereby agrees to indemnify and keep harmless the Landlord from all damage to person or property, which any person or persons may hereafter suffer upon the premises hereby demised or might suffer by any act done or omitted to be done by the Tenant, his agent or servants, provided that such loss or damage to person or property shall not have been caused by or be due to any act hereinafter on the part of the Landlord, its agents, or servants.

14. The Tenant hires the said premises after inspection and examination and without any representation whatsoever on the part of the Landlord

and the Landlord does not warrant or represent that the premises are suitable for the purpose for which the Tenant now hires the same.

15. On paying the rent herein reserved and performing the terms, covenants and conditions herein contained, the Tenant shall peaceably and quietly have, hold and enjoy the premises hereby leased without let or hindrance on the part of the Landlord, for the term aforesaid.

This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals the day and year first above written.

SWIFT AND COMPANY (Seal)

By .....,
Assistant Treasurer.

Attest:
C. A. PEACOCK,
Asst. Secry.

Witness:
L. A. ACKLEY.

In consideration of One Dollar ($1.00) receipt whereof is hereby acknowledged, I hereby assign, transfer and set over to William Konough the above lease together with any renewal or renewals thereof, and including the option to purchase the premises therein described, together with any renewal or renewals of said option.

JAMES CLARK (L. S.)

Witness: June 27, 1919.
JAMES L. R. LAFFERTY.

Exhibit D-2.

RENEWAL OF LEASE

For and in consideration of the mutual benefits and advantages to be derived therefrom, it is hereby understood and agreed by and between the undersigned, that, that certain written lease dated July 31st, 1919, wherein Swift and Company, Lessor, leased to James Clark, of 120 Park Avenue Street, Hoboken, New Jersey, known as—

Lot Numbered 5 in Block 2, in Hudson County, New Jersey.

For a period of one year, commencing on the first day of August 1918 and ending on the first day of August, 1919, at a rental of $40.00 per month; be and the same is hereby renewed and extended for an additional period of six (6) months commencing August 1st, 1919 and ending on January 31st, 1920 on the same terms and conditions as are contained in said original lease, dated July 31st, 1918, expressly including Clause 11 of said lease giving the Lessee the option of purchasing the demised premises at the price of $40,000.00.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 5th day of August, A. D., 1919.

SWIFT AND COMPANY,
By W. W. —LESMAN,
Assistant Treasurer.

JAMES CLARK (L. S.)

Witness as to James Clark:
Henry Klutz,
Aug. 5/19.

Approved:
Form by R. C. M.
Terms by M. C. M.
H. H. S.

Exhibit D-3.

For and in consideration of the mutual benefits and advantages to be derived therefrom, it is hereby understood and agreed by and between the undersigned, that, that certain written lease dated July 31st, 1918, wherein Swift and Company, Lessor, leased to James Clark, of 120 Park Avenue Street, Hoboken, New Jersey, known as—

Lot Numbered 5 in Block 2, in Hudson County, New Jersey.

For a period of one year, commencing on the first day of August 1918, and ending on the first day of August 1919, at a rental of $40.00 per month; and which was subsequently extended and renewed for an additional period of six (6) months, commencing August 1st, 1919 and ending on January 31st, 1920, on the same terms and conditions as are contained in said original lease; be and the same is hereby renewed and extended for an additional period of six (6) months commencing February 1st, 1920, and ending on July 31st, 1920, on the same terms and conditions as are contained in said original lease, dated July 31st, 1918, expressly including Clause 11 of said lease giving the Lessee the option of purchasing the demised premises at the price of $4,000.00.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 6th day of May, A. D., 1920.

SWIFT AND COMPANY,
By W. W. —LESMAN,
Assistant Treasurer.
JAMES CLARK.

Witness as to James Clark:
Edmond F. Kilkenny.

Approved:
Form by R. C. M.
Terms by.....

Exhibit D-4.

June 21st, 1919.

Mr. James Clark,
Newark, N. J.

Dear Mr. Clark:

Mrs. Clark has called to see me concerning the Hoboken property. It is too bad that this matter could not be concluded before.

The properties are all mortgaged with the exception of the Garage, and perhaps the Madison Street property. The mortgagees are becoming restless and it would appear that something will have to be done or the property will be lost. In addition, the fine imposed is a judgment of record against you and a lien on the property, and while Mrs. Clark can probably obtain assistance in refunding these mortgages, nothing can be done so long as this $5,000 fine stands against the property.

With reference to the Garage, as I understand, you have erected a building partly on property owned by you, and partly on property on which you have an option contained in a lease which expires August 1st, 1919, and which, under its terms, requires a written notice of an intention to purchase to be given on or before July 1st. This purchase will involve the expenditure of a little over $3,500 in cash, and the money will have to be raised somewhere, if you have not got it which I understand you have not.

It is a rather difficult situation and I am sorry we will not have more time to work it out, but I will do the best I can with it in the time we have, as soon as a plan approved by you is devised. I have to suggest the following plan:

First, that you transfer all of your real estate under a Declaration of Trust to collect the rents,

issues and profits, pay the carrying charges and mortgages and generally empowering to deal with the property as you might do, with power of sale and to mortgage. It would I think be wise to give the Trustee the power to dispose of the property if an opportunity for a good sale offers, also necessary to give him power to mortgage, as it is now necessary to take care of one mortgage and it may be necessary to make new mortgages, from time to time, to pay off existing mortgages.

He should also be authorized to complete the transfer of the property from Swift & Company, so that you will not lose this option, or the value of the building you have erected thereon.

I do not think this property should be transferred to Mrs. Clark, as any mortgage or deed that it is necessary to make in connection with the property, could not be made by her without your joining, and we would be in much the same position as we are now.

If any income over and above the carrying charges is derived from this property, or from the operating of the Garage, it should be paid to Mrs. Clark so that she may have something to live on while you are away. As this is the only source of income, I should endeavor to have the fine remitted, that is, if the property is trusted upon such terms as she will receive the benefit of the income.

This letter will be handed to you by Mr. Lafferty, and I wish you would give the suggestion herein consideration and advise Mr. Lafferty if you approve. If you approve, please advise who you would wish to make the Trustee, so that I may make the deeds to him and prepare the necessary trust agreement for that person to sign.

Yours truly,

L/S

Exhibit D-5.

WHEREAS, by Deed dated June 25th, 1919, JAMES CLARK and wife have conveyed to me five (5) certain tracts of land situate in Hoboken, Hudson County, New Jersey, and

WHEREAS, said lands were conveyed to me in trust for certain purposes as hereinafter set forth,

THEREFORE, BE IT KNOWN, that the said lands and premises so conveyed to me, WILLIAM KINNAUGH of Hoboken, Hudson County, New Jersey, by said Deed as aforesaid, are held by me in trust for the following uses and purposes, that is to say.

1: To collect the rents, issues and profits from said lands and premises and pay all taxes, interest on mortgage encumbrances, fire insurance and repairs on said premises, and also on the premises at #120 Park Avenue, Hoboken, New Jersey, now occupied by the wife and family of said James Clark.

(a) Out of the excess, if any there be, to pay the sum of Twenty Dollars ($20.00) per week to CATHERINE V. CLARK, wife of the said James Clark.

(b) Out of the excess, if any there be, to pay any indebtedness other than mortgage indebtedness, of the said James Clark.

(c) Out of the excess, if any there be, to use the same for the protection of said property by the payment of mortgage principal, or otherwise.

2: I FURTHER AGREE, that I will supervise and manage the Garage business conducted upon the premises situate on Newark Street, heretofore conducted by the said James Clark, receiving the

moneys that may accrue from the conduct of said business, and any profits resulting therefrom to be used on account of payments provided for in the preceding paragraph.

3: I FURTHER AGREE, that I will endeavor to refund any mortgages on any of the properties so conveyed to me, or the property at #120 Park Avenue, Hoboken, New Jersey, payment of which is demanded by the mortgagee; and further, that I will endeavor to purchase the premises adjoining said Garage premises on Newark Street, now held under lease from Swift and Company, with option to purchase, and for that purpose will endeavor to borrow the consideration moneys by mortgage loans upon said premises and the premises adjoining upon which the Garage building stands, or otherwise.

4: At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term of imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, if the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourth day of August, 1919.

WILLIAM KINNAUGH (L. S.)

Signed, Sealed and Delivered
in the presence of
H. P. LINDABURY.

State of New Jersey, }
County of Essex, } ss:

BE IT REMEMBERED, That on this fourth day of August in the year of our Lord one thousand nine hundred and nineteen before me, the subscriber, a master in chancery of New Jersey personally appeared William Kinnaugh, who, I am satisfied, is the declarent mentioned in the within Declaration of Trust, to whom I first made known the contents thereof, and thereupon he acknowledged that, he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HARRISON P. LINDABURY,
Master in Chancery of New Jersey.

Received in the office of the Register of the County of Hudson, N. J., at 3:39 P. M., Mar. 8th, 1921, and recorded in Book 1392 of Deeds for said County on page 428, etc.

JOHN J. McMAHON,
Register.

Exhibit D-6.

Newark, N. J., 6/22/19.

Mr. A. J. Hokley,

My Dear Sir:

I wish you would stop in to see me Monday or Tuesday morning in regards to that six months extension. Am still at the Essex County Jail, Newark, N. J. If you cannot see me, see Mr. Lindabury or Mr. Knaugh who you will find at the Garage, as I have made him trustee.

The Jail is on the corner of Newark and New Sts. one block south of Central Ave. Hoping you and Mr. Dean are well, I remain,

Sincerely yours,

JAMES CLARK,
273 New St.,
Newark, N. J.

Exhibit D-7.

DISTRICT COURT OF THE UNITED STATES,
[SEAL]
DISTRICT OF NEW JERSEY.

I, GEORGE T. CRANMER, Clerk of the District Court of the United States, for the District of New Jersey, do hereby certify that I have searched the records of said court, and I do not there find any Proceedings in Bankruptcy under the Act of July 1st, 1898, nor do I there find remaining or unsatisfied of record any Judgment, Decree or other Lien, for twenty years last past, except as below set forth against James Clark,

Fourteen Recognizance v. James Clark, 120 Park Ave., Hoboken, N. J.
Decree v. James O. M. Clark, Newark, N. J.
Decree v. James William Clark, Newark, N. J.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said [SEAL] Court, at Trenton, in said District, this Twenty-third day of April, A. D., nineteen hundred and twenty at 9 A. M.

Fees
80¢

GEORGE T. CRANMER,
Clerk.

Per R. S. CHEVRIER,
Deputy.

Exhibit D-7.

Recognizance Number	Surety	Principal	Amt.
2449	David Gross	James Clark	$2,000
2450	David Gross	James Clark	5,000
2452	James Clark	Vito Spagnoletti	2,000
2512	David Gross	James Clark	1,000
2537	James Clark	Frank Bogart	500
2528	James Clark	Frank Bogart	500
2550	James Clark	Geo. Byrne	200
2727	James Clark	Otto Hass	1,000
2701	James Clark	Gussie Cohen	200
2691	James Clark	Harry Cohen	200
2673	James Clark	Harry Cohen	200
3001	James Clark	Ernst Jerchel	2,500
3489)	Samuel Glaser	James Clark	5,000
3490)	Charles Servanti	James Clark	5,000
3491)	Alex. J. Clements	James Clark	5,000
2726	James Clark	John Nelson	500

I, George T. Cranmer, Clerk of the District Court of the United States for the District of New Jersey, do hereby certify that each and every one of the above-named recognizances have been duly canceled and discharged of record.

[SEAL]

Dated, Trenton, N. J., May 12, 1920.

GEORGE T. CRANMER,
Clerk.

Per BENJAMIN F. HAVENS,
Deputy.

Exhibit D-7.

I, GEORGE T. CRANMER, Clerk of the District Court of the United States, for the District of New Jersey, do hereby CERTIFY that I have searched the records of said Court in relation to certain recognizances open of record on April 23, 1920, which were subsequently cancelled and discharged of record, as appears by further official certification attached hereto, dated May 12, 1920, and do now CERTIFY that said recognizances were cancelled of record as follows:

Recognizance #2449, dated August 2, 1917, in which James Clark was principal and David Gross surety, entered into before Samuel A. Besson, United States Commissioner, in the sum of $2,000.
Filed August 3, 1917.
Cancelled of record May 12, 1920.

Recognizance #2450, dated August 2, 1917, in which James Clark was principal and David Gross surety, entered into before Samuel A. Besson, United States Commissioner, in the sum of $5,000.
Filed August 3, 1917.
Cancelled of record May 12, 1920.

Recognizance #2452, dated August 2, 1917, in which Vito Spagnoletti was principal and James Clark was surety, entered into before Samuel A. Besson, United States Commissioner, for the sum of $2,000.
Filed August 3, 1917.
Cancelled of record May 12, 1920.

Recognizance #2512, dated September 10, 1917, in which James Clark was principal, and David Gross was surety, entered into

before Samuel A. Besson, United States Commissioner, in the sum of $1,000.
Filed September 11, 1917.
Cancelled of record May 12, 1920.

Recognizance #2537, dated September 28, 1917, entered into by Frank Bogart, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $500.
Filed September 29, 1917.
Cancelled of record May 12, 1920.

Recognizance #2528, dated September 22, 1917, entered into by Frank Bogart, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $500.
Filed September 24, 1917.
Cancelled of record May 12, 1920.

Recognizance #2550, dated October 6, 1917, entered into by George Byrne, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $200.
Filed October 8, 1917.
Cancelled of record May 12, 1920.

Recognizance #2727, dated January 15, 1918, entered into by Otto Haas, principal, and James Clark, surety, before Edward R. Stanton, United States Commissioner, in the sum of $1,000.
Filed January 16, 1918.
Cancelled of record May 12, 1920.

Recognizance #2726, dated January 15, 1918, entered into by John Nelson, principal, and

James Clark, surety, before Edward R. Stanton, United States Commissioner, in the sum of $500.
Filed January 16, 1918.
Cancelled of record May 12, 1920.

Recognizance #2673, dated December 10, 1917, entered into by Harry Cohen, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $200.
Filed December 12, 1917.
Cancelled of record May 12, 1920.

Recognizance #2691, dated December 21, 1917, entered into by Harry Cohen, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $200.
Filed December 24, 1917.
Cancelled of record May 12, 1920.

Recognizance #2701, dated December 26, 1917, entered into by Gussie Cohen, principal, and James Clark, surety, before Samuel A. Besson, United States Commissioner, in the sum of $200.
Filed December 29, 1917.
Cancelled of record May 12, 1920.

Recognizance #3001, dated May 27, 1918, entered into by Ernst Jerchel, principal, and James Clark, surety, before Edward R. Stanton, United States Commissioner, in the sum of $2,500.
Filed May 28, 1918.
Cancelled of record May 12, 1920.

Recognizance #3489, dated December 24, 1918, entered into by James Clark, principal, and Samuel Glaser, surety, before William B. Reilly, Deputy Clerk of the U. S. District Court, in the sum of $5,000.
Filed December 24, 1918.
Cancelled of record May 12, 1920.

Recognizance #3490, dated December 24, 1918, entered into by James Clark, principal, and Charles Servanti, surety, before William B. Reilly, Deputy Clerk of the U. S. District Court, in the sum of $5,000.
Filed December 24, 1918.
Cancelled of record September 30, 1919.

Recognizance #3491, dated December 24, 1918, entered into by James Clark, principal, and Alexander J. Clements, surety, before William B. Reilly, Deputy Clerk of the U. S. District Court, in the sum of $5,000.
Filed December 24, 1918.
Cancelled of record October 18, 1919.

GEORGE T. CRANMER,
Clerk.

[SEAL]

Per B. F. HAVENS,
Deputy.

Exhibit D-8.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

NOTE:—SEVEN (7%) PER CENT WILL BE ADDED ON ALL BILLS AFTER FEBRUARY 1st, 1914.

OFFICE BOARD OF COMMISSIONERS,
CITY HALL.

Hoboken, N. J., 192 .

WATER
DEPARTMENT

Mr. James Clark
No. 310 Newark St.

To Board of Commissioners of Hoboken, Dr.

To Arrears, Quarter ending February 1st, 1918	31.50
To Arrears, Quarter ending August 1st, 1918	45.00
To Arrears, Quarter ending February 1st, 1919	39.38
To Arrears, Quarter ending August 1st, 1919	54.00
To Arrears, Quarter ending February 1st, 1920	47.25
Total	$217.13

PAID
Jun 29 1920
GUSTAV BACH
WATER REGISTER
Hoboken, N. J.

R. BUCKLEY,
Ass't Registrar.

Countersigned,
Fred Kaufmann,
Ass't Comptroller.

Exhibit D-9

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 789, First Ward. Folio 18.
New Street No. 120, Block No. 34. New Lot No. 28.

Hoboken, N. J., Sep. 21, 1920.

Mr. James Clark,
Park Ave.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1918	78.03
Seven Per Cent. Interest from Dec. 20, 1918	6.50
Total	$84.53

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law; advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 819. First Ward. Folio 14.
New Street No. 120. Block No. 34. New Lot No. 28.

Hoboken, N. J., Sep. 21, 1920.

Mr. James Clark,
Park Ave.

Exhibit D-9.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1919	81.89
Seven Per Cent. Interest from Dec. 20, 1919	3.18
Total	$85.07

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 1501. 5 Ward. Folio 21.
New Street No. 1102. Block No. 102.
New Lot No. 31.

Hoboken, N. J., Sep. 21, 1920.

Mr. William Kinnaugh,
Madison Street.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the year 1919	34.67
Seven Per Cent. Interest from Dec. 20, 1919	1.30
Total	$35.97

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 1486. 5 Ward. Folio 41.
New Street No. 1102. Block No. 102.
New Lot No. 31.

Hoboken, N. J., Sep. 21, 1920.

Mr. James Clark,
Madison Street.

Exhibit D-9.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1918	33.01
Seven Per Cent. Interest from Dec. 20, 1918	2.00
Total	$35.01

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-9.

NOTE—SEVEN (7%) PER CENT WILL BE ADDED ON ALL BILLS AFTER FEBRUARY 1ST, 1914.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

OFFICE BOARD OF COMMISSIONERS,
CITY HALL.

Hoboken, N. J., 192 .

WATER
DEPARTMENT

Mr. Flaherty J. Clark,
No. 1102 Madison Str.

To Board of Commissioners of Hoboken, Dr.

To Arrears, Quarter ending August 1st, 1916	1.35
To Arrears, Quarter ending February 1st, 1917	1.35
To Arrears, Quarter ending August 1st, 1917	1.35
To Arrears, Quarter ending February 1st, 1918	1.35
To Arrears, Quarter ending August 1st, 1918	1.35
To Arrears, Quarter ending February 1st, 1919	1.35
To Arrears, Quarter ending August 1st, 1919	1.35
To Arrears, Quarter ending February 1st, 1920	1.35
Total	10.80

Received Payment,

R. BUCKLEY,
Ass't Registrar.

Countersigned,

FRED. KAUFMANN,
Ass't Comptroller.

PAID
Jul 8 1920
GUSTAV BACH
WATER REGISTER
Hoboken, N. J.

Exhibit D-10.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 931. Fourth Ward. Folio 24.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mr. Wm. Kinnaugh,
Newark Street,

Exhibit D-10.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1919	106.31
Seven Per cent. Interest from Dec. 20, 1919	4.00
Total	$110.31

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-10.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

BRING THIS BILL WHEN PAYMENT IS MADE.

NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 922. Fourth Ward. Folio 30.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mr. James Clark,
Newark Street.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1918	101.24
Seven Per Cent. Interest from Dec. 20, 1918	7.00
Total	$108.24

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 918. 4 Ward. Folio 84.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mr. James Clark,
Newark Street.

Exhibit D-10.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1917	83.63
Seven Per Cent. Interest from Dec. 20, 1917	10.00
Total	$93.63

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-10.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

BRING THIS BILL WHEN PAYMENT IS MADE.

NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 865. 4 Ward. Folio 23.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mrs. Caroline Wiatt,
Newark Street.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1916	80.21
Seven Per Cent. Interest from Dec. 20, 1916	14.79
Total	$95.00

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 885. 4 Ward. Folio 24.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mrs. Caroline Weatt,
Newark Street.

Exhibit D-10.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1915	80.68
Seven Per Cent. Interest from Dec. 20, 1915	18.32
Total	$99.00

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-10.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

BRING THIS BILL WHEN PAYMENT IS MADE.

NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 858. 4 Ward. Folio 22.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mrs. Caroline Weatt,
Newark Street.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1914	81.29
Seven Per Cent. Interest from Dec. 20, 1914	23.20
Total	$104.49

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.
BRING THIS BILL WHEN PAYMENT IS MADE.
NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 859. 4 Ward. Folio 23.
New Street No. 413. Block No. 2. New Lot No. 8.

Hoboken, N. J., Sep. 21, 1920.

Mrs. Catherine Weatt,
Newark Street.

Exhibit D-10.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1913	68.62
Seven Per Cent. Interest from Dec. 20, 1913	25.38
Total	$94.00

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-10.

THIS BILL, WHEN PAID, MUST BE COUNTERSIGNED BY THE COMPTROLLER.

BRING THIS BILL WHEN PAYMENT IS MADE.

NONE BUT CURRENT MONEY RECEIVED

All Checks to be drawn to the order of
Gustav Bach, Collector.

DEPARTMENT OF REVENUE AND FINANCE
OFFICE COLLECTOR OF REVENUE,
CITY HALL.
Office Hours, from 9 A. M. to 4 P. M.
Saturdays, 9 A. M. to 12 M.

Bill No. 860. Fourth Ward. Folio 22.
New Street No. 413. Block No. 2. New Lot No. 8.
Old Lot No. 6.

Hoboken, N. J., Sep. 21, 1920.

Mrs. Caroline Wiatt,
Newark Street.

TO CITY OF HOBOKEN, DR.

For Arrears of Taxes for the Year 1912	74.41
Seven Per Cent. Interest from Dec. 20, 1912	30.84
Total	$105.25

Received Payment,

WM. J. REYNOLDS, J. H.,
Assistant Collector of Revenue.

Countersigned,

FRED. KAUFMANN,
Assistant Comptroller.

Payments to be made in BANKABLE MONEY, and all arrears of Taxes remaining unpaid will be returned according to Law, advertised and sold.

GUSTAV BACH,
Collector of Revenue.

(Stamped on Face)

FINAL PAYMENT
Sep. 21, 1920
GUSTAV BACH
Collector of Revenue
Hoboken, N. J.

Exhibit D-11.

THIS INDENTURE, Made the Twenty-nineth day of April, in the year of Our Lord One Thousand Nine Hundred Nineteen

BETWEEN James Clark, Catherine V., his wife, of the City of Hoboken, in the County of Hudson and State of New Jersey, the GRANTORS:

AND William O'Neill of the City of Hoboken, in the County of Hudson and State of New Jersey, the GRANTEE,

WITNESSETH, that the Grantors in consideration of One Dollar, lawful money of the United States, to them paid by the grantee, the receipt whereof is acknowledged do by these presents grant, bargain, sell and convey unto the grantee and his heirs and assigns forever

ALL that certain tract or parcel of land and

premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which is known and distinguished upon a certain map entitled, "Map of property situate at Hoboken, Hudson County, New Jersey, belonging to John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen, Austen Ewen, City Surveyors, New York," filed in the office of the Clerk of the said County of Hudson, and being part of lot Number Six (6) in Block Number Two (2), and which said Lot is bounded and described as follows, that is to say:

Beginning at a place in the southerly line of Newark Avenue distant two hundred and sixteen (216) feet Northeasterly from the corner formed by the intersection of the southerly line of Newark Avenue by the northerly line of Ferry Street and running thence southerly and at right angles to Newark Avenue Eighty-five (60/100 feet more or less to the line of land of the Hoboken Land and Improvement Company; thence Easterly along the line of said Hoboken Land and Improvement Company twenty-five (25) feet more or less to the Easterly line of said Lot Number six (6); thence Northerly eighty-five (28/100 feet more or less to the Southerly line of said Newark Avenue and thence Southwesterly along the said Southerly line of Newark Avenue twenty-five (25) feet to the place of beginning.

Being the same premises conveyed to James Nealon by Peter Kerrigan and Catherine, his wife, by deed dated April 8th, 1880, and recorded April 12, 1880, in Deed Book 345, Page 243 &c., Hudson County Register's Office; and also

All that certain piece, parcel or lot of land, situate, lying and being in the City of Hoboken,

in the County of Hudson, and State of New Jersey, described as follows, viz.:

Commencing at a point in the Northerly line of Ferry Street which point is where the line dividing Lots numbered Six (6) and Seven (7) in block number Two (2) on the "Map of the property of the Estate of John C. Coster, Deceased, if it were continued Southerly in a straight line would strike the Northerly line of Ferry Street and from said point of commencement running thence Westerly along the Northerly line of Ferry Street about twenty-seven (27) feet and forty-five (45/100) of a foot to where the line dividing Lots Five (5) and Six (6) in said block if continued Southerly in a straight line would strike said Northerly line of Ferry Street; thence Northerly in a range with said line between said Lots five (5) and six (6) about eight feet and fifty-eight one hundredths of a foot (8-58/100') more or less to the line of property now or late of John G. Coster decd.; thence Easterly along said Coster line twenty-five (25) feet; thence Southerly and in continuation of the line between Lots Six (6) and Seven (7) twenty (20) feet and six (6) inches more or less to the Northerly line of Ferry Street, to the point or place of beginning.

Being the same premises conveyed to James Nealon by The Hoboken Land and Improvement Company, by deed dated September 22nd, 1882, and recorded September 25, 1882, in Deed Book 371, Page 537, Hudson County Register's Office.

Subject to all existing taxes and water rents.

Together with the appurtenances, and also all the right, title and interest, curtesy, right of curtesy of the grantors, of, in or to the same.

Being the same premises conveyed to James Clark by Caroline Wiatt Clarke and Robert Lee

Clarke, her husband, by deed dated March 25, 1918, and recorded in Deed Book 1276, page 370, Hudson County Register's Office.

TO HAVE AND TO HOLD the same unto the grantee his heirs and assigns, to his and their own use forever.

AND the said James Clark, for himself, his heirs, executors and administrators, does covenant and agree with the said grantee, his heirs and assigns:

(1) That the title to said premises is vested in fee simple absolute in the said James Clark.

(2) That the said James Clark has lawful authority to grant, bargain, sell and convey the same in form aforesaid.

(3) That the grantee, his heirs and assigns may forever peaceably and quietly hold, possess and enjoy the same against every person lawfully claiming the same.

(4) That the same are now free and clear of all encumbrance whatsoever except as aforesaid.

(5) That the grantors and their heirs, and all persons lawfully claiming under them any interest in said premises, shall and will at any time hereafter, upon the request and at the cost of the grantee, his heirs or assigns, execute all further conveyances that shall be reasonably required.

(6) AND the said James Clark and Catherine V. Clark, his wife, their heirs, the above described premises, and every part thereof with the appurtenances unto the grantee his heirs and assigns against the grantors and their heirs, and against

all persons lawfully claiming the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantors have hereunto set their hands and seals the day and year first above written.

JAMES CLARK (L. S.).

Signed, Sealed and Delivered
in the presence of:

State of New Jersey, }
County of Hudson, } ss.:

BE IT REMEMBERED, That on this Twenty-nineth day of April in the year of our Lord One Thousand Nine Hundred and Nineteen before me, the subscriber, a Commissioner of Deeds in and for the County and State aforesaid personally appeared James Clark and Catherine V. Clark, his wife, 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 Katherine V. Clark, 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.

Commissioner of Deeds,
Hoboken, New Jersey.

Exhibit D-12.

WHEREAS, by Deed dated June 25th, 1919, JAMES CLARK and wife have conveyed to me five (5) certain tracts of land situate in Hoboken, Hudson County, New Jersey, and

WHEREAS, said lands were conveyed to me in trust for certain purposes as hereinafter set forth.

THEREFORE, BE IT KNOWN, that the said lands and premises so conveyed to me, WILLIAM KINNAUGH of Hoboken, Hudson County, New Jersey, by said Deed as aforesaid, are held by me in trust for the following uses and purposes, that is to say.

1. To collect the rents, issues and profits from said lands and premises and pay all taxes, interest on mortgage encumbrances, fire insurance and repairs on said premises, and also on the premises at No. 120 Park Avenue, Hoboken, New Jersey, now occupied by the wife and family of said James Clark.

(a) Out of the excess, if any there be, to pay the sum of Twenty Dollars ($20.00) per week to CATHERINE V. CLARK, wife of the said James Clark.

(b) Out of the excess, if any there be, to pay any indebtedness other than mortgage indebtedness, of the said James Clark.

(c) Out of the excess, if any there be, to use the same for the protection of said property by the payment of mortgage principal, or otherwise.

2: I FURTHER AGREE, that I will supervise and manage the Garage business conducted upon

the premises situate on Newark Street, heretofore conducted by the said James Clark, receiving the moneys that may accrue from the conduct of said business, and any profits resulting therefrom, used on account of payments provided for in the preceding paragraph.

3. I FURTHER AGREE, that I will endeavor to refund any mortgages on any of the properties so conveyed to me, or the property at No. 120 Park Avenue, Hoboken, New Jersey, payment of which is demanded by the mortgagee, and further, that I will endeavor to purchase the premises adjoining said Garage premises on Newark Street, now held under lease from Swift and Company, with option to purchase, and for that purpose will endeavor to borrow the consideration moneys by mortgage loans upon said premises and the premises adjoining upon which the Garage building stands, or otherwise.

4. At such time as the said James Clark shall be discharged from the Federal Penitentiary at Atlanta where he is now confined, by the expiration of his term of imprisonment, or parole or pardon, I hereby agree that I will convey the lands so conveyed to me, and which shall be held by me at that time, including the premises under lease from Swift and Company, if the same shall be purchased, to Catherine V. Clark, wife of the said James Clark, and will turn over the Garage business conducted on a part of said premises, if the same shall then be under my custody and control, to the said James Clark, and will render an accounting for the rents, issues and profits received by me on account of the properties herein mentioned and referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourth day of August, 1919.

WILLIAM KINNAUGH (L. S.).

Signed, Sealed and Delivered
in the presence of

H. P. LINDABURY.

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

BE IT REMEMBERED, That on this fourth day of August in the year of our Lord One Thousand Nine Hundred and nineteen before me, the subscriber, a Master in Chancery of New Jersey, personally appeared WILLIAM KINNAUGH, who I am satisfied, is the declarent mentioned in the within Declaration of Trust, to whom I first made known the contents thereof, and thereupon he acknowledged that, he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HARRISON P. LINDABURY,
Master in Chancery of New Jersey.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

JAMES CLARK,
Complainant-Appellant,

vs.

WILLIAM KINNAUGH and CATHERINE V. CLARK,
Defendants-Appellees.

BRIEF FOR DEFENDANTS-APPELLEES.

Facts.

With some slight additions the facts as stated in the brief for the complainant-appellant are correct. These additions are:

1. That James Clark did not own all of the real estate on which was erected the garage in question. He owned one-half of that real estate, known as 413 Newark street. The other half was under lease from Swift & Co., with an option to purchase (see Exhibit D. 1, pp. 433 to 439).

2. The details of the conviction of James Clark in the United States District Court for the District of New Jersey are disclosed to the extent of showing that he was convicted on a charge of receiving stolen goods (see p. 146, ll. 21 to 23).

3. The question of whether or not James Clark steadfastly refused to convey his property to Catherine V. Clark is the subject of this litigation and should not be stated as a fact but should be the subject of argument.

New Jersey State Library

4. The question of whether or not Harrison P. Lindabury, Esq., called upon Clark at the instance and request of Catherine V. Clark or as the result of a message of James Clark is one of the subjects of this litigation and should not be stated as a fact.

5. That Harrison P. Lindabury took James Clark's acknowledgment to the deed which is in evidence and marked C. 1, and that that acknowledgment was taken on June 25, is an undisputed fact and it should not be stated that he "apparently" took that acknowledgment on that date.

6. That the declaration of trust which is in evidence and marked Exhibit C. 4 was drawn by Harrison P. Lindabury prior to August 4, 1919, is not disputed by testimony of the complainant, and it should not be stated as a fact that it was drawn on August 4, 1919.

BRIEF OF ARGUMENT.

There was ample evidence to support findings of fact on which the Court below dismissed the bill of complaint. In dealing with this point the testimony of James Clark will be analyzed, and the untruthfulness thereof in many respects pointed out. From that it will be contended that the Court having found the complainant to be false in many respects was justified in finding him to be false with respect to all disputed facts.

At page 117, lines 19 to 39, the complainant-appellant stated positively that he was not represented by Harrison P. Lindabury or any other attorney during the period of his confinement in the Essex County Jail. On the other hand, the testimony of Lewis A. Ackley, who had no

reason whatever to be in anywise influenced in his testimony either because of interest in the material results of the litigation or because of the tax upon his conduct or reputation, expressly contradicts the complainant-appellant. At page 220, line 38, to page 221, line 12, Mr. Ackley states that James Clark told him that he should communicate with Mr. Lindabury, his lawyer. At page 224, line 39, to page 225, line 4, Mr. Ackley repeated the same statement and in reply to the question of whether James Clark told him that Mr. Lindabury was no longer his attorney he said "No." At page 227, lines 22 to 31, Mr. Ackley was asked how he knew that Mr. Lindabury was James Clark's lawyer and replied that he knew it by conversations with James Clark. At page 228, lines 16 to 21, Mr. Ackley states that he said to Mr. Clark, "Well, Mr. Lindabury is your lawyer," and that Clark replied, "Yes, but that's all right; I can go outside if you say you are an attorney."

On June 22, 1919, James Clark wrote to Mr. Ackley, addressing him as A. J. Hokley, a letter in which he said, "If you cannot see me see Mr. Lindabury or Mr. Knaugh, who you will find at the garage, as I have made him trustee" (see p. 446, l. 30, to p. 447, l. 11). The letter of June 21st, which is in evidence and marked D. 4, addressed to James Clark by Harrison P. Lindabury, by its own reading shows that Mr. Lindabury was speaking in the interest of James Clark.

It is true that Mr. Lindabury refused to argue Mr. Clark's appeal before the Circuit Court of Appeals because of non-payment of fees. On the other hand, it is undisputed that Mr. Lindabury rendered to Clark valuable services after notifying him of his refusal to actively partici-

pate in that argument or to write the brief. The fact that when Mr. Lindabury called upon James Clark at the Essex County Jail on June 25, 1919, with the deed of conveyance from James Clark to William Kinnaugh, James Clark executed the same, very materially supports the testimony that he had requested the preparation of a deed and Mr. Lindabury's services.

On pages 121, 122, 123 and 124 to line 19, the complainant-appellant reviews an alleged conversation between him and Harrison P. Lindabury. That no such conversation ever took place is stated by Mr. Lindabury in his recital of the conversation which he says took place, the same being stated at page 171, line 22, to page 175, line 3. At page 183, lines 1 to 18, Mr. Lindabury categorically denies certain parts of the alleged conversation as related by James Clark.

On page 124, lines 14 to 19, James Clark states that Mr. Lindabury called upon him at the Essex County Jail on June 27th. On page 121, at lines 16 to 19, he states that Mr. Lindabury called upon him during the early part of his stay at the Essex County Jail in June, 1919. At page 171, lines 24 to 27, Mr. Lindabury states that he called upon Mr. Clark on June 25, 1919. This is supported by Exhibit C. 1 (see p. 407, which is the deed executed by James Clark in the presence of Mr. Lindabury), that it was not Mr. Lindabury who called upon James Clark on June 27th, which was the day he was removed from that institution to the Maryland Penitentiary, is supported by Exhibit D. 1 (p. 439), the signature to the assignment of which he admits on page 145, lines 20 to 30.

On page 125, lines 15 to 28, James Clark states that he received a letter about conveying his

property to William Kinnaugh. Reference to Exhibit D. 4, which is the letter in question (pp. 442 and 443), shows that no such matter was contained in the letter.

At page 125, lines 5 and 6, James Clark states that he told Mr. Lindabury to whom he owed money. Mr. Lindabury's recital of the conversation between him and James Clark contains no reference to that matter, and testimony contained on page 249, line 15, to page 250, line 1, which is supported by a written memorandum made at the time the alleged conversation, shows that the list of debtors was given to another person.

At page 125, lines 10 to 12, and at page 126, lines 1 to 3, James Clark states that Mr. Lindabury called upon him on two occasions and that Mr. Lafferty called upon him on three occasions. The testimony of Mr. Lindabury and Mr. Lafferty is that Mr. Lindabury called upon James Clark once and that Mr. Lafferty called upon James Clark twice.

At page 127, lines 1 to 4, James Clark states that he told William Kinnaugh that he was signing three pieces of property to him and his garage business, that he, Kinnaugh, was to run it, and when he, Clark, came home it was to be turned over to him. At page 358, Mr. Kinnaugh denies that Clark ever told him about conveying the real estate to him and says that he learned it only three or four days after his visits.

At page 127, lines 28 to 34, James Clark states that Mr. Ackley told him not to worry about the leased garage property. Mr. Ackley's testimony is that Clark sent for him (see Exhibit D. 6, p. 446), and that he, Ackley, told Clark that he, Ackley, had nothing to say one way or

the other, but that he would do all that he could for Clark (see p. 228, l. 34, to p. 229, l. 5).

At page 140, lines 10 to 19, James Clark states, referring to the garage property, that he found upon his return from the Federal Penitentiary that taxes and water rents had not been paid and at page 141, lines 21 to 27, he states that he cleared up five years' taxes. This is conclusively proven to be untrue by Exhibits D. 10 (pp. 461 to 473), which are tax receipts for property known as 413 Newark street, which was that part of the garage property owned by Clark and conveyed by him by Exhibit C. 1 and which show that taxes on that property for the years 1912 to 1919, inclusive, with interest, were all paid on September 21, 1920.

On cross examination on the question of payment of taxes on 413 Newark street (see p. 151, l. 36, to p. 153, l. 17), in spite of his previous statement of payment of five years' taxes on that property, Clark was asked whether there were any unpaid taxes on that property in June, 1919. His reply was that there may have been, that he couldn't say. He was again asked whether he knew as a matter of fact that taxes were due on that property from 1912 to 1919 and said that he didn't know anything about it. He was then asked whether he knew anything at the time of the examination and said that he did.

Probably the most glaring feature of the untruthfulness of the testimony of James Clark appears in his denial of his signature to Exhibit C. 1. The question first arose during the cross examination of Clark (see p. 144, ll. 12 to 19). After Mr. Lindabury had testified to all the details surrounding the execution of Exhibit

C. 1 by Mr. Clark and when Mr. Clark had taken the stand in rebuttal, the Court examined him as follows (p. 396, l. 39, to p. 397, l. 2):

> "Q Mr. Clark, you still say that is not your signature to that deed, marked C. 1? A I guess it is, your Honor, because at that time I was pretty nervous and my hand was very shaky, but I can say now that it is my signature."

This action on the part of the complainant-appellant, wherein he showed his willingness to perjure himself to the extent of denying his signature to a deed in order to carry out his present purpose, most aptly illustrates his attitude. Had not the Court asked the very last question in the case he would have left the stand without correcting his perjury.

His attitude is further illustrated by his statement on page 154, lines 30 to 37, wherein he stated that he anticipated or could see trouble when he came back as early as June, 1919, when the transactions now the subject of litigation took place.

On re-cross examination, beginning on page 157, line 33, and ending on page 158, line 35, the complainant-appellant was asked two simple questions, as follows:

> "Q I show Exhibit C. 4; do you recall that? That is the paper which you obtained from the Register's Office, isn't it?"

After first evading an answer, he then admitted the fact. He was then asked the following:

> "Q Doesn't that state correctly according to your understanding of what this trust arrangement was to have been everything except the ultimate disposition of the property?"

After argument the question was re-read. Then the Court re-framed the question in a way which seems beyond misunderstanding. After examination of the paper, which is the trust agreement, he answered, "Yes, sir." He was then examined by his then counsel as to the details of that paper and categorically denied everything which it contained, including the agreement that William Kinnaugh should supervise and manage his garage business and account for the profits. The fact is that at page 125, lines 34 to 38, he had testified on direct examination, in fact, had volunteered, that Kinnaugh was to run the garage business and that that had been arranged previously to June 25, 1919, and that on page 127, lines 15 to 21, he had testified as follows: "I told him, I says, 'Bill,' I says, 'as soon as you get custody of the business, go and get a rent-book for the houses and a book for the garage,' " etc. This, it is submitted, shows conclusively that he was testifying to whatever he thought to be expedient.

In the face of these many unquestionable contradictions, it is submitted that the testimony of the complainant-appellant can have practically no weight against the testimony of the witnesses produced on behalf of the defendants-appellees and, even assuming that the burden would be upon the defendants to show affirmatively not only that no deception was practiced, that no undue influence was used, that all was fair, open and voluntary, but that all was well understood. It is submitted that as against the testimony of the complainant that burden has been sustained.

We now turn to the testimony submitted on behalf of the defendants-appellees. The complainant contends first that the conveyance in question was purely voluntary and without any

consideration, and, second, as to what took place between husband and wife; that is, between complainant and one of the defendants, we have only the complainant's testimony on one side and the defendant wife's testimony on the other.

The terms of the trust agreement (Exhibit C. 4, p. 416) shows that the garage business was to be preserved for the benefit of the complainant and for the support of his household and that the business was to be returned to him as his own at the termination of his period of imprisonment. This, it was submitted, was a valuable consideration under the circumstances, that the complainant's ability to produce had been terminated by the sentence of imprisonment for a term of five years at a time when, according to his own testimony, all of his properties were subject to mortgages, except one of comparatively small value, and one of his properties was the subject of foreclosure proceedings, and when his garage business was newly established (see testimony of James Clark, p. 148, l. 14, to p. 152, l. 39). At the same time it appears from Exhibit D. 1 that the garage was erected upon premises which were the subject of an option to purchase and that such option to purchase was required to be exercised at or shortly after the date of the conveyance to William Kinnaugh. It also appears from Exhibit D. 10 that the remainder of the property on which the garage was erected was the subject of unpaid taxes for the years 1912 to 1919. It also appears from Exhibit D. 4 that there had been imposed upon the complainant a fine of five thousand ($5,000) dollars, which was a judgment of record and a lien upon his property and that nothing could be done so long as that five thousand ($5,000) dollar fine stood. In this connection it appears

from the testimony of Mr. Lindabury that he informed the complainant of the five thousand ($5,000) dollar fine; that he informed the complainant that he had talked with Judge Haight with reference to the fine and whether that might be disposed of and that Judge Haight said that he would do anything to help Mrs. Clark but would not do anything to help Mr. Clark (p. 173, ll. 7 to 14). It also appears from the testimony of Matthew J. Tackella that there were judgments of record against the complainant aggregating something in excess of two thousand ($2,000) dollars (p. 238, ll. 19 to 32). In addition to this there were a great number of recognizances as shown by search which is in evidence and marked D. 7.

It, therefore, appears quite clear that if he was able to or if he did succeed in saving and getting back a going business which was at least of the value of five thousand ($5,000) dollars, because he sold it for that some time after his return from the Federal Penitentiary, the complainant received a very ample consideration for what he had to give, because he had to give properties which had little or no value unless saved by the expenditure of great efforts and by the assistance of persons favorably inclined toward whomever should be entitled to the ultimate benefit.

It is, therefore, submitted that the conveyance from the complainant to the defendant, Catherine V. Clark, was not without consideration.

Assuming a conveyance either with or without consideration and even assuming a conveyance to one in whom confidence was reposed (although the complainant's attitude as shown by his own testimony indicates clearly that he re-

posed no confidence in his wife), it is submitted that the only question is whether or not the trust declaration was prepared and executed so as to contain the terms and conditions as to the disposition of property named and specified by the complainant. It is interesting to note, and we again refer to the complainant's re-cross examination at page 157, line 32, to page 158, line 35, and to his answer to that question wherein he stated that the trust declaration (Exhibit C. 4) contained all of the terms, conditions and provisions which it was his desire that declaration should contain, except the provision as to the ultimate disposition of his real estate. Assuming the truthfulness of this answer, we have the testimony of Harrison P. Lindabury, William Kinnaugh and Catherine V. Clark wherein each has stated unequivocably that they were told by the complainant that it was his desire and wish that his real estate should be conveyed to his wife.

Mr. Lindabury's recital of the conference between him and the complainant at the Newark jail on June 5, 1919, begins at line 29, page 171, and continues to line 36. We quote a part of Mr. Lindabury's testimony:

> "I had with me a deed which I had prepared that day, and I told Mr. Clark that I had called there; that Mrs. Clark had brought a message to me that he, Mr. Clark, wanted to see me and wanted to execute a deed to William Kinnaugh, and Mr. Clark said that that was correct."

This corroborates Mrs. Clark in her statement that Mr. Clark had instructed her to have Mr. Lindabury prepare such deed.

Mr. Lindabury's testimony on the subject of this interview continues practically uninter-

rupted to page 175, line 10. We quote from that part which will be found on page 172, line 31, to page 173, line 19:

> "And that was entirely satisfactory to him, and he asked me what the conditions of the transfer were. I stated that I knew nothing except what he had told me and Mrs. Clark had told me. I told him that Mrs. Clark had said that he was willing to convey the property to her, and that I advised against a conveyance to her, because then any conveyance or instrument affecting the property would have to be executed by him and he would be away, and it would be no easier to manage it that way than if he retained the title himself, and that by reason of these encumbrances and interest and taxes in arrears there would have to be a good deal of forbearance shown; that I had talked with Judge Haight with reference to the fine and whether we might get rid of that fine; and the judge said he would do anything to help Mr. Clark, but he wouldn't do anything to help Mrs. Clark. And all those facts were made known to him, and he said that he was satisfied to make a conveyance to Mr. Kinnaugh; and I asked him the terms and he told me the terms, and I made some memorandum at the time. We discussed the matter at some length."

Thereafter, Mr. Lindabury referred to certain things shown by the memorandum which had been made by him at the time, and finally, at line 35, on page 174, and continuing to line 1, page 175, testified with reference to the instrument as to the ultimate disposition of the property as follows:

> "In reference to the garage: He mentioned the garage business that was to be run by the trustee, and there was to be an accounting, and the trusteeship was to end when Mr. Clark served his sentence or was

> paroled, or whatever it might be, and at that time the land was to be conveyed to Mrs. Clark."

(The record as printed shows the last word but one of the above quotation to be *Mr.* This is an error.) Without quoting from the further testimony of Mr. Lindabury, we will refer simply to the following parts of the record wherein he repeated or elaborated upon the instructions given to him by Mr. Clark (p. 175, l. 31, to p. 176, l. 2; Exhibit C. 4, p. 416; p. 181, l. 34, to p. 182, l. 3; p. 200, ll. 35 to 40; p. 204, ll. 14 to 17; p. 204, l. 32, to p. 205, l. 11).

The defendant, Catherine V. Clark, was examined on this subject, as shown by the record at page 293, line 36, to page 294, line 28. We quote the first question and answer on that subject:

> "And you went there with the firm determination that you were going to make him transfer that property to you? A Yes; I told him I couldn't bother with him if he didn't transfer it to me, and he told me repeatedly before that that he wouldn't transfer it, but he said he would then."

The subject is again testified to by Mrs. Clark at page 301, lines 19 to 34.

William Kinnaugh, one of the defendants, who claims no beneficial interest in this property, was examined upon the subject of the complainant's contention as to the ultimate disposition of his real estate. His testimony on this subject appears at the following places of the record: Page 357, lines 20 to 37; page 365, lines 7 to 40; page 372, lines 17 to 34; page 391, lines 29 to 41. The clear statement by Mr. Kinnaugh

is found at page 372, lines 17 to 21, wherein he testified as follows on cross examination:

> "Q What else made you think that? A Because Mr. Clark told me he would turn over the property to his wife.
>
> Q He told you he would turn it over to his wife? A Yes."

It is, therefore submitted that regardless of whatever burden of proof might be upon the defendants to prove that the trust declaration C. 4 is in accordance with the complainant's directions and instructions that burden has been supported.

II. *The complainant does not come within the rule of independent advice, but assuming that he did come within the rule, he has had it.*

As far as his relationship with the defendant, William Kinnaugh, is concerned, it is very clear that he placed trust and confidance in him because, according to his own testimony, he had turned over to Mr. Kinnaugh the garage business without any legal formalities or taking any step to protect himself. See page 125, lines 34 to 37, wherein the complainant testified as follows:

> "Q What about your garage business? A Nothing at all; Kinnaugh was to run that.
>
> Q Who said Kinnaugh was to run it? A That was arranged previous to that."

And also see page 127, lines 15 to 21, wherein the complainant testified:

> "Q You also said something about your garage business. A I told him, I says, 'Bill,' I says, 'as soon as you get custody of the business, go and get a rent-book for the houses and a book for the garage.' and I also inserted in that thing that my wife was

to receive $20 a week during my term of imprisonment."

However, the defendant, Kinnaugh, claims no beneficial interest in the complainant's property, so he is not in the position of one in whom trust and confidence was imposed and who at the same time seeks an advantage.

As for the defendant, Catherine V. Clark, the complainant has testified, and everyone else who has testified has agreed, that until the very end of the negotiations for the preservation of his property he refused to transfer anything to her or to trust her in any respect. He said that she was a drunkard, that she was improvident, that if she obtained his property he would be a pauper upon his return and that she had caused his arrest after he lost his appeal in the criminal case. Furthermore, he was in the position where her efforts could not be had in his behalf unless he provided for her and where it was apparent to him that to obtain those efforts he must make her the ultimate beneficiary of a part of his estate. There was, therefore, a valuable consideration running from the defendant, Catherine V. Clark, to the complainant. He has received that consideration in the return to him of a garage business having a value as shown by the fact that he sold it for five thousand ($5,000) dollars.

As to this defendant, therefore, there was no trust or confidence and there was a valuable consideration.

As to Harrison P. Lindabury, a reading of the letter written by him to the complainant, which letter is in evidence and marked Exhibit D. 4, shows very clearly that the complainant was well and clearly advised. In addition to

that there is the testimony of Mr. Lindabury referred to hereinbefore showing further good advice.

III. *The terms of the trust agreement subjected to the most careful scrutiny have been shown to be in accordance with the complainant's instructions.*

The complainant makes much of the fact that the trust agreement was not executed contemporaneously with the deed of conveyance to the defendant, William Kinnaugh, and contends that for that reason its terms should be scrutinized carefully. The defendants are willing that the terms be scrutinized carefully, because it is submitted that the real question in this case is whether or not that trust agreement contains a correct statement of the intended purposes.

Attention is first called to the fact that the complainant seems to be under a misapprehension in stating that the time which elapsed between the execution of the deed of conveyance and the preparation of the trust agreement was from June 25th to August 4th. Mr. Lindabury testified that the trust agreement was prepared a few days after June 25th, possibly one week (p. 187, ll. 16 to 22). The delay in execution is explained by other circumstances not in the control of Mr. Lindabury.

It appears from the testimony that Mr. Lindabury made notes during his conversation with Mr. Clark on June 25th and had those notes when he prepared the trust declaration. He still had them when he testified in this case. This is undisputed. It also appears in the testimony that the complainant had told each of the defendants that he proposed to do just what the

trust declaration provides. He, himself, admitted on cross examination that it provided that it carried out every term of his instructions except as to the ultimate disposition of his real estate.

It is, therefore, submitted that the evidence shows clearly that in this one respect wherein the parties fail to agree as to the terms of the trust declaration the complainant is wrong in his recollection and the trust declaration contains the true statement of his purpose.

IV. *It is, therefore, submitted that the decree of the Court of Chancery should be affirmed.*

Respectfully submitted,

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Appellee, Catherine V. Clark.

PORTER, ZINK & LAFFERTY,
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