

New Jersey Court of Errors and Appeals.

Between

WILLIAM E. TEN BROECK AND
EMMA JANE JACKSON,
(Complainants) *Appellants.*

and

CHARLES A. JACKSON, EXECUTOR
&c. et al.,
(Defendants) *Respondents.*

On Appeal
from
Chancery.

BRIEF FOR RESPONDENTS.

The bill in this cause was filed by William E. Ten Broeck claiming as assignee of Emma Jane Jackson by a formal deed of assignment, a copy of which is annexed to the bill (p. 20.)

The answer of Caroline Jackson individually and as Guardian ad litem of George J. Jackson, Jr. (p. 22-23) denied the validity and effect of the said assignment charging the same to have been merely colorable and for the purpose of enabling the assignor, Emma Jane Jackson, to be a witness for the purpose of establishing the claim, notwithstanding the statute which would prevent her from being such witness if the suit were brought by her.

Upon the hearing before Vice Chancellor Stevens this was so evidently the purpose of the assignment that the Vice Chancellor held that the case should not proceed without Mrs. Jackson as a party complainant, and thereupon verbally ordered an amendment to be made introducing her as such party. (pp. 63-64).

No amendment however was made, although the appeal (p 245) is jointly by Ten Broeck and Mrs. Jackson as complainants.

The mere verbal direction of the amendment not carried into effect by an actual amendment, is of no avail, and as the pleadings actually stand, the dismissal of the bill may be sustained upon the ground of want of a necessary party complainant, inasmuch as Ten Broeck, the nominal owner of the claim by assignment, clearly held it in trust wholly or in part for the assignor, the assignment being merely to facilitate the prosecution of the suit.

The purpose of the bill is to follow a specific fund as distinguished from the recovery of money owing generally.

In order to succeed upon such a bill, the complainant must be able to identify the specific property to which he lays claims, as being either the identical property which was originally his, or else the proceeds into which the original fund has been transmuted. The doctrine of following trust funds upon which the complainant relies, can have no application to a case where the trust fund received by the Trustee in money is not shown to have been employed by him in the purchase of property or to have been deposited so that the property purchased or the balance of the deposit may be traced as derived from the trust fund.

This, in substance, is the language of the present Ordinary in the case of *Ellicott vs. Kuhl*, 15 *Dickinson*, 333-337, where he held that there could be no preferred claim for the trust moneys against the estate of the deceased trustee, unless the trust fund could be traced as above stated.

The complainants' claim of course, rests upon the theory of a trust *ex maleficio* and the principles of equity applicable to such a trust are sufficiently elucidated by the cases of *Shaler vs. Trowbridge*, 1 *Stew*, 595; *Standish vs. Babcock*, 7 *Dickinson*, 628 and 8 *Dickinson*, 376.

The present case however is primarily one of fact de-

pendent upon the question. *Has the complainant traced her property into the mortgage, or into the deposit in the Manhattan Savings Institution?*

James Hart, the mortgagee received January 28, 1899 one thousand dollars principal, which was paid him by Hageman (who says he received it for that purpose from Jackson), and twenty-seven dollars and eight cents interest from Jackson which is receipted on the mortgage. On January 26, 1899 he drew from his account in Manhattan Savings Institution of the City of New York \$1,181.09, and it seems reasonable to suppose that it was out of this money that the mortgage of Hart was paid as above stated.

The account of Thomas A. Jackson in the Manhattan Savings Institution was begun January 18, 1895 by a deposit of \$1,500. This was the only deposit ever made in the account, and it was from this with the accumulations of interest (which with the principal amounted in January, 1899 to \$1,681.09) that the sum of \$1,181.09 was withdrawn, leaving precisely \$500 to the credit of Jackson. This balance remained on deposit until his death and was withdrawn by his executors June 6, 1904 with the accrued interest amounting at that time to \$594.59.

The right of the complainant therefore to a decree in this suit re-establishing the Hart mortgage as of the twenty-eighth of January, 1899, for the amount then paid thereon, and also to a decree against the executors for the \$594.59 which they drew from the Manhattan Savings Institution may be conceded, depends upon their establishing that the \$1,500 deposited by Thomas Jackson, July 18, 1895 in the Manhattan Savings Institution was in fact money which he had taken from his wife. This however has not been shown.

I.

Assuming that Jackson did take from the person of his wife about two thousand dollars as she claims, the complainant has wholly failed to trace that money into the Manhattan Savings Bank account.

The bill does not claim that the money passed directly from the possession of Jackson into the Manhattan Savings Institution, but alleges with particularity that it was first deposited in the National Bank of New Jersey at New Brunswick on the twenty fourth day of February, 1894, from which bank it was gradually withdrawn and the sum of fifteen hundred dollars thereof deposited on the eighteenth of July, 1895 in the Manhattan Savings Institution. (p. 4, l. 32 to p 6).

The complainant put in evidence Jackson's account in the National Bank of New Jersey, from which it appears that he did deposit on the twenty-fourth day of February, 1894, the date alleged in the bill, the sum of twenty-five hundred and fifty-one dollars, and doubtless this was supposed by counsel for complainant to support the charge in the bill that on that date Jackson deposited in said bank the moneys which he had taken from his wife. There was no other deposit after February 13, 1894 (the date when Mrs. Jackson claims to have lost her money) which could have included the money in question. It appeared however from the proofs on the part of the complainant, that this twenty-five hundred and fifty-one dollars, deposited by Jackson as above, was obtained by him from a source which wholly excluded the possibility that any part of it was the money of his wife.

Jackson, who was a carpenter and builder, had erected a house for one Bishop Edmonds and this was the final payment made to Jackson upon the contract.

Mr. Williamson, the architect, testifies (pp. 71-73) to a certificate given by himself as architect of said house, dated February 17, 1894 for the precise sum of twenty-five hundred and fifty-one dollars which entitled Jackson to receive said amount from the owner. The deposit

just a week later than this certificate of the exact amount which the certificate called for, leaves no doubt as to the source of this deposit.

This being the only testimony relative to the deposit in the National Bank of New Jersey, certainly it cannot be claimed that the complainant, having the burden of proof has shown that Mrs. Jackson's money was deposited on the day stated or any other day, to her husband's account in the National Bank of New Jersey.

At the close of complainant's case, his counsel, after taking time for consideration, deliberately elected to stand upon the allegations of his bill, which included the allegation that the money deposited in the Manhattan Savings Bank had been withdrawn from the National Bank of New Jersey (p. 6, l. 10 &c.)

It was in view of that action on the part of the complainants that the defendants rested without offering any evidence (p. 215 l. 15).

It was unnecessary for the defendants to offer any evidence in the situation thus presented, for the complainant himself, while alleging that the fund in the Manhattan Savings Bank had come from the account of Jackson in the National Bank of New Jersey, at the same time had failed to prove if he had not in fact positively disproved, that the deposit in the National Bank of New Jersey represented the money alleged to have been taken from Mrs. Jackson.

The allegation of the bill that the money deposited by Jackson in the Manhattan Savings Institution was withdrawn by him for that purpose from his account in the New Brunswick Bank, is to some extent supported by his account in the latter bank (pp. 231-232).

The following are some of the larger amounts drawn from said account:

February 13, 1894.....	\$1,089 54
February 19, 1894.....	200 00
February 19, 1894.....	100 00
February 28 1894.....	968 53
July 18, 1894	397 21

September 22, 1894.....	236 42
February 1, 1895.....	500 00
March 30, 1895	500 00

The last two items of \$500 each, apparently went into Jackson's account in the New Brunswick Savings Institution as deposits of like amounts appear on corresponding dates to his credit in the latter Institution. They show however that he was withdrawing from his active account funds for investment and aside from those two items here was nearly three thousand dollars drawn out by Jackson by his six other checks above mentioned.

But even if the complainants were not bound by the allegations of the bill to the theory that the deposit of \$1,500 July 18, 1895 in the Manhattan Savings Institution had come from the account of Jackson in the New Brunswick Bank, their case must still have failed.

The vital point is to show that this \$1,500 came from Mrs. Jackson. If the complainants can get away from their averment that it came from the National Bank of New Jersey, it still remains for them to show where it did come from and to trace it back through some channel to Mrs. Jackson. It cannot be claimed that they have done this. The utmost that can be claimed is that Mrs. Jackson's money was taken by her husband more than a year prior to the deposit; but what he did with it or whether this \$1,500 is any part of it, the testimony gives not the faintest indication. There is absolutely no testimony bearing on the subject except the account in the National Bank of New Jersey.

As the Ordinary remarked in *Ellicott v. Kuhl*, 15 *Dickinson*, 333-337, for aught that appears he may have casually lost the money or he may have squandered or wasted it. At all events it is not identified with the deposit in the Manhattan Savings Institution.

II.

In view of the entire failure to trace the money from Jackson's hands into the specific fund which the bill seeks to reach, it would seem idle to discuss the ques-

tion whether Jackson really did rob his wife. There is however no satisfactory proof that the money of Mrs. Jackson was ever in the possession of her husband.

The claim is sought to be established by two kinds of evidence. First, the testimony of Mrs. Jackson herself as to what occurred between her and her husband on the occasion when she says she thinks she lost it. Her evidence as to what took place in his presence, or even that he was present at any time with her, for the purpose of creating an inference that he may have taken her money, is clearly incompetent as against the executor of her husband's estate, who is a necessary party by reason of his claim to have a power of sale under Jackson's will (p. 14, l. 14).

Lipp v. Fielder, 66 Atl. 189.

It is also inadmissible as against devisees if the executor were not a party. *Kleb v. Kleb*, 4 Robins, 305.

The case of *Dickinson vs. Payne*, 37 Vroom, 35 is closely in point. It was there held that a plaintiff suing an executor for services as house-keeper could not testify to rendering such services in the presence of the decedent. Justice Dixon is delivering the opinion of the Supreme Court said, (page 36):

"Manifestly, in the transactions to which the plaintiff testified, 'the deceased bore a part and, if living, would be the most important, perhaps the only witness' against her. He must have been present when many of her acts, if she testified truly, were performed, and as to those matters, if she testified falsely, he could as a witness, have directly contradicted her. These are the conditions in which the legislature did not intend to legalize the testimony of a party against an adversary representing a testator or intestate."

Without her testimony the case utterly fails. No court would base a decree upon the meagre admissions so incredible in their narration and from sources so suspicious.

The first witness testifying to an admission is Mrs.

Virginia McCauley, sister of Mrs. Jackson, who testifies to having heard Jackson on one occasion say to his wife, the witness being present, the words "I took it and would take more if I could get it." This she says (p. 117) is every word that she heard of the conversation, and she cannot say that she heard the word money used (page 116). Her surmise that the words used by Jackson referred to money and particularly to the money now in question, is of course not evidence and is moreover quite unwarrantable. The testimony of this witness assuming it all to be true falls short of proving an admission in relation to the subject of this suit. This testimony was given on the twenty-second day of September and from that day the hearing went over until the twenty-sixth day of October, on which later occasion Elizabeth McCauley the young daughter of the last named witness (and a niece of Mrs. Jackson) appeared and testified (p. 174, l. 18) to having heard Jackson make an identical admission on another occasion under circumstances quite similar, but supplying the word money, the absence of which was the weak point in the testimony of her mother.

The testimony of this witness is so palpably a fabrication as hardly to require serious attention. Like her mother she heard but the single sentence which she now relates and which she says was spoken by Jackson in the back yard of their residence where he had apparently gone for no other purpose than that he might utter these words: for after speaking them he at once turned around and went into his house passing his wife at the back door where she had been standing. The veracious narrator of this extra-ordinary occurrence had been in the adjoining yard and after hearing the startling declaration of Jackson, got on the top of a cistern in the hope of hearing more, but was unable to do so. She says she was impressed by what she heard and often heard the loss of the money discussed in the family, but never told any one that he had heard any admission by Jackson until after the first day of the hearing when she

told her mother, supposing that it was too late for her testimony to be available. She says, however, that as she stood on the top of the cistern she was in plain view of Mrs. Jackson (p. 182) so that Mrs. Jackson must have known that she was a witness to the admission if any such thing ever took place.

Another witness who testifies to language and conduct of Jackson is Mary Oberhofer who does all she can to give the impression that during the last sickness of Jackson he repented of his act in taking the money and was desirous of making some amends; for which purpose he sought pencil and paper and carried on in a manner which such a witness as this would be likely to think probable in a person afflicted by remorse. She says he used the words "in the desk" repeatedly and told her he was sorry that he 'left her penniless, but it was too late now to mend his ways.' All of which the counsel for the complainant with an enthusiasm of zeal which blinds him to all other interpretations, considers as necessarily referring to the alleged taking of the money and the depositing of it in the Manhattan Savings Institution. A much more reasonable supposition that whatever Jackson said, (if he said anything, which may have served as the foundation for the dramatic tale of this witness had reference to his having made a will in which the provision for his wife was so inadequate that she refused to accept it in lieu of her dower, in satisfaction of which she finally accepted five hundred dollars (p. 155.)

This witness further says that Mrs. Jackson used to accuse her husband of having taken her money but he never owned up to it before her. (p. 189 top). The testimony of all three of these witnesses to supposed admissions strikingly illustrates the danger of this sort of evidence which has been frequently commented upon by Judges.

In Midmer v. Midmer's Executors, 11 C. E. Green 229, 306, Vice Chancellor Van Fleet says:

"The proofs offered in support of the alleged trust remain to be considered. They consist entirely of verbal admissions and declarations, made years ago, by the alleged trustee. No species of evidence is more dangerous. It is fitly characterized by Sir William Grant in *Lench v. Lench*, 10 Vesey 517. He says: "There is no material evidence but that of the cestique trust, who is made a competent witness by a release. She swears to no fact or circumstance capable of being investigated or contradicted, but merely to a naked declaration, supposed to have been made by the husband, admitting that the purchase was made with trust money. That is, in all cases, most unsatisfactory evidence, on account of the facility with which it may be fabricated and the impossibility of contradicting it. Besides, the slightest mistake or failure of recollection, may totally alter the effect of the declaration. There are no corroborating circumstances, by any writing under his hand. In most of the cases there has been, at least, something in writing; some account, by which it appeared that the fund was laid out." Chancellor Kent, in *Boyd v. McLean*, supra, is equally emphatic in speaking of the danger of this kind of proof, and says its admission, in cases of this class, tends to perjury, and the insecurity of paper titles."

In the present case, if we credit each of these women with a desire to tell accurately just what she heard and nothing else, it is still apparent that the admission may have referred to matters entirely different, and after the lapse of several years may by very slight change have been transformed into something very different from what Jackson really said.

The only remaining witness upon this part of the case is one Oliver a Detective who says that he was employed by Mrs. Jackson to try and find her money for her and that Jackson admitted to him that he had taken it. He

says further that he informed Mrs. Jackson of the admission made by her husband within a few days afterward and that they together consulted Judge Rice but were told him that no suit could be maintained by Mrs. Jackson against her husband for the money, in consequence of which advice no further steps were taken to recover it.

The testimony of this witness is curiously lacking in detail. He does not pretend to give Jackson's language or any part of it. His story is subject to the suspicion that generally attaches to witnesses of this class; and when he asks the court to believe that a lawyer of the standing of Judge J. Kearny Rice advised that no suit could be maintained by wife against her husband under such circumstances notwithstanding the husband's admission, he taxes credulity beyond what it will bear.

As a whole it is submitted that the testimony relied upon by the complainant being of the character recognized as dangerous (and such as should be received with especial caution against the estate of a dead person), does not carry conviction or produce that degree of satisfaction which alone should be the basis of a decree.

III.

The right to relief if any ever existed is barred by laches.

The bill alleges that on the twelfth of February, eighteen hundred and ninety-four, Thomas Jackson fraudulently took from the person of his wife two thousand dollars. The bill was filed more than ten and a half years after alleged taking of the money. In the meantime on the twenty-third of February, nineteen hundred and three, Jackson had died.

It is apparent from the very nature of the case that any defence to such a claim must necessarily have rested wholly or mainly upon the testimony of Jackson himself. Mrs. Jackson the real complainant seeks to prove her case by her own testimony as to the occurrences of the night when she says the money was taken,—in

which occurrences he took part,—and by the testimony of other persons to admissions alleged to have been made by him. Manifestly the only proof that could be opposed either to her testimony or to the evidence of his admissions would be the denials or explanations of Jackson himself.

And it now appears from the testimony of Oliver that she was informed within a very few weeks of the time when she lost her money, that Jackson had admitted to Oliver that he took it. So also she was present at the time when Jackson is said to have made the admissions to Mrs. McCauley and to her daughter. Mrs. Jackson, therefore, according to the case which she now makes, had full knowledge of practically all the evidence which she has introduced in this case as to the taking of the money; yet she allowed ten years to elapse after knowing of her husband's admission to Oliver before she began this suit. The effect of her delay has been to deprive the parties against whom the claim is asserted, of any possibility of defending it. Any act or admission of Jackson which may be alleged on the part of the complainants must go undenied because they have so timed their suit that any denial by him is no longer possible.

Under such circumstances the Courts of equity have uniformly refused to give relief. The cases are extensively collected in *Lutjen v. Lutjen*, 19 *Dickinson*, 773, in the Court of Errors. See also in addition to the cases there cited:

Farr v. Hauenstein, 61 *Atlantic*, 147.

Condit v. Bigelow, 77 *Dickinson*, 504, 515.

James v. Aller, 21 *Dickinson*, 52, 68.

Hill v. Hill, 62 *Atlantic*, 385, 387.

Quairolì v. Italian Beneficial Society, 19 *Dick.* 205, 209.

Lindsay Petroleum Co. v. Hurd, L. R. 5 P. C. 221, 239.

Rochefoucauld v. Boustead, L. R. 1 Ch. 196, 210.

By postponing her suit until after the death of her husband, Mrs. Jackson has placed the defendants in such a position that it is inequitable to enforce her claim. The Court cannot do what may appear to be justice to her with any certainty that it is not doing injustice to the other side. Where the lapse of time has produced this situation the relief must be denied, even though the time had been much shorter than in this case, and regardless of the relation existing between the parties.

It is a rule of equity binding upon all suitors in courts of equity that they must enforce their claims promptly and not by delay place the other party at a disadvantage by the loss of evidence. It is an application of the more general rule that he who would have equity must do equity, and laches of this character and producing this result appearing on the face of the bill is ground of demurrer.

Quairol v. Italian Beneficial Society, 19 Dick. 205, 209.

Van Houten v. Van Winkle, 1 Dick. 380, 384.

It was not necessary therefore, that the laches should be set up in the answer as a ground of defence.

It is no answer to this objection for the complainants to say that Mrs. Jackson did not know of the deposit in the Manhattan Savings Bank until after her husband's death. She did know within a month after the money was lost, if the testimony which she now introduces is to be believed, that her husband had admitted taking the money. Presumably at that time he had it still in his possession. It was long before the deposit in the Manhattan Savings Bank which was not made until July of the following year.

The subsequent deposit in the Manhattan Savings Institution, whether she knew of it or not, could not enlarge or extend the right of action which she had before, or relieve her from the consequences of her delay.

It is clear upon the whole case that the complainants

are not entitled to relief and that the bill was properly dismissed.

The decree should be affirmed with costs.

ALAN H. STRONG,
Of Counsel with Respondents.



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and

CHARLES A. JACKSON, Executor,
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Defendants and Respondents.

On Appeal.

BRIEF FOR APPELLANTS.

FREEMAN WOODBRIDGE AND ALFRED S. MARCH,

Solicitors for and of Counsel with Appellants.

The decree appealed from in this case dismissed the bill of complaint (p. 244).

The bill alleges that on the twenty-fourth day of February, 1894, Thomas A. Jackson, now deceased, abstracted from the person of his wife while she was sleeping on a lounge at her house in New Brunswick, N. J., the sum of two thousand dollars, cash money, a part of which money he subsequently used to pay off a mortgage on his property described. That he deposited fifteen hundred dollars of it in the Manhattan Savings Institution, New York City, from which institution, in January, 1899, he withdrew one thousand dollars, and paid the balance then remaining due on the bond and mortgage.

The bill alleges that he concealed from his wife, Emma J. Jackson, the fact of the deposit in the Manhattan Savings Institution and also concealed from her the fact that the bond and mortgage had been paid off. The bill also shows that at the time of his death there was remaining on deposit in the Manhattan Savings Institution the sum of five hundred dollars.

The bill prays that the complainant be subrogated to the amount of the mortgage. That a trust be declared in favor of the complainant against the property and estate of the deceased and that the defendants be required to account to the complainant out of the estate of the deceased for the sum of two thousand dollars and interest.

The answers were general denials (pp. 22-36).

PRELIMINARY.

The original complainant was William E. Ten Broeck, assignee of Emma J. Jackson, his mother. The latter by her assignment dated August 12, 1904 (p. 20), parted definitely and finally with all interest in the subject matter of this suit to her son (p. 38, l. 35; p. 39, l. 13). Counsel on cross examination succeeded in confusing her somewhat, but she stated distinctly that she had parted with all interest in it and had delivered it to her son. He had never received anything from his father's estate, and she preferred to have her son have it than no one at all (p. 48, top). This was entirely voluntary on her part (p. 46, l. 35 and p. 47). The testimony of the son (p. 50, l. 30, &c.) was of like effect. His mother had executed the assignment. It had been explained to him and she had delivered it to him for one dollar. He read the instrument over and handed it to his mother to put in a drawer for him. Counsel succeeded in confusing him somewhat, but the delivery was completely proved, and the transaction was perfectly legal. Mrs. Jackson thereby became qualified as a witness.

Cullen v. Woolverton, 36 *Vr.* 279.

The learned Vice Chancellor after hearing them, however, thought that Mrs. Jackson ought to be made a party to the record and ordered the amendment (p. 63, l. 30, and p. 64, top). This shut out the testimony of a most important witness, who had voluntarily and absolutely parted for a good and valuable consideration with all possible interest in the subject matter or cause of action. We call attention to the matter here because we think it obvious that from the whole testimony of both parties to the assignment (pp. 37-64) that this order was unwarranted.

FACTS.

The facts in the case are practically without dispute. The testimony of complainant's witnesses was absolutely uncontradicted. The defendants put in no testimony but rested on complainant's case. It might be thought at first glance that this was because their skilful and distinguished counsel considered it too weak to require any defense. We shall discover, however, that it was not for this reason, and that he conducted the cause of his clients much more skilfully and ably by refraining to call them or those with them in court than if he had allowed them to be sworn.

The witnesses were not all called in due order, but the facts may be so presented and discussed.

That Thomas A. Jackson took \$2,000 from the person of his wife, Emma J. Jackson, as alleged in the bill, and disposed of it substantially as therein stated, does not admit of a doubt.

I.

JACKSON WAS AFTER THE MONEY AND PLANNED TO GET IT.

The motive and intent was clearly proven by the testimony.

Jackson was paying attention to Emma for about two years before his marriage (p. 122). She and a sister were unmarried and he said he would marry the

one that had the most money (p. 109, l. 20-40). Again he said: "When I married a Runyon I put my tools away never to work again; he said that many a time" (p. 185, l. 20-32), and he never did work again (p. 185, l. 34; p. 93, l. 1-40; p. 81, l. 1-20; p. 121, l. 10, &c.). Emma married Jackson, October 14th, 1893, and shortly before, in the month of July, 1893, there had been paid to her by Marks \$800, and by Stilwell \$1,200 (p. 123, l. 20 to p. 125, l. 20; and Mr. Runyon, p. 89, l. 10, to p. 91, l. 10). This money Jackson knew about before his marriage, and he enquired about it of Mr. Runyon (p. 92, l. 1-5; p. 126, l. 20, &c.). Mrs. Jackson carried the money on her person in the pocket of her dress pending the time she should reinvest it. She accurately describes the denominations of the bills (p. 125, l. 20, &c.), and as is shown, her husband knew that it was in her possession.

The learned Vice Chancellor thought the complainant failed to prove *motive*. What more motive could there be expressed by this man himself or inferred from his words or actions? There was a mortgage on Jackson's properties, on which there remained due at the time of his marriage the sum of \$1,300 (Ex. 3, p. 220, and Ex. 4, p. 220-223, l. 20, offered p. 69, l. 15-32). This mortgage it appears by the indorsements on the bond (p. 121, &c.), Jackson had been seven years reducing \$500; this while he was engaged in business. After his marriage and after the loss of his wife's money, although he had retired from business, he paid off the balance of \$1,300 in less than five years in two payments, one payment of \$300, July 16th, 1894 (p. 223, l. 25, &c.), and the other payment of \$1,000 January 28th, 1899 (p. 95, l. 25, to p. 96, l. 20, which must be read in conjunction with Mr. Hageman's testimony, p. 100, l. 1, to p. 101, l. 30). Here was motive carried out to pay off the mortgage on his houses.

It has been held in this State at the Middlesex Oyer and Terminer in two famous cases on which convictions were secured that this was motive for murder.

State v. Robinson, 1840.

State v. Aragio, 1895.

II.

JACKSON GOT HIS WIFE'S MONEY.

The Opportunity.

He was there the night she lost it; she had it when he came into her presence; when she left his presence she was without it (p. 126-134).

Discussing for a moment the rule of law, it is evident that from the very nature of the situation Jackson's presence during all of the time in which her money was lost must be admitted. No one else was there (p. 128, l. 10, to p. 140, l. 38). The very objections therefore that counsel made right through here admitted Jackson's presence; otherwise she was competent to testify what took place. (See p. 200, &c., where the Court conducted the examination.)

If it be true, therefore, that this witness could not testify *to the presence of the deceased*, the very fact that the witness is thus disqualified by the ruling of the Court must prove his presence at that time and place, and the other side by its objection is forced thereby to admit on the record the presence of the deceased as a proven fact (p. 13, l. 39; p. 132, l. 1-40). But the testimony was competent as to his presence.

Cowan v. Davenport, 30 N. Y. Appel. Div. 130.

Hamlin v. Stevens, 59 N. Y. Appel. Div. 522.

These authorities are directly in point and collect the New York cases under a statute, the effect of which cannot be distinguished from our own.

The prohibition of the statute is not against the situation, but against the witness.

We think it was sufficiently and competently proved, therefore, by Mrs. Jackson's testimony that her husband was present at the time she lost her money, so long as she did not prove or attempt to swear to anything that he or she said or did in his presence.

This would seem to accord with the language of the Chancellor in *Wolverton v. Van Sickle*, 28 Vr. 392-395, where he said: "Neither the language nor the reason

of the legislation extends the disability beyond transactions and conversations in which the decedent participated."

The Am. & Eng. Enc. of Law, 2nd Ed., Vol. 30, p. 1031, under the title of "Independent Facts," thus stated the rule: "Since the statutes do not render a "party wholly incompetent . . . it follows that a "party is competent to testify to any material fact "which does not involve a personal transaction with "the deceased. In other words, the surviving party to "the transaction may testify to all material facts within "his knowledge, except such as came to his knowledge "through a personal transaction or conversation with "the deceased."

It is obvious, therefore, that the two naked facts, that Mrs. Jackson had her money when her husband came into her presence, and that she was without it when he left her presence, were matters that were within her knowledge, entirely independent of anything that he did or said. This is not at all in conflict with the case of *Dickerson v. Payne*, 37 Vr. 35.

His presence being thus established at the time of the loss of her money, there is certainly a strong corroboration of his confession subsequently made.

The Court may take judicial notice that the money did not walk away itself.

His confessions.

These are most important. He confessed it in the presence of Mrs. Virginia McCauley (p. 110, l. 1-20); he confessed it in the presence of Elizabeth McCauley (p. 174). It seems absurd to say in view of these confessions that there is no proof that they referred to the fund which forms the subject of this litigation. They were talking about this money, these witnesses say. It formed the subject of much conversation and quarreling between them (p. 115, l. 39, to p. 116, &c.; p. 178 to 183). Elizabeth McCauley says on her cross examination that this declaration made an impression for the very reason that it referred to Mrs. Jackson's money

(p. 180, l. 8, &c.). There is no testimony in the case that shows that it could have referred to anything else. The learned Vice Chancellor says: "These expressions might have referred to a dozen other subjects of controversy." There is nothing in the case to show that they might have. It not being shown that there were any other moneys to which these expressions could apply, it must be presumed in the absence of proof to the contrary that they referred to these funds.

Jeffrey v. Tower, 18 Dick. 530-538.

Next we have the confession made to Charles A. Oliver (p. 159, &c.). Jackson admitted that he took this money from his wife (p. 160, l. 1 20, and p. 161, l. 1-40). There seems to be no reason for a gratuitous disbelief of what Mr. Oliver says. This witness was over-conscientious, if such a thing be possible. He recalls distinctly what Jackson told him, but not "*the exact words.*" But his testimony is as positive as though he remembered the very words and bears more the stamp of truth than if he had attempted to give them. It accords exactly with every circumstance and part of the rest of the case. Compare testimony of Oliver (p. 161) and testimony of Mrs. Jackson (p. 127, l. 15; 129 to 133, and 198, l. 40, to 199, l. 20), brought out by counsel on cross examination; also her examination by the Court (p. 200, l. 1, to 203, l. 30).

Mr. Oliver comes into this case like any other witness uninterested. His connection with the matter ceased more than ten years before this bill was filed. He stood and stands now in a different position from those detectives who are employed to discover evidence of guilt. His investigation ceased when he learned what became of this money, and in that investigation he naturally turned first to the only other person present at the time it was lost. He found out and took her to the Judge of the Criminal Court, whose officer he was at that time, and learned there undoubtedly that a husband could not be guilty of larceny from his wife. Is

it impossible to suppose, as inferred by the Vice Chancellor, that the learned Judge of the Middlesex County Criminal Courts at that time so informed a person brought to him by the assistant to the prosecutor? (p. 161, l. 30, &c.). There is no evidence to show that Judge Rice was civilly employed.

III.

HIS REPENTANCE AND ATTEMPT AT RESTITUTION.

Mary Oberhover.

We now come to the *most important witness in this whole case*, and without whose testimony this bill upon the theory of the complainant probably would not have been filed. This testimony the learned Vice Chancellor absolutely ignores or overlooks. Her testimony is the connecting link between these specific confessions and Jackson's whole course of conduct from the time the funds were taken until his death. Whatever its importance, no one can read it and doubt its truth. She was employed to take care of Jackson and watch with him during his last illness two weeks before his death (p. 187, l. 40). The time is approaching when men speak the truth and when the wrongs that they have done fill their being with remorse, and remorse for some wrong done by Jackson to his wife fills his being. He is restless; he walks up and down looking for pencil and paper that he may write; he paces to and fro, wringing his hands; he lies on the lounge and calls his wife to him. He whispers to her (p. 193, l. 40). What he said in that whisper is shut out by the amendment ordered by the learned Vice Chancellor, but Mrs. Oberhover hears him say, "I have wronged you, Emma." She sees him hand her the keys to his desk and hears him say, "In the desk, in the desk" (p. 196, l. 20, &c.). Jackson died February 23, 1903 (p. 70, l. 21, &c.).

IV.

THE MONEY OR ITS PROCEEDS DISCOVERED.

And what was in the desk?

First. The deposit book in the Manhattan Savings Institution, showing \$1,500 deposited July 18th, 1895 (p. 194, l. 20, &c. See Ex. 8, p. 229, l. 20).

Second. The paid but uncanceled bond and mortgage on his properties (p. 194, l. 40, to 195, &c), which he had paid off to James Hart on January 26th, 1899, by withdrawing for that purpose from the Manhattan Savings Institution \$1,181.09 (see Ex. 8, p. 230, l. 9; and Ex. 6, p. 226, l. 20, &c.). This he had gone also to great pains to conceal by scheming for a bogus assignment (Ex. 5, p. 224; see also testimony of Richard R. Hageman, p. 100-104, and James Hart, p. 95, l. 10, to p. 99).

Third. This assignment to and the satisfaction piece of Richard R. Hageman (Ex. 6, p. 226) obtained from him in the manner related (p. 101, l. 25, to p. 102, l. 25); but not recorded until after his death (p. 70, l. 1, &c.).

And there was nothing else in the desk except some old checks and papers, of no value.

All of these instruments and documents were taken by Mr. Van Cleef, who was attorney for his executors (p. 196-198). Are we to presume that Jackson referred to the worthless papers as the things that he wanted his wife to have to right the wrong that he had done her and exclude the other documents, the bank book and the bond and mortgage? Why shall we not say rather that he referred to everything that was in the desk; the bank book, the bond, the mortgage, the bogus assignment and satisfaction piece, as well as those old checks and papers of no value?

These were the things that he had always kept from her knowledge until that time (p. 135, l. 1-40). The learned Vice Chancellor thinks this not of much account because "he told her he was going to pay it off"

(p. 134, l. 40). Her explanation of that was clearly to the effect that he was to borrow the money for that purpose from a "widow woman" (p. 135, l. 15-32). "He told me it was on." (Stricken out.) One statement was as competent as the other. Neither was responsive to the question asked, and both were incompetent as involving statements by deceased. But if this case is to turn upon Jackson's statement to his wife "that he was going to pay off the Hart mortgage," certainly it was but fair that we should have in the statement that he did not thereby mean that the property would be freed and cleared, but rather that he would take it up of a "widow woman." Neither did it appear when he told her so. He may have told her just before his death. This is important because the Vice Chancellor uses it to infer laches (p. 242, l. 20). But it does not open the door for any such inference, even if competent to be noticed at all.

Mr. Van Cleef and the executors and two appraisers were present when the desk containing the bond and mortgage and bank book was opened. They took them all away (p. 203, l. 30, &c., and p. 194, l. 20, to 195, l. 30). Some of these were in court; all, except one, are living. Why were they not called to testify that there was something else in the desk to which Jackson might have referred when he told his wife, "I have wronged you. In the desk, in the desk," and gave her the keys to it?

The rule is that if a witness who might be contradicted, if possible, is not contradicted, the inference must be against the side failing to do so.

V.

THE CONDITION OF HIS ACCOUNTS AND ESTATE IS STRONG PROOF OF COMPLAINANT'S CASE.

Let us now turn to see whether or not the circumstances of this case corroborate these witnesses and the theory of the complainants.

Jackson had been a contractor and builder, and, as the evidence shows, had considerable work up to February, 1894. His properties were mortgaged and his bank accounts show no considerable deposits except those arising from his contracts (Ex. C 20 (9) p. 231, &c., admitted p. 158, l. 15, &c.). Every one of his deposits of sufficient size to make it important is identified as funds received from these contracts. 1st, Mr. Florence's check, March 28, 1893 (Ex. C 21, p. 158, l. 30, &c.), \$2,386.63 deposited (p. 231, l. 10). 2nd, first payment by Mr. Price on his house as shown by Ex. C 1 (p. 216), check and architect's voucher, October 20, 1893 (p. 65, l. 1, &c.; deposited p. 231, l. 43). 3rd, Mr. Price's second payment (Ex. C 2, p. 219) \$1,440.50, architect's voucher, January 31, 1894 (deposited February 12, 1894, p. 232, l. 3). The remaining Price payment was made direct to Mr. Butler, a material man, of \$1,400 (p. 217), and did not pass through Jackson's hands (p. 65, l. 20). 4th, The deposit for the contract price of Mr. Edmund's houses. See testimony of Architect Williamson (p. 71), and certificate (p. 73, l. 15, &c.), dated February 17th, 1894, for \$2,551.00 (deposited p. 232, l. 4).

All of these were close jobs. They were the lowest estimate. See testimony of George B. Rule (p. 77-82), where he figured the actual cost of the Price and Edmunds houses at more than Jackson took the contracts for (p. 80). See also testimony of Architect Williamson (p. 72, l. 40, &c.) "They were the lowest estimates." Jackson told Mr. Runyon that "there was nothing in these jobs." "That he hadn't made anything" (p. 92, l. 20-40).

But in spite of all this he invested in the New Brunswick Savings Institution \$1,000 out of his deposits in the National Bank of New Jersey. (See drafts of February 1 and March 30, 1895, \$500 each, Ex. C 20, p. 232, l. 38, and Ex. C 7, p. 228, l. 12 and 13.) Of this deposit of \$1,000 the whole amount remained in his estate at the time of his death as follows: Eight hundred dollars was invested in the stock of the New

Brunswick Fire Insurance Company, July 7, 1899 (See draft on Ex. C 7, p. 228, l. 36, and testimony of Frederick Weigel, p. 75; also inventory, p. 70, l. 25); and two hundred dollars principal was still in the New Brunswick Savings Bank at the time of his death and was drawn out by his executors. (See draft, February 24, 1905, Ex. C 7, p. 229, l. 15, and inventory, p. 70, l. 25.) *It is worthy of note that the \$1,500 in the Manhattan Savings Institution (Ex. 8, p. 229) was not inventoried (p. 70, l. 25).*

We may say then that this \$1,000, drawn from the bank where his business account was kept, represented his profits on three contracts, the Florance, Price and Edmunds properties. Something over a ten per cent. profit, which must be considered pretty good in view of the fact that he took the jobs at less than it would have cost Mr. Rule to build them and said there was no money in them. March 1, 1893, his balance in the National Bank of New Jersey was \$35, and on January 2, 1897, \$26.55 (p. 231 and 233). The mesne drafts of any size are so near the dates of the deposits that they must have gone in payment of his labor and material (see p. 131-132, left hand column), and this inference is made conclusive by the fact that no asset remained in his estate which any such deposit or draft explains, except only the \$1,000 of the New Brunswick Savings Institution and its proceeds, placed there in the two \$500 deposits, of which \$800 was drawn out for investment in the Fire Insurance Company but still in the estate.

The business account shows no large deposit after Mr. Edmunds, February 24, 1894, and only of \$70.86 after that at all. Where then was he in receipt of the sum of \$1,500 to open a deposit in the Manhattan Savings Institution July 18, 1895 (Ex. C 8, p. 229) not inventoried? We find no drafts on any of his accounts to correspond with this deposit in the New York bank. Certainly it did not come from any of the funds of his business account. He had no other accounts or property from which it might have been derived. We have

his mortgage and the deeds to his real estate in evidence. His bank accounts are in evidence. If he had any source of income or property by means of which this deposit may be explained, let the defendants produce it.

VI.

THE FAILURE OF THE DEFENCE TO RESPOND BY ANSWER OR PROOF IS A STRONG CORROBORATIVE CIRCUMSTANCE, IN FACT AND IN LAW.

They have all his books and papers. Mr. Van Cleef, in the presence of the appraisers and executors, took them away, and they do not deny it, although present in Court. If it were not for this testimony it would be presumed that the executors, the defendants, or their counsel, had them. They are the proper custodians of the effects of the decedent, and unless they satisfactorily explain their failure to produce, which they do not do, it must be presumed that they have no explanation to give that would help their case. The complainant called for them by the bill (p. 17) and notice (p. 234), but the executor or counsel who took possession of the effects fails to produce or explain. The Manhattan Bank account was opened during the continuance of his account in the National Bank of New Jersey. There is no corresponding draft or any draft or series of drafts from which any relation may be inferred between these two accounts. Where then are the returned vouchers of the New Brunswick National Bank? Why are they neither produced nor the failure to produce them explained? Were these drafts on the National Bank of New Jersey at New Brunswick account payable to Thomas A. Jackson himself as his profits out of the jobs, or did they all (except the \$1,000 that we have traced into the New Brunswick Savings Institution) go to pay material men and labor? There are a large number of them (see left hand column of Ex. C 20). Where are they? There are many of the laborers and material men who worked or supplied

material for the Florance, Price and Edmunds houses still living in New Brunswick, after twelve years, and many other witnesses who could tell from every check whether there was a material man or laborer of that name in New Brunswick then. If we could see them we could prove as to each one, whether it went to a material man or laborer or was a profit to Jackson. It would be a great help to the defendants to prove that out of these deposits Jackson had fifteen hundred dollars available over and above the one thousand dollars that he put into the New Brunswick Savings Institution February 1 and March 30, 1895; or that he had fifteen hundred dollars available anywhere else; or *that there was anything in the desk of the deceased to which he might have referred when he told his wife he had wronged her and said "In the desk, in the desk,"* except the proceeds of her funds. The rule is that their failure to produce anything or to explain its non-production, raises a presumption in favor of the complainant and against the claims of the defendants.

Raymond v. Cox, 17 Stew. 415—note 416.

And this rule goes so far that their failure to show that he had other moneys out of which this deposit of fifteen hundred dollars might have been made in the Manhattan Savings Institution, or to explain why they do not show it, requires that every reasonable intentment be made against them.

Bohle v. Hasselbroch, 19 Dick. 334-337.

See also

Sanborn v. Adair, 2 Stew. 338.

Lee v. Steiger, 3 Stew. 610.

Jones v. Knauss, 4 Stew. 609.

We say that the uncontradicted testimony that they got possession of all his papers and effects, given in the presence of the only persons who could contradict it if false, Mr. Van Cleef and the executor, both present in Court, coupled with their failure to produce such papers or explain their non-production, raises a strong

presumption that such production or explanation would be injurious to the defence and goes strongly to corroborate the complainants.

It is apparent now that counsel's failure to put in any defence was not due to his confidence in the weakness of the complainant's case, but to his fear that it would be still further strengthened if an opportunity was given to examine the defendants.

Where then did Jackson get this fifteen hundred dollars that he placed in the Manhattan Savings Institution? Certainly not out of any of the moneys that passed through the National Bank of New Jersey. He had no other property, so far as we have found, so far as the inventory shows, nor so far as the defendants have shown, with every opportunity so to do if they could, and the presumption raised against them by their failure so to do or to explain. He was not working. "When I married a Runyon I put my tools away, never to work again." And he never did work. (Reference under Point I. above.)

VII.

HIS CONDUCT OF SECRECY AND THE BOGUS ASSIGNMENT OF THE MORTGAGE WHEN IT WAS PAID, ARE NOT EXPLAINABLE EXCEPT UPON THE THEORY OF COMPLAINANT'S CASE.

Let us now look at the circumstances attending this secret deposit in a foreign jurisdiction (Ex. C 8, p. 229). He had a savings bank deposit in New Brunswick commenced nearly six months before he opened the account in New York (Ex. C 7, p. 228). Why should he go to a New York bank with his account? He was an elderly man—habits of life fixed. There was only one object in it, and that was to more effectually conceal it from his wife and put it out of the jurisdiction of the New Jersey courts. It is impossible to escape this conclusion under the circumstances. He had no business in New York; his banking was done

in New Brunswick. But this fifteen hundred dollars was never in any bank in New Brunswick and never drawn out of any bank in New Brunswick. Whence then this deposit? *This was Mrs. Jackson's money.* The case is perfectly plain; he kept the money in his personal possession until the excitement had blown over, and then he takes it and places it in the Manhattan Savings Institution in New York City. Out of the remaining five hundred dollars, between February 14, 1894, and January 26, 1899, he undoubtedly made the \$300 payment on the bond and mortgage to Mr. Hart, July 16, 1894, as shown in the endorsements (Ex. 3 and 4, p. 223, l. 27, &c.). It must be so considered because there are no other funds shown to have been in his possession out of which they could be made. He had no other money available for such a purpose. If so, here again the defendants are called to show it or the presumption must go against them. The mortgage was thus reduced, until there was due upon it one thousand dollars. Now let us see what happened. Mr. Jackson told Mr. Hart, the mortgagee, he would pay off the balance due (p. 95, l. 40, &c.). He waits until after his January interest is computed, January 1, 1899 (Ex. C 8), and on January 26, 1899, he drew from the Manhattan Savings Bank \$1,181.09, leaving a balance of \$500 to his credit (p. 230, l. 5); and with that money on the twenty-eighth day of January, 1899, he paid off Mr. Hart two days later (p. 95 and 96 and Ex. 5, p. 224, the bogus assignment).

Here was a most remarkable transaction. Jackson knew that everyone suspected that he had taken his wife's \$2,000. In order, therefore, that he might not arouse the suspicions of Mr. Hart, he uses *Mr. Hageman as a dummy*, and told him that he wanted to transfer it to his son. He handed *Mr. Hageman* \$1,000 cash, and Mr. Hageman gave Mr. Hart his certified check for it and immediately turned over the assignment and the bond and mortgage to Mr. Jackson. The first thing that a man ordinarily does when he pays off a mortgage is to get it cancelled. But Jackson waited

nearly three years before he took a satisfaction piece of this bond and mortgage and then got Mr. Hageman to give him one (see Ex. C 6, p. 226, and p. 99, l. 35, p. 102, l. 25). And what does he do with the instruments, the bond and mortgage, the assignment and the discharge? Did he put them on record so that his property might be clear? *Not at all.* What was his object in keeping his property encumbered with an apparent lien which he had gone to much pains to discharge? The record was notice to all the world and to Mrs. Jackson. If she had had notice that he had paid off that bond and mortgage and discharged it, she would have pointed to him and said: "*Jackson, that was my money; you have no property available for that purpose except what you took from me.*" There would have been a notice that called upon her to act; *something by which she might have traced her funds.*

But what did he do with them? He placed them "*in the desk,*" with the bank book of the Manhattan Savings Institution. The desk where they were found and to which he gave his wife the keys when he was dying and told her, "I have wronged you." "It is here," *pointing to his heart.* "I cannot write." But "*In the desk, in the desk.*" And there they were: *The bond, the mortgage, the assignment and discharge, the last two unrecorded, the bank book in the Manhattan Savings Institution of New York, and nothing else, except some old papers.*

Was there ever a stronger case?

It is absolutely conclusive, because it not only points conclusively, but *excludes* every other reasonable hypothesis.

LAW.

PRELIMINARY.

The claim of the complainants in this action is based among other things upon what is termed by the law writers and authorities, "*The modern doctrine in equity in relation to the following of trust funds.*"

This modern doctrine had one of its ablest expositions in the leading case of *Knachtbull v. Hallett*, 13 Ch. D. Eng. 696; and a valuable general dissertation upon the same subject, entitled "Progress of equity in following trust funds," is to be found in volume 31 of the Central Law Journal, 1890, numbers of August 15th and 22nd.

At the risk of making this brief too lengthy we undertake to set forth here some of the rules as thus collected in the last reference, because we believe that the statement of them will at once elucidate what has heretofore been set down regarding the facts of this case.

"While there is necessarily much difficulty in deducing general rules for guidance in dealing with the great variety of cases that may arise for the application of the doctrine of equity under consideration, still the following may be submitted as constituting a part at least of the points that have been decided by the most recent English and American cases concerned with the matter of following money or funds impressed with trust:

"1. There is no distinction between a rightful or a wrongful disposition of the property by a trustee or a party standing in a fiduciary position, so far as regards the right of the beneficial owner to follow the proceeds.

"3. The relief will be given whether the *cestui que trust* be technically such by reason of an express trust, or whether he be merely a party in whose favor the law will imply or raise a trust, because of the existence of any fiduciary relation whatsoever.

"4. The relief will be given not only when the subject matter of the trust is to be found in *specie*, but also when the proceeds of the same are to be traced, identified or ascertained after a change in the nature or character of the moneys or funds as originally appertaining to the trust, and such proceeds will be subjected to the trust through whatever transmutations they may have gone, or may have been put, whether

"by the trustee, or third parties taking the same with
"notice of the trust.

"5. And in following such transferred property, the
"*cestui que trust* or beneficial owner may trace the same
"into the hands of any transferee, unless he stands in
"the position of a *bona fide* purchaser for a valuable
"consideration, without notice of the trust.

"6. The *sectui que trust* or beneficial owner may
"follow the trust property into the hands of a volunteer,
"whether he had notice of the trust or not, and into the
"hands of a purchaser for value *if he had notice of the*
"*trust*.

"7. If the trust funds are money, or are found to have
"been turned into money, or mixed or blended and
"confounded in a general mass of the same description
"with money belonging to the trustee, or with that of
"third persons who have acquired the trust funds from
"the trustee *with notice* so as to present the case of an
"undivided and undistinguishable mass of current
"money or of the proceeds, product, property, whether
"personal or real, in which such mixed fund has been
"invested, the *cestui que trust* or beneficial owner will
"have the right of a charge or equitable lien for the
"amount of the trust fund upon the mixed funds or
"such proceeds, product or property, and the whole will
"be treated as trust property except so far as the trustee
"may be able to distinguish what is his own."

"10. The *cestui que trust* or trust creditor may follow
"and obtain in priority to general creditors trust
"moneys paid to a banker, although no longer existing
"in *specie*, as money numbered and ear-marked, *but*
"*converted into a debt*."

"12. If, after a trustee has deposited trust money with
"his banker, and has there mixed the same with deposits
"of money in every sense his own, he draws upon the
"mixed deposit for his private purposes, it will be presumed
"that he had drawn out his own money before
"that of the *cestui que trust*, even though the money of
"the latter may have been first paid in. . . . In part-
"ing from the ancient doctrine that you could not follow
"money because it had no ear-mark, it may be said,

"that in recent times the demands of commerce have
 "provided means for identifying and tracing money and
 "its equivalents, which have more than supplied the
 "want of an ear-mark; and they are as well known in
 "the courts as in the marts of trade. How could what
 "belongs to one person be so accurately distinguished
 "from what belongs to another in this era of compli-
 "cated and consolidated trade and finance, were it not
 "for the numerous devices invented for that purpose by
 "the government, the banks, clearing houses, exchanges,
 "agencies? The different qualities and quantities of
 "property and commodities and the characteristics from
 "purchaser to manufacturer and then to the several
 "classes of dealers; from hand to hand; from place;
 "are all estimated and measured by their values
 "in money. And these properties and commodities,
 "with their qualities, quantities and values, are at
 "every stage of their progress through the commercial
 "world provided with an ear-mark of some kind,
 "whether it be by an entry in a book of account, or of
 "record, or by some other symbol—a bank check, bill
 "of exchange or promissory note, a bond, bill of lading,
 "warehouse or elevator receipt, a clearing house cer-
 "tificate, a gold or silver certificate, or what-not. By
 "such ear-marks do we follow, trace and identify money
 through its 'transformations' and 'ramification,' even
 "when mixed or confounded in an undivided and un-
 "distinguished mass of current money."

These rules will be recognized as unimpeachable, and
 the articles mentioned are accompanied by a number of
 footnotes referring to the English and American cases.

Some cases recognizing and applying the principles
 in New Jersey generally applicable to this case are as
 follows:

Shaler v. Trowbridge, 1 *Stew.* 595.

Partridge v. Wells, 3 *Stew.* 176.

(Affirmed 4 *Stew.* 362.)

Stanish v. Babcock, 7 *Dick.* 628.

(S. C. 8 *Dick.* 628.)

James v. Allen, 21 *Dick.* 69.

Cole v. Lee, 18 *Stew.* 779.

I.

THE COMPLAINANTS IN THIS CASE ESTABLISHED A TRUST AGAINST THE PROPERTY AND AGAINST THE ESTATE OF THOMAS A. JACKSON FOR THE AMOUNT OF MONEYS AND INTEREST WHICH HE TOOK FROM HIS WIFE.

In the case of *Newton v. Porter*, 69 N. Y. 143, certain securities were taken and the plaintiff sought to follow the proceeds of the sale of such securities by charging them with a trust in equity. The Court said at page 157: "The right of the plaintiff to have the notes and mortgage while they remained in the possession of the felon subjected to a lien or trust and compel their transfer to her as the equitable owner, does not admit of a doubt." And again on p. 139: "It is insisted by counsel for the defendant that the doctrine which subjects property acquired by the fraudulent misuse of trust money by a trustee has no application to a case where the property was acquired by felony and has been converted; and that there is no trust relation between the owner of stolen property and the thief and that the law will not imply one for the purpose of subjecting stolen property to the claim of the owner. It would seem to be an anomaly in the law if an owner who has been deprived of his property by larceny should be less favorably situated by a court of equity in his remedy to recover it or the property into which it has wrongfully been converted, than one who by an abuse of trust has been injured by the wrongful act of the trustee. The law will in such case raise a trust *in adritum* out of the transaction for the very purpose of subjecting the substituted property to the purposes of indemnity and recompence." Quoting Story's Eq. Juris., sec. 1255 and 1258. Also *Hill on Trustees*, p. 222. "We are of the opinion that the absence of a conventional relation of trustees and *cestui que trust* is no obstacle to giving

"the plaintiff the benefit of the notes and mortgage or
"the proceeds of the stolen bonds."

American Bank v. Pollock, 3 Ed. Ch. 215.

Silsbury v. McCoon, 3 N. Y. 380.

Thompson v. Perkins, 3 Mason (U. S. C. C.)
232. Story, Justice.

Of the case of *Newton v. Porter*, Perry on Trusts, at sec. 129, p. 170, of the 5th ed., says: "There would
"seem to be no principle to the contrary."

In England in the case of *Tyler v. Plinner*, 3 Maule & Selwyn, 562, a draft of money was abstracted and converted. Lord Ellenborough said at p. 574: "The
"argument which has been advanced that the property
"of the principal continues only as the authority of
"principal is pursued in respect to the order and dispo-
"sition of it and that it ceases when the property is
"tortiously converted into another form, for the use of
"the factor, is mischievous in principle and supported
"by no authorities in law."

For other cases on this subject see

Nationl Mechanic's Bank v. Barry, 125 Mass. 20.

Wells Fargo Co. v. Robinson, 13 Cal. 133.

Riehl v. Eavensville Foundry Co. 104 Ind. 70.

II.

IT BEING SHOWN THAT MR. JACKSON RECEIVED HIS WIFE'S MONEY, IT IS THE PRESUMPTION THAT HE HELD IT FOR HER USE AND BENEFIT AND THE BURDEN OF PROOF IS UPON HIM OR HIS REPRESENTATIVES TO SHOW A GIFT OR DISPOSITION IN ACCORDANCE WITH HER DIRECTIONS.

On this proposition it is only necessary to cite *Adoue v. Spencer*, 17 Dick. 782, where on page 785 Justice Fort writing the opinion of this Court, quotes with approval from *Cole v. Lee*, 18 Stew. 779-782: "It
"is well settled that on proof that a husband has re-

"ceived his wife's money, a court of equity will compel him and his *representatives* to account to her . . . and they can only discharge themselves by showing that the husband disposed of the money according to the wife's directions or that it was a gift to him."

It is apparent then that in the absence of any proof by the defendants the case of complainant was completely proved by the showing that Jackson got his wife's money.

And the burden of showing acquiescence on her part was also in the defendants.

In *Re Marsden*, 26 Chy. Div. 783.

There was, therefore, no presumption of acquiescence and therefore none of laches.

III.

NEITHER THE STATUTE OF LIMITATIONS NOR THE DOCTRINE OF LACHES HAS ANY BEARING ON THIS CASE.

A. That there exists in equity a well defined analogy between the application of the statute of limitations at law and the doctrine of laches at equity, even though courts of equity are not bound by the operation of the statute, does not admit of a doubt.

In the case of *Lutjen v. Lutjen*, 19 Dick. 773, at 781, Judge Vredenburg, writing the opinion of this Court, said: "Equity requires this diligence in *analogy to the statute of limitations at law*." The reason for this undoubtedly is that "equity follows the law."

In *Alpaugh v. Wilson*, 7 Dick. 424-425, it is stated in the opinion of the Vice Chancellor: "The Court has therefore to dispose of such questions as justice and equity may require, according to the general rules which have long been established for its guidance."

(Affd. on this opinion, 7 Dick. 589.)

The learned Vice Chancellor on this part of the case considered himself bound by the statement of Chief Justice Beasley in *Gray v. Gray*, 12 Stew. 511-513, to

the effect that in spite of the rule respecting the doctrine of laches and the statute of limitations, a court of equity may reject a claim of this kind when by reason of lapse of time it would be open to grave suspicion. That this statement by the great jurist refers only to a question of *certainty in the dispensation of justice after a lapse of time* is clear, because in the decision of that same case he held that neither the statute of limitations nor the doctrine of laches is applicable, and on page 512 he says: "Their conversations (that is, the conversations between the husband and wife) were plainly inadmissible as they were expressly prohibited by the act that qualifies as witnesses the parties to the suit to a limited extent when either plaintiff or defendant is such in a representative capacity, *but the case of the respondent is not seriously impaired by the rejection of this testimony for the facts necessary to support her claim are amply proven by the residue of the evidence.* It is shown beyond rational dispute that the moneys claimed were the property of the wife and were received by her husband . . . for her benefit and as her *quasi trustee*. It is not to be questioned that under such circumstances, in the absence of qualifying conditions, the estate of the husband must account in equity in a suit by the widow for the moneys thus received and held." And again on page 513 he says: "Inasmuch as the wife during coverture by force of our statute and the general regulations of our legal system cannot sue nor be sued by her husband at law, the act in question (statute of limitations) can under no circumstances be applicable by its terms to debts due to her from him and the consequence is, such debts in their relation to the passage of time must be regulated altogether on an equitable basis."

It is insisted that there could be no stronger authority for the present case than that of *Gray v. Gray*, and that the words above quoted might well have been written in this case.

In the case of *Lutjen v. Lutjen*, 19 Dick. 773, which

the Vice Chancellor also relies upon, the application of the rule adverted to by Chief Justice Beasley, is thus stated: "Lapse of time alone is deemed by the authorities to be a sufficient ground of estoppel,
"when the Court cannot feel confident of its ability to ascertain the truth now as well as it could when the subject for investigation was recent and before the memories of those who had knowledge of the material facts had become faded and weakened by time."

But that case and the cases there quoted were not between husband and wife, nor is there any case in New Jersey where either the statute of limitations or the doctrine of lachès has been applied in an action between husband and wife or the representatives of either in equity, and this for the very reason stated by Chief Justice Beasley in *Gray v. Gray*.

Let us see. The relation existing between husband and wife is distinctly fiduciary in its character.

Kirkpatrick v. Corning, 3 Dick. 302 (ffd.).

And with regard to her funds in his hands, the relation was that of trustee and *cestui que* trust.

Rusling v. Rusling, 15 Stew. 594.

City Bank v. Hamilton, 7 Stew. 158.

Even, therefore, though she knows that he has her funds in his hands and acquiesces therein, such knowledge does not alter the rule.

Vreeland v. Vreeland, 1 C. E. Gr. 512-523.

Bostleman v. Bostleman, 9 C. E. Gr. 103-110.

Irick v. Clement, 4 Dick. 590.

The possession of a wife's fund by a husband is not of itself wrongful. She may suppose during coverture that he holds them for investment for her; that he intends to restore them to her; that by will he will leave her the property back or otherwise indemnify her and make good to her the taking. She is not bound during his lifetime to disrupt the family relation with a litigation on the presumption that he intends to wrong her

to whom he owes the highest duty in life, at the alternative of being charged with laches in attempting to recover her own. It is only on his death that she may discover his intent to wrong her and convert her property to his use, if that was his intent and what was done. *In New Jersey the action has been repeatedly maintained after the death of the husband and against his representatives and in such an action the burden of proof is upon the defendants to show a rightful disposition or a gift.*

See the cases collected by the present Chancellor, writing the opinion of this Court in *Cole v. Lee*, 18 Stew. 779-785. In one of those cases only the action was in the lifetime of the husband (*Black v. Black*, 3 Stew. 215), but it was reversed in this Court (4 Stew. 798), and cannot be regarded as a precedent to require the wife to sue in the lifetime of the husband.

See also *Adoue v. Spencer*, 17 Dick. 782-787, &c.

There is no rule of law or of equity that requires a wife to presume during the lifetime of her husband, with whom she is living, that he is a thief and proposes to defraud her of all persons.

The confessions therefore made by the husband to the wife that he had her money so far from charging her with laches can only be held to charge her with acquiescence in the supposition that he held it for her benefit and until she discovered the contrary at his death. Husband and wife are one person in legal contemplation during marriage, and laches cannot be charged at all.

In *Alpaugh v. Wilson*, 7 Dick. 424 (Affd. 7 Dick. 589), the debt arose in 1883 and the case was in 1894, after the death of the husband. (11 years.)

In *Rusling v. Rusling*, 15 Stew. 594, the debt arose in 1863; the husband died in 1881, and the case was in 1887. (24 years.)

In *Collins v. Babbitt*, 1 Rob. 165, the obligation arose in 1888 and the action was brought in 1901, against the representatives of the deceased husband. (13 years.)

In *Cole v. Lee*, 18 Stew. 779, the action arose in 1855

and 1865, and the case was in 1888. (33 years and 23 years.) (See 17 Stew. 318.)

From a consideration of these cases, it must be undoubted that in the absence of proof to the contrary, the burden of which is on the defendant, the law implies a promise or presumes the existence of a condition which takes the action out of the operation of the statute and the application of the doctrine of laches.

In *Re Marsden*, 26 Chy. Div. 783.

(See point II., above.)

No presumption of laches, therefore, can arise against her by reason of her failure to bring this suit during the lifetime of her husband. Any explanation of that failure on her part has been shut out by the amendment ordered by the learned Vice Chancellor, making her a party to the record. A dozen explanations might be given. He may have told her that he lost it; he may have told her that he held it for her use and benefit. It cannot be presumed that he did not tell her these things or have an understanding with her. The statute of evidence disqualifying a party from testifying as to statements by or transactions with the deceased, was intended merely to close her mouth. Its object was not to aid presumptions against her. The learned Vice Chancellor goes far out of his way to presume laches, but nothing of that kind is warranted by the evidence and no case can be found where laches has been charged against any person at equity within six years from the time of the *accrual of the remedy*. "*Equity follows the law*" and its policy is determined by the statute.

B. But regardless of the fact that the action was between husband and wife or the representatives, the statute and consequently the doctrine of laches is never applicable by its terms to actions *exclusively* cognizable in a court of equity.

Partridge v. Wells, 3 Stew. 176-179.

(Affd. 4 Stew. 362.)

Cummins v. Culver, 8 Stew. 94.

Buckingham v. Ludlam, 10 Stew. 137-144.

Gutch v. Fostick, 3 Dick. 353.

Agens v. Agens, 5 Dick. 566-571.

Waln v. Hance, 8 Dick. 660.

(Affd. 660-668.)

Without discussing further the authorities, it is apparent that for whatever reason, the doctrine of laches is not applied in actions between husband and wife and their representatives and that mere lapse of time is not a bar.

C. But standing on the rule laid down in *Lutjen v. Lutjen*, even as between husband and wife, it is only applicable *when* the court feels that it cannot rely upon the memory of the witnesses; that knowledge of the material facts has become faded and weakened. (See 19 Dick. p. 781.)

It works the other way in this case. The revelations brought to light *at the time of and since the death of Jackson, by him carefully concealed for nearly ten years prior thereto, were the very things which sweep away all the mysteries previously surrounding the loss and disposition of Mrs. Jackson's money. These are the very facts which enable the Court to do that very justice which it could not have been certain of doing and which is referred to as the ground for the application of the doctrine of laches in Lutjen v. Lutjen.*

Admitting for argument that there was uncertainty before the discovery in the desk, there was not one particle of evidence available to her as to what disposition he had made of her money until *that last confession a few days before his death, in which he told her that it was "in the desk, in the desk."* She had no knowledge as to what he had done with it or how or where it might be found. His confessions made to Virginia McCauley, Elizabeth McCauley and Charles A. Oliver, shed no light upon this subject. The record showed that his property was heavily mortgaged; she knew nothing of his savings bank accounts and she was not

bound to file a bill against him in order to obtain a decree upon which she had no reason to suppose she could collect; neither was she bound to go upon a "fishing excursion" only with knowledge that he had taken it from the time of the respective confessions, first, to Mr. Oliver, then to Virginia McCauley and then to Elizabeth McCauley.

As was stated in *Elliott v. Kuhl*, 15 Dick. 333-337, he may have lost it out of his possession. Adopting the words of the Chancellor in that case, "*the trust fund received by the trustee in money is not shown to have been employed by the trustee in the purchase of property or to have been deposited so that the property purchased, or the balance of the deposited money be traced as derived from the trust fund,*" until she discovered the bond and mortgage, the assignment, the satisfaction piece of the same and the bank book "*in the desk,*" after the delivery of the keys to her in that last confession when he said he had wronged her, and when it was opened with those keys subsequent to his death.

IV.

THE STATUTE OF LIMITATIONS DID NOT COMMENCE TO RUN UNTIL THE ACCRUAL OF THE REMEDY, AND LACHES CANNOT BE CHARGED UNTIL THAT TIME, IF AT ALL.

Counsel for the defendants strove in the court below, as he will strive in this court, to make this an action for accounting between the wife and the representatives of the husband. That was his only hope in obtaining an application of the doctrine of laches, namely, that the remedy accrued at the time Jackson took his wife's money, ten years before the filing of the bill; but a careful consideration of the bill of complaint will show that that was not the cause of action here set up.

The remedy here sought primarily is the following of specific funds taken; first, into the mortgage, second, into the Manhattan Saving's Institution, and the possession being thus established, third, into the estate of

Thomas A. Jackson, deceased, for an accounting of the balance, if any.

It is obviously, therefore, not an action for money had and received brought into a court of equity because courts at law have not jurisdiction. It is the following trust funds in equity.

Jeffray v. Tower, 18 Dick. 530.

The distinction between the two classes of cases is pointed out in *Krueger v. Armitage*, 13 Dick. 357, approved by the court in *Polhemus v. The Trust Company*, 16 Dick. 655. The learned Vice Chancellor lost sight of this distinction. (See his statement, p. 207-211.)

The allegations in the bill as to the taking of the money were *mere narration of facts necessary to lay the foundation for following the funds* and because the bill sets forth as a necessary part of that narration that Jackson unlawfully took the money and retained it does not turn this case into an action for money had and received or trover and conversion between husband and wife in equity. The bill is distinctly a bill to follow trust funds in equity charged with a trust and to recover those specific funds or the proceeds thereof and an accounting of the same against the estate. This being so, the statute of limitations and laches by analogy was a part of the remedy (10 Stew, 147), and it did not begin to run until the accrual of the remedy which was the ability to trace the funds and the knowledge of where they went.

Gibbs v. Guild, 9 Q. B. D. 59 (1882).

This is the leading English case on this subject, and citing it the Am. & Eng. Enc. of Law (1 Ed.), Vol. 13, p. 729, says: "*The fraud in question is not that which gives but that which conceals the cause of action.*" As to the application of this principle in equity see Am. & Eng. Enc. Law (1 Ed.), Vol. 13, p. 680, collecting the English, United States, Pa., New England and other authorities in Note 4.

It was clearly pointed out in *Holloway v. Appleget*, 10 Dick. 583-585, where Vice Chancellor Reed said: "It seems clear that a court of equity will interfere, although the *cause of action may not have arisen out of a technically fraudulent act, if the defendant has employed any means to mislead or hide from him that a cause of action has arisen.*" (Affm. 10 Dick. 587.)

In that case the concealment was a mere silence. It is not necessary, therefore, to discuss in New Jersey the distinction between a concealment that is a mere silence and an active and affirmative act of concealment amounting to a new fraud.

Holloway v. Appleget accords with the weight of authority elsewhere, but it must be regarded as the rule in New Jersey. Nevertheless, if it were necessary (passing by *Holloway v. Appleget*) to establish an affirmative act of concealment amounting to a new fraud, we think there would be no difficulty in this case in maintaining that the disposition of the funds out of the State in the Manhattan Savings Institution of New York, the secreting of the bank book, the taking of the bogus assignment, the keeping of the mortgage alive on the record after it was paid and satisfied, the concealment of the documents and the general conduct of Jackson as declared by the evidence, constituted such new and affirmative acts of fraud as postponed the running of the statute and the application of the doctrine of laches, until the whole cause of action was complete by the discovery *in the desk*.

See Am. & Eng. Enc. of Law, Vol. 19, 2d Ed., p. 242-243; also p. 288 of same reference, title "Estoppel to plead the statute."

In *Clark v. Augustine*, 17 Dick. 689-694, a fraudulent concealment of the existence of the claim or a promise or other conduct amounting to a waiver is mentioned as a ground in equity for refusing the bar of the statute. The confidence expressed or implied in the relation of the husband and wife is as strong as any of these.

V.

THERE NEVER WAS LACHES AS TO THE REMEDY FOR THE RECOVERY OF THESE MONEYS.

It is a general proposition undoubtedly that in a court of equity a wrong-doer can never gain title to the funds by him wrongfully appropriated or converted.

These moneys were the property of Mrs. Jackson and the fact that Jackson took the money did not make *it his*. It was always her money and still was her money until her assignment of her interest to William E. Ten Broeck, whereupon he took the title. As we have seen in the collection of the rules respecting the following of trust funds in equity and the cases herein above set out, the money is in legal and equitable contemplation still in the estate of Thomas A. Jackson as the money of the complainants for their benefit and the fact that its form was changed did not change its character. (See Point II. above.)

Irick v. Clement, 4 Dick. 590.

Bohle v. Hasselbroch, 19 Dick. 334.

The relation of debtor and creditor does not arise between a thief and one from whom the property is taken, and an owner may take his or her stolen property whenever they find it. On this part of the case, suppose Mrs. Jackson after six years or any length of time found in her husband's pocket or among his effects the pocketbook containing her \$2,000, would she not have been entitled to take it? She now comes into a court of equity because the wrongdoer has changed the form of her funds and placed them in such a position that she cannot get it without its intervention. If she could she would take it and hold it and could hold it against all comers, and defendants would not be in a position to take it away from her either by force or in an action at law or equity because they alleged that she did not find it within six years or any length of time. This illustration is of itself a complete answer to the application of the doctrine of laches.

VI.

NEITHER THE STATUTE OF LIMITATIONS NOR THE DOCTRINE OF LACHES APPLIES BECAUSE THE DEFENDANTS FAILED TO PLEAD IT.

If the defendants desired to take advantage of the statute of limitations or of the doctrine of laches in this case they had ought to have raised it by their pleading or by demurrer.

Peer v. Cookerow, 2 *Beas.* 136-138.

Partridge v. Wells, 3 *Stew.* 176.

(*Affd.* 4 *Stew.* 362.)

This principle is not in conflict with the cases which hold that a court may raise the question of laches of itself, where through lapse of time it cannot feel confident of its ability to ascertain the truth, as was stated in *Lutjen v. Lutjen*, 19 *Dick.* 773-781, and the cases collected.

In this case the answer is a general denial. The defence offered no proof, and it was not set up either by way of answer or defence that any circumstances had arisen which would prevent the court from doing that full and ample justice between the parties which might have been done had the suit been immediately instituted after the taking. Nor does such a situation appear on the face of the complainant's case. The testimony of the witnesses is as positive as though it had been given in court the next day. It is not surrounded with any uncertainty. Jackson's accounts are produced in the same condition that they were the day they were written. The inventory of his estate and all the property of which he died seized and possessed is before the court as completely as though he had been living. The defendants do not allege by way of answer or proof that anything which might shed light upon the case for them has been lost, disposed of or made away with. On the contrary, they refuse to respond on that subject, either by answer or proof, although distinctly

called upon so to do by the bill of complaint and the notice (p. 234). The complainant's case was not complete until the discovery of the bank book, the bond and mortgage, the bogus assignment and the unrecorded discharge in the desk. Jackson died February 23, 1903 (p. 70, l. 20), and this bill was filed less than a year and a half afterwards. The complainants were entitled to some time to get their case ready after the accrual of the remedy that they here sought and their remedy was not complete until the important discoveries made after Jackson's death. What ground can there possibly be for the application of the doctrine of laches? Certainly not on the grounds referred to in *Lutjen v. Lutjen*. If this suit had been brought before the discovery of the bank book, the bond and mortgage, the bogus assignment and the unrecorded discharge, then there might have been some reason for the application of the doctrine of laches on this ground, if it could apply at all. While it is not always necessary that laches should be pleaded by way of defence, this seems to be a case where under all the circumstances if the defendants had anything to allege by way of injury to them because of lapse of time, they should have been required to allege or prove it.

It is true there is an infant on the record, but the Court does not set up laches or the statute of limitations in favor of an infant in a case where it does not apply. In this case the infant is represented by able and competent counsel, who answered for him on the merits, and his rights are as fully protected as if he were of full age.

VII.

IT WAS SUGGESTED IN THE COURT BELOW THAT THE STATUTE AND DOCTRINE OF LACHES WAS NOT PLEADED BECAUSE THE BILL ALLEGED FRAUD, AND IN THE TESTIMONY NO FRAUD WAS SHOWN, AND THE VARIANCE WAS SUCH THAT THE DEFENDANTS WERE TAKEN BY SUCH SUR-

PRISE WITH REFERENCE TO THE STATUTE OF LIMITATIONS THAT THE RULE THAT THEY SHOULD HAVE PLEADED OR DEMURRED SHOULD NOT BE APPLIED.

Even if this were true and it appeared in the case that the statute of limitations or the doctrine of laches would not avail the defendants even if they had pleaded it, the Court would not go through so absurd a proceeding as to dismiss the bill because they might have pleaded it if they had *supposed* it might apply. But the allegations of the bill and the proofs are not at variance with respect to the fraud and the proposition so suggested cannot avail the defendants in any event. We have already seen that Jackson's course of conduct amounted to one continuing fraud, and that it was the fraudulent concealment of the *cause of action* in this case against which neither the statute nor the doctrine of laches could ever run until its discovery.

Horton v. Handvil, 14 Stew. 57.

Keen v. James, 12 Stew. 527.

The defendants answered the whole bill, denying not only the original taking of the funds but also the subsequent fraud and concealment and they cannot object now that they might have pleaded the statute had they known that the original fraud had been confessed. An answer on the merits presents to the court the whole case.

Polhemus v. Holland Trust Co. 16 Dick. 654-657.

The substance of this bill of complaint is not based upon the original taking of these funds but upon the fraudulent disposition of them, the concealment of such disposition, and the power of a court of equity to trace them and declare them still to be the property of the complainants, although changed in form. If the original taking were confessed and acquiesced in it would make no difference in New Jersey in regard to the remedies here sought.

Bostleman v. Bostleman, 9 C. E. Gr. 103-110.

Irick v. Clement, 4 Dick. 590 Ct. Err. & App.

VIII.

THERE WAS NOT SUCH MATERIAL VARIANCE BETWEEN THE FACTS STATED IN THE BILL AND THOSE STATED IN THE PROOFS AS TO DEFEAT THE ACTION.

Counsel made a great time in the court below and in his brief because the bill of complaint alleged that Jackson after taking his wife's funds deposited them in his account in the National Bank of New Jersey, whereas, on more particular investigation it was found, as proved, that the funds that Jackson deposited in that bank about that time were moneys derived from his contracts, and that in reality he retained his wife's money in his personal possession until he deposited \$1,500 of it in the Manhattan Savings Institution after having paid \$300 on account of the principal of his mortgage, July 16, 1894.

A. The bill of complaint in this case was filed to trace funds charged with an equitable trust and have the property of the estate declared the subject of that trust. That was the case. It is upon the difference in the case made by the bill and the proofs that a variance is fatal. It is not fatal because the proofs omit some allegations of fact contained in the bill. If this were fatal it is very seldom that a bill in equity could be sustained after taking proofs.

The New Jersey authorities are collected in *Lehigh Valley R. R. Co. v. McFarland*, 3 *Stew.* 180-182, and the *Enc. of Pld. & Prac.*, Vol. 22, p. 531, refers to the case made by the bill and proofs. On p. 532 of this authority the rule is thus stated: "Where the variance does not affect the merits with respect to something material in the rights of the parties it is not fatal."

Mott v. Mott, 4 *Dick.* 182-195.

Goherty v. Bennett, 10 *Stew.* 87.

Olcott v. Disborough, 2 *Gr. Ch.* 214.

The bank is not a party to this suit and it is absolutely immaterial for all the purposes of this suit

whether these funds went into the National Bank of New Jersey or not.

It is the purpose of the bill to trace these funds into the possession of Jackson and into his estate, and on that point the bill and proofs are not in conflict. It was no part of the *substance of the issue* to trace these funds into the National Bank of New Jersey. It is the purpose of equity pleading to state the nature of the case, not the evidence upon which the party intends to rely.

B. But this objection comes from the defendants with bad grace and is inequitable at this time. The bill prays from the defendants a discovery of these very things, namely, Thomas A. Jackson's bank accounts and other accounts. These things are presumably within their knowledge and they did not deny that they had them. They did not take the stand and say that they have it not within their power to produce his bank accounts, returned checks and vouchers. It was proved that they got possession of his papers. They do not say that those papers would not shed great light upon this case. It is an undisputed fact in the case that they had them and have them, and it must be practically undisputed that a revelation of their contents would shed great light upon this case, called for by the bill and the notice to produce.

If their answer had been honest and responsive they would have set forth these vouchers and accounts in full. They were bound to do this or else deny their ability to do it by every rule of equity pleading and in common fairness and justice.

Brown v. Fuller, 2 Beas. 271.

Vreeland v. N. J. Stone Co. 10 C. E. Gr. 140.

Pace v. Bartells, 18 Stew. 371.

With all these things in the possession and knowledge of the defendants the purpose of the bill could not have been more than to be as certain as possible as to such matters and call upon the defendants to discover the true state of affairs.

Watson v. Murray, 2 C. E. Gr. 257.

Suppose now that in honesty and fairness the defendants had responded and answered the interrogatories in the prayer of the bill, it would have appeared long before the hearing of this cause whether or not he deposited this money in the National Bank of New Jersey or kept it in his possession or put it in other securities. Instead of adopting so fair and equitable a course as they were bound to do, the defendants contented themselves with a general denial and drove the complainants to pursue the investigation by a *process of elimination*. This led to the discovery of what the defendants knew or had it in their power to know all the time, namely, that the moneys in the National Bank of New Jersey representing funds sufficiently large to be of interest in this cause, were not Mrs. Jackson's money, but were the proceeds of the Price, Edmunds and Florance contracts respectively, for building, and that Thomas A. Jackson was in possession of no other sums of money at that time or afterwards sufficiently large to have accounted for his deposit in the Manhattan Savings Institution or the condition of his estate at his death. *The reason now for the failure of the defendants to answer fully and fairly is as obvious as the reason for their failure to take the stand.* They could not have done either without giving away the whole thing, and it is not equitable to allow them after having put the complainants in this position by their failure to sufficiently and fairly answer and say, "We are taken by surprise," concerning a matter of which it is obvious they held the whole truth the whole time.

C. How were the defendants prejudiced by this failure of the proof to meet this allegation in the bill of complaint? They knew the truth, had the evidence of it in their possession. No injury has been done them; they had not been precluded from making any defence that they otherwise would have made; they have not been taken by surprise. Is this Court any less able to decide this case according to law and to justice between these parties because the bill alleged that the money went into the National Bank of New Jersey, whereas

the proof showed that it did not? Could the defendants have offered any defence that they have not put in if the bill had omitted this allegation? It becomes mere surplusage and this Court will not dismiss a bill in a case of this importance because of an immaterial variance unless something appears to show that a substantial prejudice, injury or injustice to the other side has been done on account of it.

IX.

THE STATUTE OF FRAUDS HAS NO APPLICATION TO A CASE OF THIS KIND.

It does not by its terms apply to trusts of personal property.

Lewin on Trusts (ed. 1888), Sec. 55-54, p. 65-66.

Pitney v. Bolton, 18 Stew. 639.

(Affd. 1 Dick. 610.)

Danser v. Warwick, 6 Stew. 144.

(Affd. 7 Stew. 578.)

Sayre v. Frederick, 1 C. E. Gr. 205.

The trust established here arising and resulting by implication and construction, it is within the express exception of the statute.

Gen. Stat. Vol. 2, p. 1603, sec. 3. See cases in Note B.

These remarks are pertinent because something was said at the trial about the application of the statute of frauds to this case.

X.

IF THE COURT SHOULD FEEL THAT THE MONEYS WERE NOT SUFFICIENTLY TRACED AND YET BE SATISFIED BY THE PROOF THAT THEY WERE TAKEN INTO THE POSSESSION OF JACKSON, THE COMPLAINANTS ARE STILL ENTITLED TO RELIEF.

It appearing under the authorities hereon cited that

neither the statute of limitations nor the doctrine of laches is applicable, under the circumstances of this case the defendants would be entitled to general relief for an accounting.

The theory of the bill is the tracing of the trust funds, but the complainants are not limited to that. They are entitled to such equitable relief arising out of the case made on the pleadings and proofs as the Court thinks they ought to have, by accounting or otherwise.

Belleville Mutual Insurance Co. v. Van Winkle,
1 *Beas.* 333-335, citing Story's Equity Plead-
ing.

Graham v. Berriman, 4 *C. E. Gr.* 29-34.

Hill v. Beech, 1 *Beas.* 31.

Arnold v. Hageman, 18 *Stew.* 186-204.

Jr. Order B. & L. Assn. v. Sharp, 18 *Dick.* 500-
506.

If, therefore, the theory of the bill fails, they are still entitled to relief under the cases.

(See Point II. page hereof.)

CONCLUSION.

It seemed to counsel for the complainants in this case that the facts and that the fundamental principles underlying it were clearly established in law and equity. The difficulty which the learned Vice Chancellor had with the legal propositions at the time of the trial and argument, and in the decision of the case, as well as the seriousness with which they are combated by the learned counsel for the defendants and respondents, must go as our apology for the lengthy discussion of the law and facts in this brief.

A case very similar to this, in which moneys fraudulently taken were traced in very much the same way, is that of the *N. Y. & Brooklyn Ferry Co. v. Moore*, 18 *Abb N. C.* 106; also reported in 102 *N. Y.* 667. In that case testimony excluding the possession of other moneys, opportunity given to the defendant to show that he had other funds, to explain his possession of the

funds followed, and his failure to do so was taken as evidence establishing the nature of the funds sought to be traced, and it shows how a court may view a situation like that here disclosed.

We respectfully submit that every reason in law and in fact exists for granting to the complainants and appellants the relief sought by their bill of complaint in this case, and it is respectfully submitted that the decree of the Court of Chancery should be reversed and the record remitted to that court for the entry of a decree as prayed for in the bill of complaint.

First. That the real estate of which Thomas A. Jackson died seized is charged with a trust arising out of the moneys of Emma Jane Jackson taken by Thomas A. Jackson from the possession of his wife and paid by him on account of the bond and mortgage due and paid to James Hart, to the amount of thirteen hundred dollars (\$1,300), together with interest thereon from the twelfth day of February, in the year eighteen hundred and ninety-four (1894), and that the said complainants be subrogated to the lien of the said mortgage and interest, as prayed for in the bill.

Coudert v. Coudert, 16 Stew. 407.

Second. That the five hundred dollars (\$500) balance remaining on deposit in the Manhattan Savings Institution at the death of Thomas A. Jackson, together with all accumulations of interest thereon, be decreed to belong to the complainants, and that the executors and defendants in this case be required to account for and pay over to the said complainants the said sum of money, with interest thereon at the lawful rate of six per centum per annum, from February twelfth, eighteen hundred and ninety-four (1894), to date.

Third. That the said defendants and the estate of Thomas A. Jackson be required to account for and pay over to the said complainants the sum of two thousand dollars (\$2,000) taken by said Thomas A. Jackson from the possession of his wife, together with interest

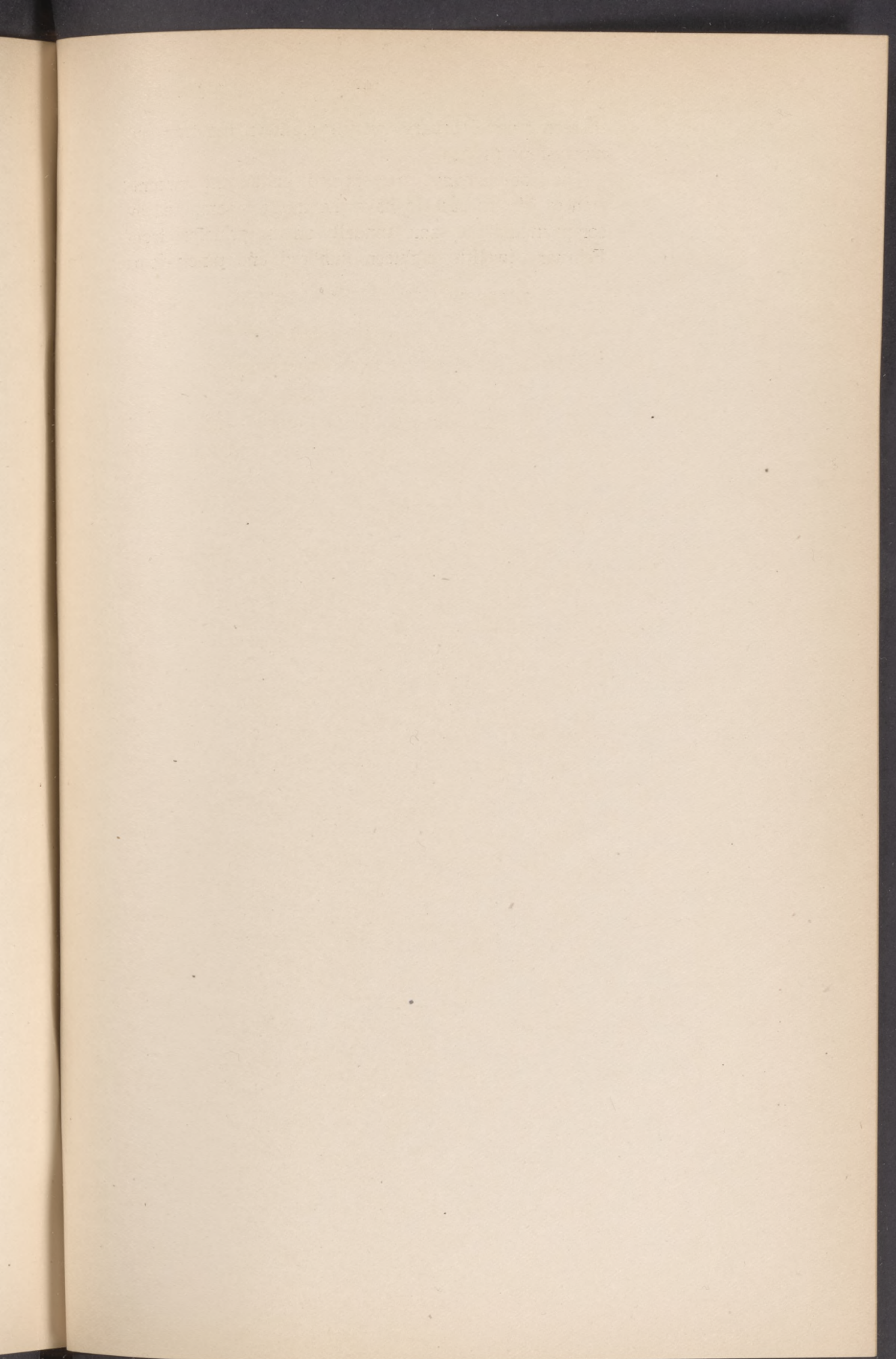
thereon from February twelfth, eighteen hundred and ninety-four (1894).

The complainants are entitled under the circumstances of this case to have the interest computed by compounding the same annually on the principal from February twelfth, eighteen hundred and ninety-four.

Dessenger's Case, 12 Stew. 227.

All of which is respectfully submitted.

FREEMAN WOODBRIDGE,
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Complainants and Appellants.



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New Jersey Court of Errors and Appeals.

Between

WILLIAM E. TEN BROECK and
EMMA JANE JACKSON,

Complainants and Appellants,

—and—

CHARLES A. JACKSON, Executor,
&c., et als,

Defendants and Appellees.

On Appeal. 10

BILL OF COMPLAINT.

Filed August 22nd, 1904.

20

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE WILLIAM J. MAGIE,
Chancellor of the State of New Jersey:

HUMBLY COMPLAINING showeth unto
your Honor your orator, William E. Ten Broeck, of
the City of New Brunswick, in the County of Middle-
sex and State of New Jersey; that your orator holds³⁰
by deed of assignment of EMMA JANE JACKSON,
a copy of which is hereto annexed and making a
part of this bill of complaint, the claim and equitable
cause of action arising under the facts and circumstan-
ces hereinafter set forth, which assignment bears
date the twelfth day of August, in the year nineteen
hundred and four (1904), and the original of which is
now in the possession of your orator, ready to be pro-
duced when and where this Honorable Court shall di-
rect and to which your orator begs leave to refer for⁴⁰

greater certainty, if it be necessary so to do.

AND your orator further shows that on or about the fourteenth day of October, in the year eighteen hundred and ninety three (1893), the said Emma Jane Jackson was married to Thomas A. Jackson, then of the City of New Brunswick, in the County of Middlesex and State of New Jersey, now deceased, and that the said Thomas A. Jackson subsequently, on or about the twenty third day of February, in the year nineteen hundred and three (1903),
 10 departed this life, and that at the time of his marriage he was seized of two certain tracts of land situate in the said City of New Brunswick, described respectively as follows:

THE FIRST TRACT—Beginning at a point in the westerly line of George Street, said point being at the bend in the westerly line of the said George Street between Commercial Avenue and Jones Avenue, and distant two hundred and twenty six feet and six
 20 inches northerly from the intersection of the said westerly line of George Street with the northerly line of Jones Avenue; thence (1) southerly along the westerly line of George Street thirty feet; thence (2) westerly at a right angle with the westerly line of George Street fifty two (52) feet; thence (2) westerly at a right angle with the westerly line of George Street fifty two (52) feet; thence (3) still westerly and at a right angle with the easterly line of Redmond Street fifty five feet and five inches to the said easterly
 30 line of Redmond Street; thence (4) northerly along the easterly line of Redmond Street thirty feet; thence (5) easterly at a right angle with Redmond Street fifty four (54) feet and five inches; thence (6) still easterly and at a right angle with the easterly line of George Street fifty feet to the place of beginning.

Being the same premises conveyed to the said Thomas A. Jackson by deed of Azariah Newell and wife, bearing date March 9th, 1886, and recorded in the Middlesex County Clerk's Office in Book 207 of Deeds, at page 148, &c.

THE SECOND TRACT—All that certain lot of land and premises situate and being in the first ward of said city of New Brunswick, and known and designated upon a certain map filed in the Clerk's Office of the County of Middlesex, entitled — “ A map of certain real estate in the First Ward of the City of New Brunswick, on the southeastery side of the Trenton Avenue, formerly of Abraham Suydam, Esq., and by him conveyed with other property to James Lorimer Graham, by deed dated June, 1836, surveyed and divided into lots and parcels May 31, 1838, by Daniel Ewen, City Surveyor, ” as lot number (973) nine hundred and seventy three, in parcel designated on said map as parcel number ten (10).¹⁰

Being the same premises conveyed to the said Thomas A. Jackson by deed of William Boylan and wife dated September 29, 1868. and recorded in the Middlesex County Clerk's Office in Book 114 of Deeds, at page 340, &c.

And your orator further shows that²⁰ subsequently on the third day of January, in the year eighteen hundred and eighty seven the said Thomas A. Jackson borrowed from one James Hart of the City of New Brunswick, in the County of Middlesex and State of New Jersey, the sum of eighteen hundred dollars, and for the better securing of the said sum of money made and executed and delivered to the said James Hart his bond and also accompanying the same, made and executed with his former wife, then living, named Annie E. Jackson, a certain indenture of mortgage dated the day and year last aforesaid, for the said sum of eighteen hundred dollars, covering the said two tracts of land above described, which said mortgage having been duly delivered to the said James Hart was recorded in the office of the Clerk of the County of Middlesex, in this State, on the eighth day of January, eighteen hundred and ninety seven in Book 98 of Mortgages, at page 672, &c., and to which said record your orator begs leave to refer for greater certainty, if it be necessary so to do.³⁰

And your orator further shows that at the time of the marriage of the said Emma Jane Jackson to the said Thomas A. Jackson the said bond and mortgage remained wholly unpaid and unsatisfied and still in the possession of the said James Hart and in all respects a valid and subsisting lien upon the said premises therein and herein above described.

And your orator shows that at the time of her said marriage with the said Thomas A. Jackson,
 10 the said Emma J. Jackson was possessed of the sum of two thousand dollars, cash money, which said sum represented a portion of the savings of the said Emma Jane Jackson for a long number of years then past, and which had a short time previous to her said marriage been paid unto her on a bond and mortgage where she had previously invested the same, and that the said Emma Jane Jackson kept and retained the said sum of money in her own personal possession at the time of her said marriage, and thereafter until the twelfth day of February, in the year eighteen hundred
 20 and ninety four, on the night of which date between the hours of five and eleven o'clock P. M., the said Thomas A. Jackson, the husband of the said Emma Jane Jackson, fraudulently abstracted the said sum of two thousand dollars cash money from the pocket of the dress of the said Emma Jane Jackson, while she, the said Emma Jane Jackson, his wife, was sleeping, without her knowledge or consent, and subsequently for the space of several years or upwards fraudulently and falsely represented to the said Emma Jane Jackson and tried to make her believe that she had lost or
 30 mislaid the pocket book containing the said sum of two thousand dollars.

And your orator further shows that the said Thomas A. Jackson after taking the said money out of the possession of the said Emma Jane Jackson, as aforesaid, retained the same in his possession until the twenty fourth day of February, in the year eighteen hundred and ninety four, at which date he took the sum of two thousand dollars by him fraudulently
 40 taken as aforesaid from the said Emma J. Jackson, and

fraudulently intending and contriving to convert the same to his own use, deposited the same without her knowledge or consent, in the National Bank of New Jersey, of New Brunswick, New Jersey, a banking institution located in said City of New Brunswick, in his own name, in which said bank the said Thomas A. Jackson kept his account, he being a carpenter and builder and from time to time theretofore having been in the habit of handling various sums of money derived from the carrying out on his part of contracts for the erection and construction of buildings or other work in which he was engaged in the course of his business. 10

AND your orator further shows after making the said deposit in the said National Bank of New Jersey of the said sums of money taken by him as aforesaid, the said Thomas A. Jackson still acting to defraud the said Emma J. Jackson, commenced to make payments out of the said funds on his said mortgage to the said James Hart, both of the interest as the same became due, and also from time to time on account of the principal, all without the knowledge of the said Emma Jane Jackson, still fraudulently and falsely holding out to her at that time and for some time thereafter that she had lost the money in the snow and pretending and insisting to her that with the rains and melting snows it had been washed down the sewer pipes in the street; the said Thomas A. Jackson at the same time using every apparent effort to assist her in finding the said money, advising her to advertise in the newspapers of the said City of New Brunswick, consult detectives and assisting her to look for the said lost money in places where he stated she might have dropped it. 20 30

AND your orator further shows that the said Thomas A. Jackson having fraudulently as aforesaid reduced the money so as aforesaid taken by him and deposited in the National Bank of New Jersey, to the sum of about fifteen or sixteen hundred dollars, by payments out of the same on the said mortgage, he fearful lest the said Emma Jane 40

Jackson should discover that he had such a large amount of money standing to his credit in the aforesaid Bank at New Brunswick, and thereby have her suspicions that he took her money confirmed, as your orator believes and therefore expressly charges, fraudulently contriving to deceive her and further deceive and mislead her in the premises and for the purpose of fraudulently concealing from her the fact that he was possessed of such a large amount of money, which he was using toward the payment of the mortgage on his
 10 houses, during the summer and fall of eighteen hundred and ninety four, and in the month of December of said year and in the months of February and March, eighteen hundred and ninety five, gradually withdrew from the said funds the sum of fifteen or sixteen hundred dollars remaining and standing to his credit in the National Bank of New Jersey, and subsequently on the eighteenth day of July, eighteen hundred and ninety five, in the furtherance of his said fraudulent conduct and design opened in his own name an account
 20 in the Manhattan Savings Institution of the City of New York, of Number 644 Broadway, New York City, a Savings Bank of said City, for fifteen hundred dollars, leaving the balance over and above such amount as he had then already applied to the payment on account of said mortgage still on deposit in the said National Bank of New Jersey, to his own use and in his own name.

AND your orator further shows that out of the said money then in his hands, the property of the said Emma Jane Jackson, the said Thomas A.
 30 Jackson continued in his fraud of the said Emma Jane Jackson to make payments on account of the principal of the said mortgage to the said James Hart until he had reduced the said principal thereof to the sum of one thousand dollars, and that afterwards while the principal sum due on the said bond and mortgage remained at the sum of one thousand dollars, the said James Hart at the request of the said Thomas A. Jackson by his deed of assignment, bearing date the twenty eighth day of January, in the year eighteen hundred
 40 and ninety nine, assigned the said bond and mort-

gage to one Richard R. Hageman, of the City of New Brunswick, New Jersey, in consideration of the sum of one thousand dollars, as therein stated, which said assignment having been duly acknowledged according to law by the said James Hart on the said last mentioned date, was delivered to the said Richard R. Hageman and contained a covenant that there was then due and owing thereon the sum of one thousand dollars, principal money, and which was afterwards recorded, as hereinafter stated. But your orator shows that the ¹⁰ said Richard R. Hageman took the said assignment from the said James Hart at the special request of the said Thomas A. Jackson and that after he, the said Richard R. Hageman, had paid over to the said James Hart the said sum of one thousand dollars (\$1,000.00) for the said assignment of the said bond and mortgage on the twenty eighth day of February, eighteen hundred and ninety nine, the said Thomas A. Jackson then and there and as a part of the same transaction informed the said Richard R. Hageman that he desired to ²⁰ pay the said mortgage off and that he then had with him the money for that purpose and asked and requested the said Richard R. Hageman, to then and there take the principal sum thereof, to wit, the said sum of one thousand dollars (\$1,000.00). That the said Richard R. Hageman was greatly surprised, but that the said Thomas A. Jackson told him that since making arrangements for the said assignment he had got the said money in, and the said Richard R. Hageman thereupon at the request of the said Thomas A. Jackson immediately on the said twenty eighth day of January, ³⁰ took from the said Thomas A. Jackson the said sum of one thousand dollars and delivered up to him the said bond and mortgage, either by personal delivery or by an assignment simultaneously executed as the case may be. And your orator, therefore, expressly charges that the said Thomas A. Jackson used the said Richard R. Hageman as a mere dummy and without his, the said Hageman's knowledge, as his mere agent for the purpose of paying off to the said James Hart the said bond and mortgage, and that the money paid as ⁴⁰

aforesaid by the said Thomas A. Jackson for the said bond and mortgage was fraudulently supplied by him out of the funds taken for that purpose from the Manhattan Savings Institution of New York City, from the moneys fraudulently taken by him as aforesaid from the said Emma Jane Jackson, and that the transaction and the use of the said Richard R. Hageman in the same was conceived and carried out by the said Thomas A. Jackson for the purpose of further concealing from the said Emma Jane Jackson more effectually the fact
 10 that the said Thomas A. Jackson had in his possession a sum of money sufficient to pay off the amount due on the said bond and mortgage and in furtherance of his said fraud upon her. And that the said assignment of mortgage, if any, given by the said Richard R. Hageman to the said Thomas A. Jackson instead of a cancellation thereof was given in a fraudulent effort to make it apparent that the said bond and mortgage was in full force and a valid and subsisting lien upon the premises described therein, and to conceal
 20 from the said Emma Jane Jackson the fact that the said Thomas A. Jackson had in his possession funds sufficient to pay the same in whole or part.

And your orator further shows that subsequently on or about the fourteenth day of November, in the year nineteen hundred and two (1902), the said Thomas A. Jackson came to the said Richard R. Hageman and informed him that he had neglected to take a discharge of the said mortgage and that it was necessary for him to have some writing from him, the said Richard R. Hageman in order to get his said mortgage cancelled of record, then and there requesting the said
 30 Richard R. Hageman to execute to him a discharge of mortgage and that thereupon the said Richard R. Hageman having received the money due on the said bond and mortgage previously as aforesaid on the twenty eighth day of January, eighteen hundred and ninety nine, did on the said fourteenth day of November, nineteen hundred and two, make, execute, acknowledge and deliver to the said Thomas A. Jackson a discharge
 40 of the said mortgage, purporting on its face to be for

and in consideration of the sum of one thousand dollars.

But your orator shows that both the said assignment of mortgage made as aforesaid by the said James Hart to the said Richard R. Hageman, and the said discharge of mortgage made by the said Richard R. Hageman to the said Thomas A. Jackson, were kept from the records of the Clerk of the County of Middlesex by the said Thomas A. Jackson for the express purpose of fraudulently concealing from the said Emma Jane Jackson¹⁰ the fact that the same had been discharged or satisfied in whole or in part, and in order that she might be falsely and fraudulently induced to believe that the said bond and mortgage was in all respects a full, valid and subsisting lien against the said properties of the said Thomas A. Jackson; and that the said bond and mortgage and the said assignment of mortgage and the said discharge of mortgage, duly executed as aforesaid, were found among the effects of the said Thomas A. Jackson after his death and that the executor of the said Thomas A. Jackson having obtained possession thereof²⁰ after the death of the said Thomas A. Jackson, thereupon caused the said assignment of mortgage to be recorded in the office of the Clerk of the County of Middlesex on the ninth day of March, nineteen hundred and three, in Book W of Assignments of Mortgages, at page 97, &c., To which said record your orator begs leave to refer if it be necessary so to do. And did also cause the said discharge of mortgage to be recorded on the said ninth day of March, nineteen hundred and three, in Book 2 of Discharges of Mortgages, at page 576,³⁰ &c., in the said County Clerk's Office: to which record your orator begs leave to refer for greater certainty, if it be necessary so to do. And that the Clerk thereupon according to his practice indorsed upon the margin of the original record of the said mortgage in book 98 of Mortgages, at page 672, in his office, that the said mortgage was discharged March 9th, 1903, as would appear by the record of said discharge. All of which will more fully and at large appear by the said records, reference being thereunto had.

And that the assignment of mortgage, if any, made by the said Richard R. Hageman to the said Thomas A. Jackson on the twenty eighth day of January, eighteen hundred and ninety nine, has always until recently been kept from the knowledge of your orator and the said Emma Jane Jackson, in the furtherance of the fraud aforesaid practiced upon her, and in the further effort to fraudulently conceal from her the true state of affairs and has never been recorded.

10 AND your orator further shows that during all of this time the said Emma Jane Jackson, wife of the said Thomas A. Jackson, remained in ignorance that the said Thomas A. Jackson had made any payments on account of the said bond and mortgage, either to the said James Hart or to Richard R. Hageman, or that the same had been assigned to the said Richard R. Hageman by the said James Hart, or paid to the said Richard R. Hageman by the said Thomas A. Jackson and an assignment taken to him in an effort to keep the said mortgage alive, or that the same had
20 been discharged or satisfied in any way, and that she also remained in ignorance of the said deposits of the said Thomas A. Jackson in the National Bank of New Jersey, of New Brunswick, New Jersey, or of his deposits as aforesaid in the Manhattan Savings Institution of New York City, or of his drafts out of the said funds in either or both of the said banking institutions.

But that on the contrary thereof, although she at all times believed that the said Thomas A. Jackson had taken her money, he always falsely and fraudulently held
30 out to her up to the time of his death that the said mortgage held as aforesaid by the said James Hart was still in all respects a full, valid and subsisting lien against his said properties, and that he had not paid or satisfied the same in whole or in part, but that he kept the interest on the said bond and mortgage paid out of the rents derived from his said properties, and that she so believed until after the death of the said Thomas A. Jackson, when the said Emma Jane Jackson became aware through the said recording of the said assign-
40 ment and the said discharge of the said mortgage that

the same had been paid and assigned and discharged, as hereinabove stated.

AND your orator further shows that the said Thomas A. Jackson was a carpenter and builder and took contracts during his lifetime for the erection of houses and other buildings, but that after the twelfth day of February, in the year eighteen hundred and ninety four, the said Thomas A. Jackson never during the remainder of his life took any contracts or made bids upon any buildings in the line of his business, and in fact seemed to have retired entirely from active business and that he never after the said date was in receipt out of his said business or otherwise of any sums of money sufficient to have paid and discharged his said mortgage, or sufficient to have maintained his account in the National Bank of New Jersey, or open his account in the Manhattan Savings Institution in the amounts which he kept therein, as hereinabove set forth, except only the said sum of two thousand dollars taken by him as aforesaid from the possession of the said Emma Jane Jackson on the twelfth day of February, in the year eighteen hundred and ninety four. But your orator shows that the said Emma Jane Jackson supported herself out of the rents of property owned by her and moneys which she had theretofore invested, and that the said Thomas A. Jackson always held out to the said Emma Jane Jackson that it was not necessary for him to work and take further contracts in the course of his business, but that he found his support out of the rents and revenues derived from his properties hereinabove described, at all times fraudulently concealing from her as aforesaid that her money had gone in and been used in the payment and discharge of the mortgage against his said premises.

AND your orator further shows that at the time that the said Thomas A. Jackson took the said sum of two thousand dollars from the said Emma Jane Jackson, the said Emma Jane Jackson consulted eminent and competent counsel of this state with regard to the recovery of the same and she was informed that she

could bring no action for the recovery of the said money against the said Thomas A. Jackson, he being her husband; but that the said Emma Jane Jackson while believing that the said Thomas A. Jackson had taken the money, remained in ignorance until after his death of the fact that he had used the same to pay off the mortgage on his properties, and that the said mortgage held on his properties was paid off, and until a bill was filed in this Honorable Court by his executor for the construction of his will, when an examination of the
 10 records in the month of June or July, nineteen hundred and four, revealed that the said mortgage had been discharged as herein set out.

AND your orator further shows that he is advised that thereupon and thereby an equity arose in favor of the said Emma Jane Jackson, which equity has now accured to the benefit of your orator, as the assignee of the said Emma Jane Jackson, under the said assignment, dated the twelfth day of August, in the year nineteen hundred and four (1904), by which he
 20 is entitled to be subrogated to the lien of the said mortgage and by which the said lands and premises and the estate of the said Thomas A. Jackson are charged in favor with a trust to the amount of the said sum of two thousand dollars (\$2,000.00), or so much thereof as went into the payment of the said bond and mortgage, together with interest thereon to be computed according to law.

AND your orator further shows, that the said Thomas A. Jackson died testate and that in
 30 and by his last will and testament, bearing date the nineteenth day of November, in the year nineteen hundred and two (1902), the said Thomas A. Jackson devised certain interests in his said properties to his widow, the said Emma Jane Jackson in lieu of dower, and that such proceedings were thereupon had that the said Emma Jane Jackson refused to accept the said devise in lieu of dower and that thereupon the executors of the said estate paid over to the said Emma Jane Jackson a sum of money to be accepted by her in gross in
 40 lieu of dower, and that thereupon she released all her

dower interests in the said premises by her deed of release of dower, bearing date the eleventh day of May; in the year nineteen hundred and four, and duly acknowledged according to law and recorded in the Middlesex County Clerk's Office on the eighth day of June, nineteen hundred and four, in Book 357 of Deeds, at page 484, &c., To which said record your orator begs leave to refer for greater certainty, if it be necessary so to do.

And that thereupon all interest of the said Emma Jane Jackson in the said lands and premises under the said will or as the widow of the said Thomas A. Jackson became and was at an end. ¹⁰

AND your orator further shows that the said Thomas A. Jackson devised certain interests in the said properties to his son, Charles A. Jackson, and also to his son, George J. Jackson, as tenants in common, giving to them the fee of the said properties, subject only to a certain interest of the said Emma Jane Jackson, now released as hereinabove set forth; and that the said Charles A. Jackson and the said George J. Jackson were his only heirs at law and next of kin and his only devisees mentioned in the said will, and that the said George J. Jackson son of the said Thomas A. Jackson, departed this life on or about the fourth day of October, in the year nineteen hundred and three (1903), testate, and that he left him surviving as his only heirs at law and next of kin and devisee, George J. Jackson Jr., who was born after the decease of his said father, the said George J. Jackson, and also his widow, Caroline Jackson, and that the executor of his said will duly qualified according to law, is Schuyler C. Van Cleef, of the City of New Brunswick, New Jersey, who in and by the said will is given certain powers of sale of any real estate interests whereof the said George J. Jackson died seized and possessed. ²⁰ And your orator shows that by virtue of the said will of the said Thomas A. Jackson duly recorded in the office of the Surrogate of the County of Middlesex, and by virtue of the said will of the said George J. Jackson, also duly recorded in the office of the Surrogate of the County of Middlesex, and by virtue of the statutes of descent ³⁰ ⁴⁰

and also the statues of wills, the said Charles A. Jackson and the said Caroline Jackson and the said George J. Jackson Jr., and the said Schuyler C. Van Cleef claim to have some interest in the said lands and premises, hereinabove mentioned and described.

AND your orator further shows that in and by the will of the said Thomas A. Jackson the said Emma Jane Jackson and the said George J. Jackson and the said Charles A. Jackson were named as
 10 executors, but that the said Emma Jane Jackson subsequently resigned as such executor and that the said George J. Jackson having departed this life the said Charles A. Jackson is now the sole remaining executor of the said will and that under the same he claims to have some power of sale of the lands and the said properties whereof the said Thomas A. Jackson died seized and possessed.

AND your orator further shows that on the fifth day of April, in the year nineteen hundred
 20 and four (1904), the said Caroline Jackson was appointed by the Orphans' Court of the County of Middlesex, gaurdian of the person and property of the said infant, George J. Jackson, Jr., And that the said George J. Jackson, Jr., infant, or that the said Caroline J. Jackson, as guardian on his behalf, – or both of them, claim to hold some interest in the said lands and real estate; but your orator shows and insists that if any of the said persons hold any interest in the said lands and real estate and the properties hereinabove described, and which were covered by the said mortgage given by
 30 the said Thomas A. Jackson, as aforesaid, in his lifetime to the said James Hart, the same is subject in all respects to the equities of your orator by virtue of his said assignment, to have the said mortgage declared to be a valid and subsisting lien upon the said lands and real estate covered by the same, for the benefit of your orator, and to have the said lands and premises charged with a trust in favor of your orator, to the amount of moneys paid on the same by the said Thomas A. Jackson, out of the funds which he took from the said Emma Jane Jackson, as hereinabove set out, together with
 40

Ammended by
 order dated
 October 21,
 1904.

interest thereon, to be computed according to law.

AND your orator further shows that after the twelfth day of February, in the year eighteen hundred and ninety four, the said Thomas A. Jackson continued to collect the rents, issues and profits of the said premises described in the said mortgage down to the time of his death, and that after his death, on the twenty third day of February, in the year nineteen hundred and three (1903), the said Charles A. Jackson, 10 executor, Charles A. Jackson, the said George J. Jackson, Jr., the said Caroline Jackson, widow of the said George J. Jackson, the said Caroline Jackson, guardian of the said George J. Jackson, Jr., infant, and the said Schuyler C. Van Cleef, executor of the said George J. Jackson, deceased, or some of them continued to collect the rents, issues and profits of the said premises described in the said mortgage; and that the said Emma Jane Jackson before the date of the said assignmmt to your orator, and your orator since the date of the said assign-
ment, have frequently and in a friendly manner applied 20 to them, or some of them to account to your orator for the rents, issues aud profits and requested them, or some of them, to deliver up to your orator the said bond and mortgage as a full, valid and subsisting lien upon the said premises under and by virtue of your orator's equity to have the benefit of the same, as set forth in the premises. And your orator well hoped that they would have complied with such reasonable requests,

Yet they have wholly refused and neglected so to do and still refuse and neglect so to do. 30

All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

IN TENDER CONSIDERATION
WHEREOF and for as much as your orator is with-
out remedy in the premises at and by the strict rules 40

of the common law and can only obtain relief in this Honorable Court where such matters are properly cognizable and relievable ;

TO THE END. THEREFORE,
that the said Charles A. Jackson and Charles A. Jackson executor of the last will and testament of Thomas A. Jackson, deceased, the said George J. Jackson, Jr., infant, Caroline Jackson and Caroline Jackson, general guardian of the person and property of George J. Jackson infant, Schuyler C. Van Cleef, Executor of and
10 under the last will and testament of George A. Jackson, deceased, may without oath, full, true and perfect answer make to the utmost of their respective knowledge, remembrance, information and belief to all and singular the matters aforesaid, as fully as if the same were here again repeated and they and each of them distinctly interrogated thereto ; and that they may set forth and discover the amounts and dates of the payments on account of both the principal and interest
20 indorsed on the said bond and mortgage given by the said Thomas A. Jackson to the said James Hart, together with the said bond and mortgage ; by whom such payments were made and by whom they were indorsed thereon ; whether the same be for principal or interest ; the said assignment of the said bond and mortgage made and executed by the said James Hart to the said Richard R. Hageman, and the said discharge of mortgage ; and also whether or not the said Richard R. Hageman assigned the said bond and mortgage to the said Thomas A. Jackson on the
30 twenty eighth day of January, in the year eighteen hundred and ninety nine, and the terms of the said assignment ; whether or not the said assignment is in the possession of the said defendants, or any of them, and may set forth and discover the same.

And may also set forth and discover the terms and the dates and the amounts of the receipts, if any, given by the said James Hart or the said Richard R. Hageman to the said Thomas A. Jackson, for payments of principal and interest on account of the said bond and
40 mortgage ; whether the said Thomas A. Jackson at the

time of his decease had any account in the National Bank of New Jersey; how long the said account had been running and the deposits in the same about the twelfth day of February, in the year eighteen hundred and ninety four and prior thereto and subsequent thereto; the balance in the said account at the first balancing of the said bank book after the twelfth day of February, in the year eighteen hundred and ninety four; the drafts upon the same and the amounts and the dates thereof. And that they may set forth and discover the ¹⁰ deposit book of the said Thomas A. Jackson therein, with all the items of credit and charge against the same; the pass-book of the said Thomas A. Jackson in the Manhattan Savings Institution of the City of New York, with the amounts and dates of the deposits therein and the accumulations of interest credited therein to the said Thomas A. Jackson and the drafts out of the same and the dates thereof and the balance therein at the time of the decease of the said Thomas A. Jackson; the books of account of the said Thomas A. Jackson, de- ²⁰ ceased, and the items therein; What other bank books or pass books in any banking institutions or accounts were kept by the said Thomas A. Jackson from the twelfth day of February, eighteen hundred and ninety four, to the time of his death; the amounts and dates of the deposits and drafts against the same.

Of what moneys the said Thomas A. Jackson was in receipt after the marriage of the said Emma Jane Jackson to him in the month of October, eighteen hundred and ninety three; of what moneys the said Thomas A. Jackson was in receipt after the twelfth day of Feb- ³⁰ ruary, in the year eighteen hundred and ninety four; whether or not there were found among his papers and effects any contracts or evidence thereof, either in his books of account or otherwise entered into by him for the construction of buildings or other work, showing the receipt of moneys by him after the twelfth day of February, eighteen hundred and ninety four; what amounts of revenue were derived from his said properties and the dates on which the same were paid in rents, issues and profits, or otherwise, together with the amou- ⁴⁰

nts thereof and charges against the same; and also that your orator may be decreed to be subrogated to the lien of the said James Hart and the said Richard R. Hageman under and by virtue of the said bond and mortgage, and that the lien of the said bond and mortgage may be decreed to be a full, valid and subsisting lien in favor of your orator to the amount of of the said sum of two thousand dollars, taken by the said Thomas A. Jackson from his said wife, Emma Jane Jackson, that was paid in on account of the principal
 10 or interest of the said bond and mortgage: and that the said bond and mortgage may be delivered up to your orator as a full, valid and subsisting lien against the the properties therein described, and the discharge thereof set aside and made null and void as having been made in fraud of the said Emma Jane Jackson and in fraud of your orator, as her assignee. And that the said properties and the said estate of the said Thomas A. Jackson may be charged with a trust in favor of your orator to the amount of the said sum of two
 20 thousand dollars (\$2,000.00) with interest thereon be computed according to law, or to so much thereof as may have been used by the said Thomas A. Jackson to the payment and discharge of the amount due on his said bond and mortgage, together with interest thereon, to be computed according to law.

And that your orator may be decreed to have a lien upon the said properties mentioned and described in the said bond and mortgage to the amount paid thereon out of the said two thousand dollars, taken by
 30 the said Thomas A. Jackson as aforesaid, from his wife, Emma J. Jackson, together with interest thereon to be computed according to law; and that the said defendants may be decreed to pay over and deliver up to your orator the said sum of two thousand dollars, with interest thereon to be computed according to law, besides the interest on the said sum of fifteen hundred dollars, accrued in the Savings Bank account of the said Thomas A. Jackson in the Manhattan Savings Institution in the City of New York. And also that the said
 40 defendants may be required to account to your orator

for the said sum of two thousand dollars and the rents, issues and profits thereof, while the same was in the possession of the said Thomas A. Jackson, and for the rents, issues and profits of the said properties mentioned in the said bond and mortgage, from the twelfth day of February, in the year eighteen hundred and ninety four (1894) to the twenty third day of February, nineteen hundred and three (1903), and also from the twenty third day of February nineteen hundred and three (1903), to the date of such accounting.¹⁰

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

May it please your Honor the premises considered to grant unto your orator the State's Writ of Subpœna issuing out of and under the seal of this Honorable Court, directed to the said Charles A. Jackson and the said Charles A. Jackson, executor of the²⁰ last will and testament of Thomas A. Jackson, the said George J. Jackson, Jr., infant deceased, Caroline Jackson and Caroline Jackson, general guardian of the person and property of George J. Jackson, infant, and Schuyler C. Van Cleef, executor of and under the last will and testament of George J. Jackson, deceased, all of the City of New Brunswick, County of Middlesex and State of New Jersey, and commanding them and each of them by a certain day and under a certain penalty therein expressed to be and appear before your Honor in this Honorable Court, then and there to an-³⁰swer all and singular the premises aforesaid and to stand to, abide by and perform such order and decree therein as to this Honorable Court shall seem meet and proper and as shall be agreeable to equity and good conscience. And your orator as in duty bound will ever pray, &c.

Amended Oct.
1904.

FREEMAN WOODBRIDGE,

*Solicitor for and of Counsel
with Complainant.*

KNOW ALL MEN BY THESE PRESENTS
 that I, EMMA JANE JACKSON, of the City of
 New Brunswick, County of Middlesex and State of
 New Jersey, for and in consideration of the sum of one
 dollar and other good, valuable and sufficient consid-
 eration to me in hand paid by WILLIAM E. TEN
 BROECK, of the said City of New Brunswick, County
 of Middlesex and State of New Jersey, have assigned,
 transferred and set over and by these presents do assign,
 10 transfer and set over unto the said William E. Ten
 Broeck, his heirs, executors, administrators and assigns
 a certain debt now due and owing to me by the estate
 of THOMAS A. JACKSON, late of the City of New
 Brunswick, County of Middlesex and State of New
 Jersey, deceased, and the equitable or legal cause of
 action arising thereunder, amounting to the sum of two
 thousand dollars (\$2000.00), which accrued on the
 twelfth day of February, in the year eighteen hundred
 and ninety four (1894), together with all my right,
 20 title and interest therein, both at law and in equity,
 and also all my right, title and interest both at law
 and in equity in a certain bond and mortgage given by
 Thomas A. Jackson in his lifetime to James Hart, bear-
 ing date the third day of January, in the year eighteen
 hundred and eighty seven (1887), for the sum of eigh-
 teen hundred dollars (\$1800.00), together with the
 interest due and to grow due on the said debt and on the
 said bond and mortgage, and my right to subrogation
 arising out of the same, either in law or equity, and all
 my right to an accounting against the estate of the said
 30 Thomas A. Jackson, or against his heirs, executors, ad-
 ministrators or assigns, or against the property of which
 he died seized and possessed, real or personal, arising
 out of the transactions concerning the said debt of two
 thousand dollars (\$2,000.00) .

AND I do hereby give to the said Wil-
 liam E. Ten Broeck, his executors, administrators and
 assigns, full power and authority for his and their own
 use and benefit but at his or their own cost to demand
 40 collect, receive, compound and give acquittance for

the same, or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or equity therefor, as fully and completely as I might do if I was present acting therein, and I do hereby ratify and confirm all his lawful acts in the premises.

IN WITNESS WHEREOF I have hereunto set my hand and seal this twelfth day of August, 10 in the year nineteen hundred and four (1904).

EMMA J. JACKSON.

{ L. S. }

Signed sealed and delivered }
in the presence of }

H. B. COOK.

20

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

BE IT REMEMBERED that on the twelfth day of August, in the year nineteen hundred and four (1904), before me, a Master in Chancery in ³⁰ and for said State, personally appeared EMMA JANE JACKSON, who I am satisfied is the person named in and who executed the foregoing assignment. And I having first made known to her the contents thereof, she did thereupon acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

HENRY B. COOK,
Master in Chancery of New Jersey.

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FILED JANUARY 14, 1905.

IN CHANCERY OF NEW JERSEY.

BETWEEN		
10	WILLIAM E. TEN BROECK,	} On Bill &c. Answer.
	<i>Complainant.</i>	
	—And—	
	CHARLES A. JACKSON, EXECUTOR,	
	&C., ET AL.,	
	<i>Defendants.</i>	

The answer of Caroline Jackson, widow of George
 20 A. Jackson, deceased and also Guardian ad litem of
 George J. Jackson, Jr. to the bill of complaint of
 William E. Tenbroeck.

This defendant for answer unto the said bill of com-
 plaint or unto so much and such parts thereof as she
 is advised it is material or necessary for her to make
 answer unto, says:

That she denies that the said complainant holds by
 deed of assignment from Emma Jane Jackson the claim
 or alleged equitable cause of action stated in said bill
 30 of complaint. And this defendant saith that the said
 assignment in said bill mentioned from the said Emma
 Jane Jackson to the said complainant was and is merely
 colorable and was made for the purpose of enabling the
 said Emma Jane Jackson to be a witness in behalf of
 said claim notwithstanding that the executor of the
 said Thomas A. Jackson, deceased is a party defendant
 in this cause, and in order to avoid the effect of the
 Statute of this State which would prevent the said Em-
 ma Jane Jackson from testifying in this cause in her
 40 own behalf. And this defendant insists that the said

Emma J. Jackson is still interested in the said claim and that the same is held by the said William E. Tenbroeck for her use wholly or in part and that the said Emma Jane Jackson is a necessary complainant in this cause, and that no decree can be made in favor of the said complainant in the absence of the said Emma Jane Jackson as a joint complainant with the said William E. Tenbroeck.

And this defendant further answering says that she 10 has no knowledge as to the alleged marriage on or about the fourteenth day of October in the year eighteen hundred and ninety three of the said Emma Jane Jackson to the said Thomas A. Jackson, now deceased, that this defendant cannot deny and does not admit the alleged marriage but leaves it to the said complainant to prove the said marriage as he may be able or as he may be advised; this defendant does admit, however, that the said Thomas A. Jackson, died on or about the twenty third day of February, in the year 1903, and that at the time of his 20 alleged marriage was seized of two certain tracts of land mentioned and described in said bill of complaint and that he died seized thereof, and in and by his last will and testament, devised the same to his sons Charles A. Jackson and George J. Jackson, in fee as by said will and testament appears, to which this defendant prays leave to refer if it shall be necessary so to do.

And this defendant further answering says she has no knowledge of the execution and delivery by the said Thomas A. Jackson, and his former wife Annie E. 30 Jackson, of a mortgage on the said lands and premises to James Hart, bearing date the third day of January in the year eighteen hundred and eighty seven, recorded in the office of the clerk of the county of Middlesex in this State, on the eighth day of January in the year eighteen hundred and eighty seven in book 98 of mortgages at page 672 etc. to secure the sum of eighteen hundred Dollars, except that derived from the said mortgage and the accompanying bond and the aforesaid record thereof, but expressly denies as alleged in said bill 40

of complaint, that at the time of the marriage of the said Emma Jane Jackson to the said Thomas A. Jackson the said bond and mortgage remained wholly unpaid and unsatisfied.

And this defendant further answering says she has no knowledge as to the allegations of said bill of complaint that the said Emma Jane Jackson, at the time of her said marriage with the said Thomas A. Jackson, was possessed
 10 of the sum of two thousand dollars, cash money, or that she was thereafter possessed of the said sum of money, until the twelfth day of February in the year eighteen hundred and ninety four, but leaves the said complainant to make proof thereof as he may be able or may be advised; this defendant however expressly denies that the said Thomas A. Jackson, the husband of the said Emma Jane Jackson either on the said twelfth day of February in the year eighteen hundred and ninety four, or at any time whatever, fraudulently
 20 or in any manner, abstracted the said sum of two-thousand dollars cash money, or any part thereof or any sum of money, from the pocket of the dress of the said Emma Jane Jackson while she the said Emma Jane Jackson his wife was sleeping either with or without her knowledge or consent, or that he the said Thomas A. Jackson ever had or retained the said sum of two thousand dollars, or any part thereof or any sum of money whatever of the said Emma Jane Jackson in his possession until the twenty fourth day of February in the year eighteen hundred and ninety four, or at any time what-
 30 ever, or that at that time, or any time took the sum of two thousand dollars, or any part thereof, or any sum of money whatever of the said Emma Jane Jackson and deposited the same, either with or without her knowledge or consent, in the National Bank of New Jersey of New Brunswick, New Jersey or in any other bank or depository, in his name or otherwise.

And this defendant further answering says it is not true and she therefore denies that the said Thomas A. Jackson, made payments either of principal or interest
 40 on his said mortgage to the said James Hart, from or

out of the said sum of two thousand dollars, or from or out of any other moneys of the said Emma Jane Jackson, either with or without her knowledge or consent.

And this defendant further answering says it is not true and she therefore denies that the said Thomas A. Jackson, either on the eighteenth day of July in the year eighteen hundred and ninety five, or at any time before or after that date, opened an account with the moneys of the said Emma Jane Jackson in his own name, in the Manhattan Savings Institution of the City of New York of Number 644 Broadway, New York City, for fifteen hundred dollars or any other sum taken from the National Bank of New Jersey at New Brunswick as alleged in said bill of complaint.

And this defendant further answering says it appears by records in the office of the Clerk of the County of Middlesex aforesaid that on or about the twenty eighth day of January in the year eighteen hundred and ninety nine, the said James Hart by deed of assignment under his hand and seal for the consideration of one thousand dollars therein expressed, sold, assigned, transferred and set over the said bond and mortgage unto Richard R. Hageman, who afterwards and on or about the fourteenth day of November in the year nineteen hundred and two, executed and delivered unto the said Thomas A. Jackson, a discharge of the said mortgage, certifying that the same had been paid and satisfied and consenting that the same be discharged of record; that both the deed of assignment of the said bond and mortgage and the discharge of the said mortgage were recorded in the clerk's office of said county of Middlesex on the ninth day of March in the year nineteen hundred and three, and after the decease of the said Thomas A. Jackson, but this defendant expressly denies that the said bond and mortgage were paid, in whole or in part, either of principal or interest by the said Thomas A. Jackson with moneys of the said Emma Jane Jackson, or that said assignment of the said bond and mortgage to the said Richard R. Hageman was procured to be given by the said James Hart, by or through any fraudulent act,

intent or purpose on the part of the said Thomas A. Jackson, to injure, cheat or defraud the said Emma Jane Jackson, and this defendant further denies that the said Emma Jane Jackson, has been thereby injured, cheated or defrauded in any way in the slightest degree

And this defendant further answering says it is not true and she therefore denies the allegation that after the said twelfth day of February in the year eighteen
 10 hundred and ninety four, the said Thomas A. Jackson, never was in receipt out of his business or otherwise of any sums of money sufficient to have paid and discharged his said mortgage, or sufficient to have maintained his account in the National Bank of New Jersey or open his account in the Manhattan Savings Institution in the amounts which he kept therein.

And this defendant further answering says it is not true and she therefore denies that Emma Jane Jackson supported herself out of the rents of property owned by
 20 her and moneys which she had theretofore invested, on the contrary thereof it is true that the said Thomas A. Jackson always supported his wife the said Emma Jane Jackson in a manner suitable to her station in life,

And this defendant further answering denies that any equity arose in favor of the said Emma Jane Jackson, or has accrued to the complainant as the assignee of the said Emma Jane Jackson under the said assignment so made by her to him or that he is entitled to
 30 to be subrogated to the lien of the said mortgage, or that he has any valid right, title or interest in the said mortgage or any claim under it as pretended by him in his said bill of complaint.

And this defendant further answering says it is not true and she therefore denies that the said lands and premises are subject to the said mortgage or that the said mortgage is now a lien or encumbrance thereon or that the complainant has any equity by virtue of the assignment to him from the said Emma Jane Jackson to have the said mortgage declared to be a valid
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and subsisting lien upon the said lands and real estate described therein or any equity to have the said lands and premises charged with a trust in favor of the complainant to any amount whatsoever.

And this defendant admits that the said Thomas A. Jackson upon his death left a last will and testament bearing date the nineteenth day of November nineteen hundred and two and prays that reference may be had to the said will for the contents thereof, 10 the same having been duly proved in the office of the Surrogate of the County of Middlesex. And this defendant admits that in and by said will certain interests in real estate were devised by the said Thomas A. Jackson to his said widow in lieu of dower, and that the said Emma Jane Jackson refused to accept said devise in lieu of dower and thereupon a sum of money was paid to her in gross in lieu of her dower, which said sum in gross was ascertained and paid to her upon the basis of the said lands being free and clear from any mortgage or other encumbrance, and in case the said 20 lands were subject as is now claimed by the said complainant to the said mortgage the amount so paid to and received by the said Emma Jane Jackson was largely in excess of the amount to which she was properly entitled for her dower; and this defendant saith that the said Emma Jane Jackson accepted the said sum of money so paid to her in lieu of dower with full knowledge of all the circumstances with respect to the payment of said mortgage by the said Thomas A. Jackson and the assignment thereof to 30 the said Richard R. Hageman and of all other facts and circumstances in respect to the said claim now made by the said complainant.

And this defendant insists that the acceptance of the said sum of money by the said Emma Jane Jackson with full knowledge as aforesaid was and is a bar to such claim as is now set up by the complainant, and that the said Emma Jane Jackson and the said complainant claiming under her are estopped thereby from setting up said claim. 40

And this defendant answering admits that the said Thomas A. Jackson devised certain interests in his property to his son Charles A. Jackson and also to his son George J. Jackson as tenants in common and that the said George J. Jackson, son of the said Thomas A. Jackson departed this life as is in said bill stated and that the said George J. Jackson, Jr., only child of the said George J. Jackson, deceased was born after the decease of his said father and is the sole heir at law
 10 and representative of his said father, and that this defendant Caroline Jackson is the widow of the said George J. Jackson, deceased and is entitled to dower in the interest in said lands which was vested in the said George J. Jackson deceased in his lifetime.

And this defendant further admits that in and by the will of the said Thomas A. Jackson the said Emma J. Jackson George J. Jackson and Charles A. Jackson were named as executors but that the said Emma Jane Jackson subsequently resigned and was thereupon discharged as such executrix by the Orphans Court of Middlesex County, and that the said Charles A. Jackson is now the sole remaining executor of said will and that as such he has power of sale of said lands whereof the said Thomas A. Jackson died seized.
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And this defendant on or about the fifth day of April in the year nineteen hundred and four was appointed by the Orphans Court of the County of Middlesex, Guardian of the person and estate of the said George J. Jackson, Jr., her son.
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And this defendant prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

A. H. & T. STRONG,

Solicitors for Caroline Jackson individually and as Guardian ad litem for George Jackson, Jr.

40 Replications in common form.

FILED JANUARY 14, 1905.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM E. TEN BROECK,

Complainant.

—And—

CHARLES A. JACKSON, EXECUTOR,
&C., ET AL.,

Defendants.

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On Bill &c.
Answer.

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The answer of Charles A. Jackson, executor of the last will and testament of Thomas A. Jackson, deceased defendant to the bill of complaint of William E. Ten Broeck, complainant.

This defendant for answer unto the said bill of complaint or unto so much and such parts thereof as he is advised it is material or necessary for him to make answer unto, says:

That he denies that the said complainant holds by deed of assignment from Emma Jane Jackson the claim or alleged equitable cause of action stated in said bill of complaint. And this defendant saith that the said assignment in said bill mentioned from the said Emma Jane Jackson to the said complainant was and is merely colorable and was made for the purpose of enabling the said Emma Jane Jackson to be a witness in behalf of said claim notwithstanding that the executor of the said Thomas A. Jackson, deceased is a party defendant in this cause, and in order to avoid the effect of the

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Statute of this State which would prevent the said Emma Jane Jackson from testifying in this cause in her own behalf. And this defendant insists that the said Emma J. Jackson is still interested in the said claim and that the same is held by the said William E. Ten Broeck for her use wholly or in part and that the said Emma Jane Jackson is a necessary complainant in this cause, and that no decree can be made in favor of the said complainant in the absence of the said Emma
 10 Jane Jackson as a joint complainant with the said William E. Ten Broeck.

And this defendant further answering says that he has no knowledge as to the alleged marriage on or about the fourteenth day of October in the year eighteen hundred and ninety three of the said Emma Jane Jackson to the said Thomas A. Jackson, now deceased, that this defendant cannot deny and does not admit the alleged marriage but leaves it to the said complainant to prove the said marriage as he may be able or as
 20 he may be advised; this defendant does admit, however, that the said Thomas A. Jackson, died on or about the twenty third day of February, in the year nineteen hundred and three, and that at the time of his alleged marriage was seized of two certain tracts of land mentioned and described in said bill of complaint and that he died seized thereof, and in and by his last will and testament, devised the same to Charles A. Jackson and George J. Jackson, in fee as by said will and testament appears, to which this defendant prays leave
 30 to refer if it shall be necessary so to do.

And this defendant further answering says he has no knowledge of the execution and delivery by the said Thomas A. Jackson, and his former wife Annie E. Jackson, of a mortgage on the said lands and premises to James Hart, bearing date the third day of January in the year eighteen hundred and eighty seven, recorded in the office of the clerk of the county of Middlesex in this State, on the eighth day of January in the year eighteen hundred and eighty seven in book 98 of
 40 mortgages at page 672 etc. to secure the sum of eigh-

teen hundred Dollars, except that derived from the said mortgage and the accompanying bond and the aforesaid record thereof, but expressly denies as alleged in said bill of complaint, that at the time of the marriage of the said Emma Jane Jackson to the said Thomas A. Jackson the said bond and mortgage remained wholly unpaid and unsatisfied.

And this defendant further answering says he has no knowledge as to the allegations of said bill of complaint that the said Emma Jane Jackson, at the time of her said marriage with the said Thomas A. Jackson, was possessed of the sum of two thousand dollars, cash money, or that she was thereafter possessed of the said sum of money, until the twelfth day of February in the year eighteen hundred and ninety four, but leaves the said complainant to make proof thereof as he may be able or may be advised; this defendant however expressly denies that the said Thomas A. Jackson, the husband of the said Emma Jane Jackson either on the said twelfth day of February in the year eighteen hundred and ninety four, or at any time whatever, fraudulently or in any manner, abstracted the said sum of two-thousand dollars cash money, or any part thereof or any sum of money, from the pocket of the dress of the said Emma Jane Jackson while she the said Emma Jane Jackson his wife was sleeping either with or without her knowledge or consent, or that he the said Thomas A. Jackson ever had or retained the said sum of two thousand dollars, or any part thereof or any sum of money whatever of the said Emma Jane Jackson in his possession until the twenty fourth day of February in the year eighteen hundred and ninety four, or at any time whatever, or that at that time, or any time, took the sum of two thousand dollars, or any part thereof, or any sum of money whatever of the said Emma Jane Jackson and deposited the same, either with or without her knowledge or consent, in the National Bank of New Jersey of New Brunswick, New Jersey or in any other bank or depository, in his name or otherwise.

And this defendant further answering says it is not true and he therefore denies that the said Thomas A. Jackson, made payments either of principal or interest on his said mortgage to the said James Hart, from or out of the said sum of two thousand dollars, or from or out of any other moneys of the said Emma Jane Jackson, either with or without her knowledge or consent.

10 And this defendant further answering says it is not true and he therefore denies that the said Thomas A. Jackson, either on the eighteenth day of July in the year eighteen hundred and ninety five, or at any time before or after that date, opened an account with the moneys of the said Emma Jane Jackson in his own name, in the Manhattan Savings Institution of the City of New York of Number 644 Broadway, New York City, for fifteen hundred dollars or any other sum taken from the National Bank of New Jersey at New Brunswick as alleged in said bill of complaint.

20 And this defendant further answering says it appears by records in the office of the Clerk of the County of Middlesex aforesaid that on or about the twenty eighth day of January in the year eighteen hundred and ninety nine, the said James Hart by deed of assignment under his hand and seal for the consideration of one thousand dollars therein expressed, sold, assigned, transferred and set over the said bond and mortgage unto Richard R. Hageman, who afterwards and on or about the fourteenth day of November in the year nineteen hundred
30 and two, executed and delivered unto the said Thomas A. Jackson, a discharge of the said mortgage, certifying that the same had been paid and satisfied and consenting that the same be discharged of record; that both the deed of assignment of the said bond and mortgage and the discharge of the said mortgage were recorded in the clerk's office of said county of Middlesex on the ninth day of March in the year nineteen hundred and three, and after the decease of the said Thomas A. Jackson, but this defendant expressly denies that the said
40 bond and mortgage were paid, in whole or in part, either

of principal or interest by the said Thomas A. Jackson with moneys of the said Emma Jane Jackson or that said assignment of the said bond and mortgage to the said Richard R. Hageman was procured to be given by the said James Hart, by or through any fraudulent act, intent or purpose on the part of the said Thomas A. Jackson, to injure, cheat or defraud the said Emma Jane Jackson, and this defendant further denies that the said Emma Jane Jackson, has been thereby injured, cheated or defrauded in any way in the slightest degree. 10

And this defendant further answering says it is not true and he therefore denies the allegation that after the said twelfth day of February in the year eighteen hundred and ninety four, the said Thomas A. Jackson, never was in receipt out of his business or otherwise of any sums of money sufficient to have paid and discharged his said mortgage, or sufficient to have maintained his account in the National Bank of New Jersey or open his account in the Manhattan Savings Institution in the 20 amounts which he kept therein.

And this defendant further answering says it is not true and he therefore denies that Emma Jane Jackson supported herself out of the rents of property owned by her and moneys which she had theretofore invested, on the contrary thereof it is true that the said Thomas A. Jackson always supported his wife the said Emma Jane Jackson in a manner suitable to her station in life,

And this defendant further answering denies that 30 any equity arose in favor of the said Emma Jane Jackson, or has accrued to the complainant as the assignee of the said Emma Jane Jackson under the said assignment so made by her to him or that he is entitled to be subrogated to the lien of the said mortgage, or that he has any valid right, title or interest in the said mortgage or any claim under it as pretended by him in his said bill of complaint.

And this defendant further answering says it is not true and he therefore denies that the said lands and 40

premises are subject to the said mortgage or that the said mortgage is now a lien or encumbrance thereon or that the complainant has any equity by virtue of the assignment to him from the said Emma Jane Jackson to have the said mortgage declared to be a valid and subsisting lien upon the said lands and real estate described therein or any equity to have the said lands and premises charged with a trust in favor of the complainant to any amount whatsoever.

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And this defendant admits that the said Thomas A. Jackson upon his death left a last will and testament bearing date the nineteenth day of November nineteen hundred and two and prays that reference may be had to the said will for the contents thereof, the same having been duly proved in the office of the Surrogate of the County of Middlesex. And this defendant admits that in and by said will certain interests in real estate were devised by the said Thomas A. Jackson to his said widow in lieu of dower, and that the
 20 said Emma Jane Jackson refused to accept said devise in lieu of dower and thereupon a sum of money was paid to her in gross in lieu of her dower, which said sum in gross was ascertained and paid to her upon the basis of the said lands being free and clear from any mortgage or other encumbrance, and in case the said lands were subject as is now claimed by the said complainant to the said mortgage the amount so paid to and received by the said Emma Jane Jackson was largely in excess of the amount to which she was
 30 properly entitled for her dower; and this defendant saith that the said Emma Jane Jackson accepted the said sum of money so paid to her in lieu of dower with full knowledge of all the circumstances with respect to the payment of said mortgage by the said Thomas A. Jackson and the assignment thereof to the said Richard R. Hageman and of all other facts and circumstances in respect to the said claim now made by the said complainant.

And this defendant insists that the acceptance of
 40 the said sum of money by the said Emma Jane

Jackson with full knowledge as aforesaid was and is a bar on such claim as is now set up by the said complainant, and that the said Emma Jane Jackson and the said complainant claiming under her are estopped thereby from setting up said claim.

And this defendant answering admits that the said Thomas A. Jackson devised certain interests in his property to his son Charles A. Jackson and also to his son George J. Jackson as tenants in common and that the said George J. Jackson, son of the said Thomas A. Jackson departed this life as is in said bill stated and that the said George J. Jackson, Jr., only child of the said George J. Jackson, deceased was born after the decease of his said father and is the sole heir at law and representative of his said father, and that Caroline Jackson is the widow of the said George J. Jackson, deceased and is entitled to dower in the interest in said lands which was vested in the said George J. Jackson deceased in his lifetime.

And this defendant further admits that in and by the will of the said Thomas A. Jackson the said Emma J. Jackson George J. Jackson and Charles A. Jackson were named as executors but that the said Emma Jane Jackson subsequently resigned and was thereupon discharged as such executrix by the Orphans Court of Middlesex County, and that the said Charles A. Jackson is now the sole remaining executor of said will and that as such he has power of sale of said lands whereof the said Thomas A. Jackson died seized.

And the defendant Caroline Jackson on or about the fifth day of April in the year nineteen hundred and four was appointed by the Orphans Court of the County of Middlesex, Guardian of the person and estate of the said George J. Jackson, Jr., her son.

And this defendant humbly submits, and prays to be hence dismissed with his reasonable costs and charges

in this behalf most wrongfully sustained.

JAMES H. VAN CLEEF,

Solicitor for
Charles A. Jackson,
Executor &c.

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IN CHANCERY OF NEW JERSEY.

BETWEEN
 WILLIAM E. TEN BROECK,
 AND OTHERS.
Complainants.

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—And—
 CHARLES A. JACKSON, EXECUTOR,
 ETC, ET AL.,
Defendants.

Before his Honor Vice Chancellor STEVENS.

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MR. FREEMAN WOODBRIDGE AND
 MR. A. S. MARCH
for the Complainants.

MR. JAMES H. VAN CLEEF AND MR. ALAN
 STRONG

for part of the defendants.

SCHUYLER C. VAN CLEEF,

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for part of the defendants.

Transcript of shorthand report of the evidence
 given upon the trial of the above stated cause
 on the twenty second day of September, A. D.
 1905, at the Court House, in the City of New
 Brunswick, N. J.

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MR. WOODBRIDGE:

I offer in evidence first, deed of assignment made by Emma J. Jackson to William E. Ten Brock bearing date the 12th day of August, 1904, the assignment being acknowledged before Henry B. Cook, Master in Chancery.

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MR. STRONG:

I object, I take it that that character of instrument is not proven by acknowledgement, it may be acknowledged but I think it ought to be proven.

MR. WOODBRIDGE:

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If counsel wants the subscribing witness I can have him here, I can put Mrs. Jackson upon the stand and ask her in regard to the signature, but I don't want to examine her any further at this time.

EMMA J. JACKSON sworn.

DIRECT EXAMINATION

Mr. Woodbridge.

30 Q I hand you a paper writing that I have offered in evidence and ask you if that is your signature?

A Yes, sir.

Q What is this instrument here, is it an assignment made by you to Mr. William E. Ten Broeck - to your son?

A Yes, sir.

40 Q Of your cause of action in this case?

A Yes, sir.

Q I ask you if you have parted with all interest in this case by virtue of this assignment?

A Yes, sir.

Q Have you reserved any interest at all in it?

A No, sir. I am a little hard of hearing, you will have to speak loud to me sometimes. 10

Q That assignment is a complete assignment, is it?

A Yes, sir.

MR. WOODBRIDGE:

I offer it in evidence, she says she signed it.

CROSS EXAMINATION.

Q Where did you sign it? 20

A I cannot tell you just the date I signed it, in George street, in Mr March's place.

Q Well, when was it, one year or two years or three years ago?

A When was it?

Q Yes, how long ago? 30

A It has been since Mr Jackson's death.

Q Is that the nearest you can tell about it?

A I cannot tell you just the date now.

Q Well, I don't ask just the exact date, I want your recollection as to when it was done?

A Well, I cannot tell you just when but I tell you it was since Mr Jackson's death. 40

Q Was it before you brought the suit or afterwards?

A Before I brought this suit?

Q Yes.

A It was certainly afterwards, wasn't it?

Q Well I want you to tell me.

10 A Well I think it was.

Q You think this was after you commenced the suit?

A Why would it not be. I cannot tell you just when it was maybe it was a year ago, I could not say.

Q What was the object of making this assignment?

A What was the object of it?

Q Yes.

20

A Why to get my money.

Q To get it?

A Certainly, why wasn't it.

Objected to.

Objection over-ruled.

30

Q Well?

A I answered it, I didn't reserve any interest in it.

Q Why do you say you made this assignment?

A Why did I?

Q Yes.

A I answered it.

40

Q. You answered it once before; you said to get your money, is that what you mean to say?

A. Well, why else would I?

Q. Why would you if not to get your money?

A. Yes, but that don't say that I have any interest in it, does it? I have no interest in it. 10

Q. Who is William C. Ten Broeck?

A. My son.

Q. Did he pay you anything for this assignment?

A. No, sir.

Q. Nothing at all?

A. No, sir. 20

Q. It says in consideration of a dollar and other considerations, did you get the dollar?

A. Did I get it?

Q. Yes.

A. Yes, sir, if he gave it to me and I gave it back to him was there any harm in it?

Q. Was there anything else except the dollar? 30

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. What did you do with the paper after you signed it?

A. What did I do with it?

Q. Yes. 40

A. Mr. Woodbridge had it, didn't he?

Q. Well, did he?

A. No, I took it home.

Q. You took it home?

A. Yes, sir.

10 Q. How long did you keep it?

A. Well, now I cannot answer that question either as to how long I had it.

Q. To whom did you give it? Have you ever given it to anybody—have you had it ever since?

A. I cannot tell you whether it lies in my bureau drawer now or not.

Q. Well, here it is.

20 A. Then I must have given it to Mr. Woodbridge.

Q. Do you remember doing that?

A. I don't think I do remember it, but I must have; I haven't got a very good recollection ever since Mr. Jackson's death, but I mean to tell you the truth.

30 Q. Don't tell anything that I don't ask you?

A. I don't want to.

Q. Do you remember taking it home the day you signed it?

A. Yes, sir.

Q. You do remember that?

A. Yes, sir.

40 Q. But you have no recollection of giving it to anyone after that, have you?

A. I think when it comes to me, when you cross-question me, that I gave it to Mr. Woodbridge.

Q. Can you give me any idea how long it was after you signed it?

A. No, sir, I couldn't tell you how long it was now.

Q. What did Mr. Woodbridge have to do with it? 10

A. What have you to do with it?

Q. Answer my question, please.

A. Mr. Woodbridge had, as far as I know, the same—

Q. I don't understand you.

A. I don't understand you either.

Q. My question is—I ask you what Mr. Wood- 20
bridge had to do with it?

A. Mr. Woodbridge. Hadn't he a right to it?

Q. Well, I am asking you, I want to know.

A. Well, I don't know either, I am asking you.

Q. Was Mr. Woodbridge your lawyer?

A. Certainly.

Q. You gave it to him to keep for you, is that 30
it?

A. I suppose so, just the same as I would give it to you if you were my counsel.

Q. Exactly. That is all.

RE-DIRECT EXAMINATION:

Q. When you signed this paper did you deliver 40
it to Mr. Ten Broeck?

A. Yes, sir.

Mr. Strong: I submit that is not proper; it is leading.

The Court: It is a leading question, undoubtedly.

10 Mr. Strong: Your Honor sees the interest and character of this witness.

The Court: Yes I will overrule the question.

Q. When you signed this paper what did you do with it?

A. I took it home to Willie.

Q. Who is Willie?

A. Well, my son, William Ten Broeck.

20 Q. Well, you got it home, you say you took it home; what do you mean by that, do you mean you gave it to him?

A. Yes, sir.

Objected to as leading.

Q. You took it home to Willie; now what do you mean by that?

30 A. I gave it to Willie.

Q. Was that before this suit was brought or afterwards?

The Court: What is the date of the acknowledgment?

Mr. Woodbridge: August 12th, before the bill was filed.

40 Witness: Yes, it was. Don't you see I have to think because I tell you I have already explained to you that my mind ever since Mr. Jackson's death and his sickness has not been

good; it all upset me and I haven't been the same since.

Q. Well, never mind.

A. Well, please believe me.

FURTHER CROSS:

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Q. Was Willie living with you at that time, did Willie live in your family?

A. Yes, sir.

Q. And he does still, doesn't he?

A. Yes, sir.

Q. He has always made his home in your family?

20

A. Not always; after I married Mr. Jackson why he didn't make his home with me, he made his home with his sister and brother.

Q. Where were they?

A. Mr. Ten Broeck over in Highland Park and Mrs. Madison, who is in her grave.

Q. And ever since Mr. Jackson's death your son has lived with you?

30

A. Yes, sir.

Q. How old is he?

A. How old is he? Well, he is about 32 years old, I think.

Q. When you signed this paper who was present?

A. Who was present? Mrs—, that lady that sits over there.

40

Q. What is her name?

A. McElroy, is it not?

Q. I presume so if you say so.

A. Well, don't you know?

Q. I cannot say I do.

10 A. In Mr. Woodbridge's office.

Q. She was a stenographer in Mr. Woodbridge's office?

A. Yes, sir.

Q. She typewrote the paper, didn't she, on the machine?

A. Well, Mr. Woodbridge was the one, I think.

20 Q. You think he was the one that had it done?

A. Most assuredly.

Q. Who else was there except Miss McElroy?

A. Well, I don't remember of anyone else.

Q. Wasn't Mr. Woodbridge there?

A. Oh, yes, Mr. Woodbridge was there.

Q. Was Willie there?

30 A. No, sir, he wasn't there; he was to work.

Q. He was at work?

A. Yes, sir.

Q. Who suggested the making of this assignment?

A. I did.

Q. You suggested it?

40 A. Yes, sir, I gave it to him.

Q. You suggested you should make it?

A. Yes, sir.

Q. Didn't Mr. Woodbridge say it ought to be done?

A. Did he say so? I went to him for advice the same as I did to you.

Q. Advice about this claim?

A. I wanted what had been taken from me, and I gave it to my son just as I am telling you. 10

Q. You went to Mr. Woodbridge for advice about getting your money back?

A. Didn't I come to you, too?

Q. Please answer my question. Do you say that you went to Mr. Woodbridge for advice?

A. No, I went myself; I was sent there by a person that I don't have to mention. 20

Q. What did you go to Mr. Woodbridge for?

A. Didn't I tell you?

Q. Please say it again if you did.

A. I wouldn't have went to him if I hadn't wanted to get what was taken from me.

Q. You mean this money that you are suing for? 30

A. Would I? No, sir, I wouldn't.

Q. You wouldn't have gone except for that?

A. No, sir.

Q. Did Mr. Woodbridge advise or suggest that this assignment should be made to Willie or somebody else?

A. No, sir, I did myself, no one didn't advise me. 40

Q. You simply made a gift of it to Willie, didn't you?

THE COURT:

Q. You gave it to Willie, you say; what do you mean by that—what do you mean when you say you gave it to Willie?

10 A. Well, his father was dead and I had never given him any money, and Mr. Jackson took this money from me, and I says if I can get it for my son I will get it and give it to him. Now, do you see? I am going to speak the truth. I don't know anything about lying.

FURTHER CROSS:

Q. What we want to get at is, you wanted to get that money for Willie, is that right?

20 A. Do I want to get it if I can? Would not you want to get it if it had been taken from you?

Q. I suppose what you wanted was to get it and give it to Willie, was that it?

A. I certainly did.

Q. What is Willie going to do with it when he gets it?

A. How can I answer that question, Mr. Strong?

30 Q. Do you mean you don't know?

A. No, how could I?

Q. Well, I don't know. Willie is a good son, he will likely give it to you, won't he?

A. I don't know.

Q. You don't?

A. I could not say.

40 Q. Well, when was it you gave this paper to Willie?

A. Now, didn't I tell you I couldn't say whether it was a year or whether it was six months ago.

Q. How long was it?

A. Well, you know, it is in the paper there, I suppose.

Q. I don't care about the paper, I want your recollection. 10

A. I cannot tell whether it was a year or six months or a year and a half, I cannot tell you.

Q. Well, answer my question, how long was it after you received it that you gave it to Willie?

A. I took it right home and gave it to him.

Q. The same day? 20

A. I did.

Q. Was he at home then?

A. Was he home?

Q. Yes.

A. Yes, sir, he wasn't working then.

Q. I thought you said he was working that day?

A. Well, I don't remember. Some days he was working and sometimes not. He worked on the Pennsylvania Railroad. 30

Q. What did he do on the railroad?

A. Well, I cannot answer that question, he was at Waverly.

Q. And some days he works and sometimes not?

A. Yes, sir.

Q. If he was working that day you didn't give 40 it to him that day?

A. Mr. Strong, I cannot remember. I took it and gave it to Willie, he read it and I put it in the dressing-case drawer.

Q. In your dressing-case?

10 A. Yes, sir.

Q. What did you do with it after that?

A. I left it there for a while and then I took it to Mr. Woodbridge.

Q. Then Willie took it and read it and gave it back to you?

A. Yes, sir, I put it away.

Q. In your own dressing-case drawer?

20 A. I put it in my bureau dressing-case.

Q. That is all.

The Court: Why wasn't Mrs. Jackson made a party to this suit?

Mr. Woodbridge: Well, because she parted with all interest in the claim.

WILLIAM E. TEN BROECK sworn:

30 DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you reside?

A. New Brunswick.

Q. Where are you employed?

A. Waverly, on the Pennsylvania Railroad.

Q. In the freight office there?

A. In the freight transfer room.

40 Q. I hand you a paper writing which has been offered in evidence in this case signed by Edward J. Jackson and ask you what it is?

The Court: Well, the paper shows for itself, you may ask him when he first saw it.

Q. When did you first see it?

A. I don't recognize the date exactly, but shortly after we discovered the bank book showing that the deposit had been made in New York, it was after we discovered that. 10

Q. Before or after the commencement of this suit?

A. After the—before the commencement of this suit.

Q. Have you any agreement or understanding with Mrs. Jackson regarding any interest in this suit? 20

Q. No, sir, I haven't.

Q. What was the consideration, Mr. Ten Broeck, of the instrument, why did your mother assign that over to you?

A. I suppose she thought it was money I ought to have, that was due to me.

Mr. Strong: I move to strike that out, it is merely a supposition. 30

The Court: Let him tell what was said. The witness says he saw that paper before the commencement of the suit, now that is not all, hadn't you better find out from this witness under what circumstances he saw it, and what happened.

Q. State under what circumstances you first saw that paper? 40

A. Mr. Woodbridge I suppose arranged—

Q. No, don't suppose, just tell us what you recollect.

A. Mr. Woodbridge arranged—

Q. State what you know about that paper, you say you saw it before the commencement of this suit, tell us under what circumstances you saw it, where and when and what happened?

10 A. Well, I first saw this paper, it was at Mr. Woodbridge's office I believe.

Q. When?

A. It was before this suit was commenced.

Q. What was done with it then?

A. Then my mother gave it to me.

20 The Court: What Mr. Woodbridge wants to know is, under what circumstances you first saw that paper, what was said at the time you saw it, now you say you saw it in Mr. Woodbridge's office, now tell us under what circumstances—how you happened to see it?

Witness: I was advised or I was told to go to his office, and of course then this agreement was made up or written out, and my mother assigned it to me.

30 FURTHER DIRECT:

Q. Well, you say she assigned it to you, what was done with the paper, just tell what was done with the paper?

A. Why it was given to me.

Q. By whom?

A. Why my mother gave it to me, given me by my mother and then I supposed it was returned to
40 Mr. Woodbridge afterwards.

Q. What was said at the time that your mother gave you that paper, if anything?

A. That if this should turn out all right for me that the money that was to be given was for me only.

Q. Who said that?

A. My mother.

Q. Was there any consideration for the paper? 10

A. No consideration.

Q. Did you have any claim upon your mother?

A. At the death of my father there was an estate left and my share of it I had never received.

Objected to.

CROSS-EXAMINATION—Mr. Strong: 20

Q. When the bank book was discovered which you referred to a while ago, did your mother consult Mr. Woodbridge about it?

A. She consulted Mr. Weigel; she never had anything to do with Mr. Woodbridge at that time, she had another lawyer.

Q. How long afterwards did she consult Mr. Woodbridge?

A. Well, I should say, I am not positive, I should say maybe two or three years. 30

Q. How do you know that your mother consulted Mr. Woodbridge?

A. I didn't know it the first time, no, sir.

Q. Well, subsequently, did you?

A. Yes, afterwards.

Q. How long was that before this paper was 40 drawn up when you first went to Mr. Woodbridge?

A. I should say about a week after we dis-

covered it, I should say probably a week or so afterwards, and then the papers were drawn up.

Q. A week or so after your mother first consulted Mr. Woodbridge?

10 A. Yes, sir.

Q. First your mother went to see Mr. Weigel?

A. Yes, sir, he was her lawyer first off.

Q. Did you go with her to consult him?

A. Not the first time, no, sir, I went to see Mr. Weigel during the time he was acting for her to see him about getting her money returned.

20 Q. And then after she consulted Mr. Woodbridge and you went with her, not the first but the second time that she went to Mr. Woodbridge's office?

A. I cannot say whether it was the second time she went or not, but it was shortly afterwards.

Q. How many times were you at Mr. Woodbridge's office?

30 A. I say about two or three times, not more than that.

Q. The first time you went there you went with your mother?

A. Yes, sir.

Q. And that was before this paper had been made?

A. No, sir, the paper had been made.

Q. Before you went there at all?

40 A. I think so.

Q. Well, are you positive of that?

A. I think so.

Q. Wasn't the paper drawn up in your presence while you were there?

A. No, sir.

Q. Wasn't it drawn up after you and your 10 mother had been there together and talked to Mr. Woodbridge about it?

A. I don't think so.

Q. What was the first you knew about this paper at all?

A. The first I knew about it?

Q. Yes.

A. I went to the office to see Mr. Woodbridge 20 about it, and he showed it to me.

Q. You went to the office for your mother?

A. Yes, sir.

Q. How did the paper happen to be mentioned at that time?

A. Well, she made the assignment to me, and that is the way it was signed.

Q. You don't answer my question, you went 30 there to see Mr. Woodbridge about this case for your mother, is that right?

A. In the interest of myself too.

Q. What interest had you—the paper hadn't been made up to that time?

A. At the time I went there?

Q. Yes.

A. I think it had.

40

Q. Where had you heard of this paper first?

A. Well, I am trying to tell you.

Q. You said the first you knew of it was when you went to Mr. Woodbridge's office?

A. Yes, sir.

10 Q. Had the paper already been made then?

A. Yes, sir.

Q. Had you ever heard of it up to that time?

A. My mother said she thought Mr. Woodbridge was drawing up a paper to that effect, and she wanted the money assigned to me.

Q. Your mother didn't say Mr. Woodbridge had so advised her?

20 A. That Mr. Woodbridge had?

Q. Yes, advised that such a paper should be drawn.

A. Well, she felt, I suppose——

Q. No, no, what did she say about that?

A. No, she didn't say Mr. Woodbridge advised it at all.

30 Q. Then what did she say, I mean the first talks had with your mother about any such papers?

A. She told me that she had gone down to Mr. Woodbridge's office, and he wanted to see me, and when I went down there the paper had already been drawn up.

Q. What did she say Mr. Woodbridge wanted to see you about?

A. Something concerning this case.

Q. Your mother said that?

A. Mr. Woodbridge was only engaged for this case.

Q. Mr. Woodbridge already had the case in his hands for your mother, hadn't he?

A. When I went there.

Q. Yes.

A. Yes, sir. 10

Q. And your mother told you to go down to Mr. Woodbridge's office that Mr. Woodbridge wanted to see you in reference to this case?

A. Yes, sir.

Q. Now is that what she said?

A. That is about what she said.

Q. Then you went down there. Now what did Mr. Woodbridge have to say to you? 20

A. He read this paper out to me where my mother had made the assignment to me.

Q. It was already prepared was it?

A. The paper was written out just the same as you see it here; he read it to me.

Q. Had it been signed?

A. It had been signed. 30

Q. Your mother had signed it then at that time?

A. Yes, I think she had.

Q. Well, do you recollect?

A. I cannot say for certain, but I think she had.

Q. You think so?

A. I think the paper was signed, but I cannot say for sure. 40

Q. Well, your best recollection is that you think she had. Now Mr. Woodbridge you say read the paper, what was done with it then?

A. What was done with it?

10 Q. Yes.

A. I cannot tell you, my mother gave it to me.

Q. Where did you see it after the day Mr. Woodbridge read it to you when did you see it next after that?

A. At my home I think it was.

Q. At your home?

A. Yes, sir.

20 Q. How long afterwards?

A. I think it was after I went down there one day, she went down the following day and got the paper, brought it up and gave it to me at my home.

Q. You didn't take it away with you on the day Mr. Woodbridge read it to you?

A. No, sir.

30 Q. You think the next you saw of it was the following day when your mother had it?

A. Yes, sir, and he gave it to me.

Q. At your home?

A. Yes, sir.

Q. At the time she had it at your home was it signed then, had she signed it at that time?

A. Yes, sir.

40 Q. Had it been signed then?

A. Yes, sir.

Q. Now, she says she handed it to you to read it over, and then she took it and put it in her bureau drawer, is that what was done with it?

A. I think she did, yes, sir, she gave it to me and then it was about a year I guess, of course we didn't destroy it. 10

Q. Do you know what did become of it after she handed it to you and you read it?

A. Well, I wasn't going to carry it around in my pocket.

Q. Tell me what you recollect as to what was done with it?

A. I think it was put in the drawer.

Q. Who put it in the drawer? 20

A. Well, I cannot tell you, I didn't put it in the drawer.

Q. Well, what did you do with it, I want to know just what was done with the paper, just as if you were doing it down here now?

A. Well, the paper was handed to me.

Q. She handed it to you?

A. Yes, sir. 30

Q. And what did you do with it?

A. I think I looked it over and handed it back to her and she put it in the drawer.

Q. When did you see it after that?

A. When did I see it again after that?

Q. Yes, have you ever seen it since until now? 40

A. I don't know as I have, but I knew and felt it was all right.

Q. Well, never mind, you answered the question. That is all.

RE-DIRECT EXAMINATION:

Q. Now I want to ask you why did your mother
10 give you this paper?

Objected to.

Q. What was said between you and your mother at the time she gave you this paper? At the time she handed you the paper what was said, when you were talking over it what was said at that time?

A. Well, she assigned this to me with the understanding that—

20 Q. No, no, what did you say and what did she say, do you remember what she said—do you remember anything that was said?

A. I cannot remember what was said.

Q. Now, what was the conversation between you and your mother that lead up to the drawing of this paper?

Objected to.

30

BY THE COURT:

Q. Did you have any conversation before that with your mother about the drawing of this paper?

A. I think she was at the office and had this paper drawn up, and it was all to be drawn up in my favor, there was no understanding between her and I at all.

40

Above answer stricken out.

FURTHER RE-DIRECT EXAMINATION:

Q. The question was before it was drawn?

A. No, no, no.

Q. Before it was drawn and delivered to you, did you have any conversation with her? 10

Objected to as already answered.

Q. Before it was drawn and handed to you?

A. We conversed about the case all the time like you know persons do. I thought she ought to win her case.

Q. Never mind what you thought, tell us what the conversation was? 20

A. Well, I cannot recollect, Mr. Woodbridge.

Q. Was there any conversation regarding what she owed you, in relation to your father's estate?

Objected to.

The Court: Do you want to correct your statement that the consideration was one dollar—the consideration of that paper?

Witness: No, sir. 30

Mr. Woodbridge: I would like to have my question put.

(Question repeated, as follows: "Was there any conversation regarding what she owed you, in relation to your father's estate?")

A. Not at that time.

Q. Was there before that? 40

Objected to.

Objection overruled.

A. Before that? Oh, no, she never mentioned anything to me about that.

Q. Wasn't there in my office between you and Mrs. Jackson—was there such a conversation between you and Mrs. Jackson in my office before
10 this paper was executed, when you and your mother met there?

A. Yes, sir, I think there was, come to think about it.

Q. What was said at that time between you and your mother in reference to the drawing and execution of this paper?

Objected to as already testified to.

20 Q. Well, what was that conversation?

Objected to as immaterial.

Objection overruled.

Q. You say—you admit there was a conversation at Mr. Woodbridge's office, now what was it?

A. I cannot recollect what the conversation was.

Q. Did you pay your mother a dollar consideration for this instrument?
30

A. Yes, sir.

Q. Did she hand it back to you?

A. No, sir.

Q. Did you answer yes or no?

A. I said no, sir.

CROSS-EXAMINATION:

40 Q. You are positive that the dollar was not given back to you?

A. No, sir.

Q. Didn't you hear your mother's testimony?

A. No, sir, I just got here when she was on the stand.

Q. You didn't hear her say that she handed it to you and you handed it to her?

10

A. No, sir, I didn't hear her testimony.

Q. Now, refresh your your own recollection and see if that is not the fact that she did hand it to you?

A. That she did hand it back to me?

Q. Yes, the dollar I mean.

A. Well, I don't know, I remember handing it to her, and I think she gave it back to me, I am 20 not positive about it.

Mr. Woodbridge: The instrument is under seal, I offer it in evidence.

Mr. Strong: I object to it as not being proper and as not effective to transfer the interests of the complainant or interests of the assignor, Mr. Jackson.

(At this point the Court asked why Mrs. Jackson had not been made a party complainant in the suit, and after some discussion between counsel, the Vice Chancellor asked whether defendant's counsel would consent to Mrs. Jackson being made a party complainant in the case at this time.) 30

Mr. Strong: I am representing infant defendants here, and I don't think I ought to make any consent. It must be done without my consent—whatever your Honor may direct 40 to be done, but I would rather not consent because of my representing the infants.

(The Court then ordered that Mrs. Jackson be made a party complainant in this suit, and defendant's counsel not desiring any delay, the case proceeded.)

10 The Court: I will ask whether you have come prepared to defend this case on the merits.

Mr. Strong: Yes, it was our idea that the case would be tried to-day, I suppose we are as well prepared as we can be.

20 The Court: Then I don't think the interests of the infants will suffer by allowing this amendment to be made. Now, let the case go on now as if it were actually made, and I will mark the paper ordering the amendment as having been made at this time, and the case will proceed as though Mrs. Jackson were and is a joint complainant.

BENJAMIN M. PRICE sworn:

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

30 A. 148 Livingston avenue.

Q. You were acquainted with Thomas A. Jackson in his life time?

A. Yes, sir.

Q. In the year 1893 did he build a house for you?

A. He did, yes, sir.

40 Q. I will ask you to tell if, on October 21, 1893, you had any transaction with Mr. Jackson regarding the payments?

A. I did, yes, sir.

Q. What was that transaction?

A. I have a certificate which was issued by the architect to make a payment to Mr. Jackson upon his contract, which was in the sum of \$1600.

Mr. Strong: You have a certificate here?

10

Witness: Yes, sir.

Q. Have you the check there you paid it with?

A. Yes, sir.

Said papers offered in evidence.

Q. On February 12, 1894, did you make any payment?

A. This certificate is dated January 28, and the check was drawn on January 11th. 20

Q. How much was that?

A. This wasn't paid to Mr. Jackson.

Q. Who was it paid to?

A. ~~Hoyt~~ ^{Howard} V. Butler.

Q. What was the amount?

A. \$1400.

30

Q. Even amount?

A. Yes, sir, I think that was just exactly \$1400.

Q. Why was the payment made to Mr. Butler?

A. Well, as far as I understood it was because Mr. Butler notified me or served a notice on me.

Q. Mr. Butler notified you to pay him out of this money?

A. Yes, sir, and Mr. Jackson was present of course when I paid the check in Mr. Butler's office to him. 40

Q. What was your relation to Mr. Jackson?

A. Nothing except that he built the house for me.

Q. Well, he was a carpenter and builder?

10 A. Yes, sir.

Q. And you made a contract with Mr. Jackson to build your house?

A. Yes, sir.

Q. Butler & Co. were to furnish materials for the house?

A. Yes, sir.

20 Q. Now, on February 12th, did you make a payment to Mr. Jackson or just prior to that date—perhaps at this point I better offer these four papers in evidence.

(Four papers were pinned together and marked Exhibit 1 for complainant.)

Q. Did you subsequently make any payment to Mr. Jackson?

A. Yes, sir.

30 Q. What was the amount of that?

A. \$1450.50.

Q. What is the date of it?

A. This certificate is issued January 31, 1894, but of course I cannot positively say, as I haven't the check in regard to its payment.

Q. Well, it was about that time?

40 A. Yes, sir, it may have been a day later.

Q. The payment was made, was it?

A. Yes, sir.

Q. To Jackson?

A. Yes, sir, Thomas A. Jackson.

Offered in evidence.

Marked Exhibit 2.

Q. Mr. Price, did you have any conversation ¹⁰
with Mr. Jackson at the time he built your house
or about the time it was completed, as to how
much profit there was in that house, if any?

A. No, sir.

Q. Did he state to you whether or not—

Objected to as immaterial.

The Court: I cannot tell yet whether it is ²⁰
immaterial.

Q. Did he state to you whether or not there
was any money made on the job?

Objected to.

Q. Did you have any conversation with him as
to whether there was any money in the job?

A. No, sir, I don't remember any such conver-
sation.

Q. Did you know Mr. Jackson long? ³⁰

A. I knew him a good many years, yes, sir, from
boyhood, I suppose.

Q. Do you remember any other job he was do-
ing about the time he was doing this job?

A. Yes; sir, he was building Mr. Bishop Ed-
mund's house at the time.

Q. Do you know whether he had any other job ⁴⁰
after this house of yours?

A. I don't know positively.

Q. That is all.

CROSS-EXAMINATION—Mr. Strong:

Q. This payment on this certificate on January 31st, upon which you say payment was made soon afterwards, that was the final certificate and final payment on your job?

10 A. Yes, sir, I have no check for that as that was paid by the Savings Institution.

Q. Paid through the Savings Institution?

A. Yes, sir.

Q. It was a loan made to you?

A. Yes, sir.

Q. So that wasn't paid by your check?

20 A. No, sir, therefore I have no receipt for it except that paper.

Q. Can you tell approximately how soon after the certificate the payment was made?

A. Well, I could only judge of that, Mr. Strong, by the manner in which those things were done. For instance, Mr. Williamson issued the certificate to Mr. Jackson and Mr. Jackson would come
30 as quick as possible to get his money, and it might have been a day or two days afterwards.

Q. In this instance of the final payment, there might have been some time elapsed on account of preparing the papers for the loan, might there not?

A. Yes.

Q. You say you have no definite recollection about that?

40 A. No, sir.

Q. That is all.

Mr. Woodbridge: I offer in evidence deed

of Enoch Newell and wife to Thomas A. Jackson, bearing date March 9, 1886, recorded in book 207, page 148, in Middlesex County Clerk's office being for the property known as 44 George street.

Also a deed of William Boylan to Thomas A. Jackson, dated September 29, 1886, recorded in Book 114 of deeds, page 340, in the Middlesex County Clerk's office, that is the property known as 54 Throop avenue. 10

I also wish to offer in evidence a mortgage by Thomas A. Jackson to James Hart, dated January 3, 1887, recorded in book 98 of mortgages, page 672, etc., for \$1800, and I call upon the defendants to produce the instrument. 20

(Same produced.)

The Court: How was the money to be paid, within what time according to the conditions of the bond.

Mr. Woodbridge: I think it was in one year, the instrument is dated January 3, 1887, and it covers both these properties.

30

Mortgage marked 3.

Bond marked 4.

Also assignment of mortgage of J. Hart to Richard R. Hagerman, January 28, 1899, recorded March 9, 1903, in book W of assignments of mortgages, page 97, and I call upon the defendants to produce it.

Same produced and offered in evidence.

40

Marked Exhibit No. 5.

Mr. Woodbridge: That is the assignment

of the mortgage last above mentioned. I also offer in evidence a discharge of mortgages dated November 14, 1902, recorded March 9, 1903, page 576, and call upon the defendant to produce it.

10 Same produced and offered in evidence.

Marked Exhibit 6.

Mr. Woodbridge: This was the discharge of the mortgage last above mentioned, assigned. I also offer in evidence inventory of the estate of Thomas A. Jackson, deceased, dated March 10, 1903, recorded in Book 9 of Inventories, page 54, etc., in the Middlesex County Clerk's office.

20 The Court: I suppose it will be admitted when he died. Let it now appear upon the record that he died February 23, 1903, in New Brunswick, New Jersey, and let it appear upon the record what personal estate the deceased had.

30 Mr. Woodbridge: The amount of the inventory is \$1091.78. Of that \$800 consisted of forty shares of stock in the New Brunswick Fire Insurance Company, \$221.93 of money on deposit in the New Brunswick Savings Institution, \$24.85 another deposit in the People's Bank of New Brunswick, New Jersey, and the rest was personal effects and household goods aggregating \$33.50.

DOUWE G. WILLIAMSON sworn:

40 DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

A. 36 Union street, New Brunswick.

Q. You are an architect?

A. Yes, sir.

Q. By profession?

A. Yes, sir.

Q. Were you an architect in the winter of 1893 10
and 1894?

A. I was.

Q. Were you acquainted with Thomas A. Jackson in his life time?

A. I was.

Q. Whose representatives are defendants in this suit?

A. Yes, sir. 20

Q. Did he do some work on houses on which you were the architect at that time?

A. He did.

Q. I call your attention to the house of Bishop Edmunds on ^{Mine} ~~Lyon~~ street, were you an architect for that house?

A. Yes, sir. 30

Q. I call your attention to a payment made to Mr. Jackson on February 17th or thereabouts on account of Bishop Edmunds' house, and ask you if you have a voucher for that payment, and what it represented?

A. What is the date, please?

Q. Your voucher is February 17th, 1894, I think.

A. Certificate No. 213. I have it. 40

Q. Just state what it was?

A. The certificate was for \$255; this is the stub.

Mr. Edmund is in possession of the certificate and he is west, at San Francisco.

BY MR. STRONG:

10 Q. This is your certificate in which you kept a record on the stubs of the certificates you issued?

A. Yes, sir.

Q. The original certificate didn't come back to you?

A. No, sir, they belong to the owner.

FURTHER DIRECT:

20 Q. Well, now, go on?

A. Amount of the certificate was \$2551.

Q. What is the date of it?

A. February 17, 1894.

Q. On whose house?

A. Mrs. Annie V. Edmunds.

Q. Were you the architect also for the house of Mr. Price?

30 A. I was.

Q. Do you know whether or not Mr. Jackson made any profit on those two houses of Price and Edmunds?

A. I had no means of knowing.

Q. You knew about the price of those houses, didn't you?

40 A. Yes, sir.

Q. State whether or not they were close jobs or not?

A. In both cases they were the lowest contract, that is, the lowest estimate.

Q. That is all.

CROSS-EXAMINATION:

Mr. Strong: I don't think I have any ques- 10
tions, but I think this stub ought to be copied,
just put as it is in the record.

Q. That is really all you know about it, what
your stub shows, is it not—all that you remember
now?

A. Yes, sir, I presume it is.

(The following is a copy of the said cer-
tificate: "Certificate No. 213. Feb. 17, 1894. 20
Number of Payment. Total Contract. Owner
Mrs. A. V. Edmonds. Building Residence.
Cert. given to T. A. Jackson (upon the ex-
press agreement that so soon as weather per-
mits, he will change glass in staircase win-
dow:) Contractor for Carpentry etc.
Amount of Contract, \$2,726.00.
Am't of this Cert. \$2551.

W. H. Pette
Previously paid 175. 30

Total paid to date \$2,726.00

Balance \$

(Endorsement) "Copy of original stub:—

October 30th 1905. D. D. W."

FURTHER DIRECT:

Q. There was another payment made to Mr. 40
Jackson before that on account of this house?

A. The Edmonds house?

Q. Yes, I call your attention to the date of December 31, 1893.

A. Edmonds' house?

Q. Yes, look at December 31, 1893.

10 A. There is no such stub here, sir, there is one December 20, 1893.

Q. What was that?

A. That was a payment to Mr. Rule, but has nothing to do with Mr. Jackson.

Q. About that time, that is the only Jackson payment that was made then, the one now in evidence?

20 A. Yes, sir, there were other certificates for some extras which came later, some small certificates.

Q. That is the entire contract price then?

A. Yes, sir, the entire contract price.

FURTHER CROSS:

Q. What was the amount in the extras?

A. He had two certificates, one for \$10.54, and
30 other for \$49.28.

Q. Give me the dates of those?

A. February 24, 1894, \$49.28, and March 14, 1894, \$10.54.

Q. That is all.

FREDERICK WEIGEL sworn:

DIRECT EXAMINATION—Mr. Woodbridge:

40 Q. Where do you reside?

A. New Brunswick.

Q. Are you a practicing attorney here?

A. Yes, sir.

Q. In the year 1895 were you secretary of the New Brunswick Fire Insurance Company?

A. Yes, sir.

Q. 1899, I should say?

10

A. Yes, sir.

Q. Have you the book of that company in your possession here?

A. Yes, sir.

The Court: What do you want to prove by this witness?

Mr. Woodbridge: That he bought \$800 worth of stock of the New Brunswick Fire Insurance Company on July 7, 1899, and paid \$800 for it. 20

The Court: Is that admitted?

Mr. Strong: I don't know anything about it. All this witness knows is that he finds the certificate.

Q. What do you know about this transaction?

A. On July 7, 1899, estate of Joseph N. Palmer by Henry H. Palmer, executor, transferred to Thomas A. Jackson forty shares of the New Brunswick Fire Insurance Company's stock as set forth in this transfer book. 30

Q. How much was paid for it?

A. In this book it shows a certificate issued to Thomas Jackson for said forty shares, and it is receipted for by Thomas Jackson, July 7, 1899; he paid \$800 for it, \$20 a share. 40

Q. When was that stock transferred again?

A. I didn't look that up.

Q. Was it after his death?

A. It was in his name at the time of his death, to my best recollection.

Q. In his estate?

10 A. Yes, sir.

CROSS-EXAMINATION:

Q. Now, what have you that enables you to say that this stock was transferred on that day—what are you referring to here?

A. (Witness exhibited book to counsel.)

Q. That is in your handwriting, except the signature?
20

A. Yes, sir.

Q. Witnessed by you?

A. Yes, sir.

Q. What else have you besides the transfer book?

A. Here is the certificate book and the original certificate of stock drawn up, and made out, and the stub made out on that day and receipt given
30 from Thomas A. Jackson personally.

Q. That certificate has never been returned?

A. No, sir, not during my time.

Q. Your time ended when?

A. About two years ago, I think.

Q. This stub has the receipt of Jackson on it as of the date of July 7, 1899.
40

A. Yes, sir.

Q. For certificate 156, forty shares dated July 7, 1899, issued to him?

A. Yes, sir.

Q. Now, what do you know about the \$800 paid, as you say?

A. Well, I knew at that time that the Palmer stock was being sold for twenty a share to Mr. Jackson; I gave him a price of twenty-five a share, and I told him that he was getting it at that time for less than any other man was paying at that present time. 10

Q. That is the extent of your knowledge as to the amount paid?

A. Yes, sir, I didn't see the actual payment, however.

Q. That is all. 20

GEORGE B. RULE sworn:

DIRECT EXAMINATION—Mr. Woodbridge:

Q. What is your business?

A. Builder.

Q. How long have you been in such business?

A. As a builder or as a master builder or in the business? 30

Q. As a master builder?

A. Twelve years.

Q. Were you acquainted with Mr. Jackson in his life time?

A. Yes, sir.

Q. Did you know of his having a contract for the house of Mr. Price as has been testified to in this case? 40

A. I didn't hear the testimony.

Q. Did you know of his having had a contract for the building of a house for Mr. Benjamin M. Price at 148 Livingston avenue, New Brunswick?

A. Yes, sir.

10 Q. In the year 1893 or 1894?

A. Yes, sir.

Q. Did you make a bid on that house?

A. Did I get the contract? No, sir.

Q. Did you make a bid on the house?

A. Yes, sir.

20 Q. Now, I will ask if you can testify what was Mr. Jackson's bid on that house?

Objected to.

Mr. Strong: It appears by the certificates in evidence what the payments aggregated on that contract.

Q. (Question repeated.)

A. My memorandum calls for \$4440.

Q. Did you make a bid on that house?

30 A. Yes, sir.

Q. What was your bid?

Objected to.

Q. Did Mr. Jackson also bid on the Edmonds house?

A. Yes, sir.

40 Q. On Mine street?

A. Yes, sir.

Q. That has been testified to in this case?

A. Yes, sir.

Q. What is his bid on that house?

A. \$2720.

Q. Did you have any conversation with Mr. Jackson as to those houses, as to whether or not there was any money in them?

A. No, sir.

Q. Did you have any conversation with him about that?

A. No, sir.

Q. Do you know as a matter of fact—you remember the house, don't you?

A. Yes, sir.

20

Q. And the work that was called for?

A. Yes, sir.

Q. Do you know as a matter of fact whether there was any money in those houses on his bids?

A. No, sir.

Objected to.

Witness: I have no way of knowing whether he made or lost money on them. 30

Q. Didn't you examine the plans and specifications on those houses?

A. Yes, sir.

Q. Did you bid on both those houses yourself?

A. Yes, sir.

Q. You have already testified as to the amount Mr. Jackson bid—the bids which he made? 40

A. Yes, sir.

Q. Are you familiar with the value of the building materials and labor about that time?

The Court: I will assume that.

Witness: Yes, sir.

10 Q. State whether or not the price at which Mr. Jackson built those houses of your general knowledge as a builder and contractor in New Brunswick, there was any profit in them, or whether they were close jobs?

Objected to.

The Court: I understood the witness to say he didn't know.

20 Mr. Woodbridge: I thought I might ask him to give his opinion.

The Court: I overrule the question, but you may ask this question.

Q. What do you think those houses have been built for at that time according to the plans and specifications, without any profit to the contractor?

30 A. The B. J. Edmonds house I estimated at that time the cost of it, and my estimate at that time was the cost to me. I can give you the amount of cost in my opinion at that time.

Q. Well, your opinion is what we want, at that time?

40 A. Yes, sir, the cost of the Edmonds house I estimate as \$2986.44; the cost of the Price house I estimate at that time and do yet at \$4,934.89; that is the cost we are now getting at, not the amount of the bid.

Q. You knew Mr. Jackson well?

A. Yes, sir.

Q. Do you know whether or not he ever did any carpenter work after these two houses?

A. That I cannot say.

Q. Do you know whether those were his last jobs he ever did?

A. I think Mr. Jackson virtually stopped business after that time; he may have done some small work of a small nature, but I don't think he ever built any more houses after that. Of course this is only a matter of memory, and I may be mistaken.

10

Q. Did Mr. Jackson admit to you that there was no profit in those jobs?

A. No, sir.

20

CROSS-EXAMINATION:

Q. Were there other bidders on the Edmonds job besides you and Jackson?

A. I cannot tell you, Mr. Strong. I have only my own and Mr. Jackson's bid here in my memorandum.

Q. Was it your custom to keep a record of the bids?

30

A. No, sir, only my own bid and the bid that took the job.

Q. Are those the only bids you have on the Price job.

A. No, sir, I have Homan's bid.

Q. Were they higher or lower than you?

A. Lower than me.

40

Q. You were the highest of three then?

A. Yes, sir.

Q. But the figures you have given on each of these jobs, as I understand it, was what you estimated to be the cost?

A. Yes, sir.

10 Q. Without figuring any profit?

A. Yes, sir.

RE-DIRECT EXAMINATION:

Q. Was the bid of Homans on the job less than your estimated cost or more?

Objected to and overruled.

20 Q. That is all.

HOWARD C. RULE, sworn.

DIRECT EXAMINATION—Mr. Woodbridge:

The Court: What are you going to prove by him?

Mr. Woodbridge: The account in the New Brunswick Savings Institution.

30 Counsel stated that they will admit a copy of the account so as to save the Savings Bank the trouble of bringing over large books here.

Q. What is your business?

A. I am employed in the Savings Institution.

Q. Are you one of the officers?

A. I am assistant secretary.

40 Q. Did you know Thomas A. Jackson in his life time?

A. Yes, sir.

Q. Did he keep an account with you?

A. Yes, sir.

Q. I hand you a copy of the account which has been prepared by you, and ask you if that is a copy of his account he kept in your Institution?

10

A. Yes, sir, I compared that with the ledger account.

Q. Is that a copy?

A. That is a statement of the account on the ledger.

Q. That would be a copy of his pass book?

A. Yes, sir.

Q. Have you the pass book.

20

A. This has more on it than the pass book would have; there are entries of interest marked here.

Q. Has fifty-two cents more in it than the pass book would have?

A. Yes, sir.

(Pass book is now produced on the call of the complainant and offered in evidence and marked Exhibit C 7.)

30

CROSS-EXAMINATION—Mr. Strong:

Q. What do you say this paper is which was shown you?

A. Statement of the ledger account of Thomas A. Jackson with the bank.

Q. Is it a copy?

A. No, sir, not an exact copy.

40

Q. Sort of a summary or abstract of it, is it not?

A. Well, the ledger does not have the word "interest" on it as that has, or the word "deposit and profit" it has separate columns for each, of course the figures are the same here as on the ledger.

10 Q. Does the ledger show any more than this?

A. What do you mean.

Q. Anything more than what you have got here?

A. The ledger shows pencil balances every six months, and those are not here.

Q. That is derived from these items here, figured up for six months?

A. Yes, sir.

20 Q. Does it show anything more in reference to these items?

A. No, sir.

Q. Is this the entire account?

A. Yes, sir.

Q. From the beginning to the end?

A. Yes, sir.

30 Q. Starting February 1, 1895, that is the beginning of the account?

A. That account, yes, sir.

Q. He wasn't a depositor in your bank before that, was he?

A. I don't know.

Q. Do you mean to say that?

40 A. I don't know, of course I can tell by looking at the index but I cannot remember.

Q. You made no examination to ascertain that?

A. No, sir.

Q. And there is a balance there now on credit to the Jackson estate of \$36.03?

A. Yes, sir.

Q. That is all.

RE-DIRECT EXAMINATION:

10

Q. That is the whole amount, is it?

A. Yes, sir.

Q. That is all.

CLIFFORD VANWINKLE, sworn.

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

20

A. 155 Bayard street.

Q. What is your business?

A. Book-keeper in the National bank.

Q. The National Bank of New Jersey or of New Brunswick, New Jersey?

A. Yes, sir.

Q. Had that bank an account with Thomas A. Jackson in his life time?

A. Yes, sir.

Q. I hand you a copy of the account running from October 21, 1893 to January 2nd, 1897, and ask you if that is a copy of the account kept in the National Bank by Thomas A. Jackson in his life time?

A. Yes, sir.

40

Q. Prepared by you?

A. Yes, sir.

Q. From the books of the bank?

A. Yes, sir.

Offered in evidence.

10 CROSS-EXAMINATION:

Q. This was made up by you from the books?

A. Yes, sir.

Q. And commences October 21, 1893. Was that the first entry in his account?

A. No, I think not. It is some time since I made it out. Does it not state a balance there?

20 Q. Yes, balance October 21, \$7.52.

A. Yes, sir, at that time, but the account was in the bank before that time.

Q. How long before that?

A. I cannot tell you.

Q. Was it some years?

30 A. I could not say whether it was a month or a year because our ledgers run so that there are eight days on each page.

Q. This is not a copy of anything then, it is a summary made up from your books showing what the books taken together show?

A. No, sir, it is all taken from the ledger.

Q. Does it appear in your ledger in exactly that form?

A. No, sir.

40 Q. Does the ledger show anything more in reference to the items than what is shown here, namely the year, month, day and the amount?

A. No, sir.

Q. That is all it shows?

A. Yes, sir, with the exception of the balances struck each day in the ledger.

Q. You haven't struck it on each day in this account?

10

A. No, sir.

Q. Now this runs down to January 2nd, 1897, is that so?

A. Yes, sir.

Q. Does the account terminate there?

A. No, sir, there is a balance struck there.

Q. The account continued beyond that point then?

20

A. As I remember now it did.

Q. Do you know down to what point it continued?

A. Not without reference to the books.

Q. Do you know whether it came down to the time of his death?

A. I don't know when he died.

30

Q. In February, 1903.

A. It may have done so, that is what you would call a day account, there was no transaction at all only just the balances to them.

Q. Well, you don't recollect as to that, do you?

A. No, sir.

Q. You could not state without looking at the books of account?

40

A. No, sir.

Mr. Strong: I said to Mr. Woodbridge that I would accept copies of the account, I did not mean that I would accept fragments of it.

The Court: I suppose the witness can furnish the balance of the account.

10

Mr. Strong: The account ought to be from the beginning to the end.

The Court: Let the witness prepare a supplemental statement and present it to counsel and that will prevent his coming here again.

Q. Will you prepare a statement of the whole account?

20

A. Yes, sir.

Q. From the first entry to the last of it?

A. Yes, sir.

RE-DIRECT EXAMINATION:

Q. How long a period did Mr. Jackson's account run over?

A. I cannot tell you here.

30

Mr. Woodbridge: Well, I call upon the defendants to produce the book of Mr. Jackson in the National Bank of New Jersey, and the returned vouchers and checks.

40

Mr. Strong: In response to that call I will say we have neither the pass book or returned checks they did not come to the executor, but have been in the possession of the complainant J. E. Jackson one of the complainants, and he always had them and has them yet.

Mr. Woodbridge: I will offer the account in evidence as far as it will go then.

The Court: You had better wait and offer it in its completed shape.

Mr. Woodbridge: Very well, sir.

JAMES W. RUNYON, sworn.

10

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

A. 191 George street.

Q. You are a brother of Mrs. Emma J. Jackson?

A. I am sir.

Q. I will ask you if you remember in the month of October, 1893, the ~~mortgage~~^{marriage} of Mrs. Emma J. Jackson to Thomas A. Jackson? 20

A. I do not, I knew nothing about the dates, but I remember their being married, but the dates I cannot tell you.

Q. Prior to that time were you cognizant of your sister, then Mrs. Ten Broeck, having some money in her possession?

A. Yes, sir.

30

Q. How much money did she have in her possession?

A. Well, I seen her have over \$2,300.

Q. \$2,300?

A. About \$2,300.

Q. How do you know she had that money?

A. Well, I gave her about \$1,200 myself.

40

Q. How did you come to give her \$1,200?

Objected to.

Q. You say you gave her \$1,200?

A. Yes, sir, something over that \$1,200 and the interest for six months or a year; the records will show that it was paid to me by Peter F. Daily, which he holds my receipt for—the record will
10 show that.

Q. What was that \$1,200?

A. What denomination?

Q. Where did it come from?

A. It came from the mortgage on to the property of James Stillwell, and he was deceased and his widow paid it off to Captain Griffith.

20 Q. It was paid off at that time by Mr. Daily?

A. Paid off at that time by Mr. Daily to me.

Q. By Mrs. Stillwell's order?

A. Well, do you want to know who was there. Michael Lyon, Peter Daily, Mrs. Bridget Stillwell and Captain Griffith.

Q. Was Mrs. Jackson notified to come down to the office and get that money?

30 A. Yes, sir.

Mr. Woodbridge: It was a mortgage from James Stillwell to Mrs. Emma Ten Broeck, I will produce the record of it. The original mortgage was canceled ^{book} on page 82 of the record, and the mortgage was dated February 25, 1890, made by James H. Stillwell and Bridget Stillwell his wife to Emma J. Ten Broeck, for the amount of \$1,200 paid off or canceled July 6, 1892, on property in the
40 city of New Brunswick, New Jersey.

Q. Mr. Daily paid you this money in cash?

A. No, sir, he gave me some in cash, I forgot the denomination but I think there was \$600 in large bills, and the rest were small denominations, and one check but I have forgotten what the check was for, I know I went and cashed the check.

Q. What did you do with the proceeds? 10

A. I gave them to her.

Q. Did you know Mr. Thomas A. Jackson in his life time?

A. Surely, I knew him all my life.

Q. Do you remember a conversation you had with him about this time as to the receipt of this money by Mrs. Ten Broeck?

A. Do you want me to go into the details of it. 20

Q. Yes, tell it all.

A. He came to my store and was in the habit of coming there and buying cigars, and he asked me how I made out yesterday with the mortgage and with Auntie—he called her Auntie to me. I said I knew nothing about it at all. If you want me to go into the whole details of it I will tell you. I thought he was prying into her business. He asked me if I could change him a \$20 bill, and I told him I could and gave him change for a \$20 bill, because I had all kinds of denominations, but I thought he was prying into her financial affairs too much. 30

Objected to.

Q. Now, Mr. Runyon, he knew of the receipt of this money by her, did he?

Objected to. 40

Q. What did he say—tell what he said in regard to it, state all Mr. Jackson said to you about this money, if anything?

A. He asked me about the money, whether I had it, and how I made out, and I told him I didn't know anything about her affairs; I didn't want to tell him, I thought it was none of his business.

Q. Did he say he did know about it, did he say
10 anything else about it?

A. About this particular money?

Q. Yes.

A. No, sir.

Q. Did you know Mr. Jackson after he married your sister?

A. Did I know him? Yes, sir.

20 Q. Do you remember the time he built the houses for Price and Edmonds?

A. I knew the occurrence.

Q. Did you ever have any conversation with him about those houses?

A. Yes, sir.

Q. What was it?

30 A. He said there was nothing into it—into building houses any more.

Q. Did you say anything to him in regard to these two particular houses?

A. He said he hadn't made anything.

Q. Did you talk with Mr. Jackson subsequently?

A. Oh, he came right along to see me, and followed me up all over.

40 Q. Did you talk with him more or less about his business?

A. Well, I didn't have much conversation concerning that.

Q. State whether or not you knew what jobs he was doing?

A. Well, he had Mr. Florence's house and Mr. ~~Kaisers~~ ^{Prices}, I went into Mr. Florence's house and saw it.

Q. In regard to the Price and Edmonds houses, ¹⁰
do you know whether or not he ever did any job after that?

A. I could not say.

Q. Did he ever have any job after these Price and Edmond houses?

A. I never knew him to work after he married my sister.

Q. Well, state whether he did any work? ²⁰

A. I never knew him to do anything after his marriage, to my knowledge.

Q. Did you live near Mr. Jackson?

A. At what time?

Q. The time of the marriage to your sister and after that for a few years?

A. I don't know where he lived at that time, he ³⁰
was somewhere over on Townsend street I didn't follow him up.

Q. Well, Mr. Runyon, you knew him right up to the time of his death?

A. Yes, sir, I was there all through his sickness and took care of him a good deal of the time, I slept there.

CROSS-EXAMINATION:

⁴⁰

Q. When was it the Florence house was built by Mr. Jackson?

A. I cannot tell you the date, but twenty years ago I suppose.

Q. About the time he was building Edmonds house?

10 A. Yes, I don't know whether he had the three of them in course of erection or not.

Q. What is your recollection?

A. As far as I know he used to cross over to my house——

Q. What I am trying to get at is whether it was the same time or not?

20 A. Well, I am trying to explain to you as near as I can.

Q. You say you have no idea whether the Florence house was being built about the same time as the other two were?

A. I cannot say.

Q. Or whether it was before or after?

A. I cannot say, I don't know which contract he took first at all.

30 Q. Are you able to say whether the Price house was built before the Edmond house?

A. I don't know.

Q. Or whether the Edmonds house was built before the Price house?

A. No, sir, I don't know.

Q. You don't know a great deal about his business, do you?

40 A. Not a bit.

Q. He didn't tell you his business?

A. I don't recollect that he did.

Q. Didn't talk about his business to you at all?

A. No, sir, not very much.

Q. That is all.

James
~~JOHN~~ HART, sworn.

10

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

A. New Brunswick.

Q. You were the holder of the bond and mortgage marked Exhibits 3 and 4 for the complainant in this case, were you not?

A. Yes, sir.

20

Q. Made by Thomas A. Jackson to you?

A. Yes, sir.

Q. I ask you to state if you recollect the circumstances of Mr. Jackson paying off that mortgage to you?

A. Yes, sir, that is, partly, I recollect where he paid it off, it was some small sums in the beginning, he paid it off in that way until he paid off \$800. He was paying interest on the principal at the time and paying off \$100 or \$50 until I told him that I would not receive any more small sums. The mortgage was then paid down to \$1,000 and I said I wouldn't break into that sum by small payments, but I would take the \$1,000 any time he would give it.

30

Q. What were the circumstances of the paying off of the balance of \$1,000 which you say was due?

A. I cannot give the circumstances, I was notified from Mr. Van Cleef's office to bring down all the papers, and get my money, and to surrender the bond and mortgage.

40

Q. Did you bring down your papers and get your money?

A. I did.

Q. Who paid you that money?

10 A. I got the check from Mr. Richard Hagerman, it was a certified check for \$1,000, and Mr. Jackson paid me the balance in money. That was what was due on the interest, that was paid in cash by Jackson.

Q. About how much was there paid in cash?

A. Well, I cannot tell you exactly about the amount of the interest at that time, but I was paid off up to date.

20 Q. I hand you assignment of a mortgage exhibit C 5, and ask you if that is the assignment that you executed to Mr. Hagerman at the time Mr. Jackson paid off this mortgage?

Mr. Strong: He has not said it was paid off by Mr. Jackson.

The Court: At the time Jackson brought the money to Mr. Van Cleef's office?

30 Witness: Yes, sir.

Q. When Mr. Jackson would pay you any principal or interest upon this mortgage would you endorse it upon the bond?

A. Yes, sir.

Q. Are those endorsements in your handwriting?

40 A. Sometimes I would do it and sometimes I preferred that Mr. Jackson should do it himself; I think you will find his handwriting somewhere there and sometimes it is mine.

Q. These receipts endorsed on the bonds were for money you got from him, was it?

A. Yes, sir, I believe they are about correct, and whenever he wrote the receipt for me I signed it at the bottom, I think they are all correct.

Q. What kind of check did Mr. Hagerman give you, was it a certified check? 10

A. Yes, sir, certified check.

Q. What bank was it on?

A. On the Peoples' Bank of the City of New Brunswick I think.

Q. Was Mr Van Cleef present at the time?

A. It was Mr. Van Cleef that attended to the transaction as far as I know, it was all ready for me to transfer the bond and mortgage over and get my money. 20

Q. And that was done in his office, wasn't it?

A. Yes, sir.

Q. Papers drawn by him?

A. I suppose so, he seemed to be the transacter of the business. 30

Q. This transaction took place on the date of the assignment, did it?

A. Yes, sir, I think it did when I got the check.

CROSS-EXAMINATION:

Q. Did you tell Mr. Jackson that you wanted him to take that mortgage up before it was paid off, was it done at your request? 40

A. No, sir, I haven't asked for the money, but when I got notice about bringing down my papers I hadn't expected to receive any such notice at that time and I didn't want it.

Q. Had there been any dispute between you and Mr. Jackson in relation to the loan?

A. Yes, sir, in regard to an insurance policy.

Q. What was it?

10 A. Well, I notified Mr. Jackson a day or two before the policy ran out and he said he would not have it insured in the same office, and that he could get it cheaper, well I told him it was all right I was satisfied, but to get it insured, and I think on the day the policy came due I asked Mr. Jackson if he was going to attend to the insurance and he said no. If you don't, I said, I will, well he said, if you do you will have to pay for it yourself. Well, I said of course I am willing to pay for it, but you
20 will have to pay for it hereafter. Those are just the words I said, so I went up to Mr. Kirkpatrick when the policy was due, and I had it renewed, and of course I paid Mr. Kirkpatrick and took the policy home, and I informed Mr. Jackson that I had it insured. He said that is all right enough but I will never pay you. So that remained until the settlement in Mr. Van Cleef's office, and then I got my money back for the insurance.

30 Q. How long was this check about the insurance before the time you got word to come down and get your money?

A. Well, I should think, I cannot exactly say, maybe two or three months, maybe not so long, I don't recollect.

Q. The substance of it was that Jackson objected to keeping the property insured, is that it?

A. I don't care what his objection was.

40 Q. Well, that is true, that is what he said?

A. No, sir, he didn't say so. I said suppose the

property was to burn down what would I have for my money, and he says you have the lots there all right; well, I said, Mr. Jackson, I won't have it that way, I said I am willing to take my money now, if you will pay me \$1,000, and then of course I won't go any further with the insurance, but until that is done I would like to have the insurance policy. 10

Q. He thought the lots were good enough without the buildings?

A. I suppose so.

Q. That is what he said?

A. That is what he said, but that is what I didn't think.

Q. And when you transferred the bond and mortgage to Mr. Hagerman you transferred the policy to him I suppose?

A. Yes, sir.

Q. And you got paid for the premium that you had paid?

A. Yes, sir.

Q. That is all. 30

RICHARD R. HAGERMAN sworn.

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you live?

A. New Brunswick.

Q. How long have you resided there? 40

A. Thirty-seven or thirty-eight years.

Q. Did you know Mr. Thomas A. Jackson?

A. I did.

Q. Do you remember a transaction with Mr. Hart, which he has just testified to in regard to the paying off of the mortgage?

A. I do.

10 Q. You gave Mr. Hart your certified check for that, as he has testified to?

A. Yes, sir.

Q. And took his assignment?

A. Yes, sir.

Q. Which is Exhibit C 5?

A. Yes, sir, I took the assignment.

20 Q. Where did you get the money that you paid to Mr. Hart?

A. From Mr. Jackson.

Q. How long before?

A. Might have been a day or two, I don't know whether it was that day or the day before, but within a day or two.

30 Q. What conversation did you have with Mr. Jackson regarding that?

A. Mr. Jackson came to me and said he owed Mr. Hart on the mortgage \$1,000, and that he wanted to pay it off and transfer it to his son, and in order to do that he would have to have someone to buy it, and he asked me if I would do it, and I told him if there was nothing wrong about it I would do it as his friend.

40 Q. Now, how did he supply the money, was it in cash?

A. In cash.

Q. What did you do?

A. I deposited it in the Peoples' Bank.

Q. And gave Mr. Hart a certified check?

A. Yes, sir.

Q. And that was your whole connection with the transaction? 10

A. Yes, sir, that part of the transaction.

Q. After you had taken this assignment into your possession what did you do with it, and the bond and mortgage?

A. Gave them to Mr. Jackson.

Q. Right then and there?

A. Yes, sir.

Q. As soon as Mr. Hart left the room? 20

A. I don't know whether it was as soon as that or not, but it was done at the same time.

Q. All turned right over to him?

A. Yes, sir.

Q. Did you, subsequently, in November, 1902, execute this discharge of mortgage, Exhibit C 6?

A. I executed something, Mr. Jackson said he 30 had to have to get the mortgage canceled, but he never canceled it.

Q. Is that the paper?

A. Yes, sir, I think it is.

Q. How did you come to execute that instrument?

A. By request of Mr. Jackson.

Q. State the circumstances of that request of 40 November 14, 1900?

A. Well, he came to me and said that he hadn't

canceled the mortgage, or something of that kind, and it was necessary to have a paper of this kind in order that he could get the mortgage canceled.

Q. Did he tell you where he came to sign such paper?

10 A. Yes, sir.

Q. Where?

A. Mr. Van Cleef's office.

Q. Mr. Van Cleef was his attorney, wasn't he?

A. He done the business, as far as I was concerned.

Q. Did you ever have any interest in the bond
20 and mortgage or the assignment of the money paid for it in any way?

A. Not any, it was simply to accommodate Mr. Jackson.

CROSS-EXAMINATION—Mr. Strong:

Q. When did you first speak to Mr. Woodbridge
or he speak to you about this transaction in which
you paid \$1,000 to buy this mortgage of Thomas
30 Hart?

A. I could not say about that, he sent word to me to come to his office that he wanted to see me, but I don't know just when it was.

Q. About when, as near as you can tell?

A. About a year ago.

Q. About the time this suit was begun?

A. That was the first I heard of the suit.

40 Q. That was the first time you heard of it?

A. Yes, sir.

Q. Did he tell you he was about to begin suit?

A. Yes, sir.

Q. And then you told him the circumstances of this transaction, did you?

A. As far as he asked me about it, he seemed to know all about the transaction. 10

Q. Did you tell him about the same as you told here to-day?

A. Yes, sir.

Q. Did you tell him that after you had paid to James Hart the sum of \$1,000 for the assignment Jackson informed you that he desired to pay the mortgage off, and that he then had the money for that purpose, and asked you to then and there take the principal sum of \$1,000, that you were greatly surprised but that said Jackson told you that since making arrangements for the assignment to you he had gotten the money in, and did thereupon—did you tell Mr. Woodbridge that you thereupon at the request of Jackson on the 28th of January take from him \$1,000 and deliver up those papers to him, is that the way you told it to Mr. Woodbridge? 20

A. I think when Mr. Woodbridge first called me there, I could not exactly remember the circumstances, and then I went back to him and corrected it, after I had thought the matter over and recalled it, and found out all about the transaction. 30

Q. Did you ever make the statement that you had bought this mortgage with your own money and that afterwards Jackson came to you greatly to your surprise to pay you off?

A. I don't think I did. 40

Q. Did you ever have any such understanding of the transaction as that?

A. Not at all.

Q. Or any such recollection of it?

A. No, sir.

Q. And it is not true then that you paid the
10 money to Hart in the first place with your own money?

A. No, sir.

Q. With the idea of holding the mortgage?

A. No, sir.

Q. That is not true at all?

A. No, sir, not my own money.

Q. And the payment which you made was paid
20 out of money and with money that Jackson had given you for that purpose?

A. Yes, sir.

Q. What was it you corrected when you went back a second time and told Mr. Woodbridge about it?

A. I think that was how the transaction came about in the first place, and then I was a little
30 nervous for fear I had made a mistake in some way or another.

Q. Cannot you tell us what it was you went back to correct?

A. I think perhaps when I came to hear of this suit and that there was money connected with it why I didn't tell Mr. Woodbridge the truth the first time that I saw him.

Q. In what particular didn't you tell him the
40 truth the first time?

A. In the matter of my own money.

Q. Well, what did you tell him the first time about it—paying your own money?

A. I don't remember just what I did tell him.

Q. But you have a recollection that you did not tell the truth the first time?

10

A. No, sir.

Q. And that is the particular point in which you did not tell the truth as to its being your own money?

A. Yes, sir.

Q. You say now in fact it was not your own money?

A. No, sir.

20

Q. You said you knew Jackson, did you?

A. Yes, sir.

Q. And you knew his widow?

A. Yes, sir.

Q. Know her very well, don't you?

A. Yes, sir.

Q. Rather more than ordinarily well, don't you? 30

A. I know her.

Q. Are you a bachelor or widower?

A. I am a widower.

Q. Have you been paying attention to Mrs. Jackson?

A. No, sir.

Q. I mean since her husband's death?

40

A. No, sir, I was never in Mrs. Jackson's house

but once since her husband died and then on business.

Q. That is all.

RE-DIRECT EXAMINATION:

10 Q. When you first came to me, when I sent for you to come to see me, what you stated to me was your recollection of the transaction at that time, wasn't it?

A. At that time, yes.

Q. And afterwards, what?

A. Then I found I hadn't told you the truth.

20 Q. And afterwards you thought over the transaction and it all came back to you?

A. Yes, sir, and I came to you and corrected it.

Q. Your recollection of the time you first came to me—of this transaction was that—

Objected to.

30 A. Well, I wanted to tell the truth about it, and I simply got a little nervous about it, and I thought you would think I had stolen the money of him, so I wanted to say to you that I didn't intend to do anything wrong.

RE-CROSS EXAMINATION:

Q. You didn't know anything about any stolen money, of course?

40 A. I didn't? Everybody knew about it, it was talked of all over the country here about Mrs. Jackson losing the money.

Q. And that got to the newspapers, didn't it?

A. Yes, sir.

Q. About her having lost this money?

A. Yes, sir.

Q. And when this suit was brought that was published in the newspapers, too?

A. Yes, sir.

10

Q. Then you heard the claim that the money had been stolen from her?

A. Yes, sir.

Q. Is that what made your nervous?

A. Yes, sir, that is what affected me.

Q. That is what got you nervous, is it?

A. Well, I was afraid I had done something wrong.

Q. But you were not conscious of any wrong, were you?

A. No, sir.

Q. That is all.

VIRGINIA McCAULEY sworn:

30

DIRECT EXAMINATION—Mr. Woodbridge:

Q. Where do you reside?

A. New Brunswick.

Q. How long have you resided there?

A. All my life time.

Q. Are you a relation of Mrs. Jackson?

A. Yes, sir, her sister.

40

Q. She is your oldest sister?

A. She is my oldest sister.

Q. Do you remember the time of her marriage to Thomas A. Jackson?

A. Yes, sir.

Q. Do you know the date she was married?

10 A. No, sir.

Q. Do you know where Mr. Thomas A. Jackson had lived after their marriage?

A. After they were married? At the first of their marriage in her own house, I think.

Q. That was how near to you?

A. Quite a ways up, I lived on Troop avenue, No. 52.

20 Q. That is about two blocks from where you lived?

A. Yes, sir.

Q. Then they moved next door to you, didn't they?

A. Yes, sir.

Q. How long was that after the marriage?

30 A. Oh, I cannot say.

Q. How long did they live next door to you?

A. I guess four or five years.

Q. Up to the time of Thomas' death?

A. Yes, sir.

Q. Do you remember when he died?

A. Yes, sir.

40 Q. What was the date?

A. I cannot tell you the date.

Q. Do you remember the occasion?

A. Yes, sir.

Q. Before Mr. Jackson's marriage to your sister, did you have any conversation with him in regard to his prospective marriage?

A. Well, I knew him all my life time.

10

Q. Now, answer my question, did you have a conversation with him regarding his prospective marriage to your sister?

A. Oh, no, sir, I went in there of course a great deal and saw them.

Q. He lived next door to you before he was married?

A. Oh, yes, sir, I knew his first wife, I was a very intimate friend of hers.

20

Q. He lived next door to you before his marriage, didn't he?

A. Yes, sir, many years.

Q. Do you remember when his first wife died?

A. Yes, sir.

Q. Did he ever say whether he was going to marry your sister?

30

A. Well, he was intimate with both sisters—two sisters, and he said he would rather have the one that had the most money.

Q. Which one was that?

A. Mrs. Jackson.

Q. Emma?

A. Emma.

Q. Do you remember the occasion when Mrs. Jackson lost her money?

40

A. Yes, sir.

Q. Then they lived next door to you, didn't they?

A. Yes, sir.

10 Q. Did you ever hear any conversation between Mr. Jackson and his wife, your sister, after she lost her money?

A. Yes, sir.

Q. Regarding it?

A. Yes, sir, he said, I took it and I would take more if I could get it.

CROSS-EXAMINATION—Mr. Strong:

20 Q. Where did you hear her say that?

A. I was next door and he was in his own yard.

Q. Who was he talking to?

A. Me and his wife.

Q. His wife was present?

A. Yes, sir.

Q. When was it?

30 A. During the time she lived there, I could not exactly tell when.

Q. Lived where?

A. In her house and in mine.

Q. Which house do you mean?

A. Well, my house is next to hers.

Q. Yes, but which house was he living in when he said this?

40 A. In his own house next to me on Troop avenue.

Q. How long was that after she lost her money?

A. Oh, that was I guess a couple of years.

Q. Wasn't it more than two years?

A. It may have been.

Q. Have you any way of fixing the time at all? 10

A. No, sir, I don't think I can recollect exactly the time.

Q. Your sister, Mrs. Jackson heard that too, did she?

A. She certainly must have, she was right in the same house.

Q. Didn't you take any part in the conversation, did you do any of the talking yourself? 20

A. No. sir.

Q. Did he know you were in the yard?

A. Certainly he knew I was in the yard, he saw me.

Q. Saw you in the house?

A. Yes, sir.

Q. He was in the yard, was he? 30

A. Yes, sir, he was in the yard.

Q. Where was your sister?

A. His wife was in the house, in the room with me.

Q. In the room with you?

A. Yes, sir.

Q. And Jackson saw you and his wife altogether also, did he? 40

A. Yes, sir.

Q. Now, how did he come to say that?

A. Well, I don't know, I suppose they may have had words inside and that brought it out.

10 Q. Did you hear any more than just that, is that all you heard?

A. Well, there may have been some more conversation, but I cannot recollect it.

Q. Just tell us how this conversation came about, how long had he been there in the room with you sister?

A. Not very long, I went in for a pail of water.

Q. And you found her there?

20 A. Yes, sir, him and her both.

Q. Both in the room together?

A. Yes, sir.

Q. In what room?

A. In her room, in her own house where she lived next door to me.

Q. What room was it?

30 A. Sitting room.

Q. What part of the house is that located in?

A. It is right next to me, I guess, except the kitchen is back of that.

Q. The kitchen is back of that room?

A. Yes, sir.

Q. And then there is this sitting room?

40 A. Yes, sir.

Q. And then there is a room in front of the house?

A. Yes, sir, a parlor.

Q. In front of the sitting room?

A. Yes, sir, and a hall also.

Q. Now the three rooms are in a line are they not?

10

A. Yes, sir.

Q. The first room in the front is the parlor?

A. Yes, sir.

Q. And that entered into the sitting room?

A. Yes, sir.

Q. And then the sitting room opened into the kitchen?

20

A. Yes, sir.

Q. What way is there of getting into the sitting room?

A. Well, there used to be a way of getting in there, there used to be a stoop going into the sitting room, but it is not there any more.

Q. At that time I am talking about?

A. At that time the only way was going in the front way.

Q. At that time the only way of getting into the sitting room was going through the parlor?

A. No, sir, through the kitchen.

Q. The only way would be to go through the kitchen into the sitting room?

A. Yes, sir.

Q. Whereabouts did you get your pail of water?

40

A. In the kitchen.

Q. And what did you go in the sitting room for?

A. My sister was in there and I went in to see her.

10 Q. And as you went in was Mr. Jackson in the room with her?

A. Yes, sir.

Q. Mr. Jackson and your sister were in the room together?

A. Yes, sir.

Q. Did you go in there before you got your pail of water or afterwards?

A. I went in before.

20 Q. What did you go in for?

A. Well, I always used to go in you know to see her, because she was my sister and living so close to me I would naturally go in to see her, I saw her very often.

Q. You went in there very often?

A. Yes, sir.

30 Q. You were not accustomed to get water from her, were you?

A. Yes, sir, I went in most every day two or three times a day for water.

Q. Don't you have water in your place?

A. I have a cistern.

Q. The only water you have is from a cistern?

A. Yes, sir.

40 Q. And the other water you got in your sister's house?

A. Yes, sir.

Q. What water was there there?

A. City water.

Q. Now, when you went in tell us what was your sister was doing?

A. I think she was folding her clothes, I kind of 10 think she was folding her clothes.

Q. And her husband, what was he doing?

A. I don't think he was doing anything only sitting there talking.

Q. Was he talking to his wife when you went in there?

A. He was talking to his wife.

Q. Then he must have gone out into the yard after that, while you were in there?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

BY THE COURT:

Q. Were they quarreling? 30

A. They were having words.

Q. Quarreling?

A. Having words and I think it was about money.

FURTHER CROSS:

Q. How do you know it was about money?

A. Well, I could tell by their actions. 40

Q. How did they act, just describe?

A. They acted mad, angry.

Q. They were angry, were they and acting so?

A. Yes, sir.

Q. Is that the only reason you think they were talking about this money?

10 A. Is that the only reason why I heard him say——

Q. You didn't hear him say money to her?

A. I heard him say, I took it yes, and I would take more if I could get it.

Q. That is his exact language?

A. Yes, sir.

20 Q. Did he use the word "money" to her?

A. I have heard him use the word "money."

Q. But I am talking about what was said on this particular occasion?

A. I have often heard them talking about money.

Q. But you didn't on this occasion hear him say anything about money, did you?

30 A. Well, it meant money, because I know they were having words about money.

Q. But you didn't hear either one of them say what it was they were talking about, I mean on that day?

A. Well, I cannot say.

Q. You cannot say that you did?

A. No, sir.

40 Q. Now, can you give us anything else relating to that conversation except the words which you have already mentioned?

A. I don't know what you mean?

Q. (Question repeated.)

A. Well, I don't know as I can any more or not.

Q. Do you remember a single other thing Jackson said, outside of what you have already repeated?

10

A. Said outside?

Q. Outside of what you have repeated already?

A. I don't think so.

Q. Can you tell us a single word that your sister said?

A. Well, she often told me—

Q. No, no, at that time?

20

A. Oh, at that time—no, I cannot recollect.

Q. Then you have told us every word that you can remember of that conversation, have you?

A. I guess I have.

Q. And you have told us every word that you heard of that conversation, have you?

A. Well, I often heard her say to him—

Q. One moment, at that time I am asking you. 30

A. At that time, yes, sir.

Q. How long did you stay there in the sitting room?

A. Not very long, I stayed I guess maybe half an hour.

Q. Half an hour?

A. Yes, sir.

40

Q. And then after that did you get your pail of water and go home?

A. Yes, sir.

Q. Now, how soon after you went out did Jackson go out?

A. Not long.

10 Q. Well, 15 minutes?

A. I suppose it was.

Q. Then after you were there he was in the room with your sister about fifteen minutes before you went out?

A. No, sir, we were all three of us in the room.

Q. All three in the room together?

A. Yes, sir.

20 Q. Were you talking with him?

A. Oh yes, I talked with him.

Q. Do you remember now anything you were talking about?

A. I cannot remember what we were talking about.

30 Q. And then it wasn't until he got out in the yard that he made this statement which you have repeated?

A. Yes, sir, when he was in the yard.

Q. Whereabouts in the yard was he?

A. Right by the kitchen door.

Q. How far away from you was he?

A. Not far, I was sitting in the sitting room right by the door.

40 Q. Give me an idea of how far it was?

A. Well, you know how big a kitchen is.

Q. No, I don't.

A. Well, it was a middling size.

Q. Well, there was only about the length of a room then between you and him, is that what you mean?

A. Yes, sir. 10

Q. It was rather a small kitchen, wasn't it, rather than a big one?

A. Well, I don't know, Mrs. Jackson can tell how large it was, I cannot tell you.

Q. And he was outside of the kitchen door?

A. Yes, sir.

Q. Where did he go then? 20

A. Well, he went down the alley and came back again and came in the house.

Q. Came in the house again after that?

A. Yes, sir.

Q. And his wife and you still remained there?

A. Yes, sir.

Q. There was nobody else present except your 30 sister and yourself and Jackson?

A. Only us three.

Q. That is all.

RE-DIRECT EXAMINATION:

Q. You said you heard one or two other conversations that occurred between your sister and Mr. Jackson, what were those conversations about?

A. Well, about taking her money, she said you 40 took my money, and you cannot have any peace until you fix it, she said to him.

Q. When did she say that to him?

A. Right in the sitting room.

Q. At what time?

A. I cannot tell you.

10 Q. I don't mean the time of day, I mean was it on this occasion?

A. No, sir, on a different time.

Q. What was his reply to that?

A. I cannot remember.

Q. What were they quarreling about on this day when you went in there that you have been testifying about?

20 A. I think it was about money.

Mr. Strong: I object to this, she said she did not hear any other conversation, or cannot repeat any other conversation.

The Court: She said when she was asked to state what was said that she could not recall a single word of what was said except what she has given.

30 Mr. Strong: I ask that the last answer be stricken out.

The Court: She may state any conversation if she can recollect it.

Q. Did you ever hear Mr. Jackson have any other conversation about money?

A. I was there many times when they had words
40 about money, but I cannot recollect what was said.

Q. There seemed to be some ill will and feeling about this money?

A. There seemed to be som, still while they lived agreeable sometimes, sometimes they didn't.

Recess.

Q. Are you able to tell us whether or not Mr. Jackson ever had any other jobs or work? 10

A. Not to my recollection.

Q. After the Price and Edmonds jobs that have been testified to here?

A. None that I can recollect of only fixing his own house around his own place, laying the walk there and such as that.

Mr. Woodbridge: I offer in evidence an account of the Manhattan Savings Institution in New York City which is a sworn account, and is admitted in evidence by the other side as the account of Thomas A. Jackson in that institution and being the Thomas A. Jackson mentioned in this suit, and is the whole of his account, and this is done in order to save the expense of bringing out the books from the Bank. 20

Marked Exhibit 8. 30

EMMA J. JACKSON recalled:

FURTHER DIRECT EXAMINATION — Mr. Woodbridge:

Q. Where do you live?

A. 191 George street, New Brunswick, New Jersey.

Q. How long have you lived there? 40

A. I haven't lived there for a year now, I moved away when I married Mr. Jackson up to his place.

Q. When you married Mr. Jackson?

A. I moved from my house to Mr. Jackson's place.

Q. When did you marry him?

10 A. I married Mr. Jackson in 1893.

Q. What date?

A. October 14, 189³4.

Q. How long were you married to Mr. Jackson?

A. Mr. Jackson died in 1903.

Q. In February, 1903?

A. February 23, 1903.

20 Q. You lived with him from your marriage up to the time of his death?

A. Yes, sir.

Q. How long before you married Mr. Jackson was he paying attention to you?

A. About two years.

30 Q. At the time of your marriage, and all the time of your marriage was Mr. Jackson the owner of the two properties put in evidence in this case, No. 44 George street and 54 Troop avenue, or whatever the number is?

A. Yes, sir.

Q. Did he own any other real estate?

A. Not that I know of. Well, one down in John street, his carpenter shop.

Q. Did he own that lot on John street?

40

A. Yes, sir.

Q. That was where his carpenter shop was?

A. Yes, sir.

Q. Did he rent the carpenter shop?

A. Part of the time.

Q. Did he rent the house that the owned?

A. Yes, sir, we lived in one five or six years, or 10
four or five years, I cannot tell you just how long.

Q. Did Mr. Jackson have a pension?

A. Yes, sir.

Q. What income did Mr. Jackson have after his marriage to you?

A. He had a pension, he got it every three months, \$18 and the income of his house, that is all I knew of. 20

Q. At the time of your marriage to Mr. Jackson were you possessed of any money?

A. Yes, sir.

Q. What money was it?

A. What money was it?

Q. Yes.

A. I had money in the Savings Bank, I had 30 money that I had got out of a bond and mortgage, I had got money from Mrs. Stillwell, a widow woman, and Mr. Marks, Abraham Marks.

Q. That money you got from Mr. Stillwell, was what Mr. Runyon gave to you as he testified?

A. Yes, sir; I was sick at the time and I sent for him and asked him if he wouldn't go down and get it for me.

Q. How much was that? 40

A. That was—well, Mr. Marks was \$800 about,

it was \$2,000 altogether, you can reckon it up yourself, I am too nervous.

Q. Mr. Marks \$800 and you had altogether \$2,000; Mr. Runyon testified it was \$1,200?

10 A. Yes, he was right. Now, gentlemen, you must excuse me, I am not trained like you two are, but I am going to speak the truth.

Q. Now never mind, just answer my question. When did Mr. Marks pay off this \$800 to you?

A. When did he give it to me?

Q. Yes.

A. I cannot answer you.

20 Q. Was it about the time Mr. Stillwell paid off?

A. Yes, sir.

Q. How did Mr. Marks come to pay this to you?

A. How did he?

Q. Yes.

A. He came to me and paid it.

Q. Well, in what, in cash?

30 A. Yes, sir, in cash; he paid it to me in George street.

Q. Now, is this the bond that you held from Mr. Marks for that money?

A. Well, I don't know, I cannot read.

Q. Look and see?

A. Well, I want you to put on your glasses and see, you know I cannot read writing.

40 Q. This is a bond given by Mrs. Marks and her husband to Emma J. Jackson, where did you get that paper?

A. From Mr. Marks.

Q. You borrowed it of him to bring here to-day, didn't you?

A. Yes, sir, he said he would come here for me if I wanted him.

10

Q. Well, I didn't think that was necessary. You delivered that up to him when he paid it off, did you?

A. Yes, sir, and I went for it and he gave it to me back to bring here.

Mr. Woodbridge: Bond in the penal sum of \$1,600, conditioned for the payment of \$800.

Q. What did you do with this \$2,000 cash that 20 you had, as you have stated?

A. I had it in my pocket on my person.

Q. How long did you carry it there?

A. That I cannot say just how long, I was trying to put it out on bond and mortgage, but I didn't do it, I didn't find any place to put it.

Q. Can you give us the denomination of the bills?

30

A. Yes, sir.

Q. What were they?

A. One was a \$1,000 bill, the other was \$500, and four \$100 and two \$50 and one of the \$50 I had changed up to the grocery store, at Mr. Hubbards' to get groceries with.

Q. How long did you carry this money around with you?

40

A. I could not say, Mr. Woodbridge.

Q. Two or three days or some months?

A. Oh, yes, sir; I had been used to carrying it, I have never lost a penny, I was used to carrying money with me.

Q. Well, was it something like two or three days?

10 A. I carried it I guess maybe a month or two, maybe longer, because I thought nothing of it.

Q. More than a month or two?

A. I think I had.

Q. Who knew, if anybody, that you had that money?

A. Who knew?

20 Q. Yes, that you carried it on your person?

A. Well, my husband knew I had it, Mr. Thomas A. Jackson.

Objected to and motion to strike out.

The Court: I will strike it out, at the same time I will give you an opportunity to prove, if you can in some legal way, that she knew her husband knew it.

30 Q. Did your husband ever see you have this money?

Mr. Strong: I object to that.

The Court: Do you offer to prove, Mr. Woodbridge, that her knowledge was derived in some other way than from his saying so, or from what she herself observed while in his presence?

40 Mr. Woodbridge: Yes, sir.

The Court: Well, how? Do you mean that he saw her have it?

Mr. Woodbridge: Yes, sir.

The Court: Well, I must overrule that because that took place in his presence.

Q. Who was your lawyer at that time?

A. Mr. Frederick Weigel. 10

Q. Did you ever re-invest that money?

A. No, sir.

Q. When did you have it yourself?

A. I had it last at 191 George street in my house, on the lounge.

Q. What day?

A. It was 1894, the 12th of February. 20

Q. At the house where you lived at that time?

A. Yes, sir, I was living—

Q. Just answer my questions and stop.

A. All right.

Q. Whose house was that?

A. It was mine.

Q. What were you doing there? 30

A. I went there to look after the fire and I was called away—I went down George street to my daughter's.

Q. What time did you get back to the house?

A. I went back about six o'clock.

Q. Who was there?

A. Who was there?

Q. At your house when you went in? 40

A. No one.

Q. Who did you see there later?

A. Mr. Jackson came in.

Objected to.

10 Q. Was anyone else there?

A. No, sir.

Objected to.

20 The Court: I will admit, subject to your objection evidence, so far as it relates to the presence of the husband, of anything that occurred when he was not in immediate connection with his wife; I will exclude anything that occurred when the parties were together, but up to the point of their coming together, I think it is my duty to admit it. (To the stenographer): Read the question.

(The stenographer reads the question as follows: "Was anyone else there?"):

The Court: I will not overrule this question until I find out what she means.

Q. Did you hear Mr. Jackson come in?

30 Objected to as leading.

Q. Where were you?

A. I was in 191 George street in the back parlor, I hadn't lit the light then when he came in.

Q. Was it dark?

A. Yes, sir.

40 Q. Where did you see him first?

A. I didn't see him until he came in the back parlor, and I lit the light.

Mr. Strong: Now I renew my objection.

The Court: Now I overrule this evidence. She says she didn't see him until he came into the same room, that it was dark and she could not see him until he came in the very room where she struck a light and that was the beginning of the transaction which is excluded by the statute. 10

Q. Did you know he was there in any other way than by seeing him?

A. No, sir.

Q. Did you hear him come?

A. Yes, sir.

Q. Come in?

A. Yes, sir. 20

Q. To the house?

A. Yes, I heard him come in the parlor—come in the back parlor.

Q. Did you know he was in the house before he came in the room, did you know who it was?

A. I knew it was him.

Q. Did you know who it was before he came into that room? 30

A. Yes, sir, I knew it was Mr. Jackson.

Q. How?

A. Because I knew it was him.

Q. Yes, but how?

A. Well, I seen him and I knew it was my husband coming in. 40

Q. Did you hear his step?

Q. Yes, sir, and I knew it was him.

Mr. Strong: I ask that all this testimony may be taken subject to my objection, without my repeating it to each question.

The Court: Yes.

10 Q. Was your money in your pocket there that night?

A. Yes, sir.

The Court: I understand her to say that she left the money on the lounge when she went out.

Mr. Woodbridge: I don't think so, I think she said she wasn't living in that house.

20 (The stenographer was directed to read what the witness had said with respect to this subject, and did so.)

Q. Where did you have the money when you were on the lounge?

A. I had it in my dress pocket.

Q. Was the dress on you?

A. Yes, sir.

30 Q. What were you doing on the lounge?

A. I was lying there.

Q. Who was there that night?

A. Nobody but my—

Objected to.

Q. Was anybody there that night besides Mr. Jackson?

40 A. No, sir, I seen no one.

Mr. Strong: I object to that question.

(Question overruled.)

Q. How did you happen to stay there or lie on the lounge that night?

A. I was only there for a little while, I stopped in to look after the fire.

Q. How long did you stay there?

10

A. I laid down on the lounge and dropped to sleep.

BY THE COURT:

Q. What time did you get there?

A. Well, I should judge it was seven or eight o'clock in the evening. I went to my daughter's first.

Q. It was seven or eight o'clock in the evening? 20

A. Yes, sir.

Q. Now you say you laid down on the lounge and fell asleep?

A. Yes, sir.

Q. How long did you sleep?

A. Well, I should judge I slept I think about two hours, maybe, I cannot say positively.

30

RE-DIRECT EXAMINATION:

Q. When you woke up did you have your money?

A. I don't think I did, no, I did not, because I went right straight up to 44 George street.

Q. Just answer my question, please, yes or no.

The Court: I have excluded all evidence when her husband was present. Now, if you 40
admit that he was present that is a very dif-

ferent thing. What position do you propose to take about that, Mr. Strong?

10 Mr. Strong: I am willing that it should stand that he came there and that he was in the house all the time that this witness was there, she says he was in the room, and I don't think she ought to be permitted to testify to anything further than that.

The Court: Are you willing to accept that admission?

Mr. Strong: I don't mean that we admit it, but let her statement stand to that effect, that her statement that he came in her presence may be allowed to stand.

20 The Court: Now, Mr. Strong is willing to admit that the husband came into the house and remained there in her presence while he was there.

Mr. Strong: I don't mean to admit it as a fact in the case, I will admit that she has testified that he came into her presence.

30 The Court: Well, it stands as her testimony that he came there and remained in the house in the same room with her until she left, are you willing that she shall testify to that, and are you willing to accept that?

Mr. Woodbridge: If it does not exclude my other witnesses.

The Court: Certainly not, but it will exclude her from testifying as to anything that happened while he was in the house after he came in.

40 Mr. Woodbridge: Then I don't accept it.

The Court: If it subsequently appears that

the husband was there, then it may be a question whether I shall not be obliged to rule out this testimony, but the evidence is admitted now subject to Mr. Strong's objection.

Q. What time did you wake up?

10

A. I think it was about ten o'clock, I didn't wake up, he woke me up, you want me to speak the truth, don't you?

Objected to.

Motion to strike out.

Stricken out.

Mr. Strong: Now I think you will have to deal with the transaction as they are trying 20 to bring it out, what she wants to say is that she went to sleep and while asleep he went through her clothes, and it seems to me, to let that all in, simply excluding any reference to his presence would be violating the statute.

The Court: I will allow the complainant to go on and testify to what occurred at that time, but just as soon as you shall put another witness on to testify that her husband was 30 present I shall have to rule it all out.

Q. Did you have your money when you woke up?

A. I did not no, then I had lost it; that he had taken my money. Why gentlemen——

Q. Now, just answer my question, please.

Mr. Strong: I move the last answer be stricken out.

40

Q. Answer my question yes or no. Don't men-

tion Mr. Jackson's name, please. Now, did you know that your money was gone when you woke up?

A. I did not, no.

10 Q. Did you know when you woke up whether you had or had not your money?

A. I told you when I laid down I had my money.

Q. When did you first discover that the money was gone?

A. When I went up to Mr. Jackson's house at 44 George street, I then discovered the money was gone.

20 Q. Did you ever see the money again?

A. No, sir.

Q. Did you advertise for your money?

A. No, sir.

Q. Why not?

A. Because Mr. Jackson had it.

Objected to and stricken out.

30 Q. Mrs. Jackson, do you remember when Mr. Jackson built the Price and Edmond houses that have been testified to in this case?

A. Yes, sir.

Q. Did he ever do any other job after that?

Objected to.

40 Q. When did you first find out that the Hart mortgage had been paid off?

A. I found it out—well, I cannot tell you the day, he told me he was going to pay it off.

Q. When did you first find out that the mortgage to Mr. Hart had been paid off?

A. When I found out that the mortgage had been paid off to Mr. Hart? It was paid off in Mr. Van Cleef's office.

Q. Was that before Mr. Jackson's death or afterwards? 10

A. After his death.

Q. Did you then find among his papers this bond and mortgage and the assignment and discharge?

A. I found the bond and mortgage in his desk. I went home—I found it in Mr. Van Cleef's office, we had been up there to have the will probated, and we went back to Mr. Van Cleef's office and Mr. 20 Van Cleef said to the boys one is to pay the other one \$500 more, I said, why Mr. Van Cleef you know that there is a mortgage of \$1,000 on the property 44 George street, I don't know it, he says, I says, what, he says, no, didn't you take the money up of a widow woman after Mr. Jackson—

Q. Never mind what Mr. Van Cleef said, did you ever receive any knowledge during Mr. Jackson's life time that the Hart mortgage had been paid off? 30

A. No, sir, he told me it was on—

Objected to.

Stricken out.

Q. When did you first know of the deposit in the Manhattan Savings Bank?

A. After Mr. Jackson's death.

Q. How did you find it out then? 40

A. I found it out by going in his desk.

Q. Did you ever find your money?

A. No, sir.

CROSS-EXAMINATION—Mr. Strong:

10 Q. Where were you when you first discovered that you had not your money?

A. Where was I when I discovered that I had my money?

Q. That you had not your money?

A. That I didn't have my money?

Q. Yes.

A. Up in 44 George street.

20 Q. And whereabouts were you in the house?

A. I was in the house.

Q. What part of the house?

A. In our bed room.

Q. How long had you been in the house?

A. We hadn't been in yet ten minutes, nor hardly five.

30 Q. And you were then in your bed room?

A. Yes, sir.

Q. How did you come to discover that you hadn't your money?

A. I put my money under my pillow, and something says to me, where is your money, and I went to the pillow and shook the pillow, and shook the bed quilt, and there was no money, and I says, Mr.

40 Jackson—

Q. Now, never mind that, you say you put your money under your pillow?

A. Yes, sir.

Q. And after you had done that you went to the pilow to see if it was there, because something said to you, where is your money?

A. I didn't put it under my pillow, I only 10
thought that.

Q. You thought you put it there?

A. I always had put it there when I went to bed.

Q. Then you went to the pillow and shook it?

A. Yes, sir, and it wasn't there.

Q. Why did you go to the pillow and shake the pillow?

A. Because I had always put my money there, 20
and I laid down to rest.

Q. And you thought you had put it there that night, did you?

A. I did not know, I went to look.

Q. Was this after you had got to bed?

A. No, sir, I wasn't in bed yet.

Q. After you were preparing for bed? 30

A. I was getting ready.

Q. Were you about getting into bed?

A. No, sir, I wasn't undressed at all.

Q. Not undressed at all?

A. No, sir.

Q. Had you taken off your dress that you had been wearing? 40

A. No, sir.

Q. Or your skirt?

A. No, sir.

Q. What made you think that the money or your pocket book—that the money might be under your pillow?

10 A. Because I had been used to putting it there.

Q. But you still had your dress on you?

A. Yes, sir.

Q. And you had been carrying that pocket book in your pocket in the dress?

A. I did.

Q. Then you went to the pillow to see if it was there?

20 A. Certainly.

Q. Now, can you explain why you did that?

A. I did explain it, because I had been used to going there and putting the money there, and I said to Mr. Jackson—

Objected to.

Q. Were you accustomed—

30 A. Yes, sir, I was.

Q. Well, you haven't heard what I am going to ask you yet.

A. All right.

Q. Were you accustomed, when you started to undress and before you took off your clothing, to put your pocket book under your pillow?

40 A. Yes, sir.

Q. And do you remember whether you put it under your pillow that night or not?

A. I tell you I did not.

Q. You found that you did not when you went there and looked for it?

A. I didn't put it under my pillow.

Q. How do you know you didn't? 10

A. Because it wasn't there to put there.

Q. It might have been lost there from under the pillow, might it not?

A. No, sir.

Q. Why not?

A. Because if it had been there I would have found it.

Q. At any rate that was the first time you found that you had lost it? 20

A. I told you I hadn't been in the house ten minutes.

Q. What time in the night was that?

A. I think about ten o'clock, I cannot swear positively.

Q. When you left your own house on George street where you say that you were some part of the evening, how did you get up to your husband's house where you were living? 30

A. I went with my husband.

Objected to.

Stricken out.

Q. What I mean is did you go on foot or otherwise? 40

A. Most assuredly we walked, it was raining, hailing and snowing, it was February 12th.

Q. It was a stormy night?

A. Yes, sir, 1894, it was a stormy night and day.

Q. Was the walking bad?

A. I don't think it was very good, it was slushy.

10 Q. Whereabout were you accustomed to carrying your pocket-book in your dress?

A. Right in the back part of my dress there (indicating).

Q. The pocket in what they call the blanket hole, was it?

A. It was in the pocket.

20 Q. When you walked home that night did you hold your dress up?

A. I think likely I did, I could not swear positively, I always did when it was stormy.

Q. It would be a natural thing for you to do it, if you wanted to save your skirt?

A. Why would I not?

30 Q. Certainly. How far is it from your house where you were that evening, your house, to the other house?

A. It is not a block and a half, about a block I guess.

Q. Did you go directly from one house to the other?

A. Yes, sir.

40 Q. You went directly home when you left the other house?

A. Yes, sir.

Q. When you got to the house where you were living with your husband did you go directly to bed?

A. He unlocked the door and we went up the front stairs to the bed-room and I went to bed.

(That portion relating to the husband's act of unlocking the door stricken out.) 10

Q. You went right upstairs to your bed-room?

A. Yes, sir.

Q. You said that some time that afternoon or evening you went to the house of your daughter, did you?

A. I went to my daughter's right about one' 20 o'clock in the afternoon, right after dinner.

Q. How long were you there?

A. I stayed there until six o'clock.

Q. Whereabouts was your daughter's house?

A. In George street.

Q. How far was that from your own house?

A. How many blocks is it? Seven or eight, 30 maybe a little more or less.

Q. You left your daughter's house about six?

A. Yes, sir.

Q. While you were at your daughter's house did you have any occasion to use your pocket-book?

A. Yes, sir.

Q. What did you do?

A. I was upstairs in my daughter's parlor and 40 my grandchild came home from school, I took out

my pocket-book and sent her downstairs, to get half a dozen oranges for fifty cents, she brought the oranges up and I sat there and looked at the Sentinel until six o'clock, then I got up, picked up the oranges and my umbrella and went downstairs out of the front door up to George street, No. 1911 George street.

10 Q. You took out your pocket-book you say and gave your grandchild fifty cents?

A. Fifty cents.

Q. Did you have fifty cents in change?

A. Yes, sir.

Q. You didn't have to get a bill changed?

20 A. No, sir.

Q. But you had fifty cents in change?

A. Yes, sir.

Q. Did she bring you back any change?

A. Yes, sir.

Q. She brought some back?

A. Yes, sir.

30 Q. How much?

A. Well, how much was it? Fifty cents I gave her and the oranges were twenty cents, cannot you reckon it up?

Q. Don't you know how much change you got back?

A. Yes, sir, you do too, don't you?

40 Q. Yes, how much was it?

A. Thirty cents.

Q. What did you do with that?

A. Put it in my pocket-book. No I gave some of it to my grandchild Emma, the one that was going to school, I gave her five cents, and gave another grandchild five cents, and put back twenty cents in my pocket-book.

Q. You recollect distinctly putting that change 10 in your pocket-book?

A. Yes, sir.

Q. What did you do with your pocket-book then?

A. Put it in my dress pocket.

Q. Are you positive of that?

A. Yes, sir.

Q. Who was there when you were at your 20 daughter's house?

A. Eddie and Emma—other grandchildren.

Q. How old?

A. Emma was seven and Eddie about nine.

Q. Was anybody there except your grandchildren?

A. No, sir, only my daughter.

30

Q. Your daughter was there?

A. Yes, sir.

Q. You recollect positively that you put your pocket-book back in your pocket?

A. Yes, sir, positively.

Q. Did you have any occasion to notice your pocket-book after that?

A. Yes, sir.

40

Q. When.

A. The key to 191 George street was in that pocket, and I raised that pocket-book up at 191 George street and I set the oranges and umbrella down, took my hand and raised up the pocket-book got the key out and unlocked the door and went in.

10

Q. And there was nobody in that house then?

A. No, sir.

Q. Nobody living in the house?

A. No, sir.

Q. What did you get in that house for?

A. I had a fire downstairs to keep the water pipes from freezing up.

20

Q. You went there to look after the fire?

A. I did.

Q. Now, you say you raised the pocket-book up, did you take it out of your pocket?

A. No, sir.

Q. You did not?

A. No, sir.

30

Q. When you got the key out to go to the door?

A. No, sir, I raised it up and got the key from under it and unlocked the door.

Q. Now, after the time you raised the pocket-book up, in your pocket to get the key out, from that time, when was the next that you knew anything about your pocket-book?

A. I sat down to dry my skirts, I was wet, I got wet coming up George street because I had the umbrella in one hand and the oranges in the other,

40

and I couldn't hold my dress up, of course I had to take the slush and rain on my skirt, so I sat down in the rocking chair to dry my dress.

Q. Where?

A. 191 George street, and after I dried my dress I laid on the lounge with the pocket-book in my pocket. The lounge was a left-handed lounge and had a back to it, and I had my pocket-book in my pocket, and I had the key in my dress too, and I had some change in there, and that made it a little heavy, and the pocket-book was up against the back of the lounge when I laid down. 10

Q. You are positive then that you had it in your pocket-book up to that time?

A. I am positive, I know it as well as I know anything. 20

Q. Have you ever had any doubt about it?

A. No, sir, I never had.

Q. Is it not a fact—

A. Mr. Strong I am positive of it.

Q. Wait, wait, you are very positive about everything. Isn't it a fact that after you had discovered 30 you had lost your pocket-book the same night you went back to Munsen's house and routed your daughter and her family out of bed in order that they should make a search in their house for it?

A. No, sir, I looked around the door and the stoop.

Q. Didn't you go down to your daughter's house the same night after you discovered the money was lost? 40

A. No, sir.

Q. You did not?

A. No, sir.

Q. Are you positive of that?

A. No, sir.

10 Q. Where did you go after you found out it was lost?

A. I went up home.

Q. After you discovered that the money was lost what did you do?

A. I went down to the kitchen, 191 George street.

Q. You did?

20 A. Yes, sir.

Q. What did you do there?

A. What did I do there?

Q. Yes.

A. I looked at the last place where I had seen the pocket-book, where I knew the pocket-book was in my dress when I sat down there to dry my dress, and where I moved it after that when I laid down on the lounge.

30 Q. What did you do when you got there?

A. I looked for it there.

Q. You looked back of the lounge?

A. Yes, sir, that was the last place I had seen it.

Q. Where else did you look?

A. All around the kitchen where I had swept.

40 Q. When had you done the sweeping?

A. When I went in. I went back to the dining-

room and took a broom and swept the porch, it was all ice and snow and slush.

Q. Then you found the money was lost?

A. That was when I first went in, I hadn't lit the light yet.

10

Q. Before you lit the light you say you swept off the front porch?

A. Yes, sir, I did.

Q. Now, the next morning you looked around there where you had been sweeping?

A. Yes.

Q. Why?

A. I didn't want to think that my husband had 20
took that money until I had looked. Do you think it would have been right until I knew it?

Objected to and stricken out.

Q. The reason you looked where you did sweep was because you thought you might have dropped it while sweeping?

A. No, sir, I knew different.

30

Q. Then why did you look?

A. Don't you look around sometimes—

Q. Answer my question, you had no idea that you had dropped that when you were sweeping?

A. No, sir, because I took it from under me when I sat down to dry my dress.

Q. The night you lost the money did you go anywhere else to look for the money except to the house, 191 George street? 40

A. No, sir, I worried all night about it and got up the next morning real early.

Q. Did you look that night at any other place than just at the lounge?

A. No, I looked all around the lounge.

Q. Did you look in any other part of the house?

10 A. No, sir.

Q. Did you look in the street between your house and your husband's house?

A. No, sir.

Q. Did you return to examine the path that you had taken?

A. No, sir, but the next morning he got a man to clear it off all the way, I didn't know it until the
20 neighbors told me.

Objected to and stricken out.

Q. Why didn't you that night?

A. Because I knowed he had it, I am positive he had it.

Q. You mean that that night you were already positive he had it?

30 A. Yes, sir, and I could not believe my husband would take it.

Q. Why didn't you examine the path you followed from 191 George street to 44 George street, why didn't you go carefully over that?

A. I could not, it was dark and snowy.

Q. Could not you have got a light?

A. I didn't get one.

40 Q. Why not?

A. Because I didn't feel as though I wanted to get it, I knew he took my money.

Q. You knew it at that time?

A. Yes, sir, but I would not accuse him of it until I was certain, I would not accuse any person until I was positive of it.

Q. Why did you go back to 191 George street for the purpose of looking for it, if you were satisfied already that your husband had it? 10

A. To look for it? What do you mean?

Q. You said you did go back to your house, 191 George street, to look where you had laid on the lounge, now, if you did that why didn't you also look at the path you had trodden in getting from 191 George street to 44 George street?

A. I don't remember that I did, it was too 20 slushy and snowy.

Q. Now, haven't you said to different people when you missed your pocket-book when you felt in your pocket, that you opened the door at 191 George street?

A. I did not, I didn't say that I missed it then.

Q. Not to anyone?

A. I said I raised it up to get the key from under 30 the pocket-book to unlock the door at 191 George street.

Q. What I am asking you is, haven't you said at any time that when you put your hand in your pocket-book to get the key of 191 George street, you then discovered that your pocket-book wasn't there?

A. It was there, yes, sir, it was there, yes, sir; that pocket-book was there, and I didn't say that 40 it was not.

Q. Did your husband have an adopted daughter who was in the family at that time?

A. Yes, sir.

Q. What was her name?

10 A. Eliza Jackson.

Q. Didn't you say in her presence the following day that you had missed your pocket-book with the money in it, when you put your hand in your pocket to get the key, in order to enter the door of 191 George street?

A. I did not.

Q. Didn't you say substantially the same thing that I have mentioned in my last question, namely,
20 that you had missed your pocket-book when you felt in your pocket for the key at 191 George street, didn't you say that to George J. Jackson, your husband's son?

A. No, sir, I did not.

Q. Within a week or two after you had lost it?

A. No, sir.

Q. Didn't you to Charles Jackson, this man
30 here?

A. No, sir, I never did.

Q. Didn't you say that to Charles Jackson's wife?

A. No, sir, I never did, Mr. Strong, I never said it to anybody, for it is not so.

I don't ask you whether it is or not, but whether you never said it?

40 A. No, it is not so.

Q. Didn't you say that to Mrs. Henrietta Peck?

A. No, sir.

Q. The mother of George Jackson's widow?

A. No, sir.

Q. Do you know who I mean?

A. Yes, sir, George Jackson's mother-in-law.

Q. Yes.

10

A. No, I never did.

Q. Haven't you said to Mr. James Hart the last place you remembered having your pocket-book or the money was at Mrs. Munsen's, your daughter's house?

A. No, sir.

Q. You never said that?

A. No, sir, I never did, never, I never did; Mr. 20
James Hart told me he knew Mr. Jackson took the money, he knowed it to be the truth.

Q. You say Mr. Hart told you that?

A. Mr. Hart did—didn't I tell you that?

Q. Did Mr. Hart tell you that he knew your husband had taken that money?

A. Yes, sir, he did, he told me he knowed Mr. Jackson had taken that money, but of course he 30
didn't want to be brought in here under oath, but he said he knew the way it was, and that he had taken the money. I didn't mean to bring that up, Mr. Hart, excuse me.

Q. What did you do about finding that money, outside of what you have already told us?

A. What did I do?

Q. Yes.

40

A. I got a detective, Mr. Oliver, to try and find

out about it. I asked Mr. Oliver if he wouldn't try to find out, and he searched for it, and he told me he couldn't find it, but he said he knew Mr. Jackson took it, he said you will find it before you will die. That is what Mr. Oliver said.

10 Stricken out on motion of Mr. Strong.

Q. You employed a detective?

A. Yes, sir.

Q. And the detective was unable to find the money?

A. Yes, sir.

Q. What else did you do?

20 A. What else did I do?

Q. Yes.

A. Mr. Oliver went up and consulted counsel—
Objected to.

Q. What did you do; didn't you advertise in the paper?

A. No, sir.

30 Q. Why didn't you?

A. Where was the use? Mr. Oliver was the one looking after it, not me.

Q. Why didn't you advertise it?

A. I was told Mr. Jackson offered a reward of \$250; I didn't know at the time, but other folks told me.

40 Q. You didn't know that?

A. No, sir.

Q. Didn't you know it was going to be done?

A. I did not know it was going to be done, no, sir.

Q. Did you see the advertisement?

A. I did afterwards, but not right away, until neighbors told me they saw it.

Q. Now, what amount of money was there in the purse the last time you saw it? 10

A. Mr. Strong, there was the money I told you of, \$1,000 bill, \$500 bill, four \$100 bills and one \$50 bill, and the other one I had changed, as I told you, and there were keys in there and some change that I told you about.

Q. Keys in it, too?

A. Yes, sir, of my dressing case and a little box 20
I had.

Q. Did you ever find your keys again?

A. No, sir, I didn't never find my keys again; Mr. Jackson took the lock off the dressing case and unlocked it with a button hook; he took the lock off and went down and had a key made for it.

Q. I ask you whether you went to Munsen's house that same night when you discovered this 30
loss?

A. No, sir, I went the next morning.

Q. You did?

A. I didn't go for that, though, because I knew it wasn't there.

Q. You did look all around Munsen's house, didn't you?

A. No, sir, what would I look around there for? 40

Q. I ask you if you did not?

A. No, sir.

Q. You did not look for it at Munsen's house at all?

A. No, sir, I went down to my daughter's because she was sick.

10 Q. That is all.

RE-DIRECT EXAMINATION:

Q. You said you consulted counsel about this?

A. Yes, sir.

Q. As a result of that what did you learn?

Objected to.

20 Q. You did consult counsel?

A. Yes, sir, Mr. Oliver did.

Q. Did you consult him yourself?

A. Mr. Oliver did for me. I had Mr. Weigel.

Q. You did consult Mr. Weigel?

A. I told him about it.

30 Q. As a result of that did you bring any action against Mr. Jackson for this money?

A. No, sir, I was notified all over that I could not find it, and then I found the mortgage in his papers.

FURTHER CROSS:

40 Q. You never did bring any action of any kind or suit against your husband in his life time, did you, for this money?

A. No, sir, do you want me to tell you why?

Q. I asked you if you did.

A. I say no. You don't want me to say anything more?

Q. Just answer my questions, please; you never presented any claim against your husband's estate except as you brought this suit, did you, for this money? 10

A. What?

Q. Did you ever present any claim under oath to your husband's estate?

A. No, because I was told to do different.

Q. Under your husband's will there was some property given to you in place of your dower, if you choose to accept it, did you accept it or not?

A. There was no property given to me. 20

Q. Did you accept the will or dissent from it and take your dower?

A. I took my dower, didn't I?

Q. And your dower—you had a certain sum ascertained as the amount of money that your dower was worth, didn't you?

A. Yes, sir, my counsel said—— 30

Q. Wait, wait, wait, now what amount was paid you?

A. They told me he would give me \$500.

Q. \$500, wasn't it?

A. Yes, sir.

Q. That was before this suit was brought, wasn't it?

A. Yes, sir. 40

Q. Who paid you that \$500?

A. Mr. Weigel.

Q. Mr. Weigel?

A. I think it was.

Q. Then you gave a release, didn't you?

10 A. I signed the release before I got it, but that was for my dower.

Q. That is your dower and the two pieces of real estate that your husband owned?

A. Sir?

Q. That was for your dower and the two pieces of real estate that your husband owned?

20 A. Well, you read the will to me.

Q. Don't talk about that. The release you gave was for your dower in the George street house and in the Troop avenue house which your husband owned?

A. Certainly.

RE-DIRECT EXAMINATION:

30 Q. You said that one of your \$50 bills was in change. What you mean by the other one was referring to the fifty dollar bill, wasn't it?

The Court: She said she changed a fifty dollar bill.

Witness: Yes, sir.

Q. That is all.

Adjourned.

IN CHANCERY OF NEW JERSEY.

Between	}
WILLIAM C. TEN BROECK	
and others,	
<i>Complainants,</i>	
—and—	
CHARLES A. JACKSON,	}
Executor, etc., <i>et al.</i> ,	
<i>Defendants.</i>	

10

Before His Honor, Vice-Chancellor STEVENS.

20

Mr. Freeman A. Woodbridge and Mr. A. S.
March for the Complainants.

Senator Van Cleef and Mr. Allan Strong for
part of the Defendants.

Mr. Schuyler Van Cleef for part of the De-
fendants.

Transcript of shorthand report of the evidence
given upon the trial of the above stated cause on
Thursday, the twenty-sixth day of October, A. D., 30
1905, at the Chancery Chambers, Newark, N. J.

Mr. Woodbridge: I desire to make a motion
in regard to a matter apparently settled by the
testimony already given, but which it appears
was erroneously given, in regard to the matter
of the assignment. The testimony of the two
witnesses was so erroneous as to what action
took place with regard to the delivery of the
assignments and they misunderstood me so 40
that they now desire to go on and give a cor-
rect version of the matter, if the Court sees

10 fit to permit it, that is to say, to correct their testimony with regard to the delivery of the assignment. Mrs. Jackson got the matter mixed up with something else. I would be glad to have it put straight upon the record so as to show what actually did take place, if the Court is willing to allow them to go on and correct their testimony in that regard.

Defendants' counsel opposed the motion.

(Motion denied.)

20 Mr. Woodbridge: I now produce a statement from the National Bank of New Jersey. Mr. Strong asked that it be produced showing the account in full. He consents that it go in. It shows the account back to March 1st, ~~1903~~, ¹⁸⁹³, commencing with a balance of \$35. It is to go in by consent so as to save the Bank being compelled to produce great long accounts after that date. The accounts stood in the name of Thomas A. Jackson from that date down to September 25, 1897.

Marked Exhibit C 20.

30 Also a check given by William A. Florence to the order of Thomas A. Jackson for the sum of \$2,386.63, bearing date March 28, 1893, which it is agreed was a payment made by Mr. W. A. Florence of New Brunswick, New Jersey, to Thomas A. Jackson for Mr. Florence's house which Mr. Jackson built for him as a carpenter. That corresponds with the large deposit of that date by Mr. Jackson in the exact figures.

40 Marked Exhibit C 21.

CHARLES A. OLIVER sworn for complainant.

DIRECT EXAMINATION— Mr. Woodbridge:

Q. Where do you live?

A. New Brunswick, New Jersey.

Q. How long have you resided there?

10

A. Sixty-two years.

Q. What is your business?

A. Detective officer.

Q. Did you know Mr. Thomas A. Jackson in his life time?

A. I did .

Q. And his wife Mrs. Emma J. Jackson which is in Court here to-day?

20

A. Yes, sir.

Q. No, calling your attention to the time in the winter of 1894, I ask you if you remember the time Mrs. Jackson lost her money as was alleged?

A. I do. I cannot fix the date but eleven or twelve years ago I should think.

Q. You remember the occasion, do you?

30

A. Yes, sir.

Q. Were you consulted at that time as a detective?

A. Yes, sir.

Q. Now, pursuant to that consultation did you have any conversation with Mr. Jackson regarding it.

A. I did.

40

Q. Just state what that was, if you please?

A. I cannot state the conversation because it was eleven or twelve years ago, and I don't pretend to give the exact conversation, although I can give you the substance of it.

10 Q. Can you state what he said to you at that time?

A. I can give the substance of it, the English of it.

Q. Give the substance of what you learned from him?

A. I had two interviews with him and at the second interview he admitted that he had taken
20 the money.

Mr. Strong: I object to that.

The Court: Let him state what was said.

Q. What did he say, Mr. Oliver, in regard to taking that money as near as you can repeat in his own words, give us the words in which he admitted it, as nearly as you can?

A. Well, I cannot give the conversation.
30

Q. Tell us what he told you?

A. I say this occurred ten or eleven years ago, and I cannot give you the exact conversation.

Q. Did he tell you that he took it?

Objected to as leading.

Q. Just state as nearly as you can the words in which he told you what he had done?

40 A. Well, can I give it in this way, cannot I give a portion of it, as I don't recollect it all?

Q. Yes, give all that you can recollect of it?

A. I cannot give the entire conversation, but I remember some things I said and some admissions he made. I don't pretend, however, to give the whole conversation.

Q. Well now just tell us what he told you, if ¹⁰
you cannot give his words, give it as nearly as
you can, Mr. Oliver?

A. Well, he said he got that \$2,000.

Q. Did he tell you how he got it?

A. He finally said, well, what are you going to
do about it—what can you do about it? I think
he told me that he had picked his wife up in one
part of the room and carried her over to a lounge, ²⁰
and had occupied the lounge with her for a while
and that at that time he got the money.

Q. Was there anything further? I want the
Court to have the exact words as near as you
can give them; did he state how he got it or where
he took it from?

A. He may have said that, but I don't recollect
except that he took it from her person.

Q. Did he state that? 30

A. He said he took it from her, and I advised
or I notified Mrs. Jackson, or at least I gave her
the statement as it was given to me, and I advised
her to go and see Judge Rice, and I went with her
to see Judge Rice.

Q. Who is Judge Rice? Is he a lawyer prac-
ticing in New Jersey?

A. Yes, sir; I think at that time he was the pre- ⁴⁰
siding Judge of the court.

Q. Were you present at her interview with Judge Rice?

A. Yes, sir.

Q. And as the result of that interview what did you do or what did she do?

10 A. Well, as a result of that interview I can tell you what I did.

Q. Well?

A. I did nothing further.

Q. Why not?

Objected to.

20 The Court: You may ask him what his instructions were.

Q. State whether or not your instructions were that nothing further could be done?

Objected to.

Q. Well, I will put the question as your Honor suggested it, state what were your instructions then?

30 A. Well, does that mean the advice that Judge Rice gave the lady in my presence?

Q. I am asking what Mrs. Jackson told you to do?

A. I don't think she told me anything, but I told her something—

Objected to.

The Court: That would not be competent.

40 The Witness: I had nothing more to do with the case myself.

Q. A that time, Mr. Oliver, what position did you hold in New Jersey, as a detective, any official position?

A. I was the prosecutor's detective, but the case was not handled in that way at all.

Q. You mean that you were consulted in your private capacity? 10

A. Yes, sir.

Q. How soon after her loss was it that you started your investigation?

A. A few days, I cannot tell you exactly.

Q. Two days?

A. I said a few days. 20

Q. And your interview with Mr. Jackson was almost at once?

A. My first interview, yes.

CROSS-EXAMINATION—Mr. Strong:

Q. How soon after the first interview was it you had the second interview in which you say he made these admissions?

A. Well, it may have been two or three weeks. 30

Q. Who consulted you about the loss of the money first?

A. Mrs. Jackson was the only person that ever consulted me about it.

Q. Mrs. Jackson?

A. Yes, sir.

Q. Who was present when you had this conversation with Mr. Jackson? 40

A. Nobody.

Q. And did you after your second interview with him at once inform Mrs. Jackson of what he had told you?

A. I did very soon afterwards.

10 Q. Within a few days afterwards, I suppose?

A. Yes, sir.

Q. How soon after that was it when Mrs. Jackson went to see Judge Rice?

A. After the second interview, a very few days, possibly the next day.

20 Q. Have you told us all that you can tell us about what Jackson said to you in regard to this money?

A. I have told you that I have only given you the substance of what was said; I don't pretend to give everything he said, or half that he said at that interview; the first interview lasted an hour, and it is eleven or twelve years ago.

Q. Just answer my question, please, and stop.

A. I am trying to answer it.

30 Q. Please read it.

(Stenographer read the question as follows:

“Q. Have you told us all that you can tell us about what Jackson said to you in regard to this money?”)

40 A. All that I recollect. I looked it up to see if I had some memoranda to-day, and I couldn't find anything.

Q. How many conversations in all did you have with Mr. Jackson?

A. Do you mean in my office?

Q. Anywhere, upon this subject?

A. I met him once or twice upon the street and had talks with him once or twice.

Q. Did you ever have any conversation with him 10
after the one which you said was a second interview,,and in which he made his admissions?

A. I don't think so.

Q. Then after the interview at Judge Rice's office the matter was dropped entirely, so far as you had anything to do with it?

A. I have just thought of something else he said, if you want to hear it.

Q. I am trying to get what he said on the occasions when you saw him? 20

A. Well, he said he was afraid his wife would lose that money because she went out on the street with it.

Q. What is that?

A. He said that his wife carried that money about her person and was in the habit of going out in the street with it, and he was afraid she 30
would lose it.

Q. He said that in the same interview in which he said he admitted he took it?

A. I think it was.

Q. Did you make any demand upon him to return it?

A. Well, no.

Q. Did anybody else that you know of make 40
any demand upon him at that time to return the money?

A. Well, I saw Judge Rice in relation to—

Q. Please answer my question. Read it, please.

(The stenographer read the same as follows:

10 “Q. Did anybody else that you know of make any demand upon him at that time to return the money?”)

A. Not of my own knowledge, no; but I heard so.

Q. Never mind what you heard. Did he tell you where the money was at the time when you had this interview with him, or what he had done with it?

20 A. No, sir.

Q. As far as you know or had any reason to believe he still had the money in his possession, is that right?

A. So far as I know anything about it, yes, sir.

Q. And the admission he made to you was within two or three weeks after his taking the money?

30 A. As near as I can recollect, yes; it may have been a month.

Q. Were you in Court as a witness the first day this case came on in New Brunswick?

A. No, sir, I haven't been in any court or heard a word of the matter, nor have I seen Mrs. Jackson for years.

Q. Were you expected to testify in New Brunswick on the last day the trial came up?

40 A. Well, I was subpoenaed with a subpoena.

Q. When?

A. I don't know; it was upon the day that I had already been subpoenaed in a case before Judge Fort, and I was engaged to testify in that case.

Q. The subpoena you speak of in this case was for your appearance in Newark here?

A. Yes, sir, but I was subpoenaed before Judge Fort before that. 10

Q. That was the last time the case was postponed, wasn't it?

A. I don't know, I think it was the 28th of September.

Q. Have you that subpoena with you?

A. No, sir, I have not. 20

Q. Prior to your receiving that subpoena had you been informed in any way that you were expected to testify in this case?

A. I don't think so. Mr. George Seltzer, a lawyer, served me with a subpoena.

Q. That is all.

RE-DIRECT EXAMINATION:

Q. In this case have you been requested to testify since the last trial in the interest of the other side? 30

A. I have been asked about the facts, I haven't been asked to testify.

Q. You have been asked about what your testimony would be here to-day?

A. Yes, sir. 40

FURTHER CROSS:

Q. Who asked you that?

A. Mr. Van Cleef.

Q. Senator Van Cleef?

A. Yes, sir.

Q. Didn't you say to Senator Van Cleef that you couldn't remember that Jackson had made any admissions to you?

10

A. No, sir, I said to Senator Van Cleef that I didn't pretend to give the conversation, nor I don't, and I told Mr. Woodbridge the same.

Q. Did you tell Mr. Van Cleef that Jackson had made admissions to you?

A. No, sir, I did not; I didn't want to come here at all.

Q. What?

20

A. I didn't want to come here at all.

Q. So that when Senator Van Cleef asked you what you would be able to testify to you say you didn't tell him that you knew nothing of the kind that you have testified to here to-day?

A. I told him as I did Mr. Woodbridge, that I could not pretend to give the conversation.

Q. Did you tell Mr. Van Cleef that Jackson had admitted to you at any time that he had taken that money?

30

A. No, sir, certainly not.

Q. Mr. Van Cleef had spoken to you before that time in regard to what you knew about this case, hadn't he?

A. He may have done so, I don't remember it.

Q. And didn't you tell him that Jackson made no admissions to you?

40

A. Did I?

Q. Yes.

A. I can't tell you.

Q. When did you first tell it to Mr. Woodbridge?

A. Well, if that case was down for the 28th of September it was about that time.

Q. That is about the time you received the sub- 10
poena to attend here in Newark?

A. About then.

Q. Or a few days before?

A. About that time.

Q. Wasn't that after the first hearing of the case at New Brunswick?

A. I don't know about any hearing.

Q. Didn't you know there was a hearing in New 20
Brunswick prior to the time when you made that statement?

A. No, sir, I never heard of it.

Q. You read the New Brunswick newspapers, don't you?

A. I do when I feel like it, I don't read them every day, and I am away from town days at a 30
time.

Q. Did Mr. Jackson come to see you first or did you hunt him up?

A. I think I wrote him each time to come to my office.

Q. Isn't it a fact he went to see you first?

A. I don't think so.

Q. Now, to get this matter right between you 40
and Mr. Van Cleef, didn't it come about in this way, and is not this what occurred between you,

that is to say, somewhere near the 28th of September, he met you in the street I think, and made some inquiry about the health of your son?

A. Who did?

10 Q. Senator Van Cleef, and you had some few words, and some little talk of a friendly nature, and then you made the statement that you had received a subpoena to appear in this case as a witness, and didn't you further say that you didn't know anything about it?

A. No, sir, I did not, I never said I didn't know anything about it.

20 Q. Didn't you expressly say in that conversation that you could not remember that Jackson had ever made any admission to you?

A. I answered that by saying that I told Senator Van Cleef—

Q. Please answer my question.

A. I am answering it in my own way.

Mr. Strong: I think the witness ought to be compelled to answer my question.

30 Witness: I want to answer it and I will answer it if you permit me to go on.

Mr. Strong: I don't think the witness ought to be permitted to make these loose statements, he ought to answer my question.

The Court: Read the question.

(The stenographer read the question.)

A. May I answer it in my own way?

40 The Court: Answer the question as it is put to you, you can answer that yes or no.

A. No.

FURTHER CROSS:

Q. You did not?

A. No, but I would like to explain that.

Q. Well, never mind, I don't want your explanation. That is all. 10

RE-DIRECT EXAMINATION:

Q. You may explain it?

A. I did tell Senator Van Cleef that I did not pretend to remember what was said, and I don't either. I cannot remember what Mr. Jackson said to me or what I said to him. The interview lasted for some time, and I don't pretend now to be able to repeat all that was said or remember all that was said. That is what I said to Senator Van Cleef. 20

Q. In saying that Mr. Oliver, you mean that you cannot repeat his words, do you?

Objected to as leading.

Overruled.

Q. In saying that Mr. Oliver you mean that you do not undertake to repeat his words? 30

Objected to.

Overruled.

Q. State whether or not, Mr. Oliver, you are able to repeat Mr. Jackson's words?

A. I have tried to cover that to the best of my recollection.

Q. Did you inform Mrs. Jackson of what you 40

had discovered from your interview with Mr. Jackson at that time?

A. Certainly I have testified to that.

Q. And you have a perfectly clear recollection of what Mrs. Jackson told you— —

10 Objected to as leading.

Q. Well, have you or not?

Objected to.

The Court: The witness has told us many times he does not recollect clearly, and that he can only give us the substance of the conversation.

20 Mr. Woodbridge: Well, then, I will let it stand in that way.

ELIZABEETH McCAULEY sworn.

DIRECT EXAMINATION—Mr. Woodbridge:

Mr. Woodbridge: The last witness desires to go back on the stand and make a statement in regard to his interview with Senator Van Cleef, he has just had a short interview with the Senator, and desires to correct his testimony.

30 CHARLES O. OLIVER recalled.

Witness: He intimated that he didn't stop me in the public street for the purpose of asking about this case, that is true.

Mr. Woodbridge: That is, Mr. Van Cleef stopped you on the public street and asked you about this case?

40 Witness: No, sir, he did not.

Mr. Woodbridge: Did anyone else?

Witness: No, sir.

ELIZABETH McCauley recalled.

DIRECT EXAMINATION—Mr. Woodbridge: 10

Q. Where do you live?

A. 52 Troope avenue.

Q. New Brunswick, N. J.?

A. Yes, sir.

Q. How long have you resided there?

A. All my life.

Q. Did you know Mr. Thomas A. Jackson in his 20
life time?

A. Yes, sir.

Q. Of New Brunswick?

A. Yes, sir.

Q. Do you know his wife, Mrs. Emma J. Jackson?

A. Yes, sir.

Q. What relation is Mrs. Jackson to you? 30

A. My aunt.

Q. Do you remember how near they lived to you
when Mr. Jackson was alive?

A. Right next door.

Q. Do you remember the time when Mrs. Jackson lost her money?

A. Yes, sir.

Q. After that time how long did Mrs. Jackson 40

live next door to you; did they live next door to you after that time?

A. You mean after the money was taken?

Q. Yes, after the money was lost?

10 A. Yes, sir.

Q. Did you ever hear any conversation between Mr. and Mrs. Jackson respecting this money?

A. Yes, sir.

Q. State what you heard Mr. Jackson say, if anything to his wife, about it?

A. He says yes I took the money, and I would take more if I could get it.

20 Q. Where were you at that time?

A. On the cistern top.

Q. In your yard?

A. In our own yard.

Q. And the Jackson yard was right next door?

A. Yes, sir.

Q. How far away were they from you?

30 A. I should think about four feet.

Q. The cistern was right along near the fence?

A. Yes, sir.

Q. Did you see Mr. Jackson there that day?

A. Yes, sir.

Q. And you saw his wife there?

A. Yes, sir.

40 Q. At that time when he said it?

A. Yes, sir.

CROSS-EXAMINATION—Mr. Strong:

Q. You are the daughter of Mrs. Virginia McCauley who testified at New Brunswick in this case?

A. Yes, sir.

Q. Were you in Court when your mother testified? 10

A. No, sir.

Q. Had you been notified to be a witness at that time?

A. No, sir, not at that time.

Q. When were you first notified to be a witness in this case? 20

A. I should think about two weeks ago.

Q. And when did you first tell anybody about this conversation that you heard between Jackson and his wife?

A. I should think it was a little over two weeks ago.

Q. Then down to a little over two weeks ago you never had mentioned to anyone that you had heard Jackson say this to his wife? 30

A. No, sir.

Q. You had heard a good deal of talk in the family about the loss of Mrs. Jackson's money, didn't you?

A. Yes, sir.

Q. And you had heard also that she had brought this suit against the Jackson estate? 40

A. Yes, sir.

Q. You knew that?

A. Yes, sir.

Q. And did you know that your mother was going to testify to a conversation that she heard?

A. Yes, sir.

Q. You knew that too?

10 A. Yes, sir.

Q. How did you know of that?

A. She told me so.

Q. When did she tell you that?

A. A long time ago, I can't tell you when.

Q. And you never told her that you had heard something of the same sort, did you?

20 A. No, sir.

Q. Why didn't you tell her?

A. Because I thought that as she was trying to get this it would come up in court and I didn't want to come here.

Q. You didn't want to go to court?

A. No, sir.

30 Q. What was it changed your mind so that you were willing to come to court now?

A. Well, I thought I didn't have to come, I thought if I told it I wouldn't have to come to court.

Q. How did you get that idea?

A. Well, I thought it was too late, of course, I didn't know anything about it.

40 Q. Then you kept those things to yourself until you thought it was too late to be of any use?

A. Yes, sir.

Q. Then who did you tell it to first?

A. My mother.

Q. You told your mother, did you?

A. Yes, sir.

Q. After she had testified in New Brunswick? 10

A. Yes, sir.

Q. And did you tell it to Mr. Woodbridge?

A. Yes, sir.

Q. When?

A. About two weeks ago, it may have been a little over that, I can't tell exactly.

Q. Was it after you had told your mother? 20

A. Yes, sir.

Q. Right after you told your mother?

A. Yes, sir.

Q. Did you go down to Mr. Woodbridge's office to tell it?

A. Yes, sir.

Q. Now, when was the conversation that you 30 had heard between Jackson and his wife?

A. Well, I can't tell you exactly, but I think about three years after it was taken.

Q. Do you mean after the money was lost?

A. Yes, sir.

Q. Three years after that time?

A. I should think so.

Q. Have you any way of fixing that at all; what 40 makes you say it was three years afterwards?

A. Well, I cannot tell you that.

Q. You cannot tell us that?

A. No, sir, but it seems to me it was about three years afterwards.

10 Q. You don't fix it by reference to any other circumstances?

A. No, sir.

Q. Who was with you when you heard that, was anybody with you?

A. No, sir.

Q. Was there any person who heard it so far as you know except Jackson and his wife?

20 A. No, sir.

Q. Where were they?

A. Mr. Jackson was in the alley and Mrs. Jackson was at the door.

Q. What was the beginning of the conversation, how did it come about?

A. I don't know.

30 Q. Did you hear anything else except just that?

A. That is all.

Q. Did you hear her say anything at all?

A. No, sir.

Q. Either before he made that statement or afterwards?

A. No, sir, he came out—

Q. What?

40 A. He came out from the kitchen and went into the alley, and I don't know what was said before that.

Q. Then he went into the alley, now, did he go right out through the alley?

A. No, sir, he went back into the house.

Q. How long did he stay in the alley?

A. I can't tell you. 10

Q. What did he do in the alley?

A. He just repeated those words and then went back into the house.

Q. Then he came out into the alley, made that statement, turned around and went back again?

A. Yes, sir.

Q. I think you said you were within four feet of him? 20

A. Yes, sir.

Q. Now, where was Mrs. Jackson?

A. In the kitchen door.

Q. How far away was she from her husband?

A. I cannot tell you.

Q. Well, give us some idea?

A. Well, I should think about 12 feet. 30

Q. 12 feet?

A. Yes, sir.

Q. Was Jackson talking to you or with her?

A. He was talking to her.

Q. Was he speaking loud?

A. Yes, sir.

Q. Now, what was it he said? 40

A. He said, yes, I took your money and I would take more if I could get it.

Q. Now, you are sure he used the word money, are you?

A. Yes, sir.

Q. Well, I suppose that made quite an impression upon you?

A. Yes, it did.

Q. Did you ever have any talk with Mrs. Jackson about it afterwards?

A. Yes, sir.

Q. You knew she was complaining about the loss of her money?

A. Yes, sir.

Q. And that she was very anxious to find it?

A. Yes, sir.

Q. And you never told her a word about it?

A. Not until I told my mother first.

Q. That was two weeks ago, you mean?

A. Yes, sir.

Q. How near was Mrs. Jackson to you at the time this was said?

A. Well, she was about eleven feet I should think, or about ten feet.

Q. Mr. Jackson you said was about four feet away?

A. No, sir, I said twelve feet.

Q. Twelve feet from you?

A. Oh, yes, four feet.

Q. Then he was very near to you?

A. Yes, sir.

- Q. About as near as the stenographer is now?
- A. Yes, sir, a little further away than that.
- Q. What was there between you and Jackson?
- A. You mean the fence?
- Q. Well, was there a fence? 10
- A. Yes.
- Q. What kind of a fence was it?
- A. Board fence.
- Q. A high board fence?
- A. Yes, sir.
- Q. Could you see over it?
- A. Not unless I got on the cistern top. 20
- Q. Did you get up on the cistern top?
- A. Yes, sir.
- Q. What were you doing there?
- A. Looking over at him.
- Q. What did you do that for?
- A. I wanted to hear what he had to say.
- Q. Oh, I see. Now, did you hear him say anything except just those words? 30
- A. No, sir.
- Q. When was it you got up on the cistern top?
- A. After he said it or before, do you mean?
- Q. Yes, after or before?
- A. After he said it.
- Q. Now, when you got up on the cistern box you could see him perfectly, could you? 40

A. Oh, yes.

Q. Could you see her too?

A. Oh, yes.

Q. And could she see you?

10

A. Yes, sir.

Q. Did you say anything?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. Then you say he went back in the house immediately?

20

A. Yes, sir.

Q. Apparently he had no object in coming out in the alley except to say those words?

A. Oh, yes, he was angry, he ran out.

Q. Did he run back again?

A. No, sir.

Q. Did she run after him?

30 A. Well, she didn't come no further than the door.

Q. When he went back where was she, did she stay in the doorway?

A. No, sir.

Q. Where was she?

A. She must have went in the house.

Q. Well, did she go in the house?

40

A. Yes, sir.

Q. He went in after she did?

A. No, he went in first.

Q. Who went in first?

A. He did.

Q. Where was she when he went in the door?

A. Standing right in the door. 10

Q. Did she say anything to him?

A. No, sir.

Q. Did she do anything to him?

A. No, sir.

Q. That is all.

RE-DIRECT EXAMINATION:

20

Q. Who came to my office with you when you say you came there about two weeks ago?

A. Mrs. Jackson.

Q. That is all.

RE-CROSS EXAMINATION:

Q. Do you live with your mother still?

A. Yes, sir. 30

Q. You have always lived with your mother, haven't you?

A. Yes, sir.

Q. That is all.

MARY OBERHOVER sworn.

DIRECT EXAMINATION—Mr. Woodbridge:

40

Q. Where do you live?

A. 21 Troop avenue, New Brunswick.

Q. New Jersey?

A. Yes, sir.

Q. How long have you resided there?

A. It will be six years or five years the 6th of
10 November, next month.

Q. How long have you resided in New Brunswick?

A. Since I was eight years old.

Q. Are you married?

A. Yes, sir.

Q. Who is your husband?

A. John Oberhover.
20

Q. He lives in New Brunswick with you?

A. Yes, sir.

Q. Did you know Thomas A. Jackson in his life time?

A. Yes, sir.

Q. Do you know his wife, Emma J. Jackson?

A. Yes, sir.
30

Q. Do you remember when they lived at 54 Troope avenue nearly opposite where you do?

A. Yes, sir, I worked for them.

Q. What kind of work did you do for them?

A. I washed for them.

Q. Then that is when they lived at the house Mrs. McCauley testified to?

A. Next door.
40

Q. What period of time did you work for Mr. and Mrs. Jackson?

A. About a year and a half.

Q. When, in relation to Mr. Jackson's death, before or after?

A. Before his death and after and while he was sick.

Q. That is while he was sick with his last illness? 10

A. Yes, sir, I helped take care of him, I stayed there nights.

Q. Do you remember the time Mrs. Jackson lost her \$2,000?

A. I heard of it through the papers.

Q. Did you ever hear any conversation when you were working at Mr. and Mrs. Jackson's house there on Troope avenue, between Mrs. and Mr. Jackson relating to this money? 20

A. I often heard them at the dinner table when Mrs. Jackson would ask him for money, when he would say that he hadn't any, and she would say well, you always had money, how did you get along before, you always worked and you don't work now, and you haven't worked any in nine years, she said one day, and he said when I married a Runyon I put my tools away never to work again. He said that many a time. 30

Q. Did he work any after that?

A. No, sir, I know he didn't.

Q. Did you ever hear any further conversation with reference to the taking of the money?

Objected to.

Q. Well, did you ever hear her say anything further besides this in regard to the matter? 40

Mr. Strong: In regard to what matter?

Mr. Woodbridge: In regard to the same matter, or in regard to the taking of it.

10 The Court: I don't understand that that is a leading question. Read the question, Mr. Knight.

(Stenographer read the question as follows:

"Q. Well, did you ever hear her say anything further besides this in regard to the matter? Mr. Strong: In regard to what matter? Mr. Woodbridge: In regard to the same matter, or in regard to the taking of it.")

20 Mr. Woodbridge: Make that in regard to taking the money.

A. Well, there was one thing, Mr. Jackson came in, I think between eight and nine o'clock in the evening, I cannot say exactly what day it was, that is, the day of the week, and Mr. Jackson seemed to be in great trouble, he was wringing his hands and lying on the lounge in the dining room, and he called her Emma—he says Emma,
 30 I am sick, he says, and I know I done you wrong, and it is too late now, I cannot help it, and he got off the lounge—they had a shelf back of the stove and he went there, and she says "Tom, what do you want there?" He says, "I want a pencil and paper." Well, she says, there is none there, I will get you some. Well, he says, I cannot write, and I cannot tell you, and when he said that he put his hands in his trousers pockets and on the right hand side he had a bunch of keys, on the
 40 left hand side he had some money and some change and some paper, but I don't know how much, and he gave them to Mrs. Jackson and he said, "In

the desk, in the desk." Then he laid down on the lounge again, and then we were going to take off his shoes because he seemed to be in such distress, and he said, don't take my shoes off, and then he got up off the lounge and put his clothes on the lounge and ran out in the kitchen. Every night and often in the day time he would act peculiar, he seemed to be hunting for something and would tell her that he had wronged her. 10

Q. Did he give her the keys?

A. Yes, sir, I saw him give them to her and the change out of her pocket.

Q. Did he say what keys they were?

A. Of his desk—it wasn't in the room, though. 20

Q. You say that among the things he took out of his pocket was some change?

A. Yes, sir, some paper and change; I cannot exactly say what it was, or how much it was, because I thought it did not concern me.

Q. After he said this to her "in the desk" did you ever hear any other conversation besides this you have related in regard to the matter?

A. Yes, sir, he told her that he was sorry that he left her penniless, but it was too late now to mend his ways. 30

Q. When was that?

A. A night or so after that.

Q. How long before his death was it this took place?

A. Well, they had a gentleman nurse, and I should think it was about two weeks before his death. 40

Q. Did you ever hear Mrs. Jackson—calling your attention to a particular occasion, did you ever hear Mrs. Jackson charge her husband with taking her money?

A. Yes, sir.

10 Q. What did he do or say on such occasion as that, if anything?

A. Well, one day—

Mr. Strong: Let us have the conversation, I think we ought to have the exact conversation.

The Court: Yes, let her give the conversation.

20 Q. What did he say and what did she say?

A. One day at the dinner table she wanted some muslin, and she wanted him to buy it. Mr. Jackson used to buy everything and have them sent home. Mrs. Jackson would not buy them. One day she wanted a whole piece of muslin or something, and she said to him, you took my money why don't you buy this muslin for me, I want it, and he said "Oh, shut up about that money." Is that what you mean?

30 Q. Yes, that is what I mean, just what you told me that you heard spoken of. Did you ever hear her accuse him of that again?

A. Oh yes, they used to scrap at the table.

Q. Did you ever hear him deny that he took it?

Objected to.

The Court: What else did you hear them say about it?

40 Witness: She used to accuse him of it, but he never owned up that he took the money in

front of me; he used to keep still; he never said he took it, in front of me.

Q. You were not a relative of Mrs. Jackson in any way?

A. No way at all.

10

CROSS-EXAMINATION—Mr. Strong:

Q. Where do you live now?

A. 51 Troop avenue.

Q. Where were you living at the time you used to wash for the family?

A. At the same place.

Q. At this time you speak of you said he seemed to be in pain and trouble and was ringing his hands?

A. Well, he was sick.

Q. How long was that before his death?

A. I cannot say for certain, but I think it was about two weeks before he died.

Q. Was he confined to his house at that time?

A. He used to go out but he would get spells. 30

Q. Did he go out after that?

A. Around the yard during the day.

Q. He went, you said, to a closet to get a pencil and paper?

A. He went back of the stove in the dining room to a shelf there for a pen or pencil, and there wasn't any there.

Q. How do you know he went there?

40

A. He told us—I ask him what he wanted; he

seemed to be searching for something, and he said he wanted a pen or pencil and paper.

Q. He didn't find any there?

A. There wasn't any there and then we were going to get it for him.

10 Q. Well, did you get it for him?

A. No, sir, I wanted to, and he said, oh, I cannot write, I cannot tell you what I want, it is here but I cannot tell you.

Q. And then after that he put his hands in his trousers pockets?

A. About an hour afterwards—he seemed to be worrying.

20 Q. Well, don't tell me what he seemed to be doing, you said something about his putting his hands in his trousers pockets?

A. Yes, sir, he did.

Q. That was about an hour afterwards?

A. It was the same evening.

Q. It was about an hour afterwards?

30 A. About then.

Q. And he put his hands in his pockets?

A. Yes, sir on the right hand side he had a bunch of keys, and on the left hand side he had some money.

Q. Which pocket did he put his hand in?

A. In both pockets at one time.

40 Q. Then he had both hands in his trousers pockets?

A. Yes, sir, like this (illustrating) both together.

Q. Then he pulled out in one hand a bunch of keys?

A. Yes, sir.

Q. And in the other hand he had some change?

A. Yes, sir.

10

Q. And gave that to his wife?

A. To Mrs. Jackson, and when she handed her the keys he said something about his desk, but the desk was not in the room at the time.

Q. Do you remember just what he said about his desk?

A. He said "In the desk" two or three times.

Q. In the desk?

20

A. Yes, sir.

Q. And that was all you heard him say, was it?

A. Well, he used to wander around saying things.

Q. Was he out of his mind then?

A. Well, he wasn't to say out of his mind; he seemed to have a great deal of trouble, and he wanted to tell Mrs. Jackson about it.

30

Q. Do you think he knew what he was saying that night?

A. I do, because he repeated it.

Q. You think he knew what he said?

A. Yes, sir.

Q. Can you recall anything else he said, except what you have told us?

40

A. Well, there was one evening—

Q. I am referring to that same night; have you told us all about what was said that same night, that you can remember?

A. Well, I guess so, about the money.

10 Q. Now, you say you tried to take his shoes off?

A. Yes, sir, we tried to get him to bed, but he wouldn't go upstairs to bed.

Q. And then he ran out in the kitchen?

A. Yes, sir.

Q. Did he go outdoors?

A. Yes, sir.

20 Q. What did he do when he got into the kitchen?

A. He walked all around again, he walked first out of the room into the kitchen and then back to the dining room and then walked around, and we wanted to get him to lie down on the lounge and wanted to take off his shoes, and we said we would help him to take off his shoes and he said no, he didn't want to lie down.

Q. He did not lie down at that time, did he?

30 A. He didn't for a half an hour afterwards.

Q. Did he go to bed?

A. No, sir, he wouldn't take his clothes off all night; I was there until five o'clock in the morning.

Q. Did he have a doctor at that time?

A. Doctor Slack, I think.

Q. Was he there that evening?

40 A. He was there before I got there, but I didn't see him.

Q. Did Mr. Jackson complain of being in pain?

A. He didn't seem to complain.

Q. What did he say about having any pain?

A. Well, he had like a shortage of breath and pain around here (pointing to her chest).

Q. Asthma he had?

10

A. Either that or his heart, I don't know exactly what to call it.

Q. And that evening he was in distress from shortness of breath?

A. Well, it seems he couldn't lie down.

RE-DIRECT EXAMINATION:

Q. When he said it is here and I cannot tell you, what did he do? 20

A. He laid down.

Counsel for complainant asked stenographer to read what the witness had said with regard to saying "It is here," and the stenographer did so; whereupon counsel for the complainant stated to the Court that the witness had pointed to her breast at the time she testified "It is here."

30

Q. When did you mean when you said just now, it is here but I cannot tell you; did he do anything else?

Objected to.

BY THE COURT:

Q. When he said it is here, did he make any gesture?

40

A. He called Mrs. Jackson to the lounge and he whispered something to her, but I didn't hear

what was said, but he said something about you will find it.

FURTHER RE-DIRECT EXAMINATION:

Q. When he said it is here, did he make any
10 gesture?

A. When he said it is here, I cannot tell you what he did, except that he called Mrs. Jackson and said something to her.

Q. That is all.

EMMA J. JACKSON, recalled:

FURTHER DIRECT EXAMINATION—Mr.

20 Woodbridge:

Q. Mrs. Jackson, after your husband's death, did you have the keys to his desk?

A. Yes, sir.

Q. What did you do with them?

A. I gave them to Mr. Van Cleef.

Q. What did he do with them?

30 A. He opened Mr. Jackson's desk.

Q. In your presence?

A. Yes, sir.

Q. What did he find in the desk?

A. He took some papers out, the mortgages and the deeds and things—he took the deeds and mortgages and a lot of other papers.

40 Q. These mortgages which have been offered in evidence here in this case?

A. Yes, sir.

Q. What else did you find in the desk?

A. I found a savings bank book of the Manhattan Savings Bank, Broadway, New York.

Q. The mortgage you refer to was the Hart mortgage, was it; that is the mortgage you refer to? 10

A. Yes, sir, and a mortgage upon 44 George street that had been paid off and never cancelled, and Mr. Van Cleef took it in order to have it cancelled, he told me.

Q. That is all.

A. And his son—

Q. Never mind, that is all. 20

CROSS-EXAMINATION—Mr. Strong:

Q. What else was there in this desk when Mr. Van Cleef opened it?

A. I don't know.

Q. Mr. Van Cleef opened it in your presence?

A. He took the papers.

Q. What papers did he take? 30

A. Well, I have just told you, didn't I? Mr. Jackson had just died, and I was all upset, and his son came up there and wanted to know if I would let him have the keys.

Q. Won't you please answer my question?

A. Won't you let me answer it? It won't injure anybody, I don't think.

The Court: You must answer the question. 40

Witness: He got some money to pay for the advertising and they got the book—

Mr. Strong: I move to strike the answer out so far as it is irresponsible.

The Court: Yes, I will strike it out.

Witness: I was completely upset at the
10 time.

Q. Did Mr. Van Cleef take everything in the desk?

A. Mr. Van Cleef took the papers.

Q. You don't answer my question, did he take everything in the desk?

A. I have answered your question.

Q. (Question read.)
20

A. No, there were some few little things left there.

Q. What were they?

A. I don't know, I cannot tell you, I cannot read writing.

Q. What kind of things?

A. Well, there wasn't anything there scarcely,
30 some few little papers; I don't know what they were.

Q. There was a lot of old checks?

A. Some of them I suppose was.

Q. Didn't you see a lot of checks there that had been through the bank and paid and returned to Mr. Jackson?

A. There were a few checks there to his adopted
40 daughter.

Q. Well, they were checks made by Mr. Jackson, were they not?

A. They were made to her.

Q. Were there not a good many checks not only to his daughter, but to other persons?

A. I don't know.

Q. You don't?

10

A. I don't. Now, Mr. Strong, I told you I didn't know.

Q. Yes, I know. Didn't you go through that bunch of checks and pick out those that were made to his daughter?

A. No, sir, I did not.

Q. What?

A. No, I did not.

20

Q. Didn't you afterwards go to his adopted daughter with a number of checks?

A. I went there, yes.

Q. Now, you insisted that she had a lot of money from him and you showed her those checks, is not that so?

A. I told you I didn't know what was there, and I am telling you the truth.

30

Q. Were there any other checks there besides those that you took to his adopted daughter?

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

Q. You don't?

A. No, sir.

Q. Is that the only answer you can give us?

A. Yes, that is my only answer.

40

Q. What other checks or papers, if any, were there in this desk, besides those checks?

A. Well, Mr. Van Cleef can tell you, maybe.

Q. I am asking you.

A. I don't know.

Q. Were there any books of account there?

10 A. No, sir, not that I know of.

Q. You didn't see any?

A. No, sir.

Q. Do you mean to say that there were no other papers except those checks?

A. No, sir, I don't say so, I said there was a few other things.

20 Q. What other things were there?

A. I have told you I don't know.

Q. Where are they now?

A. I don't know what has become of them, I have been moving around ever since.

Q. Are they in that desk yet?

A. I think there is a few of them there yet.

Q. Who has that desk?

30 A. I have got it.

Q. You have it?

A. Yes, sir.

Q. It has been in your possession from the time of his death down to now, has it not?

A. Yes, but I moved it around to different places.

40 Q. Now, going back to the time when you lost your money, the night that you lost your money, I understood you to testify that your husband

came into the room where you were lying on the lounge in the vacant house, is that true?

A. Do you want me to testify over again?

Q. Now, be kind enough just to answer my question, tell me whether that is a correct understanding of your testimony or not? 10

A. My husband got up off the rocking chair and came and laid down on the lounge—

Q. One minute; I didn't ask you about that, and I move to strike it out.

A. Yes, sir, he did.

Mr. Strong: I ask to strike out anything the witness has said which was not responsive to my question. 20

The Court: Yes.

The Witness: No, I wasn't lying on the lounge, I was drying my dress by the stove.

Mr. Woodbridge: Well, I object to this, I object to the question; we ought not to be prejudiced by anything counsel now chooses to bring out on cross-examination; it strikes me that the rule is that anything we have brought out by competent testimony should stand, that is to say, whatever the fact was in regard to the money up to the time he was there, and as to the time when she first missed it, and we certainly ought not to have that testimony ruled out by the fact that counsel on cross-examination brings out that mean- 30 while he was there.

The Court: Well, do you want to ask the witness in regard to that? The question 40 should be asked, and I think that I ought to ask the question.

Mr. Woodbridge: Well, I think we can leave that safely in the hands of your Honor.

BY THE COURT:

Q. You say while you were lying on the lounge
10 in the dining room, on the occasion that you have referred to in your direct examination, your husband came into the room; you have testified to that, haven't you? Answer the question yes or no. Did your husband come into your room while you were lying on the lounge?

A. No, sir.

Q. When did he come into the room?

A. He came into the room and I lit the light
20 and I sat down to dry my dress, and after I had dried my dress I got up and laid on the lounge.

Q. Now, one moment, during all that time was your husband there?

A. Yes, sir.

Q. Did your husband remain there while you were in the dining room?

A. Yes, sir.
30

Q. I think you stated that you were there some three or four hours?

A. No, sir.

Q. How long were you there?

A. Did I say that?

Q. Well, how long were you there?

A. How long were I there?

40 Q. Yes.

A. After my husband came in do you mean?

Q. After your husband came in how long did you and he remain there together?

A. After I dried my dress I laid down on the lounge.

Q. After your husband came in how long did you and he remain there together? 10

A. Well, I should judge that we went home at about half past nine or ten o'clock.

Q. Now, did you and he go home together?

A. Yes, sir.

Q. Did you go upstairs together?

A. Yes, sir.

Q. Did you sleep in the same room? 20

A. Yes, sir.

Q. I think you have stated that you first missed your money when you were preparing to put your purse under your pillow, is that right?

A. Yes, sir.

Q. Was he there then?

A. Yes, sir.

Q. You stated that when you missed your money you went out into the storm and looked for it? 30

A. Yes, sir.

Q. Was he with you when you made your search?

A. No, sir.

Q. You went out alone then?

A. I did. 40

Q. Now, how long did you stay out there?

A. He dressed himself and came down to 191 George street.

Q. Well, is that where you went?

A. Yes, sir.

10 Q. So you went from your home to 191 George street alone?

A. Yes, sir.

Q. And he came after you?

A. Yes, sir.

Q. How long did you stay together at 191 George street?

20 A. We stayed no time at all, we went back to our home.

Q. Did you and he remain together until the next morning?

A. Yes, sir.

The Court: Now, I think we have got the fact, so that I can deal with the testimony hereafter in such a way as may seem to be proper.

30 RE-DIRECT EXAMINATION:

Q. I would like to suggest also to the Court this question. When you went alone from your house, 44 George street, to 191 George street, did you have your money then?

Objected to.

BY THE COURT:

40 Q. Did you have your money at that time?

A. No, sir.

Q. You were looking for it?

A. Yes, sir.

Q. That is all.

Mr. Strong: This examination by your Honor has been with a view to the preliminary question of whether the evidence is to be received on the amended question. 10

The Court: Yes.

Mr. Strong: Of course I understand my objection sufficiently appears in the case.

The Court: I shall not regard as evidence in the case, but as evidence addressed to the Judge for the purpose of determining its competency, with the single exception that I shall regard as evidence in the case the question that I asked the witness at the request of Mr. Woodbridge with respect to the fact whether the witness missed the money when she was going from 44 George street to 191 George street—that I shall regard as evidence in the case. 20

CROSS-EXAMINATION:

Q. When Mr. Van Cleef took these papers from the desk who else was there? 30

A. George Jackson, Mr. Jackson's son George.

Q. He was one of the executors, wasn't he, and you were also an executor?

A. Yes, sir.

Q. And the other son was also an executor, wasn't he, of Mr. Jackson's will?

A. Yes, sir. 40

Q. Now, were the appraisers there, the gentlemen who came in to appraise the property?

A. Yes, sir.

Q. I understand you to say yes?

A. What property do you mean, do you mean the personal property?

10 Q. Personal property?

A. Well, that is what I want to know. Yes, the appraisers came there.

Q. And they were there at the time the papers were taken out of the desk?

A. No, sir, they were not.

Q. They were not?

A. No, sir.

20 Q. Who were present at that time?

A. At that time?

Q. Yes.

A. I think Mr. John Erhad who keep a grocery store there in George street, and the other one was—I cannot think of his name.

Q. Mr. Clayton, wasn't it?

30 A. Yes, sir.

Q. They were there when the papers were taken out of the desk?

A. No, sir.

Q. They were not, well, who was there when the papers were taken out?

A. They were not there then.

40 Q. Well, who was there at that time?

A. I have told you once.

Q. Tell me again?

A. Mr. Jackson's son George.

Q. And yourself?

A. I was there, yes.

Q. Who else?

A. I don't know of anyone else.

10

Q. Mr. Van Cleef was there?

A. Mr. Van Cleef was the one that unlocked that desk and took the papers.

Q. All the papers were examined there at that time, were they?

A. No, sir, I don't think they were, if they were I did not notice it.

20

Q. Well, the bank book was examined at that time?

A. No, sir, the bank book was found afterwards, it was away up in the writing desk.

Q. Who found the bank book?

A. I did.

Q. When did you find the bank book?

A. I was going to tell you but you stopped me, 30 it was in a different part of the desk.

Q. When did you find it?

A. I did.

Q. When?

A. Up in the desk.

Q. I didn't ask you where you found it, I said when, not where. When you found it?

40

A. When did I?

Q. Yes.

A. Well, I could not say, maybe two or three days afterwards Mr. Jackson gave me the keys, I never went into his desk, I was too much afraid.

Q. Did you find the Manhattan Savings Bank book at the same time that Mr. Van Cleef opened
10 the desk?

A. I don't think I did, I think I found it afterwards.

Q. How long afterwards?

A. Well, I will tell you, I cannot remember.

Q. You found it yourself?

A. I think I found it.

Q. What did you do with it when you found it?
20

A. Well, his son George that is in his grave came there. I think I took it down to Mr. Van Cleef's office if I am not mistaken, and he threw himself around in his chair like this (illustrating) and part of it was gone, and he said I didn't have it all; I said I did have it when I came in here, and I met his son one day—

Q. Now, one moment, I haven't asked you about
30 that?

A. Well, the trouble is you only want to know just so much. I would like to tell the story as it is.

Q. Well, it would take a great many days for you to tell the story as you understand it.

Mr. Strong: I move to strike out so much of the answer as is not responsive to my question.

The Court: It will be stricken out.
40

Q. Mr. Van Cleef is the lawyer of the estate of Thomas Jackson?

A. Yes, sir, he was.

The Court: This case is in a very singular position. There is an infant defendant here appearing by guardian. It is proper that the Court should consider the interests of the infant. The bill alleges a fraudulent concealment of this theft or taking up to the time of Mr. Jackson's death. Now, if there was a fraudulent concealment of the taking of this money that would get rid of the bar of statute of limitations, the taking is alleged to have been in 1894; the bill was not filed until 1903. In other words, nine years elapsed between the taking and the bringing of the suit. Mr. Jackson died February, 1903, and so this taking was nearly nine years before Mr. Jackson died. Now the general rule in equity is that the statute does not commence to run until the fraud or unlawful act is discovered. In the bill it is alleged that this act was concealed up to the time of Mr. Jackson's death. Now, if that were so of course the state of limitations could not be pleaded. The statute of limitations would not be a proper plea to that condition of facts and I find on looking over the answers that the statute of limitations was not in fact pleaded.

Mr. Strong: For that reason sir.

The Court: Now the question is this, the evidence is that Mrs. Jackson knew from the very beginning, within a month after this money disappeared that her husband took it. If I believe this evidence I must believe there was no concealment; he not only did not conceal the fact that he took it but he admitted it, admitted it to the detective, and admitted it to the other witnesses. Now that is a different

10 case altogether from that made by the bill, and the question in my mind is whether I ought not to find out from you now whether you propose to rest upon your present pleadings or whether you desire to amend them. The general rule is that the probata must correspond in substance to the allegata. You cannot make out one case and prove another. The obvious reason being that the defendants come prepared to meet the case alleged on the record. In that connection I would like to inquire whether the bill has been amended—actually amended, I mean by making Mrs. Jackson a complainant with her son.

20 Mr. Woodbridge: It has not been amended, except the order to amend is on the record, we haven't had the record written out. I did not know that that was necessary as long as your Honor had made the order.

30 The Court: Now, I don't know what you propose to do in this case, but it seems to me it is a matter for consideration whether or not before the defense is made you propose to rest upon the case alleged in your bill or whether you propose to amend your bill and make it conform more closely to your proofs. If you propose the latter way then the defendant ought not to be compelled to go on with his case until he sees your amendment and has an opportunity of answering your amended bill, if he so desires. Now that is the situation, and it is so peculiar that I shall be glad to hear from counsel upon the subject as to what they regard as the proper course to be taken.

40

Mr. Woodbridge: Well, first, in regard to the statute of limitations. I suggested to

your Honor that the Statute of Limitations does not run in this case, even supposing Mrs. Jackson knew about her husband having taken the money all the time; we don't stand here in an action of trover and conversion or in an action for money had and received, 10 we stand here upon the express or implied trust which was created by her money going into his hands as has been decided again and again in this State, and I have authorities here, but I am not prepared to state them in their order. Then again, the Statute of Limitations does not apply in actions in equity between husband and wife. There is a case on that subject in this State, in the Court of Errors and Appeals, which holds that, and 20 that is not changed by the fact that this suit is against his executor.

The Court: What case do you refer to?

Mr. Woodbridge: I didn't expect to argue this case to-day, now.

The Court: Well, it is not necessary for you to argue the matter to-day.

Mr. Woodbridge: I have a number of au- 30 thorities bearing upon this matter.

The Court: Well, you need not state them now. I have pointed out the difficulty. Your proofs do not correspond with the allegations of your bill in what seems to be an important particular. Your bill alleges that this taking was fraudulently concealed from Mrs. Jackson during her husband's life time, during the nine years he lived after the taking of her money. The proof is that Mrs. Jackson 40 was informed of its taking immediately after it occurred; within a month at the latest, and

10 that she could not have been ignorant of the person who took it; consequently that allegation in your bill is not sustained by the evidence. Now all I ask you now is whether or not you desire to amend your bill; I don't call upon you to amend it, I do not say that you must amend it, but I merely want to know whether you ask to amend it, because if the case goes on I shall of course have to decide the case as it is—as it appears upon the record and the proofs.

20 You are not obliged to amend the bill; if you think that your proofs substantially conform to your allegations why of course it is for you to say whether or not you desire to amend or not.

30 Mr. Woodbridge: I think if your Honor will permit me to make a suggestion in regard to this I should think it was a fraudulent concealment, when he kept from her what he did with this money, because even shortly before his death, while he said to her "In the desk, in the desk," she didn't even know what was in the desk until she came to open it, so that he kept from her what he had done with this money, and the disposition of the money up to the time of his death. Now, it would seem to me that the statute of limitations did not begin to run against her from the time that he took it, and that the discovery of the fraud was not when she discovered he took it but when she knew where she could trace it to; that strikes me would be the real question as to the discovery of the fraud. I don't know how that appeals to your Honor. When she knew that the mortgage was paid off, which she testified she didn't know until after his

40

death, when she found in his desk the bond and mortgage or assignment, which were not recorded until after his death. That was the time, as it strikes me, of the discovery of the fraud. Suppose we had to deal with the statute of limitations, she could not bring an action against her husband for money had and received, she could not have had him arrested for larceny. 10

The Court: Could not she have sued her husband in equity? It has been decided over and over again that she could have sued him in equity.

Mr. Woodbridge: That is undoubtedly true, she could sue him in equity for an accounting, and for the funds, but just those bare admissions between husband and wife and to Mr. Oliver that he had taken this money from her, without any effort on her part to trade it, or without any means on her part to trade it or show what he did with it, do not strike me would give her a standing in such a suit. I don't believe a suit in equity for money had and received would be sufficient. I think she would have been compelled to trace it, would not she? 20 30

The Court: I want you to take your own course; I think it is only fair that you should know what the difficulties are which exist in my mind. Now do you wish to rest on your present pleadings and proof or do you wish to amend? If you desire to amend I will give you an opportunity of doing so.

Mr. Strong: I suppose the pleadings stand in their present shape. Then all the testimony which has been given showing knowl- 40

10 edge by Mrs. Jackson—the admissions made to her and made to the detective ought to be stricken from the case, that is to say, if the allegation stands in the bill that this was concealed, then the proof which tends to show admissions by him in his life time ought to be excluded.

The Court: I will determine that when I come to decide the case.

Mr. Strong: Otherwise it seems to me there would be no value in the rule requiring pleadings and proofs to correspond.

20 The Court: If Mr. Woodbridge would like to take time to consider the matter I will adjourn now until a quarter to two.

Mr. Woodbridge: I would like to do that. Suppose we do not amend are the defendants to go on to-day?

The Court: Yes.

Mr. Woodbridge: If we do amend then the case will have to stand over.

30 Mr. Strong: Whatever amendments are to be made I think should be actually made, and I ought to have an opportunity to change our pleadings, if the Court please.

Recess.

40 Mr. Woodbridge: We have had an opportunity of considering the matter, and I am of the opinion that the statute of limitations, if it applies, should have been pleaded to the bill as it stands already. The allegations of the bill are to the effect substantially that he fraudulently concealed what he did with the money, and not that he fraudulently con-

cealed from her the taking of it. This bill is
 a bill to trace the monies, and is not in the
 nature of a suit in equity by a wife against
 her husband to recover monies, but to charge
 certain monies which are followed with a trust
 and I think the statute of limitations if appli- 10
 cable at all thereto do not apply until she dis-
 covered where the monies were put, so that
 they can be followed and charged with the
 trust. I think it is not necessary or proper to
 amend the bill, not being directed by the Court
 to amend it, but only receiving it as a sugges-
 tion. I offer to amend the bill in regard to
 discrepancies that appear between the plead-
 ings and proofs of the fact that the money
 went into the National Bank of New Jersey, 20
 and that it was from thence drawn and placed
 in the Manhattan Savings Bank in New York,
 as alleged in the bill; the proofs showing and
 the complainant claiming that the money went
 directly into the Manhattan Savings Institu-
 tion from the possession of Mr. Jackson, no
 part having gone into the National Bank of
 New Jersey of these monies which we seek
 to trace in the bill.

The Court: Do you apply for leave to 30
 amend in that respect? If you do apply for
 such leave I will permit it. That will require
 you to amend the bill and put it in such shape
 that it can be answered, and Mr. Strong need
 not go on until he has a chance to answer
 your amended bill.

Mr. Woodbridge: I don't know how far
 that amendment strikes your Honor as being 40
 with respect to material allegations.

The Court: I cannot express any opinion
 upon that now; if you apply to amend I shall

allow you to amend on terms which will give Mr. Strong an opportunity, if he desires it, to see the amended bill reduced to writing, and an opportunity to reply to it; you must take your own course.

10 Mr. Woodbridge: I will apply to amend the bill in that respect. It seems to be a material
allegations in the tracing of those frauds, so I will apply to amend my bill to such form,
on pages 5 and 6, that the statement that the money was deposited by the said Thomas A.
Jackson in the National Bank of New Jersey and were thence drawn out and placed in the
Manhattan Savings Institution of New York City, be taken out, and that in lieu of that
20 statement we will allege that the said Thomas A. Jackson retained said monies in his possession in some place unknown to the complainant, until the 18th day of July, 1895, at which time and place the said monies or a portion of them were placed in the Manhattan Savings Institution in New York City.

Mr. Strong: I object to that amendment, but I recognize that your Honor has discretion about it. and if your Honor allows the
30 amendment I desire to avail myself of the position which your Honor has spoken of—of seeing the bill in its final shape and replying to the amended bill by answer, I don't think we ought to be obliged to go on with the case to-day, if the amendment is made.

The Court: Then you don't propose to offer any evidence to-day.

40 Mr. Strong: No, sir.

Mr. Woodbridge: I don't want it to be said on the argument of the case that he has been

taken by surprise, it strikes me this is an utterly immaterial allegation.

The Court: I do not say you are obliged to amend; I say if you do amend it will be terms that Mr. Strong has an opportunity to answer. I do not want to be understood as saying that I advise or suggest an amendment, or that I have any opinion with respect to the matter, it is a matter that rests entirely within your own discretion.

Mr. Woodbridge: I think I will withdraw my application to amend the bill in order that the case may go on to-day.

Mr. Strong: Then the case stands as it is.

The Court: Yes. 20

Mr. Strong: I think if your Honor please I will not offer any evidence. We rest.

The Court: Then the case is ready for argument.

Mr. Woodbridge: I am not ready to argue it to-day.

The Court: The case is closed and ready for argument, if there is no objection by the other side you (Mr. Woodbridge) may put in a brief hereafter. Have you any objection to that course, Mr. Strong? 30

Mr. Strong: No, sir, I suppose I may have the same opportunity.

The Court: Certainly.

Case closed in order that the evidence may be written out and forwarded to counsel and briefs prepared by them. 40

Exhibit 1.**A.**

No. 2. New Brunswick, N. J., October 20th, ¹⁸⁹³~~1903~~.

National Bank of New Jersey

10

Pay to the order of Thomas A. Jackson

One Thousand and Six Hundred 00-100 Dollars

\$1,600 00-100

MRS. AMELIA R. PRICE

B.

Certificate No. 193

\$1600 00-100

New Brunswick, N. J., Oct. 14, 1893.

20

To Mrs. Amelia R. Price—

This is to Certify That under the terms of
the contract dated Apl. 17 for work upon
your Residence—

Mr. Thomas A. Jackson

Contractor for Carpentry, etc. is entitled to
the First payment amounting to

Sixteen hundred no-100 Dollars.

E. & O. E.

Amount of Contract \$4440 50

30

Am't of this Cert., \$1600

Previously paid,

Total paid to date, \$1600 00

Balance, \$2840 50

D. D. WILLIAMSON,

Architect.

\$1600 00-100

1893

Received from Mrs. Amelia R. Price

40

Sixteen no-100 Dollars,

as per above Certificate Oct. 20th.

THOMAS A. JACKSON.

D. D. Williamson, Architect,
New Brunswick, N. J.

C.

No. 3 New Brunswick, N. J., January 11th, 1894

National Bank of New Jersey

Pay to the order of Howard V. Buttler & Co.

One Thousand and Four Hundred 00-100 Dollars 10

\$1400 00-100

MRS. AMELIA R. PRICE.

20

30

40

D.

Certificate No. 2060

\$1400 00

New Brunswick, N. J., Jan. 8th, 1894

To Mrs. Amelia R. Price—

10

This is to Certify That under the terms of the contract dated — for work upon your residence—(Contract is made with T. A. Jackson and this certificate is issued upon order of said T. A. Jackson)—

M Howard V. Buttler & Co

Contractor for Interior finish is entitled to the only payment amounting to

Fourteen hundred no-100 Dollars.

20

Note:—This certificate does not constitute an acceptance of the work, and does not relieve the contractor from responsibility for defective work, or omissions, or other imperfections.

Amount of Contract, \$1400

Am't of this Cert., \$1400

Previously paid,

D. D. Williamson, Architect,
New Brunswick, N. J.

Total paid to date, \$1400

Balance, \$

30

D. D. WILLIAMSON Architect.

E. & O. E.

\$1400 00

Jan. 8th, 1894

Received from Mrs. Amelia R. Price—

Fourteen hundred no-100 Dollars,
as per above Certificate.

HOWARD V. BUTTLER & CO.

40

Exhibit 2.

Certificate No. 211.

\$1440 50

New Brunswick, N. J., Jan. 31, 1894.

To Mrs. Amelia R. Price—

This is to Certify That under the terms of
the contract dated — for work upon your
residence 10

Mr. Thomas A. Jackson

Contractor for Carpentry is entitled to the
Final (Contract) payment amounting to
Fourteen hundred and forty 50-100 Dollars,
Note:—This certificate does not constitute

an acceptance of the work, and does not
relieve the contractor from responsibil-
ity for defective work, or omissions, or
other imperfections. 20

Amount of Contract, \$4440 50

Am't of this Cert., \$1440 50

Previously paid, 3000 00

Total paid to date, \$4440 50

Balance, \$

D. D. WILLIAMSON, Architect.

E. & O. E.

\$1440 50

Jan. 31, 1894. 30

Received from Mrs. Amelia R. Price—

Fourteen hundred and forty 50-100 Dollars,
as per above Certificate.

THOMAS A. JACKSON.

D. D. Williamson, Architect,
New Brunswick, N. J.

Exhibit 3.

Mortgage covering property described in bill of complaint given by Thomas A. Jackson and Anna E., his wife, dated January 3, 1887, duly acknowledged January 4, 1887; recorded January 10 8, 1887, in Book 98, at page 672, &c., Middlesex County Clerk's Office.

Amount \$1800.00. Due January 15, 1888. Given to secure bond Exhibit 4.

Exhibit 4.**BOND.**

20 Know all Men by these Presents, That I Thomas A. Jackson of the City of New Brunswick in the County of Middlesex and State of New Jersey am held and firmly bound unto James Hart of the City of New Brunswick, Middlesex County, New Jersey, in the sum of Thirty-six Hundred Dollars lawful money of the United States of America to be paid to the said James Hart or to his certain Attorney, Executors, Administrators or assigns;
30 To which payment well and truly to be made, I bind myself, my Heirs, Executors and Administrators, firmly by these presents. Sealed with my Seal and Dated the Third day of January, in the year of Our Lord One Thousand Eight Hundred and Eighty-seven.

The condition of this obligation is such that if the above bounden Thomas A. Jackson, his Heirs, Executors, Administrators, or any of them shall and do well and truly pay or cause to be paid unto
40 the above mentioned James Hart or to his certain Attorney, Executors, Administrators or Assigns

the just and full sum of Eighteen Hundred Dollars lawful money aforesaid in one year from the Fifteenth day of January in the year of Our Lord One Thousand Eight Hundred and Eighty-seven with interest from the same at the rate of five per cent. per annum payable semi-annually without any fraud or other delay then this obligation to be void or else to be and remain in full force and virtue. 10

THOMAS A. JACKSON. (Seal.)

Signed, sealed and delivered {
in the presence of }

JAMES H. VAN CLEEF.

New Brunswick July 15 1887 Recd from Thomas A Jackson forty-five 45.00 Dollars interest on the Winthen Bond Paying to July 15 1887 20

JAMES HART.

New Brunswick January 15 1888 Recd from Thomas A. Jackson Forty five 45.00 interest on the winthen Bond paying to January 15 1888

\$45.00

JAMES HART.

New Brunswick July 15 1888 Recd from thommas A Jackson forty five dollars 45.00 interest on Eighteen hundred Dollars Paying to July 15 1888 30

JAMES HART.

New Brunswick January 15 1889 Recd from thomas A Jackson Forty five dollars instred on the winthen Bond pay to January 15 1889 45 00-100

JAMES HART.

also two hundred dollars on princepell laving the winthen Bond to sixteen hundred dollars 40

JAMES HART.

New Brunswick Juley 15 1889 Received from Mr.
Thomas A Jackson Fortey Dollars instred on six-
teen Hundred dollars Paying to Juley 15th, 1889

\$40.00

JAMES HART.

- 10 New Brunswick Janary 15th 1890 Received from
Thonas A. Jackson Fortey Dollars instred on six-
teen Hundred dollars paying to Janary 15th 1890

\$40.00

JAMES HART.

New Brunswick July 15 1890

Reed from thomaes A. Jackson fortety dollars in-
terst on sixteen Hundred dollars Paying to Juley
15 1890 \$40.00

- 20 also one Hundred dollars on princell reducing
morgage to fifteen hundred dollars JAME HART
\$100.00

New Brunswick Janary 15 1891 Red from thomaes
A Jackson the sum of thirtey sevan dollars And
50 et intrest on fifteen Hundred dollars paying to
Janary 15 1891 \$37 50-100

Also one Hundred dollars on princell reducing
morgage To fourteen hundred dollars \$100 00-100

JAMES HART.

- 30 New Brunswick July 15th 1891 Red from thomas
A. Jackson The sum of thirty five dollars)35.00(
intrest on fourteen hundrd Dollars paying to July
15 1891 also one hundred dollars Princell reducing
morgage to thirteen Hundred Dollars

JAMES HART.

- 40 New Brunswick Jan 15th 1892 Red from Thomas
A Jackson The Sum of Thirty two Dollars and
fifty cents \$32.50 Interest on thirteen hundred
Dollars paying to Jan 15th 1892

JAMES HART.

New Brunswick July 15 1892 Red from thomas A.
Jackson The sum of thirty two Dollars & fifty
cents)32.50(intrest on Thirteen Hundred Dollars
paying to July 15th 1892 JAMES HART.

New Brunswick Jan. 15 1893 Recd from Thomas
A. Jackson The sum of thirty two Dollars & fifty 10
cents \$32.50 intrest on thirteen Hundred Dollars
Paying to January 15th 1893 JAMES HART.

New Brunswick July 15th 1893 Recd from Thomas
A. Jackson The sum of thirty two dollars & fifty
cents 32.50 intrest on thirteen Hundred Dollars
Paying to July 15 1893

JAMES HART.

New Bruswick Janary 15 1894 Rec from thomas A 20
Jackson Thirty two dollars & fifty cents 32.50 in-
strest on thirteen Hundred Dollars Paying to
January 15 1894 JAMES HART.

New Brunswick July 16 1894 Rec from Thomas A.
Jackson Thirty two dollars & fifty cents)32.50(
instred on the Whin Bond Also three Hundred
Dollars on Principle reducin it to one thousand
Dollars JAMES HART.

Rec twenty five dollars intrest to the 15 of Janary 30
1895 \$25.00 JAMES HART.

New Brunswick, July 15 1895
Rec Twenty five dollars intrest to the 15th of Juley
1895 \$25.00 JAMES HART.

Recd Twenty five Dollars intrest to January 15
1896 \$25.00

Rec twenty five dollars intrest to July 15 1896 40
25.00

Rec Twenty five dollars intrest to Janary 15 1897
\$25.00

Rec Twenty five dollars intrest to July 15 1897
25.00

- 10 Rec Twenty five dollars intrest to Janary 15 1898
\$25.00

Rec Twenty five dollars intrest to July 15 1898
\$25.00

Received Jany 28 1899 the sum of Twenty-seven
Dollars and eight cents interest in full on within
bond to February 1st 1899 JAMES HART.

20

Exhibit 5.

- Know all Men by these Presents, That I James
Hart of the City of New Brunswick County of
Middlesex and State of New Jersey, party of the
first part, in consideration of the sum of One Thou-
sand Dollars lawful money of the United States of
America, to me in hand paid by Richard R. Haga-
man of the City of New Brunswick County of Mid-
dlesex and State of New Jersey, party of the Sec-
30 ond Part, at or before the ensealing and delivery
of these presents, the receipt whereof is hereby
acknowledged, have granted, bargained, sold, as-
signed, transferred and set over, and by these
presents do grant, bargain, sell, assign, transfer,
and set over unto the said party of the second part
his heirs executors administrators and assigns an
Indenture of Mortgage bearing date the Third day
of January, One Thousand Eight Hundred and
eighty-seven made by Thomas A. Jackson and
40 Anna Elizabeth Jackson his wife on lands in the
City of New Brunswick County of Middlesex and

State of New Jersey to me to secure the payment of the sum of Eighteen Hundred Dollars which mortgage is recorded in the Clerk's office of the County of Middlesex in Book 98 of Mortgages, pages 672 &c.

Together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To Have and to Hold, the same unto the said party of the second part his heirs, executors, administrators or assigns forever

subject only to the proviso in the said Indenture of Mortgage mentioned: And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made; And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of One Thousand Dollars

In Witness Whereof, I have hereunto set my Hand and Seal the Twenty-eighth day of January in the year of Our Lord One Thousand Eight Hundred and Ninety nine.

JAMES HART. (Seal.)

Signed, sealed and delivered {
in the presence of }

JAMES H. VAN CLEEF.

State of New Jersey,)
 County of Middlesex. } ss.:

Be it Remembered, That on this Twenty-eighth day of January in the year of Our Lord One Thousand Eight Hundred and Ninety-nine before me
 10 one of the Masters in Chancery of New Jersey personally appeared James Hart who, I am satisfied is the assignor in the within Deed of Assignment named: and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

JAMES H. VAN CLEEF,
 20 Master in Chancery of New Jersey.

Exhibit 6.

Know all Men by these Presents, That I Richard R. Hagerman of the City of New Brunswick, County of Middlesex and State of New Jersey

Do Hereby Certify, That a certain MORTGAGE bearing date the Third day of January in the year
 30 of Our Lord One Thousand Eight hundred and eighty-seven made and executed by Thomas A. Jackson and Anna Elizabeth Jackson his wife to James Hart to secure the sum of Eighteen hundred dollars, and which said mortgage, together with the bond accompanying the same was on the twenty eighth day of January, in the year of Our Lord Eighteen hundred and ninety-nine assigned and transferred to Richard R. Hagerman and which assignment has not yet been recorded, and
 40 which said mortgage was received in the Clerk's Office of the County of Middlesex and recorded in

the office of the Clerk of the County of Middlesex in Book 98 of Mortgages, page 672 &c. on the Eighth day of January 1887 at 1.25 o'clock P. M., is paid and satisfied; and I do hereby consent that the same may be discharged of Record.

Witness my hand and seal this Fourteenth day 10
of November, 1902.

RICHARD R. HAGERMAN. (Seal.)

Witness:

JAMES H. VAN CLEEF.

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

Be it Remembered, That on this Fourteenth day of November in the year of Our Lord One Thou- 20
sand Nine hundred and Two, before me, one of the Masters in Chancery of New Jersey personally appeared Richard R. Hagerman who, I am satisfied is the person mentioned in the foregoing Discharge of Mortgage, 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.

JAMES H. VAN CLEEF, (Seal) 30

Master in Chancery of New Jersey.

Exhibit 7.

Copy of Account in New Brunswick Savings Institution.

Statement of Account

10	No. 26430	Thomas A. Jackson		
	1895			
	Feby 1	Deposit		500.
	Mch 29	"		500.
	July 1	Interest		10.
	Aug 1	Draft	10.	
	96			
	Jany 1	Interest		20.
	Feby 3	Draft	20	
	July 1	Interest		20.
20	Aug 31	Draft	20	
	97			
	Jany 1	Interest		20.
	Feby 27	Draft	20.	
	July 1	Interest		20.
	Sept. 27	Draft	20.	
	98			
	Jany 1	Interest		20.
	Feby 23	Draft	20.	
	July 1	Interest		20.
30	Sept. 12	Draft	20.	
	99			
	Jany 1	Interest		20.
	Jany 11	Draft	20.	
	July 1	Interest		15.
	July 7	Draft	800.	
	Aug 14	"	15.	
	1900			
	Jany 1	Interest		3.
	July 1	Interest		3.04
40	01			
	Jan 1	Interest		3.09
	July 1	Interest		3.13

02			
Jan	1	Interest	3.18
July	1	Interest	3.22
03			
Jan	1	Interest	3.27
July	1	Interest	3.31
04			10
Jan	1	Interest	3.37
July	1	Interest	3.42
05			
Jan	1	Interest	3.48
Feby	24	Draft	200.
July	1	Interest	.52
		Balance	36.03

— — — —

Exhibit 8.

No. 140647.

Thomas A. Jackson

in account with the

Manhattan Savings Institution of the City of New
York

644 & 646 Broadway, Cor. Bleecker Street
New York 30

1895		Drafts	Deposits
July	18		1500.
1896			
Jany	1	Interest	13.75
July	1	"	27.72
1897			
Jany	1	"	26.96
July	1	"	27.44
1898			40
Jany	1	"	27.91

	July 1	"		28.40
	1899			
	Jany 1	"		28.91

	Jany 26		118109	1681.09
10	July 1	Interest		8.75
	1900			
	Jany 1	"		8.89
	July 1	"		9.04
	1901			
	Jany 1	"		9.20
	July 1	"		9.36
	1902			
	Jany 1	"		9.53
	July 1	"		9.69
20	1903			
	Jany 1	"		9.87
	July 1	"		10.04
	1904			
	Jany 1,	"		10.22
	June 6		59459	
			----	----
			177568	177568
			----	----

Exhibit C 20 (9).

Account of Thomas A. Jackson in National Bank
of New Jersey at New Brunswick, N. J.

1893.		1893.	
Mch.	28,	522.61	Mch. 1, Balance, 35.00
	29,	94.54	28, 2386.63 10
	29,	50.79	July 8, 10.40
Apl.	1,	701.64	14, 71.92
	26,	10.42	Sept. 9, 95.00
May	8,	6.75	11, 24.06
	10,	25.00	
	16,	7.50	
	19,	7.87	
	29,	15.00	
June	5,	12.50	
	7,	25.00	20
	7,	15.00	
	12,	14.46	
	13,	28.92	
	19,	19.18	
	19,	8.90	
	20,	6.00	
	24,	10.00	
	26,	12.22	
	27,	24.04	
July	3,	11.50	30
	3,	10.00	
	5,	11.75	
	6,	22.50	
	7,	46.60	
	8,	100.00	
	11,	10.00	
	14,	50.00	
	22,	75.00	
	28,	30.00	
		500.00	40
Oct.	6,	140.00	
	21,	230.00	Oct. 21, 1600.00

	Nov. 4,	100.00	Dec. 21,	276.72
	6,	14.64	1894.	
	8,	175.00	Feby. 12,	1440.50
	18,	100.00	24,	2551.00
	Dec. 2,	100.00	Mch. 17,	70.86
	16,	30.00		
10	1894.			
	Jany. 3,	12.00		
	10,	279.25		
	13,	222.75		
	15,	2.50		
	17,	32.50		
	Feby. 13,	1089.54		
	14,	117.56		
	14,	76.43		
20	19,	200.		
	19,	100.		
	28,	968.53		
	Mch. 8,	26.25		
	9,	35.00		
	27,	19.07		
	May 7,	4.00		
	14,	25.00		
	21,	10.86		
	July 18,	397.21		
30	Aug. 9,	7.00		
	Sept. 11,	10.50		
	22,	236.42		
	Oct. 2,	10.50		
	15,	25.00		
	Nov. 2,	20.00		
	Dec. 17,	21.00		
	1895.			
	Feby. 1,	500.00		
	Mch. 30,	500.00		
40	Apl. 8,	9.00		
	9,	18.80		
	20,	22.70		

May 3,	12.00	
June 11,	18.00	
17,	18.00	
25,	27.64	
Aug. 3,	9.00	
Sept. 28,	83.20	
Oct. 26,	3.00	10
Balance,	26.55	
	5946.40	5946.40

Jany. 2, 1897, Balance, 26.55

This balance was withdrawn Sept. 25, 1897.

20

30

40

Copy of Notice to Produce.

IN CHANCERY OF NEW JERSEY.

10	Between WILLIAM E. TEN BROECK, <i>Complainant,</i> —and— CHARLES A. JACKSON, Executor, &c., <i>et als.</i> , <i>Defendants.</i>	}	On Bill, &c.
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20 To the above named defendants and JAMES H. VAN CLEEF, SCHUYLER C. VAN CLEEF and ALAN H. STRONG, their solicitors:

TAKE NOTICE that you are hereby required to produce on the trial of the above stated cause before the Hon. Frederic W. Stevens, one of the Vice-Chancellors of the State of New Jersey, at the Court House in the City of New Brunswick, New Jersey, on the twenty second day of September, instant (1905), at the hour of ten (10) o'clock in the forenoon, the following documents which are in your possession or in the possession of the defendants:

30 A deed made by Azariah Rule and wife to Thomas A. Jackson dated March ninth, eighteen hundred and eighty six, and recorded in the Middlesex County Clerk's Office in Book 207 of Deeds, page 148, &c., describing premises of which the said Thomas A. Jackson died seized and possessed.

40

A deed made by William Boylan and wife to Thomas A. Jackson, dated September twenty ninth, eighteen hundred and sixty eight, recorded in Middlesex County Clerk's Office in Book 114 of Deeds, page 340, &c., covering premises therein described, of which the said Thomas A. Jackson died seized and possessed. 10

A mortgage made by Thomas A. Jackson and Annie E. Jackson, his wife, to James Hart, dated January third, eighteen hundred and eighty seven, for the sum of eighteen hundred dollars to secure the payment of a certain bond accompanying said mortgage and bearing even date therewith for the same sum, given by the said Thomas A. Jackson to the said James Hart; which mortgage was recorded in Book 98 of Mortgages, at page 672, &c., in the Middlesex County Clerk's Office.—Also the said bond accompanying the same. 20

The bank-book kept by the said Thomas A. Jackson showing his account in the National Bank of New Jersey at New Brunswick, New Jersey.

The bank-book kept by the said Thomas A. Jackson showing his account in the People's National Bank of New Brunswick, New Jersey.

The pass-book or deposit book kept by the said Thomas A. Jackson and showing his account in the New Brunswick Savings Institution of New Brunswick, New Jersey. 30

The check books containing the stubs of the checks on the said banks, all showing the accounts and check stubs of said Thomas A. Jackson from the first day of February, eighteen hundred and ninety four, to the first day of March, nineteen hundred and five. 40

All the return checks given on said banks against the said accounts or any of them during

the said period of time. All the books of account of the said Thomas A. Jackson during said period of time.

An assignment of the bond and mortgage above mentioned made and executed by James Hart to
 10 Richard R. Hageman on the twenty eighth day of January, in the year eighteen hundred and ninety nine and acknowledged before James H. Van Cleef, Master in Chancery of New Jersey, and executed in his presence, recorded March ninth, nineteen hundred and three, in Book W. of Assignments of Mortgages, at page 97, &c., in the Middlesex County Clerk's Office.

An assignment of said bond and mortgage made
 20 by the said Richard R. Hagerman to the said Thomas A. Jackson bearing date the twenty eighth day of February, eighteen hundred and ninety nine and executed and acknowledged before James H. Van Cleef, Master in Chancery of New Jersey.

The pass-book of Thomas A. Jackson in the Manhattan Savings' Institution of New York City, showing the deposits therein for a period of time from July eighteenth, eighteen hundred and ninety five, to June sixth, nineteen hundred and four,
 30 known as book of account No. 140,647.

A discharge of mortgage discharging and satisfying the bond and mortgage above mentioned and made out by Richard R. Hageman to Thomas A. Jackson, dated February fourteenth, nineteen hundred and two, acknowledged and executed before James H. Van Cleef, Master in Chancery of New Jersey, recorded in Book 2 of Discharges of Mortgages, at page 576, &c., in the Middlesex
 40 County Clerk's Office.

All other bank books, deposit books, books of account or returned checks or stubs or vouchers,

showing the accounts of the said Thomas A. Jackson in any bank, savings' institution or savings' bank or otherwise, and his payments and drafts out of the same from the first day of February, eighteen hundred and ninety-four, to the date hereof, which are or may be in your possession. 10

AND in default of such production, secondary evidence of the contents of said documents will be offered.

FREEMAN WOODBRIDGE,
Solicitor for Complainant.

Opinion.

20

IN CHANCERY OF NEW JERSEY.

Between WILLIAM E. TEN BROECK and EMMA JANE JACK- SON, <i>Complainants,</i> —and— CHARLES A. JACKSON, Executor, &c., <i>et als.</i>, <i>Defendants.</i>	}	On Bill, &c.	30
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Stevens, V. C.

This is a peculiar case. Emma J. Jackson, one of the complainants, alleges that on February 12, 1894, while her husband, Thomas A. Jackson, 40 stole from her person, while she was asleep on a

lounge, her pocket-book, containing \$2,000. She alleges further, that a part of this sum was, on July 6, 1902, that is, over eight years afterwards, used by him to pay off a mortgage on his property. He died on February 23, 1903, and this
 10 suit is brought against his executor and against a devisee, and against the executor and infant heir of another devisee. The bill prays for an account, and asks that the money used to pay off the mortgage may be charged upon the land mortgaged.

There is no direct evidence to support the allegation that the money was stolen or taken, as alleged. There is little or no circumstantial evidence. The proof of it consists in an alleged admission made to a detective by the name of Oliver,
 20 to which I shall presently advert. It appears that about a year and a half before the money is said to have disappeared, \$2,000 was paid to Mrs. Jackson on two mortgages held by her. This sum, she says, she carried constantly in her pocket after that time. She was a widow when the money was paid to her, but was married to Jackson, a widower, on October 14, 1894. They lived together
 30 up to the time of his death in a house owned by him, on George Street New Brunswick.

On February 12th, 1894, early in the evening, she says she went to 191 George Street, a house owned by her, about a block away from their residence, and then unoccupied, to look after a fire which she was keeping up to prevent the water pipes from freezing. She testifies that she had the money when she went to this house, and that she first missed it on her return home. The allegation of the bill is "that between the hours of
 40 five and eleven o'clock P. M. the said Thomas Jackson, the husband of the said Emma Jane

Jackson, fraudulently abstracted the said sum of two thousand dollars, cash money, from the pocket of the dress of the said Emma Jane Jackson, while she, the said Emma Jane Jackson, his wife, was sleeping, without her knowledge or consent.

10

There is not any legal proof of her husband's presence on this occasion. Mrs. Jackson did, indeed, state against objection that her husband entered the house after dark, but I think that this must be treated as evidence addressed to the Judge on the voir dire and that she was not a competent witness to prove even this fact as evidence in the cause, for the "transaction" began the instant she recognized him.

20

No one else was called to prove that the husband was in the company of his wife at any time during that day, so, as I have said, direct proof of the taking fails altogether.

The only evidence, then, is that of Oliver. Mrs. Jackson testifies that, suspecting her husband, she employed him as a detective within a few days after the alleged taking. He says that he had two interviews with Jackson; that he could not give the conversation, as it was eleven or twelve years ago, but that he could give "the substance."

30

On being asked for this substance, he replied: "I had two interviews with him, and at the second interview he admitted that had taken the money."

On being asked for the words in which the admission was made, he replied: Well, he said he got that two thousand dollars. He finally said,

40

“Well, what are you going to do about it?” On cross-examination, he said: “I met him once or twice upon the street and had talks with him once or twice.” On being pressed further he said he could not tell whether he didn’t tell Senator Van Cleef that Jackson made no admission to him and he concluded by saying, “I did tell Senator Van Cleef that I did not pretend to remember what was said and I don’t either. I cannot remember what Mr. Jackson said to me or what I said to him.”

I think that any one perusing this testimony and regarding the halting way in which it was given will not be disposed to consider it as very satisfactory. The detective does not speak from notes by him at the time, but from memory only. Zealous in the cause of his employer, he may have drawn an inference of guilt from what Jackson said or failed to say in answer to his questions, the soundness of which we cannot now pass upon, and this inference may very well after a lapse of nearly twelve years, have been remembered as a direct admission. Of course, this is a conjecture, but conjecture not unsupported by circumstances.

It appears that Jackson had, prior to his marriage, been a builder. He was a man of good character. He had accumulated some property. The bond offered in evidence shows that year by year he had paid something on account of principal. He owned two dwelling houses, and the lot on which he had carried on his business of carpenter and builder. He had, in February, 1894, just completed two buildings taken on contract.

It appears conclusively by his bank account, put in evidence, that on the day before the alleged

taking, there stood to his credit in a New Brunswick bank, \$1,585, and that a considerable sum of money remained on deposit for over a year afterward. A part of it (\$1,000) was actually invested by him in bank stock. The deposits of \$1,440.50 made on February 12th (before the time of the alleged taking), and of \$2,551, made on February 24, are accounted for. It is not claimed that they were composed in part of complainant's money. 10

Now, when a crime is committed, we look to see the motive of it. Here, motive seems to be wanting. Jackson was not being pressed for money. He was living with his wife and he would have had the benefit of the investment of the \$2,000 in his wife's hands as part of their joint income. He had two grown-up sons; that a man so circumstanced would have been willing to imperil his good name by such an act seems hard to believe. 20

There is another strong circumstance. Oliver says that after the alleged admission, he and Mrs. Jackson went together to consult Judge Rice, and that after the consultation, nothing further was done. Now, Mrs. Jackson was not a young woman, inexperienced and confiding. The evidence shows that she then had a grandchild eight years old. The union was, evidently, a marriage de covenant. 30

I cannot, therefore, under these circumstances, conceive why a lawyer of the ability and experience of Judge Rice, should not, upon the strength of an unqualified admission, have sent for Mr. Jackson, and insisted upon his returning the money. The remedy was clear and an interview could scarcely have ended otherwise than 40

favorably to his client. It cannot be suggested that Jackson may to their knowledge have dissipated the money; for the complainant's entire case rests upon the theory that he kept it; that a year and a half after he took it, he deposited it in a New York savings bank and that he drew from there to pay off the mortgage.

If the complainant knew that she had a case and knew, as she must have known, that her husband was pecuniarily impossible, it is very strange indeed that for the nine years that he lived, she made no effort to recover the money; that she waited until his lips were sealed by death before she took action.

It is argued by counsel that the cancellation of the mortgage was withheld from the record and that, with a view to concealment, it was assigned and not discharged, he being afraid to let it be known that he had the money to cancel it. This might have been a circumstance in complainant's favor had it not been for her own evidence that he told her that he was going to pay it off.

The so-called admissions made to Mrs. McCauley and her daughter, I regard as scarcely of any importance. Recollection of casual conversations occurring years before would necessarily be imperfect, and the reference might have been to a dozen other subjects of controversy.

If the evidence of the taking is unsatisfactory, the attempt to trace the money into the New York Savings Bank account is still more so. The only proof is an inference that the deposit must have been made with Mrs. Jackson's money because Jackson had no other money available for the purpose. But this is pure assumption. He might have held notes given to him while in active busi-

ness, or the money might have been derived from other sources unknown to Mrs. Jackson.

It seems to me that this is a case to which the doctrine of laches expounded by the Court of Appeals in *Lütjen vs. Lutjen*, 19 Dick., 773, is peculiarly applicable. 10

The complainant has waited until it has become impossible to hear both sides and to ascertain the exact facts. It is said in counsel's brief that the statute of limitations does not apply. This is undoubtedly so. The Court of Appeals so decided in *Gray vs. Gray*, 12 Stew., 511, but in that very case Beasley, C. J., used this language: "That a stale claim of this character would be open to the gravest suspicion and would often be rejected in a court of conscience on its own peculiar methods of dispensing justice is evident at a glance." 20

I think the bill should be dismissed.

30

40

Final Decree.
IN CHANCERY OF NEW JERSEY.

	Between		
10	WILLIAM E. TEN BROECK and EMMA JANE JACK- SON,	}	
	<i>Complainants,</i>		
	—and—		
	CHARLES A. JACKSON, Executor, &c., <i>et als.</i> ,	}	On Bill, &c.
	<i>Defendants.</i>		

20 This cause coming on to be heard in the pres-
ence of Freeman Woodbridge and Alfred S.
March, of counsel with the complainants and of
James H. Van Cleef, of counsel with Charles A.
Jackson, Executor, &c., Schuyler C. Van Cleef,
solicitor and of counsel pro se, and Alan H.
Strong of counsel with Caroline Jackson individ-
ually and as guardian ad litem of George J. Jack-
son individually and as guardian ad litem of
30 George J. Jackson, Jr., an infant, and the plead-
ings having been read and testimony having been
taken orally in the presence of the Court and the
arguments of counsel having been heard, and all
having been duly considered, and it appearing
that the said complainants are not entitled to the
relief prayed in and by their said bill of complaint
or to any relief under said bill;

It is therefore on this twenty-sixth day of Oc-
tober, in the year nineteen hundred and six, by
40 the Honorable William J. Magie, Chancellor of
the State of New Jersey, ordered, adjudged and
decreed that the complainants' bill be and the
same hereby dismissed with costs.

W. J. MAGIE,

Respectfully advised.

Frederic W. Stevens, V. C.

C.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between	
WILLIAM E. TEN BROECK and EMMA JANE JACK- SON,	10
<i>Complainants,</i>	
—and—	On Bill, &c.
CHARLES A. JACKSON, Executor, &c., <i>et als.</i> ,	
<i>Defendants.</i>	20

An the said William E. Ten Broeck and Emma Jane Jackson, complainants in the above stated cause, hereby appeal from the final decree made in said cause on the twenty-sixth day of October, in the year nineteen hundred and six (1906), and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated, November 30th, 1906. 30

FREEMAN WOODBRIDGE,
Solicitor for and Counsel with
William E. Ten Broeck and
Emma Jane Jackson,
Complainants.

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

FREEMAN WOODBRIDGE,
Of Counsel with William E. 40
Ten Broeck and Emma Jane
Jackson, Complainants.

Filed December 1, 1906.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

WILLIAM E. TEN BROECK
and EMMA JANE JACK-
SON,*Complainants,*

—and—

CHARLES A. JACKSON,
Executor, &c., *et als.*,

20

Defendants.

} On Appeal.

The petition of appeal of William E. Ten Broeck and Emma Jane Jackson, respectfully shows:

That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the twenty-

30 sixth day of October, in the year nineteen hundred and six, in a certain cause therein, wherein your petitioners were complainants and Charles A. Jackson, and Charles A. Jackson, executor of Thomas A. Jackson, deceased, Schuyler C. Van Cleef, executor of George J. Jackson, deceased, Caroline Jackson and Caroline Jackson, guardian ad litem of George J. Jackson, Jr., an infant, were defendants, in this respect, to wit:

40 That it was therein and thereby recited and decreed—That the pleadings in said cause having been read and the testimony having been taken

orally in the presence of the court, and the arguments of counsel having been heard, and all having been considered, and it appearing that the said complainants, these petitioners and appellants, were not entitled to the relief prayed for in and by the said bill of complaint or to any other relief under the said bill, it was there and in and by the said decree ordered, adjudged and decreed that the bill of complaint of the said complainants, these petitioners and appellants, be, and the same was by the said decree dated as aforesaid, dismissed with costs. 10

And the said complainants, these petitioners and appellants, show that they appeal from the said decree and from the whole and every part thereof on the ground that the same is erroneous, 20 for that the said complainants, these petitioners and appellants, were entitled to the relief prayed for in the said bill of complaint because it was by the testimony taken and the evidence produced in the said cause duly proved in such a way as to entitle the said complainants, these petitioners and appellants, to the relief prayed for in the said bill. That Thomas A. Jackson in his life time at the times stated in the said bill of complaint, did take from the person of the said Emma 30 Jane Jackson, his wife, the sum of two thousand dollars (\$2,000), cash money, which she then and there had in her personal possession, without her knowledge or consent and having kept the said money in his own possession and concealed from her the taking thereof, did retain the same in his possession or in his bank account or accounts in his own name, and did subsequently pay off on property which he owned in the City of New Brunswick, New Jersey, a mortgage with the said 40 funds, or a part thereof; and did also have and

keep in his possession the said funds taken as aforesaid from the said complainant, Emma Jane Jackson, and take to his own use the same and receive the interest on the same, so that the said funds, with large accumulations of interest thereon, either in the form of cash money or in the form of the property upon which he paid off the mortgage with the said funds, remained in his estate at the time of his death just prior to the filing of the said bill of complaint.

And because the said complainants, these petitioners and appellants, were not, nor were either of them, guilty of laches or delay in proceeding to recover possession of the said funds or the proceeds thereof and proceeding to follow the same into the property and estate of the said Thomas A. Jackson, because the said Thomas A. Jackson concealed from the said complainants, these petitioners and appellants, and each of them, what disposition he had made of the said funds and the same was not discovered until after his death, whereupon the said complainants, these petitioners and appellants, filed the said bill of complaint. And because thereupon the property and estate of the said Thomas A. Jackson became charged with a trust in favor of the said complainants to the amount of the said funds with the accumulations of interest thereon at the lawful rate from the time of the taking of the same.

And also because the said complainants, these petitioners and appellants, were not, nor were either of them, guilty of laches and the statute of limitations did not run against them, or either of them, and the statute of limitations had no application in said cause and the principle of laches had no application in said cause.

And also because this complainant, Emma Jane Jackson, was at the time of the taking of the said funds and at all times up to the death of the said Thomas A. Jackson remained the wife of the said Thomas A. Jackson; and because the statute of limitations and the doctrine of laches does not apply; nor do they apply to trusts, exclusively cognizable by courts of equity. And because the said Emma Jane Jackson could not have sued the said Thomas A. Jackson at law. And because the statute of limitations did not commence to run until the time of the discovery as to what disposition the said Thomas A. Jackson had made of the said funds. And because the statute of limitations and the doctrine of laches never applies to remedies for the recovery of the property of the complainant, Emma Jane Jackson. 10 20

And because the said defendants failed to plead the statute of limitations and the doctrine of laches. And because the said defendants did not answer in good faith, as required by the bill of complaint and the law, and they were not entitled to take advantage of any failure of the complainants to produce matters exclusively within the knowledge of the said defendants.

Wherefore, the complainants, these petitioners and appellants, became entitled to a decree subrogating them to the lien of the bond and mortgage on the properties described in the bill of complaint and to a decree that the said bond and mortgage be delivered up to them as a full, valid and subsisting lien against the said property. And that the said properties and the estate of the said Thomas A. Jackson should be charged with a trust in favor of the said complainants, these petitioners and appellants, to the amount of the said two thousand dollars, with interest to be computed ac- 30 40

10 cording to law, and that the said defendants may
be required to account and pay over to the said
complainants, these petitioners and appellants, for
the said sum of money, with interest to be com-
puted according to law, or such other sum of
money as shall be found to be due and owing to
them.

20 Wherefore, the said complainants, these peti-
tioners and appellants, pray that the said decree
may be in all respects reversed, set aside and for
nothing holden and such decree made in favor of
these complainants as is hereinabove set forth and
as prayed for in the said bill of complaint and that
these petitioners may have such other and further
relief in the premises as to this Honorable Court
shall seem meet.

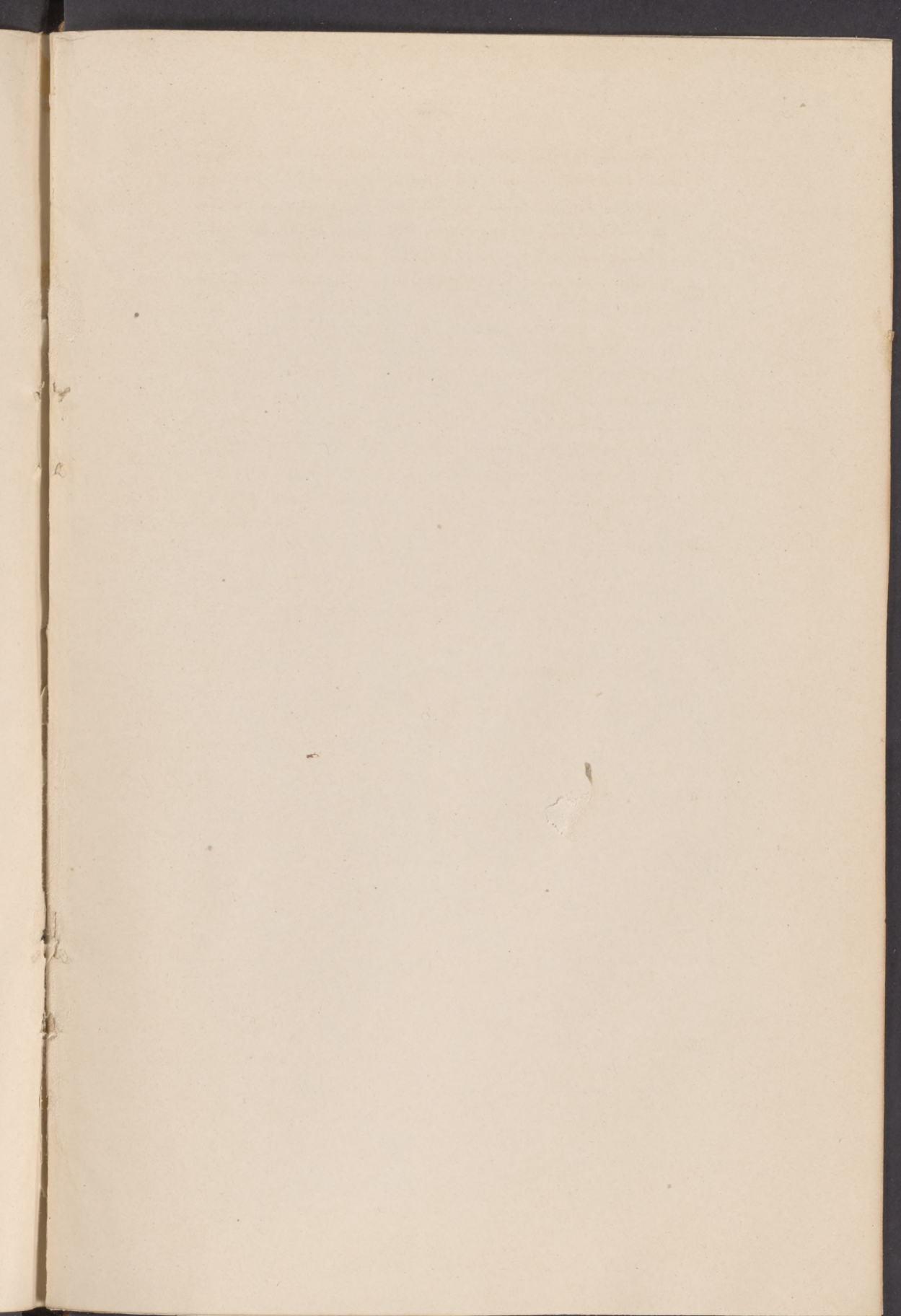
FREEMAN WOODBRIDGE,
Solicitor for and Counsel with
Appellants.

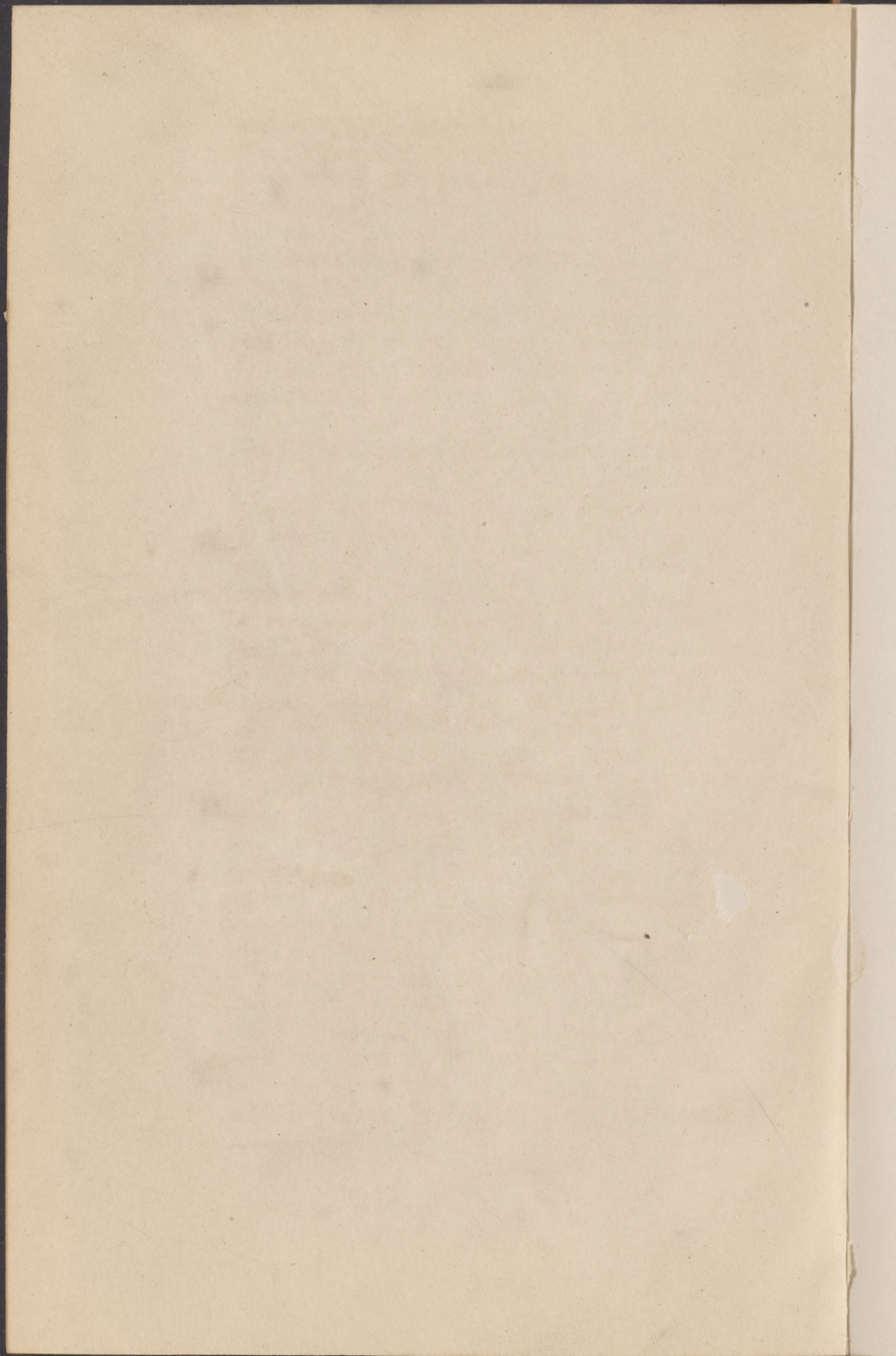
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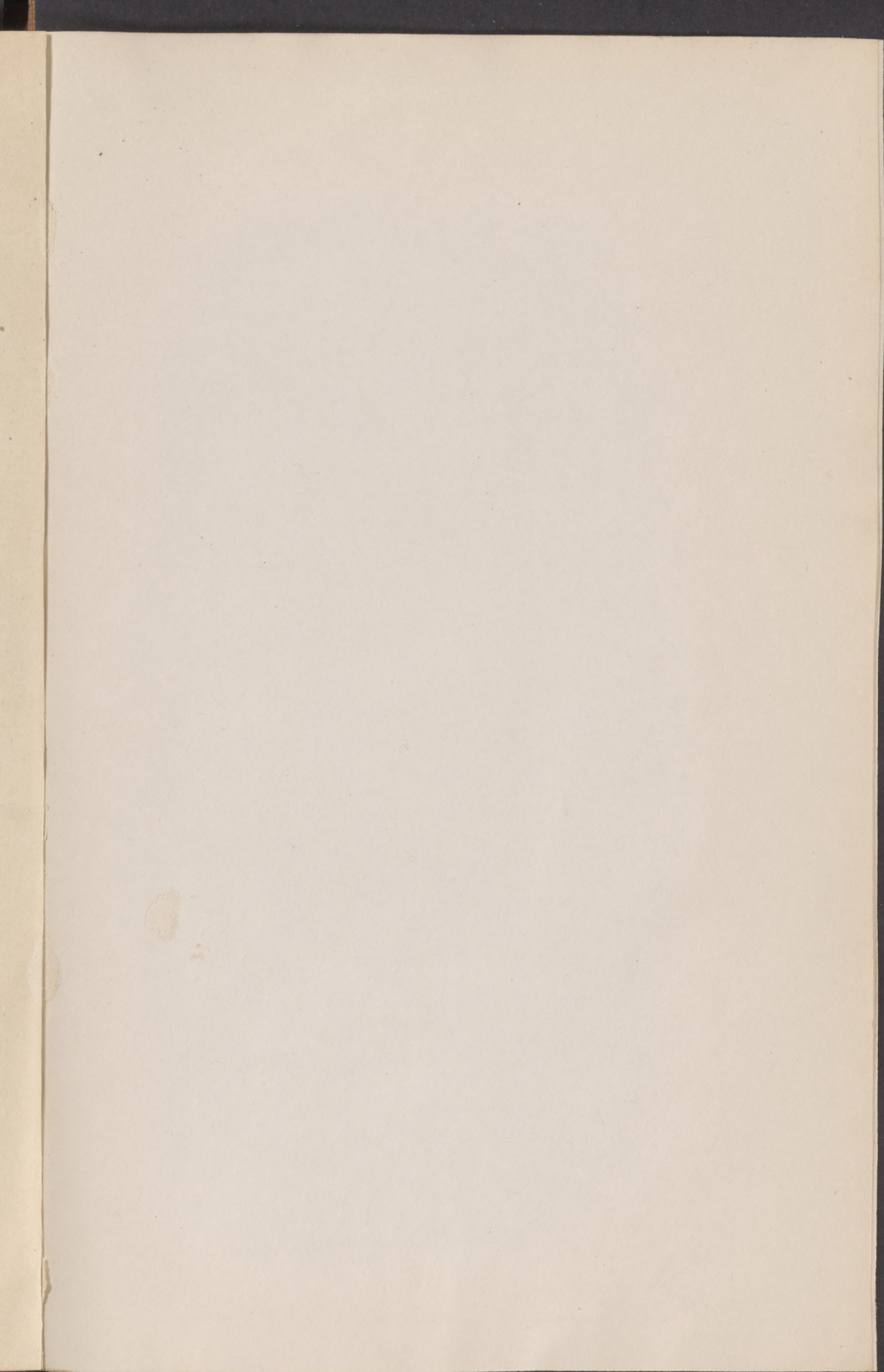
Answer in common form.

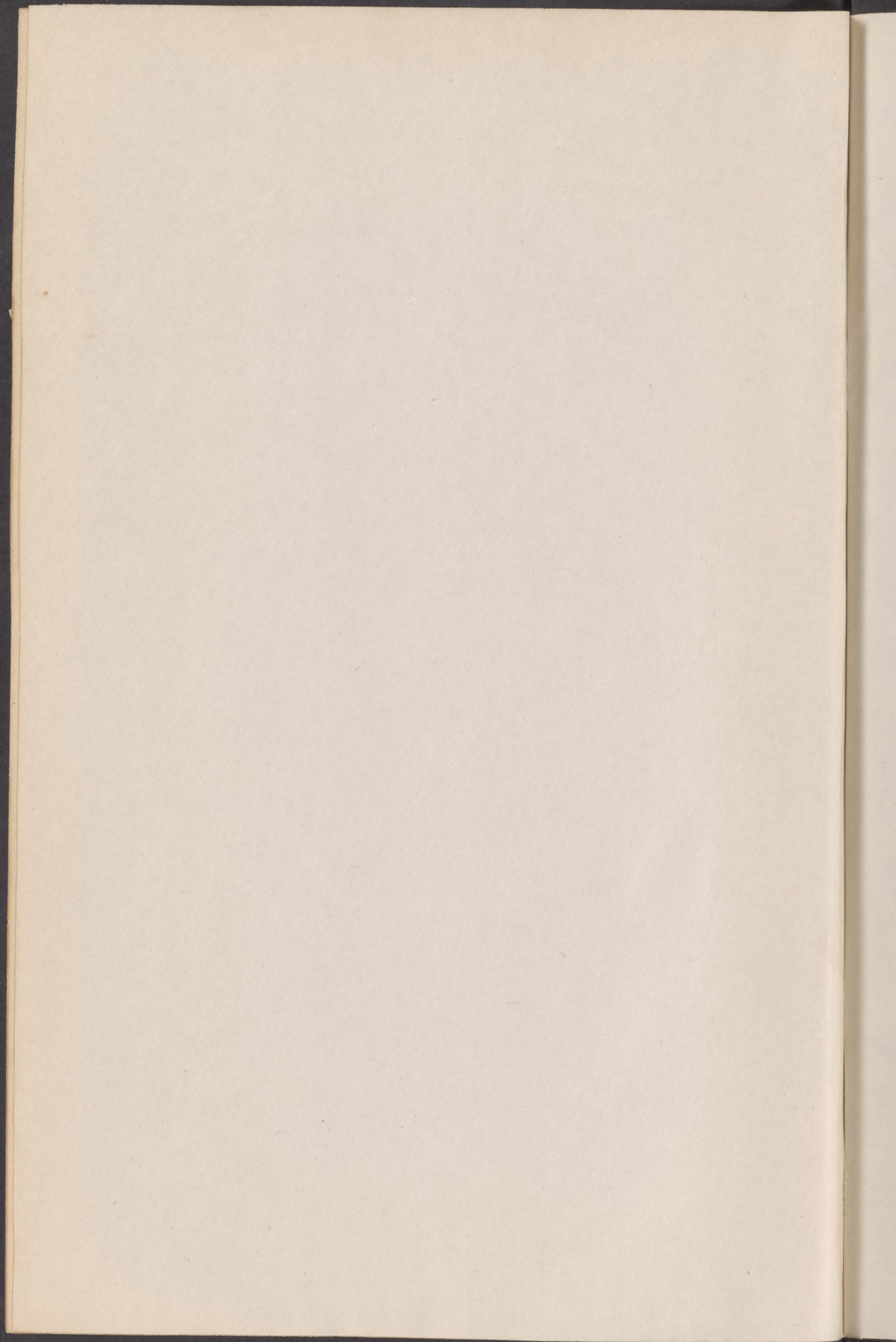
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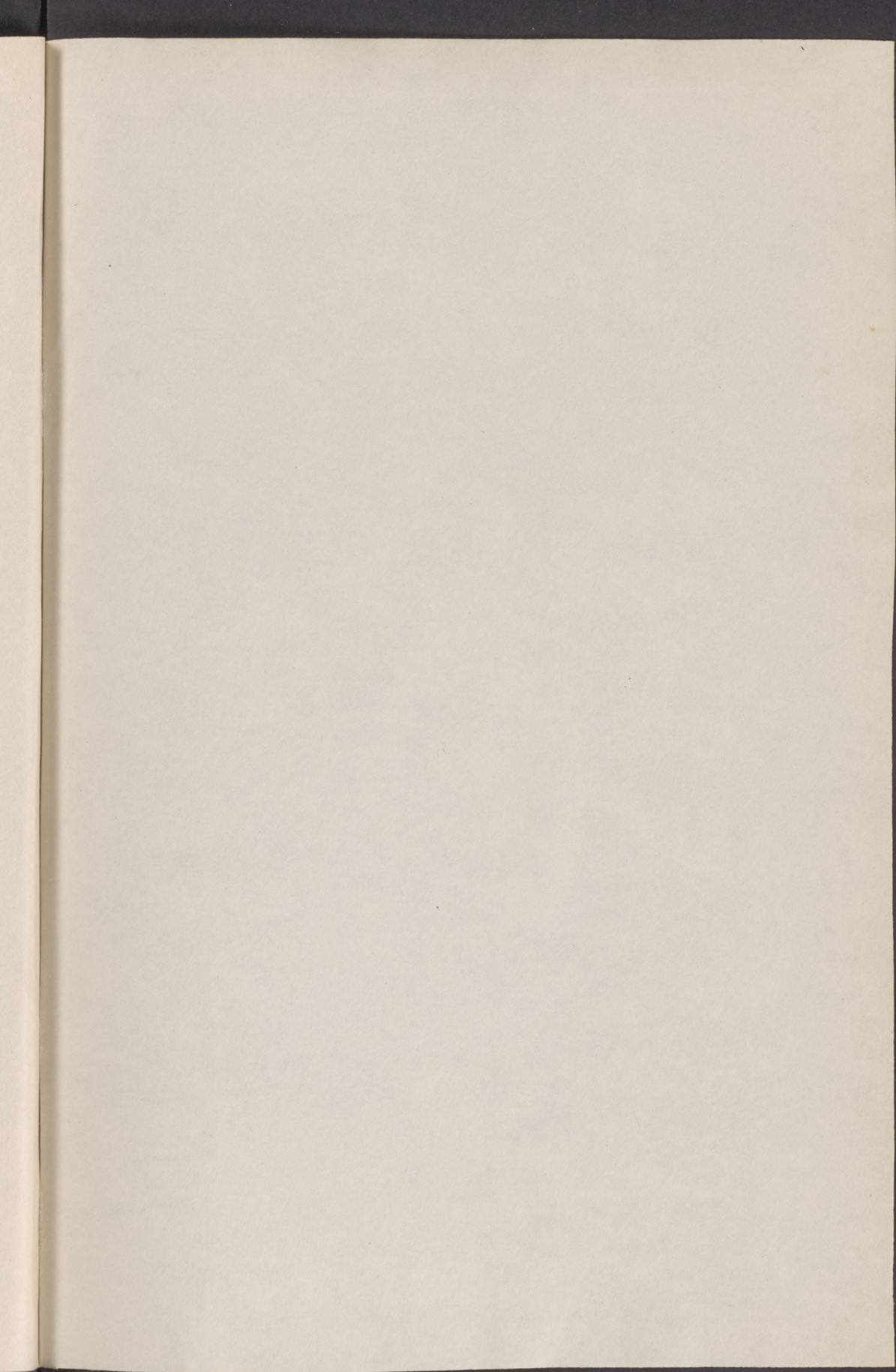
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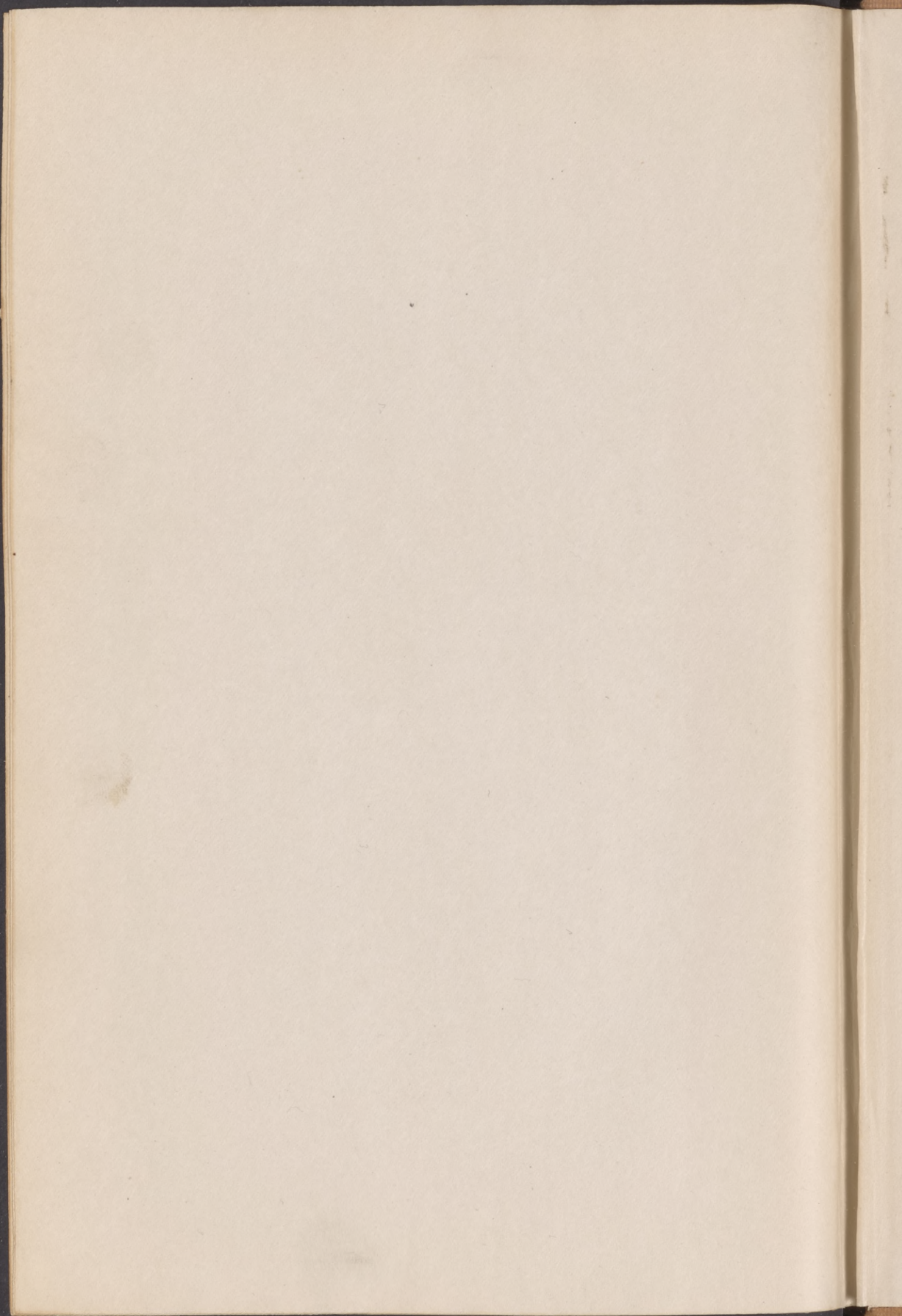


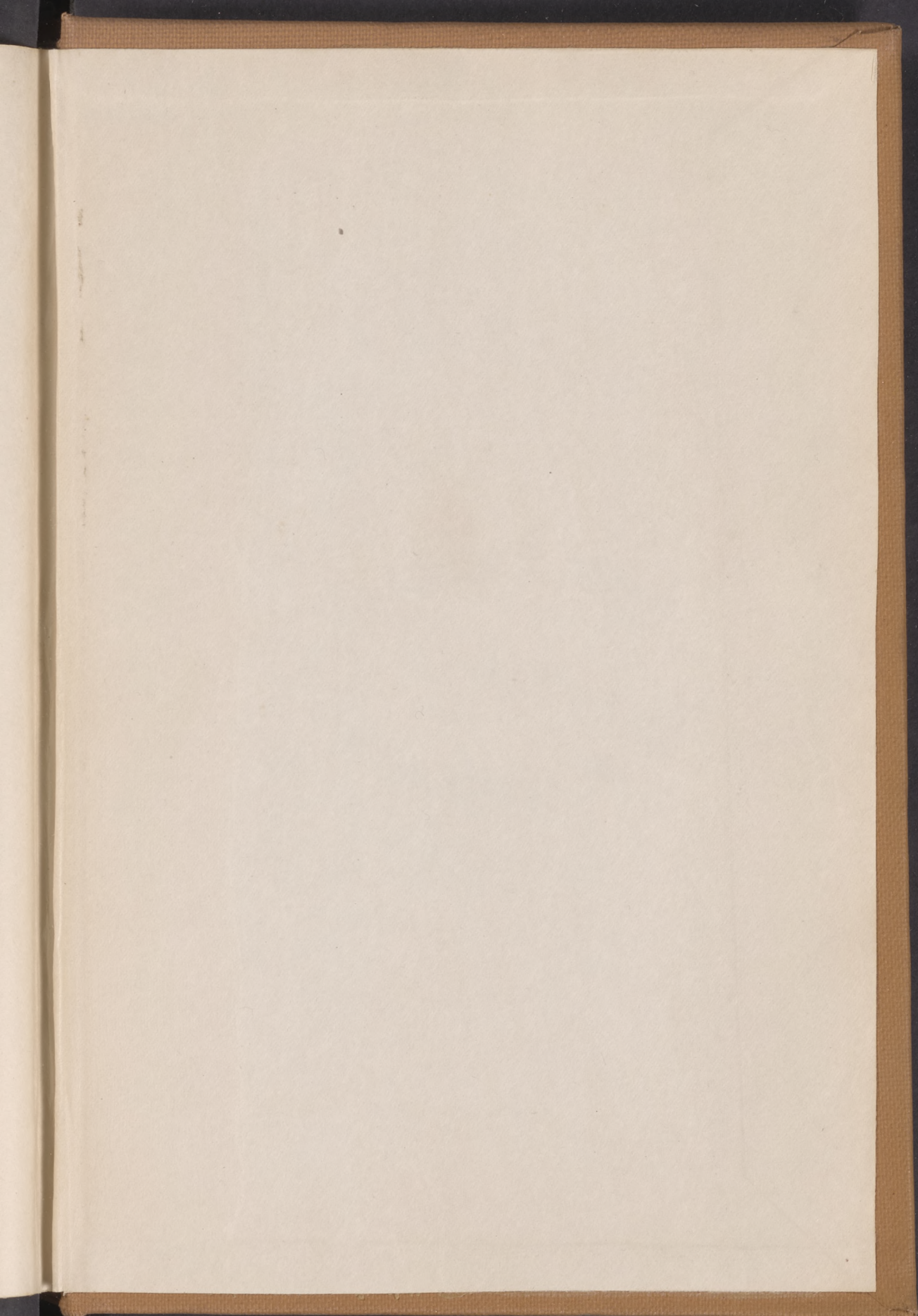












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