

# INDEX.

	PAGE
Bill of Complaint .....	1
Amended Bill of Complaint .....	5
Answer .....	6
Order of Reference .....	12
Conclusions of Vice-Chancellor .....	89
Final Decree .....	91
Notice of Appeal .....	92
Petition of Appeal .....	93
Answer to Petition of Appeal.....	95

## TESTIMONY.

Jennie M. Oppenheim, direct examination.....	13
cross " .....	18
re-direct " .....	30
re-cross " .....	33
re-called, direct examination.....	79
Myron H. Oppenheim, direct examination.....	34
cross " .....	47
re-direct " .....	59
Laura J. Tremberger, direct examination.....	60
cross " .....	64
re-direct " .....	66
Jennie G. Goodman, direct examination.....	67
cross " .....	72

*Offd. Ptd.*

Exhibit B. 1—Deed Myron H. Oppenheim, et ux., to De Peyster Realty Company.....	14	81
Exhibit C. 2—Deed Myron H. Oppenheim, et ux., to De Peyster Realty Company.....	14	84
Exhibit D. 1—Certificate of Incorporation of De Pey- ster Realty Company .....	39	9
Exhibit D. 2—Cancellation of Mutual Wills.....	60	88

INDEX

*Bill of Complaint.*

**Bill of Complaint.**

Filed December 27, 1917.

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

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Complainant residing in the City of New York, says:

1. She is the wife of the defendant Myron H. Oppenheim.
2. The defendant De Peyster Realty Company is a corporation organized and existing under the laws of the State of New York and has its principal office in the City of New York.

3. Said De Peyster Realty Company was organized by the defendant Myron H. Oppenheim for the purpose of taking title to properties owned by him and for the purpose of holding and dealing with such properties through the instrumentality of said corporation. Said Myron H. Oppenheim is the president of said corporation and is the owner of the entire capital stock of said company.

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3. In the month of May, 1902, the defendant Myron H. Oppenheim became seized in fee simple of certain lands situate at Elberon, County of Monmouth and State of New Jersey, particularly described as follows:

*First Tract*

BEGINNING on the west side of a street seventy feet wide, at the northeast corner of a tract of land heretofore conveyed by Alice M. Eaton and husband to Charles F. Hoffman, thence (1) along the west side of said street as the magnet pointed November 16th, A. D. 1895 north three degrees and fifty-five minutes east one hundred and ninety-four feet and one inch; thence (2) north eighty-three degrees and twenty minutes west one hundred and ninety feet and nine inches to the east line of lands belonging to Wilson Green; thence (3) along said line south three degrees and fifty-five minutes west two hundred and six feet and eight inches to the north line of said tract of land conveyed to Charles F. Hoffman; thence (4) along said line south eighty-seven degrees east one hundred and ninety feet and six inches to the place of beginning, containing eighty-eight hundredths of an acre.

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*Bill of Complaint.*

Being part of the same premises conveyed to Lavinia Sickles by Sarah M. Green and others by deed recorded in Monmouth County Clerk's office in Book 435 of Deeds, page 363; and duly conveyed by the said Lavinia Sickles to William M. V. Hoffman by deed recorded in the said Monmouth County Clerk's office in  
 10 Book 564 of deeds at page 80 and thereafter duly conveyed to John P. Everett, by the said William M. V. Hoffman and wife by deed intended to be recorded simultaneously herewith in the aforesaid Monmouth County Clerk's office.

*Second Tract:*

BEGINNING at a stake standing in the northeast corner of the lands hereby conveyed, said stake bearing S. 60 degrees 05 minutes W. from the west gate post to wood entrance to the grove of John Hoey, and also bearing S. 38 degrees 30 minutes W. from the centre of the standing pipe of the Long Branch  
 20 Water Company; thence (1) as the needle of George Cooper's Compass pointed May 7th, 1881 S. 6 degrees 05 minutes W. 700 feet (seven hundred feet) to a stake, thence (2) N. 77 degrees W. 591 feet (five hundred and ninety-one feet) to the west line of the property now or lately belonging to John Hoey aforesaid, thence (3) along said division line N. 3 degrees 15 minutes E. 630 feet (six hundred and thirty feet) thence (4) S. 83 degrees 45 minutes E. 617 feet and six inches (six hundred and seven-  
 30 teen feet and six inches) to the place of beginning. Containing 9 186/1000 acres (nine and one hundred and eighty-six thousands acres) of land, more or less. Being the same piece or parcel of lands and premises that was conveyed to William R. Garrison, since deceased, by John Hoey and Josephine, his wife, by indenture dated the eleventh day of May in the year of our Lord one thousand eight hundred and eighty-one, and recorded in the office of the Clerk of the County of Monmouth in Book 335 of deed—page 442 on the eight day of June, in the year of our Lord one thousand eight hundred and eighty-one.

And also all that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in  
 40 the Township of Ocean, in the County of Monmouth and State of New Jersey and bounded and described as follows, to wit:

BEGINNING at a point formed by the intersection of the northerly side of Park Avenue with the westerly side of a road leading from Park Avenue north between lands formerly belonging

*Bill of Complaint.*

to Alice M. Eaton and William S. Eaton, her husband and the late Charles F. Hoffman; running thence westerly and along the said northerly side of Park Avenue three hundred and ninety-one feet and nine inches; thence north three degrees forty-five minutes ( $3^{\circ} 45'$ ) East five hundred and twenty-nine feet to land formerly belonging to said Alice M. Eaton and William S. Eaton her husband and the late Charles F. Hoffman; and thence southerly and along the westerly side of said road six hundred and six feet six inches to the point or place of beginning. Be the said several dimensions more or less, the said tract containing five acres, situated in the Village of Elberon and being the same premises conveyed to said Charles F. Hoffman by Alice M. Eaton and William S. Eaton, her husband; by deed dated the 24th day of March, 1892, and recorded in the office of the Clerk of Monmouth County, N. J. on the 4th day of April, 1892, in Book 497 of Deeds, for said County, on pages 323 &c.

And also all the right, title, interest and estate of the parties of the first part in and to a certain other outlying tract of land, situate in said county (but whether in said Ocean Township, unknown to parties hereto at date hereof) about five miles more or less from the said two tracts above mentioned, and containing about six acres more or less, consisting of wood and stone land; also all the right, title and interest and estate that the said parties of the first part have or may have in any capacity whatsoever in and to a certain agreement or contract for the purchase of about fifteen acres of land, more or less, situate in said Monmouth County, and on which said contract the sum of fifteen hundred (\$1,500.00) Dollars has been paid, the purchase price agreed to be paid for said land being the sum of nine thousand (\$9,000.00) Dollars, leaving a balance of Seventy-five hundred (\$7,500) Dollars due thereon; also all the right, title, interest and estate that the said Charles F. Hoffman or the parties of the first part hereto had, have or may have in, to, under or by virtue of a certain agreement as to certain roads or ways bounding the four sides of the said tract of land first above mentioned, made between John Hoey of the first part and William R. Garrison, of the second part, and bearing date May 11th, 1881.

Being the same premises conveyed to Myron H. Oppenheim by Eleanor L. Hoffman and others, by deed dated May 15th,

*Bill of Complaint.*

1902, and recorded with the Clerk of Monmouth County on the 17th day of May, 1902, in Book 689 of Deeds on page 371.

4. On or about the 28th day of November, 1917, the defendants caused to be recorded in the office of the Clerk of Monmouth County, New Jersey, two certain deeds bearing date  
 10 October 3rd, 1916, purporting to be executed by Myron H. Oppenheim and the complainant, conveying the property described in the preceding paragraph to the defendant De Peyster Realty Company, which alleged deeds purported upon their faces to have been acknowledged by the defendant Myron H. Oppenheim and the complainant before one J. G. Goodman, a Commissioner of Deeds on the 3rd day of October, 1916, in the State, County and City of New York.

5. At all times herein mentioned complainant was the wife  
 20 of the said Myron H. Oppenheim, but that at no time has she ever executed, acknowledged or delivered the said deeds mentioned in the preceding paragraph purporting to have been made, signed, executed, acknowledged and delivered by her, and that she has not to her knowledge ever appeared before J. G. Goodman or before any other person and made any acknowledgement of the making, execution and delivery of such deeds.

6. Complainant further says that if the deeds above mentioned bear her signature, same were obtained falsely and without her knowledge of the purport or effect of such paper or  
 30 papers and without there having been made known to her the contents or effect thereof.

7. Complainant says that the effect of public recording of said deeds would be to deprive her of the benefit of her inchoate right of dower therein.

8. The complainant has no adequate remedy at law and therefore prays:

1. That the defendants Myron H. Oppenheim and De Peyster Realty Company may answer this bill of complaint without oath  
 40 and each statement therein.

2. That said two deeds purporting to be made by Myron H. Oppenheim and Jennie M. Oppenheim his wife to the De Peyster Realty Company recorded November 28th, 1917, in the office of

*Order Amending Bill of Complaint.*

the Clerk of Monmouth County, New Jersey, may be decreed to be null and void as to complainant Jennie M. Oppenheim.

3. That the said deeds and each of them, as to the complainant, Jennie M. Oppenheim, may be set aside and annulled, and for nothing holden.

4. That the complainant may have such other and further relief as in the premises may be equitable and just. 10

CONGLETON, STALLMAN & HOOVER,  
*Solicitors for Complainant.*

**Order Amending Bill of Complaint.**

Filed February 5, 1919.

20

On motion of the solicitors for the complainant, the solicitors for the defendant consenting hereto, it is

ORDERED that the Bill of Complaint be amended by striking out Paragraph Five and Six and substituting therefor the following:

“At all times herein mentioned the complainant was the wife of the said Myron H. Oppenheim, but she denies that she ever consciously and as her voluntary act and deed, sealed, signed and delivered either of the deeds mentioned in the preceding paragraph, and if said alleged deeds bear her signatures, said signatures were obtained by the defendant Myron H. Oppenheim, by fraud, deceit and duress practiced by him upon complainant.” 30

“Complainant further denies that on or about October 3rd, 1916, she appeared before J. G. Goodman, a Commissioner of Deeds in and for the City, County and State of New York and acknowledged sealing, signing, or delivering said deeds; she denies that at or about the time of said alleged acknowledgment the contents of said alleged deeds were made known to her; she denies that at or about the time of the alleged acknowledgment she acknowledged or admitted that said alleged deeds were sealed, signed and delivered by her as her voluntary act and deed free from any fear, threat or compulsion of her said husband; and complainant says that the recitals of the certificates of acknowl- 40

*Answer.*

edgment of each of said deeds is untrue in fact in each and every part thereof.”

Respectfully advised,

FREDERIC W. STEVENS,  
V. C.

10

We consent to the foregoing order.

CONGLETON, STALLMAN & HOOVER,  
*Solicitors for Complainant.*

LINDABURY, DEPUE & FAULKS,  
*Solicitors for Defendants.*

**Answer.**

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Filed April 13, 1918.

Myron H. Oppenheim and De Peyster Realty Company, the defendants in the above-entitled cause, for answer unto the complainant's bill of complaint say:

1. They admit the allegations contained in paragraphs 1 and 2 of the said bill of complaint.

2. They admit that the defendant Myron H. Oppenheim caused the De Peyster Realty Company to be organized and that he is the President thereof. They also admit that the immediate purpose of said organization was to take title to certain properties then owned by the said Myron H. Oppenheim and situate in the City of New York. They say, however, that said corporation was organized to do a general real estate business and not merely to hold particular property, as appears by its certificate of incorporation, a copy of which is hereto annexed and made a part hereof. Ninety-five shares of the stock of said corporation were issued to the defendant Myron H. Oppenheim and have ever since been held by him. Said Myron H. Oppenheim is not the owner of any other shares. The remaining shares were originally issued to the incorporators and are now held by stockholders other than the said Myron H. Oppenheim. The present directors of the corporation are Myron H. Oppenheim, Morris Joseph and John J. McBride. The officers are: Myron

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*Answer.*

H. Oppenheim, President; Morris Joseph, Treasurer, and John J. McBride, Secretary. Monroe F. Toplitz, one of the incorporators named in the certificate of incorporation, is the brother of the complainant. It is not true, as alleged in the bill of complaint, that the defendant Myron H. Oppenheim organized said corporation for the purpose of taking title to properties owned by him and thereafter holding and dealing with such properties through the instrumentality of such corporation. It was considered at the time of the organization of said corporation that certain properties owned by said Myron H. Oppenheim in the City of New York could be better held, managed and marketed by a corporation, and that the estate of the said Myron H. Oppenheim would be in better position as the owner of stock in a realty company than as the owner of such real estate. The matter was fully discussed at the time between the complainant and said Myron H. Oppenheim, and the complainant fully concurred in the advisability of the scheme. Said certificate of incorporation was filed in the office of the Secretary of the State of New York on the 18th day of February, 1909, and on the 27th day of February following, the properties referred to were conveyed by the said Myron H. Oppenheim to the said corporation, the complainant joining in the conveyance.

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3. The defendants admit the allegations contained in paragraph 3 (being the second paragraph numbered 3) in said bill of complaint. They also admit the allegations contained in paragraph 4.

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4. The defendants deny all the allegations contained in paragraphs 5 and 6 of said complaint, except the allegations contained in paragraph 5 that at the time therein mentioned the complainant was the wife of the said Myron H. Oppenheim. They say that the complainant signed, sealed and delivered the two deeds mentioned in paragraph 4 of said complaint with full knowledge of the purport and effect thereof; that on the day the said deeds bear date the complainant voluntarily appeared before J. G. Goodman, a Commissioner of Deeds for the City of New York, whose certificate is attached to said deeds, and then and there acknowledged that she signed, sealed and delivered said deeds and each of them as her voluntary act and deed for the uses and purposes therein expressed, having been previously informed as to the contents and effect of the said

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*Answer.*

10 deeds and having such contents again explained to her by the said Commissioner before making acknowledgment thereof. They also say that the said complainant was further privately examined by the said Commissioner separate and apart from the said Myron H. Oppenheim and that she did on such private examination further acknowledge that she signed, sealed and delivered the said deeds and each of them freely as her voluntary act and deed without any fear, threats or compulsion of or from her said husband. Defendants further say that said deeds were signed, sealed, acknowledged and delivered in the City, County and State of New York, where both the complainant and said Myron H. Oppenheim then resided and still reside.

20 5. With respect to the allegations contained in paragraph 7 of said complaint the defendants deny that the effect of the recording of said deeds was to deprive the complainant of the benefit of her inchoate right of dower in the property therein described. They say that such deprivation resulted from the execution and delivery of said deeds and not from the recording thereof.

6. All of which matters and things these defendants are ready to maintain and prove as and when this Honorable Court may direct, and pray to be hence dismissed with their costs.  
Dated, April 10, 1918.

30 LINDABURY, DEPUE & FAULKES,  
*Solicitors for and of Counsel with Defendants.*

*Answer.*

EXHIBIT D. 1.

COPY OF CERTIFICATE OF INCORPORATION OF DE PEYSTER REALTY COMPANY.

We Monroe F. Toplitz, Moses M. Lindenstein and Gustave E. Schloss, all being of full age and two thirds being citizens of the United States, and one of us a resident of the State of New York, do hereby certify and set forth: That we propose to form a Business Corporation pursuant to and in conformity with the Acts of the Legislature of the State of New York.

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First:—The Corporate name of the said Company shall be De Peyster Realty Company.

Second:—The purposes for which said corporation is to be formed are as follows:

(a) To acquire by purchase, grant, gift, devise or in any other legal manner, real estate and real property improved and unimproved, in the State of New York or elsewhere, within the United States, and any interests and rights therein; to hold, own, maintain, work, improve, sell, convey, develop, mortgage, rent, exchange or otherwise dispose of the same; to erect, construct, build, alter or contract for the erection, construction, building or alteration of any buildings or improvements or other structure upon the real estate owned by the corporation; and to manage and develop the same; to do any and all things which may be useful, necessary or convenient in carrying out the purposes of the said corporation to the full extent permitted by the laws of the State, and as fully, and with all the powers that the laws of this State confer upon corporations and organizations under this Act, and to do any and all of the purposes above mentioned and set forth to the same extent as natural persons might or could do.

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(b) To invest in and buy and sell real estate, and real and personal property throughout the United States and procure and negotiate loans for itself and others, both on real and personal property, or securities of any kind or nature, except bills of exchange, to buy, sell and exchange mortgages; to loan money on real and personal property secured by mortgage.

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(c) To transact a general real estate and brokerage business including the management of estates; to act as attorney in fact

*Answer.*

for any persons or corporations in buying, selling or dealing in real estate in the City of New York, and elsewhere in the United States.

10 (d) To conduct any and all of its business and to do any one or more of the acts and things herein set forth as its purposes, not only within the State of New York but also outside of the State of New York and in other States and Territories of the United States; and the said Corporation may conduct its said business and do said acts or things or any of them in any of said States or Territories, and may have one or more offices within or without the State of New York.

Third: The amount of the capital stock of the said company shall be the sum of Ten Thousand (\$10,000.) Dollars which shall consist of Common Stock.

20 Fourth: The number of shares of which said capital stock shall consist, shall be one hundred (100) each of the par value of One hundred Dollars (\$100.), and the amount of capital with which said Corporation will begin business is Five hundred Dollars (\$500.).

Fifth: The location of the principal business office of the said Corporation shall be at No. 135 Front Street, in the City of New York, in the County of New York, and State of New York, Borough of Manhattan.

Sixth: The duration of said Corporation shall be perpetual.

30 Seventh: The number of Directors of said Corporation shall be three (3).

Eighth: The names and Post Office Addresses of the Directors of said Corporation for the first year are as follows:

Names	P. O. Address.
Monroe F. Toplitz	64 W. 77th St. Bor. of Manhattan, N. Y. C.
Moses M. Lindenstien	161 E. 60th St., N. Y. C. Borough of Manhattan.
Gustave E. Schloss	114 E. 73d. Street, Borough of Manhattan, New York City.

*Answer.*

Ninth: The names and Post Office Addresses of the subscribers of the certificate and the number of shares of stock which each agrees to take in said corporation are as follows:

Names	Post Office Address	Number of Shares	
Monroe F. Toplitz	64 W. 77th. Street New York City	two	10
Moses M. Lindenstein	161 E. 60th. Street, New York City	two	
Gustave E. Schloss	114 E. 73d. Street, New York City	one	

In witness whereof, we have made and signed this certificate, in duplicate, the 16th. day of February, one thousand nine hundred and nine.

MONROE F. TOPLITZ  
MOSES M. LINDENSTEIN  
GUSTAVE E. SCHLOSS

20

In presence of

JOSEPH BERNSTEIN

State of New York,  
County of New York, } ss.,  
City of New York

On this 16th. day of February in the year one thousand nine hundred and nine, personally appeared before me Monroe F. Toplitz, Moses M. Lindenstein and Gustave E. Schloss, to me known to be the individuals described in and who executed the foregoing certificate, and they severally, and before me signed the said certificate, and acknowledged that they executed the same for the purposes therein set forth.

30

JOSEPH BERNSTEIN,  
*Commissioner of Deeds,*  
New York City.

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*Order of Reference.*

**Order of Reference.**

Filed June 4, 1918.

10 It is, on this 4th day of June, Nineteen Hundred and Eighteen,  
on motion of Congleton, Stallman and Hoover, solicitors for the  
petitioner, ORDERED, that the above stated cause be referred to  
the Honorable Frederic W. Stevens, one of the Vice-Chancellors,  
to hear the same for the Chancellor, and to report thereon to  
him and advise what order or decree should be made therein.

E. R. WALKER,  
C.

We hereby consent to the foregoing order.

20 LINDABURY, DEPUE & FAULKS,  
*Solicitors for Defendant.*

A true copy.

ROBERT H. McADAMS,  
*Clerk.*

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*Jennie M. Oppenheim, direct.*

## In Chancery of New Jersey

*Between*

JENNIE M. OPPENHEIM,

*Complainant,*

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*and*

MYRON H. OPPENHEIM and DE PEYSTER  
REALTY Co.,

*Defendants.*

Before His Honor Vice-Chancellor Stevens.

Messrs. Congleton, Stallman & Hoover, and Mr. Lewis (of the New York Bar), appearing for the complainant.

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Messrs. Lindabury, Depue & Faulks appearing for the defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause on Tuesday, October 8, 1918, at Chancery Chambers, Newark, New Jersey.

JENNIE M. OPPENHEIM, sworn.

*Direct examination* by Mr. Stallman.

Q Mrs. Oppenheim, you are the complainant in this case? A I am. 30

Q Where do you reside? A In New York City.

Q You are the wife of the defendant, one of the defendants, Myron H. Oppenheim? A I am.

*Mr. Stallman.* Mr. Lindabury, have you the original deeds which I noticed you to produce?

*Mr. Lindabury.* Yes (produced).

*Mr. Stallman.* These deeds, if the Court please, are two deeds, one bearing the date the third day of October, 1916, between Myron H. Oppenheim and Jennie M. Oppenheim, his wife, both of New York, and the De Peyster Realty Company, a corporation of New York, endorsed: Recorded November 28, 1917, in the Clerk's office of Monmouth County, in Book 1053, at page 261. 40

*Jennie M. Oppenheim, direct.*

10 The other deed is dated October 3, 1916, between Myron H. Oppenheim and Jennie M. Oppenheim, his wife, of New York, of the first part, and the De Peyster Realty Company, of the second part, and endorsed: Recorded in the office of the Clerk of Monmouth County on the twenty-eighth day of November, 1917, in Book 1053 at page 263, being the two deeds mentioned in the bill of complaint and in the answer, and which are produced by Mr. Lindabury in response to a notice to produce. I would, therefore, like to have them marked as the complainant's exhibits at this time so that I may proceed with examination on them.

Marked Exhibits C. 1 and C. 2.

20 Q Mrs. Oppenheim, did you on the third day of October, 1916, or about that immediate time, to your own knowledge and consciously execute a deed together with your husband conveying certain premises in the Township of Ocean, Monmouth County, New Jersey, to the De Peyster Realty Company? A I did not.

Q I have two deeds before me, referred to in the bill of complaint, both purporting to be dated on the third day October, 1916, and signed by Myron H. Oppenheim and Jennie M. Oppenheim; does your answer refer to both of these deeds? A Both.

Q That is your signature upon each of these deeds, is it not?

*Mr. Lindabury.* You better ask her rather than tell her.

30 *Mr. Stallman.* I thought you would like to have us admit that she signed the paper.

*Mr. Lindabury.* Well, we would like the witness to testify about it.

A That is my signature.

*Mr. Lindabury.* I understand her answer is that she did not sign them.

A I did not sign them on the date mentioned.

40 *Mr. Lindabury.* Well, I only stated that I understood the answer to deny you signed them at all, and therefore I prefer that the witness and not counsel shall testify about so important a matter.

*Jennie M. Oppenheim, direct.*

Q That was Exhibit C. 2, which she looked at first. Now, look at Exhibit C. 1 and say whether or not that is your signature to that deed? A That is my signature.

Q These deeds, Mrs. Oppenheim, Exhibits C. 1 and C. 2, also purport to have been acknowledged by you before J. G. Goodman, Commissioner of Deeds, New York, Register No. 12-17-126, both of them being signed in that way, and the acknowledgment purporting to have been made on the third day of October, 1916; will you tell the Court whether or not on or about the third day of October, 1916, you appeared before any one by the name of J. G. Goodman and acknowledged the execution of these deeds? A I did not.

Q In company with your husband, or either separately and apart from your husband? A I did not.

*Mr. Stallman.* I would like to have the Court at this time observe that in the date on the face of these deeds, as well as the acknowledgment, the word indicating the year was erased and the word "sixteen" written over whatever had been there before.

*Mr. Lindabury.* There is no doubt of the fact, your Honor, both in the date of the instrument and the date of acknowledgment of both deeds.

Q Do you know without reading these descriptions just what the property is that is referred to and described in these deeds? A I do.

Q What is that property, generally? A It is a property known as Castlewall, at Elberon, New Jersey, and the other property is known as the Moses cottage on Park avenue, in Elberon, New Jersey.

Q In the same vicinity as Castlewall property? A Yes, on the same ground almost.

Q Are they adjoining parcels? A Yes.

Q That is quite a large summer residence property? A Castlewall is almost twenty-five acres, over twenty-four acres; the other property is less than five.

Q Five acres? A About.

Q That is the Moses cottage? A Yes.

*Mr. Lindabury.* Mr. Oppenheim suggests she is mistaken about the Moses property being in; he says the

*Jennie M. Oppenheim, direct.*

Moses property is not embraced in either of these deeds. I only tell you so that you may exhibit them to her to see if she is not mistaken.

Q These two deeds in any event refer to the Castlewall property? A They surely do, one of them; I presume the other one  
10 was in relation to the Moses cottage.

Q That is, you do not know about that? A No.

Q When is the first time that you knew or had brought to your attention the fact that there was such a paper as the deeds purport to be? A At the time that I appeared in Judge Leventritt's office.

Q When was that? A That was in October, 1917.

Q Just about a year ago? A About a year ago.

Q (*By the Court.*) You mean in his office or chambers, or what? A In his office.  
20

*Mr. Stallman.* Judge Leventritt is not on the bench, he is practicing.

*Mr. Lindabury.* He had retired from the bench at that time.

Q After you had learned at that time and place of the existence of these papers what did you do? A I went down to Freehold to look at the deeds.

Q And did you see these original deeds down there? A Saw these deeds there.

Q And upon referring to them at that place is that when you got the idea of what they covered? A Yes.  
30

Q (*By the Court.*) Did you see the deeds at that time? A I saw the deeds.

Q Now, Mrs. Oppenheim, did you of your own knowledge and consciously ever execute any paper that you know of referring to the Castlewall property? A I did.

Q Have you any recollection as to when that was? A That was in October, 1915.

Q That is three years ago? A Three years ago, October,  
40 1915.

Q Where was that paper signed? A At Elberon, New Jersey.

Q Whereabouts at Elberon? A At the Park avenue cottage, known as the Moses cottage.

*Jennie M. Oppenheim, direct.*

Q Was that a place of residence, your residence? A We were stopping there for the week-end.

Q The paper that you signed at that time, did you examine it to see what it was? A I examined it but not carefully; I signed it because Mr. Oppenheim asked me to give him an option on the property to transfer to a Mr. Meyer who was then looking at the property with an object of buying and exchanging for some apartment property in New York City.

10

Q Well, now, did Mr. Oppenheim tell you at that time what that paper was that you were to sign? A He told me that, that he wanted something to show to Mr. Meyer that he would transfer this property in exchange for this apartment house which Mr. Meyer owned.

Q Did you at any other time sign any other paper regarding the Castlewall property to your knowledge and consciousness? A No.

20

Q In October, 1915, were you asked to sign any deed conveying the Castlewall property? A I was not.

Q Did Mr. Oppenheim tell you at that time that the paper submitted for your signature was a deed? A He did not.

Q Did you know it was a deed? A No.

Q Did you in October, 1915, appear before J. G. Goodman and acknowledge the execution of the paper which you signed at that time? A I did not.

Q Did you appear at any subsequent time and acknowledge the execution of that paper? A I did not.

30

Q Do you know who J. G. Goodman is? A I do.

Q Who is it? A Bookkeeper of the Filter Company at 92 Pine street.

Q Bookkeeper of the Filter Company. Has she any relation to the defendant, your husband? A He is the president of the Filter Company.

Q (*By Mr. Lindabury.*) And that company has an office at that place? A At 92 Pine street.

Q (*By Mr. Lindabury.*) That is what you mean, is it? A Yes.

40

Q How long have you known Miss Goodman? A Many years; I don't know how many.

Q Were you personally acquainted with her in the year 1915? A Yes.

Q And in 1916? A Yes.

*Jennie M. Oppenheim. cross.*

Q And you had known her for some years previous to that?

A I had.

Q And during the year 1915 do you remember whether you saw Miss Goodman? A I don't remember seeing her during that time, that year.

10 Q Do you remember seeing her in the year 1916? A I do not.

Q I will ask you once more, if I have not done it before, to look at Exhibit C. 1 and Exhibit C. 2 and tell the Court whether in fact you ever signed either of these papers in the presence of J. G. Goodman? A I did not.

Q Or whether you ever appeared before J. G. Goodman and acknowledged that you and your husband signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed, and whether you, being privately examined separate and apart from your husband, did  
20 further acknowledge that you signed, sealed and delivered the same freely as your voluntary act and deed without any fear, threats or compulsion of or from your husband? A I did not.

*Cross examination by Mr. Lindabury.*

Q How old are you, Mrs. Oppenheim? A Fifty-three.

Q Is your memory good? A Very.

Q Well, this conveyance is to the De Peyster Realty Company; did you know of the existence of this company in 1916? A I did.

30 Q Do you know when it was organized? A I think it was in 1909.

Q And by whom? A Mr. Oppenheim.

Q And for what purpose? A To incorporate his property, I suppose.

Q Did Mr. Oppenheim at that time own other property than Castlewall? A He did.

Q He owned Castlewall at that time, did he not? A Yes, I think he did.

Q That was bought for a summer residence for you and Mr.  
40 Oppenheim, I take it? A It was.

Q And you occupied it for a number of years, did you not? A We did.

Q Down until when did you cease to occupy it as a summer residence? A I think it was 1914 was the last year.

*Jennie M. Oppenheim. cross.*

Q Well, now, in 1909 the De Peyster Realty Company was organized by your husband as a land company to take title to property that he owned? A Yes.

Q Where did he own property at that time other than this Castlewall property? A New York City.

Q More tracts than one? A Yes. 10

Q How many, do you remember? A Several.

Q After the organization of the De Peyster Company did he convey the New York properties to that company? A He did.

Q Did you join him in those deeds? A I did.

Q You do not remember how many deeds you made? A No.

*The Court.* Was it a New York or New Jersey land company?

Q Yes, it is a New York company, is it not? A I believe it is.

Q Do you know whether it is a New York or New Jersey company; perhaps you don't? A New York. 20

Q That is correct? A Yes.

Q Organized in 1909, she says. You do not remember how many different parcels of property were then conveyed? A No, I do not.

Q Could you estimate the number? A Well, I know two, One Hundred and Twenty-fourth street and Ninety-third street, and I think 92 Pine street; I don't remember, or 135 Front street was then in the corporation.

Q Those properties were conveyed by separate deeds, were they? A I believe so; I don't remember. 30

Q Those were all joined in, of course, by you? A They were.

Q Was this the first real estate company that took title to property that your husband had owned or was there a preceding one? A Not that I know of.

Q Wasn't there an improvement company, New York and New Jersey Land and Improvement Company; do you remember that? A I have some recollection of it.

Q That was a little earlier, was it not? A I don't know; I really don't remember.

Q Do you remember joining in several conveyances to them? A I don't recollect. 40

Q You do not remember those? A No.

Q Well, one time and another you signed a good many deeds, joined your husband in making quite a good many deeds, have you not? A In the sale of property, yes.

*Jennie M. Oppenheim. cross.*

Q I mean in the sale of properties sometimes; well, of course, the transfers to De Peyster were not sales in the ordinary sense, were they? A No.

10 Q You do not remember about the conveyances to the New York and New Jersey Land Improvement Company? A I have some recollection of it, but I cannot remember exactly the conditions.

Q There were still other transactions; sometimes mortgages were given on those properties to you, were there not? A Yes.

Q Do you remember how early a mortgage was given on any of these properties to you? A No.

Q Do you remember one in 1903 of \$25,000? A No, I do not.

Q On the Ninety-third street property? A No.

20 Q Do you remember one somewhere about the same time, another one of \$25,000 on the One Hundred and Twenty-fourth street property? A No, I do not.

Q Don't remember that? A No.

Q Don't you remember that such mortgages were given to you and immediately assigned by you to your husband? A No.

Q In order that he might in that way better deal with the property? A No, I do not.

Q Do you remember one of \$50,000 made to you? A Yes, I do.

Q When was that made? A I do not recollect the date.

Q Well, could you approximate the year? A No, I couldn't just at the moment.

30 Q Did you immediately assign that to your husband? A No, I did not.

Q Are you sure? A Sure.

Q If you do not remember the assignments do you remember making from time to time satisfaction pieces by which those were cancelled of record? A No.

Q Don't remember about that? A No.

Q Not in any case? A No.

Q In any one of the three cases? A No, sir.

Q Twenty-five; twenty-five or fifty thousand? A No.

40 Q When were you married? A May 27, 1884.

Q Any children of your marriage? A Yes.

Q How many? A One daughter.

Q How old is she? A Thirty-one.

Q Married now? A Yes.

*Jennie M. Oppenheim. cross.*

Q You and your husband lived pleasantly together during the larger part of your married life, did you not? A We did.

Q When did differences first arise between you; I do not mean now for a date, but the year or thereabouts? A 1917.

Q Not until 1917? A No.

Q You at one time entered into an agreement to make mutual wills, did you not? A We did. 10

Q And you did make mutual wills? A Yes.

Q Of course, you know what I mean by that, do you not; each giving everything to the other? A Yes.

Q This was a matter of agreement between you, was it not? A It was.

Q Do you remember how early that was in your married life? A No, I do not.

Q That you made those wills? A No.

Q Well, pretty soon after you were married, was it not? A I don't recollect the time. 20

Q A good while ago? A Well, it is some years.

Q You have nothing by which you can fix it? A No.

Q Do you remember how you came to do it? A No.

Q Well, just a matter of affection, I suppose; I mean there was no special circumstance? A No, nothing special.

Q Your child was born then, was she not? A Oh, I imagine so; yes, she was born three years after we were married, so I suppose it was after that.

Q Did you have any property at that time? A No. 30

Q Mr. Oppenheim did then have considerable property, did he not? A Yes.

Q You afterward inherited a large sum from your father, did you not? A Yes.

Q And do you remember about when you came into that inheritance, about the year? A That was in 1910, I think.

Q A little later, was it not? A I believe so.

Q When did your father die? A My father died in 1910; well, it was in 1911.

Q You got your property a year or two later? A Yes, about a year, I think. 40

Q These mutual wills were continued up to that time, were they not? A Yes, I believe they were.

Q Were they every destroyed?

*Jennie M. Oppenheim. cross.*

*Mr. Stallman.* I object to that; I think that is entirely incompetent and immaterial.

*The Court.* What is the object of the examination?

*Mr. Lindabury.* To develop the relations between these parties, and I am coming right to the circumstances which led to the making of these various deeds.

10

Admitted.

Q Do you remember whether you formally cancelled the agreement to make mutual wills? A Yes.

Q And you did it in writing, did you? A I believe so.

Q That is your recollection, is it not? A Yes.

Q What did you do with the will that you had made in favor of your husband; I mean did you destroy it? A I never had it; I don't believe I ever had it.

20 Q Well, didn't you make a will as well as him? A Well, we signed a paper, the same paper; I don't believe I ever had a copy of it.

Q But you said just now that you entered into a writing to cancel your agreement to make mutual wills; you remember that? A Oh, yes.

Q Do you remember when you did that? A Yes, that was done in Ed. Lazansky's office some time in the winter of 1916 or 1917, I believe.

Q Do you remember which? A No, I do not.

30 Q Do you know how near it was to the date of this conveyance, the third of October, whether it was before or after, or about that same time? A No, I don't recollect.

Q Well, you do remember it was about that time, do you not? A No.

Q What is your best recollection as to when it was? A I really cannot say; I would have to think it up.

Q You mentioned the winter of 1916 and 1917? A I really don't remember; can't recollect.

Q How came you to do that? A Because I had made a will the summer previous.

40 Q Different from the agreement? A Yes.

Q Had you told your husband about it? A Yes, he was present at the time.

Q When you did it? A Yes.

Q He consented to your doing it, did he not? A Yes.

*Jennie M. Oppenheim. cross.*

Q Was that because you had now come into your property?

A No, that was not the reason.

Q Well, I do not care to press for the reason. Your situation had very materially changed, of course, since the mutual wills were made, had it not, by your coming into the possession of your property from your father? A It had in a way; I had no income from the property. 10

Q Do you remember asking your husband whether or not he would enter into this agreement with you to abrogate the agreement to make mutual wills; do you remember proposing it to him? A Yes.

Q You consulted some lawyer about it, did you not? A No.

Q Or some friend, maybe not a lawyer? A No, I did not consult anyone.

Q Didn't you tell him you had been advised that it would be better to rescind that agreement in a formal way by paper writing? A Not at all. 20

Q Well, who did you go to to have the agreement drawn? A I went with him to Ed. Lazansky.

Q A lawyer? A He is now judge.

Q To draw it. Well, he agreed to it, I suppose, when you proposed it? A He did; it was Mr. Oppenheim's proposition.

Q I see. Well, that is your recollection that he proposed it? A Yes.

Q Did he give you any reason for it? A Because he said I made a will of my own. 30

Q Did he discuss with you then his proposed will? A No, he did not.

Q Did he tell you that he was willing, of course, if you desired to give up the agreement, and that you should dispose of your property any way you choose, and that he had concluded to make a will giving you a certain annuity which he mentioned?

A Not at all.

Q Don't remember his talking about that? A He didn't make any such suggestion that I know of. 40

Q As you know of; you mean as you remember? A Yes.

Q You talked very freely and very confidentially to each other at that time about your respective affairs, did you not? A In a way.

*Jennie M. Oppenheim. cross.*

Q Well, you did not at that date withhold anything from him, did you? A Well, I made my will because I was suspicious of him with another woman at that time.

Q Did you inform him of that suspicion? A Well, I did not at the time mention the reason for it, but I had my suspicions at that time.

10 Q What was the date of that will then, as near as you can recall? A That was, I think, the summer of 1914.

Q You think it was as early as that? A I think so.

Q Wasn't it 1916? A No.

A Or 1915? Have you got that will yet in existence? A No.

Q It has been destroyed, has it? A Yes.

Q So you have not any means of fixing that date, have you, except your recollection? A No; I could recollect it if I thought about it, I could remember the date if I could just fix it in my mind; I think it was the summer of 1914, as I went to Asbury Park to execute it.

Q Well, you had conveyed by the summer of 1917 to the De Peyster Realty Company your dower or dower rights in all the property that Mr. Oppenheim had except Castlewall, had you not, everything had been conveyed by that time by your cooperation, by your joining in the deeds, except that? A Well, that wasn't the intention that I signed those deeds, to convey my dower right; when I signed them it was because Mr. Oppenheim suggested it would be a protection to him to incorporate the company, as he was being hardly pressed in an investigation of the Filter Company by Judge Leventritt, and that was the reason I signed it, to allow him to incorporate in his company this property; I didn't know that it conveyed my dower right.

Q Didn't you know the effect of your signing? A I did not; I depended on Mr. Oppenheim absolutely for all legal advice.

Q You depended on what? A Mr. Oppenheim for all legal advice, I never consulted an attorney.

40 Q When did you first consult an attorney and cease to depend entirely on Mr. Oppenheim? A October, 1917.

Q Not until that time? A No.

Q Well, of course you had mutual wills at the time you made these various conveyances, so that you not only would

*Jennie M. Oppenheim. cross.*

have gotten your dower but everything he had, would you not?

A Yes.

Q And with regard to your legal dower right, you had that in mind? A I certainly wouldn't have signed it if I had known it took away my dower right.

Q But when you signed these various deeds you knew that you had arrangement with him about mutual wills, and indeed that he had made a will giving you everything when he died, didn't you? A Yes. 10

Q Where do you say it was that you signed this paper? A At Elberon, New Jersey.

Q I mean these papers that are produced here as deeds? A At Elberon, New Jersey.

Q Do you remember that quite distinctly? A Quite distinctly.

Q My recollection is that in your answer you deny that you even signed them; perhaps I am wrong in my understanding of the answer. A I deny that I acknowledged them. 20

*Mr. Stallman.* She had no knowledge they were deeds.

*Mr. Lindabury.* It was my impression that the complaint denies that she signed them.

*The Court.* Paragraph 5 of the bill is what you refer to?

*Mr. Lindabury.* Yes.

Q Haven't you a good many times to friends and others denied that you had signed them at all? A I denied that I signed away my right to Castlewall. 30

Q No. Haven't you denied your signature to the deeds a good many times? A I denied that I signed any deeds for Castlewall conveying Castlewall to the DePeyster Realty Company.

Q Haven't you denied that these signatures on these deeds were your genuine handwriting, haven't you denied that again and again and again, Mrs. Oppenheim? A No. 40

Q Haven't you? You say in your answer that at no time have you ever executed, acknowledged or delivered the said deeds mentioned in the preceding paragraph purporting to have been made, signed, executed, acknowledged and delivered by you. Do you mean that all you meant by that was that you

*Jennie M. Oppenheim. cross.*

had not signed them as deeds? A I hadn't signed them as deeds and I hadn't acknowledged them.

Q I know, that you deny elsewhere. Were you ever down in the office where Miss Goodman is? A Yes.

Q When last? A Some years ago.

Q About how many? A More than two years.

10 Q Well, of course, this purports to have been made two years ago. Have you been there since that date, October third? A No.

Q How long before that date is it you were there? A I can't recollect having been there more than two years before that.

Q So that you have not been there in four years? A Well, three or four years.

20 Q Well, first you say two years, and that would be just this time, and then you said two years before that, that would be four years; now what is your best recollection? A Well, I wasn't there in 1916, I don't believe I was there since 1915 or 1914; I saw Miss Goodman last in 1914, I think, at Castlewall.

Q Did you employ Judge Leventritt in 1917 after you say you discovered these deeds? A No, I discovered them when he presented them to me in his office, when he represented that they had been signed, he showed me at his office.

Q Who showed you? A He told me that they had been signed, and that I was to go down to Freehold to look at them.

Q Judge Leventritt? A Yes.

30 Q Well, you consulted Judge Leventritt? A Oh, yes, in October, 1917.

Q Had you known Judge Leventritt for some time? A Very intimately.

Q Very intimately? A Yes.

Q He had been a Judge of the Supreme Court of the State of New York? A Yes.

Q And had resumed practice at the time you waited on him? A Yes.

40 Q Did you discuss with him the provision your husband claimed to have made for you by his will? A Yes.

Q In consideration of all your various transactions in giving up the will? A Yes.

Q Did you claim it was insufficient?

*Mr. Stallman. I object to that.*

*Jennie M. Oppenheim. cross.*

A We didn't talk about the mutual will at all.

*Mr. Stallman.* It seems to me we are going far astray from the issue in the case; what Mrs. Oppenheim discussed with her counsel at that time it seems to me can have no bearing, even if it were otherwise permissible.

*The Court.* This comes strictly within the rule that consultations between lawyer and client are privileged. 10

*Mr. Lindabury.* I did not mean to go against her wish into the details of it, but merely to know if she discussed with him that matter of the provision which Mr. Oppenheim had made or claimed to have made for her in his will as a result of these various talks and understandings, and she says yes to that; if counsel objects I will not inquire any further.

A I did not understand your question. I did not discuss with Judge Leventritt the question of the will at all; it was simply Mr. Oppenheim's last will. 20

Q What say? A I didn't discuss with Judge Leventritt the question of this will that you speak of.

Q Do you say you discussed with him the last will or that you discussed with him the mutual wills? A I didn't discuss the mutual will at all.

Q Oh, it was only the last will? A Yes.

Q Now you may answer this or not as you choose, or as your counsel consents or objects. Did you express to him dissatisfaction with the provision that Mr. Oppenheim had made for you in his will, for the reason that it was postponed to sundry other legacies? 30

*Mr. Stallman.* I object to that.

*The Court.* I overrule the question.

*Mr. Lindabury.* Well, I take it, under advice or objection you do not care to answer that question; you at least do not wish her to answer it; am I right?

*Mr. Stallman.* I object to it, yes.

*Mr. Lindabury.* Well, there is nothing illegal about it; she has a right to refuse to answer of course, but the question is not objectionable in any other respect. 40

Q Did Judge Leventritt inform you that Mr. Oppenheim had made a change in his will to meet an objection you then made to it?

*Jennie M. Oppenheim. cross.*

*Mr. Stallman.* I object to this question.

*The Court.* I overrule the question.

Q Mrs. Oppenheim, how do you fix October as the date when you went to Freehold and saw the deeds? A I didn't go there in October.

10 Q I understood you to say you went down in October? A Oh, no; I placed my matters in Judge Leventritt's hands in October, 1917.

Q That is you consulted him then? A Yes.

Q In October. Wasn't it September? A October.

Q Did you know then of this deed being recorded, or was that a later discovery? A No, I didn't know it until Judge Leventritt called it to my attention.

Q Later on? A Yes.

20 Q In fact it was not recorded until the latter part of November, was it? A No.

Q So that you had placed your affairs in his hands before that time? A Yes.

Q And were those affairs touching your husband? A Yes.

Q Relations with your husband? A Yes.

Q So that at that time they were strained? A Yes.

Q Well, how came you to ascertain about the recording of the deed? A Why, as far as my recollection goes Judge Leventritt told me to go down to Freehold and see the deed.

Q How came he to do that? A I don't know.

30 Q How did he know, what was there to lead him to suppose that these deeds might be recorded? A Why, I really don't know.

Q Did you suggest to him that he make inquiry? A No,—oh, he had looked into the deeds.

Q He had what? A He had gotten the deeds of all the property that Mr. Oppenheim owned.

Q Now he got you to go down for the purpose of inspecting the originals, didn't he? A Yes.

Q He already had copies, did he not? A No.

40 Q Or information, he had information? A He had information, yes.

Q Information about the deeds, the recording, etc.? A That the year had been changed.

Q Do you mean he had that information? A Yes.

Q That the year had been changed? A Yes.

*Jennie M. Oppenheim. cross.*

Q And he got you to go down and see whether they were your genuine signatures? A Yes, and to look at the change of date, change of year.

Q And was it at your suggestion that he inquired at Freehold to see if a deed was recorded there? A No.

Q Had you heard anything about the character of this paper that you now find as a deed before you went to Judge Leventritt? A No. 10

Q You had no suspicion until you went to him that what you had signed the preceding year was a deed or deeds? A No.

Q So that you had no reason to suspect that that property had ever been conveyed away by your signature? A No.

Q And you don't know how it was that he came to inquire down there, you don't know what led him to make the inquiry? A Why, we had received word from some one at Freehold who had examined the deed that the date, the year had been changed. 20

Q Who received that word, you or Judge Leventritt? A My brother.

Q Oh, your brother. Well, how came your brother to make inquiry at Freehold, if you know?

*Mr. Stallman.* If the Court please, I think that is utterly immaterial, I object to it.

*Mr. Lindabury.* Well, I am cross examining.

*Mr. Stallman.* Well, we want to cross examine on facts, and it seems to me utterly immaterial how Mrs. Oppenheim went about to ascertain the fact. Now it is a fact that the deeds were changed and she found it out, and it is utterly immaterial to show the machinery she put into motion in order to ascertain that fact. 30

*The Court.* I think the inquiry is a matter of cross examination. I do not know what will develop but I am not prepared to say now that the cross examination is not proper.

Q If you know, how came your brother to inquire at Freehold to see if there had been a deed recorded; did you suggest that he do it? A No, sir. 40

Q Do you know what led him to think there might be a deed recorded there? A No; it was Judge Leventritt's suggestion I suppose.

*Jennie M. Oppenheim, re-direct.*

Q You mean that Judge Leventritt suggested it to your brother? A I really don't know.

Q Or to you? A I don't know.

Q Well you don't know how it happened then that inquiry was made down there to see if there was a deed? A No, I do not.

10 Q You had no suspicion that there was? A No.

Q You had no suspicion that what you had signed was a deed? A No.

*Re-direct examination by Mr. Stallman.*

Q You say you have known Judge Leventritt for a great many years? A I have.

Q And he had been more of a friend I suppose than a counsel? A He was; he appeared in this matter as a friend, not as counsel.

20

*Mr. Lindabury.* She is the witness, and not you Mr. Stallman.

Q Now, you said in answer to certain questions of Mr. Lindabury's that you had joined with Mr. Oppenheim in conveying to the De Peyster Realty Company certain properties on One Hundred and Twenty-fourth street and Ninety-third street and Pine street and Front street, but that you had no recollection of mortgages given to you or put in your name of \$25,000 each on the Ninety-third street property and the One Hundred and Twenty-fourth street property? A No.

30

Q Is that right? A Yes.

Q Then Mr. Lindabury asked you about a mortgage of \$50,000 that you said you knew about, but that you had made no assignment of it? A No.

Q Have you now pending any proceedings or inquiry with reference to that fifty thousand dollar mortgage? A I have.

Q In New York? A In New York.

Q And has the question of your executing an assignment or some other paper with reference to that mortgage been raised in that proceeding?

40

*Mr. Lindabury.* You can put in the record in that case if you want to, but I object to oral evidence. If you think it would be to your advantage to put in the record of the case you brought in New York on that you

*Jennie M. Oppenheim, re-direct.*

may do so, but I object to testimony as to what issues were raised.

*Mr. Stallman.* I simply ask whether a proceeding was pending with respect to it or an inquiry was pending with respect to it.

*The Court.* Well, Mr. Lindabury asked on cross examination whether she had made an assignment of that paper and she said she had not. Now I suppose it would be strictly redirect for you to elaborate that particular matter. 10

*Mr. Stallman.* Just that one transaction of which she admitted she had some knowledge about the transaction.

*The Court.* If that matter requires further explanation than was brought out by cross examination you may re-examine on it. 20

Q Do you know whether there is any paper—

*Mr. Lindabury.* One moment, before you ask that question, I say to the Court and I say to you that there is no proceeding pending in New York challenging any assignment that she made or that purports to have been made by her of that fifty-thousand dollar mortgage. Now counsel must know that and if he is going into an examination of some other matter upon a misunderstanding I want to set him right.

Q You said in answer to one of Mr. Lindabury's questions that you knew of this fifty-thousand dollar mortgage to you, but that you had not assigned it? A I did. 30

Q Do you know whether or not there is any paper that you are charged with signing, the effect of which would be to assign or discharge that mortgage? A I do.

Q And what position have you taken with reference to that paper? A That I signed a paper which Mr. Oppenheim told me was to pay off a mortgage which the Albany Savings Bank had called, and I signed this paper which he said was for that purpose, and in my investigation it turned out it was this fifty-thousand dollar mortgage which I had signed away. 40

Q And you understand that the effect of the—

*The Court.* Oh, no.

*Jennie M. Oppenheim, re-direct.*

10 Q You said in answer to a question by Mr. Lindabury, he asked you whether it was not a fact that you had made a number of conveyances, that is joined with Mr. Oppenheim in making a number of conveyances of Mr. Oppenheim's property to the De Peyster Realty Company before the date of these deeds of Castlewall, and you said in answer to that question that "I signed those deeds to allow him to protect his property," or something of that kind. Now what did you mean when you said "those deeds," which deeds did you refer to? A The New York property, Ninety-third street, One Hundred and Twenty-fourth street and 135 Front street.

Q And the explanation that you gave was with reference to that property? A Yes.

Q That Mr. Oppenheim wanted to protect himself financially some way? A Yes, New York City property.

20 Q And at that time do you know whether any papers had been presented to you to sign with reference to Castlewall property, was that talked of at that time? A Not at all.

Q You say you think the last you saw of Miss Goodman was in the year 1914? A Yes.

Q And that was where? A At Castlewall, Elberon.

Q Where did you reside in the month of October, 1916? A At the Hotel Renaissance, New York.

Q Did you ever see Miss Goodman at that place? A No.

30 Q Now, Mr. Lindabury asked you how it was that you or your counsel in New York— A Oh, I want to change that, I saw Miss Goodman later than 1914, if that is the question you asked me, I saw her in August, 1917, but I was not in Mr. Oppenheim's office.

Q Mr. Lindabury asked you a number of questions trying to elicit from you the reason that this investigation was made at Freehold with respect to the deeds, Exhibits C. 1 and C. 2. At that time I think you said that your relations with Mr. Oppenheim had become strained. A Yes.

40 Q And was there anything pending in the way of proceedings for you to obtain separate support, maintenance or support of any kind? A There was.

Q (*By Mr. Lindabury.*) In October, 1917? A No. I had simply consulted Judge Leventritt in October, 1917. Proceedings were not started until February, 1918.

*Jennie M. Oppenheim, re-cross.*

Q In view of those proceedings that were started in February, 1918, can you say what the purpose was of making the examination of the records to ascertain what deeds Mr. Oppenheim had recorded? A What was the question?

*Mr. Lindabury.* I object to the question.

*The Court.* I do not see what this has to do with the matter in dispute. Mr. Lindabury has a right on cross examination to show the relationship between the parties is not amicable, but when you go as far as that, that is as far I think as you can go, you do not want to show anything to the contrary. 10

*Mr. Stallman.* No. I was merely trying to have the witness testify, her memory perhaps being refreshed by cross examination, but it is not material and I do not care about it. 20

Q Mr. Oppenheim is an attorney and counsellor at law of New York, is he not? A Yes.

Q And has been practicing in New York a great many years? A Yes.

Q I think you said he was connected with the filter business? A Yes.

Q And also a real estate business? A Yes.

Q And you say that you did not seek outside legal advice but took all the advice in matters of real estate from your husband? A Yes. 30

*Mr. Lindabury.* What is the object of simply reciting former testimony?

*Re-cross examination by Mr. Lindabury.*

Q Mrs. Oppenheim, do you mean to say you have any action pending in New York to set aside the cancellation or satisfaction piece of that fifty-thousand dollar mortgage? A No.

Q I thought you did. I show you what purports to be one of the copies of the agreement to cancel the agreement with respect to mutual wills, and see if you can recall it? A That is my signature. 40

Q That is your signature. (Witness is shown an agreement between Myron H. Oppenheim and herself, dated the 30th of December, 1916.) I suppose you took one copy and Mr. Oppenheim another? A I left my copy with Ed. Lazansky.

*Myron H. Oppenheim, direct.*

Q Does this look to you like one of the copies? A Yes, I think it is.

Q Now, I want to ask you whether or not up to the date of signing that paper you ever hesitated or refused to sign any deed for real estate that your husband presented to you for signature? A I did not.

*The Court.* That better be marked for identification, or if you want to put it in evidence.

*Mr. Lindabury.* I mean to put it in and I might as well do it now.

*Mr. Stallman.* I object to it. As far as I can see it is incompetent, irrelevant and immaterial to the issues in this case.

*Mr. Lindabury.* Well, I am not offering it against your objection now, but only asking to have it marked for identification.

Marked D. 1 for identification.

COMPLAINANT RESTS.

MYRON H. OPPENHEIM, sworn.

*Direct examination by Mr. Lindabury.*

Q How old are you, Mr. Oppenheim? A I was fifty-nine the twenty-fourth of June last.

Q When were you married? A I was married on the twenty-seventh of May, 1884.

Q Where? A At San Francisco, California.

Q Mrs. Oppenheim was a resident at that time of San Francisco? A She was.

Q Thereafter did you take up your residence in New York? A I did.

Q You had lived, had you, before that in New York? A In Albany and New York; I was born in Albany.

Q You are a practicing lawyer of the bar of New York, are you? A Yes.

Q Mrs. Oppenheim I believe says you had one child of your marriage? A Yes.

Q Now grown and married? A Yes, sir.

Q Were your relations with your wife friendly in earlier years of your married life? A Entirely so.

*Myron H. Oppenheim, direct.*

Q And confidential? A Very.

Q When was there a change? A I noticed a change in September, 1907.

Q Ninteen what? A A change; the first intimation that I had of any real—

Q I didn't get the year, Mr. Oppenheim? A 1916. 10

Q I didn't know whether you said 1907 or 1917. A 1916,—no, that was 1917, I believe 1917.

Q I was not sure whether you said 1907 or 1917. A No, 1917.

Q Did you and she ever enter into an agreement to make mutual wills? A We did.

Q How early was that in your married life? A Oh, very early in our married life.

Q And did you do it? A We did.

Q Did you make one and did she make one? A Yes, sir. 20

Q They were mutual in the fullest sense, were they? A Absolutely mutual.

Q Was the agreement to make them in writing or simply verbal between you? A They were in writing.

Q When that agreement was made,—what do you mean was in writing, the agreement to make them or the wills? A The wills were in writing.

Q But was the agreement to make mutual wills in writing or simply verbal? A Verbal.

Q At that time did you have property? A I did. 30

Q Considerable amount? A Yes, sir.

Q Did she have any? A No, she hadn't any except what I gave her.

Q Well, had you given her considerable? A I gave her considerable, yes.

Q Of what character? A I gave her jewels and pearls.

Q Amounting to considerable? A Amounting to considerable money, thousands of dollars.

Q That was the extent of her property that could be covered by her will? A Yes. 40

Q You know, I suppose, whether she came into an inheritance on the death of her father? A I do.

Q Was he a man of wealth? A He was.

Q He had a number of children I understand, did he? A Five.

*Myron H. Oppenheim, direct.*

Q Do you remember when she inherited her property? A I think it was about 1911.

Q And was it considerable in amount? A Well, I think so, yes.

Q I do not care for the amount, but I want to know whether it was very considerable or not? A Yes, it was substantial.

10 Q Did the mutual wills exist up to and after that time? A Yes.

Q Have you seen before this paper marked identification D. 1.? A I have.

Q Purporting to be an agreement to cancel the mutual wills. When was the matter of rescinding that agreement about mutual wills first taken up between you? A Well, Mrs. Oppenheim spoke, after the death of her father she referred to it at various times and thought she would like to cancel the mutual wills; I never interposed any objection to her desire to do that or  
20 anything else that she expressed a desire to do, and I acquiesced, I said, "All right."

Q Were the mutual wills nevertheless continued in existence for a time? A They were, yes.

30 *Mr. Stallman.* I would like at this time, in order that we may have a definite understanding how to proceed, to object to this testimony of the existence of mutual wills and any negotiations to cancel them or substitute other wills therefor, on the ground that whatever the facts may be in connection therewith it is entirely immaterial and irrelevant to the issue in this case. As your Honor pointed out in the beginning, Mrs. Oppenheim said that here are certain deeds on record purporting to have been made consciously by me and acknowledged by me, and I did not execute them consciously and I did not acknowledge them at all, and it seems to me that the testimony about the wills, whatever they might have agreed to about their wills can shed no light on the question whether or not at a certain time and at a certain place Mrs. Oppenheim signed and acknowledged  
40 two deeds, and for that reason I would like to have my objection at length on the record and press it at this time.

*The Court.* What is the relevancy of the question?

*Myron H. Oppenheim, direct.*

*Mr. Lindabury.* Why, your Honor, it is not only right but probably necessary for the defendant to explain the circumstances under which this conveyance was made, this dower release, that his wife was treated fairly and that she understood what she was doing, did not part with that right without being sensible of what she was doing and without having good reason for it. I want to show that this was all a part of one transaction, giving up the mutual wills and conveying this property, the making of a new will by which he gave her an annuity of seventy-five hundred dollars in his will in place of the old will and in finishing up these real estate transfers, and it was all a part of one general arrangement.

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*The Court.* Was it at the same time?

*Mr. Lindabury.* Not the same immediate time but in close proximity.

20

*The Court.* When in relation to these deeds was the mutual will matter considered? The deeds are dated October 3, 1916. Now when was this mutual will transaction?

*Mr. Lindabury.* The mutual will transaction, as he says, had been talked about for a year or two and it came to a head just a month or two before this transfer was made at which the wills were destroyed, or Mr. Oppenheim's was, and he understood hers. Then later she came back in December and said that she had been advised that it would be better to have a writing rescinding in that formal way the mutual wills, and then this paper was signed, and then Mr. Oppenheim made the will which I will present to you, and which was later altered by a codicil, which I also present, at the suggestion of her attorney, Judge Leventritt.

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*The Court.* If the evidence of the witness is that there was an agreement which led to all these transactions together, then I think the evidence might be competent, but if there was no agreement linking these transactions together, then it seems to me incompetent. I have not as yet heard that the two transactions were contemporaneous or were parts of one agreement; as soon as the witness testifies to that perhaps then the evidence

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*Myron H. Oppenheim, direct.*

10 may become competent. The question is, under what circumstances were these two deeds executed and acknowledged. That is what I want to hear. It may be that in developing that something else will come up that will be material, but at present it seems to me that that is the inquiry. The agreement with regard to the mutual wills seems to me to be wholly irrelevant, unless it was distinctly a part of this transaction. It may be that the evidence will become competent, but at present it seems to me to be incompetent and irrelevant. I will overrule the question.

Q Mr. Oppenheim, had your wife joined you in executing deeds for property owned by you before the execution of this deed of October third? A Always.

20 Q Do you remember approximately how many deeds she had joined you in executing? A No; a great many.

Q Do you remember the organization of the De Peyster Realty Company? A I do.

Q And what was the date of that? A I think it was February, 1909.

Q Do you remember how many different properties were conveyed to that company at that time? A Oh, I think there were four, three or four or five, four or five.

Q Did you at that time own the Castlewall property? A I did.

30 Q Was there any discussion between you with respect to conveyances of that property at that time? A There was.

Q Please state it. In the first place, did you have a deed drawn for it? A I had two deeds drawn for it, and those deeds were executed with all the deeds of all the property I owned everywhere, that is, they were signed by myself and my wife.

Q (*By the Court.*) You mean contemporaneously? A Yes, they were signed at the time that all the deeds were signed of the other properties.

40 Q (*By the Court.*) So that they all bear the same date? A No, they were not dated.

Q (*By the Court.*) Or acknowledged? A They were not acknowledged then.

Q (*By the Court.*) Well, I just want to know what you mean by contemporaneous execution, that is all. A They were

*Myron H. Oppenheim, direct.*

signed, these two deeds were signed at the time all the other deeds were signed conveying my property to the De Peyster Realty Company.

Q (*By Mr. Stallman.*) Was that in 1909 you say? A That was the time of the conveyance, there were two, that was the time of the conveyance of all my property to the De Peysters. 10

Q (*By Mr. Stallman.*) Well, was that in 1909? A Yes.

*Mr. Lindabury.* I will give you the exact date in a minute; they were all dated on the same day; I have all the deeds here.

I desire to offer in evidence the certificate of incorporation of the De Peyster Realty Company. I have a copy certified by the New York County Clerk.

*Mr. Stallman.* We charge in our bill that it is a New York corporation and it is admitted. 20

*The Court.* Well, the date may be important.

*Mr. Lindabury.* It shows that the company was organized February 11, 1909, by Monroe F. Toplitz, Moses M. Lindenstien and Gustave E. Schloss, they being the incorporators, each of them taking two shares.

Q Who is Monroe F. Toplitz? A My wife's brother.

Marked Exhibit D. 1.

Q I think she says that organization took place with her knowledge. A Yes, I think so. 30

Q Do you remember how soon following these conveyances were made, at or shortly afterwards? A I presume within a few months.

Q February twenty-seventh apparently. A Yes.

Q That seems to be the date; is that your recollection, about that time? A Yes.

Q Now the deeds for the New York property were acknowledged, not only signed by yourself and your wife but acknowledged and presently recorded, weren't they? 40

*Mr. Stallman.* Objected to as leading.

*Mr. Lindabury.* Well, there is no question about it, she testified to it.

*The Court.* Well, she admitted that.

*Myron H. Oppenheim, direct.*

*Mr. Stallman.* You are referring now to the New York?

*Mr. Lindabury.* Yes, New York only.

*Mr. Stallman.* I will withdraw my objection.

A They were.

10 Q What became of the deed that was drawn and signed but not acknowledged to the Castlewall property? A Two deeds.

Q Two deeds? A They were put in my safe.

Q How did it happen that they were not acknowledged and recorded? A Mrs. Oppenheim asked me not to record those deeds, for the reason that that was our home at Elberon, we were living there and our daughter was unmarried, and she wanted me to keep that property for the present in my name and not put it in the name of the corporation, and I consented to that, as I always had to in everything.

20 Q What is that? A And I consented readily.

Q Was anything further done with those deeds until the autumn of 1916? A Nothing at all.

Q Mrs. Oppenheim says that in the autumn of 1915 you spoke to her about giving an option on the Castlewall property to somebody in New York, and obtained her signature to a paper which was spoken of as an option; is she correct in her recollection about that? A No, she is not; Mrs. Oppenheim is entirely mistaken about that; I never asked Mrs. Oppenheim for any option at all.

30 Q Did you obtain her signature during that year to any option on that property? A Certainly not; there was no necessity for it.

Q Did you obtain her signature then or at any other time to any paper? A No, sir.

Q To any paper affecting it, excepting the signature made years before on the old deeds? A No, never; if I ever asked Mrs. Oppenheim to join me in a deed she did it readily without any hesitation.

40 Q She said she never hesitated or refused signing any deed you asked her to before the signing of this mutual will paper at the end of 1916; is that a fact? A December 30, 1916, yes, that is a fact.

Q Were you present in the office when her acknowledgments were taken to the two deeds of October third, were you not in

*Myron H. Oppenheim, direct.*

the room but in the office? A I was in the office but not in the room.

Q Where? A At 92 Pine street.

Q How came Mrs. Oppenheim to be there? A Mrs. Oppenheim accompanied me there.

Q Accompanied you there? A Yes. 10

Q And what do you know about the acknowledgments, or in the first place, were the deeds produced that day there? A They were.

Q By whom? A By me, I took the deeds out of my safe.

Q What did you do with them? A I called my stenographer in the office and asked her in Mrs. Oppenheim's presence to put in the date, that day, October 3, 1916, and she took them out.

Q Do you happen to remember whether the year date was in already at that time, or don't you remember? A No, there was no year date in at all, there was no date of any kind in; she took them out and— 20

Q The dates were all blank? A The dates were blank.

Q She took them out, and did she return them? A She returned them, but she had inserted the figures "16."

Q You mean she said that, did she say that you mean? A No, she brought them back with the dates inserted, figures "1916," and I sent her back and told her to write sixteen out, "s-i-x-t-e-e-n" and not to put it in figures. 30

Q Was Mrs. Oppenheim there then? A Mrs. Oppenheim was present in my office when I told her to do that.

Q Did she return them again with the dates filled in correctly? A She did.

Q What then happened? A Then I asked Miss Tramberger, who was my stenographer then, after she returned the deeds, to ask Miss Goodman to come in and take the acknowledgments of those two deeds.

Q Then what happened? A Then Miss Goodman came in to my private office and I acknowledged the execution of the deeds, and I stepped out of the office, there was somebody in the outer office at the time waiting to speak to me, and I left Mrs. Oppenheim and Miss Goodman in my private office. 40

Q Did you see Mrs. Oppenheim again? A I did.

Q How soon? A Shortly after.

*Myron H. Oppenheim, direct.*

Q Did you return to the office or did she come out? A No, I came back to my private office and she was there, and we chatted and then she left.

10 Q How came she to go down, or rather how came you to ask her to acknowledge this deed at that time. I want to know what led up to it from then, whatever time it began. A We had talked, she had asked me repeatedly about the cancellation of the mutual wills, and shortly before that, a month or two, a few months before that, she asked me whether I had destroyed it, the mutual will, or would destroy it, my copy, and I said I would, and I did, that very day I went to my office and I destroyed the mutual will.

Q That is your copy of the mutual will? A Mine.

20 Q Your own, yes. A Yes, which I had, and not until some little time later did she advise me that somebody had told her that the cancellation of those wills ought to be in writing, executed by both of us; so I said "Very well, I am perfectly agreeable to execute a writing if you would like it that way"; so she said she would, and she spoke to Judge Lazansky unbeknown to me, she spoke to him and asked him if he would prepare—

*Mr. Stallman.* That is merely hearsay; he doesn't know what Mrs. Oppenheim did.

30 A She told me she did, she spoke to Judge Lazansky and asked him to prepare such a paper, and I returned home one day and she presented those papers to me for signature, and I signed them with her; she took one and I took the other.

Q (*By the Court.*) Was that before or after the time when she acknowledged the two deeds of which you have spoken? A That was after; these deeds acknowledged October 3, 1916, and this paper writing was not—

*The Court.* Well, that is a matter of no consequence as far as I can see.

40 Q What, if any, connection did that have with this acknowledgment and delivery of the deed on October 3rd? A Well, the mutual will, my mutual will had been destroyed prior to that, and this writing of course was subsequent to that.

Q I know, but I want to know whether they were talked of in connection, or there was any agreement or understanding

*Myron H. Oppenheim, direct.*

that linked one with the other in any way? A I went into the matter fully with Mrs. Oppenheim, and after the cancellation she said she wanted to, now that she had come into her property she wanted to will it to whoever she pleased, and she wanted those wills cancelled; I said "Very well, then I will draw a new will and I will create a trust in that will by which you will receive an annuity of seventy-five hundred dollars, and in addition thereto the sum of ten thousand dollars," which I had received from her father on our marriage. 10

Q What was said about this property, this conveyance, in that connection? A I told her I would take those deeds now which were drawn of Castlewall, and she would join me in executing them and acknowledging them, and I would place them on record.

Q What did she say to that? A She said very well.

Q Was that a part of the same general talk? A It certainly was, surely. 20

Q Had you been in New York for some time before this October third? A Oh, yes.

Q Or had you been in the country? A Well, we had been in the country.

Q Do you remember how you came to go that particular day? A Well, we were there, we were at the Renaissance Hotel then, and I asked Mrs. Oppenheim to come down to the office with me and acknowledge those deeds. 30

Q She said she didn't know what that paper was? A She certainly did know what it was, and read it and looked it over, she certainly knew all about it, the same as she did every other deed she ever signed, because I explained particularly everything, there was no reason why I should not, we were the very best of friends, and Mrs. Oppenheim never objected to sign any paper I asked her to, and I fully and at large explained every transaction I ever had to Mrs. Oppenheim.

Q Did you make such a will as you told her you would make in that connection? A I did. 40

Q I show you what purports to be the original, is that it? A It is.

Q What is the date of it? A January 29, 1917.

Q The first bequest in that is ten thousand dollars to her, is it not? A It is.

*Myron H. Oppenheim, direct.*

Q And there is an annuity created of seventy-five hundred dollars per year? A Yes, sir.

*Mr. Stallman.* I object to that, and ask that those questions be stricken out.

10 *The Court.* He is merely asking the contents of the will for convenience; I see no objection to that.

Q It is dated January 29; how soon did you begin it? A I began immediately after the making of the agreement of cancelling the wills, I started right in to make my will as I told Mrs. Oppenheim I would.

Q Were you called to Judge Leventritt's office? A In November.

Q Of that year, 1917? A 1917.

Q After Mrs. Oppenheim had consulted him? A Yes.

20 Q And did you talk over your relations with your wife with him? A I did.

Q And did you show him that will? A I did.

Q Do you remember any criticism he made?

*The Court.* About the will?

Q Yes.

*The Court.* Oh, no.

30 *Mr. Lindabury.* Your Honor, let me open and then if you think it is proper to rule it out, very well. It is a fact that this seventy-five hundred dollar annuity in the will comes after various pecuniary legacies amounting to fifty or sixty thousand dollars, and Judge Leventritt went over it and objected on the ground that his changed circumstances, at least at that time, for he had lost some money, made that rather an insecure provision, and he acknowledged it and immediately executed a codicil by which he put that next after the ten thousand dollar legacy, preferring that annuity to his wife over all other bequests, even to his own daughter, in the will. It satisfied the point that Judge Leventritt made. I have studied these cases, your Honor, and maybe it would not be presumptuous to say that I have read more of them recently than your Honor ever has, and it is I think regarded as perhaps necessary that a husband should show

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*Myron H. Oppenheim, direct.*

that he has treated his wife fairly, and that a conveyance and release of dower has not been made either by misrepresentation or withholding from her matters that she ought to know about, and all the cases that I have seen have considered all the circumstances bearing on the question of whether the wife acted intelligently and acted reasonably, or whether the husband got her, through affection or otherwise, to do something that she ought not to have done, not necessarily lied to her or deceived her, but left her without independent advice and got her to do something that a reasonable person independently advised or independently acting would not have done. Now therefore, it does seem to me—I will make an argument of only two minutes, give you my theory of the case anyhow—that you must take account of the fact that this couple had this confidence and trust in each other and this relation which led to the making of the mutual wills, wills made by the way, too, when the mutuality was rather one-sided because the property was pretty much all the husband's, and they were continued down during the period when all these deeds, except the last one, were signed, and even then, when that was, too, because that was not really rescinded until December; she hadn't any reason in the world, therefore, to hesitate about signing any deed because while this agreement and these wills lasted when he died she would have gotten everything and not merely her dower right. Now, place yourself in her situation and inquire whether or not what she did was a reasonable thing for a wife to do under the circumstances, or whether the husband acted reasonably in getting her to do it or letting her do it. They had conveyed all the property except that Castlewall for reasons which do not seem to be now questioned by her, and had refrained from doing that through some family pride, they had an unmarried daughter then, and it was their home, so that was not put upon record, acknowledgment was not made and the deed was not completed. The time comes now when she comes in to her own through her father's death, a large amount of property, a fortune, and then for reasons which we need not enter into at all, she says now some feeling of jealousy or some-

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*Myron H. Oppenheim, direct.*

10 thing, suspicion she called it, she concluded that she would rather be rid of that situation and be free to dispose of her property in any way she pleased. She talks about that with her husband for a year or two or more, and presses it until some time, a month or two before this, he yielded and said all right, and tore up his will as he understood she had destroyed hers, and then they talked about this property, the daughter was married, they were not living there any more, it appears by the evidence they had given it up in 1914 as a place of residence, since the daughter was married, and he was giving up all he had a right to under the mutual wills, and besides he was providing, notwithstanding the giving up of the mutual wills, very handsomely for his wife by this will of his own, and under all the circumstances I think, all those  
20 circumstances, anyone would have to say that it was a reasonable thing for him to say, now let us complete that conveyance, and a reasonable thing for her to say all right, and not hesitate about doing it; and I think she did, I think she probably forgot it; I am not meaning to accuse this lady of giving false testimony, but it is not unreasonable that she should forget it; the evidence I think will be abundant about her acknowledging it. Of course with respect to signing it, nobody was present but her and Mr. Oppenheim, and you have got to weigh their words respectively; but with regard to the acknowledgment of it I think the proof will be plenary. That  
30 is the theory on which I offer this evidence.

*The Court.* I will overrule the evidence now being offered. I have allowed the evidence which bears on the question of the contemporaneous agreements of the parties to go in. This evidence can certainly throw no light whatever upon what happened. Mrs. Oppenheim distinctly charges that she was told that this paper which she signed was not a deed of this property but was an option, and she must stand or fall on that. Now what  
40 happened six months or a year afterwards in connection with a will can certainly throw no light upon the question whether or not such a representation was made, and I overrule it.

*Myron H. Oppenheim, cross.*

Q Did you ever represent to Mrs. Oppenheim that these two deeds which are produced here and which she signed were anything other than they are? A Never.

Q That is, that they were options? A Never.

Q Were the contents of them explained to her when she signed them in the early days, 1909? A Yes, fully. 10

Q You had them all there? A All of them.

Q And taking those with the others, I understand you that they constituted all you had? A All the property I had.

Q It was to take them that the De Peyster Company was organized with her brother in it? A Yes.

Q Did he stay in it for some years? A So long as he remained with me he stayed in, for many years, yes.

*Cross examination by Mr. Stallman.*

Q Mr. Toplitz was only a dummy in that company, was he not? A No, he was not, he was the actual secretary and treasurer, he was not a dummy, signed checks, executed agreements and paper writings. 20

*The Court.* Let us confine ourselves to the issue. Counsel for the complainant has insisted that the defendant shall confine himself to the issue, and I think the rule should be applied that he be confined to the issue as well.

Q You are a practicing attorney of New York and have been how many years? A Thirty-five years or more. 30

Q You acquired this Castlewall property in 1902, did you not? A I think so.

Q And was the New York property that has been referred to acquired before that or after that? A I think the New York property was acquired about that time, or in 1903.

Q How many deeds did you have prepared to convey your parcels of property to the De Peyster Realty Company in February, 1909? A I think there were deeds of the Ninety-third street property, and the deed of the One hundred and Twenty-fourth street property, and the deeds of 92 Pine street, and I am not sure about 135 Front street, whether that was conveyed to that company or to the New York and New Jersey Land & Improvement Company; that was a company previously organized to these deeds of Castlewall. 40

*Myron H. Oppenheim, cross.*

Q Well then, there would be five deeds that you recall; is that right? A I think so, no, I think there may have been another deed, Fifty-fourth street property at that time, I don't recollect, that may have been conveyed to the New York & New Jersey, or either that or to the De Peyster; that property I gave my daughter.

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Q Where were those deeds signed? A All the deeds?

Q Yes. A At my office.

Q At 92 Pine street? A No, 135 Front.

Q And who was there at the time? A Why, I don't remember who was there, seventeen years ago or sixteen years ago, at the time.

Q Had you signed these deeds before Mrs. Oppenheim? A No, I think we signed them together.

20

Q Of course Miss Goodman was not there at that time? A No, I think not, Miss Goodman was not with me at that time.

Q You say that the deeds for Castlewall property were then prepared and Mrs. Oppenheim requested you not to have them recorded; is that what she asked you? A She asked me not to put them in the De Peyster, but keep them in my own name for the present, not to put them in the corporation.

Q But for you to keep the deeds yourself, and you did that? A To keep the property in my own name.

Q And you put the deeds in your safe and kept them there? A I did.

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Q (*By the Court.*) Why were they signed at all? A I intended to convey all the property that I owned to the De Peyster Realty Company, and I prepared all the deeds of all the property that I owned.

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Q (*By the Court.*) That I understand, but why, the title was to be kept in your name, after having drawn the deeds why did you go to the length of signing them? A They were all signed together, and then I explained to Mrs. Oppenheim after the signing of all the deeds that I was conveying the Ninety-third street property to the De Peyster, the One Hundred and Twenty-fourth street and 92 Pine street and Castlewall to the De Peyster, and then she said "I wish you wouldn't convey Castlewall to the De Peyster, why not keep it in your own name, we are living there as our home, and Dorothy is unmarried, and keep it for the present, anyway," and I said "All right, I will," and I put those deeds in the safe, they were

*Myron H. Oppenheim, cross.*

not acknowledged, they were not dated, they were simply signed up with the others, and we did not date, those two deeds were not dated or acknowledged, but put back in my safe; the other deeds were all dated, acknowledged and recorded.

Q And as a matter of fact Mrs. Oppenheim never saw those deeds after that, at least until the time you say she acknowledged them? A I don't believe she did; they were in my safe; there was no occasion for her to see them. 10

Q Now did you have any conversation with Mrs. Oppenheim during the summer of 1916 about Castlewall? A I certainly had various conversations with Mrs. Oppenheim about Castlewall during 1916 and every other year, we owned it and I talked about it, and naturally discussed everything with her in connection with all my affairs.

Q Did you have any talk with her in 1915 about it? A About Castlewall generally, about vegetables and— 20

Q No, about selling the property. A Oh, yes, I was talking for many years about selling it, we wanted to sell it, it was too large for our purposes; and I tried very—

Q Well, you said yes. A Yes, indeed.

Q And did you get a man named Meyer interested in it as an agent or possible purchaser? A No, I didn't get him interested.

Q Well, you know Mr. Meyer, don't you? A I met Mr. Meyer, and I met a hundred others who I talked with in relation to the purchase of the property. 30

Q All right. Now you have practiced law long enough to know when you have answered the question. As a matter of fact you had Mr. Meyer down to Elberon to look over the property? A Yes.

Q That was in October, 1915, was it not? A I don't know.

Q Didn't you drive down to Elberon in an automobile with Mrs. Oppenheim and Mr. Meyer, and another lady who is now in California, for the purpose of looking over that property and showing it to Mr. Meyer? A No doubt about it, absolutely so, but I was going to tell you— 40

Q That was in October? A I won't say that.

Q It was in the fall of 1915? A No, I won't say that. I say there is no doubt in my mind that Mr. Meyer came down with Mrs. Oppenheim and another lady and myself in a motor,

*Myron H. Oppenheim, cross.*

but whether it was October 1915 or 1916 or 1914 I don't know; I took many people down there to look at the property with an effort to sell it or exchange it, so he was one of many; I do not recall the date but I distinctly remember that he did go.

10 Q Did you along about that time in discussing the probable sale of the Castlewall property to Mrs. Oppenheim tell her that you had in mind a trade of that property for some property on Park avenue in the city of New York? A No.

Q Do you deny that absolutely? A Deny what?

Q That you had a conversation with Mrs. Oppenheim about trading Castlewall for a property in Park avenue, New York? A No, I certainly do not deny it; I talked with Mrs. Oppenheim about a hundred trades.

Q Then you did have such a conversation? A Yes, I may have had, I won't say that I had, but I have no doubt I may have had because I discussed a hundred trades that were offered.

20 Q Just tell us the circumstances leading up to this occurrence that you say took place on the third of October in your office? Where was your office at that time? A 92 Pine street.

Q And you say that Mrs. Oppenheim came down town with you that day? A She did.

Q What time of day was it? A Oh, in the morning.

Q Well, what time? A Oh, it was before twelve.

Q How did you go down town? A Came down, I don't remember whether we came down in the motor or in the cars, I know we came down there, I don't remember whether it was in  
30 the motor or in the cars.

Q Where did you come from? A Come from our home; we were then living at the Renaissance.

Q Had you any conversation that morning about this property? A Surely.

Q The night before? A Yes, I may have mentioned it.

Q Well, I am asking you, did you? A I may have had the night before, I certainly did that morning because I asked Mrs. Oppenheim to accompany me to my office for the purpose of acknowledging those deeds.

40 Q And when you got down to your office did you get the deeds out of your safe yourself or did Miss Goodman get them out? A No, I got them out of my own safe.

Q And then when you got them out of the safe what did you do? A I called my stenographer in.

*Myron H. Oppenheim, cross.*

Q What is her name? A Miss Tremberger.

Q Is she here today? A She is.

Q And she had been in your office some time? A Yes.

Q How many years? A She had been there some little time; I do not recall how many years.

Q She had been in your office three or four years before that? A I think not. 10

Q Two or three? A Perhaps one or two.

Q This was your law office, was it not? A Well, it was the office of the Filter Company.

Q That is where you have your law office? A Well, I wasn't very actively engaged in the practice of law.

Q That was also the office of the De Peyster Realty Company? A Yes.

Q And that is where you transacted your real estate business? A Yes. 20

Q And in the transaction of your real estate business you frequently prepared deeds and contracts and mortgages and assignments of various kinds I assume? A Yes.

Q So you called your stenographer and told her to put in the date in these deeds, is that right? A That is right.

Q Then just tell us what happened after that. A Well, she took the deeds and she typed the October 3rd, and put the figure "16," typed them in both deeds, in both acknowledgments, and she brought them in and I asked her to write out sixteen in place of putting it in figures, and she took them back and wrote them out and brought them back. 30

Q Back where? A To my office, and then I told her to ask Miss Goodman to come in and take the acknowledgments.

Q Miss Goodman was then employed by you? A Employed by the Filter Company.

Q Well, the Filter Company was your company? A I was the president of the company.

Q And Miss Goodman had been in your employ or the employ of your corporation for a good many years? A Yes.

Q Do you know how many times this word "sixteen" was erased and written over? A No, I don't know that, I presume once, the "16" was rubbed out. 40

Q You say there were two figures in there before, a "1" and a "6," and that is all? A Yes.

*Myron H. Oppenheim, cross.*

Q And it was immediately taken out and the letters "sixteen" substituted? A Yes.

Q Now you say Miss Goodman came into your private office? A Yes.

10 Q Then what transpired? A I told Miss Goodman that Mrs. Oppenheim and I had wanted to acknowledge the execution of two deeds of Castlewall to the De Peyster Realty Company, and I acknowledged mine for the uses and purposes therein mentioned, and I then got up and left my office and Miss Goodman remained there with Mrs. Oppenheim, I went in my other office, in the front office, somebody was waiting to see me.

Q And you asked Miss Goodman to sign her name on this paper that it was signed, sealed and delivered in her presence?

A I asked her to take our acknowledgments to that paper.

20 Q Did you ask her to sign it as a witness that it was signed, sealed and delivered in her presence? A She signed it evidently; I don't remember whether I asked her to sign it or not.

Q As a matter of fact it was not signed, sealed and delivered in her presence, was it, either one? A It was sealed and delivered, it may not have been signed in her presence.

Q Did you tell Mrs. Oppenheim that it was necessary for your business arrangements to have these deeds acknowledged at that time? A Which deeds do you refer to?

Q C. 1 and C. 2. A I told Mrs. Oppenheim in furtherance—

30 Q Can not you answer that yes or no? A I did not. What is the question?

Q (Question read.) A Business arrangements? No, no business arrangements, no, not at all.

40 Q After you had them acknowledged at that time why was it you kept them off the record for over a year? A Well, there was, I don't know, I put them aside, I didn't think much about them; the property was conducted from that time on as the De Peyster Realty Company's, the insurance was issued in that way, I gave instructions to them, and we ran it in the name of De Peyster, and the moneys received from rent went to the credit of De Peyster, and all expenditures on the property were made by the De Peysters.

Q I didn't ask you that. What was the occasion for having these deeds acknowledged on the third of October, 1916, when there wasn't any occasion for putting them on record until

*Myron H. Oppenheim, cross.*

November, 1917? A The only occasion they were acknowledged was in conformity to Mrs. Oppenheim's and my discussion on the will question; I wanted to place all my property in the De Peyster because she was getting an annuity, and she so understood it, and was not to share in any property under dower right.

Q Of course you explained in detail to Mrs. Oppenheim that when you conveyed all of your property and had her convey all of her dower interest in your real estate that there would not be any real property left for her to take under your will, did you not? A I explained fully to Mrs. Oppenheim the reason why we were going to convey the property to this corporation.

Q But did you explain fully to Mrs. Oppenheim that after all those transfers took place that you would not have any real estate to convey by your will? A By my will?

Q Yes, to bequeath to her under your will. A I explained the nature and object of the conveyances which were made by myself and in which Mrs. Oppenheim joined me, I explained it fully to her; she understood the reason why I made the conveyances.

RECESS.

Q Now just what was it that you said to Mrs. Oppenheim in explanation of these transfers of these five pieces of property?

A I told her that there was,—I didn't care to be sued individually on actions brought for damages, I had been sued by the administratrix of a young man who had been killed as an elevator boy in one of the apartments and judgment had been obtained amounting to seven or eight thousand dollars against me individually, and there were other matters that made it undesirable for me to continue to own the property, the Compensation Act which made an owner of property liable for anything that might happen, any property, and I didn't care to be sued individually, or sue individually, and for that reason I thought it a great deal better to have the property controlled by a corporation.

Q Do you know when the Compensation Act was passed in New York? A Yes, there was a Compensation Act passed in New York.

*Myron H. Oppenheim, cross.*

Q When? A Oh, some years ago, making the owner of property liable.

Q Well, was it in 1909? A I don't exactly remember just what year it was.

Q Well, you know it was not until after 1909, do you not?

10 A No, I don't know that.

Q And it was after the Compensation Act was passed that you had this conversation with Mrs. Oppenheim? A No, I won't say that.

Q Didn't you tell me you explained to her on account of the liability? A I explained generally that there was a personal liability which I did not care for and that was the reason I wanted the property controlled and owned by a corporation.

20 Q Then you mentioned to her the Compensation Act in New York which made you responsible for damages? A I don't say at that time I mentioned that to her, that was incidental, I don't say I did at that time.

Q When I asked you what you said to her you said something to me about your liability under the Compensation Act. A I did say that and other things at various times; I didn't say that was mentioned at the time the corporation was formed.

*Mr. Lindabury.* Did you mean to state that the Compensation Act in New York was not passed until after 1909?

*Mr. Stallman.* I am asking the witness.

30 *Mr. Lindabury.* You stated that as a fact, I understood you, to the witness; you did not mean that.

Q You don't know when that Compensation Act was passed? A I do not.

Q You do not remember whether it was before or after 1909? A No, I do not.

Q Following that conversation you say you had these deeds executed by yourself and Mrs. Oppenheim; is that right? A Following the conversation as to personal liability.

40 Q Where do you say these deeds were executed? A They were executed at my office I believe, 135 Front street, New York City.

Q Is it not a fact they were executed at the office of the Title Guaranty & Trust Company? A Not at all.

Q Well, some other trust company? A Not at all.

*Myron H. Oppenheim, cross.*

Q You are positive of that? A Quite positive.

Q When was it, according to your recollection now, when Mrs. Oppenheim made a new will? A I think it was in 1916; I don't know that she made a will.

Q I mean according to your information. A The information obtained from her?

Q Yes. A I think she told me in 1916, that is my recollection. 10

Q And when was it, according to your present recollection or information that you first discussed with her the subject of entering into an agreement to cancel a previous agreement relating to mutual wills? A I never discussed that with her, she broached the subject to me.

Q Well, then, when she broached it you discussed it with her? A Well, there wasn't very much discussion on my part at all; I acquiesced in anything she said she wanted to do.

Q When was that? A About the cancellation,—oh, that must have been around in the fall of 1916, shortly before the papers were drawn, October I believe. 20

Q Now you have identified some paper here relating to this will matter; let me ask you do you now recall where that paper was drawn? A Which paper, the cancellation paper?

Q Yes. A I don't know of my own knowledge where that was drawn, I only know what Mrs. Oppenheim told me; she presented those papers to me for signature at the Renaissance and said that she had had them drawn and asked me to sign them, and I signed them at once. 30

Q Where? A At the Renaissance.

Q You did not go to Judge Lazansky's office? A Never.

Q You have never been in his office? A Oh, yes, I have, but I say those two papers were signed in my apartments at the Renaissance, Mrs. Oppenheim signed them and I signed them, and she took one and I took the other; never went to Judge Lazansky's office to sign those papers.

Q I think you say in your answer that you own about ninety per cent. of the stock of the De Peyster Realty Company? A I own all of the stock except the few shares necessary for incorporation purposes. 40

Q Have you not testified in an examination before trial in the separation proceedings brought against you in New York by your wife that you had no personal property?

*Myron H. Oppenheim, cross.*

*The Court.* What difference does that make? It has nothing to do with the issue.

A The examination was here, if your Honor please.

Q You say that you procured Mrs. Oppenheim to acknowledge the papers marked Exhibits C. 1 and C. 2 after some arrangement with her which you made with her by which you were to make a new will leaving her a certain annuity and legacy? A I never said that I procured Mrs. Oppenheim to sign any paper.

Q You understand what I mean, that you had Mrs. Oppenheim go to your office at 92 Pine street. A I asked Mrs. Oppenheim to accompany me to my office for the purpose of acknowledging those two deeds.

Q And you say it was done either subsequent or pursuant to some conversation with her in which you said that you would make a new will leaving her certain annuities or legacies? A Yes, sir.

Q Did that conversation take place prior to November, 1916? A Not prior to,—oh, yes.

Q At the time that you made that statement about your intentions regarding your will were you indebted to Mrs. Kreidel in the sum of sixty-two thousand dollars?

*Mr. Lindabury.* One moment. I object.

*The Court.* What is the object of it?

30 *Mr. Lindabury.* I object rather upon the idea that the Court has indicated a disposition to keep the case within rather strict limits; if we can go into the whole story I will not object, but I do not want to be cut out with other parts of it if some goes in.

40 *Mr. Stallman.* What I had in mind was this. Mr. Lindabury has succeeded I think, over my objection, in getting in some testimony for the purpose of showing to the Court or leading the Court to believe that the two deeds in question were consciously acknowledged by Mrs. Oppenheim as a result of some sort of a trade, that is, as a result of something by which she would obtain certain benefits if she would acknowledge this paper, the benefits to come irrespective of what the extent of it was, but some benefits by virtue of a will which her husband was then contemplating drawing.

*Myron H. Oppenheim, cross.*

*Mr. Lindabury.* I did not mean that, and I think perhaps I was misunderstood, and the Court maybe misunderstood me. Shall I explain? I do not mean to claim, your Honor, that there was a bargain by which he said that he would make this will if she would sign these deeds. I put that in upon the idea that it showed a state of mind. She had asked that the mutual wills be given up and her husband had acceded, and then he told her, not immediately but presently, that he was now going to make a new will, in which will he would not give her all the property, he would give her ten thousand dollars and that he would give her an annuity of seventy-five hundred dollars in lieu of dower. That had nothing to do immediately with this acknowledgment, but that rested in her mind presumably, she knew that was the situation of his property and of his intention, and then shortly thereafter, within a matter of a few weeks, he proposed to her that this deed be acknowledged, the circumstances which led to not acknowledging it and filing it having changed, they were no longer living there, and the daughter had grown and was married, and there then seemed to him, in view of all the circumstances, especially that he had done what he had in giving up the will, the propriety in the deed being acknowledged and filed. Now that is all I meant, and I did not claim it was in the nature of a bargain by which she agreed to do the one if he did the other. I think perhaps I stated it in such a way that counsel and Court misunderstood me. I now mean to correct it.

*Mr. Stallman.* That I think makes it a little bit more clear. I will admit I got that impression from Mr. Lindabury's question. That was the reason I wanted to go into the question of the meritoriousness of the consideration.

*Mr. Lindabury.* I did not mean you should not do that at all, but I only wanted to correct a misapprehension that had arisen out of my clumsy statement.

Q I would like to ask this one question, if you won't object Mr. Lindabury. In the year 1916, or whenever it was that you were contemplating making this will in which these

*Myron H. Oppenheim, cross.*

provisions of an annuity and legacy were contained, were you then in a financial condition which would enable you to make such a will? A I certainly was.

10 *The Court.* That would not make any difference, not a particle. Mr. Lindabury has disclaimed any consideration for this deed at the time it was acknowledged and recorded.

*Mr. Lindabury.* Yes, anything in the nature of a direct consideration.

*The Court.* Then that question is utterly irrelevant.

*Mr. Lindabury.* Does your Honor rule it out?

*The Court.* Yes.

*Mr. Lindabury.* Well, I hope you won't if I say I shall prefer it to remain in.

20 *The Court.* What bearing has it on the case?

*Mr. Lindabury.* Suppose that he said to her and created in her mind the impression that she was to be taken care of in that way, and it was utterly false, he could not do it.

30 *The Court.* That is a different thing; she may have been moved to do what she did by her husband's prior acts, although those acts were not the consideration for what she did. I understand your position, and when we are going into the question of the will it seems to me we are going a good ways from the issue. The issue is was this woman by fraudulent representation induced to sign that paper?

*Mr. Lindabury.* I do not want to argue counsel's side, he is capable of doing that himself; but suppose what he said to her was false and he could not do it, why it would be just as bad deceit as that that she alleges.

*The Court.* If you both want it to go in, I will let it go in.

40 Q Mr. Oppenheim, referring to Exhibits C. 1 and C. 2, at the time that you took these out of your safe, which you say was on the third of October, 1916, just what writing was on the paper at that time and what writing was added to that paper at that time? A The entire thing, the entire deed was typewritten, the names of the parties and the description of

*Myron H. Oppenheim, re-direct.*

the property and the consideration, and the entire deed was filled in excepting the date, everything was done excepting the date.

Q Even the names of the parties in the acknowledgment? A Surely; not the notary's name, of course not, but the typing was all done, everything was complete except the date in the deed, the body of the deed and the acknowledgment. 10

Q And which is the stenographer that wrote up the deed? A Oh, that is a matter of fifteen or seventeen years ago, I couldn't tell you that, I had many stenographers in that time.

Q (*By the Court.*) How many? A Oh, many stenographers in that time, a period of fifteen or sixteen years; these deeds were drawn, let me see, no, it was seven years, that is it, seven years.

*Re-direct examination by Mr. Lindabury.*

Q Mrs. Oppenheim said something about property being included in one of these deeds other than that known as Castlewall; is any property included in either deed except Castlewall property? A No. 20

Q She mentioned some other property that she was under the impression was contained in it; do you remember the name? A The Moses property.

Q Moses property? A That is not.

Q Was there property down there known as the Moses property? A Yes.

Q Was that purchased some time or other? A Yes. 30

Q To whom was that conveyed? A Directly to the DePeyster Company.

Q When it was purchased? A When it was purchased.

Q Was it ever owned by you? A Never.

Q So it never was in your name? A Never.

*Mr. Lindabury.* I desire to offer that agreement marked for identification, the agreement to cancel the agreement to make mutual wills.

*Mr. Stallman.* I object to the paper. 40

*The Court.* That paper was dated before this transaction, was it?

*Mr. Lindabury.* No, your Honor, the paper is dated on the 30th of December following.

*Laura J. Tremberger, direct.*

*Mr. Stallman.* I object to it because it is remote, it is incompetent and immaterial in reference to the issues of this case and is something subsequent to the execution of the deeds on the date which they purport to bear.

10 *The Court.* Is there not a date there that may be useful? I thought it was introduced primarily for the purpose of identifying a date. I do not understand the witness to say that that paper was executed because of a prior agreement to execute it; on the contrary he says that there was no prior agreement to execute an agreement of this sort, that his wife brought him the paper at the time he signed it and asked him to sign it.

20 *Mr. Lindabury.* The witness says that agreement was to give up and destroy the mutual wills, which was just a little before this deed was executed; then a month later she said to him that she had been advised that that agreement ought to be reduced to writing so that the agreement to make the mutual wills would be cancelled in a way that could be easily established.

*Mr. Stallman.* Yes, I think that is what Mr. Oppenheim testified.

*The Court.* Then I will let the paper in.  
(Marked Exhibit D. 2.)

*By Mr. Stallman.*

30 Q You said that the deeds were signed, I am speaking now of the deeds for the New York property, were signed in your office on Front street; do you know whether they were prepared at that place or not, written up? A If that was my office, which I believe it was at that time, not 92 Pine street, my present office, they were prepared in my office.

LAURA J. TREMBERGER, sworn.

*Direct examination by Mr. Lindabury.*

40 Q Miss Tremberger, where do you live? A 309 West 134th street.

Q Were you in the employ of the Filter Company, so-called, in 1916? A Yes, sir.

Q What were your duties? A Stenographer and telephone operator.

*Laura J. Tremberger, direct.*

Q Where were you, where did you serve, where was the office where you served? A 92 Pine street.

Q How long had you been there? A What year, how long have I been there now?

Q If you please, yes, how long have you been there? A Over four years.

Q You had been there two years then? A Yes. 10

Q And your duties, you ran a typewriter too, did you? A Yes, sir.

Q Typewriting, stenography and attendance at the telephone? A Yes.

Q Is that the company of which Mr. Oppenheim is the president? A Yes, sir.

Q And is his office in the same suite? A Yes.

Q I show you two deeds bearing date October 3, 1916, from Mr. and Mrs. Oppenheim to the De Peyster Realty Company; tell me whether you ever saw them before. A Yes, I did see them quite some time ago. 20

Q When did you first see them and under what circumstances? A Why, I don't know, I think it was about two years ago that I first saw them.

Q Well, about two years ago? A Two years ago.

Q Tell the circumstances. A Mrs. Oppenheim came into the office and Miss Goodman greeted her as Mrs. Oppenheim.

Q She was also in the office? A Yes.

Q You mean you saw her come in? A Yes.

Q Did you see her come in? A Yes. 30

Q What do you mean by saying that Miss Goodman greeted her? A She said "How do you do Mrs. Oppenheim?"

Q Did you hear that? A Yes, sir.

Q Then what happened next? A Then she was in there talking with Mr. Oppenheim for a while, Mr. Oppenheim called me in.

Q One moment. Had you known Mrs. Oppenheim before that? A No, sir.

Q But you heard the greeting of Miss Goodman? A Yes, sir. 40

Q Then where did Mrs. Oppenheim go? A Into Mr. Oppenheim's private office.

Q Do you remember whether she came in alone or accompanied? A I believe she came in right with Mr. Oppenheim.

*Laura J. Tremberger, direct.*

Q And they went in to Mr. Oppenheim's private office? A Yes.

Q Then what happened? A Why, they were in there talking for a little while; Mr. Oppenheim called me in and asked me to fill in the dates of the papers.

10 Q How did he call you in; did he ring for you? A No, he called me in.

Q Then what happened? A He asked me to date the papers.

Q What papers? A The two deeds.

Q Well, where did you first see them? A When he called me in to tell me to date the papers.

Q Who had the deeds when you first saw them? A Mr. Oppenheim had them.

Q Are they these two that I have shown you? A Yes, sir.

20 Q Then what did you do? A I took them out into my office and dated them and brought them back.

Q What dates did you put in? A The third day of October, 1916.

Q Do you remember whether that was the day of the date you put in? A Why, I don't know whether it was the day Mrs. Oppenheim was there.

Q What? A I don't remember exactly whether it was the date she was there, but I believe it was the day she was there in the office.

30 Q You believe that you dated them on the day she was there? A Yes, the same day she was there, but I am not quite sure of that.

Q Does anything occur to your mind to make you doubt whether you put in that date or some other date? A No.

Q Then having put the dates in what did you do with them? A Brought them back to Mr. Oppenheim, and he told me it was not legal to write sixteen in figures, and take it out and write the number 16 out.

40 Q What sixteen do you refer to now? A The third day of October, 1916, that I have in the paper.

Q The word "sixteen" you had in figures there? A I had figures, "16," "1" "6."

Q What did you do then? A I took it out and erased it.

Q What with? A A regular rubber, typewriting rubber.

*Laura J. Tremberger, direct.*

Q Then what did you do? A I brought it back to Mr. Oppenheim.

Q No, but after that erasure what did you do? A I wrote the word "sixteen" in.

Q With the typewriter of course? A Yes.

Q How many times did you do that? A What, erase it? 10

Q No, I mean to say how many changes did you make of the word "sixteen"? A Just one, I rubbed out the figures and put in the word "sixteen."

Q Where? A Out in my office.

Q No, I do not mean that, but where on the paper?

*The Court.* Just point out on which line.

A Why up here I erased it.

Q (*By the Court.*) What line is that? A The second line. 20

Q Did you do it anywhere else in the paper? A In the back where the acknowledgment is supposed to be taken.

Q The opening part of the acknowledgment which contains the date? A Yes, sir.

Q Did you do that to both papers? A Yes, sir.

Q Then what did you do with them? A I brought them in to Mr. Oppenheim and he told me to tell Miss Goodman to come in.

Q Who was there when you went back? A Into Mr. Oppenheim's office? 30

Q Yes. A Just Mrs. Oppenheim.

Q Just Mrs. Oppenheim? A That is all.

Q And of course Mr. Oppenheim? A Mr. Oppenheim.

Q Mr. Oppenheim told you to do what? A To tell Miss Goodman to come in to acknowledge them.

Q What did you do? A I went outside and told Miss Goodman Mr. Oppenheim wanted her, and she went in to the office and I stayed outside.

Q Do you remember how long she was in there? A No. 40

Q Do you remember how long Mrs. Oppenheim stayed? A No, I don't remember how long she stayed.

Q Did you see the papers after that? A Never.

Q That ended your connection with the matter in any way, did it? A Yes, sir.

*Laura J. Tremberger, cross.*

*Cross examination by Mr. Stallman.*

Q How is it you remember the day, after two years, that you wrote in the words "third of October, nineteen hundred and sixteen" on those deeds; you would not remember what date you put in there except hearing it discussed here in the Court room? A That is all, and the recollection came back to me by hearing it discussed here, the discussion here this morning recalled the whole fact to me.

Q That is, you heard us talk about the third of October and that is the reason you now say that it was the third of October that you put into the paper? A Yes, sir.

Q And after having looked at the paper?

*Mr. Lindabury.* That is not quite fair; she says she is not entirely sure that she put it in the day they were there, she thinks so.

20 *Mr. Stallman.* I asked her whether it was not because of our mentioning the date that she says she put in the third of October. Now you had been working there in Mr. Oppenheim's office for two years before this?

A About two years, yes, sir.

Q And was that the first position you had? A No, sir.

Q You had been working before that? A Yes, sir.

Q Just what kind of stenography work had you done there during those two years? A Sometimes I filled out law papers for Mr. Oppenheim and complaints.

30 Q Did he have his law office there? A We just had the complaints for the Filter Company and the Fire Extinguishing Company.

Q Did Mr. Oppenheim have his law office there? A Yes, sir.

Q Did you do work for him in his law practice? A Yes, some work I did for him, not all.

Q Well, you did work for him in his law practice? A Yes, sir.

Q And that was not the first deed you ever saw, was it? A Why, I don't believe I ever saw a deed before that.

40 Q Did you ever see any sort of a legal paper before that? A Yes, sir.

Q You have filled out blanks before? A Yes, sir.

Q You had seen mortgages at that time, had you not? A No, I never saw a mortgage.

*Laura J. Tremberger, cross.*

Q How did you know this paper was a deed? A I didn't know it was a deed, I didn't know what kind of paper it was, I just filled it out.

Q But you had often written up papers like this before, had you not? A Not deeds—

Q Well, mortgages or assignments, or something of that kind? A No, just summonses and complaints. 10

Q Didn't you know at that time that Mr. Oppenheim was engaged more or less in real estate work? A Why no, I didn't know anything about Mr. Oppenheim's affairs, just the Filter Company.

Q What is that? A I didn't know anything about Mr. Oppenheim's affairs, just for the Filter Company.

Q What is there about these papers that makes you recall having seen them before? A Why, I seen the papers before at the office. 20

Q How is it that you remember it, what is there about them, is there anything that is recalled to your mind by looking at these papers? A No, sir.

Q Were those blue slips on the last time you saw it? A I don't remember that.

Q Don't remember that? A No, sir.

Q Can you explain to us why, if you only had these figures "1" and "6" down there that you had to erase as large a space as is now covered by the letters "ixteen" and a period? A No, I can't explain that. 30

Q Are you sure there wasn't something else under that than "16" before you put the figures "1" and "6" there? A Not that I remember there was nothing underneath it, I don't believe there was any other figure underneath it.

Q That was Exhibit C. 1, look at the acknowledgment on Exhibit C. 1 and see where you have erased the paper under the letters "sixte," that is erased under five different letters, is it not? A Yes, sir.

Q Do you know why you had to erase that much? A I haven't any protector, I just rubbed across to rub the figures out, I guess. 40

Q Can you tell by looking at Exhibit C. 2 whether or not you had another period or a comma on that paper before you put in the one after the word "sixteen"? A No.

*Laura J. Tremberger, re-direct.*

Q Well, there are two punctuation marks shown there, are there not? A I don't know what that is.

Q You don't know what what is? A What this here is supposed to be.

Q That other little mark? A Yes.

10 Q It looks like a punctuation mark there that has been erased. A It looks to me as though it is a pencil mark.

Q You say that you are not sure that you put in the date October third on the third day of October, 1916? A I remember Mr. Oppenheim telling me to come in and date the papers, but I don't know whether that was the third day.

Q Did he tell you to put in October third, 1916? A I don't remember.

Q Neither do you remember whether the day that he said that was the third day of October, do you? A No, sir.

20 Q Do you know what kind of a typewriting machine you used to fill in this date? A I believe it was an L. C. Smith.

Q An L. C. Smith? A Yes.

Q Now you say that you had never seen Mrs. Oppenheim before that? A No, sir.

Q And when she came in you did not know whether it was Mrs. Oppenheim or not, did you? A No, sir.

Q Do you know whether this is the lady that was there that day or not? A Yes, sir.

30 Q (*By Mr. Lindabury.*) You say you do not remember distinctly whether it was October third; do you remember whether it was about that time? A It was around that time.

Q Can you look at these papers and tell us whether you put in with your machine that you were using at that time anything else besides the words "third October" and "16"? A No, I don't think I did.

Q Did you put anything on the back of this deed? A The date.

Q What is that? A The date, I guess.

40 Q You put on the date but you did not put on the words "Myron H. Oppenheim, etc., to the De Peyster Realty Company"? A I don't remember doing it.

Q But you do remember writing this in here? A I am not sure whether I wrote it in or not, but I know I dated the deeds.

Q You mean on the inside? A Yes.

*Jennie G. Goodman, direct.*

Q But you do not remember whether you endorsed the date of October 3, 1916? A No, I don't remember that.

JENNIE G. GOODMAN, sworn.

*Direct examination by Mr. Lindabury.*

Q You are in the employ of the Filter Company? A Yes, 10  
sir.

Q Having an office where? A 92 Pine street, New York City.

Q How long have you been in the service of that Company? A Almost ten years.

Q Do you know Mrs. Oppenheim? A I do.

Q When did you first make her acquaintance? A Oh, several years ago, I met Mrs. Oppenheim quite often, she used to come to the office, I met her at her country residence, met her 20  
occasionally.

Q What was the character of your duties at the office of the Filter Company? A I am the bookkeeper and cashier.

Q How long have you been such? A How long? For about, well, ever since.

Q Ever since you have been there? A Yes, practically.

Q You also, I believe, are a Notary Public? A No, Commissioner of Deeds.

Q Commissioner of Deeds for the City and County of New York? A Yes, sir.

Q Accustomed to taking the acknowledgment of deeds, are you? A Yes. 30

Q Taken many, have you during the period? A Oh, yes, quite some.

Q How long have you been a Commissioner? A For about four years, four years, yes, just about four years.

Q I show you deeds offered in evidence from Myron H. Oppenheim and wife to the De Peyster Realty Company, bearing date October 3, 1916, covering what is called here the Castle-wall property, and ask you if you ever saw them before? A 40  
Yes, I did see these deeds before.

Q When first? A At the time I was asked to take the acknowledgment.

Q Do you remember when that was? A Yes, that was about two years ago in October.

*Jennie G. Goodman, direct.*

Q By reference to the papers can you fix the exact date? A Yes.

Q What was it? A On the third, I remember it.

Q Third of October. Tell me how the request to take the acknowledgment came to you. I want the whole circumstances.

10 A Well, Mr. and Mrs. Oppenheim came down in the automobile, which was an occasion, because Mrs. Oppenheim did not call very often at the office; they went into Mr. Oppenheim's private office and after a discussion there Mr. Oppenheim asked me to come in that Mrs. Oppenheim will acknowledge some papers.

Q One moment. Now how was Mr. Oppenheim's request conveyed to you? A Mr. Oppenheim came outside to the office and said "Mrs. Oppenheim is here for the purpose of acknowledging some papers in relation to Castlewall."

20 Q Did you go inside? A I went inside and—

Q One moment. Who was there? A Mrs. Oppenheim.

Q Was Mr. Oppenheim also there? A As I came inside he walked out, when I came in his private office.

Q What took place?

*The Court.* Tell us all that happened after you came in, beginning at the very beginning and going right down to the end.

30 A Well, first Mr. Oppenheim came outside and had the dates put in the papers, and then he called me in and he said "Mrs. Oppenheim is here for the purpose of acknowledging these deeds, and you will take her acknowledgment"; then Mr. Oppenheim walked out in the outer office and I told Mrs. Oppenheim this was her signature and I acknowledged her deeds.

Q You told what? A I asked Mrs. Oppenheim if this is her signature, and knowing Mrs. Oppenheim's signature I asked her, and I took the acknowledgment to the deeds.

40 Q What was said about the deed or what it was, what was said about the paper? A "These are two deeds of Castlewall conveyed to the De Peyster Realty Company."

Q Who said that? A I said that to Mrs. Oppenheim.

Q What did she say? A She acknowledged it.

Q Did she make any reply to that statement? A None.

*Jennie G. Goodman, direct.*

Q How did she acknowledge it, you say she acknowledged it, what did she say or do? A Nothing was said, I asked her if this is her signature and I took the acknowledgment.

Q How did you take the acknowledgment, what did you say or do in taking the acknowledgment, how did you take it? A Well, I took it right at the office there.

Q I know, but tell me—

10

*The Court.* You said something to her, did you not?

A Yes.

Q What did you say? A I said "These two deeds are deeds of Castlewall which convey Castlewall property to the De Peyster Realty Company."

Q Yes. A And that was all, and then I asked her if she would acknowledge it.

Q In taking her acknowledgment how did you take it, what did you say to her? A Well, I didn't say anything.

20

Q What was the conversation? A Well, that was the conversation.

Q What do you call taking her acknowledgment; you said after making that statement you took her acknowledgment? A Yes.

Q How did you take it, what did you do, what did you say, what did she say? A She said "Yes," she said "Yes, it is O. K.," it is her signature, and I acknowledged it; she knew what the papers contained.

30

*Mr. Lindabury.* May I ask a leading question?

*Mr. Stallman.* I object.

*Mr. Lindabury.* I have tried my best to get her to tell all that took place.

Q (*By the Court.*) Suppose that Mr. Lindabury came into your office and said "I just signed a deed, now I want you to take my acknowledgment"; what would you do, what would you say? A Well, I would ask Mr. Lindabury if that is his signature, he should sign it, and then I would acknowledge it.

Q (*By the Court.*) Would you do anything more than that, ask him whether it was his signature? A Well, if he knew the contents of the paper.

40

Q (*By the Court.*) Well, would you ask him whether he knew the contents of the deed? A Yes.

*Jennie G. Goodman, direct.*

Q (*By the Court.*) Would you ask anything more? A No.

Q (*By the Court.*) After he had said that he knew the contents of the deed what would you say? A Well, I suppose my part ends there, what I have to do.

10 Q (*By the Court.*) Suppose Mr. and Mrs. Lindabury should come into your office and they should tell you that they had each of them signed a deed and they wanted you to take their acknowledgment, what would you do? A Well, I would ask if they would acknowledge the deeds.

Q (*By the Court.*) Is that all you would do? A And swear to them.

Q (*By the Court.*) Is that all? A I presume so.

*Mr. Lindabury.* May I ask my leading question?

20 *Mr. Stallman.* I do not think Mr. Lindabury should ask a leading question.

*Mr. Lindabury.* I agree that every means should be taken to exhaust the recollection of the witness first, but failing that I think I am entitled under the rules to ask the question and take it for what it is worth.

30 *Mr. Stallman.* The reason I would like to state now my objection to counsel doing it, before he even puts the question, is that this witness is an employee of the defendant, and under examination by both counsel and the Court she has not only explained what she did in this instance but what she would do in a present instance, and I think it is highly improper and prejudicial for counsel now to suggest to her what her answer should have been.

*The Court.* The rule is that after the recollection of the witness has been exhausted by questions that are not leading, that then counsel if he wishes to call attention to any particular point may do so. You can ask her to look at the certificate and see if she says anything further about it.

40 Q Look at the certificate which you signed, it is on the other side, you call it the acknowledgment; read that certificate or acknowledgment and see if it refreshes your recollection as to whether or not anything else passed between you and Mrs. Oppenheim. A No, nothing else passed.

*Jennie G. Goodman, direct.*

Q What? A Nothing else passed.

Q (*By the Court.*) Now look at the latter part of the certificate beginning with the words "and the said Jennie M. Oppenheim," and read that. A Well, I recall of course I asked Mrs. Oppenheim if she signed these papers and she said she did, and they contained the Castlewall property, and she did. 10

Q (*By the Court.*) That is all you can recollect? A That is all; Mr. Oppenheim wasn't present at that time.

Q Mr. Oppenheim was not present? A No.

Q Did you say anything about her doing it of her own free will without fear, threats or compulsion from him?

*Mr. Stallman.* I object to that.

*The Court.* I will let the question be answered. In proportion as the question is leading the value of the answer diminishes, but I will allow the question to be asked. 20

A I believe I did.

Q (*By the Court.*) Why do you say you believe you did? A Because my recollection is not so clear on that point.

Q Did you sign that certificate at that time? A I did, yes, sir.

Q And read it at that time? A Yes.

Q Have you any reason to think that you did not do all that you certified there you did do? 30

*Mr. Stallman.* I object to that, that is speculating, that is arguing with the witness.

*The Court.* She said she thinks she said that but her recollection on the subject is not good.

Q Did you in signing those certificates subscribe to any statement that you were conscious was not correct. In other words, was the statement when you signed it intended to be a true statement by you? A Yes.

Q Then what became of the papers? A They passed out of my hands, I haven't seen the papers. 40

Q Well, you say you signed, it is your signature to the witness clause? A Yes.

Q And to the certificate of acknowledgment? A Yes, sir.

*Jennie G. Goodman, cross.*

Q And what did you do with the papers? A I acknowledged it and put my seal on it and brought them back to the office, and Mr. and Mrs. Oppenheim were in the office then.

Q You put the seal on them? A Yes.

Q What did you do with them? A I acknowledged them outside at my desk.

10 Q You mean you wrote your certificate outside? A Yes, and then I brought them back in the inner office where Mrs. and Mr. Oppenheim were there.

Q To whom did you give them? A I put them on the desk.

Q Then you went out? A Yes.

Q That ended your connection with the transaction? A Yes.

Q Did Mrs. Oppenheim remain there long? A She remained for quite a while, and I believe they went out together, I am not sure.

20

*Cross examination by Mr. Stallman.*

Q You say you have been a commissioner of deeds about four years? A Yes.

Q And you have been working down there at Mr. Oppenheim's office about ten years? A Almost ten years, going on ten years.

Q And you were bookkeeper and cashier for the Filter Company? A Yes.

30 Q Why did you get a commission as commissioner of deeds? A It was convenient for me, I was asked quite often to sign papers, because where I live, in my vicinity there were no commissioners of deeds at that time, not in a few blocks within where I live, so I took that out.

Q You served in that capacity quite often for Mr. Oppenheim and the De Peyster Realty Company, did you not? A Well, quite a few times, yes.

Q In fact whenever there were any papers to be signed affecting real estate of the De Peyster Realty Company you took the acknowledgments and proofs? A Well, I don't know whenever, but quite often, there might have been papers signed by some one else.

40

Q And now you say on this occasion Mrs. Oppenheim came down town with Mr. Oppenheim and went in, the two of them

*Jennie G. Goodman, cross.*

went in to Mr. Oppenheim's office, and he came outside and told you that Mrs. Oppenheim was there for the purpose of acknowledging some deeds? A Yes.

Q In other words, you got that message direct from Mr. Oppenheim? A Yes.

Q You heard his voice, in other words? A Yes, indeed I did. 10

Q And then you went into his private office, as he was coming out; that is right, is it? A Yes.

Q You went in there and you found Mrs. Oppenheim there alone? A Yes.

Q Where were the deeds at that moment? A On the desk.

Q Did you pick up the deeds and read them yourself? A I didn't read the deeds through; no, I only knew the contents, I knew what it was.

Q You did not read the description? A No. 20

Q How did you know what it was? A Because I was told.

Q Who told you? A Mr. Oppenheim told me they were the deeds of the Castlewall.

Q When did he tell you that? A At the time.

Q So you simply said to Mrs. Oppenheim "Is this your signature on here" and then you took her acknowledgment; that is what you said, is it not? A Yes; well, I don't recall just exactly what I said to her at that time, just what I stated. 30

Q Now you said something about asking the person signing the deed to swear to it; did you have Mrs. Oppenheim swear to it? A Yes.

Q Just what was the oath you administered her? A The oath?

Q Yes. A There was no oath taken.

Q Well, you said you had her swear to it? A Well, she acknowledged her signature and then I swore to it, surely.

Q You swore to it? A Then I took the acknowledgment, surely, I signed it. 40

Q What do you mean when you say you had her swear to it? A Well, as long as she acknowledged her signature that is just as good as an oath sometimes.

Q She came in, and did she sign it while you were sitting there? A It was not signed in my presence, no.

*Jennie G. Goodman, cross.*

Q Well, you wrote down here that it was signed in your presence, didn't you? A It wasn't signed in my presence.

Q Is that your signature? A Yes.

Q Why did you put that in there? A Because I knew Mrs. Oppenheim's signature and Mr. Oppenheim's.

10 Q And that is the reason you wrote in there it was signed and sealed in your presence? A Yes, she was there at the time.

*Mr. Lindabury.* That is the attestation clause you were pointing to?

Q No. Signed, sealed and delivered in the presence of. Mr. Oppenheim was not present at this time at all? A Well, I wasn't present when he signed that.

20 Q But I mean at the time you signed your name down here you say Mrs. Oppenheim was in the office alone? A Well, I don't know whether Mr. and Mrs. Oppenheim were there, but I know the two were in the office, either he was out in the other office or inside.

Q But you told us a while ago that Mr. Oppenheim in coming out, you passed him coming out of the office and you went in there and you found Mrs. Oppenheim there alone; that is true? A Yes.

Q And you asked her if that was her signature, didn't you? A Yes.

Q And she said it was; isn't that what you said? A Yes.

30 Q Then you took her acknowledgment; is that right? A Yes.

Q Then you went outside to your own desk, got your seal, signed your name and put the seal on? A Quite right.

Q That is everything that happened, is it not? A Yes.

Q Now as a matter of fact you picked these papers off the desk this way, and you said to Mrs. Oppenheim "Is that your signature," and she said "Yes," and then you went and filled out the back; is not that just what happened? A I filled out the back?

40 Q Yes, signed your name down there? A I asked her if she knew the contents of the papers.

Q You did, and what did she say? A "Yes."

Q Yes. Now did you ask her that before or after you told her it was Castlewall property? A Before, before I took the acknowledgment.

*Jennie G. Goodman, cross.*

Q You told her it was about the Castlewall property? A Yes.

Q Why did you ask her what was in it? A I don't quite get you.

Q You said a while ago that when you picked up the deeds you said "This is about the Castlewall property." A I didn't pick up the deeds in the first place; the deeds were on Mr. Oppenheim's desk, and Mrs. Oppenheim came down for the purpose to acknowledge them. 10

Q That is what you thought? A Yes; I asked her if she knew the contents of the paper, and I told her those were the deeds of Castlewall and she said "Yes."

Q Which was it, did you tell her they were Castlewall deeds, or did you ask her if she knew what they were without you telling her? A Well, I am not quite sure on that subject, I think I asked her if she knew. 20

Q Then you don't think you said to her that they were Castlewall deeds? A No, I couldn't quite recollect every word of the conversation, I couldn't state.

Q Is it a fact that you said to Mrs. Oppenheim that "Here are the deeds for Castlewall" because Mr. Oppenheim had told you they were Castlewall deeds? A Well, I looked at the papers before I signed them myself and I saw they were deeds of Castlewall.

Q Explain to me what there is in there that shows it is Castlewall property? A It is in relation to the Castlewall property. 30

Q Show me what there is on that deed that shows its relates to Castlewall? A I can't just read them through, but I know they were about Castlewall.

Q Did you ever see that paper before that day? A No, I did not.

Q You had never read it before? A No; I am not supposed to.

Q All right. Then what is there in that paper that you could have seen that day to indicate to you that it was Castlewall property? A In the first place, Mr. Oppenheim told me. 40

Q Now what is it in the second place? A And then I read the papers, of course I didn't read them thoroughly, but I knew what it was about.

*Jennie G. Goodman, cross.*

Q How did you know it wasn't for the Moses property?

A Because it didn't say so.

Q Does it say Castlewell there? A I believe it does.

10 *Mr. Lindabury.* Which one are you showing her; one of them I know does. You do not want to mislead the lady I know.

A Well, it doesn't say anything about Castlewall in here, I don't think.

Q Didn't you tell me a few minutes ago that you did not read the description at that time? A I saw the deed and I read a little of it, but not all of it, because it was none of my affairs.

Q You did not read any part of the description of it? A No, I don't think I did.

20 Q (*By the Court.*) Do I understand you you did not read the deed yourself? A No, sir.

Q (*By the Court.*) And you did not read it to Mrs. Oppenheim? A No, your Honor.

Q (*By the Court.*) You did not read it; so that you did not know what that deed contained? A Not quite, only from what I was told.

Q (*By the Court.*) You knew from what Mr. Oppenheim told you that it was Castlewall property? A Yes, sir.

Q (*By the Court.*) And that is all you did know? A Yes, sir.

30 Q (*By the Court.*) You did not know it from any examination that you yourself made of the deed? A No.

*Mr. Stallman.* I do not see the word "Castlewall" anywhere in the paper, I cannot find it there.

*Mr. Lindabury.* It was my impression, but I might easily be mistaken.

Q Did you or didn't you ask Mrs. Oppenheim to swear to it? A I couldn't tell you.

Q You don't remember? A No.

40 Q You are quite sure that Mrs. Oppenheim was there alone? A Yes, indeed, I am quite sure of that.

Q And that from the time you walked in and found the papers on the desk and took them out and put your seal on Mrs. Oppenheim had not touched the papers? A Well, I

*Jennie G. Goodman, cross.*

don't know; of course nobody touched the papers while they were in my possession.

Q What I am getting at is this, that Mr. Oppenheim called to you personally and said "Mrs. Oppenheim is here to acknowledge some papers" or something of that kind? A Yes.

Q You immediately got up from where you were sitting, walked into Mr. Oppenheim's private office and found the papers on his desk, and then turned and said something to Mrs. Oppenheim, and then you took the deeds, walked out of that room, went over to your desk, signed it and put your seal on, and then after that you handed the papers back to Mr. Oppenheim, did you? A I put them on the desk. 10

Q Oh, you put them back on the desk? A Yes.

Q There wasn't any occasion or necessity for you saying anything more to Mr. Oppenheim? A No, I didn't think it was necessary. 20

Q Do you know Miss Tremberger? A Yes.

Q Would you care to change your testimony any about how you came to put your name on these papers if you recall while you were in the room that Miss Tremberger testified that she received a telephone message from Mr. Oppenheim at her switch-board asking you to go in there, and she told you to go in the office?

*Mr. Lindabury.* Do not answer that question. The lady gave no such testimony, no such testimony.

*The Court.* My recollection of her testimony was that Mr. Oppenheim told her to call this witness in and she did so. 30

*Mr. Lindabury.* Yes, that is what she said.

*Mr. Stallman.* Yes, and then you asked her how did he ask you to do that, and she said over the 'phone.

*Mr. Lindabury.* Oh, no.

Q Is it a fact then, according to your recollection, that Miss Tremberger told you that Mr. Oppenheim wanted you?

A No, Mr. Oppenheim came out personally and told me. 40

*Mr. Lindabury.* We rest.

*Mr. Stallman.* If the Court please, I have just seen these deeds for the first time today, they have been produced upon notice, and before we rest I would like to

*Jennie G. Goodman, cross.*

10 have the opportunity of having these deeds examined by an expert, under Mr. Lindabury's supervision as well, for the purpose of determining whether I ought to offer some additional testimony; I do not know whether I ought to do that or not until the deeds could be subjected to examination, and I would like to have the Court adjourn the matter at present without day so that I can determine whether or not we should offer some testimony of that character. I think it is material to the case as to whether or not there have been alterations of this instrument or some change made in the instrument after it was first prepared or executed, which I cannot possibly do myself, I am not sufficient an expert in that line, and neither probably is the Court, and I think it may be material in the case.

20 *The Court.* Have you got any witnesses here?

*Mr. Stallman.* No; as I say, that requires an examination of the paper itself. There is some dispute in the case as to when this paper was drawn and when it was signed and when it was acknowledged, and I think very likely if we could have an opportunity of having an expert look at it we could tell a little bit better whether we desire to introduce further testimony in regard to it or not, but I cannot tell unless I have somebody look at it.

30 *Mr. Lindabury.* It appears now that they have inspected these deeds at the office in Freehold in 1917, and anyhow the issue has been made up for some months, they have known just what our position was, as we have known what theirs is, and the deeds have been here in my office, counsel could have seen them or had an expert examine them at any time he wanted to; he surely has not the right to wait until the trial is over and then ask the Court to postpone the case while he goes on a fishing expedition.

40 *The Court.* It seems to me that the situation is this: This complainant was told by her counsel to go to Freehold to look at the original deeds; she went there, she saw her signature, and she saw this erasure, and from that day to this there has been an opportunity of determining why that erasure was made as far as the

*Jennie M. Oppenheim, direct.*

microscope could determine it. It seems to me it is rather late to ask for a postponement on that ground.

JENNIE M. OPPENHEIM, recalled.

*Direct examination by Mr. Stallman.*

Q Do you know the witness Miss Tremberger? A I do. 10

Q Did you ever see her to your recollection prior to October, 1916? A I did.

Q Where? A Several times at 52 East Fifty-second street.

Q Is that the place you lived? A That is the house we occupied; she came there to see Mr. Oppenheim, he was laid up for several days and she was there several times.

Q And did she see you there do you know? A Yes.

Q Had you spoken to her before? A Yes.

Q On the third of October or thereabouts, 1916, did you go into Mr. Oppenheim's office at the time when Miss Tremberger and Miss Goodman were there, and did Miss Goodman greet you with "Good morning, Mrs. Oppenheim"? A I did not. 20

Q There is just one question I would like to ask, if the Court please, and Mr. Lindabury, which is not strictly rebuttal, but which will be explanatory of some of Mrs. Oppenheim's testimony. Mrs. Oppenheim, when you recognize your signature upon the two deeds, Exhibits C. 1 and C. 2 from looking at them, could you tell or do you know, or is your recollection refreshed as to when you put your name on those papers? A I never remember to have signed a deed for Castlewall. 30

Q Well, that is not what I ask you, but after looking at the papers and recognizing the signature on there to be your signature, does that recall to your mind when you signed that particular paper? A No, it does not.

Q Do you know whether or not these deeds which confessedly, admittedly bear your signature, are the papers which you say you signed at Elberon in October of 1915? A No, I signed two papers but they were not deeds. 40

Q Well, what I mean is, these identical signatures, do you know whether or not these signatures were the ones you made in October, 1915? A No, I do not.

*Mr. Lindabury.* I think she said she knew they were not because they were not on that kind of paper.

*Jennie M. Oppenheim, direct.*

Q On October 3, 1916, or thereabouts, were you alone with Miss Goodman in Mr. Oppenheim's office? A I was not.

*Mr. Lindabury.* Now I understand the witness to say that she was not there at all; she has fully denied all this; is it necessary to go over it again?

10 *Mr. Stallman.* Just because Miss Goodman was specific in putting it inside of the private office, that is all.

*Mr. Lindabury.* She says she was not there at all.

CASE CLOSED.

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*Exhibit C. 1.*

EXHIBIT C. 1.

THIS INDENTURE, made the 3rd day of October, in the year of our Lord one thousand nine hundred and sixteen

BETWEEN Myron H. Oppenheim and Jennie M. Oppenheim, his wife, both of the City, County and State of New York, parties of the first part and De Peyster Realty Company, corporation duly organized and existing under the Laws of the State of New York, of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of one (1) dollar and other valuable considerations lawful money of the United States of America, to us in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its heirs and assigns forever.

ALL that certain piece or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Ocean in the County of Monmouth and State of New Jersey, at Elberon

BEGINNING on the west side of a street seventy feet wide, at the northeast corner of a tract of land heretofore conveyed by Alice M. Eaton and husband to Charles F. Hoffman thence (1) along the west side of said street as the magnet pointed November 16th A. D. 1895, north three degrees and fifty-five minutes East one hundred and ninety-four feet and one inch; thence (2) north eighty-three degrees and twenty-minutes west one hundred and ninety feet and nine inches to the east line of lands belonging to Wilson Green; thence (3) along said line south three degrees and fifty-five minutes west two hundred and six feet and eight inches to the north line of said tract of land conveyed to Charles F. Hoffman; thence (4) along said line south eighty-seven degrees East one hundred and ninety feet and six inches to the place of beginning. Containing eighty-eight hundredths of an acre.

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*Exhibit C. 1.*

Being part of the same premises conveyed to Lavinia Sickles by Sarah M. Green and others by deed recorded in the Monmouth County Clerk's Office in book 435 of deeds page 363; and duly conveyed by the said Lavinia Sickles to William M. V. Hoffman by deed recorded in the said Monmouth County Clerks Office in book 564 of deeds at page 80, and thereafter duly conveyed to John P. Everett, by the said William M. V. Hoffman and wife by deed intended to be recorded simultaneously herewith in the aforesaid Monmouth County clerks office.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining. ALSO all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part, of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances

TO HAVE AND TO HOLD all and singular the above described piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, its heirs and assigns, to its own proper use, benefit and behoof forever.

AND the said parties of the first part their heirs, executors and administrators, do covenant and grant to and with the party of the second part, its heirs and assigns, that the said parties of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of thesealing and delivery of these presents are not encumbered by any Mortgage, Judgment or Limitation or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever,

AND ALSO, that the said parties of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises, in manner aforesaid. AND ALSO, that the said parties of the first part will WARRANT, SECURE, AND FOREVER DEFEND THE SAID land and premises, unto the said party of the second part, its heirs and assigns forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever,

Exhibit C. 1.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MYRON H. OPPENHEIM  
JENNIE M. OPPENHEIM.

10

Signed, Sealed and Delivered in the Presence of

J. G. GOODMAN

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED, that on this 3rd day of October in the year one thousand nine hundred and sixteen before me personally appeared Myron H. Oppenheim and Jennie M. Oppenheim who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

20

AND the said Jennie M. Oppenheim being by me privately examined, separate and apart from her said husband did further acknowledge that she signed, sealed and delivered the same freely, as her voluntary act and deed, without any fear, threats or compulsion of or from her said husband.

30

J. G. GOODMAN

Comm. of Deeds No. 1217

N. Y. Register No. 17126

Comm. exp. 12/28/1917

Myron H. Oppenheim  
and  
Jennie M. Oppenheim, his wife,  
to  
De Peyster Realty Company

RECEIVED in the Clerks office of the County of Monmouth N. J., on the 28th day of November A. D., 1917, at 11.30 o'clock in the fore-noon, and Recorded in Book 1053 of Deeds for said County on pages 261

40

DEED.

JOSEPH McDERMOTT

Dated October 3rd 1916

Clerk

*Exhibit C. 2.*

EXHIBIT C. 2.

THIS INDENTURE, made the 3rd day of October, in the year of our Lord one thousand nine hundred and sixteen

10 BETWEEN Myron H. Oppenheim and Jennie M. Oppenheim, his wife, both of the City, County and State of New York, parties of the first part, and De Peyster Realty Company, corporation duly organized and existing under the Laws of the State of New York, of the second part,

20 WITNESSETH, That the said parties of the first part, for and in consideration of the sum of one (1) dollar and other valuable considerations lawful money of the United States of America, to us in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its heirs and assigns forever.

ALL that certain piece or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Ocean in the County of Monmouth and State of New Jersey,

30 BEGINNING at a stake standing in the Northeast corner of the lands hereby conveyed; said stake bearing S. 6° 05' W. from the west gate post to wood entrance to the Grove of John Hoey and also bearing S. 38° 30' W. from the centre of the standing pipe of the Long Branch Water Company; Thence (1) as the needle of George Cooper's Compass pointed May 7th, 1881, S. 6° 05' W. 700 feet (seven hundred feet) to a stake, Thence (2) N. 77° W. 591 feet (five hundred and ninety one feet) to the west line of the property now or lately belonging to John Hoey aforesaid, Thence (3) along said division line N. 3° 15' E. 630 feet (six hundred and thirty feet), Thence (4) S. 83° 45' E. 617 feet and 6 inches (six hundred and seventeen feet and six inches)  
40 to the place of beginning. Containing 9 186/1000 acres (Nine and one hundred and eighty six thousands acres) of land, more or less. Being the same piece or parcel of land and premises that was conveyed to William R. Garrison, since deceased, by John Hoey and Josephine, his wife, by indenture dated the

*Exhibit C. 2.*

eleventh day of May in the year of our Lord one thousand eight hundred and eighty-one, and recorded in the office of the Clerk of the County of Monmouth in Book 335 of deed page 442 on the eighth day of June in the year of our Lord one thousand eight hundred and eighty-one.

And Also ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Ocean in the County of Monmouth and State of New Jersey and bounded and described as follows, to wit: 10

BEGINNING at a point formed by the intersection of the Northerly side of Park Avenue with the Westerly side of a road leading from Park Avenue North between lands formerly belonging to Alice M. Eaton and William S. Eaton, her husband and the late Charles F. Hoffman; running thence Westerly and along the said Northerly side of Park Avenue Three Hundred and ninety one feet and nine inches; thence North three degrees forty five minutes ( $3^{\circ} 45'$ ) East five hundred and twenty nine feet to land formerly belonging to Henry Green; thence Easterly and along the Southerly line of the said land Three hundred and eighty four feet to the said Westerly side of said road running between lands formerly belonging to said Alice M. Eaton and William S. Eaton her husband and the late Charles F. Hoffman; and thence Southerly and along the Westerly side of said road Six hundred and six feet six inches to the point or place of beginning. Be the said several dimensions more or less, the said tract containing five acres situated in the Village of Elberon and being the same premises conveyed to said Charles F. Hoffman by Alice M. Eaton and William S. Eaton, her husband; by deed dated the 24th day of March, 1892, and recorded in the office of the Clerk of Monmouth County, N. J., on the 4th day of April, 1892, in Book 497 of Deeds, for said County, on pages 323 &c. 20 30

And Also ALL the right, title, interest and estate of the parties of the first part in and to a certain other outlying tract of land, situate in said County, (but whether in said Ocean Township, unknown to parties hereto at date hereof), about five miles more or less from the said two tracts above mentioned, and containing about six acres more or less, consisting of wood and stone land; also all the right, title and interest and estate that the said parties of the first part have or may have in any capacity whatsoever, in and to a certain agreement or contract for the pur- 40

*Exhibit C. 2.*

10 chase of about fifteen acres of land, more or less, situate in said Monmouth County, and on which said contract the sum of Fifteen hundred (\$1,500.00) Dollars has been paid, the purchase price agreed to be paid for said land being the sum of Nine thousand (\$9,000.00) Dollars, leaving a balance of Seventy-five hundred (\$7,500.) Dollars due thereon; also all the right, title, interest and estate that the said Charles F. Hoffman or the parties of the first part hereto had, have or may have in, to, under or by virtue of a certain agreement as to certain roads or ways, bounding the four sides of the said tract of land first above mentioned, made between John Hoey of the first part and William R. Garrison of the second part, and bearing date May 11th, 1881.

20 Being the same premises conveyed to Myron H. Oppenheim by Eleanor L. Hoffman and others, by deed dated May 15th 1902 and recorded with the Clerk of Monmouth County on the 17th day of May 1902, in Book 689 of deeds on Page 371.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining, ALSO all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part, of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances

30 TO HAVE AND TO HOLD all and singular the above described piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, its heirs and assigns, to its own proper use, benefit and behoof forever.

40 AND the said parties of the first part their heirs, executors and administrators, do covenant and grant to and with the party of the second part, its heirs and assigns, that the said parties of the first part are the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents are not encumbered by any Mortgage, Judgment or Limitation or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever,

*Exhibit C. 2.*

AND ALSO, that the said parties of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises, in manner aforesaid. AND ALSO, that the said parties of the first part will WARRANT, SECURE, AND FOREVER DEFEND THE SAID land and premises, unto the said party of the second part, its heirs and assigns forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever, 10

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MYRON H. OPPENHEIM  
JENNIE M. OPPENHEIM

Signed, Sealed and Delivered in the Presence of 20

J. G. GOODMAN

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED, that on this 3rd day of October in the year one thousand nine hundred and sixteen before me personally appeared Myron H. Oppenheim and Jennie M. Oppenheim who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 30

AND the said Jennie M. Oppenheim being by me privately examined, separate and apart from her said husband did further acknowledge that she signed, sealed and delivered the same freely, as her voluntary act and deed, without any fear, threats or compulsion of or from her said husband.

J. G. GOODMAN

Comm. of Deeds No. 1217

N. Y. Register No. 17126

Comm. exp. 12/28/1917

*Exhibit D. 2.*

Myron H. Oppenheim  
and  
Jennie H. Oppenheim, his wife,  
to  
De Peyster Realty Company

RECEIVED in the Clerks office  
of the County of Monmouth N.  
J., on the 28th day of November  
A. D., 1917, at 11.30 o'clock in  
the fore-noon, and Recorded in  
Book 1053 of Deeds for said  
County on pages 263 &c.

10

## DEED.

JOSEPH McDERMOTT

Dated October 3rd 1916

*Clerk*

## EXHIBIT D. 2.

AGREEMENT, made this 30th day of December, 1916, between  
MYRON H. OPPENHEIM of the City of New York, party of the first  
part, and JENNIE MAY OPPENHEIM, his wife, of the same place,  
party of the second part.

20

WHEREAS, the parties of the first and second parts heretofore  
entered into an agreement wherein and whereby it was agreed  
between them to execute mutual wills, of which agreement there  
is no written evidence in existence; and

WHEREAS, such mutual will was executed, but it is believed by  
the parties hereto to have been destroyed; and

WHEREAS, the parties hereto are desirous of annulling, cancell-  
ing and abrogating such agreement to make mutual wills,

30

NOW, THEREFORE, in consideration of the premises and of the  
sum of One dollar (\$1) to each of the parties by the other in hand  
paid, the receipt whereof is hereby acknowledged,

IT IS HEREBY AGREED by and between the parties hereto, as  
follows:

40

Any agreement or agreements heretofore made between the  
parties hereto, to make and execute mutual wills, are and each  
of them is hereby cancelled and annulled and declared to be of  
no force and effect whatsoever, and each of the parties hereto re-  
lieves the other from any liability of any kind whatsoever there-  
under and each of the parties hereto shall have the full right and  
authority, without any claim on the part of the other, his or her  
heirs, executors, administrators or assigns, to execute a will,  
making such disposition of his or her property as he or she  
may deem proper.

*Conclusions of Vice-Chancellor.*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals in the City of New York this 30th day of December, One thousand nine hundred and sixteen.

MYRON H. OPPENHEIM (L. S.)  
JENNIE M. OPPENHEIM (L. S.)

10

**Opinion.**

Filed January 31, 1919.

Mr. M. M. Stallman, for complainant.

Mr. R. V. Lindabury, for defendants.

STEVENS, V. C.

The bill prays that two deeds bearing date and purporting to have been acknowledged on October 3, 1916, made by complainant and her husband to the De Peyster Realty Co.—a company of which her husband holds all the stock—may be decreed to be null and void as to complainant on the ground that her signature was, in the language of the bill, “obtained falsely and without her knowledge of the purport or effect of the papers and without there having been made known to her the contents or effect thereof.”

20

In February, 1909, Mr. Oppenheim caused the Realty Company to be incorporated for the purpose of taking title to certain properties in New York City and Elberon, New Jersey, of which he was the owner. Deeds for the New York property were executed and recorded. Deeds for the New Jersey property were signed but not acknowledged, Mrs. Oppenheim expressing a wish at that time that Mr. Oppenheim would keep it in his own name, as it was their home and as their daughter was unmarried. To this Mr. Oppenheim acceded and the papers were put in the safe.

30

Prior to 1909 the parties had made mutual wills. Subsequently to the signing of the deeds Mrs. Oppenheim came into the possession of an inheritance and wanted the mutual wills cancelled. Mr. Oppenheim consented and said he would make a new will by which he would give his wife \$10,000 and an annuity. Soon afterward he requested her to come to the office

40

*Conclusions of Vice-Chancellor.*

and acknowledge the deeds of the Elberon property, which he still desired to convey to the Realty Company.

10 There can be no doubt that Mr. Oppenheim went to the office and acknowledged the deeds before Miss Goodman with intent to make them effective. Her failure to remember the transac-  
 10 tion does not counterbalance the other evidence. The certificate of acknowledgment is correct in form and Miss Goodman's uncertain evidence is not sufficient to overcome its effect. *Homeopathic Life Ins. Co. v. Marshall*, 32 Eq., 103. *Gould v. Hurley*, 75 Eq., 512. Whether she separately acknowledged is immaterial, for the statute requiring separate acknowledgments has been repealed. (Laws of 1916, p. 321.) It may be a ques-  
 20 tion whether a wife's title may not now pass by delivery just as a husband's title does. The fourth section of Paterson's Act (Pat. Laws, p. 398) provided that "no estate of a *feme covert* \* \* \* shall hereafter *pass* by her deed" without separate acknowledg-  
 20 ment. That provision having been repealed, it may be plausibly argued that the ground for holding the acknowledgment of the essence of the conveyance fails. (*Armstrong v. Ross*, 5 C. E. Gr., 109, 118. *Corby v. Drew*, 10 Dick., 392. *Ten Eyck v. Saville*, 19 Dick., 611.) As the question was not argued and as its solution does not seem to be necessary or even material to the decision, I express no opinion upon it. If Mrs. Oppenheim's recollection is to be depended upon she neither acknowl-  
 20 edged nor delivered the deeds in question.

30 The complainant further insists that the deeds are voidable because there is a presumption of undue influence and because she is not shown to have had the benefit of independent advice. We are not dealing with the case of a transfer by Mrs. Oppenheim of her separate estate nor with an instrument whose provisions are complicated. Nothing is better understood by people in general than the nature of a wife's dower. When she signed and acknowledged the deeds she did not need advice as to what she was giving up. There is not the least evidence that there was any fraud practiced or that her acknowledgment was obtained by undue influence. The parties were living together  
 40 and as far as appears without, at that time, any thought of separation. The conveyance is to a company of which her husband owned the stock and it might well have been for their mutual advantage. The surrounding circumstances do not stamp the transaction as open to criticism, or as unreasonable or as

*Order Dismissing Complaint.*

at all different in principle from the multitude of cases in which wives join with their husbands in executing deeds of their husband's property. It seems to have been very much in the nature of a family arrangement, grounded upon what had occurred a short time previously. It does not fall within the principle of *Hall v. Otterson*, 7 Dick., 522, and I think the bill should be dismissed.

10

A true copy.

JESSE R. SALMON,  
*Clerk.*

**Order Dismissing Complaint.**

Filed February 1, 1919.

20

The above-entitled cause coming on to be heard in the presence of M. M. Stallman, Esq., for the complainant, and R. V. Lindabury, Esq., for the defendant, and the pleadings having been read, and the proofs heard and considered and it appearing that such proofs do not support the charges contained in the bill of complaint or establish any equity in favor of the complainant as against the defendant, IT IS, on this thirty-first day of January, 1919, ORDERED, ADJUDGED AND DECREED that the said bill of complaint be and the same is hereby dismissed.

30

E. R. WALKER,  
C.

Respectfully advised,

FREDERIC W. STEVENS,  
V. C.

40

*Notice of Appeal.*

**Notice of Appeal.**

Filed March 26, 1919.

To Lindabury, Depue & Faulks, Esqs., Solicitors of Defendant.

10 TAKE NOTICE that the complainant appeals to the New Jersey Court of Errors and Appeals from the decree entered in the above entitled cause in the Court of Chancery on the thirty-first day of January, 1919, and from each and every part thereof.

Yours, &c.,

CONGLETON, STALLMAN & HOOVER,  
*Solicitors of Complainant.*

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

MAXIMILIAN M. STALLMAN,  
*Of Counsel for Complainant.*

30

40

*Petition of Appeal.*

**Petition of Appeal.**

Filed March 26, 1919.

New Jersey Court of Errors and Appeals

10

*Between*

JENNIE M. OPPENHEIM,

*Complainant,*

*and*

MYRON W. OPPENHEIM, *et al.*,

*Defendants.*

*On Bill, etc.*

*Appeal from  
Court of Chancery.*

*Petition of Appeal.*

20

To the Honorable, the New Jersey Court of Errors and Appeals,  
the last resort in all causes:

The petition of Jennie M. Oppenheim, the complainant below  
in the above entitled cause and the appellant herein, respect-  
fully shows:

That your petitioner finds herself aggrieved by a certain  
decree or order made in the Court of Chancery by the Honorable  
Edwin Robert Walker, Chancellor of the State of New Jersey,  
on the 31st day of January, 1919, in a cause wherein the parties  
were as set forth in the foregoing title, in and by which decree  
it was ordered and decreed that the bill of complaint be dis-  
missed.

30

Your petitioner shows that she is aggrieved in the following  
respects, to wit:

1. That said decree or order erroneously adjudged and de-  
creed that the complainant's proofs did not support the charges  
contained in her bill of complaint.

2. That said decree or order erroneously adjudged and de-  
creed that complainant's proofs did not establish any equity in  
favor of the complainant as against the defendant.

40

3. That said decree or order erroneously adjudged and  
decreed that the bill of complaint should be dismissed and

*Petition of Appeal.*

your petitioner humbly appeals from said order or decree and from each and every part thereof on the ground:

1. That the Court should have adjudged and determined that the deeds mentioned in the bill of complaint and in the possession of the defendants were obtained from the complainant  
10 by fraud on the part of the defendant, Myron H. Oppenheim.

2. That the Court should have adjudged and determined that the deeds mentioned in the bill of complaint and in the possession of the defendants were not sealed, signed, delivered or acknowledged by the complainant, Jennie M. Oppenheim, as her voluntary act and deed.

3. That the Court should have adjudged and determined that the said deeds mentioned in the bill of complaint and in possession of the defendants are null and void as to the complainant.

20 4. That the Court erroneously adjudged and decreed that the bill of complaint should be dismissed.

And your petitioner humbly appeals from said order or decree and from each and every part thereof and finds herself aggrieved thereby because said decree or order was for divers other reasons illegal, erroneous and unlawful.

Your petitioner therefore prays that the said decree or order of the said Chancellor made in the premises aforesaid, be reversed, set aside and for nothing holden, and that the Court  
30 of Chancery may be directed to make a proper decree in accordance with the directions of this Honorable Court, and that your petitioners may have such other and further relief in the premises as to your Honorable Court shall seem meet.

CONGLETON, STALLMAN & HOOVER,  
*Solicitors for Appellants.*

MAXIMILIAN M. STALLMAN,  
*Of Counsel.*

*Answer to Petition of Appeal.***Answer to Petition of Appeal.**

Filed April 12, 1919.

The answer of the above named respondents to the petition of appeal of the above named appellant.

10

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that a certain decree or order was on the 31st day of January last past made and entered in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced and the said respondents are advised and believe that the said decree or order is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

20

LINDABURY, DEPUE & FAULKS,  
*Solicitors for and of Counsel with Respondents.*

30

40

Answer to Petition of Appeal

The Court of the said Court of Appeals

in and for the State of New York

do hereby certify that the following

is a true and correct copy of the

original of the said Petition of Appeal

as the same appears from the

records of the said Court of Appeals

this 10th day of June 1888

J. B. [Name]

Clerk of the said Court of Appeals

O - P - Q

# New Jersey Court of Errors and Appeals

*Between*

JENNIE M. OPPENHEIM,  
*Complainant-Appellant,*

*and*

MYRON H. OPPENHEIM and DEPEYSTER  
REALTY Co.,

*Defendants-Respondents.*

*On Appeal  
from Chancery.*

*(Stevens, V. C.)*

## BRIEF OF COMPLAINANT-APPELLANT.

This suit is brought to have declared null and void, two certain deeds from Myron H. Oppenheim and the complainant, Jennie M. Oppenheim, his wife, to the DePeyster Realty Company, a corporation, the stock of which is all owned by the defendant Myron H. Oppenheim. Each of these deeds are dated and purport to have been made, executed and acknowledged by complainant and her defendant husband in the City of New York on October 3rd, 1916 (pp. 81, 84), before J. G. Goodman, a Commissioner of Deeds of New York (pp. 83, 87). The deeds were recorded in Monmouth County on November 28th, 1917, about fourteen months after the date of the alleged acknowledgment. The complainant prays that the deed may be set aside as to her and her inchoate dower right in the property preserved, on the ground that she did not knowingly and consciously sign, seal, acknowledge or deliver either of the deeds as her voluntary act and deed. She swears unequivocally that she never signed any paper which she knew to be a deed, and that she did not appear before said commissioner or acknowledge the deeds at the time, place or in the manner stated in the commissioner's certificate (p. 17). The deeds were obviously altered at some time; the word "Sixteen" in the dates of the deeds and in the dates of the acknowledgments having been typewritten over something that had been erased (p. 15, l. 20).

The defendant husband, who was also the sole owner of the other defendant, the grantee corporation, admits that the deeds were not signed by his wife at or about the time they bear date (p. 48, l. 36). He says that in February, 1909, he incorporated the defendant DePeyster Realty Company in the City of New York for

the purpose of taking and holding title to his real estate.. As soon as this corporation was formed, he had his wife join with him in signing deeds conveying to this corporation his real property consisting of three or four parcels of land in New York City and the premises in question, which are situated at Long Branch, in this state. The defendant, however, admits that so far as the deeds in question are concerned, he obtained his wife's signature to them without acquainting her with the contents thereof. He says that *after* she had signed the deeds, of which there were five or six, he *then* told her that they included the premises in question, and that she immediately objected to this property being conveyed to the corporation, and wanted it kept in his own name (p. 48, l. 41).

“Q (*By the Court.*) That I understand, but why, if the title was to be kept in your name, after having drawn the deeds, why did you go to the length of signing them? A They were all signed together, and then *I explained to Mrs. Oppenheim after the signing of all the deeds that I was conveying the Ninety-third street property to the DePeyster, the One Hundred and Twenty-fourth street and 92 Pine street and Castlewall to the DePeyster, and then she said, ‘I wish you wouldn’t convey Castlewall to the DePeyster; why not keep it in your own name; we are living there as our home, and Dorothy is unmarried, and keep it for the present, anyway,’ and I said, ‘All right, I will,’ and I put those deeds in the safe; they were not acknowledged, they were not dated; they were simply signed up with the others, and we did not date, those two deeds were not dated or acknowledged, but put back in my safe; the other deeds were all dated, acknowledged and recorded (p. 48).*

Q And, as a matter of fact, Mrs. Oppenheim never saw those deeds after that, at least until the time you say she acknowledge them? A I don’t believe she did; they were in my safe; there was no occasion for her to see them” (p. 49, l. 9).

These deeds therefore lay undated, not acknowledged, and not delivered for nearly eight years locked up in the defendant’s safe (p. 48, l. 27), and it must be patent that the existence of these papers, which had no legal efficacy whatever, had totally passed out of the complainant’s mind at the time, seven years later, when the alleged acknowledgment was taken.

The defendant further says that on the morning of October 3rd, 1916, without any previous conversation or arrangement showing that she had changed her mind, he asked his wife to accompany him to his office and acknowledge the deeds. The commissioner of deeds, J. G. Goodman, who says she took Mrs.

Oppenheim's affidavit, is Jennie G. Goodman, a clerk who has been employed by the defendant for ten years (p. 72). This alleged acknowledgment the complainant strenuously denies (p. 18, l. 20). Even if the commissioner's testimony is believed to the effect that the complainant appeared before her on October 3rd, 1916, her testimony falls far short of showing that the contents of the deeds were made known to Mrs. Oppenheim and that Mrs. Oppenheim thereupon freely acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, free from all fear, threats or compulsion of her said husband. It is apparent from the examination of this witness by the Vice-Chancellor (pages 69-70) that *the commissioner did not know the formalities of taking an acknowledgment* of a deed of land in New Jersey, and in addition thereto the following discrepancies are made manifest by her testimony:

1. She signed the deeds as a witness (p. 74). The signatures in fact were made seven or eight years previously, not in her presence, but this seemed to make no difference to her.

2. Her certificate says that Myron H. Oppenheim and Jennie M. Oppenheim, his wife, appeared before her and acknowledged the deed, but she swears (page 74) that Mr. Oppenheim was not present; that she went into his office, found the papers on his desk, said something to Mrs. Oppenheim, put her signature and seal upon the deeds and put them back on Mr. Oppenheim's desk, and that *there was no occasion or necessity for her to say anything at all to Mr. Oppenheim* (p. 77, 17). The certificate is therefore untruthful because she did not formally take Mr. Oppenheim's acknowledgment, but merely filled out the acknowledgment certificate at his direction on the assumption that his formal acknowledgment was an unnecessary detail.

3. It is also clear that the commissioner did not make the contents of the papers known to Mrs. Oppenheim. She testified first (p. 68) that Mr. Oppenheim came out of his private office into the outside office and said to her (the commissioner): "Mrs. Oppenheim is here for the purpose of acknowledging *some papers* in relation to Castlewall. *I told Mrs. Oppenheim this was her signature and I acknowledged her deeds* (line 34). \* \* \* I asked Mrs. Oppenheim if *this was her signature*, and knowing Mrs. Oppenheim's *signature*, I asked her and I took the acknowledgment to the deeds. I said to Mrs. Oppenheim, 'These are two deeds of Castlewall conveyed to the DePeyster Realty Company.' *She made no reply to that statement* (line

44). *Mrs. Oppenheim did not say anything* (p. 69, 2). I asked her if this is her *signature* and I took the acknowledgment. I said 'these two deeds are deeds of Castlewall which convey Castlewall property to the DePeyster Realty Company.' *In taking her acknowledgment I didn't say anything to her* (l. 20). That was the conversation (l. 21). Yes, it is her *signature* and I acknowledged it. She knew what the papers contained (l. 26). After reading the certificate of acknowledgment, it does not refresh my recollection as to anything else. Nothing else passed between me and Mrs. Oppenheim (p. 70, 44). I recall I asked Mrs. Oppenheim if she *signed* these papers and she said she did. That is all I can recollect" (p. 71). On being asked, over objection, whether she said anything to Mrs. Oppenheim about signing the deeds without fear, threats or compulsion of her husband, she testified "I believe I did, my recollection is not so clear on that point (p. 71, l. 22). I went into Mr. Oppenheim's office as he was coming out and I found Mrs. Oppenheim there. *I didn't read the deeds. I only knew the contents. I did not read the description.* I knew what they were because Mr. Oppenheim told me they were deeds of Castlewall (p. 76). I don't recall just exactly what I said to Mrs. Oppenheim at that time, just what I stated. *I had Mrs. Oppenheim swear to it"* (p. 73). *There was no oath taken. She acknowledged her signature and then I swore to it surely* (p. 73).

Q You swore to it? A Then I took the acknowledgment to it, surely, I signed it.

Q What do you mean when you say you had her swear to it? A Well, as long as she acknowledged her signature that is just as good as an oath sometimes (p. 73, l. 38).

The deeds were not signed in my presence. I signed as a witness, as I knew Mrs. Oppenheim's signature and Mr. Oppenheim's. I asked her if she knew the contents of the papers and she said, "Yes." I told her it was about the Castlewall property (p. 74).

Q Which was it, did you tell her they were Castlewall deeds, or did you ask her if she knew what they were without telling her? A Well, I am not quite sure on that subject; I think I asked her if she knew (p. 75).

Q *Then, you don't think you said to her that they were Castlewall deeds?* A *No, I couldn't quite recollect every word of the conversation; I couldn't state* (p. 75).

I looked through the papers before I signed them myself and I saw they were deeds of Castlewall. I had never seen the papers before that day.

Mr. Oppenheim told me they were Castlewall deeds. *It doesn't say anything about Castlewall in the deeds.* I read

a little of it but not all, because it was none of my affairs. I did not read any part of the description and I did not read it to Mrs. Oppenheim. I did not know what the deed contained only from what I was told. That is all I know and it is not from any examination which I made of the deed. I don't remember whether or not I asked Mrs. Oppenheim to swear to it (p. 76).

It must be apparent to the Court from a perusal of this testimony that the witness had only one notion about the formality of acknowledging a deed and that was to assume or ascertain that the signature is the signature of the grantor and if the grantor does not deny the signature, to turn the deed over and sign the certificate and such act is the "acknowledgment." The testimony is too contradictory and vague to justify a Court in finding that the witness made the contents of the papers known to Mrs. Oppenheim, or asked her to admit the truth of the statements of the certificate. She swears absolutely that she did not know herself what the papers were except from what Mr. Oppenheim told her, and what Mr. Oppenheim said (not in his wife's presence, p. 73) was, "Mrs. Oppenheim is here for the purpose of acknowledging *some papers* in relation to Castlewall." "Mrs. Oppenheim is here for the purpose of acknowledging *these deeds* and you will take her acknowledgment." If this is all that Mr. Oppenheim told the witness and the witness did not read the papers, and she had never seen them before, the testimony absolutely negatives the requirement that the commissioner should have made known to Mrs. Oppenheim that these were two deeds by which she and her husband conveyed all their right, title and interest in the Castlewall property to the DePeyster Realty Company. The witness sought refuge from this dilemma by saying that Mrs. Oppenheim knew what the papers contained, but this is clearly nothing but a last resort guess of the witness.

In view of the fact that these papers had been lying in Mr. Oppenheim's safe for nearly eight years and that he had put them there and had not used them because Mrs. Oppenheim did not want to part with Castlewall, it was imperative that in October, 1916, Mrs. Oppenheim should then have formally acknowledged these old papers, once repudiated by her, to be her voluntary act and deed after the contents thereof were fully explained to her, and this requirement of the statute is absolutely lacking.

The Court must consider that the printed form of the certificate is not of the commissioner's making. The form is there, all printed, with the exception of names and dates, which were filled in by defendant Oppenheim, and whatever presumption may exist in favor of the truth of the statements of the printed certificate is much weaker than would arise from a certificate signed by a competent commissioner or one formulated by the commissioner. And in this case, the presumption was altogether lost when the commissioner, *after reading the certificate, could not recognize or even conceive in her own mind the constituent formalities of taking a married woman's acknowledgment.*

It is a matter of importance in this case to consider that this controversy is between the original parties; there is no innocent third party without notice who is here defending his rights, because Mr. Oppenheim and The DePeyster Realty Company are the same. It is a suit between husband and wife in which the wife claims that her husband has attempted to defraud her of her inchoate right of dower in this property. It is not a case where the wife may be presumed to have acted in conjunction with and by the advice of her husband in conveying their property for a consideration to another party, as in *Homeopathic Life Ins. Co. v. Marshall*, 32 N. J. Eq., 103. Here the husband, a lawyer of thirty-five years' experience, admittedly sought to put the title where he could control it free from the rights of his wife. If he had the title put in the name of the corporation for any other reason (none appears by the record as to those premises), why did he hold it off the record until his wife brought suit for separate maintenance?

In *Troxell v. Silverthorn*, 45 N. J. Eq., 330, the Court of Errors and Appeals unanimously affirmed a decree advised by Vice-Chancellor Bird, in which he said (p. 339):

"I have already intimated, sufficiently clearly, I think, that the difficulty in this case is not in the simple execution of the deed, not whether the instrument was read to the married woman, or whether she acknowledged it according to the forms required by law, but whether she had such understanding of the true nature of the transaction as she was entitled to have in order that the execution of the instrument might be binding upon her according to its legal import and effect. Nor, in coming to these conclusions, is it necessary to depend upon the testimony of Mrs. Silverthorn alone; for if her testimony were out of the case, and she were here objecting to the interposition of this release, as she now is, Mr. Taylor's frank statement as to what took place would leave an immense, yea, a

measureless void in this transaction, without anything more than the frailest semblance of a consideration to bridge it over."

We strenuously contend that in a case like this, where the alleged acknowledgment is of a paper signed and repudiated eight years previously, is attacked on the ground of fraud and falsity, no presumption in its favor can exist and no excuse of mere failure of recollection (*Gould v. Hurley*, 75 Eq., 512) can be accepted in the face of the testimony of the commissioner who demonstrated that she does not know at this time how to take an acknowledgment even after reading the certificate, and if she does not know now, she certainly did not know how to do it two years ago. The only conclusion permissible from her testimony is that she was satisfied in some way that the *signatures* were genuine, and she assumed that that knowledge was all that was necessary to warrant her in signing her name to the certificate of acknowledgment, which had been filled out, names and dates, by someone else.

Moreover, we have two separate deeds, each conveying a separate tract. They required that the contents of *each paper* should be made known to the complainant, and that she should formally make acknowledgment of each, and the commissioner's testimony makes it clear that this was not done. If these formalities had been observed it would be impossible for the witness to testify as she has.

We deny that Mrs. Oppenheim was present on the occasion alleged, but if she was there, under all the circumstances of the case we submit that the evidence plainly shows that the signing, sealing and delivery of these deeds were not acknowledged by the complainant in the form and manner required by law, and as to her and her rights, should be declared null and void.

*The wife was deprived of a lawful valuable right.*

The learned Vice-Chancellor apparently ignored the circumstance under which Mrs. Oppenheim's signature was obtained, and also seems to hold that the surrender of a dower right is a matter of small moment in any event, and probably was for her advantage. This, as we have said, overlooks the facts that the wife was not willing to transfer the title to this property in 1909, and nothing was shown by the defendant as to how or why he induced her to change her mind seven years

later. While she may not have needed independent advice in an honest transaction, the Court should not overlook the fact that the defendant, a lawyer of thirty-five years' experience, did not hesitate to take advantage of any opportunity to evade his legal responsibilities; in fact, that was the chief reason for putting all of his property in the name of a corporation (p. 54).

*The matter of mutual wills is entirely irrelevant and should have been excluded from consideration.*

Notwithstanding the defendant's disclaimer that this transaction was in any way connected with their wills, the Court erroneously permitted the defendant to testify that three months after the alleged acknowledgment, the parties entered into an agreement with reference to their wills (Ex. D. 2, p. 88), so as to create an atmosphere around the case, from which it might be inferred that the completion of these deeds was a part of a general settlement. This was expressly denied by the defendant (p. 57), yet the Court below was undoubtedly influenced by this testimony as is shown by the opinion.

Respectfully submitted,

CONGLETON, STALLMAN & HOOVER,  
*Solicitors of Complainant.*

MAXIMILIAN M. STALLMAN,  
*Of Counsel.*

New Jersey Court of Errors and Appeals.

*Between*

JENNIE M. OPPENHEIM,  
Complainant-Appellant,

AND

MYRON W. OPPENHEIM and DE  
PEYSTER REALTY COMPANY,  
Defendants-Respondents.

On Appeal from  
Final Decree in  
Chancery.

**BRIEF FOR DEFENDANTS-  
RESPONDENTS.**

**Statement of the Case.**

(Throughout this brief the letter R is used to designate the Record, or Statement of the Case, and the figures following the page and line. Thus R, 1-28, means Record, page 1, line 28.)

The complainant is the wife of the defendant, Myron H. Oppenheim. The bill seeks to annul as to the complainant two certain deeds of real estate situated at Elberon, New Jersey, and known as the Castlewall property. The deeds were made by Mr. and Mrs. Oppenheim to the De Peyster Realty Company and bear date October 3, 1916. It is alleged in the bill that, at no time did the complainant ever execute, acknowledge or deliver the deeds, and that she did not, to her knowledge, ever acknowledge the making, execution and delivery of the same. The bill charges that if the deeds bear the complainant's signature, such signature was obtained falsely and without her knowledge of the purport or effect of such paper or papers and without the contents or effect thereof having been made known to her.

### I. As to the signing of the deeds.

The deeds were exhibited to the complainant on the witness stand and she admitted that they bore her signature (R, 14-34). She claimed, however, that these signatures were obtained from her by her husband at Elberon, New Jersey, in October, 1915, upon a representation that they were an option on the Castlewall property in favor of a Mr. Meyer, who was then looking at the property with the object of buying or exchanging the same for some apartment property in New York City. She said her husband told her that he wanted something to show Mr. Meyer that he would transfer this property in exchange for an apartment house which Mr. Meyer owned and that she remembered this quite distinctly (R, 16-34; 25-18),

Mr. Oppenheim denied that the deeds or any other papers affecting the Castlewall property were signed by Mrs. Oppenheim in the autumn of 1915 and said that she was entirely mistaken in her statement about the option and that, in fact, he never asked Mrs. Oppenheim for any option at all (R, 40-24). He said that the deeds were signed in February, 1909; that he then owned considerable improved real estate in the City of New York and that, as he did not wish to be sued individually for damages in connection with the operation of the same, he conceived the idea of organizing a corporation to hold title thereto (R, 53-28). He said that Mrs. Oppenheim concurred with him in this view and that to put it into effect the defendant corporation, De Peyster Realty Company, was organized on February 11, 1909, with Mrs. Oppenheim's brother as one of the incorporators and as Secretary and Treasurer (R, 39-22; 47-20). He said that he then had deeds drawn to the De Peyster Company for all the property he owned everywhere, including the two deeds for the Castlewall property now in question, and that these deeds were all signed by him-

self and his wife at the same time (R, 38-30). He fixed the date as February 27, 1909 (R, 39-35). He said that after the deeds were all signed, he explained to Mrs. Oppenheim that he was conveying the 93rd Street property, the 124th Street property, 92 Pine Street and Castlewall to the De Peyster Company and that she then said, "I wish you wouldn't convey Castlewall to the De Peyster, why not keep it in your own name, we are living there as our home, and Dorothy is unmarried, and keep it for the present, anyway", and that he replied, "All right", and thereupon put the deeds in his safe; that the deeds were not dated or acknowledged but were simply signed with the others and that the other deeds were all dated, acknowledged and recorded (R, 48-34). He said that nothing further was done with the Castlewall deeds until the autumn of 1916 (R, 40-20).

Before this testimony was given Mrs. Oppenheim had admitted on cross-examination that she knew of the organization and purposes of the De Peyster Realty Company, and that she had united with her husband, in conveying his New York property to the Company (R, 19-1). She had also admitted that she and her husband lived pleasantly together during the larger part of their married life; that no differences had ever arisen between them until some time in the year 1917 (R, 21-1), and that, up to that time, she had never hesitated or refused to sign any deed for real estate that her husband presented to her for signature (R, 34-3).

Mrs. Oppenheim was recalled after the foregoing testimony was given by her husband and made no denial of his account of the signing of the deeds, except to say, "I never remember to have signed a deed for Castlewall". She was then asked by her counsel the following question: "Do you know whether or not these deeds, which confessedly, admittedly bear your signature, are the papers which you say you signed at Elberon in October of 1915?", to which she answered, "No, I signed two papers, but they were not deeds" (R, 79-31).

This, of course, disposed of the claim made in paragraph 6 of the Bill of Complaint that, if the deeds bear the complainant's signature, such signature was obtained falsely and without her knowledge of the purport or effect of such paper or papers and without there having been made known to her the contents or effect thereof, and consequently this claim has not been heard of since the testimony was given.

## **II. As to the circumstances leading up to the acknowledgment and delivery of the deeds on October 3, 1916.**

Mrs. Oppenheim admitted that she and her husband executed mutual wills soon after their marriage in 1884, by which each gave everything to the other, and that these wills remained in existence and force until shortly before the date of the acknowledgment and delivery of the deeds in question (R, 20-40; 21-10). She also admitted that, at the time the mutual wills were made, she had no property and that Mr. Oppenheim had considerable property, and that about 1911 she inherited a large sum from her father (R, 21-30). She also admitted that about 1916 or 1917 she asked her husband to cancel the mutual wills because she had made a new will during the previous summer, differing from the agreement to make mutual wills, and that he had consented to her request. She said she did not make this request because she had come into her property, but because she was suspicious of her husband with another woman at that time, although she did not, at the time, mention the reason for it (R, 22-22; 23-1; 24-1).

Mr. Oppenheim testified that, after the death of her father, Mrs. Oppenheim referred to the mutual wills at various times and thought she would like to cancel them (R, 36-14); that they talked repeatedly

about the cancellation of the mutual wills and that shortly before the deeds were cancelled—a month or two or a few months before that—she asked him whether he had destroyed it, the mutual will, or would destroy it, his copy, and that he said he would and on that very day went to his office and destroyed his copy (R, 42-10). He said that he went into the matter fully with Mrs. Oppenheim and that she said she wanted, now that she had come into her property, to will it to whoever she pleased, and she wanted these wills cancelled and that he said, “Very well, then I will draw a new will and I will create a trust in that will by which you will receive an annuity of Seventy-five Hundred Dollars (\$7500.) and, in addition thereto, the sum of Ten Thousand Dollars (\$10,000)”, which he said he had received from her father on their marriage. He also stated that in the same connection he told her he would take those deeds now which were drawn for the Castlewall, and she would join him in executing and acknowledging them, and he would place them on record and that she said, “Very well”, and that this was a part of the same general talk (R, 43-1). He said that some time later Mrs. Oppenheim advised him that somebody had told her that the cancellation of the wills ought to be in writing, executed by both of them and that he said, “Very well, I am perfectly agreeable to executing a writing if you like it that way”, and that then Mrs. Oppenheim spoke to Judge Lazansky and the latter prepared a cancellation piece, which was executed and bears date December 30, 1916, and was offered in evidence and will be found, as Exhibit D-2, on page 88 of the Record (R, 42-18; 55-23). Mr. Oppenheim further testified that, after the making of the agreement to cancel the mutual wills, he started right in to make his will as he had told Mrs. Oppenheim he would and that he executed it on January 29, 1917. He said that the first bequest in this will was the sum of Ten Thousand Dollars (\$10,000.) to Mrs. Oppenheim

and that he created therein an annuity of Seventy-Five Hundred Dollars (\$7500) per year in her behalf (R, 43-38).

On cross examination Mr. Oppenheim testified that the discussion about the cancellation of the mutual wills was around in the fall of 1916, shortly before the papers were drawn (deeds acknowledged), in October, he believed (R, 55-20). He was further asked, "What was the occasion for having these deeds acknowledged on the third of October, 1916, when there wasn't any occasion for putting them on record until November, 1917?", to which he answered, "The only occasion they were acknowledged was in conformity with Mrs. Oppenheim's and my discussion on the will question; I wanted to place all my property in the De Peyster because she was getting an annuity, and she so understood it, and was not to share in any property under dower right" (R, 52-44).

Mrs. Oppenheim was recalled after the foregoing testimony was given by her husband, and did not contradict a word of it (R, 79-10). She had, however, on her first cross-examination denied that her husband had told her at the time the mutual wills were cancelled that he had concluded to make a will giving her a certain annuity, which he mentioned. She said that he did not make any such suggestion that she knew of (R, 23-34).

This denial is greatly weakened, if not entirely destroyed, by Mrs. Oppenheim's later testimony to the effect that after she became estranged from her husband in October, 1917, she called upon Judge Leventritt, a lawyer then practicing in New York, and discussed with him the provision her husband claimed to have made for her by his will (R, 26-39). She said that she and Judge Leventritt did not on this occasion talk about the mutual wills at all but simply about Mr. Oppenheim's last will (R, 27-1).

The foregoing testimony would seem to be a sufficient justification for the finding of the Vice-Chancellor as to the circumstances which led up to

the acknowledgment and delivery of the deeds and also a sufficient answer to the suggestion contained in complainant's brief that the matter of mutual wills was entirely irrelevant to the case and should have been excluded from consideration.

Counsel say that the court permitted the defendant to testify that three months after the alleged acknowledgment the parties entered into an agreement with reference to their wills, so as to create an atmosphere around the case from which it might be inferred that the completion of the deeds was a part of the general settlement. The error in this statement consists in the fact that the defendant testified that the arrangement for the cancellation of the mutual wills was made shortly before the acknowledgment and delivery of the deeds, as shown above, and that the writing referred to in the brief was made in December following simply for the purpose of giving Mrs. Oppenheim written evidence of the cancellation.

### **III. As to the acknowledgment and delivery of the deeds.**

Mrs. Oppenheim denied that she appeared before the Commissioner, Miss J. G. Goodman, and acknowledged the deeds at the time stated in the certificates of acknowledgment, or at any other time (R, 15-4). She declared that she was not at her husband's office in 1916, and that she last saw Miss Goodman in 1914 (R, 26-18).

Mr. Oppenheim testified that pursuant to his conversation with Mrs. Oppenheim he, on the morning of October 3, 1916, asked her to accompany him to his office for the purpose of acknowledging the two Castlewall deeds, and that she did so on that day (R, 50-20; 56-18). He said that, on their arrival at the office, he took the deeds out of his safe and called in his stenographer and, in Mrs. Oppenheim's

presence, asked her to put in the dates; that the stenographer returned the deeds with the year 16 inserted in figures; that he sent her back and told her to write "sixteen" out; that she returned again with the correction properly made; that he then told her to ask Miss Goodman to come in and take the acknowledgments to the deeds; that Miss Goodman came in and he acknowledged the execution of the deeds and stepped out, leaving Miss Goodman and Mrs. Oppenheim in the private office, and that he returned presently and chatted with Mrs. Oppenheim and then she left (R, 41).

Miss Tremberger, the stenographer, testified that on the day the acknowledgments were taken Mrs. Oppenheim came into the office with Mr. Oppenheim and, after greeting Miss Goodman, went into Mr. Oppenheim's private office and that, after she was there a while, Mr. Oppenheim called her, Miss Tremberger, in and asked her to fill in the dates of the papers—the two deeds; that she took the deeds into her office and put in the dates, October 3, 1916; that when she brought them back Mr. Oppenheim told her it was not legal to write 16 in figures and to take the deeds back and write the number sixteen out; that she did this, erasing the figures 16 with a typewriting rubber; that on her return with the deeds thus corrected Mr. Oppenheim told her to tell Miss Goodman to come in to acknowledge the deeds; that she did so and that this ended her connection with the matter (R, 61).

Miss Goodman testified that she had been in the employ of the Filter Company, of which Mr. Oppenheim was President, for about ten years; that she was bookkeeper and cashier of the company and a Commissioner of Deeds for the City and County of New York and was accustomed to taking the acknowledgments of deeds. She said that she first saw the deeds in question when she was asked to take the acknowledgments on the third of October, 1916; that Mr. and Mrs. Oppenheim came down to the office in their automobile and went into Mr.

Oppenheim's private office; that after a discussion there Mr. Oppenheim asked her to come in, saying Mrs. Oppenheim would acknowledge some papers; that Mr. Oppenheim came outside and had the dates put in the papers and then called her in and said "Mrs. Oppenheim is here for the purpose of acknowledging some papers in relation to Castlewall"; that Mr. Oppenheim then went into the outer office and she asked Mrs. Oppenheim if this was her signature and Mrs. Oppenheim said that it was; that she said to Mrs. Oppenheim, "These two deeds are deeds of Castlewall which convey Castlewall to the De Peyster Realty Company."; that she then asked Mrs. Oppenheim if she acknowledged it and that Mrs. Oppenheim said, "Yes, it is O. K." (R, 69-14).

On being asked if she said anything to Mrs. Oppenheim about signing the deeds of her own free will without fear, threats or compulsion of her husband, she answered that she believed she did, but that her recollection was not clear on that point (R, 71-14). She said she signed the certificate at the time; that she read it before signing it and that the statement she signed was intended by her to be a true statement. She said that she went outside to her desk and acknowledged the papers there and put her seal on them and brought them back to the office and put them on the desk; that Mr. and Mrs. Oppenheim were there then and that this ended her connection with the transaction and that she had not seen the papers since (R, 71-26).

On cross-examination, Miss Goodman stated that she could not recollect just exactly what she stated to Mrs. Oppenheim at the time she took the acknowledgments (R, 73-26). Later she said that she asked Mrs. Oppenheim if she knew the contents of the papers and told her they were deeds of Castlewall and that Mrs. Oppenheim said, "Yes". She then repeated that she could not quite recollect every word of the conversation and that she couldn't state it (R, 75-14).

Miss Goodman's testimony is somewhat confused

and her recollection was not at all clear as to just what was said when the acknowledgments were taken. There is nothing, however, to impugn her honesty. The matter was mere routine for her and, after the lapse of two years, the details may well have passed out of her mind. Her refusal to swear to these details, when she could not recall them, certainly does not stamp her as a conspirator in a scheme to defraud.

The certificates of acknowledgment are regular in form and are *prima facie* evidence of the facts which they recite and will prevail against a mere failure of memory on the part of either party making the acknowledgments, or the officer taking them, or both.

In *Homeopathic Mutual Life Insurance Co. v. Marshall*, 32 N. J. Eq. 103, 111, the court said:

“In opposition to the certificate there is only the recollection of husband and wife, after the lapse of more than five years from the date of the execution of the mortgage, in regard to the particulars of a transaction in the details of which they probably took not the slightest interest at the time. And it would be far more surprising to find that they had remembered them than to find that they had entirely forgotten them. The impolicy of admitting such evidence to countervail the official certificate, is obvious. If such testimony were admitted, the danger to titles depending on the deeds of married women would be great indeed, especially when the officer by whom the acknowledgment was taken had died, or, as in this case, had gone beyond reach, so that his testimony could not be obtained. The stability of such titles would manifestly often depend on the memory or integrity of those whose interest it would be to nullify them.”

In *Tooker v. Sloan*, 30 Eq. 394, the Chancellor held that “a certificate of acknowledgment is not invalidated or affected by the want of recollection of the grantor or the commissioner as to the transaction”.

In *Gould v. Hurley*, 75 Eq. 512, Vice-Chancellor Walker declined to set aside the acknowledgment of a deed regular in form, notwithstanding both Mr. and Mrs. Gould, who executed and acknowledged it testified, eight years after the event, that they never appeared before the commissioner and never acknowledged the execution of the deed, and the commissioner only stated "that he took the acknowledgment and the certificate was written by him, although he said he had no recollection of the circumstances under which the acknowledgment was made, and frankly said that he did not know either Mrs. Gould or her husband, and he said that the facts stated in the certificate to the best of his knowledge were true."

In the brief for the complainant it is claimed that the testimony of Miss Goodman is too contradictory and vague to justify a court in finding that she made the contents of the papers known to Mrs. Oppenheim, or asked her to admit the truth of the contents of the certificate. I do not think that this is so. The statement that "these two deeds are deeds of Castlewall which convey the Castlewall property to the De Peyster Realty Company", gave her as much information as if the deeds had been read throughout. But, assuming that it is so, does it not follow that it is also too contradictory and vague to justify a finding to the contrary?

Surely the solemn certificate of a public official is not to be set aside upon the vague and contradictory testimony of such official, given two years after the happening of the events recorded in such certificate—events which she confesses she does not recall with either fullness or accuracy!

Mrs. Oppenheim's denial of the acknowledgments is of little account, since she denied being at the office at all, and if she is mistaken about this, she is just as likely to be mistaken about the other. For she admits that at this time she was signing deeds for her husband, without question or hesitation as a matter of course (R, 44).

It should also be remembered that in her bill of complaint she even denied executing the deeds; that when called as a witness on the trial she testified on both direct and cross-examination that she signed them in October, 1915, understanding that they were mere options to a man named Meyer (R, 8, 26), and that on redirect she testified that the papers she signed in 1915 were not deeds at all and that she did not remember signing the deeds, although they bore her genuine signature (R, 134).

And it should be further remembered that, after Mr. Oppenheim had given a detailed account of the circumstances which led to her visit to his office for the express purpose of acknowledging the deeds, she went upon the stand in rebuttal and did not contradict a word of it.

Some other peculiarities in the testimony of Mrs. Oppenheim should be noted.

On page 23, line 2, she testifies that she requested her husband to abrogate the agreement to make mutual wills, and on line 27, of the same page, she makes the absurd statement that the proposition came from him.

On page 22, line 38, she correctly fixes the date of her new will as the summer of 1916, and on page 24, line 11, puts it back to 1914.

On page 24, line 24, she says that she did not know that the effect of her signing the deeds to the New York property in 1909 was to release her dower and that it was not her intention to do so. On page 25, line 4, she says that she certainly would not have signed these deeds if she had known that they took away her dower right. Yet on the same page she admits that when she signed these deeds she knew that under the mutual wills she would, at her husband's death, not only have gotten her dower, but everything he had; and on page 34, line 3, she admits, as already pointed out, that up to December 30, 1916, she never hesitated or refused to sign any deed for real estate that her husband presented to her for signature.

Mrs. Oppenheim claimed that she had a very good memory (R, 18-26). She evidently is a woman of education and intelligence, but the sorry truth is that her testimony is so full of contradictions and inconsistencies as to render it quite unreliable for any purpose. The confusion and uncertainty of Miss Goodman, so much commented upon in the brief of Mrs. Oppenheim's counsel, is not a circumstance in comparison with that which Mrs. Oppenheim exhibited on the witness stand.

And now, a final word as to the fairness with which Mr. Oppenheim treated his wife. To begin with, he joined with her in making mutual wills at a time when he had a large amount of property and she had nothing. Later, when she had inherited a fortune of her own and expressed a desire to be free to will it to any one she chose, he readily consented to the cancellation of the wills and soon thereafter informed her of his purpose to make a new will and give her \$10,000. outright and an annuity of \$7,500. a year—a purpose which he proceeded to execute by the making of a new will in January following. After the mutual wills were cancelled, he told her that he would now like to have the Castlewall deeds acknowledged and the conveyances to the De Peyster Realty Company completed, and she agreed to it and agreed to go with him to his office for that purpose, the reasons on account of which she hesitated in 1909 having disappeared.

All this was testified to by Mr. Oppenheim without a word of contradiction from his wife and it exhibits a course of dealing at once fair and honorable and utterly inconsistent with the charge of fraud and bad faith contained in the bill of complaint.

I respectfully submit that the decree appealed from should be affirmed.

Dated, June 12, 1919.

R. V. LINDABURY.

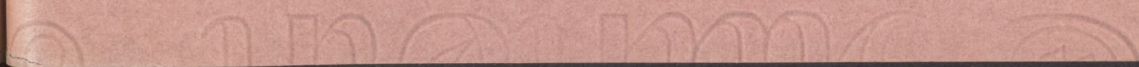








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