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Complaint.

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In Chancery of New Jersey.

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

Humbly complaining showeth unto your Honor, your oratrix, Eva P. Cropsey, of the Town of Rutherford, in the County of Bergen and State of New Jersey.

1. That your oratrix was married to her present husband, Charles D. Cropsey, upon the 13th day of March, 1892, and thereafter they took up living together as husband and wife in West Boro, Massachusetts, and then in Bayonne, New Jersey and finally in the year 1893 in Rutherford, in the State of New Jersey. That the husband of your oratrix was a doctor and neither your oratrix nor her said husband had any money to any extent. That your oratrix immediately co-operated with her husband in making money giving music lessons, both vocal and instrumental, and also did considerable church work as soloist and chorus director and concert work, renting furnished rooms, millinery work and work of other descriptions which can be done by a woman and anything in fact that your oratrix could turn her hand to to make a dollar so that your oratrix and her said husband prospered with the result that in the

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Complaint.

year 1904 there was purchased in the Town of Rutherford, County of Bergen and State of New Jersey as aforesaid a lot described as follows:

10 All that certain tract or parcel of land and premises hereinafter particularly described situate, lying and being in the Borough of Rutherford, in the County of Bergen and State of New Jersey.

20 Beginning at a point in the southeasterly side of Mortimer Avenue distant one hundred and sixty (160) feet from the southerly corner of Passaic Avenue and Mortimer Avenue and running thence (1) southeasterly and parallel with Passaic Avenue one hundred (100) feet; thence (2) southwesterly and parallel with Mortimer Avenue sixty three (63) feet more or less to a point distant one hundred (100) feet from Donaldson Avenue measured at right angles thereto; thence (3) northwesterly and parallel with Donaldson Avenue fifty (50) feet; thence (4) southwesterly and parallel with Mortimer Avenue one hundred (100) feet to Donaldson Avenue; thence (5) northwesterly along Donaldson Avenue fifty (50) feet to Mortimer Avenue; thence (6) northeasterly along Mortimer Avenue 30 one hundred and sixty-three (163) feet more or less to the point or place of beginning.

40 That the money used for the purchase of this lot was money solely belonging to your oratrix which had been earned by your oratrix; that thereafter your oratrix and her said husband built upon said lot a house and said house was completed in the year nineteen hundred and five or six and represented in all an investment of both house and lot of over ten thousand dollars;

Complaint.

that the money used in building said house was partly contributed by your oratrix and partly moneys of your oratrix's husband which had been given to your oratrix by her said husband; that all of the moneys for the building of the said house were paid by check of your oratrix and any moneys which were contributed by your oratrix's husband were, in fact, given by him to her prior to their being used in the building of the said house so that when the said house was completed the said house and lot belonged to your oratrix, title thereto having been taken in the name of your oratrix by deed dated October 4th, 1904, recorded in the Office of the Register of Bergen County in Liber 849, page 138.

2. That after the marriage of your oratrix and her said husband they lived happily together for three or four years when your oratrix's husband began to neglect her; that he indicated that he had ceased to love your oratrix if, in fact, he had ever loved her, and refused to take her out at nights, refused practically to have any social intercourse with her whatever; commenced to accuse her of improper relations with other men without any reason whatever; that your oratrix loved her said husband and put up with his treatment, continued to live with him as his wife notwithstanding the fact that in the year nineteen hundred and two he had struck her with a horse whip several times and in the year nineteen hundred and three struck her with his fist and knocked her down a flight of stairs and called her opprobrious names of every nature and description and compelled her

Complaint.

to submit to personal indignities of various na-
tures; that finally and in the year nineteen hun-
dred and seven the treatment of the said Charles
D. Cropsey became, if possible, worse toward
10 your oratrix; he stated to your oratrix that he
loved another woman; that he was sorry for
your oratrix and he knew your oratrix loved
him, but that he couldn't help it and that he
would not live with her and would not stay
with her nights, but that as a matter of fact,
after the year nineteen hundred and seven he
did not upon any occasion stay with your oratrix
at night, did not take her out at all, had no
social intercourse with her and continuously
20 went out and associated with a woman known
as Mrs. Anne Hagger; that notwithstanding the
treatment accorded to your oratrix by her said
husband she still loved him and still continued
to live in the house as his wife and did every-
thing that she could possibly do to keep him by
her but that finally and in January, nineteen
hundred and twelve, the said Charles D. Crop-
sey refused to have marital relations with your
oratrix; as a matter of fact, during the year
30 nineteen hundred and twelve, they had only
had marital relations about four times; that
during the year nineteen hundred and twelve
and the early part of nineteen hundred and
thirteen your oratrix's husband upon several
occasions made propositions to your oratrix in
an endeavor to get your oratrix to leave him
offering your oratrix various inducements to
get her to go away from him, which your ora-

Complaint.

trix refused, hoping continuously that something would change the relations existing between her and her said husband and that he would come back to her, your oratrix loving her said husband and being desirous of living with him as his wife; that your oratrix's husband taunted her upon several occasions with her feelings; that he stated that he knew that she loved him; that he knew that she would give him everything to get him to come back and he knew that she did love him and knew that she would give up everything in the world if she could get him to come back and live with her again and treat her as he had prior to the year eighteen hundred and ninety-five.

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3. That finally and prior to June, nineteen hundred and thirteen your oratrix's husband endeavored to get your oratrix to convey to him a one-half interest in the house and lot owned by your oratrix hereinbefore described; that he made the life of your oratrix unbearable, but your oratrix refused to convey such house and lot or any interest therein; that finally and in the spring of nineteen hundred and thirteen, as the requests became more insistent and your oratrix became weaker by reason of the treatment accorded to her by her said husband, your oratrix's said husband came to her and said that unless she transferred to him a one-half interest in the house he was going to leave her; that she would have to transfer it if she expected to keep him at all; that your oratrix asked him whether or not he would return to her and be a husband to her and behave himself if she did make the transfer and he promised that he

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Complaint.

10 would. That finally induced by the threats of the said husband that if she did not transfer a one-half interest in the house and lot to him he would leave her and by his promise that if she did he would leave off other relations, re-
turn to her and behave himself as he should and as a husband to her and still loving her said husband and being desirous that the relation-
ship should continue she said that she would make the transfer.

20 4. That immediately her said husband took your oratrix down to the office of his lawyer, Shafer & Conkling and there saw Mr. Conkling of that firm; that when it came time to sign the deed your oratrix went in to Mr. Conkling and there told him the circumstances under which she was so signing; she said that she wasn't doing it of her free will and accord; that she was induced to do it by the threats of her husband that if she did not do it he would leave her and by his promise that if she did do it he would return to her and behave himself but that she had her misgivings and it was against her will that she was actually doing it; that the said
30 Mr. Conkling then said that he could not take the acknowledgment of your oratrix under such circumstances and your oratrix went home after making an appointment to return at two o'clock; that at two o'clock your oratrix did return to the office of Mr. Conkling and there a Mr. Miller was called in and took the acknowledgment of your oratrix; your oratrix then returned home and upon thinking over the matter again had mis-
givings and telephoned to Shafer & Conkling tell-

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Complaint.

ing them that she did not want the deed to go through; that she had not executed it of her free will or accord; that she had done it because of threats on the part of her husband and that she wanted it stopped; that she was advised by Mr. Conkling that it could be stopped and would be stopped; that her said husband thereupon became angry and again threatened your oratrix that if she did not go immediately to the phone and countermand her orders he would leave her at once and thereupon forced your oratrix to go to the phone and countermand the orders whereupon the deed went through and was recorded so that the title of the said lands and premises now seems to be vested in your oratrix and her said husband by deed, the one from your oratrix and her said husband to Cook Conkling, dated May 29th, 1913, and recorded in the office of the Clerk of Bergen County in Liber 840, page 142 and the other by Cook Conkling to Eva P. Cropsey and Charles D. Cropsey, dated May 29th, 1913, and recorded in the office of the Clerk of Bergen County in Liber 849, page 144.

5. Your oratrix further shows that forthwith and immediately after the said Charles D. Cropsey ascertained that the deeds had been recorded he endeavored to get your oratrix out of the house; that he told your oratrix that he would give her a certain sum of money if she would go; that when she refused to go he communicated with his counsel and endeavored to get advice from him which would permit him to compel her to go and endeavored by all means

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Complaint.

in his power to force your oratrix out upon the street; that he refused to return to your oratrix and be her husband and told your oratrix to her face that he had never meant what he said and that he never intended to live with her again; 10 that he would not have anything to do with her; that he did not love her; that if she wouldn't leave he would and that the getting of the house away from her was just a slice more than he expected before he did leave; that as a matter of fact, your oratrix not leaving, the said Charles D. Cropsey did leave your oratrix and has not since the recording of said deed associated with her in any manner whatsoever, and in fact upon 20 or about the 13th day of March, 1914, commenced in the Court of Chancery of this State a divorce suit against your oratrix upon the charge of adultery which suit your oratrix has answered and which suit is still pending undetermined; that all of the information upon which said suit is based was well known to the said Charles D. Cropsey before the property was transferred by your oratrix to him and that there is no truth in the allegations in said petition and that the said Charles D. Cropsey well knows 30 the same.

6. Your oratrix charges and insists that for some years last past the said Charles D. Cropsey has entertained no feelings of love towards your oratrix; that he has become tired of your oratrix; that he has become infatuated with other women; that his whole desire has been to get rid of your oratrix either by obtaining some ground for divorce against your oratrix on his part or by forcing your oratrix in a position 40

Complaint.

where she would be obliged to sue for divorce and that such was the feeling of the said Charles D. Cropsey at the time he made his threats and promise which resulted in the transfer of the one-half interest in the property by her to the said Charles D. Cropsey; that the said Charles D. Cropsey at the time he made the promises knew the same to be false and intentionally mislead your oratrix well knowing that your oratrix, still loving him would do almost anything in the world to get him to come back and live with her and imposed upon your oratrix and intentionally imposed upon her, and your oratrix charges and insists that the conveyance of a one-half interest in said property by your oratrix to her said husband was induced by the threats of the said husband and by fear on her part of her said husband and his threats and duress and that such transfer was so induced was known to her said husband at the time such transfer was made, and your oratrix further charges and insists that she never of her free will acknowledged that she signed, sealed and delivered the said deed as her voluntary act and deed and without any fear, threats or compulsion of her said husband; that as a matter of fact, the said conveyance was induced by the fear, threats and compulsion of her said husband and known to be by him at the time.

Your oratrix, therefore, charges and insists that the said conveyance of transfer is void.

For as much as your oratrix cannot have adequate relief at and by the strict rules of the common law but as this court has full and complete jurisdiction in the premises:

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Complaint.

10 To the end, therefore, that the said Charles D. Cropsey may full, true, direct and perfect answer make, to all and singular the matters aforesaid as if the same were here again repeated, but without oath, and that he may set forth and discover under what circumstances said deeds hereinbefore mentioned were made, and that the deed made by your oratrix and her husband to Cook Conkling, and recorded in the office of the Clerk of Bergen County in Liber 849, page 142, and the deed from Cook Conkling to your oratrix and Charles D. Cropsey recorded in the office of the Clerk of Bergen County in Liber 849, page 144, be declared null and void and be set aside and your oratrix re-invested with full title to said lands and premises as before the execution of said deeds she was, and that in the meantime and until the further order of this court the said Charles D. Cropsey may be restrained and enjoined from disposing of, encumbering or in any wise dealing with said lands and premises, and that your oratrix may have such other and further relief as to your Honor may seem meet.

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40 May it please your Honor, the premises considered, to grant unto your oratrix, not only the state's writ of injunction issuing out of and under the seal of this honorable court enjoining him as aforesaid, and also the state's writ of subpoena, issuing out of and under the seal of this honorable court, commanding him on a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such

Answer.

order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, etc.

MERRITT LANE,
Solicitor for and of counsel
with Complainant.

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Answer.

The defendant, Charles D. Cropsey, answering the bill of complaint in this cause, or so much thereof as he is advised it is necessary for him to make answer unto, says:

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1. This defendant admits that he was married to the complainant on the twelfth day of March, 1892, and that he and the complainant lived together as man and wife for a number of years, at the places set forth and stated in the said bill of complaint. And he admits that in the year nineteen hundred and four this defendant purchased a lot of land described in the bill of complaint, located in the Town of Rutherford, County of Bergen and State of New Jersey, but he denies the allegation contained in the first paragraph of said bill, to the effect that the said money that was used for the purchase of the said lot belonged to the complainant, or was earned by the complainant; he charges and insists the truth to be that said moneys belonged to this defendant and were the property of this defendant. He admits as set forth in the first paragraph of said bill of complaint that after the purchase of said lot there was erected thereon, in the year nineteen hundred and five,

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Answer.

10 or nineteen hundred and six, a house, the residence in which the complainant is now maintaining her home and in which this defendant is now maintaining his office; but he denies that the money used or devoted to the erection of the said building was contributed by the complainant, or that the said house when completed, or the said lot upon which the same was erected, belonged to the complainant in any way, shape or manner. This defendant charges the fact to be that if any moneys, used either in the purchase of said lot or in the erection of said building, could be said to be the moneys or property of the complainant, such moneys were a very small proportion, in amount, to the total investment in said lot and building.

20 This defendant further answering said paragraph admits that the title to said premises, as appears from the deed, was taken in the name of the complainant; but he charges and insists that that was a matter which neither the complainant nor the defendant had given any concern to, and the title was so take simply as a matter of convenience and that it was always understood and appreciated, between the complainant and this defendant, that the property belonged to this defendant.

30 2. Answering the second paragraph of the said bill of complaint, this defendant says, that he and his wife did live happily together for a short time after their marriage, but he denies that any differences of opinion existed between them subsequent thereto, due to any neglect on his part, or to the fact that he ceased to love the complainant, or to his refusal to give her

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Answer.

proper care and consideration; and he denies that he, at any time, without reason, made improper accusations or charges against her as to her relationship with other men; he denies that he ever assaulted his wife, as charged in said paragraph, or that he ever called her the names indicated and suggested in said paragraph, or that he compelled her to submit to personal indignities of various natures, whatever such term may mean; he denies that he ever ill treated his said wife in any way, shape or manner; and he denies that he ever said to his wife that he loved another woman, or that he would not live with the complainant because he was in love with someone else; and he denies all the other charges set forth in said second paragraph, denying particularly that he made offers to his said wife to separate from him. And he further denies particularly that he stated that he knew his wife would give him everything provided their relations could be re-cemented, after the relationship had become strained, as hereinafter set forth.

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3. Answering the third paragraph this defendant says that he denies all the allegations contained therein, wherein it is alleged that he endeavored to coerce his wife, or to force his wife, or to otherwise improperly induce his wife, to transfer to him a one-half interest in the house and lot hereinbefore referred to; and he denies all the allegations contained in said paragraph relative or preliminary to the transfer of said property.

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4. Answering the fourth paragraph of said bill of complaint, this defendant admits that the

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Answer.

10 title to said property was finally vested in this defendant and his wife, jointly, by deed dated May 29th, 1913, recorded in the office of the Clerk of Bergen County in Liber 849 on page 144, and admits that said deed was drawn by Messrs. Shafer & Conkling, attorneys at law of Rutherford; but he denies every allegation contained in said paragraph wherein it is charged that the execution and recording of said deed was obtained by any fraud, promise or threat on the part of this defendant.

20 5. Answering the fifth paragraph of said bill of complaint, this defendant says that he denies each and every allegation contained in said paragraph, except that portion thereof which relates to the commencement by this defendant of an action for divorce against his said wife.

6. Answering the sixth paragraph of said bill of complaint, this defendant says that he denies each and every allegation contained therein.

30 7. Further answering this defendant says, that the property described in the bill of complaint is actually and really the property of this defendant; he admits that for a short time after the marriage of this defendant and the complainant, the complainant did some singing and gave lessons in music, and in other ways earned money, but the amount earned by her was not large and was used by her in the purchase of things for herself and for her comfort.

40 This defendant says that he is a physician and has practiced his profession ever since his marriage to the complainant, and has built up a fair practice in Rutherford and vicinity, and, as

Answer.

a result of his practice, he succeeded in saving practically all the money that was used in the acquirement of the property and the erection of the building thereon; that he was very fond of his wife for years and allowed her to do pretty much as she pleased; that the title to the lot and house so owned by this defendant was kept in his wife's name for years, but gradually this defendant noticed that his wife's affections for him were waning, she seemed to get all her pleasure from the company of others, and her relations with others were such that the complainant and this defendant became very much estranged, and they finally separated. That shortly following their separation this defendant commenced divorce proceedings against his said wife, which proceedings are now pending in this court. That prior to the final separation between this defendant and the complainant, however, they had frequent talks about their property interests, and it was proposed by this defendant, and agreed to without any hesitation on the part of the complainant, that the title to the house in which they lived should be in both their names, instead of in the name of the complainant alone, as said house represented, in a measure, the savings of this defendant; there were other savings of this defendant, kept in bank accounts, which are still held in the name of the complainant, amounting to several thousands of dollars. When the transfer of the property was made, it was made simply in the interest of common justice between the parties; they had no children, and it was concluded that this was the proper course to take; and this defendant

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Answer.

made no threats to the complainant, or did not seek the action of the complainant in the matter through any false promises or representations made by him. That after the separation between the complainant and this defendant the complainant continued to live with her mother in the home in question, and this defendant continued to maintain his office in a part of said building, sleeping and getting his meals elsewhere, and no question was ever raised at any time by the complainant about the title to the house, or about any of the incidents thereto. That after the commencement of the divorce proceedings the question of alimony was fixed by the Court of Chancery, and this defendant has paid the alimony so fixed, but the complainant has, on several occasions, made demands for increased money from this defendant, and this defendant refusing, he now states that he is of the opinion that her only purpose in making an attack upon the deed referred to in the bill of complaint is to harrass and annoy this defendant, and to compel him to make, if he can, further and more satisfactory financial provisions for her.

And this defendant further answering says, that he has done everything that a reasonable man could do for his said wife, especially in a financial way. She possesses his savings for years, in her own name, he making practically all his bank deposits in her name until almost the very day of their separation. This defendant further says that the conduct of the complainant and her attitude toward him has been the means of his losing a large portion of his business.

Replication.

This defendant therefore prays that the said bill of complaint may be dismissed.

CHARLES D. CROPSEY,

Defendant.

ROBERT CAREY,

Solicitor for and of Counsel with defendant.

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Replication.

Replication in usual form.

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Appearances.

IN CHANCERY OF NEW JERSEY.

10	Between EVA P. CROUSEY, Complainant, and CHARLES D. CROUSEY, Defendant.	}	On Bill, &c. Testimony.
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20 Testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on Wednesday, December first, 1915, at 2:15 P. M. Before—Hon. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

MERRITT LANE, ESQ., for the Complainant;

ROBERT CAREY, ESQ., for the Defendant.

Mr. Lane: We call for the production of the three deeds.

(Counsel for defendant produces said deeds).

30 Mr. Lane: I offer in evidence a deed from Frederick William Luttgen to Eva Pauline Cropsey, dated July 15, 1901, and recorded in the office of the Clerk of Bergen County on the 6th day of January, 1902, in Book 538 of Deeds, page 239, &c., for the expressed consideration of \$1300.00, and covering the property referred to in the bill of complaint.

Said deed is marked "Exhibit C 1."

40 Mr. Lane: I offer in evidence a deed from Eva Pauline Cropsey and husband to Cook Conkling, dated May 29th, 1913, and recorded on the 4th day of June, 1913, in Book 849 of Deeds, page 142, for the expressed consideration of \$1.00.

Thomas Berridge, direct.

Said deed is marked "Exhibit C 2."

Mr. Lane: I also offer in evidence a deed from Cook Conkling to Charles D. Cropsey and Eva Pauline Cropsey, his wife, dated the 29th day of May, 1913, and recorded in the office of the Clerk of Bergen County on the 4th day of June, 1913, in Book 849 of Deeds, page 144, for the expressed consideration of \$1.00. 10

Said deed is marked "Exhibit C 3."

THOMAS BERRIDGE, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Berridge, where do you live? A. Passaic, New Jersey. 20

Q. And what is your business? A. Builder.

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

Q. Did you do any building on the property belonging to Mrs. Cropsey on Donaldson Avenue in Rutherford, in 1904? A. I built a house there about that time; I couldn't say just what time.

Q. Have you the agreement under which that house was built? A. I have a contract.

Q. Produce it. A. (Witness produces paper). 30

Mr. Lane: I offer the paper in evidence.

Said contract between Eva P. Cropsey and the Berridge Building Company, is marked "Exhibit C 4."

Q. Did you receive payment on that contract? A. I did.

Q. From whom? A. That I couldn't say, who the checks were signed by all I did, was to give credit to Eva P. Cropsey's contract. 40

Eva P. Cropsey, direct.

Q. You don't remember how any of the checks were signed? A. No.

Q. Do you know whether or not "Eva P. Cropsey" appeared on the checks? A. I couldn't say, I am sure

10

EVA P. CROPSEY, the above named complainant, being duly sworn in her own behalf, testified as follows:

Direct examination by Mr. Lane:

Q. Mrs. Cropsey, where do you live? A. Rutherford, New Jersey.

Q. When were you married to Dr. Cropsey? A. March 13, 1892.

20

Q. How long did you live with Dr. Cropsey as husband and wife? A. Up until January 2, 1912.

Q. What happened then? A. Dr. Cropsey refused to be a husband to me.

Q. Did he actually leave your bed at that time? A. Not at that time, no, sir.

Q. Did he subsequently? A. Yes, sir.

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Q. When? A. He left my bed, as near as I can remember, in either March or April, and slept in another room, refusing to sleep with me.

Q. What year? A. The same year, 19—I think that was in 1913.

Q. How long did he continue to live in the same house? A. He lived in the same house until July 22, 1913.

Q. And then, what did he do? A. He left me.

Q. And has he ever lived with you since? A. No, sir.

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Q. Or made any attempt to live with you since? A. No, sir.

Eva P. Cropsey, direct.

Q. Do you remember when the property that is covered by this deed was bought? A. Yes, sir.

Q. Whose money was used in purchasing it?

A. My money purchased the lot.

Q. When you say your money, what do you mean; how did you get the money? A. I earned a great deal of money myself, and other money; there was some money from Dr. Cropsey, which was practically given to me; he wanted me to have my home, and my money I had earned myself by singing and giving music lessons, and dressmaking, and so forth; a great part of it was my money, and the other money that came in was some money Dr. Cropsey would give to me in good faith.

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Q. The title to this land apparently was put in your name? A. Yes, sir.

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Q. Do you know why? A. Simply because it was bought with my money; we thought everything was all right, and Dr. Cropsey wanted me to have it, and he gave it to me, you might as well say; he wanted me to have it; the land was simply bought with my money.

Q. Afterwards, a house was built on it? A. Of course, we thought everything was all right.

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Q. A house was afterwards built on that land? A. Yes.

Q. How much did it cost? A. I think it cost between eight and nine thousand dollars, maybe a little more.

Q. Who paid the moneys that were paid on the contract for building the house? A. I did.

Q. Out of what bank account? A. Moneys I had, with money Dr. Cropsey had given me from time to time, and I took the mortgage out in

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Eva P. Cropsey, direct.

the Franklin Institution for \$5,000, and as I got my money I would pay off, and if Dr. Cropsey gave me money, I would put it in the home instead of spending it for other things.

10 Q. When was the first talk, if there was any, with respect to your transferring any part of this house to Dr. Cropsey? A. Nearly nine years ago,—fully nine years ago.

Q. And how did it come about? A. Dr. Cropsey had been neglecting me; he had not been home, and he was going out continually, and he was neglecting me; he had expressed his love for another woman, and at this time he told me he loved this woman and he couldn't help it; he felt sorry for me, and he said, I had been a
20 good wife to him and that he would put clothes on my back, food in my stomach and a roof over my head, but for loving me, he didn't love me and he loved a certain woman—

Q. Well, now, at that time, or after that time—was that the first talk of your turning over any of the property? A. Right after that he asked me to turn the property over; he said we ought to have it half and half. I said I didn't see why; I had left him everything in my will, and he had
30 likewise made me a will, leaving everything he had to me; I had reciprocated; but he simply said he wanted the money, and I was selfish, why didn't I turn it over; he wanted me to turn over the property.

Q. What money did he want? A. He wanted me to turn over the property.

Q. You didn't turn it over? A. No.

Q. Did he continue asking you to turn over
40 this property? A. He continued it continuously,

Eva P. Cropsey, direct.

Mr. Lane, and that got very frequent later; and finally, he threatened he would leave me and he wouldn't live with me; he said I was selfish and a thief to want to keep it in my name, and he would leave me there and then without a cent if I didn't turn it over.

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Q. When did he say that? A. These quarrels became more and more frequent up until around about, I should say, 1913, or '12, I am not just sure which,—but Dr. Cropsey said to me, and in fact, he had said to me a great many times, he said, "Eva, your happiness lays in the palm of your hand, but you don't know it; if you would do as I ask you and turn over this home to me, I will give up this woman whom I have told you I loved, and I'll stay home with you and I'll go out with you; but you are such a fool you can't see what's good for you;" he said, "consequently, I want the property." So I thought the thing over. I didn't want to—

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Q. When was this? A. This was around about, I think, in 1913.

Q. Was it before or after he had left your bed? A. No; let me see—I can't tell the exact date, Mr. Lane, but right there around that time when he did leave my bed; no, I think he had left my bed and gone in the other room to sleep at that time, in the spare room. He said he couldn't be a husband to me, if I wouldn't turn the property over to him.

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Q. What was said just immediately prior to the transfer? A. Dr. Cropsey came in that morning—

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Eva P. Cropsey, direct.

Q. What morning? A. This morning of the day we transferred the deed.

10 Q. The 29th of May? A. The 29th of May. He said, "Are you going down with me to transfer this property?" and I said, "No, I am not." He said, "You are not?" he said, "then I am going to leave you;" he said, "I'll leave you without a cent;" he said, "Now, you can think well or not of this;" he said, "I don't intend to live with you any more, that is, if you will not turn the property over to me." I looked at him, and I cried. He said, "I want the whole back lot which goes to this property;" there's a lot 100 by 160, and he said "I want the whole property;" that's what he wanted first. This I refused.

20 Then he said, "I want the entire back lot; that you will have to give me full and clean." I said "No." He said, "Then I'm going to leave you." He had his automobile outside. On a couple of other occasions he had packed his clothes and said he was going to leave me, and this time he said, "Eva, I mean business; I don't intend to stand for this any longer. You can transfer it or not, but if you don't, I am going to leave you." I didn't want him to leave me, and I wanted to do what was right, and I

30 thought then, that if he considered I was selfish—

The Court: Mr. Lane, when the witness goes too far, you had better stop her.

Q. Tell us what was said, and never mind your feelings. A. Dr. Cropsey promised then he would give up this woman and take me around and stay at home and be a husband to me; and then I said, "I will give—"

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Eva P. Cropsey, direct.

Q. What did you do? A. He took me down to Lawyer Conkling's office.

Q. And what happened there? A. Mr. Conkling said to me, "You have come to transfer this property." I said, "Yes, I have, Mr. Conkling." I said, "Dr. Cropsey hasn't been kind to me; he has promised to be kind to me, and treat me kindly if I will transfer this property to him." I said, "I am not doing this of my own free will and accord, but to please Dr. Cropsey." Mr. Conkling smiled, and he said to me at the time—

10

Q. Was Dr. Cropsey there? A. Yes; he said, "Well, if he don't, we'll put him under bonds to keep the peace;" he said that, "or something like that." (Gesticulating.) He said to Dr. Cropsey, "I cant take her affidavit now." It was about 11 o'clock in the morning—"but you bring her in about 2 o'clock in the afternoon." Dr. Cropsey and I went home and had our luncheon, and he then took me down in his automobile to Conkling's office and he had Mr. Miller in, and Mr. Miller took my affidavit.

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By the Court:

Q. Your acknowledgment, you mean? A. Yes. Dr. Cropsey was there, and Mr. Miller was there.

30

Q. Dr. Cropsey was there and you and Mr. Conkling and Mr. Miller? A. Yes.

Q. Was Dr. Cropsey in the room at the time the acknowledgment was taken? A. He stood right outside the door, which was open; the door was open and he was right outside; he could hear everything that was said; and I went home that night and Dr. Cropsey did not come in until very late. I saw his automobile in front of this house of this woman—

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Eva P. Cropsey, direct.

Q. Was there any talk about that afterwards, between you and Dr. Cropsey? A. Yes, the next morning. I said, "You were up there at that woman's last night?" He said, "No, I wasn't;" and I said, "yes, you were;" he said, "Then what did you ask me for?" He went out, and I called up Shafer and Conkling, and he went out. Shafer answered the 'phone, and I said, "Mr. Shafer, that deed hasn't gone through?" he said, "No, it hasn't;" I said, "I have changed my mind; I don't want that deed to go through." Mr. Shafer said, "All right," and about a half to an hour, Dr. Cropsey came in, and he was white with rage; and I was sitting on the front piazza, and he said, "Come in the office, I want to speak to you;" and I went in the office, and he looked at me, and he said, "How dare you countermand that deed going through?" He said, "You take that receiver," and he said—well, I don't care to say what he said.

Q. He used hard language? A. Yes. He said, "If you don't take that receiver up and tell them to send that deed through, I'll choke you," and he was white with rage, and he said, "I'll leave you, too." I went to the 'phone and called them up and told them to send the deed out, but prior to that—

Q. When was that? Were you present at the time he told him about how long it would take? A. Yes; I heard Mr. Conkling say a month, and Dr. Cropsey said, "As long as that?" and Mr. Conkling said "Yes." And then, during that month, Dr. Cropsey said to me on several occasions, "What would you say if I told you I

Eva P. Cropsey, direct.

was going to get a divorce from you?" He told me that one day on the ball field.

Q. What happened just before he left, with respect to this property? A. Then the deed came back and Dr. Cropsey and I had no words, practically, things seemed to be peaceful, in a way; and he came in and said to me the deed had come back, and I said, "Will you let me see it?" He said, "No, I won't give it to you;" I said, "Will you let me see it?" He said, "No, it's in my lawyer's office, and I am going to leave you;" he said, "This is a slice more than I expected to get; now I've got it, and I'm going to leave you." Whereupon, that very night Dr. Cropsey didn't come home to dinner, and made his threat good to leave me. Dr. Cropsey came in several times and talked to me, and he said to me, "I—" just a minute; I think I am getting a little ahead of my story. I called Mr. Conkling up on the 'phone and asked him what it meant. I said, "Is this true that he's going to leave me;" and he said, "Well, you know these things sometimes happen in families, and I think if you go away from Dr. Cropsey and go down to Asbury and spend your summer there, probably everything by the time you come back will be all made right."

Q. Did Dr. Cropsey make that suggestion to you himself? A. Yes, sir; he said he would pay my board of \$10.00 a week down there, and give me a check of \$25.000 for clothes, if I would go. I didn't know what to do.

Q. You didn't go? A. No.

Q. Did he make any threats because you wouldn't go? A. He threatened to leave me, and, in fact, up to that time Dr. Cropsey was staying

Eva P. Cropsey, direct.

10 out nights, and he wouldn't sleep with me, he wasn't sleeping with me; and then I came home, and Dr. Cropsey said to me, "You go back again, after you promised me you were going to Asbury;" and I said "No, I have made up my mind I am not going." And he said, "I want that \$25.00 back that I gave you for clothes, and I handed him back the check. Thereupon, he took the receiver down and called up Mr. Conkling. He said, "Mr. Conkling, she hasn't gone and she refuses to go; she will not leave the house;" and Mr. Conkling said, "Doctor, either she or you have got to leave the house; you come and stay with me if she hasn't gone and won't go; your bring your pajamas," and 20 he did get his pajamas, and he went down and made his home with Conkling until the following November.

Q. When was this conversation? A. This was, probably—Dr. Cropsey—

Q. How long after the deeds were transferred? A. This came up around about, I should say, the first of August, after the deeds were made the first of the year following that; this was in August of 1913.

30 Q. Now, who paid the interest on the mortgage up until the time Dr. Cropsey left you? A. I paid the interest on the mortgage.

Q. Out of what bank account? A. I took this money and put the money in the Franklin Savings Institution, I borrowed \$5,000; this is the money referred to this morning; this \$5,000 was taken out, and of that \$3,500 was paid; we drew our checks from the Franklin Savings Institution, and it was all taken out for the

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Eva P. Cropsey, cross.

house, with the exception of a few—about fifteen, or eight, or seven dollars, a small amount.

Q. Well, the interest on the mortgage, was that paid by you out of that bank account? A. No.

Q. Out of what bank account did you pay the interest? A. As a rule, the Bergen County Bank, where I paid my checks from. 10

Q. Did Dr. Cropsey have his own check account also? A. No, our check account was together; he didn't, but his private savings are in his own name, as far as I know—as far as I know about Dr. Cropsey's affairs; I paid all the bills and expenses.

Q. Who paid the taxes? A. I paid the taxes.

Q. Were they paid out of the same account? A. Yes, sir. 20

Cross examination by Mr. Carey:

Q. The story you have just told you have written all out, haven't you? A. No, sir.

Q. You have committed it to memory? A. No, sir.

Q. When you said, "I am a little ahead of my story," didn't you mean you had skipped a few lines of it? A. I didn't write it.

Q. Didn't you mean when you said that, that you had written it out and missed something? A. No. 30

Q. Now, Mrs. Cropsey, when you said a little while ago, that you were a little ahead of your story, didn't you mean that you had skipped a line or two of it? A. Yes.

Q. You say that you paid for this lot out of your money; is that right? A. Yes, my money, and some part of it Dr. Cropsey had given me. 40

Eva P. Cropsey, direct.

Q. Do you remember where you got the money from when you paid for the lot? A. Yes.

Q. Where? A. Singing in churches—

Q. I mean the cash itself, the time you paid for the lot? A. Yes.

10 Q. Where did you draw it from? A. Oh, I can't tell you that.

Q. At that time, as a matter of fact, didn't you have an account in your name in the People's Bank and Trust, at Passaic, and isn't that the book that I show you? (Showing witness a bank pass-book). A. No; this is Rutherford, not Passaic.

20 Q. Just look at that book, People's Bank and Trust Company, Passaic, New Jersey? A. This is in Rutherford, not in Passaic.

Q. Well, is this the book representing the account out of which you drew that money? A. It's my book—

Q. Answer the question. A. Yes.

Q. Did you have any other bank account at that time? A. 1898—I think I did, yes.

Q. Where? A. I think I had it in Rutherford, I am not sure. I had bank accounts at that time, I will admit; I had one down here.

30 Q. I am talking about the year 1902. A. Yes.

Q. I draw your attention to an item, January 4, 1902, in that book, an item withdrawn, \$650.00; isn't it a fact that that item of \$650.00 represents the only money that you put into the purchase of those lots? A. No, sir.

Q. Can you tell us of any account you have drawn upon, or that you drew upon at that time, in distinction from this account, for the purchase of those lots? A. I think I drew upon

Eva P. Cropsey, cross.

the account of the Provident Institution for Savings, right down-stairs.

Q. Have you got your book of account that would show that fact? A. I have not.

Q. But, if you didn't draw it from this account, it was from the Provident Institution for Savings? A. I don't know, I would't say positively; it was so many years ago. 10

Q. As a matter of fact, don't you know that at the time those lots were purchased, your husband drew out of his personal account all the money in excess of the \$650.00 referred to in this item, for the purchase of those lots? A. No, sir.

Q. Will you say whether it is true? A. I don't believe it is true; I don't remember it. 20

Q. You knew your husband had a personal account at that time in the People's Bank and Trust Company? A. Yes.

Q. I show you a book, which I ask to have marked "Exhibit D2," and I ask you if you don't recognize this as the book showing his personal account in the bank at that time? A. Yes.

Q. You had access to his bank book at that time, didn't you? A. Yes. 30

Mr. Carey: I offer in evidence this book. Said bank pass-book of the People's Trust Company, No. 990, is marked "Exhibit D 1."

Mr. Carey: I also offer this book.

Bank pass-book of the People's Trust Company, No. 862, is marked "Exhibit D2."

Q. I draw your attention to two items under the title "Withdrawn" in that book, one dated 40

Eva P. Cropsey, cross.

November 13, 1901, \$100.00, and the other dated January 4, 1902, \$600.00, and I ask you in looking at that whether or not you now say that your husband did not contribute from his personal account for the purchase of those lots? A. I don't know.

10 Q. Now, you stated that after these lots were acquired, that contracts were made for the building of a house thereon, and that you made the payments to the contractors under the contract. Isn't it a fact, that all the payments made to the contractors and others on account of the work done in connection with that house, were made by your husband out of his personal bank account? A. No.

20 Q. You were familiar with all of his bank accounts at that time, weren't you? A. Yes.

Q. I show you an account, a bank book, Rutherford National Bank, which I will ask to have marked "D 3 for identification," and I will ask you to look at that book and tell me whether or not it is a fact that that book represented an account kept by your husband, which was used for the erection of that building? A. I don't remember.

30 Q. How did you pay these contractors and others who did work on this building, by check or by cash? A. By check.

Q. Upon what bank? A. The Franklin Savings Institution of Newark was one.

Q. Did you have an account at the Franklin Savings Institution at that time? A. No.

Q. Then the moneys you refer to as being paid out by you, were out of the mortgage moneys? A. Yes.

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Eva P. Cropsey, cross.

Q. Outside of those mortgage moneys, did you draw checks to contractors for any moneys whatsoever? A. I did.

Q. On what bank? A. That I don't remember.

Q. Have you got the books or records to show what you paid out— A. I did have them. 10

Q. Do you know where they are? A. Dr. Cropsey had them; he took them from me.

Q. When? A. When he left me. The receipts and different things were in the safe and I asked for them and he said he would not give them to me.

The Court: Strike the latter part out. Isn't this all in the case?

Mr. Carey: I think possibly it is. 20

Q. Isn't it a matter of fact, Mrs. Cropsey, that you didn't pay a single dollar out to a single contractor, other than the mortgage moneys you refer to? A. No, sir.

Q. Do you know any contractor to whom you paid money or moneys which you received, which didn't come from these mortgage moneys? A. I can't remember now.

Q. Don't you know that Dr. Cropsey had full charge of that business? 30

The Court: I understand from counsel that the Court may consider whatever evidence has a bearing on this case, in the other cases. I understand that is consented to by counsel.

Mr. Carey: Yes, that is so. Mr. Lane and I are willing to do that in order to save time and expense. We are agreed on that. I'll go on with other matters. 40

Eva P. Cropsey, cross.

(Question withdrawn.)

Q. You say about ten years ago Dr. Cropsey began to talk to you about getting the title of his name? A. About that time, nine or ten.

10 Q. And did you give any reason to him nine or ten years ago, why you would not put the title in his name? A. I did.

Q. What was the reason you gave to him? A. Because he had given it to me for my protection and my home.

Q. Did you say to him, or give him any special reason for keeping it in your name and not in his, at that time, ten years back? A. Yes, I had reasons.

20 Q. Did you give him any reasons? A. I think I did.

Q. What were they? A. Well, I was afraid Dr. Cropsey might be sued for mal-practice and for performing illegal operations, which he had been known to do, and for that reason I wanted protection for both of us.

Q. And that was the purpose of keeping the property in your name, so he would be protected from being sued? A. Yes, at that time.

30 Q. Did you state that to Dr. Cropsey? A. Dr. Cropsey knew that; yes, he knew my reasons.

Q. Did you state that to Dr. Cropsey? A. I did.

Q. And what did the doctor say? A. He didn't say anything.

Q. Was that the reason the lot was originally taken in your name, to prevent any possible judgments? A. No, sir.

40 Q. What was the reason? A. Dr. Cropsey gave it to me; he wanted me to have it; we both worked for our home; he wanted me to have it for protection, because we both worked for our home.

Eva P. Cropsey, cross.

Q. Did he call it "our home?" A. He did.

Q. Did he say, "We want to put our money together for our home?" A. I don't know; he was perfectly willing that I should have it. He didn't want any suits brought against him.

Q. Did he say so? A. Yes. 10

Q. How did you come to talk about that? A. Because my money bought that lot, and, naturally, it was put in my name, and he was perfectly willing I should have it, and gave me money for it with my own money.

Q. When you built the house, did you discuss the reasons then? A. No, sir.

Q. Was anything said about it being in your name at that time? A. No, sir.

Q. You didn't even discuss it then in any way, shape or manner? A. No, sir. 20

Q. That was less than ten years ago, wasn't it? A. I don't understand you.

Q. When was the house built? A. 1904.

Q. The house wasn't really built until 1905, was it? A. Well, about that time.

Q. The spring of 1905, wasn't it, and the summer of 1905? A. I don't think so; I think the house was completed in 1904; we went in the house in November, I think—I don't know, four or five. 30

Q. Wasn't it 1905? A. Probably it was.

Q. That is, just ten years ago now? A. Yes.

Q. And everything was pleasant between you and the doctor ten years ago? A. Yes.

Q. When this house was built, did you move into it? A. Yes.

Q. You co-habited together, and everything was delightful, wasn't it? A. Yes. 40

Eva P. Cropsey, cross.

Q. And at that time you began to talk about the house being in your both names, didn't you?

A. No.

10 Q. Was it nine years ago? A. I forget what year we moved in the house. If Dr. Cropsey will kindly tell me that—

Q. If you don't remember; was it about the time you moved into the house that you began to talk about it? A. No, sir.

Q. How long afterwards? A. About eight years ago; that's when he first commenced to talk and to treat me unkind.

Q. And from that time on there was continuously talk between you about that house? A. Yes.

20 Q. And that was the source of a lot of trouble between you? A. Yes.

Q. And one occasion was the time you and Dr. De Baun were there, when he talked to you? A. Yes.

Q. And don't you remember Dr. De Baun saying you would be a damned fool if you did that?

A. He said that to Dr. Cropsey.

30 Q. Didn't you hear him say to you, in the presence of your husband, that you would be a damned fool if you conveyed part of the property to him? A. He didn't tell me that; I heard it.

Q. Was Dr. Cropsey at that time asking for a deed of the property? A. That was about a year before Dr. Cropsey left me.

Q. He really left you about the 27th day of May, didn't he, left your bed? A. I can't tell you the exact date.

40 Q. Don't you know it was the 27th day of May he left your bed? A. No; it was either in May or April.

Eva P. Cropsey, cross.

Q. Haven't you got it in your diary? A. No, sir.

Q. You know why he left your bed, don't you, that particular night? A. No, sir.

Q. He had been sleeping with you a long time prior to that, hadn't he, regularly? A. Yes. 10

Q. And he hadn't complained about sleeping with you or anything, until the night of the 27th day of May? A. He didn't complain.

Q. He hadn't been threatening to get out of your bed and leave you before that time? A. He threatened to leave me.

Q. How long before the 27th day of May? A. For the past seven years, if I wouldn't transfer the property.

Q. How long before the 27th day of May? A. 20
Most every day.

Q. On the 27th day of May, you had a row with your husband, didn't you, over Dr. De Baun? A. I guess so.

Q. Didn't he come into the house and find you and Dr. De Baun drinking whiskey? A. No, sir.

Q. Didn't he accuse Dr. De Baun of kissing you? A. Yes.

Q. And didn't he have a fight with Dr. De Baun on that night? A. He did. 30

Q. And grab him by the throat? A. He did.

Q. And put him out of the house? A. No, he talked with him until five o'clock the next morning.

Q. Didn't he tell him he must never come in the house again? A. I don't know; I went to bed.

Q. Wasn't that the last night that he slept 40

Eva P. Cropsey, cross.

with you? A. He didn't sleep with me for a few nights before that.

Q. He slept with you until the night before, didn't he? A. No.

10 Q. You remember the next day, don't you? A. I remember nothing particular.

Q. Do you remember calling up Dr. De Baun and making an appointment for him to apologize to Dr. Cropsey? A. No.

Q. Did you tell him your husband wanted him to apologize to him, the next day? A. Yes.

Q. Didn't you tell him that he wouldn't accept his apology? A. Yes.

Q. Didn't he tell you that? A. Yes.

20 Q. Didn't he tell you he didn't want Dr. De Baun in the house under any circumstances again? A. I don't know.

Q. Didn't he tell you he didn't want you to see Dr. De Baun again? A. I don't know.

Q. You did see him the next day? A. Only when he came to apologize to Dr. Cropsey.

Q. Didn't you send for him to come and apologize after he told you he didn't want him around? A. No, sir.

30 Q. And didn't you tell Dr. Cropsey that you were going to see Dr. De Baun whenever you wanted to? A. No, sir.

Q. Dr. Cropsey was pretty mad about that? A. He was.

Q. And it kind of worried you, didn't it? A. No more than it worried me for years.

Q. Didn't it worry you particularly at that time? A. No, sir.

40 Q. Well, that was the climax, wasn't it? A. It seemed to be.

Eva P. Cropsey, cross.

Q. You liked Dr. De Baun at that time, didn't you? A. As any other gentleman friend.

Q. You had been out with him nearly every night, playing cards? A. No, sir.

Q. Pretty nearly every night? A. No, sir.

Q. Well, about three times a week? A. No, sir. 10

Q. Weren't you a little put out because this little disturbance had come up between your husband and Dr. De Baun? A. I was sorry it happened.

Q. You wanted to do almost everything to straighten it out? A. I wanted everything all right with my husband and myself.

Q. You wanted everything all right between Dr. De Baun and your husband? A. They had been friends. 20

Q. Your relationship with Dr. De Baun had been very pleasant? A. Yes.

Q. And you wanted that to continue, didn't you? A. Not against Dr. Cropsey's wishes.

Q. You wanted him to wish for it, didn't you? A. No.

Q. Didn't you propose to Dr. Cropsey, the day after that, "If you want me to, I'll fix that deed up?" A. No, sir. 30

Q. How did the matter come up on the 29th day of May? A. Dr. Cropsey came in and threatened he would leave me on the spot, without a cent, if I wouldn't go down; he was tired of asking me to transfer the property, and he didn't intend to ask me again, he had asked me for the last time, and if I didn't do it, he would leave me, without a cent, and I could choose now, he said, about going down and having the 40

Eva P. Cropsey, cross.

10 property transferred to him, or that he would pack his clothes and leave the house. He made the promise that he would come home and live with me and give up this woman, and he would take me out and be a husband to me; and it was under all his promises of kindness that I did it.

Q. As a matter of fact, you hadn't been discussing some other woman that day, had you?

A. This same woman.

Q. On that day, weren't you worried about Dr. De Baun and the row with him? A. No, sir.

Q. Wasn't this the next day? A. It didn't worry me, no, sir.

20 Q. Wasn't it two days or two nights after he fired him out of the house? A. I don't remember the date.

Q. You had Dr. De Baun at the house the Saturday night afterwards, didn't you? A. No, sir; that was the night he came to apologize.

Q. Didn't you tell him you guess everything was all right, and you had fixed up the deed with Charlie? A. No, sir.

30 Q. Did you discuss this other woman before he talked about the deed? A. Yes.

Q. How was that brought up? A. He promised to give her up if I turned this deed over to him.

Q. Before that you began the conversation by talking about this other woman? A. I don't know the exact words; he said he was going to pack up his clothes if I wouldn't go with him; he said, "You can take your chance and go down with me and sign this deed; if you don't do it,

Eva P. Cropsey, cross.

I am going to pack my things and leave you without a cent;" and then I went with him.

Q. What promise had he made to you that morning? A. To keep away from this woman and give her up entirely, and he wouldn't go out with her any more, but that he would stay at home with me in the evening and go around with me; he promised me he would be a husband to me and love me, and in speaking of my happiness he said it lay in the palm of my hand, but I was too selfish to realize it.

10

Q. What prompted him to make all these promises to you that particular morning? A. I don't know.

Q. What started it; he wasn't sleeping with you the night before? A. He started it every morning.

20

Q. You met him at breakfast that morning? A. Yes.

Q. And how did he start in, "Good-morning, I'll promise you this and that?" A. I don't know just how he started.

Q. You weren't angry at breakfast? A. No.

Q. Weren't you angry with him for not sleeping with you? A. I didn't like it; I wasn't angry. I begged him—

30

Q. You went to Mr. Conkling's office. When you went down there, was there anybody else there? A. Dr. Cropsey.

Q. You knew Mr. Conkling very well, didn't you? A. I knew who he was, that was all.

Q. You knew him socially? A. I never went out socially with him.

Q. When you went down there, was the deed all ready? A. The deed was ready, yes.

40

Eva P. Cropsey, cross.

Q. When you got there? A. As well as I remember.

10 Q. How long were you there? A. Quite a little while. I told Mr. Conkling I made a will, and I told him about these promises made by Dr. Cropsey, and he said it was no more than right that I should turn the property over to Dr. Cropsey.

Q. And what did you say to that? A. I said I was willing to do it upon Dr. Cropsey's promises.

Q. Did you repeat the promises to Mr. Conkling then? A. No; I said he had made promises to me.

20 Q. Did Mr. Conkling ask you what promises? A. No.

Q. Did you tell him he had not been kind to you? A. Yes.

Q. And had treated you cruelly? A. Had been unkind to me.

Q. Did you inform him about Dr. De Baun being at the house? A. No, sir.

Q. Or about this other woman? A. No, sir.

30 Q. And what did Mr. Conkling say to you? A. He said I should do it; it was no more than right, and he said my will wasn't worth the paper it was written on.

Q. Who drew your will? A. Mr. Van Winkle, of Rutherford, New Jersey.

Q. How long before that? A. I don't know.

Q. Two years before that, wasn't it? A. I don't know.

Q. You told Mr. Conkling you wouldn't do it of your own free will? A. Yes.

40 Q. Then, what did he say to that? A. He said

Eva P. Cropsey, cross.

this: "Well," he said, "Dr. Cropsey promised to be kind to you," and he said, "well, if he isn't, we'll put him under bonds to keep the peace, or something like that." (Gesticulating.)

Q. What did you say? A. I cried.

Q. Did you cry in Mr. Conkling's office? A. I think I did. 10

Q. Then, did Mr. Conkling say he wouldn't take your acknowledgment then? A. Yes.

Q. While you were in that condition of mind? A. Yes, he wouldn't do it.

Q. And you went home? A. Yes.

Q. And then you went back again in the afternoon? A. Yes.

Q. And the acknowledgment was then taken? A. Yes, sir. 20

Q. Did you tell him it was satisfactory? A. I said nothing.

Q. Did Mr. Miller ask you if it was your voluntary act and deed? A. He asked me something, yes, he spoke to me.

Q. Was it your voluntary act and deed? A. No, sir.

Q. Why not? A. At the time I did it, I was willing to do anything. 30

Q. When you signed, he made fresh promises? A. No, he made them before I did it.

Q. Why did you go back again? A. Mr. Conkling said he couldn't take my affidavit, but he would do it at two o'clock; Mr. Miller wasn't there the first time I went down there, and when I went back the second time at two o'clock,—he said, "You must bring her in at two o'clock this afternoon,"—and Mr. Miller was there. 40

Eva P. Cropsey, cross.

10 Q. Don't you know that what Mr. Conkling said was, that he couldn't take the acknowledgment to the deed, because the deed was made to him from you and your husband, and from him back to you and your husband, and that he would have to get somebody else to take the acknowledgment? A. I don't remember that.

Q. And wasn't that the reason you had to go back a little later? A. I don't know.

Q. What was done with the deeds after you signed them? A. Mr. Conkling kept the deeds and returned them to Dr. Cropsey; I never saw them afterwards.

Q. You didn't know when they were recorded, or how? A. No.

20 Q. You did call up to Mr. Shafer the next morning about the deeds? A. Yes.

Q. At the time you signed them, Mr. Conkling had possession of them; what did you do with the deeds when you signed them? A. I left them at Mr. Conkling's office; I never had them.

Q. You signed them and left them there? A. Yes.

30 Q. With Mr. Conkling? A. Yes. The deeds were left at the office with Mr. Conkling.

Q. What did you intend that Mr. Conkling should do with those deeds? A. I don't know; he said they had to go to Hackensack to be recorded.

Q. Did you expect him to send them there? A. I didn't know anything about the law.

Q. Did your husband ask how long they would be before they came back? A. Yes.

40 Q. And he said it would take some time? A. About a month.

Eva P. Cropsey, cross.

Q. So when you left there, did you expect the deeds to be recorded? A. I didn't know what to expect.

Q. But you called up to see about the recording? A. Yes, to see if the deeds had gone through. 10

Q. And when there was a delay, you telephoned later, telling them to record them? A. The next morning.

Q. And didn't you write them to record them? A. I don't remember whether I did.

Q. Don't you remember you sent a letter directing them to record those deeds? A. If I did, Dr. Cropsey made me.

Q. You don't remember the incident? A. Yes, he threatened to choke me. 20

Q. Then you remember the letter? A. No, I don't remember the letter.

Q. You do remember going to the telephone? A. Yes.

Q. And you do remember him standing there and saying, I'll choke you? A. Yes.

Q. And, I'll leave you? A. Yes.

Q. But you can't remember whether you wrote a letter? A. I don't know. 30

Q. And the only thing you recollect is, that you heard Mr. Conkling say you did? A. That's all.

Q. You can't even remember when the letter was written, if it was written? A. If it was written, it was written at my home.

Q. But you don't remember just where it was? A. I don't remember.

Q. Don't you know whether it was in the doctor's office, or where it was, in your room or where? A. No. 40

Mary E. Sloan, direct.

Redirect examination by Mr. Lane:

Q. Mrs. Cropsey, where are your bank books?

A. I presume the bank has them, Mr. Lane.

Q. Where were they when Dr. Cropsey left?

10 A. I had them in my possession.

Q. Did Dr. Cropsey take any of them? A. Yes, and copied out all my accounts I had in my bank book.

MARY E. SLOAN, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Lane:

20 Q. You live with your daughter, Mrs. Sloan?

A. I do.

Q. How many years have you lived with her?

A. Five years this coming winter, in February.

Q. Did you ever hear Dr. Cropsey talking with Mrs. Cropsey about the property? A. I certainly have.

Q. When did you first hear any talk between them in respect to it? A. Ever since I have been there.

30 Q. How often? A. Constantly, day and night.

Q. Up to what time? A. It would be the first thing in the morning—

Q. Up until what time? A. Until they separated.

Q. What did he want her to do? A. To turn the property over to him.

Q. Did she ever consent to it, that you ever heard? A. No.

Mary E. Sloan, direct.

Q. Were you present at the time the actual transfer was made? A. I was not.

Q. When had you left? A. I had left. The property was transferred in May.

Q. For how long had you been gone? A. Only a few days. 10

Q. Where did you go? A. To Somerville.

Q. How did you come to go? A. Doctor asked me more than once, why I didn't go to my sister's, and I said I wasn't in a hurry to go, but he seemed anxious for me to go.

Q. Who took you there? A. One time I went alone, and one time he took me there.

Q. Did you ever hear Dr. Cropsey threaten to leave Mrs. Cropsey? A. I certainly did. 20

Q. When? A. When he was asking to have the property made over to him, and he said he would leave her.

Q. How often did he say that? A. Many times; I couldn't say how often.

Q. Did you hear him upon any occasion speak of his feelings towards her? A. His feeling has been very bitter.

Q. I ask you whether you heard him talk, in which he expressed his feeling or love towards his wife? A. I certainly have. 30

Q. What did he say? A. Well, I don't know that I would like to use the language I heard him use.

Q. Never mind the harsh language; what did he say, as a matter of fact? A. If she didn't do so and so, he would leave her, and he didn't care anything for her, and all this.

Q. Did he ever say anything about caring for anybody else? A. Not to me, no. 40

Mary E. Sloan, direct.

Q. In your hearing? A. Yes.

Q. When was the first time he said that? A. The night he expressed his opinion to my daughter.

10 Q. In your hearing? A. No, not in my hearing; it was the night he expressed his opinion to my daughter.

Q. When did he first say anything with respect to his love, or lack of love, for his wife? A. Ever since I have been there, the past five years.

By the Court:

20 Q. Do you mean that you were with your daughter and lived with your daughter for a period of five years? A. Five years this winter; it was four years.

Q. Mrs. Sloan, in order to refresh your recollection, was there any occasion on which Dr. Cropsey said to his wife anything with respect to a certain woman, what he would do before he would give her up? A. Oh, yes.

Q. When was that? A. Well, I could tell the dates.

30 Q. About how long before 1913? A. I couldn't say how long; the dates, I don't remember the dates.

Q. What did he say? A. What do you want me to say?

Q. What did doctor say with respect to what he would do before he would leave this woman? A. What woman?

Q. Mrs. Hagger? A. What he would do before he would leave her?

40 Q. Did he say anything with respect to where his wife could go? A. Oh, yes; he said she

Mary E. Sloan, cross.

could go and do what she pleased, and he would stay with Mrs. Hagger, he would stick to her.

Q. Do you remember about when that conversation took place? A. I don't; I couldn't say when it took place; it was in the winter, and it was the second winter I was there.

10

Q. Did you see Dr. Cropsey after you came back from Somerville, before he left? A. No, he had gone when I came back.

Q. Were you ever present when he said anything with respect to the property after he left? A. I had a talk with Dr. Cropsey at the lunch table about this property question. I said, "Why is it that you people can't live in peace and quietness; why is this question all the time coming up? I understand you say my son and I want this property." I said, "Now drop it. You know we could never have it, and we don't want it." I said, "That's not the reason; it's because you want to get rid of your wife."

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Q. What did he say? A. Of course, he would get rid of her.

Q. When was that? A. I think it was in June, in the month of June, it was warm weather.

Q. What year? A. The second year I was there.

Cross examination by Mr. Carey:

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Q. You didn't give any such testimony as that in the other case, did you? A. I wasn't asked.

Q. Weren't you asked to tell all the differences you knew between your daughter and your son-in-law? A. I think I told what I was asked.

Q. But you do recollect that you didn't make that statement? A. Yes.

Q. When was that talk, in June before they

40

Mary E. Sloan, cross.

separated? A. I am not saying anything about dates, I don't remember, it's impossible.

Q. You say it was in June? A. I don't know.

Q. It might have been some other date? A. It's impossible for a lady of my age—

10 Q. What year was it? A. I don't know.

Q. Your memory is not good? A. No.

Q. How old are you? A. 70.

Q. This time you had this talk at the dinner table, was there anybody present besides your daughter and the doctor? A. Yes.

Q. Were they fighting? A. They were disputing all the time.

Q. That was about two years after you went there? A. Yes.

20 Q. And it was about the real estate? A. The real estate and the Hagers; they were the two standing things; I heard nothing else.

Q. And the doctor said that the title should be fixed, so that in the event of your daughter's death, there would be no question where the property would go? A. No; he said he wanted it fixed over to him.

30 Q. Didn't you testify in the divorce case, that the only question you heard them discussing in connection with the property and the transfer of the property, was the question of what would happen to it, in case either one of them died having no children? A. I never expressed that; I said the only trouble I heard with them was the Hagger case and the house question.

40 Q. Didn't the doctor say that the title and the possession of the property, if his wife died, in the condition it was in, if his wife died it would go to her brothers? A. Yes; I said we didn't want his money.

Ada May Clark, direct.

Q. When was it that that conversation took place, about, where the reference was made to what would happen to the property in the event of death? A. I think that was made, the only time I knew, at the lunch table.

Q. Was it all in one conversation? A. That's the only conversation I had with him about that. 10

Q. That's the only conversation you had with him about the house? A. Yes.

Q. But he didn't leave? A. He didn't leave until he got it; he was only waiting.

Q. Five years ago, you can remember they were fighting about the house, and the doctor was threatening to leave if he didn't get the deed? A. Yes.

Q. And then he would go away and attend to his business and come home again, and then they would fight again? A. He was constantly fighting over the house question, I tell you. 20

ADA MAY CLARK, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination by Mr. Lane:

Q. Mrs. Clark, where do you live? A. Rutherford. 30

Q. Do you know Mrs. Cropsey? A. Yes.

Q. And Dr. Cropsey? A. Yes, sir.

Q. How long have you known them? A. I have known them about fifteen years.

Q. Did you ever have any conversation with Dr. Cropsey with respect to the property which was in Mrs. Cropsey's name? A. Yes.

Q. When? A. Just when the trouble began. 40

Ada May Clark, cross.

Q. And where was the conversation? A. In his office.

Q. When did the trouble begin? A. I suppose about two years ago.

10 Q. Was it before or after he had left his house? A. He hadn't left his house yet.

Q. What did he say? A. He got talking over the trouble—

Q. What did he say? A. He said he was going to get his home back again, and he said after he got everything he wanted, he was going to leave his wife and get out; she could do as best she could and go in the street, he didn't care where she went.

20 Q. Had he in any conversation before that to you said anything about his feelings towards his wife? A. Oh, yes.

Q. How long before that had he spoken about it? A. On several occasions; we used to talk about a lot of trouble he had with his wife, and I used to tell him the best thing he could do was to make up with his wife and treat his wife right, and there would be no trouble.

Q. When was it he first said that? A. Well, it was before that.

30 Q. Did he say anything with respect to his regard for anybody else? A. Yes.

Q. When did he make that statement? A. The same time he made the other.

Cross examination by Mr. Carey:

Q. You were not a very close friend of Dr. Cropsey's, were you? A. Yes, sir.

Q. You and he weren't socially friendly at all, were you? A. Oh, yes.

40 Q. Did he ever call on you? A. My husband and I and the family as our physician.

Ada May Clark, cross.

Q. But only once or twice? A. He was our physician for seven years.

Q. He put you out of the hospital, didn't he?

A. No, I run him out; he was attending my boy.

Q. And you brought cigarettes to your boy, didn't you? A. No, sir; the doctor in the hospital provided him with cigarettes. 10

Q. And didn't Dr. Cropsey order you out of the hospital for making a stir and a noise up there? A. No, sir, I ordered him out.

Q. When was that? A. A year ago last April.

Q. And you have had some bad blood between you since, have you not? A. No, sir; I came home and dismissed him; he wasn't treating my boy right. 20

O. And on one of those times he called as your physician, he told you all about his life and his love for some other woman? A. Right there, the same time his trouble commenced.

Q. What time? A. Two years ago, isn't it?

Q. When was it? A. I can't tell you; I suppose it's two years.

Q. How many times did he talk to you about his love for this other woman? A. Two or three times. 30

Q. How did he come to talk to you about it? A. He was tending my oldest son with heart trouble, and he come in in a rage. I said, "There's no hurry; you get your lunch;" and he said, "I have had my lunch, and I don't eat in this ranch any longer after to-day."

Q. He told you he had left? A. I don't know.

Q. He did tell you that day? A. Yes.

Q. And he said he was going to leave his wife? A. Leave the ranch. 40

Ada May Clark, cross.

Q. Did he say he had got the house? A. He didn't have the house.

Q. How did you know? A. I know; he had half.

10 Q. And he said that he was going to get the other half? A. Yes.

Q. And then he was going to leave; did he say that? A. Yes.

Q. Was that in the summer time or winter? A. It was after I came back from the mountains; it was in July or August.

Q. In August, perhaps? A. Yes.

Q. You didn't get back from the mountains until August? A. Right around there.

20 Q. That was before the doctor and his wife had separated? A. It was the time their trouble began, that's all I know.

Q. How did he come to speak to you about the house? A. He told me everything. I went for medicine, but I was afraid to take the medicine, so I went away and left him; he was excited; he didn't know what he was doing.

30 Q. Did he give you the medicine? A. No, sir, he didn't; I was explaining that he ought to do the right thing.

Q. What did you mean? A. Treat his wife right.

Q. Hadn't he been treating her right? A. No, sir.

Q. How did you know? A. I had known her for three years.

Q. Did she tell you? A. No.

Q. But you visited each other every day, didn't you? A. No, about once a week.

40 Q. You talked over this case lots of times,

Ada May Clark, cross.

haven't you? A. No, not the case. We have been to the theatre and to New York shopping.

Q. And you played cards together? A. No, I don't know how.

Q. When did the doctor talk to you—he knew you were a good friend of his wife? A. Yes.

10

Q. And so, knowing you to be a good friend of his wife, did he tell you not to tell his wife? A. He didn't; he told me right out.

Q. Did he tell you when he was going to leave her? A. Just as soon as he got the other, the house.

Q. He said, "the other," the other what? A. The other half.

Q. The other half of what? A. The property.

20

Q. What did he say? A. He said the property, he was going to get the property.

Q. Just as soon as he got the other half of the house; is that what he said? A. When he got the house, the whole or the half, I don't know which it was; I really don't know what he had.

By the Court:

Q. You have already told us, that at the time he mentioned this to you, he already had half of the house? A. I don't know only what he told me,—he was going to get it all, then he was going to leave her.

30

Q. How soon after that did he tell you he was going to leave her? A. I don't know.

Q. One or two months, or a day or two, or what? A. I don't know.

Q. He didn't leave there until the following year, did he? A. I don't know, I didn't—

40

Ada May Clark, cross.

Q. You lived so near that you knew what was going on, didn't you? A. No.

Q. But you were calling every week on Mrs. Cropsey about that time, or she on you? A. Not every week.

10 Q. About every week, weren't you? A. Once a week.

Q. And you knew from her when he left home, didn't you? A. No, sir.

Q. Didn't she tell you when he left home? A. No, sir.

Q. Didn't you ask her when he left home? A. No, sir.

Q. You never talked about that at all? A. Once in a while.

20 Q. But you are sure this talk you had with him was just after your return from the mountains, about the 31st day of August, or thereabouts? A. I know I came from the mountains, that's all I know.

By the Court:

Q. How did he come to tell you about this woman, about his loving the other woman? A. I went there for medicine, and he got talking, he was so excited. When I came in, there was nobody in the office, no maid or anybody.

30 Q. And at that time, Dr. Cropsey told you he loved the other woman? A. Yes, he told me.

Mary G. Jones, direct.

MARY G. JONES, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Lane:

Q. Mrs. Jones, where do you live? A. Rutherford, New Jersey. 10

Q. Do you know Mrs. Cropsey and Dr. Cropsey? A. Yes, both for about 20 years.

Q. Do you know them intimately? A. The latter part of the time, about ten years.

Q. Do you remember having a conversation with Dr. Cropsey on any occasion with respect to the property which is in the name of his wife? A. Once.

Q. When? A. About four or five years ago, at Asbury Park. 20

Q. Who was present at the time the conversation took place? A. My husband and Mrs. Cropsey were near by, on the porch of the hotel.

Q. What was the conversation? A. I asked the doctor why he didn't let his wife run the automobile; he said he guessed not, "Why, doctor?" he said, "Because, if something happens, she has the property all in her name; if she would turn it over to me, it would be different." 30

Q. Was that all that was said? A. About that.

Q. When did you first know of any trouble between Dr. Cropsey and Mrs. Cropsey? A. Definite trouble?

By the Court:

Q. You mean trouble that you knew about definitely? A. Yes, sir.

Q. When did you first know about it? A. 40

Mary G. Jones, cross.

For many years, more or less, I had heard it, that's all.

Q. Do you know anything about it, of your own knowledge? A. Yes, sir.

Q. It was what you heard? A. Yes.

10 Q. Mrs. Jones, on any occasion do you remember Mrs. Cropsey coming to you in an agitated and excited condition of mind? A. She was very much excited the last part of the summer, three years ago, two or three years ago.

By the Court:

Q. Three years ago? A. It was just before the doctor left home.

20 Q. And when you say she was very much excited, what do you mean? A. She was troubled and worried.

Q. Which was apparent to you? A. Apparent to me, and I asked her what the trouble was.

Q. What did she tell you at that time the trouble was, Mrs. Jones?

Mr. Carey: I object to the question.

30 The Court: I will permit it to go in; it may or may not be relevant, and you may prove to strike it out after the answer is in.

A. She said she was so worried because the doctor made her so unhappy in regard to the house.

Cross examination by Mr. Carey:

Q. You are a very close friend of Mrs. Cropsey's, aren't you? A. Yes, sir.

40 Mr. Lane: I offer in evidence now, por-

Evidence.

tions of the testimony of Dr. Cropsey, as admissions of testimony he gave in the case of Cropsey v. Cropsey for divorce.

Mr. Carey: I object to the testimony on the ground that it is immaterial.

The Court: But not as to form?

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Mr. Carey: No. I object to it as irrelevant and immaterial, and it is not proper to prove only a portion of his testimony.

Mr. Lane: On page 56 of the record, is this question: "When was the last time you had sexual intercourse with Mrs. Cropsey? A. January 2, 1911 or '12, I am not sure."

And on page 66, "After January 2, 1912, when you were insulted by reason of the charges she made against you, did you continue to kiss her after that? A. No, I didn't kiss her after that. Q. Had you kissed her for two years before that? A. Yes; I did not kiss her after she accused me of having syphilis. Q. And that's what caused you to stop kissing her? A. Yes. Q. She urged you to kiss her? A. She asked me to kiss her. Q. And she asked you after January 2, 1912, to come back and live with her? A. Yes. Q. And you refused? A. I did. Q. And she did that right straight up to May, 1913, didn't she? A. Asked me to come back and live with her? Q. Yes. A. Yes. Q. And she asked you to kiss her and take her out, didn't she? A. Do you mean I didn't kiss her

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Evidence.

10 or go back to live with her after January 2nd, 1912; is that what you have reference to? I didn't go back to live with her after January 2nd, 1912; I didn't kiss her after that. Q. And she continued to ask you to, and she continued to ask you to take her out up to May, 1913, didn't she? A. She asked me to take her out, yes. Q. And kiss her? A. Yes, sir. Q. And be a husband to her? A. And be a husband to her. Q. And you wouldn't do it, would you? A. I didn't do either one of the three, but I did take her out when I could."

20 And on page 57 of the record: "Q. And you made up your mind at that time, in January, January 2nd, 1912, before the happenings of any of these things at all— A. Because she accused me of being a moral leper; because she said she considered I was a moral leper and had syphilis, and that she didn't intend to inoculate her; and I never went near again, and I told her that if she thought that what she said was so, to have my blood examined and find out. Q. You told her you would never live with her as man and wife again, and you never changed your mind? A. I never did."

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On page 74: "Q. And you had been after her to get her to transfer the real estate for over a year, hadn't you? A. For many years."

Mr. Carey: I move to strike out the testimony as irrelevant and immaterial.

The Court: The motion is denied.

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Mr. Lane: We rest.

Cook Conkling, direct.

COOK CONKLING, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Carey:

Q. Mr. Conkling, you are a member of the New Jersey Bar, are you not? A. Yes, sir. 10

Q. How long have you been practicing your profession? A. About 18 years.

Q. You are a member of the firm of Shafer and Conkling? A. Yes.

Q. With offices in Rutherford, New Jersey? A. Yes.

Q. Do you know Dr. Cropsey? A. I do.

Q. And do you know Mrs. Cropsey? A. Yes.

Q. How long have you known Mrs. Cropsey? A. Perhaps ten years. 20

Q. And how long have you known the doctor? A. As long.

Q. Did you know them socially? A. No, not specially.

Q. You live in the town where they live? A. I do.

Q. Do you remember them calling at your office in relation to the drawing of a deed? A. I do.

Q. When was that? A. The 29th of May, 1913. 30

Q. Who called? A. Dr. Cropsey and Mrs. Cropsey.

Q. And did you draw the deeds? A. I did.

Q. After they got there? A. Yes.

Q. And from whom did you receive instructions to draw the deeds? A. From both, but at the last from Mrs. Cropsey.

Q. How many deeds did you draw? A. Two.

Q. What were they? A. One from Mrs. Cropsey and the doctor to myself, and one from myself to Dr. Cropsey and wife, as man and wife. 40

Cook Conkling, direct.

Q. I show you "Exhibits C 2 and C 3," and ask you if those are the deeds that were drawn?

A. They are.

Q. And where were they drawn? A. In the office of Shafer and Conkling.

10 Q. And who supervised the drawing of them?

A. I did.

Q. One of these deeds was made to you? A. Yes.

Q. And the other from you to Charles D. Cropsey and Eva Pauline Cropsey, is that right?

A. Yes, sir.

Q. Now, will you state what was said by Mr. and Mrs. Cropsey, in your presence, in your office, at the time of the drawing of these deeds?

20 A. Mr. and Mrs. Cropsey came into our office at about, probably, ten o'clock in the morning of May 29th, 1913; Mrs. Cropsey, I think, preceded the doctor in coming into my private office from the outer office. The statement was made to me by Mrs. Cropsey, and also by the doctor, both making the statement at different intervals, that they had come with relation to the transfer of the Donaldson Avenue property from Mrs. Cropsey to the doctor and herself; Mrs. Cropsey
30 asked me what the rights of the doctor would be in the property as the title then stood, in the event of her death, and I told her that unless they had had children born alive, the doctor would have no interest whatever. Mrs. Cropsey answered, that they had never had a child. I then told her, that upon her death the doctor's interest would cease. She asked me whether her brothers and sisters would acquire title to the property, and I told her her heirs-at-
40 law, and they would be her brothers and sisters

Cook Conkling, direct.

if she had any. She said she had, and asked me whether, in the event of her death, her brothers or sisters, I don't know how many there were, could compel the doctor to pay rent for the house and the office, or move out. I told her that they could. She said she didn't want that condition to exist. She then asked me what would be the rights of the parties in the property if the conveyance were made to the doctor and herself as husband and wife, in the event of the death of either, and I told her that the survivor would take the entire estate, free from the necessity of the probating of will, etc., that the survivor would take all; and she replied that that was exactly what she wanted, that that was exactly the way she wanted it to be. Mrs. Cropsey did not tell me that the doctor had promised here anything whatsoever. 10
20

Q. Did she say anything to you about the doctor being unkind to her? A. She made no mention of their relations whatsoever. She proceeded, after telling me what they came for, to inquire what the relative rights of the parties would be under the different conditions or states of title, which I explained, at the expense of half an hour, perhaps more. 30

Q. During that time, did she cry? A. She did not.

Q. Did you see any evidence of tears? A. None whatever.

Q. Did you see any evidence of excitement? A. There seemed to be none.

Q. After you talked the matter over, how long did it take you to draw the deeds? A. I presume an hour was consumed in the preparation and typing of the deeds. 40

Cook Conkling, direct.

10 Q. Did they stay there during that time? A. They did not; I directed them to return, or told them the deeds would be ready to be executed by about two o'clock, but that I must be provided with a deed or other paper, giving me a description of the land to be conveyed.

Q. Was that provided? A. That was subsequently provided, very shortly after they left.

By the Court:

20 Q. How was it provided? A. The doctor, I think, I am not sure, but one or the other of them brought me the deed by which the property was originally conveyed to Mrs. Cropsey. Mrs. Cropsey said in going out, "Then prepare the deeds that way." I said to her, "Have you any particular person to whom to have the property conveyed as an intermediary or conduit;" she said "No;" I said, "Then it will be conveyed to me, and I will convey to you, if agreeable to you." She said it was, and the doctor said it was, and they went out.

Q. Did they come back at two o'clock? A. About that time.

30 Q. Who was present then? A. When they came into my private office there were the three of us; they stated they had come, or rather, they inquired if the deeds were ready to be executed?

Q. Were they executed? A. They were.

Q. In whose presence? A. I called in James Miller, of this Bar, who has an office on my floor.

Q. Did he take the acknowledgement? A. Yes, sir, in my presence.

Cook Conkling, direct.

Q. Were the acknowledgements taken in the form required by law? A. They were.

Q. After the deeds were acknowledged, what was said, if anything, by Mrs. Cropsey or the doctor to you? A. Do you mean after both the deeds were executed?

10

Q. Yes. A. I was instructed to record them.

By the Court:

Q. By whom? A. By Mrs. Cropsey and Dr. Cropsey both.

Q. After that was done, what did you do? A. After the deeds were recorded?

Q. No, after they had instructed you to record them? A. I put them in the safe in the front office of our suite of offices, and there they were to remain until a day on which they could be recorded should arrive.

20

By the Court:

Q. What? A. It was, at the time the deeds were executed and delivered to me to be recorded, it was about three o'clock on Thursday afternoon, of May 29. Our County Clerk's Office closes at four o'clock. The next day was a holiday, the 30th of May. The earliest hour, therefore, to record the deeds, would be Saturday, the 31st.

30

Q. Who were you representing? A. I represented Mrs. Cropsey and Dr. Cropsey both in the matter of drawing these deeds and recording them.

Q. Did you make a charge for recording at the time? A. I did.

Q. To whom? A. To Dr. Cropsey and Mrs. Cropsey.

40

Cook Conkling, direct.

By the Court:

Q. Was the deed by Mrs. Cropsey and Dr. Cropsey delivered to you? A. Yes, sir.

10 Q. By whom? A. By—I can't say who handed it to me, but Mrs. Cropsey directed her deed to me to be recorded.

Q. And delivered it to you? A. It was delivered to me.

Q. Left with you? A. Left with me to be recorded.

Q. What happened the next day, or the day thereafter? A. The day following, which was Decoration Day, the order to record the deed was stayed by Mrs. Cropsey.

20 Q. Were you there at the time? A. I was not.

Q. Did you subsequently record the deeds? A. Yes.

Q. When and how? A. On the 3rd day of June, which was Tuesday, I directed the deeds to be mailed to the County Clerk's Office in Hackensack.

Q. Rutherford is some distance from Hackensack, isn't it? A. Five miles.

30 Q. Why did you do that? A. I had received on that day, directions from Mrs. Cropsey in writing to record the deeds.

Q. Is that the memorandum in writing that you refer to? (Referring to paper in witness's hand). A. It is.

Q. And who handed you that? A. Dr. Cropsey.

40 Q. And why did you receive that, if you know? A. Because I had told Dr. Cropsey on Monday, the second of June, 1913, that I would not record the deeds except upon an order from Mrs. Cropsey, in writing, to do so.

Cook Conkling, direct.

Q. Why did you say that? A. Because Mrs. Cropsey had requested that the deeds be not recorded on the 30th of May.

Q. Did you have any conversation at any time in the course of the negotiations incident to the preparation of the deeds and papers, or thereafter, with Mrs. Cropsey, in which she stated that the doctor threatened to leave her? A. None whatever. 10

Q. Did you hear any such conversation, even, between them? A. Not on the day when the deeds were prepared.

Q. Did you on any other occasion? A. Not that I recall. Mrs. Cropsey didn't call me up on the 30th of May and direct me over the 'phone not to record these deeds; on that day I was in Morris County, as I was also, on Saturday, the 31st, and Sunday, the first of June. 20

Q. The message that was received by your partner, Shafer, and that had been transmitted to you, related to the withholding of the deeds from the record? A. Yes, sir.

The letter from Mrs. Cropsey to Mr. Conkling is offered and marked "Exhibit D 4." 30

The taking of testimony is continued until January 10, 1916, at Jersey City, N. J.

Cook Conkling, direct.

IN CHANCERY OF NEW JERSEY.

10	Between EVA P. CROPSEY, Complainant, and CHARLES D. CROPSEY, Defendant.	}	On Bill, &c., Testimony.
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Testimony taken in the above-entitled cause at the Chancery Chambers, Jersey City, N. Y., on Monday the twenty-ninth day of January, 1917, at 11 o'clock A. M.,

20 Before.—Hon. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

HARRY LANE, ESQ., for the Complainant;
ROBERT CAREY, ESQ., for the Defendant.

COOK CONKLING, resumes the witness stand for further direct examination.

Direct examination by Mr. Carey:

30 Q. Mr. Conkling, on the occasion of the execution of these deeds, or the date of the execution of these deeds, did Mrs. Cropsey say to you, "Dr. Cropsey hasn't been kind to me; he has promised to be kind to me and treat me kindly if I will transfer this property to him? A. She didn't.

Q. She didn't say at that time "I am not doing this of my own free will and accord, but to please Dr. Cropsey"? A. She did not.

40 Q. Did you say to her at that time, "Well, if he don't (referring to his treating her properly)

Cook Conkling, cross.

we'll put him under honds to keep the peace," or something like that ? A. No, I have no recollection of any such statement by myself.

Q. Or by anyone? A. No.

By the Court:

Q. Do you mean you did not? A. I should say I did not. 10

Further direct:

Q. Did you make any such comment and did his wife then cry in your presence? A. She did not cry.

Q. Did she cry at all in your presence that morning? A. No, sir, not that I observed.

Q. You were in the same room all the time, weren't you? A. We were. 20

Cross examination by Mr. Lane:

Q. Mr. Conkling, in your testimony just now you are talking of the first occasion when Mrs. Cropsey came to your office, are you, or are you talking of the one when she came in later in the afternoon? A. I am speaking of the morning; that was the first time, ten or eleven o'clock.

Q. Was everything very pleasant between them at that time? A. There was no evidence of anything that was not pleasant: there was nothing said except that it was their desire and intention to transfer the property from Mrs. Cropsey's name to the names of both; of course, there was much more said, as I have testified to. 30

Q. And you were representing whom that morning? A. Well, I suppose I represented both; Mrs. Cropsey stated what they had come for when they came in, and the doctor also stated it; they said they wanted to transfer the property, 40

Cook Conkling, cross.

and Mrs. Cropsey said she would like to know what the rights of the doctor were then, as the title then stood, and what the rights of the parties, respectively, would be if the title was put in both their names.

10 Q. Mr. Conkling, when had you first seen Dr. Cropsey about the transfer of this property? A. Well, I suppose that during the preceding two or three years previous, off and on, now and then, he had spoken of his desire to have the property stand in both their names.

Q. You hadn't spoken to Mrs. Cropsey during that time? A. I think not.

Q. The first you spoke to her was on that morning? A. That's my recollection.

20 Q. Did you know they were coming that morning? A. No, not until they came in.

Q. Did they come in together? A. Yes, Mrs. Cropsey preceded the doctor perhaps two or three feet.

Q. And up until the time she came into the room you didn't know they were coming? A. No.

Q. When did you get the deed for the property that Mrs. Cropsey had? A. Why, perhaps in the course of half an hour or a short while after they left that morning.

30 Q. Did you see Mrs. Cropsey at all that morning alone? A. No.

Q. When she came into the office first, she waited in the outside office until Dr. Cropsey came in, didn't she? A. They came in together, she preceding the doctor.

Q. Oh, they came together except that she was a little ahead of the doctor, but they were together? A. Yes.

40

Cook Conkling, cross.

Q. Now did you know what they were there for? A. Not until they told me.

Q. Who told you? A. Mrs. Cropsey, and then the doctor.

Q. Didn't Dr. Cropsey 'phone to you that morning that he was coming? A. Not that I recall. 10

Q. When she came in, did she appear to be excited? A. She didn't appear to be, no; I didn't observe anything unusual.

Q. You knew they had trouble prior to that time? A. Oh, yes, some.

Q. Now, Mr. Conkling, did you know of any other reason, except the reason that Mrs. Cropsey wanted to protect the doctor in case of her death, that these deeds were made; did you know of any other reason? A. I knew of no reason except what was stated there. 20

Q. Was any other reason stated there that morning? A. No, no other reason than that she did not desire that if she should die the property should go to the doctor.

Q. That was the only reason she was making this deed? A. That was the only reason stated.

Q. Was anything mentioned about a will that morning? A. Not that I recall.

Q. Didn't you as her attorney, tell her she could arrange that by making a will? A. No, I didn't tell her anything of that sort, never, nothing was said about a will, so far as I remember. 30

Q. Didn't she tell you that she had made a will? A. Not that I recall.

Q. Didn't she? A. That morning?

Q. Yes. A. No.

Q. Had she at any time? A. No.

Q. How long prior to that time was it that you talked with her? A. Why, I have no definite 40

Cook Conkling, cross.

recollection of any particular time; I saw Mrs. Cropsey occasionally on the street; I don't think she called in my office before that day.

Q. And never talked to you about the property before that day? A. Not that I recall.

10 Q. You say you knew that the doctor had been endeavoring to get the property transferred for two or three years? A. He had spoken to me about the property, and he desired to have it stand in both their names.

Q. Why? A. Because, as he understood the situation, if she died, it would go to her people and he would have no interest in it.

20 Q. That morning, so far as you remember, nothing was said about any will at all? A. Not that I recall, Mr. Lane.

Q. That matter was not taken up with Mrs. Cropsey at all; the question whether this could not all be arranged by having a will drawn? A. No, I think not; I have no recollection of a will being mentioned.

Q. Do you recollect that in your direct testimony you stated that you told her that the survivor would take the entire estate free from the necessity of probating a will? A. I think I did.

30 Q. How do you reconcile that with your statement that nothing was said? A. That was merely a proposition of law, that was all.

Q. Did you explain to Mrs. Cropsey that this could be done by the making of a will, that it could be taken care of in that way? A. I did not.

40 Q. You were representing Dr. Cropsey then, and trying to get her to transfer this property, were you not? A. I was not; I had absolutely nothing to do with their coming there.

Cook Conkling, cross.

Q. You didn't have this deed before this morning at any time? A. No.

Q. And did they have the deed with them when they came? A. I think not; I think it was brought to me after I was ready to prepare the two deeds. 10

Q. Why did you have them bring the deed? A. That I might have the description.

Q. You had the description, didn't you? A. I may have had it in my office.

Q. You sold the property to Mrs. Cropsey? A. No, we simply searched the title. We are not real estate men.

By the Court:

Q. When did you search the title? A. In 1901. 20

Q. Who brought the deed to you? A. I think the doctor brought it.

Q. After they had left the office that morning? A. I think so, within a half an hour.

Q. And in the afternoon did they come back together? A. Yes.

Q. You had drawn the two deeds in the meantime? A. The two deeds.

Q. How long did they stay there in the afternoon? A. Perhaps fifteen minutes. 30

Q. Did you see Mrs. Cropsey there alone at any time that afternoon? A. No, except at the time when the doctor was out of the office, the acknowledgment being taken; of course, we were not alone then, because the master was there who took the acknowledgment.

Q. The door was never closed? A. It certainly was, it's a swinging door.

Q. While he was out of the room did you talk with Mrs. Cropsey and ask her about this mat- 40

Cook Conkling, cross.

ter any further in the absence of the doctor? A. No.

10 Q. Who told you to record the deed? A. Mrs. Cropsey, I believe, handed me the two deeds; I think Mr. Miller handed them to Dr. Cropsey and he handed it to Mrs. Cropsey and she handed them to me to record.

Q. What was said? A. She handed me the deeds and directed me to record them, and said she wished them to be recorded; she delivered to me the two deeds for the purpose of having them recorded and transfer the property to the two names.

20 Q. Did you hear any talk between Dr. Cropsey and Mrs. Cropsey on either of these occasions about their relations with each other, whether they were friendly or not? A. I don't think anything was said about their relations and their disagreements, or anything of that sort, that I recall.

Q. How did you know they had had trouble? A. The doctor had told me before that time.

30 Q. For how long a space of time prior to that had you been representing the doctor? A. Well, I hadn't been really representing the doctor, except as a man will casually drop into a lawyer's office, and he told me of some occurrences recently prior to this time.

Q. How recently prior to this time? A. I should say a week.

Q. That they had had trouble? A. Yes.

40 Q. Had you seen the doctor between this week, this occasion a week before and the time they came in with the deed, had you seen the doctor and talked with him about this trouble? A. Yes, I think I had, perhaps, on Tuesday or Wednes-

Cook Conkling, cross.

day of that week; he had told me of these occurrences which had just taken place immediately before.

Q. Did he say anything to you about the property at that time; did he mention it in any way?

A. I don't now recall whether he did or not.

10

Q. When they came in that morning you considered you were representing Mrs. Cropsey as well as Dr. Cropsey, did you not? A. I did consider that I was representing them both, because Mrs. Cropsey made these inquiries of me as to their respective rights under the then existing form of deed, and what their rights would be under the proposed deed.

Q. Now, after these deeds were made out, you got word from Mrs. Cropsey not to record them, didn't you? A. Not personally, but the office did, and they were not recorded until later on.

20

Q. And did you from that time until you recorded them, see Mrs. Cropsey personally or have anybody from your office see them personally? A. I think not.

Q. You got some memorandum signed by Mrs. Cropsey that Dr. Cropsey brought to you, did you not? A. I have in the papers here an order by her to record the deeds.

30

Q. It was brought in by Dr. Cropsey? A. I think so.

Q. And you knew all this time about this trouble between them? A. I don't know just what you refer to.

Q. You were not advised that the trouble had been patched up? A. No, nothing about it.

Q. Did Dr. Cropsey tell you of this trouble

40

Cook Conkling, cross.

as his lawyer? A. Well, I presume he intended in a sense to advise with me.

Q. As to what to do? A. I assume so, although he didn't say so in so many words.

10 Q. Did you tell Mrs. Cropsey on that morning that you had been representing Dr. Cropsey on these occasions before this time? A. No, nothing was said about prior times whatever.

Q. Have you any record of what message you received when you got the message not to record the deed? A. It was a telephone conversation that came to the office, and my partner answered the 'phone, as a consequence of which the deeds were not recorded until the written order was given.

20 Q. Did it suggest itself to your mind that there was then some trouble as to this property? A. I knew nothing about the holding up of the deeds at all; I was out of town.

Q. Before you recorded this deed you knew Mrs. Cropsey had telephoned, didn't you? A. Yes, sir.

30 Q. And did it ever occur to you to find out about the trouble, why she had stated not to record them, and then afterwards Dr. Cropsey brought in some memorandum? A. No, sir, it didn't, because I refused to record the deed until she gave an order in writing to do so, which she did, and upon that the deeds were recorded.

Q. Why did you insist on an order? A. Because she had held up the recording.

Q. You had seen Mrs. Cropsey the day the deeds were executed? A. Yes.

40 Q. And you knew of no reason why the matter should be held up? A. No, sir.

Cook Conkling, cross.

Q. From her attitude that morning? A. No, nor from anything that was said.

Q. Didn't the fact that she had held up the recording excite some suspicion in your mind as to whether she was doing it of her own free will and accord? A. To this extent, that I refused to allow the deeds to be recorded until she gave her order in writing.

10

Q. Your office was somewhat near to where Mrs. Cropsey was living at the time? A. Ten, twelve or fifteen blocks away.

Q. It was a very easy matter to have gotten her down to your office if you wanted to? A. I daresay I could have got her there.

Q. Mr. Miller is employed in your office, isn't he? A. No, sir.

20

Q. He was at that time? A. He never was.

Q. Had you seen Dr. Cropsey between the time that you got the message from Mrs. Cropsey not to record the deed and the time he came in with the memoranda? A. No, because I had not been in town.

Q. Who told Dr. Cropsey to get a written memoranda, a written letter? A. Well, I can't now say whether—

30

Q. Did you? A. I might have done so on Monday when I returned to the office, or whether my partner did, I don't know.

Q. When did you first find out that the message had been received from Mrs. Cropsey not to record the deeds, on Monday? A. I think so, when I returned to the office.

Q. And at that time you didn't have the written memoranda from Mrs. Cropsey? A. No, I think not.

40

Cook Conkling, cross.

Q. Was the memoranda in Mrs. Cropsey's handwriting? A. It is.

Q. How do you know? A. Because I know her handwriting.

10 Q. You knew her writing at the time? A. I did, very well.

Q. When Dr. Cropsey came in that morning, or was it in the morning that he brought this memoranda to you? A. I can't say what part of the day it was, I imagine it was on Monday, sometime during Monday.

Q. Did you have a talk with him about this? A. No, I have no recollection of talking to him at all.

20 Q. He just brought this memoranda? A. I think so; I have no recollection of any conversation with the doctor on the day the order was brought.

Q. Mr. Conkling, why didn't you advise with Mrs. Cropsey as to the advisability of making a will instead of transferring this property to her husband? A. It didn't come within the scope of what she desired to do; she said she wished to have the property stand in the name of the doctor and herself, and have it so deeded.

30 Q. Didn't she ask you that morning when she came in there, if it were a fact that if she died—about whom the property would go to? A. As the deed then stood?

Q. Yes. A. Yes.

Q. And didn't she tell you—what did you tell her? A. That it would go to her heirs at law.

Q. She asked you whether the doctor would have to pay rent, didn't she? A. She asked me this, "Would it then be possible for my people

40

Cook Conkling, cross.

or my brothers and sisters to compel the doctor to pay rent or move out?"

Q. And didn't you tell her that the only way she could avoid that was by transferring this property? A. I did not.

Q. What did you tell her? A. That they could compel him to do so if they had no children born alive. 10

Q. How did you tell her she could prevent that? A. I didn't tell her anything about how she could prevent it; she then asked me what would be the situation if it was in both their names and she died or he died.

Q. Did Mrs. Cropsey tell you at that time that she had already made a will leaving all her property to Dr. Cropsey? A. Not that I recall; I don't remember any mention of a will except the one word which occurred in my answer as you have read it. 20

Q. And didn't she say for that reason she didn't see any reason why she should execute a deed? A. She did not, nothing of that sort.

Q. Did you tell her at that time that the will was not worth the paper it was written on? A. I told her nothing like it.

Q. Mr. Conkling, when the deed was executed, when the two deeds were executed, and before the two deeds were executed, when they came back that day what did they say, as far as you can remember, what did Mrs. Cropsey say? A. Well, I don't recall that she said anything, except one or the other asked, "Are the deeds ready?" 30

Q. Mr. Conkling, during those two or three years, hadn't Dr. Cropsey spoken of having the entire property transferred to him? A. Not that I remember; I have not talked with Dr. Cropsey 40

James W. Miller, direct.

many times in two or three years, I have rarely seen him.

Q. What had he said? A. That the property ought to stand in both their names.

10

JAMES W. MILLER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Carey:

Q. What is your profession? A. Counsellor at law of New Jersey.

Q. Where do you practice? A. In Rutherford, New Jersey.

20

Q. When were you admitted to the bar? A. In 1892 as an attorney.

Q. Are you a counsellor as well? A. Yes, sir, I was admitted in 1898 as a counsellor.

Q. Do you maintain an office of your own in Rutherford? A. Yes, sir.

Q. Where? A. In the Shafer Building.

Q. The same building as Mr. Conkling has an office in? A. Yes.

30

Q. Do you recollect, in the month of May, 1913, being called in their office for the execution of deeds? A. I do.

Q. Who called you in? A. Mr. Conkling came to my office.

Q. Did you go in? A. I went in immediately.

Q. I show you a deed entitled "Eva Pauline Cropsy to Cook Conkling," dated May 29, 1913, "Exhibit C2" in this cause, and draw your attention to the acknowledgment on the deed, and ask you who took that acknowledgment, if you know? A. I did.

40

James W. Miller, direct.

Q. I call your attention to "Exhibit C3," a deed dated May 29, 1913, Cook Conkling to Dr. and Mrs. Cropsey, and I ask you who took that acknowledgment? A. I did.

Q. Just state what occurred, as near as you can recollect, at the time you took those acknowledgments? A. Mr. Conkling came to my office and said that Dr. and Mrs. Cropsey were at his office and desired to have me take the acknowledgment to a deed of conveyance, and I went with him, that is, I followed him to his office, and Dr. Cropsey and Mrs. Cropsey were sitting in his office.

10

Mr. Conkling asked me if I would take their acknowledgment on the deed which they had signed. I took the deed and made known the contents of the deed to both of them while they sat there, and I asked Dr. Cropsey if he acknowledged that deed as his voluntary act and deed, and he said he did; then I asked him to retire from the room.

20

Q. Did he retire? A. He did.

Q. What kind of a door was there between the room that you were in, and the room to which he retired, or the room to which the door led which he went through? A. It's a swinging door, swinging in and out.

30

Q. Does it close of its own accord? A. Yes.

Q. After he retired, what did you do? A. I asked Mrs. Cropsey if she "acknowledged that deed as her voluntary act and deed, freely, without any fear, threats or compulsion of her husband's"; she said she did.

Q. After that, what did you do? A. I took the two deeds in my office and filled in the acknowledgment.

40

James W. Miller, cross.

Q. And you took Mr. Conkling's acknowledgment? A. Yes.

Q. On the same occasion? A. Yes, the same time.

10 Q. Then what? A. I took the deeds to my office and filled in the acknowledgments and signed the same.

Q. Did you do that? A. Yes, sir, at my office.

Q. At the time you took the acknowledgment to these deeds, did Mrs. Cropsey make any protest? A. She did not.

Q. Did she say anything indicating that the execution wasn't what she wanted, or that it wasn't of her own free will? A. No.

20 Q. Did she make any statement to the effect that she was not doing it freely? A. No.

Q. Or that Dr. Cropsey had promised her anything to do it? A. No.

Q. Or had coerced her in any way? A. No.

Q. Did she say it was for the purpose of satisfying her husband? A. No.

Q. Did she say anything that would indicate to your mind in any way that she was not acting freely? A. No.

Q. Nothing of that kind at all? A. No, sir.

30 Q. Did she cry? A. No.

Q. Did you see any evidence of conflict or trouble of any sort? A. No.

Q. Did you have anything further to do with the transaction than that? A. No.

Cross examination by Mr. Lane:

Q. When did you take the deeds back to Mr. Conkling? A. As soon as I signed them.

40 Q. Were Dr. Cropsey and Mrs. Cropsey still there? A. I don't know; I think I met Mr. Conkling at his door.

James W. Miller, cross.

Q. Did you personally know Dr. and Mrs. Cropsey? A. I did.

Q. You knew they had had trouble? A. No, except rumor.

Q. You had heard rumors? A. Yes.

Q. How long was Dr. Cropsey out of the room when Mrs. Cropsey took the separate acknowledgment? 10

The Court: Is it set up in your bill that it was not a separate acknowledgment?

Mr. Lane: No, but we want to show it was under the actual duress of the husband.

The Court: You set up actual fraud and nothing else, as I understand it?

Mr. Lane: That is all. 20

The Court: You have not set up the dominance of the husband and the lack of independent advice, have you?

Mr. Lane: I think not; we set up fraud.

Q. Mr. Miller, did you say anything to Mrs. Cropsey, or have any conversation with her with the exception of going through the regular form as you do with anybody? A. I did not.

Q. Did you take particular notice to see that that door was closed? A. I did; I looked around before taking her acknowledgment, to see if he was in the room. 30

Q. Was that the first time that you knew that the deed was to be executed that afternoon? A. Yes.

Q. You hadn't heard anything of it in the morning? A. No, I had not.

Q. Do you have any recollection of Mrs. Cropsey handing that deed to Mr. Conkling and tell- 40

James W. Miller, cross.

ing him that it be recorded, or anything of that kind? A. No, that wasn't done in my presence.

Q. How long did it take you in your office to fix it up, about fifteen minutes? A. I was probably gone about five minutes, I should think.

10

Mr. Carey: I want to introduce here at this time the testimony of Mrs. Cropsey, taken before the Court on the application for fixing temporary alimony in the other cause, in the alimony cause, relative to her bank accounts and her moneys, the portions of the testimony relating to her earnings and investments, and the disbursements of her moneys, and the balances she had on hand at the time her testimony was given.

20

The purpose of that will be to offset her testimony given in this cause that it was her money given to the purchase of this property, because she had far more money there than she herself ever claimed to have earned in any capacity.

Said testimony is to be marked "Exhibit D5."

30

Mr. Lane: I want to offer in evidence the pleadings and record in the divorce suit and maintenance suit, which Mr. Merritt Lane told me he had thought he had offered, and I hadn't seen them in the papers, and he said he had intended to offer them—I mean just the pleadings, and the record, so far as the files of the clerk are concerned, for the purpose of showing that actions were pending, and the times and the dates of the pleadings.

40

Charles D. Cropsey, direct.

Mr. Carey: I have no objection to that.

Said papers are designated "Exhibit C5."

CHARLES D. CROPSEY, the above-named defendant, being duly sworn in his own behalf, testified as follows:

10

Direct examination by Mr. Carey:

Q. Doctor, you are the defendant in this action? A. I am.

Q. You are the husband of Mrs. Cropsey? A. Yes.

Q. When were you married? A. The 13th of March, 1892.

Q. You are a practicing physician? A. I am.

20

Q. And have been for how many years? A. 24 years, or 25 years.

Q. Practicing where? A. At Rutherford, New Jersey.

Q. You are practicing there still? A. I am.

Q. Do you recollect when the land involved here was acquired? A. I do.

Q. When? A. It was acquired ultimately in January, 1902, but there was some talk—

Q. From whom was it purchased? A. Mr. Luttgen.

30

Q. Who negotiated the purchase of the land? A. Myself, I negotiated it.

Q. Did your wife have anything to do with the transaction at all? A. When the deed was ultimately made out, yes; it was made out in her name.

Q. Was there any reason for it at that time? A. No, it was just a matter of convenience, and because I was advised by Mr. Talhurst and Mrs.

40

Charles D. Cropsey, direct.

Cropsey's uncle, whom we had consulted about the matter, and they had both advised that we put it in Mrs. Cropsey's name, because if I died or anything happened, or any suits were brought, we wouldn't lose our home, and it would revert to Mrs. Cropsey.

10

Q. You contemplated at that time building a home? A. Yes, sir.

Q. At that time your relations were very pleasant? A. Perfectly happy.

Q. Rifts hadn't appeared at that time? A. No, indeed.

Q. Whose money was it that purchased the property? A. My money.

20

Q. Where did you get it from? A. The People's Bank and Trust Company.

Q. How much? A. The first time it was \$100, the first payment.

Q. Drawn on your own account? A. Yes.

Q. What was the next? A. \$600.00.

Q. Where was that taken from? A. The same account.

Q. Was that all that was required for the purchase of the lot? A. The value of the property was \$1,350, and the balance was paid by Mrs. Cropsey, \$650.00, drawn from her account.

30

Q. What bank? A. The same bank.

Q. How long had that account been maintained in that bank? A. Her account or my account?

Q. Her account? A. Some few years before that; it was the small savings we had started; she had an account of her own, and I had an account of my own, and we each deposited from time to time what we could afford.

40

Q. Whose moneys would be deposited in these accounts? A. Mrs. Cropsey handled all my

Charles D. Cropsey, direct.

money, and she deposited some of the moneys in mine and some of the moneys in her own.

Q. What do you mean by handling all your money? A. My bank book and my accounts in general, she had them and handled them and made out the bills and transacted all my business, with the exception of the professional work, which I took care of myself. 10

Q. How long did you own the lot before you began to build on it? A. Two years.

Q. When you built, you borrowed some money? A. I did.

Q. Whom from? A. The Franklin Savings Institution of Newark.

Q. Who that loan? A. I did.

Q. How much did you borrow? A. \$5,000. 20

Q. Was that money utilized in the erection of the house? A. Yes.

Q. All of it? A. Approximately all; well, I don't know exactly, I should say about, perhaps, a little more than \$1,000, I don't know.

Q. What do you mean by that? A. I mean to say that the balance—

Q. How much of the mortgage money was used? A. Oh, the greater part of it.

Q. Was anything used for any other purpose? A. No. 30

Q. The search bill was paid out of it? A. No, I paid that out of my own pocket.

Q. What did the building cost, all told? A. Well, I would have to see the contract, I would say \$8,800 or \$8,900.

Q. Where did the money come from, the complete payment for this building? A. Through my account in the People's Bank and Trust Com- 40

Charles D. Cropsey, direct.

10 pany; I paid for this house through two accounts, in this way: I had a construction account in the First National Bank, which I used up to the finishing of the house for the sole purpose of the construction of the house; I withdrew moneys from the People's Bank and Trust Company to feed this account, which I paid on the house.

Q. Did Mrs. Cropsey contribute anything towards the construction of the house? A. \$800.00.

Q. When? A. I should say about May, 1904.

Q. And from what account did she get that money? A. From the People's Bank and Trust Company.

20 Q. Whence was the source of that money, her own earnings? A. I can't say positively as to that, because Mr. Cropsey always handled my accounts and my money; I couldn't say whether the money she had at the time came from part of the moneys I had earned and some moneys she may have gotten herself.

Q. Outside of that \$800.00, did she contribute anything at any time to the cost of construction of this house? A. I believe she did, subsequently.

Q. What? A. I believe \$1,000.

30 Q. From what account? I am not referring to the time the mortgage was reduced, I am talking about the construction of the house. A. That is all I recall.

Q. The mortgage was originally \$5,000? A. Yes.

Q. That has been reduced to what? She contributed only \$800.00 to the construction of the house all together? A. Yes, sir.

Q. What is the amount due on the mortgage now? A. \$1,500.

40

Charles D. Cropsey, direct.

Q. Who paid the \$3,500 upon the mortgage?
A. I did.

Q. Did she pay any portion of that? A. What part of the mortgage do you mean?

Q. Any portion of the mortgage; you stated that she paid \$800 towards the construction of the house? A. Yes, sir. 10

Q. And you said she paid \$1,000 afterwards?
A. Which was drawn from the Franklin Savings Institution account.

Q. That was from the mortgage account? A. Yes, sir.

Q. Was that applied on the reduction of the mortgage? A. I believe it was made that way.

Q. Did she pay any other moneys towards the house other than the \$800 and such moneys as came from the proceeds of the Franklin Institution account? A. Allow me to correct my statement; she paid \$800 towards the construction of the house, which I deposited in the construction account book in the National Bank through which we were making all my payments; then, later on, we paid the mortgage in November, 1907, I think it was; we paid \$3,500. I took down a check from the Rutherford National Bank for \$700, and also \$1,000 in cash, and Mrs. Cropsey, I believe, took down \$1000 also. 20 30

Q. Where did she get that \$1,000 from? A. I believe she got it from the People's Bank.

Q. And so, at the time of the reduction of the mortgage she personally contributed from a bank account in her charge that amount of money?
A. \$800.

Q. How much did she pay at the time the mortgage was paid off, \$1,000 only? A. Yes. 40

Charles D. Cropsey, direct.

Q. When you say you paid \$3,500 on the mortgage, did you get a receipt for it? A. Yes, sir.

Q. This is a receipt dated November 21, 1907?

A. Yes.

10 Q. And who got that receipt? A. It was handed to me.

Q. And you paid this yourself? A. Yes.

Mr. Carey: I offer it in evidence.

Said receipt is marked "Exhibit D6."

Q. Now, doctor, you say at that time you drew \$700 out of the Rutherford National Bank? A. The same date I drew the check from the Rutherford National and paid it and this other amount on the mortgage.

20 Q. Is that the check (showing witness check)? A. Yes.

Q. Representing the \$700 payment? A. It is.

Mr. Carey: I offer that in evidence.

Said check is marked "Exhibit D6½."

Q. Do you know where your wife got that \$1,000? A. No, I do not.

30 Q. Out of what bank? A. I believe she got it from the People's Trust Company; the main office was in Passaic.

Q. Now, you had electric work and work of that character done upon the house, didn't you? A. Yes.

Q. Who paid the bills for that? A. I did.

Q. Did you pay them by your check or how did you pay them? A. By check and cash.

40 Q. Did you have the several bills for that kind of work made out to you or to whom? A. They were almost invariably made out to me, the bills were.

Charles D. Cropsey, direct.

Q. I show you some bills, one dated January 14, 1907, Edward Miller and Company for electrical work; what was that for, if you know, for \$110.15; what was that for? A. For combination gas and electric fixtures.

Q. For the house? A. Yes. 10

Q. Who ordered that? A. I did.

Q. Who paid for it? A. I did.

Q. I show you a bill of Roberts for electrical wiring and speaking tubes; who ordered that work—\$87.00? A. I did; that was for an unfinished contract; he took it up originally and then he stopped, we had a little trouble with him and he stopped, and then he went back to it again at another time.

Q. I notice that the memorandum is addressed to you in each instance. A. Yes. 20

Q. I show you also certificate of the Underwriters' Association in relation to the completion of the electrical work? A. Yes.

Q. To whom was that addressed? A. To me.

Q. Now, you have other bills of the same character? A. Yes.

Q. Were those various bills paid by you or by your wife? A. Most were paid by myself.

Q. Were any of them paid by your wife? A. Partly by myself and partly from that mortgage account in the Franklin Savings Institution for the construction of the house. 30

Q. The bills that were not paid out of the mortgage account from the Franklin Institution for Savings, who paid them, you direct or your wife? A. I handled the—

Q. Did your wife pay any of the bills herself? A. Only from this one account.

Q. Did you pay them or did your wife pay 40

Charles D. Cropsey, direct.

them? A. She paid the bills from the account of the Franklin Savings Institution; I paid the bills up to the exhaustion of my account in the Rutherford National Bank; then I went to the Franklin Institution and took the mortgage.

10 Q. Who attended to the transactions? A. I did.

Q. All of them? A. Yes.

Q. Did your wife take any part in the negotiations with the contractors and material men? A. I looked after the contracts, and many of the times she too was there; we were building it together, and she was there many times; I consulted her about little things; she might have wanted different changes in the house than was originally planned, just as many women do want during the course of construction—they see something different.

20

Q. Have you estimated all together what you paid out yourself outside of the moneys which you say were contributed from the accounts of your wife, in connection with the construction of this property? A. Do you want me to enumerate them?

Q. Can you approximate it? A. Yes, about \$4,800 in cash.

30 Q. How much did your wife put up, regardless of where it came from originally? A. \$800 in the first place, and then \$1,000 later on.

Q. And the \$600 when the property was acquired? A. That is the property.

Q. Did the \$4,800 you refer to, include the \$700 you put up for the purchase of the property? A. No.

Q. Now, about moving into the property, doctor; you moved into it when it was completed? A. Yes, the day before Thanksgiving, 1905.

40

Charles D. Cropsey, direct.

Q. And part of the building was fitted up for your professional office? A. Yes.

Q. Since that time, up to the present time, you have paid all the taxes, have you not? A. I have.

Q. And interest on the mortgage? A. Yes.

Q. And you have maintained your office there? A. I have. 10

Q. Now, you began to have trouble with your wife afterwards? A. Yes.

Q. Over different things? A. Yes.

Q. And during the course of the years as they rolled on, did you and she at any time discuss the title to that property? A. Yes, many times.

Q. What was the substance of the discussion? A. I told her I thought it was unfair to have the property entirely in her name, because we had no heirs. And I had learned—I couldn't tell you from what source either—but I had learned from business men and other— 20

Q. Well, when you discussed with her this thing, what was said as to what should be done with the title? A. I thought it ought to be in both of our names, because if anything happened to her I would be left without anything.

Q. What did she say? A. It was better to be as it was, because she feared that perhaps some time or other there might be some suit brought against me, and if it was brought against me and I lost the suit, I would lose the property. 30

Q. Your wife testified on the stand that one of the reasons for keeping the property in her name was to protect it, because of the fact that you performed malpractice operations; did you ever perform any such operation? A. I did not, unless it was legitimate. 40

Charles D. Cropsey, direct.

Q. Did you ever do it? A. Not illegitimate operations.

Q. Ever in your life? A. No, sir.

Q. Did you ever tell your wife that you performed illegitimate operations? A. I never did.

10 Q. Do you recollect on one particular occasion talking to her about a date when a man named De Baun was present? A. Yes, sir.

Q. When was that? A. March 3, 1912.

Q. Where was that? A. In the upper hall and den of my house.

Q. Who was present? A. Mrs. Cropsey, Dr. De Baun and myself.

Q. Was that 1912 or 1913? A. I guess 1913.

20 Q. What was the occasion of that discussion? A. We were talking about the ownership of the property, and when I went upstairs—we had talked two or three times about it prior to that, and I saw him, and that he was intoxicated at the time in the house, and we were talking about the transfer of the property, and he said that if she transferred the property to me she would be “a damned fool.”

Q. That was in your house at that time? A. In the den.

30 Q. And that occasion she referred to in her testimony on cross examination; you recollect her testimony, don't you? A. No, I don't recollect it.

Q. I am coming down to the time when the actual transfer was made; did you have any differences of opinion occasionally with her about that time? A. I talked to her occasionally about transferring the property, and then it would blow over until later on, and I would talk to her again, that is, at various times we spoke of it.

40

Charles D. Cropsey, direct.

Q. Just describe any incident that occurred at your house just immediately preceding the execution of these deeds in connection with the relations between you and your wife. A. I came in the house Sunday about half-past nine P. M., on the 25th of May, 1913, and I couldn't find Mrs. Cropsey in the house, and I walked around through the house and I couldn't find her; and I went into the back hall, where my office is, and I heard a noise, and the place was in darkness, and the office was in darkness. I went to the middle office and pushed the electric button which turned on the lights, and the lights would not respond, and I went in and turned on the electric light in the center of the room, if I remember rightly, and Dr. De Baun and Mrs. Cropsey were there in the dark. 10

Q. What happened then, if anything, that night after you discovered her in the dark with him?

A. Well, as I went to the office they came out in the middle office and went back into the dining room, and just about that time we were talking, I was reprimanding them, and I was talking to them about being there in the dark, and found fault with them, and just at that time, unfortunately, I had to go out and set a broken hip; a woman had fallen down and broken her thigh, and she lived in the west end of the town, and I went away to fix this fracture. 20

Q. Were they still there when you came back?

A. No, he had gone. 30

Q. What happened the next night? A. Nothing happened the next night, but the next night after that, Tuesday night.

Q. What happened? A. That is the night I 40

Charles D. Cropsey, direct.

10 went upstairs to bed in another room, not my room, that I had been occupying, about one o'clock; Mrs. Cropsey and Dr. De Baun came into the house and she was downstairs sitting talking, and they had been drinking, and they were talking and they had taken out this whiskey bottle, and then she came upstairs, and when she came up into the regular bedroom which we occupied, she walked into the bedroom and whistled, and went on downstairs again; she said everything was all right.

20 Q. What happened after that? A. She came up again later on with the intention of having Dr. De Baun stay all night, and she came into this bedroom which I was in at that time, not my regular bedroom but the spare room, and much to her surprise she saw me there in bed. I got out of bed, and I told her that I thought it was nice proceedings going on downstairs, and this drinking, and that she was caressing him and he was caressing her.

30 Q. How did you know that? A. I was very angry at the time, and I got up and pulled on my trousers and slippers and went downstairs and ejected—

Q. How do you know they were caressing each other? A. I saw them.

Q. What did you see? A. When they came in the house she went to the sideboard and got out this bottle of whiskey and went to get a glass from the china closet—

40 Q. What did you see in the way of caressing? A. I saw Dr. De Baun and Mrs. Cropsey sitting alongside of each other at the dining-room table,

Charles D. Cropsey, direct.

and they arose and immediately they kissed each other.

Q. What did you do about that, did you go downstairs and accuse him of it? A. Shortly after that she came upstairs and I went downstairs and accused him of it.

10

Q. Did you try to eject him? A. Yes; he said I had better look out the way I handled him, he had a revolver in his pocket, and I said I didn't care whether he had or not.

Q. What did you do with him? A. I put him out.

Q. Did you strike him? A. I got hold of him by the neck and tore his shirt and collar.

Q. What did your wife do? A. She got in between Dr. De Baun and myself and tried to protect him when I had hold of him.

20

Q. That wasn't the time when he said she would be a damned fool? A. No.

Q. How long was that before? A. Two months before.

Q. On this occasion that you had the row with Dr. De Baun, did you tell him about coming to your house? A. I told him not to come in the place again.

Q. You had been friends, hadn't you? A. Yes, for 25 years.

30

Q. He was a physician? A. Yes.

Q. With offices where? A. In Passaic.

Q. Was he a drinking man? A. Yes, he was.

Q. Prior to that day, what were the relations between your wife and Dr. De Baun in a social way? A. Very friendly.

Q. How long had they been friendly? A. For years, about two years.

Q. Did they go out together? A. Yes.

40

Charles D. Cropsey, direct.

Q. How often? A. Two or three times a week, three to four times a week.

Q. What did they do? A. They played cards and rode in automobiles together, and went to various places of amusement.

10 Q. Now, the day after you told him he should not come back into the house again, did you have a talk with your wife? A. Yes.

Q. About him? A. Yes.

Q. State what was said. A. I told Mrs. Cropsey he should never come in the house again.

Q. What did she say? A. The next day?

Q. Yes. A. Well, I don't know that she said anything particular then.

20 Q. Was there any differences of opinion between you and her the next day? A. I told her—

Q. Were there any words between you, or anything of that sort? A. Well, it was mostly the night before.

Q. When was there anything said about the real property after that incident? A. The following morning she proposed transferring the property to me.

30 Q. How did it come up? A. At the breakfast table, it was.

Q. What did she say? A. She was willing to transfer the property, that is, one-half of the property, to me.

Q. What did you say? A. "Very well."

Q. At that time was anything said about an apology you were to receive, or anything of that sort? A. From Dr. De Baun?

40 Q. Yes. A. Dr. De Baun called me up on the 'phone; I didn't answer the 'phone, Mrs. Cropsey did; and Mrs. Cropsey told me he had tele-

Charles D. Cropsey, direct.

phoned saying he wanted to apologize, and the following Saturday night he did come down, and I would not accept any apology.

Q. Was Mrs. Cropsey there? A. Yes, he and she were playing cards, and I came there in the main part of the house and there they sat playing cards on a little green baize covered table. 10

Q. Did you and he make up that time? A. No. He offered to apologize, and I said, "There is no apology coming from a man" who had acted as he had, and I told him to leave the premises immediately and never come in again. I told him an apology was impossible.

Q. Did you ever see him in your house personally after that? A. No, he has come to the door of the house and rang the doorbell— 20

Q. Did you ever have anything to do with him after that? A. No.

Q. What happened that led up to the execution of the deed? A. Mrs. Cropsey proposed on Wednesday, I think it was, the 28th of May, perhaps, at the breakfast table to transfer the property from her name to both our names, making it a joint ownership; that was following the night of the altercation with Dr. De Baun and my putting him out of the house; and after breakfast, between ten and eleven o'clock we went down to Mr. Conkling's office, and Mrs. Cropsey entered the office first, and she sat down quite close to Mr. Conkling, and I sat in another chair, about six feet away; she said we had come down to transfer the property from her name to our joint names, and she asked Mr. Conkling to explain to her just the condition of the ownership of properties, whether they were owned by one individual or owned by two, and 30 40

Charles D. Cropsey, direct.

10 she asked him if the property were in her name and she were to die, would the property revert to her people, or would I still have a claim upon it; and Mr. Conkling said, that if she died while the property was in her name, the property would revert to her people, and I would have no control or any say in the property whatsoever; and then she asked something about the renting of the property; he told her I would have to rent the property and pay rent to her people, whoever it happened to be that were the beneficiaries.

Q. You had no children by Mrs. Cropsey, did you? A. No.

20 Q. Go on and tell what occurred. A. So that was between ten and eleven o'clock, and I went up to the house; we both went up and got in the carriage and got the deed from the house, and I took it to Mr. Conkling.

Q. You did not have it when you first went down there? A. No, I took it to Mr. Conkling; then in the afternoon Mr. Conkling drew up the papers.

Q. Were you down in the afternoon? A. Mrs. Cropsey and I were both there.

30 Q. Was anything said by Mrs. Cropsey to you going down there in the afternoon, that she didn't want to do this? A. No, sir.

Q. Did she say she was doing it against her will? A. No.

Q. Did you make any promises to her of any sort, kind or character to induce her to execute this deed? A. There were no promises made and no promises were asked.

40 Q. When you went there in the afternoon to execute this deed who was there? A. Mrs.

Charles D. Cropsey, direct.

Cropsey, Mr. Conkling and myself, and a little later on the acknowledgment was made for the transfer before Mr. Miller.

Q. Did you know Mr. Miller? A. Yes; and I left the room; Mr. Miller, in fact, asked me to leave the room, and I went through this door into another office, and he took Mrs. Cropsey's acknowledgment, as far as I know.

10

Q. After the execution of those deeds, what did you and Mrs. Cropsey do? A. We went home.

Q. Was anything said on the way home by her to the effect that the thing didn't satisfy her?

Q. When was the first you knew that she had any objection to the recording of the deeds? A. On Monday.

20

Q. What happened on Monday? A. I went to Mr. Conkling's office to see if the deeds had been returned. and they had not; and he told me that Mrs. Cropsey had called the firm up, stating—that was on Friday, I believe, previous—stating that she didn't want the deeds recorded at that time.

Q. Did you know anything about that until you went to their office? A. No.

Q. Did your wife tell you she had notified them? A. No.

30

Q. When you found out they hadn't been recorded, what happened? A. I went to the house and Mrs. Cropsey was sitting on the front porch, and I went through and asked her to come into the office, which she did; and I said, "I understand that you have called up Mr. Shafer, saying you didn't want the deeds recorded, and she said, "Yes." I said, "How is that?" she said, "I hadn't read the deed;" I said, "You read it

40

Charles D. Cropsey, direct.

down at the office, and the deed was read to you and read to me, and so was the transfer deed." I said, "If you don't want to make the transfer, say so now." She said, "I will telephone to Mr. Conkling;" she said, "Telephone to him."

10 Q. And did you? A. I did, and he said to me that the telephone message wouldn't do; that he would not transfer or make any transfer or registering of the deed in the Register's office unless he received a letter from Mrs. Cropsey; and Mrs. Cropsey sat down at my desk and took out a pad and paper—we always keep paper in the corner of the desk there—and sat down and wrote the note, and I took it down to Mr. Conkling myself.

20 Q. I show you a paper marked "Exhibit C4," dated June 3, 1913, signed "Eva P. Cropsey," and ask you if that is the paper to which you refer? A. Yes, sir.

Q. What did you do with that paper? A. Took it down to Mr. Conkling.

Q. At the time of the execution of these deeds had you any intention of leaving the house there? A. No, sir.

30 Q. Did you have any intention of leaving the house there at any time before the time you actually left it in July? A. I had no reason to.

Q. Did you? A. I did not.

Q. When did you leave the house? A. The 22nd of July, 1915.

Q. Why did you leave on that occasion? A. Because Mrs. Thompson had told me—

Q. Because of something that had been told you by Mrs. Thompson? A. Yes.

40 Q. Did you talk with your wife that day? A. No; I left the house perfectly satisfied that morn-

Charles D. Cropsey, direct.

ing; I didn't have any intention of leaving until I heard from Mrs. Thompson.

Q. Did you have a talk with your wife before you left, when you finally departed from the house for good? After you heard from Mrs. Thompson did you have a talk with your wife about it? A. No. 10

Q. Did you tell her you were going? A. No, sir, I had my breakfast in the house that morning; I had learned from Mrs. Thompson the facts, and I never went back.

Q. Did you talk with your wife about it? A. I told her I left the house because I had heard enough to make me lose respect for her, and I couldn't stay with her longer.

Q. When did you tell her that? A. That morning in my office. 20

Q. At that time had you any place provided to go to? A. No, sir.

Q. Where did you sleep that night? A. In the Hoffman House, East Rutherford.

Q. Had you provided any home for yourself? A. No, sir.

Q. Where did you sleep the following night? A. On the front porch; I slept two successive nights; I slept on the floor of my office for one or two nights. 30

Q. And then where? A. In the automobile in the garage for a couple of nights.

Q. Did you get a home after that? A. I didn't have any place to go—

Q. Where did you go? A. To Mr. Conkling's.

Q. How did you come to go there? A. One day he asked me where I was sleeping and staying, and I told him nowhere particular, a couple of nights in the automobile in the garage, 40

Charles D. Cropsey, direct.

and a couple of nights on the floor of the porch, and perhaps one or two nights on the floor of my office.

Q. Thereafter you went and stayed with him?

10

A. Yes, sir; he said "That's no way for a man to live."

Q. When did you first hear from your wife or from anyone to the effect that this deed was obtained by you through fraud? A. About ten months later she tried to eject me from the house—about a year later.

Q. When was that? A. In October.

20

Q. In October of which year? A. 1914. She had asked me to fix the furnace of the house, and I did so in lieu of the water which was to warm the office up, and it cost me \$49.50 to do so, and a few days after that, she had a plumber to come and cut off the pipes in my office, and no heat has been coming in there since that.

Q. What did she say, anything? A. No, a paper was served to put me out of the house.

30

Q. When did you first learn from any source that it was contended that the execution of these deeds in Mr. Conkling's office was obtained as the result of false representations made by you? A. Why, during the litigation that was going on in the divorce suit.

Q. Did you hear it before the suit was commenced? A. No, sir.

Q. Was that the first intimation you had from any source that you were charged with fraud in connection with this title, when this suit was commenced to set aside the deed? A. Yes, about a year later.

40

Q. About how long was that after you commenced your divorce action? A. About a year later.

Charles D. Cropsey, direct.

Q. Doctor, did you say to your wife in 1913, or in 1912, or on any other occasion: "Eva, your happiness lays in the palm of your hand, but you don't know it. If you would do as I ask you and turn over this home to me, I will give up this woman whom I have told you I loved, and I'll stay home with you and I'll go out with you, but you are such a fool you can't see what's good for you." Did you ever say that? A. Never any such conversation went on between her and myself as that. 10

Q. Did you ever tell her you loved another woman? A. No.

Q. Did you tell her in 1913, or on a great many other occasions, that you were going to give up some other woman? A. I had none to give up. 20

Q. Did you tell her that? A. No.

Q. Did you have any such woman to give up? A. I did not.

Q. Did you tell her any time in 1913, that you couldn't be a husband to her unless she turned over the property to you? A. No, sir.

Q. Did you tell her on the 29th of May, the day of the execution of these deeds, or rather, did this conversation on that day take place between you, you saying "Are you going down with me to transfer this property"; and she saying, "No, I am not"; and then you said, "You are not? Then I am going to leave you; I will leave you without a cent"; and continuing, you said "Now, you can think well or not of this; I don't intend to live with you any more; that is, if you will not turn the property over to me"; did you say any such thing or things to her on that day? A. No, sir, there was no conversation of that sort. 30 40

Charles D. Cropsey, direct.

Q. Did she on that day, as a result of any conversation, turn to you and cry? A. No, sir.

Q. Did you say, "I want the whole back lot which goes to this property; I want the whole property?" A. No, no conversation of that sort went on at all.

10

Q. Did you say to her, "I want the entire back lot, that you will have to give me full and clean?" A. No.

Q. Did she say, in response to any such conversation, "No" she wouldn't give you a deed, and did you say then "I am going to leave you"? A. I did not.

Q. Did you on that day have any intention in your mind of leaving her? A. None whatsoever.

20

Q. Did you say to her, "Eva, I mean business; I don't intend to stand for this any longer; you can transfer it or not, but if you don't, I am going to leave you"? A. I did not.

Q. Did you then, following that conversation, promise you would give up this woman and take her around and stay at home and be a husband to her? A. No.

Q. Did she then say that she would go around and execute the deed? A. None of that conversation went on at all.

30

Q. Did she say, in your presence, in Mr. Conkling's office, "Dr. Cropsey hasn't been kind to me; he has promised to be kind to me and treat me kindly if I will transfer this property to him"? A. No.

Q. Was there any such conversation? A. No, sir, none whatsoever.

Q. Did you say, "I am not doing this on my own free will and accord, but to please Dr. Cropsey"? A. No, sir.

40

Charles D. Cropsey, direct.

Q. Did you, a few days later, after she had notified them not to record the deed, say to her: "How dare you countermand that deed going through?" A. I did not.

Q. Did you use any hard language to her that day? A. No, sir. 10

Q. Did you call her a vile name? A. No, sir.

Q. Did you say to her that you would choke her? A. No, sir.

Q. Were you white with rage that day? A. I was not.

Q. And did you say, "I will leave you, too," after promising to choke her? A. No, sir.

Q. Did you, when the deed came back from record, did she ask you to let her see it? A. I don't recall it. 20

Q. Do you have any recollection of it? A. I don't recall it at all.

Q. Did you tell her, in response to any such request, "No, it's in my lawyer's office, and I am going to leave you; this is a slice more than I expected to get; now I've got it and I'm going to go"? A. Emphatically, no.

Q. Did you have a conversation on the telephone with Mr. Conkling, in the presence of your wife, your wife being in your office, a few days later in reference to your wife going to Asbury Park, in which Mr. Conkling said, "Doctor, either she or you have got to leave the house; you come and stay with me if she hasn't gone and won't go; you bring your pajamas"; did you have such a conversation? A. No. 30

Q. Did Mr. Conkling say that to you on the telephone? A. No.

Q. Do you remember what date you went to Mr. Conkling's to live? A. No, I can't tell you 40

Charles D. Cropsey, direct.

that; either the latter part of July or the first part of August I went there.

10 Q. Had you been threatening your wife for seven years, at least, last past prior to your separation, that if she didn't transfer the property to you, you would leave her? A. I never threatened her, no.

Q. Did you, at the time you and she left the house to go to Conkling's, say to her in substance this: that you were going to pack up your clothes and get out if she wouldn't go with you, and then say "You can take your chance and go down with me and sign this deed; if you don't do it, I am going to pack my things and leave you without a cent"? A. No.

20 Q. Was that the inducement for the execution of the deed, by you? A. There was no inducement whatsoever; Mrs. Cropsey volunteered to do it.

Q. Did you say in the course of that same conversation, that if she didn't sign the deed you would leave her? A. No, sir.

30 Q. Did you ever say, in the presence of Mrs. Sloan, the mother of your wife, on numerous occasions, that unless she made over the property to you, you would leave your wife? A. No.

Q. Did you ever say that on any occasion? A. Never, to anyone, never said it to anybody.

Q. Did you say, in the presence of Mrs. Sloan on one occasion when the property was being discussed, that your wife could go and do what she pleased; you were going to stay with Mrs. Hagger? A. I did not.

40 Q. Did you ever say, in the presence of Mrs. Sloan, that you were going to get rid of your wife? A. No.

Charles D. Cropsey, direct.

Q. Did you have any occasion to say that to your mother-in-law? A. No.

Q. Did you ever say to Mrs. Clark, who was a patient of yours for a time, that you were going to get your home back, and that after you got everything you wanted you were going to leave your wife and get out, and she could do as best she could, and she could go on the street if she wanted to, you didn't care where she went?

10

A. I never talked any matter over with Mrs. Clark other than my professional duties.

Q. Was she a social friend of yours? A. No, sir.

Q. Was she a personal friend? A. No, sir.

Q. Was she the woman that you put out of the hospital? A. Yes.

20

Q. Why? A. We were compelled to put her out; she upset the whole institution; she was an outrage.

Q. Did you tell her you had regard for any other woman? A. Mrs. Clark's relations with me were simply professional, nothing else.

Q. Did you tell her on several occasions that you had love for another woman? A. No; who do you mean, Mrs. Clark? I never had any conversation with Mrs. Clark other than professional.

30

Q. Did you on any occasion say to Mrs. Clark that you were going to get the other half of that property? A. I repeat, I never had any conversation with Mrs. Clark but professional conversation.

Q. Did you ever tell Mrs. Jones, a friend of your wife's, that your relations with your wife would be different if she would turn the property over to you? A. I did not.

40

Charles D. Cropsey, direct.

Mr. Carey: I offer in evidence the transcript of the bank accounts of the doctor in the various banks, and the bank books.

10 I offer in evidence the bank book of the People's Bank and Trust Company of Passaic, New Jersey, of Dr. Cropsey.

Said bank book is marked "Exhibit D7."

I offer in evidence the bank book of the Rutherford National Bank in account with Charles D. Cropsey.

Said book is marked "Exhibit D7½."

Mr. Carey: I offer in evidence a transcript of the account with the Franklin Trust Company and Savings Institute.

20 Mr. Lane: -There is no objection to the form of it.

Said transcript is marked "Exhibit D8."

Mr. Carey: I also offer in evidence a statement of the account of the Rutherford National Bank, being a transcript of the books of the bank showing the account of Charles D. Cropsey with that bank.

Said book is marked "Exhibit D9."

30 Mr. Carey: I also offer in evidence a transcript of the books of the Bergen County Bank of Rutherford, showing the transcript of the account of Charles D. Cropsey personally, and another showing the account of Dr. Charles D. and Eva P. Cropsey, joint.

Said transcripts are marked "Exhibits D10 and D11."

40 Mr. Carey: I also offer in evidence the account of Dr. Cropsey in the time department of the People's Bank and Trust Company of Passaic, New Jersey.

Charles D. Cropsey, cross.

Said account is marked "Exhibit D12."

Mr. Lane: I want to object to the offer of these accounts in bulk like this, unless it is printed out what particular items in these accounts are relevant in this case.

The Court: Objection overruled.

10

Cross examination by Mr. Lane:

Q. Dr. Cropsey, you were very anxious to get this deed, were you not? A. No.

Q. Why did you telephone down to Mr. Conkling's office to find out whether the deed had been recorded or not on Monday? A. I didn't.

Q. Or whether it had come back? A. I didn't.

Q. What did you do? A. I went down to Mr. Conkling's office.

20

Q. Didn't you say on direct examination you telephoned down there? A. I went down to Mr. Conkling's office.

Q. To find out what? A. To find if the deed had been returned from Hackensack, or wherever it was recorded.

Q. How long was that after it was executed? A. That was the following Monday, as the transfer was made on Thursday previous to that.

Q. On a holiday, Decoration Day, wasn't it? A. I think Saturday was the holiday.

30

Q. Now, you had been trying for two years to get this deed? A. I hadn't tried at all; we had talked the matter over ever since I had made the final payments on the house in 1907; I remarked at that time that I paid \$1,700 down, and she had paid a small proportionate amount, and I thought it was unfair for me to pay all the money from my savings into the property when she paid but a very small amount of it.

40

Charles D. Cropsey, cross.

Q. At the time you had this conversation, you had not had any trouble with her? A. No, sir, perfectly pleasant.

Q. You knew that Mrs. Cropsey had made a will, did you not, leaving the property to you?

10 A. Yes, she made a will; we had both made wills in each other's favor.

Q. And was anything said about this property the night before this conversation in the morning? A. Not at all.

Q. At the breakfast table? A. No, sir, she made the proposition at the breakfast table.

Q. Had you slept that night together? A. I believe not.

20 Q. You met at the breakfast table? A. Yes, sir, at the breakfast table.

Q. And she just voluntarily made this statement? A. We talked about the affair the night before merely, and she proposed making the transfer very shortly after that, at the same time.

30 Q. It was by reference to some talk about this affair the night before, wasn't it, in connection with that, that she made this statement? A. No, we had been talking about the affair the night before.

Q. And you were angry? A. No, I tried to reason with her and tried to show her what she had done that was wrong, as I had done repeatedly on various occasions; I couldn't control the woman.

Q. Then you were angry that morning? A. Well, I wasn't pleased.

Q. Did you say anything at all about the property? A. No.

40 Q. That morning? A. No, sir, I didn't make any proposition or have anything to say; she

Charles D. Cropsey, cross.

said she would transfer the property to me, half of it; that is, it should be in the names of both of us.

Q. What led up to that, what had been said or what had happened just before that, that led her to talk about the property; had you mentioned the house? A. No.

10

Q. Who had? A. She said she was willing to make the transfer in both our names; she did the proposing herself.

Q. And is that the first that was said about the house? A. We had talked about the transfer of the property long ago.

Q. Was that the first that had been said that morning about the house? A. Yes, sir, we had talked about it before that many times.

20

Q. Just what did she say? A. She said she was willing to transfer the property to both our names.

Q. And you immediately took her down to Mr. Conkling's office? A. I should judge that happened about eight o'clock, and sometime between ten and eleven we went down to Mr. Conkling's.

RECESS TO 2 P. M.

30

AFTER RECESS.

Q. Doctor Cropsey, when did you make the appointment to go to Mr. Conkling's office? A. I didn't make any appointment to go to the office of Mr. Conkling.

Q. Did you make an appointment with Mrs. Cropsey to go there a certain time? A. We

40

Charles D. Cropsey, cross.

agreed between ourselves to go there at a certain time; I don't recall how it was.

Q. When you testified that you had made an appointment for eleven o'clock— A. I said, I may have done so.

10 Q. After talking with Mrs. Cropsey, what did you do that morning; did you go to your office and attend to your business? A. I went out on my work.

Q. Did you go out that morning on your calls? A. Yes, I always do, every morning.

Q. Before you went to Mr. Conkling's office? A. Yes.

20 Q. And when you came back, did you meet Mrs. Cropsey in the house? A. Mrs. Cropsey and I went down in my carriage; I remember distinctly tying the horse at the side of the bank building; there was a hitching post there; I am positive about that incident.

Q. When you came back from your calls, was Mrs. Cropsey waiting for you anywhere to go to Mr. Conkling's office? A. I don't recall.

Q. Where did you meet her? A. In the house, I think.

30 Q. Did you go in to her? A. I can't say positively; I know I went down between ten and eleven o'clock.

Q. Had everything blown over, all this anger on your part, had it blown over at the time you got back, or were you still angry? A. I wasn't feeling very pleasant, of course.

Q. And you and she had quite a set-to that morning? A. The night before; and in the morning we rehearsed the matter in part and she made that proposition.

Charles D. Cropsey, cross.

Q. You were satisfied that everything she had done was all right the night before? A. No.

Q. You were satisfied with her transferring the property to you; did that satisfy you? A. It didn't satisfy me as to her wrong; you can't buy a wrong in dollars and cents.

10

Q. Did she say she would transfer this property in an endeavor to satisfy you and to please you? A. No, sir.

Q. Why did she? A. I don't know.

Q. When you got down to Mr. Conkling's office, what did you say to Mr. Conkling? A. Mrs. Cropsey advanced in the office ahead of me, and she said she had come in to consult Mr. Conkling about the transfer of the deed from her name to the combined ownership of the property.

20

Q. She said that to Mr. Conkling? A. Yes, sir.

Q. Were you standing right alongside of her? A. She was here; Mr. Conkling was there, and I was here (indicating).

Q. You had been talking to Mr. Conkling about this property and having it transferred for some time, hadn't you? A. I don't recall speaking to him close to that date; I may have in times gone by. These conversations were of frequent occurrence about the transfer of the property.

30

Q. How long prior to this time had you had a conference with Mr. Conkling about your domestic differences? A. I hadn't any conferences with Mr. Conkling.

Q. How long prior to this— A. I hadn't talked to him about that, that I remember.

Q. Did you have any conferences with Mr. Conkling prior to this time about your domes-

40

Charles D. Cropsey, cross.

tic difficulties? A. I think I did at one time say that things were not as nice as they might be.

10 Q. Had you ever conferred with Mr. Conkling as your lawyer prior to that time? A. Mr. Conkling had been the lawyer of both of us, what little we needed a lawyer; it was only at the time of the buying of the original property, that is the only use we had for lawyers.

Q. That was the only time you consulted him in reference to law business? A. Yes, sir.

Q. Had you had trouble with Mrs. Cropsey about a week prior to this? A. I had trouble with Mrs. Cropsey the Sunday night before the transfer, as the transfer was made on Thursday, I had trouble with her that prior Sunday.

20 Q. And also Tuesday? A. And also Tuesday.

Q. And after that, did you talk to Mr. Conkling about it? A. I don't recall it.

Q. Prior to that Sunday night, when did you have trouble with her? A. March 3. You mean regarding that transfer of this property and talking to Dr. De Baun? On my birthday, March 3rd, when he advised against her transferring it to me—

30 Q. Who? A. Dr. De Baun.

Q. When you went down to Mr. Conkling's office and Mrs. Cropsey said she wanted to transfer the property to you, is that what she said to you, that— A. She came in to consult Mr. Conkling about the conditions of ownership of properties, as I stated before, and what the rights were, what rights she would have in the property and I would have in the property if they were in her name and if they were in our joint names.

40 Q. And the only idea that either you or Mrs.

Charles D. Cropsey, cross.

Cropsey had in reference to that transfer, and the only thing she stated she wanted to do at that time, was to so place it that in case of her death you would get it? A. She wanted to transfer the property so that we would both own it equally, and in case of her death it would go to me, and in case of my death, it would go to her without any litigation. 10

Q. As a matter of fact, wasn't the only reason that Mrs. Cropsey stated that she wanted to so transfer the property, that in case of her death you would get it? A. If she died, I would get it, and if I died, she would get it.

Q. And there was no other reason? A. I didn't see any other reason.

Q. And you had made wills leaving it to one another? A. Yes; I willed everything I had on earth to her. 20

Q. And she did the same with you? A. With some exceptions.

Q. You knew she had made her will so this house would go to you in case she died? A. She made a will to me and I made a will to her.

Q. What other reason was there that Mrs. Cropsey wanted to transfer this property to you; what other reason was there? A. We had this altercation the night before, and the next day she made this proposition to me. 30

Q. Because of that altercation? A. I can't say positively; possibly, I will say. What was in her mind, I don't know.

Q. Did she do it while the altercation was going on the next morning? A. The altercation was the night before.

Q. Didn't you say that you and she had quite 40

Charles D. Cropsey, cross.

an altercation the next morning? A. We were talking the matter over; I talked to her of her actions the night before, and I advised her that they were very unbecoming for a woman.

10 Q. Did she give you any other reason that next morning than that she wanted you to have the property when she died; did she give you other reason? A. No.

Q. It was not the intention, was it, for her to give you that house so that it would be yours while you were living, or any part of it? A. We were to have joint ownership; we had equal rights in the property.

20 Q. You talked that over, did you? A. She asked Mr. Conkling to explain it, and he explained it perfectly plainly, and after that she was agreeable and perfectly satisfied with the explanation and she ordered Mr. Conkling to draw up the deed and make the transfer.

Q. But, was there any other talk before you went to Mr. Conkling's office, that there should be any other change in the ownership of the property in case of her death; that she was doing so, looking out for you in case of her death; was there any other reason? A. I don't recall it.

30 Q. Did you talk over the question that the property would be owned by you and your wife in any different manner in case she made this transfer? A. No, sir.

Q. Was there anything said that morning whether or not Mrs. Cropsey still loved you? A. No, sir.

Q. And that she was transferring it to you for that reason? A. No, sir.

40

Charles D. Cropsey, cross.

Q. Did you accuse her that morning of not loving you any longer? A. No, sir.

Q. Nothing was said about any such thing? A. I did tell her that I thought the manner in which she acted the night before was very unbecoming.

Q. And you accused her of doing— A. I didn't make any accusations; my conversation was very little; I thought she was very indiscreet. 10

Q. Tell the entire conversation, as much as you can remember. A. I don't recall anything but what I just stated; I don't recall any special conversation.

Q. Did you tell Mr. Conkling at the time you were in his office and when Mrs. Cropsey stated why she wanted to make the transfer, did you tell him that you had each made wills to each other? A. I don't recall that; no, I don't remember any conversation going on in Mr. Conkling's office relating to a will, but it is true we did have a will standing for perhaps a year or two years prior to that in each other's favor. 20

Q. At the time you made the wills, everything was friendly? A. Yes.

Q. When you got down there, did Mr. Conkling say he needed the deed to the property? A. He said he would have to have the deed. 30

Q. And you went back and got it? A. I went back and got it.

Q. Where was Mrs. Cropsey when you went back? A. I don't know; I believe I went down alone and took the deed down there alone.

Q. Did you and Mrs. Cropsey go back to the house together before you got the deed? A. I believe I took her up to the office, which was the most natural thing for me to do.

Q. Where was the deed? A. In the safe. 40

Charles D. Cropsey, cross.

Q. Your safe? A. Yes.

Q. As a matter of fact, Dr. Cropsey, you had a deed of another piece of property, and refused to give that to her, too, did you not? A. What, of mine?

10 Q. A deed of property of hers? A. Well, I kept all our papers of that kind in the safe.

Q. Why did you keep the deed? A. There was no special reason.

Q. When you went back at two o'clock to Mr. Conkling's office— A. Approximately two, I suppose.

Q. Had you had dinner with Mrs. Cropsey that day, lunch? A. I believe so, yes.

Q. And everything was friendly? A. Yes.

20 Q. Was anything said about the property? A. I don't recall that.

Q. There was nothing said about your attachment for any other woman at that time? A. No.

Q. Or on that day? A. No, sir.

30 Q. In the morning did Mr. Conkling say why he didn't take the acknowledgment to the deed himself, or in the afternoon? A. I don't remember that he said anything about that part of it; he simply said, "Bring down the deed" if we wanted the transfer made, and he would probably have it ready between two and three o'clock that same afternoon.

Q. Did Mr. Conkling, on any of these occasions when Mrs. Cropsey was there, did he divulge to her that you had talked to him about having the property transferred over from her to you? A. I don't remember any such conversation at all.

Q. Did you and Mrs. Cropsey leave the office that afternoon together? A. To the best of my

Charles D. Cropsey, cross.

knowledge and belief, I took Mrs. Cropsey down to Mr. Conkling's office in my carriage.

Q. And took her home? A. And took her home; Mrs. Cropsey rode a great deal of the time with me in my carriage and automobile; she was almost my constant companion that way. 10

Q. Were you home that night? A. Well, I don't remember; I can't say.

Q. You don't remember? A. Well, as far as sleeping was concerned, I was home.

Q. Did you and Mrs. Cropsey have a conversation the next morning about where you had been that night? A. No, sir.

Q. In reference to this deed? A. No, sir.

Q. That you hadn't lived up to your promises? A: No, sir. 20

Q. Was there any such conversation? A. I don't remember it.

Q. Did you have any talk with her from that time until you found out she had notified Mr. Conkling to record the deed? A. No; I didn't know Mrs. Cropsey had said anything regarding the property after the transfer was made, until I went down to Mr. Shafer's and Mr. Conkling's office the following Monday morning, and then, as I said before, Mr. Conkling told me that Mr. Shafer had received word on the 29th or 30th, telling him not to record the deed. 30

Q. What did you say then? A. I said, that's funny; I can't understand that.

Q. You were very much surprised? A. Yes, sir.

Q. And when you went back you were quite angry? A. No, sir, I was not angry.

Q. You went right back to see Mrs. Cropsey 40

Charles D. Cropsey, cross.

about it? A. I couldn't understand why she had changed her mind. I went up the front porch and she was sitting on the porch with Mrs. Edgar—

10 Q. What time in the morning was this? A. Between ten and eleven.

Q. On Monday? A. I don't know; on Monday.

Q. Was it before or after you had got your round of calls finished? A. I should say it was sometime in the forenoon.

Q. Why did you go down there? A. To get the deed.

Q. Why did you want to get the deed that morning? A. Just because I wanted it.

20 Q. Because you didn't want Mrs. Cropsey to get it? A. It didn't make any difference.

By the Court:

Q. Why were you in such a hurry? A. It was signed on Thursday, and they said it would be ready on Monday, and I went down there; then I learned she had called up in the meantime; prior to that, I knew nothing about it.

30 Q. Who told you you would get the deed back on Monday? A. I understood Mr. Conkling to say that.

Q. The next Monday or Tuesday? A. About that.

Q. Saturday was a holiday? A. Yes, or Friday, I couldn't tell you now how many days it takes to record a deed.

Q. Did Mr. Conkling ever tell you how long it took to record a deed? A. I didn't ask him.

40 Q. Do you know how long you had to wait for the deed after it was given to him to be recorded? A. The second time, do you mean?

Charles D. Cropsey, cross.

Q. Yes. A. I think it was recorded on Tuesday.

Q. When did you get it? A. I don't know.

Q. Did you get it the same week? A. I believe so, I don't know.

Q. As a matter of fact, don't you know you didn't get that deed for almost a month afterwards? A. I don't remember that.

10

Q. After the deed was recorded on Tuesday, did you go down there on Friday and try to get it back? A. Of the same week?

Q. Yes. A. I don't think I did; I don't know.

Q. How did you get that deed; did you go to Mr. Conkling's office to get it, or did he send it to you after it had been recorded? A. I don't know whether he sent it or whether I called for it; I really don't know that.

20

Q. You were not in so much of a hurry after you knew it had been recorded? A. I thought it was about two or three days.

Q. Doctor, when Mr. Conkling told you that Mrs. Cropsey told them not to record the deed, did you ask Mr. Conkling what it was necessary to do? A. No, sir; Mr. Conkling said he couldn't record the deeds because Mrs. Cropsey had given an order to Mr. Shafer in his absence, not to record it.

30

Q. Did you ask him to go ahead and record it anyway? A. No, sir.

Q. Did you, when you went back to your house, did you try to get Mrs. Cropsey to go down to Mr. Conkling's office with you? A. No.

Q. You went up there to get her to sign some paper? A. I had to go back to my office anyway, and when I was there she came there into my office and I asked her about her calling the deed off, that is, calling up Mr. Shafer and telling

40

Charles D. Cropsey, cross.

him not to record the deed, and asked her why it was it happened; and she said she hadn't read the deed, and I said, "The deed was read to both of us, and you read it."

10 Q. Why did you have to go back to your office that particular morning; why didn't you telephone from Mr. Conkling's office? A. I went back to find out why she had changed her mind, or to get her to come down—

Q. You said a moment ago you had to go back to your office? A. I did, I went back to find out why it was.

Q. And that is the only reason? A. Yes.

Q. You had your horse and carriage that morning? A. Yes.

20 Q. Did you offer to take Mrs. Cropsey down to Mr. Conkling's office? A. No.

Q. Did you say to Mrs. Cropsey when you got her in the office alone; what did you say to her? A. I asked her why she had changed her mind.

Q. Everything was very pleasant? A. Everything was pleasant.

30 Q. You didn't say to her, "Why did you go to Mr. Conkling's office and make a fool of me and tell them not to record the deed?" A. No, sir.

Q. Or anything of that kind? A. No; but I did tell her that if she didn't want to transfer the deed, simply say so and the matter would drop.

Q. And you would do what? A. Nothing.

40 Q. And what did she say to that? A. She said she would telephone to Mr. Conkling, and Mr. Conkling would not accept any telephone message; he said it would have to be in black and white, or there would be no record of the deed; and then she sat down at my desk and got a

Charles D. Cropsey, cross.

piece of paper out and wrote this thing, and I took it down to Mr. Conkling's office.

Q. Did you tell her what to write? A. No, sir, not a word.

Q. You took it right down? A. I took it right down.

10

Q. What did Mrs. Cropsey say to you at that time? A. She went out and sat down with Mrs. Edgar again.

Q. Did she say why she told them not to record it? A. That she hadn't read it. I said that it had been read to both of us.

Q. That was the only reason? A. Yes, sir.

Q. You didn't say, "Come on down to Mr. Conkling's office now; you can read it there;" did you? A. No, sir.

20

Q. Who has the deed now? A. I have; that is, it is in my attorney's hands.

Q. After you got them back from the Register's office, did you ever show them to Mrs. Cropsey? A. I am not sure; I don't know.

Q. You say you have paid the taxes and water rents during all these years? A. I have paid all the taxes on the property since I have acquired it, and the water rent.

Q. You never paid rent for the house? A. No, I shouldn't pay rent for the property.

30

Q. When you got back to Mr. Conkling's office with this memorandum from Mrs. Cropsey, did you tell them to record it right away, the deed? A. Mrs. Cropsey told them.

Q. Did you tell them? A. No.

Q. What did you say to them? A. Nothing at all; I simply handed them the note in answer to the requirements that Mr. Conkling had de-

40

Charles D. Cropsey, cross.

manded that he would not record the deed unless it was written.

Q. Unless he had written authority? A. From Mrs. Cropsey.

10 Q. Did he ask you what the total was? A. No, sir.

Q. There was nothing said about that at all? A. I don't remember any talk.

Q. Doctor, you know that Mrs. Cropsey in the early part of your life, did she earn money also? A. She did.

Q. And when you say you put about \$4,800 in this house, do you mean in addition to the \$5,000 mortgage? A. Yes, and not only \$4,800, but I put \$5,500 in.

20 Q. And also the \$5,000 for the mortgage? A. And the \$5,000 which was taken on our bond, most of it was put in the house, except about \$20, I should say.

Q. And also that \$1,000? A. The \$1,000 comes from that mortgage; the \$800 was the only money given to the house from her account, other than the \$1,000 which was taken from the Franklin Savings Institution account, which was from the mortgage.

30 Q. What happened to the other \$4,000, mortgage money? A. There was some balance.

Q. Wasn't the other \$4,000 put in the house also? A. From the mortgage?

Q. Yes. A. I believe so, but we both were on that bond; we both took the bond out together.

Q. Mrs. Cropsey, during the time when you and she were friendly, kept all the books, did she not? A. She did.

40 Q. And you don't know how much of the money was the result of her savings and of

Charles D. Cropsey, cross.

her earnings? A. I don't know how much money she saved, other than that one account book she had; I only knew she had one savings book, and that was in the People's Bank and Trust.

Q. Dr. Cropsey, originally this property was taken in your wife's name to protect you from any suits; is that right? A. That was the advice given by Mr. Lalhurst and her uncle, Mr. Woodruff. 10

Q. Did you have any letters written to you advising you to stop certain kinds of your practice, and then, immediately afterwards you stopped it? A. No, sir.

Q. Dr. Cropsey, was this the only time you endeavored to get the property from your wife, to get her to transfer it? A. We had talked the transfer over, but I never endeavored to get her to transfer the property. 20

Q. You had had quite heated words, hadn't you? A. March 3rd we had—

The Court: Doesn't that appear pretty plainly in this case?

Q. Dr. Cropsey, hadn't you had a conversation in the presence of your brother Gaspar in reference to the transfer of this property? A. I don't recall any. 30

Q. In which you threatened to get out if she didn't do it? A. No, sir.

Q. Do you remember a conversation such as that when he was there? A. No, I recall no such conversation.

Q. You ordered him out of the house? A. My brother?

Q. Yes. A. Do you mean I ordered my brother out of the house? 40

Q. Yes. A. No, sir.

Charles D. Cropsey, redirect.

By the Court:

10 Q. Why didn't you, on the morning of the 29th, after Mrs. Cropsey said to you she would make a conveyance of this property, and when you went down to Mr. Conkling's office take the deed with you; why didn't you take the deed with you in the first instance? A. Mrs. Cropsey wanted to be advised in the matter. We didn't go to him to have it transferred at that particular minute; she wanted to know the conditions on which the property would stand if it was in her name, and if it was in my name.

Q. You, for years had labored to acquire a one-half interest in this property, hadn't you? A. Yes.

20 Q. And not until the 29th, at the breakfast table, after the row the night before, did she agree to give you that which you desired? A. Yes.

Q. Why, then, when you made an appointment to take her to Mr. Conkling's office, didn't you take the deed with you? A. The deed was in the safe—

30 Q. Why didn't you take it along if she had made this promise? A. But she wanted to know the particulars of the case before she did that.

Redirect examination by Mr. Carey:

Q. Did you know that the deed would be necessary down there? A. Well, I surmised it would be necessary after a decision was made and after the thing was explained to her.

Q. Who got the deed out of her safe? A. I think I did myself; it isn't her safe, it is my safe, but we both knew the combination of the

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Cook Conkling, direct.

safe; she went into the safe a hundred times to my once.

Q. Was she there when you got the deed? A. Yes, she was; I am not positive but what she opened the combination; I don't remember.

Recross examination by Mr. Lane:

10

Q. Mrs. Cropsey didn't know the combination of that safe, did she? A. Of my safe? She not only knew it, but she had the memorandum with the combination of my safe.

Q. Had she ever opened the safe, to your knowledge? A. She took the books and the ledgers out, and was back and forth, and all our papers, all the time.

20

COOK CONKLING, being recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Carey:

Q. Mr. Conkling, did you, in a conversation with Dr. Cropsey over the telephone, say to him, "Doctor, either she or you have got to leave the house; you come and stay with me if she hasn't gone or won't go; you bring your pajamas?" A. I did not.

30

Q. Did you have any such conversation with her? A. I never did.

Cross examination by Mr. Lane:

Q. How long after this occasion of the transfer of the property did you have a talk with Dr. Cropsey about his leaving the house or Mrs. Cropsey leaving? A. It was about the the 22nd of July—Well, it was the day when he came into my office and told me of the conversation he had had that day with Mrs. Thompson.

40

Eva P. Cropsey, direct.

Q. How long after he got the deed? A. Nearly two months, I guess.

Q. I mean, after he got the deed back from Hackensack? A. I don't know; he might not have got the deed in six months, I don't know.

10 Q. Did you tell Dr. Cropsey he would get the deed back on Monday? A. He is entirely mistaken about that.

Redirect examination by Mr. Carey:

Q. You didn't tell him when he could get it back, did you? A. No.

Defendant Rests.

20 EVA P. CROPSEY, being recalled in her own behalf, testified as follows:

Direct examination by Mr. Lane:

Q. Mrs. Cropsey, on the morning of the day you went to Mr. Conkling's office, did you have any conversation with Dr. Cropsey about transferring the property to him? A. Yes.

Q. What was it?

30 The Court: You cannot reopen the case now.

Q. Did you, without any opening by Dr. Cropsey, volunteer to transfer the property to Dr. Cropsey?

The Court: You cannot do that.

Mr. Lane: I will withdraw the question.

Both sides rest.

40

*Exhibits.***Exhibit C1.**

Deed from Frederick William Luttgen, to Eva Pauline Cropsey, dated July 15th, 1901, and recorded in the office of the Clerk of Bergen County, on January 6th, 1902, in book 538 of Deeds, page 239, etc.; for the expressed consideration of \$1,300 and covering the property referred to in the bill of complaint. 10

Exhibit C2.

Deed from Eva Pauline Cropsey and husband, to Cook Conkling, dated May 29th, 1913, and recorded in the office of the Clerk of Bergen County, on June 4th, 1913, in book 849 of Deeds, page 142, for the expressed consideration of \$1.00 and covering the property referred to in the bill of complaint. 20

Exhibit C3.

Deed from Cook Conkling to Charles D. Cropsey and Eva Pauline Cropsey, his wife, dated May 29th, 1913, and recorded in the office of the Clerk of Bergen County, on June 4th, 1913, in book 849, of Deeds, page 144, for the expressed consideration of \$1.00 and covering the property referred to in the bill of complaint. 30

Exhibit C4.

Contract between Eva P. Cropsey, and the Berridge Building Company, for the erection and construction of the house on the property mentioned in the bill of complaint. 40

*Exhibits.***Exhibit C5.**

Exhibit C5 were the pleadings in the divorce and maintenance suit between the parties. It is not necessary to print these pleadings as the conclusions of Vice-Chancellor Backes in the divorce suit, are printed in this record.

10

Argued and decided April 16, 1917.

Exhibit D1.

Bank book of Mrs. Eva P. Cropsey with the Peoples Bank & Trust Company of No. 990, showing account from June 23, 1898 to May 29, 1906.

This book shows a balance to the credit of Mrs. Cropsey, on December 31, 1901, of \$755.51; a withdrawal of \$650 on January 4, 1902, and a withdrawal of \$800 on January 5th, 1905.

20

The account contains other items not pertinent to this case.

Exhibit D2.

Savings Bank book No. 1862, issued by the Peoples Bank & Trust Company of Passaic, New Jersey, showing account of Charles D. Cropsey from October 30, 1897 to May 20, 1905.

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The book shows a withdrawal, on November 13, 1901, of \$100; a withdrawal, on January 4, 1902 of \$600; a withdrawal on March 10, 1905, of \$1,700; a withdrawal on May 20, 1905, of \$300; and a balance on said date of \$1,244.53.

The other items appearing on the book are not pertinent to the case.

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*Exhibits.***Exhibit D4.**

Dear Mr. Conkling:

Please send the deed on to be recorded.

Very truly,

EVA P. CROPSEY.

10

June 3-13.

Rutherford.

Exhibit D5.

Testimony taken in the maintenance suit between Eva P. Cropsey, complainant, and Charles D. Cropsey, defendant.

Testimony of the complainant taken in the above entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the Eleventh day of May, nineteen hundred and sixteen, at 10:30 A. M.

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Before—Hon. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

MERRITT LANE, Esq., for the Complainant.

ROBERT CAREY, Esq., for the Defendant.

EVA P. CROPSEY, the above named complainant, being duly sworn on behalf of the defendant, testifies as follows:

30

Direct examination by Mr. Carey:

Q. Mrs. Cropsey, you had a bank account in the Franklin Savings Bank in Newark, didn't you?

A. It wasn't a savings account.

Q. Well, an account? A. I'll have to explain—

Q. Answer the question, Mrs. Cropsey. A. I don't know how to answer it.

Q. Didn't you draw out of that bank within

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Exhibits.

the last year and a half a considerable sum of money? A. No, sir.

Q. Does your mother have an account there?

A. I don't know.

10 Q. Your mother has no source of income except your support, has she? A. Yes, a little.

Q. Do you know what from? A. Yes.

Q. From what? A. When my father died something like six years ago he left my mother a very small amount of money, life insurance.

Q. Very little? A. Very little.

Q. Not sufficient to establish a bank account? A. I don't know my mother's affairs.

Q. You got an account in the Provident Institution for Savings? A. No.

20 Q. You did have one? A. Yes.

Q. Less than a year ago? A. I don't know the date.

Q. Wasn't there \$2,000.00 in it? A. I couldn't tell you the amount.

Q. Didn't you have \$3,000.00 there? A. I don't know.

By the Court:

30 Q. You will have to tell me, you know. A. I had about \$1,500.00 in the Provident Institution.

Q. And that is all? A. I had that.

Q. Have you got that bank account now? A. No, sir.

Q. What became of that \$1,500.00? A. I have it; some part of it.

Q. Where do you bank it now? A. It is not banked. I have some in the Manasquan Institute for Savings.

40 Q. How much have you got there? A. About \$300.00

Exhibits.

Q. Didn't you take that money out of the Provident Institute for Savings at the time the divorce case was on? A. I probably did.

Q. Didn't you deposit it in your mother's name? A. No, sir.

Q. Didn't you have \$1,700.00 in the Rutherford National Bank about a year ago? A. I can't tell you the amount. 10

Q. Have you got it now? A. No, I have considerable money spent.

Q. When did you draw that money out of that bank? A. Probably a year or a year and a half ago.

Q. Didn't you draw it out in one check? A. Yes.

Q. You didn't spend it all, did you? A. No. 20

Q. Did you keep it in cash all that time? A. Not all of it.

Q. What did you draw it out for at that time? A. I can't tell you. Because I needed the money.

Q. You needed the \$1,700.00? A. Some part of it.

Q. What for? A. For living expenses.

Q. Why didn't you draw out just what you wanted? A. I preferred to draw it all out.

Q. You were getting \$30.00 a week from the doctor at that time? A. Yes, but he didn't give me \$30.00 until he started divorce proceedings, and he had already left me for a number of months before that time. 30

Q. Don't you know that he paid every dollar of every day's expenses for the running of that house and \$10.00 a week besides? A. Up until he started his divorce, and then he deducted his gas and electric and water bill. He deducted 40

Exhibits.

everything he could, but I very seldom received \$30.00 a week.

Q. Don't you know that you received \$30.00 every week? A. No, he deducted water rent.

10 Q. What was the item you had to draw this \$1,700 for? A. I simply drew it out.

Q. It had been there a long while? A. No.

Q. Didn't you at the same time draw out another account from the Bergen County Bank?

A. I don't remember.

Q. Didn't you? A. I don't remember. We had so many bank accounts I had them all mixed up.

Q. You had all the accounts, didn't you? A. No, Dr. Cropsey had some.

20 Q. Don't you know the only account he had was in the People's Bank? A. The account we had in the Bergen Bank was the check account, and our bills were paid from the check account.

Q. Didn't you have a personal account in that bank? A. Some time before.

Q. About one year ago? A. Not in the Bergen Bank.

30 Q. You remember the time you had a little trouble about going to the theatre with Dr. De Baun and coming home late just before the separation?

Mr. Lane: Objected to.

The Court: I don't think that has anything to do with this case.

Q. Do you remember the theatre program that related to the "Sunshine Girl"? A. Yes.

Q. Do you remember making a memorandum on that program? A. Yes.

40 Q. Showing you had in bank on that date a

Exhibits.

little over \$5,000.00 and that the doctor had in in his various accounts \$4,700.00? A. No. Dr. Cropsey made that account; I didn't.

Q. Wasn't it in your handwriting on the back of the program? A. No, my bank books were always open to Dr. Cropsey —

10

Q. How many bank accounts have you got now? A. One.

Q. Where? A. In the Manasquan Savings Bank at Manasquan.

By the Court:

Q. How much have you there? A. Three hundred and seventy some odd dollars.

Q. How much money have you in cash? A. I think I have about \$1,800.00 in cash.

20

Q. Where do you keep that? A. I have that, I keep it.

Q. At home? A. No.

Q. Have you got a safe deposit box? A. Yes.

Q. As a matter of fact, have you not got nearly \$5,000.00 in different accounts? A. No.

Q. Has your mother any bank account to-day? A. Yes, but not in my name.

Q. Where? A. You will have to ask her.

Q. Don't you know? A. No.

30

Q. Don't you take charge of it for her? A. No, sir.

Q. Wasn't it your money that constituted her account? A. No, sir.

Q. Didn't you open an account with your money, with the \$1,700.00 you drew out of the Rutherford Bank? A. No.

Q. Didn't you draw nearly \$2,000.00 at one time from the Provident Savings Institution and turn

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Exhibits.

the money over to your mother's account? A. No, sir, I didn't turn it over to my mother.

Q. Isn't the account in the name of your mother in trust for you? A. Now?

Q. Yes? A. No.

10 Q. Wasn't it recently? A. No.

Q. How long ago was it? A. I should say two years ago or so; I don't know the exact dates.

Q. Why did you take it out of her name? A. Part of the money then at that time belonged to my mother.

Q. How much belonged to you in that account? A. Well, I don't know. More than half was mine.

20 Q. Didn't you, on the ninth day of October, 1913, withdraw from the Rutherford Bank the sum of \$1,653.73? A. I guess I did.

Q. Didn't you deposit that in the Provident Institution for Savings at Jersey City at that very time? A. Probably I did; I won't say positively. I had the money. I won't say yes or no. I had to spend a lot of money.

30 Q. Didn't you have on deposit in December, 1912, in Book 151, Rutherford Trust Company, the sum of \$1,471.00? A. I had money deposited there; I don't know the entire amount. I guess that's right; I had money deposited there.

By the Court:

Q. What have you done with all this money? It seems you only have \$2,200.00 left. What have you done with the difference? A. I have had to spend a great deal of money.

Q. Have you invested any at all? A. No, I have given my brother some of my money.

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Exhibits.

Q. How much? A. I probably have given my brother about \$2,000.00 to keep in trust for me.

Q. He has it, eh? A. Yes, sir.

Q. He has that in trust for you now? A. Yes, sir.

Q. Where? A. I don't know what he has done with it. I gave it to him. 10

Q. He pays you interest? A. No, he hasn't paid me any interest; he probably will.

Q. Where else? A. In the Manasquan Bank.

Q. This \$1,800.00? A. No.

Q. You say you have \$1,800.00 about your person in your house or in this safe deposit box? A. Yes, sir.

Q. And you have \$2,000.00 which your brother owes you? A. Yes, sir. 20

Q. And \$370.00 in the Manasquan Bank? A. Yes, sir.

Q. What else is there? Who else owes you money? A. Nobody.

Q. Have you bought any property personal or real? A. No, sir.

Q. Or any bank stock? A. No, sir, but I have been away for the Summer. I had bills to pay. Dr. Cropsey paid me very little money. I have had my lawyers to pay. I have had incidentals right along. 30

Q. Didn't you invest some money in Mr. Norton's business? A. No, sir.

Cross examination by Mr. Lane:

Q. Your various bank accounts and where you had them all came out before Vice-Chancellor Lewis? A. Yes, sir, Judge Carey had it all then. Dr. Cropsey took my books at that time. What I have is all my money, your Honor, all my money what I have earned all my life. 40

Exhibits.

Q. The moneys that you did have at the time Dr. Cropsey left you and that you have now, were they moneys given to you by Dr. Cropsey or moneys of your own?

10 The Court: Does that make any difference?

Mr. Carey: May I ask in regard to her health?

The Court: No, sir.

Exhibit D6.

Receipt dated November 21, 1907, for \$3,500 on mortgage.

Exhibit D6½.

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Check as follows:

RUTHERFORD NATIONAL BANK

Rutherford, N. J. Nov. 21, 1907.

Pay to the Order of Franklyn Saving Institution, Newark, N. J. \$700.00/100
 Seven hundredDollars
 C. D. CROPSEY.

30 No.....
 (Endorsed):

Pay to the Order of Union National Bank, Newark, N. J., Franklin Sav's Institution. Rutherford Branch Peoples Bank & Trust Co. of Passaic, N. J. Pay any Bank or Trust Company or order Nov. 21, 1907, with full recourse to Union National Bank, Newark, N. J. A. W. Conklin, Cashier. To the Order of Bank, Banker or Trust Company, Passaic, N. J.

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*Exhibits.***Exhibit D7.**

Bank book issued by Peoples Bank and Trust Company of Passaic, New Jersey, in the joint names of Charles D. Cropsey and Eva P. Cropsey.

Shows deposits and total of vouchers drawn on the account during the period from April 10, 1902, to April 25, 1907, when a balance of \$371 appears.

The account shows a continuance deposit, during the months covered by the accounts. The book shows a balancing at short intervals and the highest balance shown at any time was \$238. It was an active check account.

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Exhibit D7½.

Bank book of Charles D. Cropsey, showing check account in the Rutherford National Bank of July 30, 1904, to April 18, 1908.

Account closed out September 15, 1909.

This account shows a deposit of \$800, on January 5, 1905, and a deposit of \$17, on March 10, 1905; a deposit, on May 20, 1905 of \$300; on May 25, 1905, of \$300; on July 13, 1905, of \$500, and deposits of varied sums of small amounts at frequent irregular periods.

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30

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*Exhibits.***Exhibit D8.**TRANSCRIPT FRANKLIN TRUST COMPANY
ACCOUNT.

		#17499 Eva P. Cropsey	
	Date.	Drafts.	Deposits.
10	Aug. 9, 1905		\$4,950
	Aug. 12, "	1,000	
	Sept. 12, "	200	
	Oct. 30, "	9	
	Nov. 1905 Int.		19.54
	Nov. 11, 1905	200	
	Nov. 15, "	24	
	Nov. 22, "	3,000	
20	Nov. 22, "	103.50	
	Nov. 24, "		3,000
	Nov. 29, "	1,305.60	
	Dec. 5, "	17	
	Dec. 12, "	24	
	Dec. 20, "	150	
	Jan. 6, 1906	30	
	Jan. 11, "	72.90	
	Jan. 11, "	62.75	
	Feb. 26, "	166	
30	May, 1906, Int.		23.36
	May 2, 1906	50	
	July 14, "	141.85	
	Aug. 4, "	125	
	Sept. 26, "	150	
	Nov. 1906, Int.		19.90
	Dec. 17, 1906	95.27	
	May, 1907, Int.		18.78

Exhibits.

Sept. 5, 1907	118.70	
Sept. 9, "	131.35	
Nov. 1907, Int.		14.94
Nov. 21, 1907	851.50	
	<hr/>	
	\$8,028.42	\$8,046.52
	<hr/>	

10

	Bal.	\$18.10
Total Deps.	\$7,950	
Total Int.	96.52	
	<hr/>	
	\$8,046.52	
Total Drafts	8,028.42	
	<hr/>	
Balance	\$18.10	

20

Exhibit D9.

Transcript of account of Charles D. Cropsey with the Rutherford National Bank from Aug. 29, 1904, to April 18, 1908, when the account was closed.

This account shows total deposits of \$6,791.53 and withdrawals in the same sum.

Particular deposits appear as follows:

January 5, 1905	\$800	30
March 10, 1905	1,700	
March 20, 1905	300	
May 25, 1905	300	
July 13, 1905	500	

And shows these particular withdrawals:

January 10, 1905	\$800	
March 13, 1905	1,700	
May 20, 1905	300	
May 26, 1905	250	40

Exhibits.

July	14, 1905	575
Nov.	22, 1906	700
April	20, 1906	687

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Exhibit D10.

Complete transcript of the account of Charles D. Cropsey, in the Bergen County Bank, commencing January 18, 1912, and up to October 31, 1914.

20

This account shows deposits on numerous days in each month during said period, and check withdrawals, showing an active use of the account. Total deposits of \$15,614.25 and total withdrawals of \$14,834.01. The largest check drawn against this account was one for \$550 on November 22, 1913. There was a deposit, on November 22, 1913, of \$1,000.

Exhibit D11.

30

Transcript of account of "Dr. Charles D. or Eva P. Cropsey," in the Bergen County Bank, commencing December 23, 1909 and ending January 9, 1912, at which time the account was closed by withdrawal of \$1.83.

This account shows deposits on numerous days in each month during said period and withdrawals, showing an active use of the account. The total deposits and total withdrawals amount to \$8,586.46. Account similar in character to account referred to in Exhibit D10.

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*Exhibits.***Exhibit D11½.**

Transcript of account of Charles D. Cropsey with Bergen County Bank as follows (written in red ink—Special):

Date	Checks	
Jul. 16/10	1,200.00	10
19	1,200.00	
Aug. 17	200.00	
Oct. 21	1,881.70	
	4,481.70*	
Jun. 30/14 Bal.	253.15	
	4,734.85*	

Date	Deposits	
Jul. 14/10	1,200.00	20
16	1,200.00	
20	1,200.00	
Aug. 18	100.00	
Sep. 13	100.00	
Oct. 19	900.00	
Dec. 31 Int.	4.36	
Jun. 30/11 "	4.44	
Dec. 30 "	4.54	
Jun. 29/12 "	4.58	
Dec. 31 "	4.72	30
Jun. 30/13 "	4.80	
Dec. 31 "	5.90	
Jun. 30/14 "	1.51	
	4,734.85*	

*Exhibits.***Exhibit D12.**

Bank book of Charles D. Cropsey with the Peoples Bank & Trust Company, of Passaic, covering the period from May 22, 1905 to July 30, 1910, when the account was closed.

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This book is a continuation of the account covered by Exhibit D2 and carries over balance of \$1,244.53 stated in Exhibit D2.

It shows numerous deposits; the largest of which was \$466, and shows withdrawals—among them the following items:

	May 25, 1905	\$300.
	July 13, 1905	500.
	July 13, 1905	100.
20	Nov. 21, 1907	1,000.
	April 22, 1909	750.
	Dec. 18, 1909	600.
	July 9, 1910	1,410.26
	July 30, 1910	3,056.59

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Conclusions.

IN CHANCERY OF NEW JERSEY.

The Court (after argument): The bill is filed by Mrs. Cropsey against her husband, Dr. Cropsey, to set aside conveyances of their home in Rutherford; one made by Mrs. Cropsey and her husband to Cook Conkling, and the other by Conkling to Mr. and Mrs. Cropsey, dated May 29, 1913. The cause for action is fraud imposed by the husband upon the wife, namely; that he coerced her into signing the deed by threats of abandonment, and induced her to execute it upon the fraudulent promise that he would cease attentions to another woman, mend his ways in other respects and resume conjugal relations, all of which it is charged he failed to do.

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The burden of establishing the fraud is upon the complainant, although in actions of a certain class, by a wife against her husband, to set aside a conveyance of her property, a presumption of fraud arises, which the husband must overcome. For instance, if this deed were a pure gift by the wife to the husband of her property, the burden would be upon the husband to show that it was her voluntary act, and I incline that he would also be obliged to show that she had the benefit of independent advice, or at least, as the books lay it down, the burden would be upon him to prove that he did not deceive or oppress her and that he dealt fairly with her and that she understood the nature of the transaction. But this is not a gift case to which the rule applies, as I understand it. Here the husband got from his wife that which in fact belonged to him.

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Conclusions.

10 This couple was married, as I recall, in 1892, and for many years, during the struggling period, got along happily. Both worked and saved money together; he as a physician and she as a singer and music-teacher. She was the treasurer; they had but one pocket-book, and this she controlled. She managed the finance and ran his books and bank accounts. With the accumulations they bought a lot and put the title in her name and out of their savings they built their home in 1905, costing some six or seven thousand dollars; and later they paid off some of the mortgage encumbrance. The greater portion of the money came from the doctor's practice. Somewhere in the evidence it appears that 20 the object of putting the title in Mrs. Cropsey was to protect it from the consequences of possible lawsuit against the doctor. Later in life and some six or seven years ago, their relations became somewhat strained, largely due, as I take it, to his persistent demands and her refusal to transfer the home to the name of the two. The ill-feeling gradually increased and they drifted further apart, and when Dr. DeBaun came into her life it reached an acute stage, which resulted in complete estrangement. After he came on 30 the scene she was not as constant in wifely deportment, to put it mildly, as she ought to have been. For two years Dr. DeBaun's attentions to Mrs. Cropsey were marked, which served to intensify the bitterness upon the part of her husband, whose close and intimate friend Dr. DeBaun had been for many years. He was a free visitor at the house, calling almost daily, day and night, whether the doctor was home or absent, and their conduct and escapades finally led 40

Conclusions.

to the divorce courts, Dr. Cropsey charging his wife with adultery with Dr. DeBaun, in which she counter-charged him with a like offence with two women whom she named. I tried that case, and dismissed the cross-petition because the charges were entirely unfounded, and also dismissed the doctor's petition. I denied him a decree, not that there was not an abundance of evidence calculated to arouse a strong suspicion of wrongdoing, but solely because the proof did not measure up to the legal requirements to justify judging her guilty. The final separation took place in July or August of 1913, after a Mrs. Thompson disclosed to Dr. Cropsey the misbehavior of his wife and Dr. DeBaun at her home the Summer before, and the impending scandal and exposure of a threatened divorce suit was followed shortly by the death of Dr. DeBaun by suicide, as I understand. I do not know that, in drawing upon my memory, I am referring to the testimony in this case or the testimony in the divorce suit—I am unable to distinguish just now—but it does appear in the one or the other, and if it does not appear in the one I am trying it must be disregarded.

As a rule, where a husband transfers his property to his wife or causes it to be transferred to her, it is presumed to be a gift, but this is a mere presumption and, like all other presumptions, may be rebutted. Looking into the circumstances of this case—the singleness of purpose of husband and wife earning and saving in common to buy a home; his daily earnings and income contributing largely to the fund—the lifetime savings of the two, and the complete understanding that the home was to be the property of both, though

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Conclusions.

10 title was put in the wife, and that upon the death of either it was to go to the survivor—we find there was in morals and common justice, at least, a most sacred trust; perhaps unenforceable because of the presumption of gift and the rule requiring resulting trusts to be definitely estab-

20 The doctor had been insisting upon this deed for years, because, as he says, they had no children, and if his wife should die first his rights would be lost; and indeed it appears from Mrs. Cropsey's testimony that to guard against such an event she had made a will in his favor. As between himself and his wife, things were going from bad to worse. Discord reigned supreme in the household. Dr. DeBaun's attentions and presence in the house had become so objectionable to Dr. Cropsey that he ordered him to stay away, but despite this Mrs. Cropsey entertained him. The night before the day the deed was executed DeBaun was a caller. This succeeded an occasion by two or three days when Dr. Cropsey found his wife and DeBaun in darkness in the house, and according to his story under most peculiar and suspicious circumstances. As I recall his testimony, her hair was disarranged, her face flushed— On the night in question, DeBaun and Mrs. Cropsey returned home about one o'clock in the morning; the doctor says they had been drinking and that they drank after they returned, and that he saw them from upstairs caressing and kissing. True, or not, he accused

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Conclusions.

them of it and put DeBaun out, with orders to stay away, which were promptly disregarded by DeBaun's return the next evening or the evening after—to apologize, it is said. The anger of the doctor and the scene that night must have impressed Mrs. Cropsey that the climax, the point of separation, was near; and just how it came about that at this time Mrs. Cropsey yielded to her husband's longing for his share of the property, the stories of the two differ. He says that the next morning at the breakfast table she made the offer; while, on the contrary, she says that he threatened to leave her and fearful that he would and relying upon his promise to give up a named woman and that he would become fully reconciled, she agreed. At any rate, after breakfast they went to Mr. Conkling's office, a reputable lawyer in Rutherford, and detailed to him what was wanted and after a full explanation of the effect and consequences, they were told to return at two o'clock when the deed would be ready and when it was signed and acknowledged before a Mr. Miller, a Master of this Court, and left with Mr. Conkling for recording. In the meantime, Dr. Cropsey returned to his house to fetch the title-deeds for the draft. Later in the day, Mrs. Cropsey telephoned to the lawyer to withhold the deed from record, but on the following Monday she retracted by a note directing that it be recorded. I cannot credit Mrs. Cropsey's story that she signed the deed under pressure of her husband's threat to abandon her, and that she signed it against her will, and that she told the lawyer—Conkling—that what she was about to do was against her will and that the deed was not of her own free will, but was done

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Conclusions.

to please the doctor. I doubt very much that Mr. Conkling, under such circumstances, would have consented to act as the conduit, and I am satisfied that he fully explained to her the consequences and that she acted understandingly and willingly. If there had been any connivance between him and Dr. Cropsey, he certainly would not, later on in the afternoon, when Mrs. Cropsey telephoned to him, have kept the deed from the record. I doubt not that Dr. Cropsey many times upbraided his wife because of her conduct and threatened to leave home—and he couldn't be blamed if he had—but I have no confidence in her story that she was moved to sign the deed by his promise of future continence. Such threats, if we may believe her, had often been made before and with the same design, and she always strenuously resisted and therefore why capitulate at this time? As I review the situation, Mrs. Cropsey sensed her husband's suspicion of her misconduct with Dr. De-Baun. His discovery of a few nights before had brought on a crisis and to appease him, to avoid an open break, to maintain her status publicly as his wife, she relinquished. This was her gain. She was impelled by motives of self-preservation, conscious that she was simply restoring to him his own and discharging the trust he put in her years before when love and affection and confidence ruled. Her attempted repudiation of the deed in the afternoon, shows no more than that she regretted the step she had taken and does not argue that her action earlier in the day was unwilling; for, as I have said, Mrs. Cropsey's jealousy of the other woman was without foundation in fact, and her whim a mere subterfuge. That her action was deliberately considered and

Conclusions.

freely consummated, without haste or urgency on the part of her husband, is borne out by the fact that they first consulted counsel without taking with them their title deeds, which ordinarily would not have been the case had her conduct been precipitate and coerced; and, having placed her in dire fear and deluded her by false promises, as she says was the case, we would naturally expect he would supply himself with the means for a hurried accomplishment. 10

The complainant has not made out her case, and the bill will be dismissed.

P. S. In the early stages of the trial it became evident that the testimony, or some of it, given in the divorce suit, would be pertinent and I called counsel's attention to the difficulty I would naturally experience in discriminating between the evidence offered in the two cases, and it was agreed by counsel that to save time and expense and embarrassment, I was to consider whatever evidence in the divorce case had a bearing. An appeal has been taken which requires printing of the voluminous record in the divorce suit, much of which is irrelevant here, and all of which is most miserably transcribed—the regular court reporter was absent through illness. Counsel for the appellant informs me that the expense of printing would be prohibitive, and I have suggested that my findings in the divorce case be substituted, as no appeal was taken in that case. 20 30

**Conclusions in Divorce Case Printed in
Accordance With Direction of Vice-
Chancellor and by Agreement.**

IN CHANCERY OF NEW JERSEY.

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Between

CHARLES D. CROPSEY,
Petitioner,

and

EVA P. CROPSEY,
Defendant.

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For the Petitioner: MERRITT LANE, ESQ.

For the Defendant: ROBERT CAREY, ESQ.

Backes, V. C. (after the argument).

This case is before the court on cross-petition for divorce *a vinculo*.

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The petitioner and defendant were married March 13, 1892, and for many years up until July 22, 1913, when the final separation took place, lived together at Rutherford, New Jersey. On March 3rd following, Dr. Cropsey filed this petition against his wife, in which he charged her with having committed adultery with Dr. Edwin De Baun, upon numerous occasions and at divers places, viz.: at Culvers Lake, July 26th and 27th, 1912; at Elizabeth, July 28th; at Rutherford, August 27th; in New York, May 15th, 1913; at Rutherford May 25th, etc. The defendant specifically denies each of the charges and by her cross-petition charges her husband with wilful, continued and obstinate desertion for a period of

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Conclusions.

supplemental cross-petition filed nine months later, she accused the petitioner with having committed adultery with Annie Hager and with Nellie Zimmerman. The alleged adulterous acts with Mrs. Hager are charged to have been committed during each of the months of the years 1904 to 1914 inclusive, except December of the latter year, each day of that month being included to the eighteenth. The charge of adultery with Mrs. Zimmerman was laid on the first and every day of the month of August, 1914. The co-respondents to the cross-petition intervened. There is not a particle of testimony in the case which in anywise resembles proof that the offences were committed with these two women. The proof is that Dr. Cropsey's automobile was seen standing frequently in front of the Hager house. Mrs. Hager was his patient and he went there professionally and some times socially to see Mr. and Mrs. Hager. There is not a scintilla of evidence of immoral relations with Mrs. Hager, and it seems to me her name was gratuitously introduced in this case for an ulterior purpose, for the evidence shows that at the time the defendant filed her answer and cross-petition she was as fully informed of all she could bring to bear in that respect as she was when she coupled Mrs. Hager's name, and she made no charge. The inclusion of Mrs. Zimmerman was as unjust. After Mr. and Mrs. Cropsey separated, they occupied separate parts of the house in which they lived— Dr. Cropsey the rear portion, in which he had his office. On the day in question, Mrs. Zimmerman went to Dr. Cropsey's office, and while there Mrs. Crop-

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Conclusions.

sey says she saw her and the Doctor in a compromising position. Both denied having committed the offence, and that the charge was made without the slightest justification is borne out by Mrs. Cropsey's conduct at the time of the occurrence. She claims to have seen through a window of the Doctor's office, conduct, which if true, would undoubtedly prove guilt, and in her outcry accused not Mrs. Zimmerman but Ada Maxwell, who was in the office at the time and who was the doctor's secretary. Her outcry was "Oh, Ada Maxwell, I have caught you now." This thing happened after the Doctor had left Mrs. Cropsey and she probably was disturbed and hysterical. Later, when Mrs. Zimmerman heard that Mrs. Cropsey had linked her name with the affair, she called for an explanation, which apparently only increased Mrs. Cropsey's tendency to change the accusation from Miss Maxwell to Mrs. Zimmerman. Upon the evidence, as presented, both women are guiltless of the charge of adultery, and the supplemental cross-petition will be dismissed.

The testimony to prove that Mrs. Cropsey committed adultery with Dr. De Baun is focused principally upon the charge made under the date of July 26th and 27th, 1912. But, before examining and disposing of that, it will not be amiss to speak of earlier domestic troubles. The Doctor at frequent intervals had accused his wife of undue intimacy with men, of the truth of which there is, of course, in this case no evidence. He was almost constant in his suspicion of her conduct, due doubtless to his knowledge of her weakness, the fruits of his own antenuptial indiscretions. She was of a vivacious tem-

Conclusions.

perament, and fond of society, both men and women, and when she indulged in frivolous conduct—for she appears, to have liked a good time whenever she got a chance, either with her husband or away from him—he viewed her actions in a light entirely different from that in which she regarded them. What she looked upon as innocent amusement, he often viewed with great suspicion, resulting in charges of immorality. The petitioner devoted himself to his profession, to the neglect of his wife. Had he given her more attention, a little more time to her entertainment and less to his work, it is possible and even likely that the present unfortunate climax would not have come to pass. He did not treat her with the consideration that tends to hold a wife. It is not meant that he cast her at other men, but in her search for amusement in their company he certainly was tolerant and passive, especially after Dr. De Baun became a visitor at the house in the fall of 1911. After that time, a greater intimacy sprang up between Dr. De Baun and Mrs. Cropsey. He called at the house often, at daytime and at night, whether the Doctor was there or not. He was there at the Doctor's invitation, and sometimes at Mrs. Cropsey's. He often stayed to meals. Oftentimes the two doctors and Mrs. Cropsey would go to card parties. More often, Dr. De Baun would alone accompany Mrs. Cropsey, by the acquiescence, if not at the solicitation, of Dr. Cropsey. Dr. Cropsey seemed trustful and apparently perfectly satisfied. His likings were not for these social affairs, which apparently were all innocent enough in their way. There was always some

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Conclusions.

10 drinking, and sometimes perhaps too much, particularly by Dr. De Baun, who often indulged freely to the point of intoxication. These parties were also held at the Cropsey house, sometimes when he was there, but always with Dr. De Baun present.

20 Enough has been said to give the atmosphere, and we come now to consider whether the testimony shows that Mrs. Cropsey committed adultery with Dr. De Baun at Culvers Lake and at Elizabeth, or at either place, on July 26th and 27th, 1912. Dr. and Mrs. Cropsey were invited by Mr. and Mrs. Thompson, who had a summer home at Culvers Lake, to spend the weekend, and it is said that at Mrs. Cropsey's solicitation Dr. De Baun was also invited. Dr. Cropsey knew all the arrangements. Something happened on the morning of the day they were to start, Friday. He says he refused to go and forbade his wife going; while, on the other hand she testifies that he promised to come up later on in the day with Mr. Thompson, if he could, and told her to go on ahead with Dr. De Baun. If he protested, it was very faint—almost an assent. Mrs. Cropsey does not seem to be the head-strong, violent tempered and determined woman that counsel paints her. I think she had sufficient regard for her marriage promise to have obeyed her husband if he had said, "Don't go, and do not go with Dr. De Baun, for I cannot go." It would have been an easy matter to have stopped them, to have told Dr. De Baun of his unwillingness when Dr. De Baun called for Mrs. Cropsey to take her away in his auto-

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Conclusions.

mobile. On their way to Culvers Lake, Dr. De Baun and Mrs. Cropsey stopped at wayside inns, where Dr. De Baun drank, but it does not appear that Mrs. Cropsey did. They arrived in due time at the Thompson's home, where they found Mr. Thompson but not Dr. Cropsey. They were assigned to their rooms on the second floor, opposite each other, across a narrow hallway. The hallway, at the point of the doors, could be seen from the first floor. Mrs. Thompson testifies that shortly afterwards she saw Mrs. Cropsey in De Baun's room, De Baun hooking or unhooking her dress. That incident in itself means little, considering their familiarity. They all sat up very late that night, and there was considerable drinking of intoxicants. After Dr. De Baun and Mrs. Cropsey had retired and Mrs. Thompson had gone to her room which adjoined Mrs. Cropsey's, Mrs. Thompson returned downstairs on an errand, and as she was about returning she says she saw Mrs. Cropsey, with her hair down, cross into Dr. De Baun's room, where she remained some twenty minutes, and while in there she heard noises as if the couple were on the bed having sexual intercourse. From the bottom of the stairs, where it was light, she says she saw Mrs. Cropsey return to her room, after which she opened Mrs. Cropsey's door and made some inquiry as to her welfare and retired. If this witness' story is proved satisfactorily, it is of such circumstances from which guilt must be inevitably inferred. The charge is the most serious that can be made against either spouse, and the consequence is much more so when made against the wife. In arriving

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Conclusions.

at a verdict on an indictment of this kind, so momentous in the life of the alleged offender, it is not our privilege to speculate or conjecture. We must have proof which convinces the mind that the offence has been committed, before we can convict. Adultery, as has often been said, is a secret offence committed where discovery is least likely. No matter how low humans fall, there is some modesty left, and also of detection, and it cannot be said from the evidence in this case that Mrs. Cropsey was an immodest woman. Testimony, to be believed, must have probability. It is not alone what the witnesses say, assuming them to be honest; the more important thing sometimes, in the quest for the truth, is whether what they say appeals to you as likely to have occurred under the circumstances, as they describe them. Now, the house in which the Thompsons lived was a mere shack, a bungalow, where everything, even the slightest noises, could be heard throughout. The walls were unplastered and the second story was only seven or eight steps above the first. The rooms were small and creaking beds could be heard, as Mrs. Thompson said she heard. Now is it probable or likely that these two people, who had every opportunity upon many other occasions to indulge their passions, with little chance of discovery, would in the Thompson home, friends of Dr. Cropsey's, with Mrs. Thompson supposedly in her room with her son and Mr. Thompson downstairs, on a creaking bed advertise their infamy and invite discovery? The story is denied by Mrs. Cropsey, and her evidence is entitled to some consideration and

Conclusions.

weight. The earlier books say that the mere denial of the offence by the defendant and correspondent is entitled to little or no weight. This must mean when they are found in *flagrante delicto*, or when the presumption of guilt arises from the proved circumstances, but in the explanation or denial of the circumstances, their evidence, other things being equal, allowing of course for their interests, is entitled to the same credit as that of any other witness. There are a number of things which cause me to hesitate to accept Mrs. Thompson's testimony. Her husband is not called as a witness. Mr. Thompson's bed-room was downstairs, and he was in his room at the time of this supposed occurrence, and she says she told him what she had heard and had seen, and his evidence would have gone very far in substantiating his wife's story. He was on hand in this court-room during the first two days of the trial, so counsel informed me, and he was not called. It was said that he had to go away on business, but a subpoena would have detained this very important witness. His absence reflects very seriously upon the integrity of Mrs. Thompson's story. If Mrs. Thompson believed her own story, believed that she had seen the infamous conduct on the part of her guest dishonoring her home, would she have entertained these adulterers the next morning at breakfast? Would she have permitted Mrs. Cropsey to associate with her husband? Would she have entertained them later in the day by taking them automobile riding and to dinner? Would she, at a later period, have entertained Dr. and Mrs. Cropsey? All of these things she did, and

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Conclusions.

her explanation is that she did not want to get into this trouble. Women are not so forbearing; they are not constituted that way, at least good women are not. Prostitutes might submit to prostitution by others in their presence, but surely a good woman would not tolerate such conduct, and in her own home to, without violent protest. Furthermore, Mrs. Thompson says that she told her husband all that she had seen during or immediately after the happening, and yet he entertained Dr. De Baun and Mrs. Cropsey the next day, as his wife did. Now, it would seem to me that if her story were true, she and her husband would have felt so outraged as to have driven the two criminals out of the house, bag and baggage, the night of the discovery, or surely if not that night, the next morning. Mrs. Thompson made no mention of the occurrence to Dr. Cropsey until a year afterwards and when he had separated from his wife. I am not satisfied from Mrs. Thompson's testimony that adultery was committed at the Thompson home. The improbability is so great, and the flight of the lone witness who could, if her story were true, support it, is so significant, that I am led to reject the testimony as insufficient to condemn the defendant as an adulteress.

The second charge of adultery involves Mrs. Cropsey and Dr. De Baun's conduct on their way home the following night. They started to return in the afternoon. Mrs. Cropsey said the visit was cut short because Dr. Cropsey did not come up, while Mrs. Thompson says she had made things unpleasant. However this was, Mrs. Thompson was ready to make things pleas-

Conclusions.

ant for Mrs. Cropsey later on, and in her attitude on the witness stand she leaned favorably towards Dr. Cropsey. At any rate, they started early in the afternoon, and did not arrive home until about eight o'clock the next morning. About midnight they telephoned from a garage in Madison to Dr. Cropsey's home that they had tire trouble, and there they waited, Mrs. Cropsey says, expecting Dr. Cropsey to come for them. About one-thirty Sunday morning, the machine stopped in front of the Berkeley Hotel in Elizabeth, which Dr. DeBaun entered. He registered his own name only, and said to the clerk that his wife was out in the machine; that he would not register her, but that he would pay for her. The clerk says that he saw a woman in the machine, but could not identify Mrs. Cropsey. DeBaun was refused at the hotel, and the clerk says the next morning he saw him and the woman pass the place in the automobile, coming from the direction of Rahway, going towards Newark. On their arrival home, they offered the explanation that the machine broke down and that one slept on the running board and the other in the car. That is what Dr. Cropsey says the explanation was. On the other hand, Mrs. Cropsey says that she told her husband substantially all that occurred, and this is what she said happened. On the way back Dr. DeBaun made so many stops at hotels for liquor, that he got drunk and lost his way; that they strayed on strange roads and kept groping their way, until the doctor got so drunk they had to stop on the road over night, and that there they slept practically on the running board. She says that when the doctor entered the numerous ho-

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Conclusions.

tels, she always remained in the automobile, which was the same experience she had at the hotel in Elizabeth. She also says that after they got home in the morning, Dr. Cropsey accepted the explanation, and the three sat down to breakfast together. The whole thing is most peculiar and suspicious, especially the episode at the Elizabeth hotel, which indicates a criminal inclination on the part of Dr. DeBaun, at least, of which Mrs. Cropsey may have been entirely ignorant and of which she says she was, and which is believable, when we consider that DeBaun had stopped and gone into other hotels for drink, leaving her outside. I cannot conclude from the fact that they were out all night in the automobile, that adultery was committed, in the face of Mrs. Cropsey's specific denial and her explanation of the circumstances that kept them out. That Dr. DeBaun was an inebriate, is conceded, and that he got drunk and was very drunk that night, I have no doubt, and that in his drunken condition got astray, is quite natural. That Mrs. Cropsey was not able to say where on the roadside she spent the night, is not remarkable, considering that she did not know the roads in the neighborhood. It was a strange and embarrassing situation in which she found herself, hard to explain to her husband and even more difficult to satisfy a court, but as between the inference of innocence or guilt I must adhere to the former. One thing that stands out and combats the probability of adultery having been committed, is that when they got as far as Madison they telephoned home to say where they were. If they had been on adultery bent, would they have informed Dr. Cropsey that they were

Conclusions.

at Madison? That, and an all night's absence, which would arouse grave suspicion and require satisfactory explanation at home, for Dr. Cropsey surely would have known when they had left Thompson's, indicates to my mind that the happenings of that night were accidental and unforeseen. I am not convinced from the testimony that crime was committed.

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Now, let us take up the other conduct. The next occurrence was on August 27, 1912. Dr. Cropsey met with an accident and was taken to a hospital in Newark. That night Dr. DeBaun stayed at the Cropsey house. No one else was in the house, except Mrs. Cropsey and a servant. The servant said that DeBaun slept in the spare room. DeBaun looked after Dr. Cropsey's practice, or some part of it, while he was ill. No secret was made of it that he stayed at the house. Mrs. Cropsey informed her husband of it the next morning. I do not attach much importance to this incident.

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On May 25, 1913, Dr. Cropsey returned to his home about nine-thirty. He found the front of the house lighted; the office part was dark. He attempted to switch on the electric current, but found it was cut off at the fixture. Five or six minutes afterwards Mrs. Cropsey and DeBaun came out of the operating-room, which had been in darkness. The doctor says she was flushed and her hair was disheveled, and that she was excited. She explained to him that DeBaun had been treating, or was going to treat her neck with the electric vibrator, and that the lights, by reason of the mechanical construction, could not be adjusted so as to have illumination at the same time. I do not see how from this, though

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Conclusions.

10 apparently unseemly, conduct, guilt can be inferred. Mrs. Cropsey knew that Dr. Cropsey was to come in almost any minute, for she had telephoned him to return home to look after a patient; and further, immediately after Dr. Cropsey returned he left the two together to make his call, and as I recall, without remonstrance or objection.

20 Two nights afterward, on the twenty-seventh, Mrs. Cropsey and Dr. DeBaun returned home about eleven o'clock at night. Dr. DeBaun was very drunk. They had been, I believe, to one of the card parties. Dr. Cropsey was upstairs, and he testifies that Mrs. Cropsey came up, looked in her room, and then called to DeBaun, "O-hoo, nothing doing"; that she went downstairs, where she and DeBaun had three drinks; that she called the Cropsey's chauffer to crank DeBaun's car when he was ready to go; that they kissed each other, and Mrs. Cropsey tried to persuade DeBaun to stay, because of his drunken condition; that he, Cropsey, then went downstairs, where he upbraided the two and put DeBaun out, with orders to stay away. This is met by Mrs. Cropsey's detailed denial, and especially the kissing feature. She admits that DeBaun was there, and drunk. Of course, it is not insisted that adultery was committed on that night.

30 DeBaun paid no heed to Dr. Cropsey's admonition, but returned the following Saturday and was playing cards when Dr. Cropsey entered. He offered his apologies for his condition the Tuesday before, which Dr. Cropsey rejected and ordered DeBaun out, and commanded him to stay away. The breach in the very friendly relation between the two doctors was due chiefly to

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Conclusions.

DeBaun's drinking habits earlier in the year. He had forbade his wife and DeBaun drinking in the house. DeBaun had promised, and his many lapses incensed Dr. Cropsey. After this breach the relation between DeBaun and Mrs. Cropsey continued as before. He came to the house as he had been doing, despite Dr. Cropsey's objection. 10

There was some other testimony put in the case. For instance, one Johnson says that he saw Mrs. Cropsey kiss a man at the Erie tube when they parted, both taking the same train, Mrs. Cropsey getting off at Rutherford and the man at Passaic. I have very grave doubts whether this witness saw all that he said he did. Mrs. Cropsey denies the occurrence, and it seems to me to be rather an unusual and bold thing for a woman to kiss a man in a public station, with a crowd of people around who were likely to know her and where detection was sure. 20

Landstrum, the Cropsey's chauffer, says that he saw Mrs. Cropsey sitting on DeBaun's lap, in the dining-room. He says the window shades were up and the electric lights were burning brightly. The circumstances as given are meagre. Whether others were about does not appear, nor are the surrounding circumstances disclosed. The fact is denied by Mrs. Cropsey. 30

On the whole case I am not satisfied that Mrs. Cropsey was guilty of adultery, and the prayer of the petition will be denied.

Now, as to the main cross petition for divorce, which charges the petitioner with desertion. The testimony is that Dr. Cropsey ceased sexual intercourse on the second of January, 1912, although he slept with his wife continually until 40

Conclusions.

May 25, 1913, the night of the vibrator incident. Such withdrawal of marital rights, if wilful, continued and obstinate, for a period of two years next preceding the filing of the main petition, would entitle the defendant under the Raymond and Rector cases, to a decree. The fact is sworn to by the defendant and admitted by the petitioner. I doubt very much that the admission is sufficient corroboration under our rules requiring every material fact to be corroborated. I am quite sure it is not, but I pass that to dispose of the matter on another ground. It is not established that the desertion was obstinate during the entire two years preceding March 3, 1914. On January 2, 1912, Mrs. Cropsey falsely accused him of having syphilis, whereupon the doctor refused sexual intercourse, although for sixteen months afterwards he slept in the same bed with her. They had had sexual relations, and he had prescribed a creolin douche to prevent conception, as he says. Mrs. Cropsey's version is that he had told her that he had contracted the disease, and for that reason had given her the douche, but I am inclined to think that the doctor's story is the true one—that she charged him with having this vile disorder and without the least foundation for it—because why should he become angry at her because of the accusation if, as she says, he himself told her he was infected? She never withdrew the charge, although she was well aware it was not true. She had opportunity galore during the sixteen months they occupied the same bed to remove the obstacle, but she was as determined as he was not to be reconciled in this respect. It seems to me that almost any night

Conclusions.

after they had retired she could have had marital intercourse, if she had retracted and made the slightest suggestions or overtures of a desire to be reunited, especially during the first few months and before the more critical stage was reached. The element of obstinacy is not made out, at least not for the full two years. During the earlier period, when reconciliation in this respect was easier, the situation which was brought about by Mrs. Cropsey and which she could have corrected, was entirely to her satisfaction. Her failure to enjoy her marital rights was as she willed, and not against her will.

The cross petition will also be dismissed.

Final Decree.

This cause coming on to be heard at Chancery Chambers in Jersey City, in the presence of Harry Lane, of counsel with the complainant, and Robert Carey of counsel with the defendant, and the pleadings and proofs having been considered, and the arguments of counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by her in the bill of complaint.

It is, on this 18th day of April, A. D. nineteen hundred and seventeen, by Edwin Robert Walker, Chancellor of the State of New Jersey,

Ordered, adjudged and decreed that the complainant's bill be and the same hereby is dismissed but without costs.

E. R. WALKER, C.

Respectfully advised,

John H. Backes, V. C.

Notice of Appeal.

(Filed May 17, 1917.)

To Robert Carey, Esq.,
Solicitor for Charles D. Cropsey, Defendant.

Sir:

10 Eva P. Cropsey, the complainant in the above
entitled cause, hereby appeals from the final de-
cree made herein, by his Honor, the Chancellor,
on the 18th day of April, A. D. 1917, and from
each and every part of such final decree, to the
New Jersey Court of Errors and Appeals, in the
last resort for all causes.

Dated May 16th, 1917.

20 ZIEGENER & LANE,
Solicitors for Eva P. Cropsey, Complainant.
Harry Lane,
Of Counsel.

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

HARRY LANE,
Of Counsel with Eva P. Cropsey, Complainant.

(Copy duly served.)

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Petition of Appeal.

(Filed May 29, 1917.)

To the Honorable Court of Errors and Appeals
of New Jersey:

The petition of Eva P. Cropsey, the appellant
in the above entitled cause respectfully shows 10
that your petitioner finds herself aggrieved by the
final decree made in the Court of Chancery, by
his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey, on the 18th day of
April, A. D. 1917, wherein the parties were as
set forth in the foregoing title in this respect, to
wit:

That said decree adjudged and decreed that
the complainant is not entitled to the relief 20
sought and prayed for by her in the bill of com-
plaint, and that her bill be, and the same is
hereby dismissed.

And your petitioner humbly appeals from the
said decree, and each and every part thereof upon
the grounds that the same is erroneous, in that the
Court should have adjudged and determined that
the complainant was entitled to the relief sought
and prayed for by her in her bill of complaint;
and that the Court should have adjudged and 30
determined that the deed made by complainant
and defendant to Cook Conklin, and the deed
from the said Cook Conklin to complainant and
the said defendant, mentioned in the bill of com-
plaint, were null and void, and that the Court
should have adjudged and decreed that the said
deeds be set aside and complainant re-invested
with full title to the lands and premises mentioned
therein and in the bill of complaint as before the
execution of said deeds, she was; and that the

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Petition of Appeal.

10 Court should have adjudged and determined that the said deeds were obtained from complainant by the fraud of the said defendant, and induced by the threats of the said defendant, and by fear on the part of the complainant of the defendant, and his threats and duress; and that the complainant never of her free will acknowledged that she signed, sealed and delivered the said deed as her voluntary act and deed, and without any fear, threats or compulsions of the said defendant, and that the said conveyance was induced by the fear, threats, and compulsions of the said defendant, and known to be by him at the time.

20 Your petitioner prays that the said decree of the Chancellor may be reversed, and that the record may be remitted to the Court of Chancery with the direction to enter a decree in accordance with the prayer of the bill of complaint of your petitioner; and that your petitioner may have such further and other relief in the matter as to this Court shall seem meet.

ZIEGENER & LANE,
Solicitors for Appellant.

30 Harry Lane,
Of Counsel.

(Copy duly served.)

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

EVA P. CROPSEY,
Complainant below,
Appellant,

and

CHARLES D. CROPSEY,
Defendant below,
Respondent.

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} On Bill &c.

The answer of the above-named respondent to the petition of appeal of the above-named appellant: 20

This respondent not acknowledging all or any of the matters which, in the said petition of appeal are contained to be true, for answer thereto nevertheless, says and admits that a decree was on the 18th day of April, A. D. 1917, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent. 30

ROBERT CAREY,
Solicitor for Defendant below, Respondent.

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JOHN J. HENRY, GEORGE H. KENNEDY AND WIFE

PLAINTIFFS

vs.

THE BANK OF AMERICA AND TRUST COMPANY OF NORTH CAROLINA

DEFENDANT

Case No. 10,000

Filed for record this 10th day of April, 1915.

On this 10th day of April, 1915, the following

depositions were taken:

George H. Kennedy, Plaintiff

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

John J. Henry, Plaintiff

and the following

were taken for the defendant:

James D. Chesney, Defendant

New Jersey Court of Errors and Appeals.

Between,

EVA P. CROPSEY (Complainant-
below),

Appellant,

and

CHARLES D. CROPSEY (Defend-
ant-below),

Respondent.

On Bill, etc.

On Appeal
from Chancery.

BRIEF AND POINTS OF COMPLAINANT- APPELLANT.

Statement.

This case comes up on appeal from a decree of the Court of Chancery, dismissing the bill of complaint.

The bill of complaint, page 11, prays that a decree may be made setting aside a deed of real estate from complainant through an intermediary to defendant and complainant, and for incidental relief (p. 10).

Complainant and defendant are husband and wife. The property involved consists of a house and lot. The parties reside in the house. The vacant lot was purchased on July 15th, 1901, as evidenced by Exhibit C1, page 131. Subsequently in 1904, a dwelling was built upon the property (p. 19). The contract for the erec-

tion and construction of the house was made by complainant with the Berridge Building Company, Exhibit C4, page 131. The title to the property remained in the name of complainant until the execution of the deeds referred to in the bill of complaint, Exhibits C2-3, page 131.

The contention of complainant is that the defendant obtained the execution of the deeds from her by duress and fraud and without having the benefit of independent advice. There is no question but that the complainant did not have the benefit of independent advice. She was taken to the office of defendant's lawyer where the deeds were drawn up and executed by her. That same night she notified the lawyer by telephone, not to record the deeds. Subsequently she wrote a note to the lawyer, Exhibit D4, requesting him to send the deeds on to be recorded, Exhibit D4, page 133. She contends she was forced by the defendant to do this and that the note was written in his presence and taken by him to his lawyer.

There is no question but that under the law of this State, the property was the sole and exclusive property of the complainant.

Questions Involved.

The questions involved are:

- (1) As to whether the property in question was the sole property of complainant.
- (2) As to whether the deeds were obtained and induced by fraud and duress on the part of the defendant.
- (3) As to the absence of independent advice.

I will under Point IV, refer to the law applying to Points II and III and under Point V, comment on the conclusions of the Court below.

ARGUMENT.

I.

The property was the sole property of complainant.

There is no question but under the law of this State that the property in question was the sole property of the complainant.

There is some contradiction as to how much each paid towards the purchase of the property and the erection of the house and reduction of the mortgage.

There is no question but that part of this money was paid by the complainant. Complainant testifies to this and defendant admits it.

It is not necessary under this point to show just how much was paid by each, as under the law of this State even though the defendant had paid for everything, the title to the property had been taken in the name of the wife with the consent of the husband, the property is the sole property of the wife.

Persons v. Persons, 25 N. J. Eq., 260.

Linker v. Linker, 32 N. J. Eq., 174.

Lister v. Lister, 35 N. J. Eq., 49.

Reed v. Huff, 40 N. J. Eq., 229.

Duvale v. Duvale, 56 N. J. Eq., 374.

Beck v. Beck, 78 N. J. Eq., 544.

McGee v. McGee, 81 N. J. Eq., 190.

Yetman v. Hedgeman, 82 N. J. Eq., 221.

Hood v. Hood, 93 Atl., 797.

II.

The deeds were induced and obtained by fraud and duress on the part of the defendant.

The testimony is so intermingled on the question of fraud and duress and certain portions bear a relation to both questions that it is proper to argue both together.

The testimony shows that complainant and defendant were married on March 3, 1892, and cohabited together up until some time in 1913. Some time in March or April, 1913, defendant went and slept in a separate room by himself and he left the home on July 22, 1913, and has never lived with complainant since, or made any attempt to (p. 20). Complainant says that the defendant began neglecting her in or about April, 1907, and the undisputed testimony shows that their marital relations became worse from time to time; that at that time defendant told complainant that he loved another woman and right after that asked her to turn the property over, so that they would have it half and half (p. 22). That he continued to request her to transfer the property and his requests became more frequent as the time went by; that finally he threatened that he would leave her unless she transferred the property (p. 23). Defendant admits that he had been endeavoring for two or three years to get the complainant to transfer the property (p. 113). This is further corroborated by Mr. Conkling (p. 72).

Complainant had refused to do this, stating that she had left everything to him in her will and that there was no reason why she should do it. Defendant knew that complainant had made a will leaving everything to him. As long

as they were living happily together, no question arose about the property, but after defendant had lost all of his affection for complainant, he began to endeavor to get her to convey the property to him. Defendant kept continually insisting that complainant transfer the property to him and made it the subject of many quarrels (p. 23).

There is a divergence between the testimony of complainant and defendant as to the threats made by defendant to complainant, compelling her to make the transfer. Complainant testified that finally defendant threatened that he would leave her unless she transferred the property, and that he said—"Eva, your happiness lays in the palm of your hand, but you don't see it; if you would do as I ask you and turn over this home to me, I will give up this woman, whom I have told you I love, and I'll stay home with you and I'll go out with you; but you are such a fool you can't see what's good for you" (p. 23).

Defendant denies this, but admits that he had been endeavoring for two or three years to get the complainant to transfer the property. There is no doubt but that their relations were anything but pleasant for the few months preceding the transfer. His testimony on page 112 shows he was angry on the morning of the transfer and he had a violent quarrel with her the night before.

Defendant testified that complainant, of her own free will, without any reason whatever, went down to his lawyer's office with him and made the transfer without talking about anything else (p. 113).

The testimony of both complainant and defendant is to the effect that they had had a

violent quarrel the night before over a Doctor DeBaum, lasting until four or five o'clock in the morning.

It is incredible to believe that after this violent quarrel of the night before that complainant would volunteer to transfer the property to defendant.

The credibility for this contention is particularly weakened by the fact that defendant dropped everything and took complainant down to his lawyer's office; that he kept in touch with her continually up to the time the deeds were actually executed; that it was necessary for them to return home and go back to the lawyer's office at two o'clock in the afternoon; that defendant came back and had lunch with complainant and took her back to the lawyer's office.

The statement of defendant that this was a purely voluntary action on the part of complainant cannot be credited when the entire testimony of defendant is considered and his actions in reference to obtaining the execution of the deeds are considered.

On page 25, complainant testified that the lawyer for the defendant asked her when they went to his office— "You have come to transfer this property?" This statement is very probable in view of the fact that the lawyer knew that defendant had been endeavoring for some time to have the property transferred (p. 70).

Complainant's testimony is to the effect that she told the lawyer that she was not doing it of her own free will and accord, but to please defendant (p. 25).

The attitude of defendant can be best determined by excerpts from his testimony on cross examination, starting on page 111 of the Record. He denies that he was anxious to

get the deed. Yet on the following Monday, he went down to his lawyer's office to get the deed. It must be remembered that the deeds were executed about two o'clock on Thursday; that the testimony shows that Mr. Conkling was not at his office on the following day and that Decoration Day was on the Saturday following; that Monday was therefore the next business day that Mr. Conkling was at his office.

On page 122 defendant testified as follows:

"Q. Why were you in such a hurry? A. It was signed on Thursday, and they said it would be ready on Monday, and I went down there; then I learned she had called up in the meantime; prior to that, I knew nothing about it.

"Q. Who told you you would get the deeds back on Monday? A. I understood Mr. Conkling to say that."

Mr. Conkling absolutely denied that he told defendant that the deeds would be returned from recording on the Monday (p. 130).

This also shows that defendant was anxious to get the deeds in his own possession and the testimony is uncontradicted that finally about six weeks afterwards he did get the deeds from Mr. Conkling and has kept them ever since. It is particularly strange that Mr. Conkling, knowing the troubles between complainant and the defendant, should give the deeds to defendant, when he was very particular to say that after the deeds were executed, the officer taking the acknowledgment handed them to defendant and he handed them to complainant, and that she handed him, Mr. Conkling, the deeds and directed him to record them (p. 74). Why didn't he return them to complainant and why was defendant so anxious to get the deeds

that he personally went down to Mr. Conkling's office the following Monday?

The intention of defendant to get the transfer of the property before leaving the home is clearly shown by the fact that defendant left the home and went to Mr. Conkling's house to stay, almost immediately, after the deeds had been returned to him after recording. The testimony of Mr. Conkling is that the deeds were turned over to defendant about six weeks after they were sent to be recorded. His testimony is that they were sent on to be recorded on Monday, June 2nd and July 22nd is very little over six weeks after. Almost immediately after that defendant instituted a suit for divorce against complainant.

There is no question from a reading of complainant's defendant's and Mr. Conkling's testimony that complainant was not making the transfer of her own free will. Even when she went to Mr. Conkling's office with Doctor Cropsey, Mr. Conkling admits that complainant asked him for advice in the matter (p. 70).

Complainant testified that on the night of the execution of the deeds, defendant had gone up to see the other woman in the case. She says that this was the reason for her telephoning to Conkling's office not to record the deeds. There is no question but that she did telephone to Mr. Conkling's office as is admitted by both defendant and Mr. Conkling.

Defendant, when he went to Mr. Conkling's office on Monday, ascertained that complainant had directed that the deeds be not recorded. Complainant testified that he immediately came up to the house, called her in from the front porch, where she was sitting with a friend, and said: "How dare you countermand the deeds

going through," and threatened to choke her unless she telephoned to Conkling's office to record the deeds (p. 26).

Defendant's version of this incident is as follows:

"Q. When you found out they hadn't been recorded, what happened? A. I went to the house and Mrs. Cropsey was sitting on the front porch, and I went through and asked her to come into the office, which she did; and I said, 'I understand that you have called up Mr. Shafer, saying that you didn't want the deeds recorded,' and she said, 'Yes.' I said, 'How is that?' she said, 'I hadn't read the deed' I said, 'You read it down at the office, and the deed was read to you and read to me, and so was the transfer deed,' I said, '*If you don't want to make the transfer, say so now.*' She said, 'I will telephone to Mr. Conkling'; she said, 'telephone to him.'"

What was the ultimatum if she did not want to make the transfer?

"Q. And did you? A. I did, and he said to me that the telephone message wouldn't do; that he would not transfer or make any transfer or registry of the deed in the Register's office unless he received a letter from Mrs. Cropsey; and Mrs. Cropsey sat down at my desk and took out a pad and paper—we always keep paper in the corner of the desk there—and sat down and wrote the note, and I took it down to Mr. Conkling myself" (pp. 101-102).

He stated that she gave as the reason for notifying Conkling not to record the deeds that she had not read the deeds. Nevertheless he did not take her down to Conkling's office to read the deeds. He telephoned to Conkling and found out that Conkling insisted on having a written

notification to record the deeds. He got same from complainant, which she said she signed through fear of him, and took it down to Conkling. His haste in getting this straightened up is very significant.

There is no question but that defendant did go to Conkling's office on Monday afternoon; that he found out that complainant had telephoned not to record the deeds; that he immediately went back and called complainant in from the front porch to his office, ascertained that Mr. Conkling would not record the deeds until he had a written order from complainant; obtained the note to Mr. Conkling and went immediately back to Mr. Conkling's office, and that then the deeds were sent to be recorded.

From the testimony of defendant himself, not to take into consideration the testimony of complainant at all, there arises an atmosphere of doubt as to the entire transaction. From his testimony there is no question but that he was determined to obtain a transfer of this property in any way he could. I also think that the testimony warrants the assumption that he was anxious to bring this to a head and get the transfer of the property and the deeds in his actual possession before he left her and went ahead with his divorce suit.

As the matter then stood he was amply protected in case of her death, by the will leaving the property to him. She could not sell it without his signature. Of course if he got a divorce she could then sell the property without the signature of Dr. Cropsey and could change her will.

Unquestionably this explains the anxiety on the part of defendant, having in mind the institution of a suit for divorce which he must have had in his mind, to have a transfer of the

property made which would secure him an equal interest in the property if a divorce was granted. He knew that after he started a divorce suit it would be impossible for him to get her to make a transfer of the property. Hence his haste.

A great deal of the testimony to which I will refer under my next point is also relevant under this point, and should be considered in connection with this point.

III.

The transfer was obtained by the husband from his wife without independent advice or counsel.

Not only was there an absence of independent advice and counsel to the complainant, but when she went to Mr. Conkling's office, she requested advice and he gave it to her, notwithstanding the fact that he had been consulted by the defendant numerous times prior to this time, both in reference to obtaining a transfer of the property and their marital relations and he continued to represent defendant and defendant went to his house when he left complainant.

I do not wish in arguing this point, to say or infer that Mr. Conkling personally entered into a scheme to commit a fraud on complainant, but I do think that Mr. Conkling was not in a position to give complainant the impartial, independent advice she was entitled to have.

The testimony of Mr. Conkling, starting on page 61, is very short. A reading of this testimony, and particularly from his cross examination, starting on page 69, clearly shows that complainant did not have the benefit of

independent advice or counsel she was entitled to have under the law of this State.

According to Mr. Conkling's testimony, he thought he was representing both parties at the time the deeds were executed (p. 69). That complainant asked him what the rights of the defendant were, as the title then stood and what the rights of the parties, respectively, would be if the title was put in both their names (p. 70).

He said that during the preceding two or three years, defendant had spoken to him of his desire to have the property stand in both their names; that he had not, however, spoken to Mrs. Conkling during that time and that the first he spoke to her was on the morning in question; that they came in together; that he did not see complainant alone at all that morning (p. 70); that he knew of no reason for complainant transferring the property except to protect defendant in case of her death; that there was no other reason stated that morning; that he did not tell her that the defendant would be protected by her making a will; that he does not recall complainant mentioning that she had made a will (p. 71). He did not tell her that the making of the transfer would go further than merely protecting defendant upon her death, but would give defendant a present joint interest and control in the property.

Dr. Cropsey himself testified that the only reason for the making of the transfer was so that in case of Mrs. Cropsey's death he would get the property (p. 117). Thus, even though as the matter then stood he was entirely protected by her will.

Also see Mr. Conkling's testimony on page 71.

In view of the fact that Mrs. Cropsey could not convey the property without the signature of

her husband he was fully protected by the will.

On page 72 Mr. Conkling first said that nothing was said about a will and then when refreshed by his direct testimony stated that he did tell her that if the deeds were executed, the survivor could take the entire estate free from the necessity of probating a will (p. 72). He again reiterates that he did not tell complainant that defendant would be protected upon her death by the making of a will.

Defendant had seen Mr. Conkling recently in relation to his marital troubles (p. 74). He could not recall whether anything had been said about the property on the previous call of defendant, although it was the day before the execution of the deeds (p. 75).

Even in the face of the fact that he had seen Mr. Conkling about his marital troubles a day or two before the execution of the deeds and off and on for a period of two or three years, Dr. Cropsey endeavored to show that Mr. Conkling was not his lawyer, and the only time he had consulted with Mr. Conkling was at the time of the buying of the original property.

His testimony on page 116, is as follows:

“Q. Had you ever conferred with Mr. Conkling as your lawyer prior to that? A. Mr. Conkling had been the lawyer of both of us, what little we needed a lawyer; it was only at the time of the buying of the original property, that is the only use we had for lawyers.

“Q. That was the only time you consulted him in reference to a law business? A. Yes, sir.

“Q. Had you had trouble with Mrs. Cropsey about a week prior to this? A. I had trouble with Mrs. Cropsey the Sunday night before the transfer, as the transfer was

made on Thursday, I had trouble with her that prior Sunday.

"Q. And also Tuesday? A. And also Tuesday.

"Q. And after that, did you talk to Mr. Conkling about it? A. I don't recall it."

Mr. Conkling did not tell complainant that he had been previously representing defendant (p. 76).

Even after complainant had telephoned not to record the deeds, Mr. Conkling did not insist on seeing complainant, but went ahead with the recording upon defendant producing an order from complainant in writing, although complainant was living only twelve or fifteen blocks away and he could have very easily gotten her down to his office (p. 77).

It seems particularly strange that complainant did not say that she had made a will when Mr. Conkling told her that the execution of the deeds would do away with the probating of the will (pp. 78-79).

In any event, it was the duty of Dr. Cropsey to inform Mr. Conkling that a will had been executed by Mrs. Cropsey in his favor when they were talking about the reason for making the transfer.

At the most the separate acknowledgment by complainant amounted simply to defendant leaving the room for a moment and then coming back. The testimony of defendant, Mr. Miller and Mr. Conkling is to this effect. The door was simply a swinging door (p. 81), there was no further advice given to complainant while defendant was out of the room (p. 73).

Mr. Conkling did not leave the room when the separate acknowledgment was taken for Mr. Miller testified that he took Mr. Conkling's acknowledgment at the same time (p. 82).

Mr. Conkling testified on pages 73-74 as follows:

“Q. While he was out of the room did you talk with Mrs. Cropsey and ask her about this matter any further in the absence of the doctor? A. No.”

There is no question from the testimony of complainant, defendant and Mr. Conkling that at the most all that complainant intended to do was to protect defendant in case of her death.

That complainant did not have her mind fully made up when she went to Mr. Conkling's office is shown by the fact that she inquired about whether it was necessary to make the transfer in order to protect defendant at her death.

Mr. Conkling states that there was nothing said about the marital troubles. There is no doubt that defendant had consulted with Mr. Conkling about the marital troubles a day or two prior. Defendant admits that he was still angry with complainant on the morning in question. It seems to me that it was the duty of Mr. Conkling, who represented defendant and knew about the marital troubles, to inquire about them, in order to ascertain if the transfer was free and voluntary on the part of complainant, and to consult with complainant alone, away from her husband; particularly so after she had telephoned not to record them. They were still in the hands of, as he says, her lawyer, and could be withdrawn by her.

On page 74 Mr. Conkling does not say positively that nothing was said about their disagreements.

It seems remarkable that Mr. Conkling, when the two people came in, as defendant testified, apparently agreeable to each other, did not inquire about whether their troubles had been patched up.

Here we have the undisputed fact that defendant had tried for two years to get complainant to transfer the property. He had consulted with Mr. Conkling, a lawyer, about it several times. Complainant was in a frame of mind, when she was taken to Mr. Conkling's office, to have independent advice. Not such advice as the lawyer for the defendant could give her. She did not get any such independent advice, and as a matter of fact, she did not have any conversation with Mr. Conkling, or receive any advice from him, except in the presence of the defendant.

IV.

The Law.

The questions of fraud and duress and independent advice of counsel, are generally considered together in the cases. Under this head, I will therefore refer to the cases applying to both points.

A very strong case on the question of the setting aside of transfers by wife to her husband, is *Boyd v. De La Montagnie* in the Court of Appeals of New York, 73 N. Y., 498. It was held that from the confidential relations of the parties, the transfer was presumptively void, and could be set aside without proof of fraudulent intent, on the part of the husband, and the wife's fraudulent intent was no defense. The Court said on page 503:

"It is not found that the defendant acted with a fraudulent intent in procuring the transfer, but I do not understand that this is necessary to be affirmatively shown in this class of cases. A court of equity will interpose its jurisdiction to set aside instruments between persons occupying relations

in which one party may naturally exercise an influence over the conduct of another. A husband occupies such a relation to the wife, and the equitable principles referred to would apply to them in respect to gratuitous transfers by the wife to the husband, however, it might be in ordinary business transactions which the wife may legally engage in. When this relation exists the person obtaining the benefit must show by the clearest evidence that the gift was freely and deliberately made. The burden is upon the person taking the gift to show that the transaction was fair and proper. *Sears v. Shafer*, 6 N. Y., 268; *Hoghton v. Hoghton*, 15 Beav., 278; *Ford v. Harrington*, 16 N. Y., 285; *Davies v. Davies*, 2 New Rep., 382; *Goutts v. Acworth L. R.*, 8 Eq., 558-567; *Burnaby v. Griffin*, 3 Ves., 266."

In the case of *Black v. Black*, 30 N. J. Eq., 215, this Court held that a gift by a wife to her husband, is good, provided it be voluntary and not the result of his craft or power, but that when a husband receives money belonging to his wife, the law presumes he received it for her use, and she may recover on the strength of this presumption unless he produces proof to rebut it. Vice-Chancellor Van Fleet says, on page 219:

"There can be no doubt that a wife may give a part, or the whole, of her separate estate to her husband, and thus invest him with perfect title, but the courts, in consequence of his great influence over her, always look upon such transactions with watchfulness, and require the husband, when he sets up a title, founded on a gift from his wife, to show, by full proof, that her act was free and voluntary, and not the result of his craft or power. *Clancy on Mar. Wom.*, 377."

In the case of *Curtis v. Crossley*, 59 N. J. Eq., 358, this Court set aside a settlement by a wife to her husband, which was unreasonable in amount and which was made without independent counsel for the wife and at a time when she stated to others that she was about to make it under the influence of threats of her husband, the manner of which threats was corroborated by other evidence. In this case, the Court, on page, 365 holds that a court of equity will scrutinize the transactions with jealousy in order to ascertain whether the settlement was made through fear of the husband, or whether the husband exercised improper influence over the wife.

He also holds that "the unreasonableness of the settlement, the lack of independent counsel for the wife, and the omission of the power of revocation, are therefore only circumstances to be considered upon the vital question of improper influence exercised by the husband to bring about the settlement on him and his relatives."

In this case, the special instance of the undue influence exercised by the husband, were threats that he would commit suicide.

In the case of *Hall v. Otterson*, 52 N. J. Eq., 522, this Court set aside a deed where the evidence showed that it was made without any information as to its contents and effect other than what the perfunctory duties of the acknowledging officer required, and without the benefit of independent advice.

In the case of *Schultze v. Schultze*, 73 N. J. Eq., 597 (affirmed on opinion of Vice-Chancellor Howell, 75 N. J. Eq., 615), this Court held that a gift from the wife to the husband, must be the free act of the wife; it must be without coercion or fraud. Anything beyond mere per-

suasive argument will not be permitted; it must proceed from an unfettered will, and an uncontrolled desire to benefit the donee.

In this case, the suit was brought by a wife against her divorced husband, for the recovery by her from him of both real and personal property, which she alleged she had transferred, or caused to be transferred, to him during the coverture, and which she seeks to set aside on the grounds that they were obtained from her by him by means of threats and undue influence, consisting of threats and of actual bodily violence and of personal abuse, and the evidence was examined and it was held that she was coerced by assaults and abuse to make the donation to him in question and that she was entitled to relief in respect thereof.

In this case, it is held, on page 599, "that the wife is protected against settlements made upon the husband through fear or undue influence on his part, and if she is able to establish this, the settlements will be declared void"; citing with approval *Curtis v. Crossley, supra*.

On page 600, the Vice Chancellor, in speaking of the burden of proof, says:

"If, therefore, the complainant has shown that the gifts made by her to her husband were the product of undue influence or threats of injury or actual violence, they must be held to have been obtained unfairly. If she makes a *prima facie* case on these grounds, then, by all the rules of procedure, the burden of countervailing it is thrown on the defendant, and if he does not meet the burden thus cast upon him the decree must go in favor of the complainant. The gift must be the free act of the wife; it must be without coercion or fraud. Anything beyond mere persuasive argument will not be permitted. It must proceed

from an unfettered will and an uncontrolled desire to benefit the donee."

On page 601, Vice-Chancellor Howell says:

"It will be noted that in the various papers and transactions out of which this case arose there is no reservation by the wife of a power to revoke her so-called voluntary gift. It has been held in many cases that the absence of power of revocation from a voluntary settlement is evidence of mistake, and that sometimes that of itself would be sufficient to destroy the gift. *Gernsey v. Mundy*, 24 N. J. Eq. (9 C. E. Gr.), 243; *Martling v. Martling*, 47 N. J. Eq. (2 Dick.), 122; *White v. White*, 60 N. J. Eq. (15 Dick.), 115. Whether that rule applies to this case it is not necessary to determine, for the reason that sufficient evidence of unfair dealing on the part of the husband exists upon which a decree in favor of the wife can stand."

In the case of *White v. White*, 60 N. J. Eq., 104, this Court set aside a voluntary conveyance to his son by an illiterate man, unaccustomed to business transactions, of substantially all his property, in making which he did not have the benefit of independent, competent and disinterested counsel to make him fully understand, realize, and appreciate, the full practical effect and consequence of the deed, during his lifetime; that he was told generally that it conveyed the property.

The following cases are followed in *White v. White* on the question of setting aside conveyances procured by a person occupying in law, a fiduciary relation towards the donor.

Gernsey v. Mundy, 9 C. E. Gr., 243.

Mulock v. Mulock, 4 Stew., 594.

Martling v. Martling, 47 N. J. Eq., 122.

Hall *v.* Otterson, 54 N. J. Eq., 522.

Lovett *v.* Tailor, 56 N. J. Eq., 311.

The case of Hagan *v.* Post, 71 N. J. Eq., 234, is a case on the question of the improvidence of a gift by a parent to a child, and the lack of independent advice.

In the case of Gernsey *v.* Mundy, 24 N. J. Eq., 243, this Court set aside a deed by a daughter to her mother, on the grounds of mistake and that it was otherwise unadvised, improvident, and contrary to the intention of the grantor.

In the case of Mulock *v.* Mulock, 31 N. J. Eq., 594, where a conveyance was made by a mother to her son, it was held that:

1. A deed of gift will always be set aside in equity, even in a case free from actual fraud, whenever it is clearly shown that the deed does not, in a material respect, conform to the intention of the grantor, or that he executed it under a total misapprehension as to its effect.

2. A son who occupies towards his mother a position of trust and confidence, is bound, if his mother desires to make a deed or gift to him for a large part of her estate, to see that the deed, in all substantial particulars, conforms to her intention, and that she fully understands its nature and effect; otherwise the deed will be set aside.

In the case of Slack *v.* Rees (Court of Errors and Appeals), 66 N. J. Eq., 447, the Court held that:

“A gift, made by a father of advanced years and in infirm health, to a daughter

who is furnishing him care and service, made necessary by his physical condition, is, presumptively, the result of undue influence; and, in a suit brought to have a gift, made under such conditions, declared invalid for this reason, the burden of proving absence of undue influence rests upon the donee."

V.

Conclusions of the Court.

In his conclusions, the Vice-Chancellor recognizes that in an action by a wife against her husband to set aside a transfer of her property, a presumption of fraud arises which the husband must overcome, and that the burden will be upon the husband to show that it was her voluntary act and that she had the benefit of independent advise.

The Court, however, brushed this principle aside because he considered it was not a gift case, but that the husband received from his wife that which in fact belonged to him (p. 147).

Under the cases in this State cited under Point one, the property was the sole property of the wife. I have been unable to find any authority showing that the fact that the husband paid part of the purchase price of the property, or in fact all of it, rebuts the presumption of law that the property is the wife's property.

This is particularly true in view of the fact that the Vice-Chancellor in his conclusions on page 148 says:

"Somewhere in the evidence it appears that the action of putting the title in Mrs. Cropsey was to protect it from the consequences of possible law suit against the Doctor."

There is no question but that at the time of the execution of the deeds sought to be set aside, there was no consideration paid, and that it was a gift pure and simple.

The fact that there was some coercion used must have impressed itself upon the Vice-Chancellor's mind for he said on page 152:

"His discovery of a few nights before had brought on a crisis and to appease him and avoid an open break, to maintain her status publicly as his wife, she relinquished."

Particularly in view of the subsequent action of the defendant, even though it should be admitted that this was the sole reason for the execution of the deeds, there is no question but that complainant would not have executed the deeds unless defendant had given her to believe that, by so doing, he would drop everything and return to her as her husband. Instead of that he had only a day or two prior, been consulting with Mr. Conkling, his lawyer, about his marital relations and had spoken to him several times prior thereto about obtaining a transfer of the property to him, and almost as soon as he received the deeds back from Mr. Conkling after they had been recorded, he left the home and went to Mr. Conkling's house to live and instituted a suit for divorce. Further, can there be any question but that complainant would have stated to Mr. Conkling that she was transferring the property in order to appease defendant and that defendant had agreed to drop the differences and return to her as her husband. It is a certainty that she would, had she known that Mr. Conkling was defendant's lawyer, in the matter.

The Vice-Chancellor holds on page 153 that complainant's action in making the transfer was deliberate, and freely consummated without

haste or urgency on the part of her husband, as evidenced by the fact that they first consulted counsel without taking with them their title deed.

In the first place if it were in the mind of either that it was necessary for them to take their title deed with them to Mr Conkling's office, the fact that complainant did not take the deed with her showed that her mind was not made up and that she intended to consult counsel before making the transfer. Mr. Conkling testified that he had searched the property when it was purchased, and that he had not informed complainant that defendant had been consulting him in reference to their marital relations. She was therefore entitled to independent advice from an impartial counsel and to know that she was getting what she thought was independent advice from her husband's lawyer.

In the second place, there was nothing to show that either of them knew it would be necessary for them to have the deed with them. On the other hand, Mr. Conkling had searched the title when the property was purchased and they would naturally infer he had all the necessary particulars in relation to it (p. 173).

As a matter of fact the only reason he wanted the deed was to get the description and unquestionably he had it with the search records in his office (p. 73).

It seems that from a reading of the conclusions of the Vice-Chancellor on page 149, that in deciding the case at bar, he had in mind that Mrs. Cropsey had been guilty of wrong-doing but that it had been necessary for him to dismiss the divorce petition of the husband solely because the proof did not measure up to the legal requirements to justify judging her guilty.

In his conclusions in the divorce case, printed

in the record, on page 156, he said that Dr. Cropsey had at frequent intervals made accusations against his wife, of the truth of which there was no evidence and that he was almost constantly suspicious of her conduct. And on page 157 that he often viewed what she looked upon as innocent amusement with suspicion.

On page 157 he says in speaking of Dr. DeBaun (the person mentioned in the testimony of the case at bar and in the conclusions of the Vice-Chancellor), that Dr. Cropsey seemed trustful and apparently perfectly satisfied.

On page 158 he says that Mrs. Cropsey did not seem to be the headstrong violent-tempered and determined woman, that counsel painted her.

On page 160 he says that, "Testimony, to be believed, must have probability," and on page 160 he says that it was not probable nor likely for the actions to have been committed in the manner alleged by Doctor Cropsey. At the foot of page 161 he comments on the probability of the truth of the testimony of the main witness to the improper conduct with DeBaun.

On page 166 he refers to the occasion of May 27th, which is the same occasion referred to in the testimony in the case at bar, or happened on the night before the execution of the deeds and says that of course it was not insisted that any crime was committed on that night.

In concluding on page 167 he says that on the whole case he was not satisfied that Mrs. Cropsey was guilty.

Whichever way we look at it, there is no question but that the transfer was made either induced by fraud or through duress exercised on

the complainant by defendant or both and without the benefit of having independent advice or counsel.

Taking every view of the case and looking at it from every angle, it cannot be said that this transfer was a purely voluntary transfer by complainant.

Finally.

The transfer by the complainant, through an intermediary, of the one-half interest in the property mentioned in the bill of complaint, to the defendant, was induced and obtained by the defendant through fraud and duress, and without the complainant having the benefit of independent advice or counsel. Complainant did not at any time of her own free will and accord acknowledge that she signed, sealed and delivered the deed as her voluntary act and deed without any fear, threats or compulsion of her said husband, the defendant, but to the contrary said conveyance was induced by defendant through fear, threats and compulsion.

It is respectfully submitted that the complainant is entitled to the relief prayed for by her in her bill of complaint, and that the decree of the Court of Chancery be reversed, with costs, and a decree directed to be entered in pursuance with the prayer of said bill of complaint.

No. 28, November Term, 1917.

ZIEGENER & LANE,
Solicitors for Appellant.

HARRY LANE,
Of Counsel.

New Jersey Court of Errors and Appeals

EVA P. CROPSEY,
Complainant below,
Appellant,

and

CHARLES D. CROPSEY,
Defendant below,
Respondent.

*On Bill.
Appeal
from Court
of Chan-
cery.*

BRIEF FOR RESPONDENT.

The bill of complaint in this case was filed for the purpose of setting aside two certain deeds, one made by Eva P. Cropsey and Charles D. Cropsey to Cook Conklin, dated May 29, 1913, and the other by Cook Conklin to Eva P. Cropsey and Charles D. Cropsey, her husband, bearing date the same day, both of which deeds were recorded in the office of the Clerk of Bergen County, on June 3, 1913.

The bill of complaint in this case was filed in the month of December, 1914. The property involved was the home of Mr. and Mrs. Cropsey and the medical offices of Dr. Cropsey, the defendant. The legal title to the property prior to June 29, 1913, was vested in Eva Cropsey, the

wife. *The effect of the two deeds was to place the title of the property in the joint names of Eva. P. Cropsey and her husband, Charles D. Cropsey.*

The Cropseys had no children. They had been married about twenty years. A portion of the property was the place of residence of the family, the family consisting of Dr. and Mrs. Cropsey and the mother of Mrs. Cropsey. *The other portion of the house was constructed for, and was used as, the business office of the doctor.* The bill charges that the execution and delivery of the deeds was obtained by the fraud of Dr. Cropsey. *No other allegation is made in the bill.*

The bill recites the marital troubles of the Cropseys, and recites that a short time after the execution of the deeds the Cropseys separated, and that subsequently and on the 13th day of March, 1914, a suit for divorce was commenced by Dr. Cropsey against his wife, charging her with adultery with one DeBaum. The divorce action was heard before Vice-Chancellor Backes. In this action a cross-petition was filed by Mrs. Cropsey. Both the petition and the cross-petition were dismissed after hearing. The opinion of Vice-Chancellor Backes, which is made a part of this case, appears on page 154 of the printed case, and its consideration is very pertinent to this case.

The answer denies specifically all the allegations of fraud, and charges that the entire property involved was paid for, if not entirely, almost entirely out of the earnings of Dr. Cropsey.

The case is purely a fact case, and was so determined by the Vice-Chancellor, as will appear

from his conclusions set forth on pages 147 to 153 of the printed case.

In the course of the hearing it was stipulated and agreed that in order to avoid the necessity of taking voluminous testimony as to the matters in general controversy between Mr. and Mrs. Cropsey the Vice-Chancellor could consider any and all testimony taken in the divorce proceedings (See printed record, p. 33, line 30).

The testimony in the divorce case has not been included in the printed case, owing to its large volume, but the conclusions of the Vice-Chancellor in the divorce case have been printed expressing the conclusions of the court on the questions of fact involved in that action (See printed case; p. 153, opinion of the court below in this case; and p. 154, conclusions of the Vice-Chancellor in the divorce action).

The undisputed facts in the case are these:

1. During the time when the Doctor and Mrs. Cropsey were living together Mrs. Cropsey managed the bank affairs of the doctor and attended to the bank accounts and to all deposits, taking full charge of all the receipts of the doctor's office.

2. The lot upon which the house was built was purchased in 1902. The cost of the lot was \$1350. \$650. of the purchase price was paid out of a bank account that was kept in the name

of Eva Cropsey, and \$700. was drawn out of an account kept in the name of Charles D. Cropsey. The \$650. was drawn on January 4, 1902 (see Exhibit D1, p. 132). The \$700. was drawn from the Charles D. Cropsey account as follows: November 13, 1901, \$100. (the time of making the contract of purchase); January 4, 1902, \$600. (the time of the making of the purchase of the lot; Exhibit D2, p. 132).

The various bank accounts involved in the purchase transaction and in the subsequent building transaction are shown in these exhibits:

Exhibit D1 (p. 132) was kept in name of Eva P. Cropsey and was an account opened on June 23, 1898.

Exhibit D2 (p. 132) was a savings bank account in the name of Dr. Cropsey, opened October 30, 1897.

Exhibit D7 was a joint account in the names of Charles and Eva Cropsey, in the Peoples Trust Co., commencing April 10, 1902 (p. 141). This account shows deposits at quite regular intervals.

There was also an account in the name of Charles Cropsey in the Rutherford National Bank commencing July 30, 1904, of the same general character (Exhibit D7½, p. 141).

Exhibit D8 (p. 142) is the mortgage money account in the Franklin Trust Co.

Exhibit D9 (p. 143) is an account in the name of Charles Cropsey with the Rutherford National Bank, commencing August 29, 1904.

Exhibit D11 (p. 144) is an account in the name of Charles Cropsey or Eva Cropsey, in the

Bergen County Bank, commencing December 23, 1909.

Exhibit D10 (p. 144) is an account in name of Charles Cropsey in the Bergen County Bank, commencing January 18, 1912.

Exhibit D11½ is an account in the name of Charles D. Cropsey in the Bergen County Bank, commencing July 16, 1910.

Exhibit D12 (p. 146) is an account in the name of Charles Cropsey in the Peoples Trust Company, commencing May 22, 1905.

An examination of these exhibits, all of which have been summarized, will show that the doctor's moneys were miscellaneously kept in the several accounts as a matter of mutual convenience from time to time. It is undisputed that they were all handled for the doctor by Mrs. Cropsey. She had no moneys of her own except some small sums which she earned by church singing about the time they were married. It appears, however, that after their separation (Exhibit D5, pp. 133 to 137) Mrs. Cropsey had in various accounts to her own credit, or moneys held by her in cash or held by her brother for her in trust for her, as the result of withdrawals from these bank accounts, over \$4,000. There is no pretence anywhere in the case that she ever earned any such moneys, but it is apparent that these were moneys which she had diverted from the doctor's business. These references to the administration of the doctor's financial affairs are made because they are particularly referred to in the opinion of the Vice-Chancellor (p. 148), wherein the Vice-Chancellor found as a fact:

“She managed the finances and ran his books and bank accounts. With the accumulations they bought a lot and put the title in her name and out of their savings they built their home in 1905, costing some \$5,000 or \$6,000, and later they paid off some of the mortgage incumbrance. The greater portion of the money came from the doctor’s practice.”

I will not take the Court’s time to analyze in detail the testimony in the case bearing upon these bank accounts, as the appellant cannot seriously contend that the conclusions of the Vice-Chancellor so plainly expressed were not absolutely borne out by the facts.

The Testimony.

In 1905 the house and office were built on the property at a cost in excess of \$8,000. A portion of the money required for the erection of the building was borrowed from the Franklin Trust Company and a mortgage given in the sum of \$5,000. This mortgage has since been reduced to \$1500 by payments by the doctor out of his earnings from time to time. At the time of the erection of the building the doctor put \$4800 cash into the enterprise in addition to the mortgage moneys (see p. 92). Mrs. Cropsey testified that the lot was purchased with her money (p. 21), but it was clearly shown on cross-examination that she was in error (pp. 30 and 31) and that the only moneys that were even deposited in her name that went into the original transaction were the \$650 payment of January 4, 1902, the

balance of the purchase price being drawn from one of the bank accounts in the doctor's name (p. 32, line 1.) She testified on cross-examination (p. 34) that about ten years ago Dr. Cropsey began to talk about getting the title in his name. She gave as a reason for not satisfying his request at that time that she was afraid he might be sued and that she thought it ought to be kept in her name as "I wanted protection for both of us" (p. 34, line 20), and that the purpose of keeping it in her name was simply to protect them both (p. 34, line 25). She said they called it "our home" (p. 35, line 1). The house was built just about the time of that discussion. She says that from that time on there was continual talk about the title of the property (p. 36, line 18), and that the matter of the status of the title was the source of a lot of trouble between them.

It appears that for two years prior to the separation of the doctor and his wife, Mrs. Cropsey developed a very intimate friendship with a doctor named DeBaum. He was undoubtedly the cause of the separation of the doctor and his wife (see conclusions of Vice-Chancellor), and was the co-respondent named in the divorce action instituted by Dr. Cropsey. It appears without dispute that he was continuously in Mrs. Cropsey's company and the doctor testified that on the 27th of May (p. 95) he discovered Mrs. Cropsey and Dr. DeBaum caressing each other and drinking whiskey together (p. 96). On that evening the doctor ejected DeBaum from the house and ordered him never to appear there again. The relationship of DeBaum and Mrs.

Cropsey is further apparent from Mrs. Cropsey's own admission. She referred to one occasion about two months before the deed was executed when the doctor discussed with her the matter of changing the status of the title, that Dr. DeBaum was present and told her she would be a "damned fool" if she did it. She admits that Dr. DeBaum was ejected from the house on the night of the 27th of May (p. 37), and that she tried to negotiate an apology the following day (p. 38). She admitted on page 39 that her relationship with Dr. DeBaum had been very pleasant. This is further manifested from the conclusions of the Vice-Chancellor in the divorce action, in which he denied the doctor's application for a divorce because of the fact that the adulterous relationship between DeBaum and Mrs. Cropsey had not been legally established by the doctor, although he did find that the undisputed evidence in the divorce action was that Mrs. Cropsey and Dr. DeBaum were constantly in each other's company and on one occasion stayed out all night in an automobile, upon which occasion Dr. DeBaum attempted to register with Mrs. Cropsey at a hotel in Elizabeth. The court found in the divorce action (see conclusions) that Dr. DeBaum was in a state of intoxication that night, accepting Mrs. Cropsey's explanation of the all night experience as sufficient to overcome a presumption of adultery on that occasion.

I mention these facts particularly and thus generally simply to demonstrate that Mrs. Cropsey had undoubtedly an infatuation for DeBaum. Mrs. Cropsey testified that on the morning of May 29th, two days following the ejection of Dr.

DeBaum from the house and the day after she endeavored to negotiate an apology from DeBaum to the doctor for his conduct (which was rejected by Dr. Cropsey, p. 40, line 21), the doctor said to her that if she would sign the deed so that the title to the property might be vested in the doctor and herself jointly he would "be a husband to me and love me" (p. 41, line 14). She was asked "What prompted him to make all these promises to you that particular morning?" Her answer was, "I don't know" (p. 41), but she stated that despite her nine or ten years' refusal to join in such a deed on that morning she, without any hesitation, went to the office of Shafer & Conklin, reputable members of this bar, at Rutherford, to adjust the title so that it should be placed in their joint names. She testified (p. 42) that when she saw Mr. Conklin at his office she told him about the promises her husband had made, and that she told him that her husband had not been kind to her (p. 42). She said that she did not mention the DeBaum incident. She stated that Mr. Conklin told her it was a right thing for her to do. She then testified that (p. 42, line 38) she told Mr. Conklin that she was not doing it of her own free will, and then she states that she thereafter executed the requisite papers and that the acknowledgment was taken before Mr. Miller, a member of the bar of this State whose offices were located in the same building as the offices of Shafer & Conklin. She testified that the following day she directed the "withholding of the deeds from record," but states that shortly afterwards she telephoned them directing the recording of the deeds (p. 45). She urges that

she did this because of threats of the doctor to leave her if she did not. When asked whether or not she did not write a letter to Shafer & Conklin directing them to record the deeds, she testified (p. 45) that she did not remember whether she did or not; answer (p. 45, line 21), "No, I don't remember the letter."

Mrs. Sloan, the aged mother of the complainant and who was given a home by the doctor, testified to frequent wranglings between the doctor and his wife, and testified that the doctor had been for years continuously urging that the title of the property be placed in their joint names (pp. 50 and 51). *She admitted that one of the reasons that the doctor urged was that in the event of his wife's death the property would go to her brothers (they having no children).* She testified (p. 51) that for five years the doctor was continuously threatening to leave her if the deed was not executed, but that he never put any of his threats into execution (p. 51, line 20).

Ada Clark, a very intimate friend of the complainant, with whom she spent a great deal of time, admitted that she was not on very friendly terms with the doctor. This witness and the doctor had some serious trouble in connection with a medical case at the Hackensack Hospital (p. 53), which embittered her against the doctor. She testified that the doctor told her on one occasion—she could not state the occasion—(p. 52) that he was going to get his home back again, and that "she (referring to his wife) could go the best she could and go in the street, he didn't care where she went." She further testified that the doctor told her two or three

times that he loved another woman (p. 53), but her confusion on cross-examination (p. 55) relative to what her conversations with the doctor actually were about the property was so manifest that her testimony cannot be given any consideration whatsoever, and it certainly was so treated by the Vice-Chancellor.

Dr. Cropsey denied absolutely having any such conversations with this woman (p. 109); said he had no personal or social relationships with this woman; said he never talked to her about his private affairs; that on one occasion he was obliged to eject her from the Hackensack Hospital on account of her conduct there (p. 109); and his explicit denial of her improbable story was a complete refutation of it. This also applies to the testimony of Mary G. Jones, a very close friend of Mrs. Cropsey (p. 58, line 38), who testified that three years ago before the doctor left home Mrs. Cropsey once said to her: "She was so worried because the doctor made her so unhappy in regard to the house."

These witnesses referred to constituted the complainant's case.

Defendant's Witnesses.

Dr. Cropsey, produced in his own behalf, testified fully and completely with reference to bank books and accounts and that the moneys invested in the house were his moneys. I will not attempt a resumé of this testimony. He referred to the occasion when DeBaum, who was intoxicated at the time and was calling upon Mrs. Cropsey (p.

94), told Mrs. Cropsey that she would be a "damned fool" if she permitted the title of the property to be changed. He stated that he talked to her frequently about straightening out the title to the property. He described the incidents of the 25th and 27th days of May, 1913, when he discovered the very close relationship growing up between DeBaum and his wife (pp. 95, 96 and 97), and told how he forced DeBaum out of the house and ordered him never to appear again. This man DeBaum had been the friend of the doctor for twenty-five years (p. 97, line 30). He testified that DeBaum and his wife had been very friendly for two years (pp. 97 and 98), and he stated that the morning after his trouble with DeBaum *his wife suggested she would be perfectly willing to place the property so that it would be in their joint names* (p. 98); *and about that time his wife proposed to him that he accept an apology from Dr. DeBaum.* He then described the visit to Mr. Conklin's office (pp. 99 and 100). He denies that she ever even suggested that she was joining in the execution of the deed against her will. He testified that they went to Mr. Conklin's office and that Mr. Conklin required the deed and that the deed being in the safe it had to be obtained later, and that Mr. Conklin, after talking to them about the effect of the drawing of the deeds, suggested that they come back at 2 o'clock in the afternoon to execute the papers. He testified that they went back to Mr. Conklin's office in the afternoon and that no suggestion of any promise of any sort, kind or character was made by him to his wife; that the deeds were executed and acknowledged and that they went home *and that the following day Dr. DeBaum called at the house.*

There can be only one conclusion from this situation—Mrs. Cropsey had arranged the visit of Dr. DeBaum. She undoubtedly thought she had soothed the doctor's feelings toward DeBaum by the execution of the papers, but she was very sorely disappointed to know that the doctor refused to accept any apology from DeBaum, but, on the contrary, ordered him to keep away from his house. The doctor states that he was then advised by Shafer & Conklin's office that she had telephoned to withhold the recording of the deeds; that he spoke to her about it and she then wrote a letter to Shafer & Conklin, which letter to Mr. Conklin was offered in evidence and marked Exhibit D4 (p. 133), directing the recording of the deeds. *It appears from the testimony that thereafter DeBaum did call to see Mrs. Cropsey despite the doctor's protest.* The doctor testifies that at the time of the execution of the deeds he had no intention of leaving his home; that he had no other home to go to. He states that he made absolutely no promises (p. 100) to Mrs. Cropsey as an inducement to the execution of the deed. He said he continued to live at the house with Mrs. Cropsey until the 22nd day of July, 1915 (p. 102), when he was informed of facts which convinced him that his wife had committed adultery with DeBaum at the home of a Mrs. Thompson (p. 102). This was the occasion of the automobile trip of Mrs. Cropsey with Dr. DeBaum, referred to in the opinion of the Vice-Chancellor in the divorce case. This referred to the occasion when Mrs. Cropsey stayed out all night with Dr. DeBaum. *That Dr. Cropsey had no intention of leaving his home until that time is demonstrated by the fact*

that when he left he had no place to go (p. 103). The first night he left home he slept at the Hoffman House in East Rutherford (p. 103), and on the three following nights on the front porch of his house and in his private office, and for two nights in his automobile in the garage. He said he had no place to go (p. 103); that he talked to Mr. Conklin about the situation and Mr. Conklin told him that it was no way for a man to live (p. 104), and that he then temporarily went into the home of Mr. Conklin.

He says that no charge of fraud was ever made against him by his wife in connection with the transfer of the title of the property until over a year later when this suit was commenced, long after the divorce case was instituted. He denies completely her version of the incident leading up to the execution of the deeds (p. 105), and as to the matters that occurred at the office of Mr. Conklin. He denies emphatically the testimony of his mother-in-law and Mrs. Clark (p. 109) that he had made any disclosures to them of his intention to get rid of his wife under any pretence at any time. His testimony from beginning to end is a clear and convincing story of a man whose confidence was very sadly abused.

Cook Conklin, a witness produced by the defendant, and member of the law firm of Shafer & Conklin, of Rutherford, testified (p. 61) that Mr. and Mrs. Cropsey called at his office on the morning of May 29, 1913, and requested him to draw the deeds referred to in the bill of complaint. His recital of what took place is set

forth on pages 62 and 63, and is a complete refutation of Mrs. Cropsey's testimony. He denies that she cried at any time while at his office, and said there was absolutely no evidence of any excitement (p. 63). He stated that he explained the whole effect of the transaction. He advised Mrs. Cropsey, in response to her request for information, as to what would be the effect of her death upon the property if it was vested in her alone, in view of the fact that she and the doctor had no children. He described (on pp. 64-5) the formal execution of the papers in the presence of Mr. James Miller, a Master in Chancery, and identified the writing of Mrs. Cropsey directing the recording of the papers. There was nothing about the entire transaction to arouse any suspicion in Mr. Conklin.

The testimony of Mr. James W. Miller is of the same purport. He was the Master who took the acknowledgment. Both deny that any statement of any sort was made by Mrs. Cropsey, either substantially or to the effect that she was executing these papers against her will or that she was being coerced into the execution of them.

Certainly neither of these two lawyers, both of whom are of good repute at the bar, would wilfully have participated in perpetrating a fraud upon Mrs. Cropsey. Mrs. Cropsey is a strong-willed woman. Her whole attitude in her entertainment of Dr. DeBaum is evidential of this fact. She testified that she had repeatedly refused the request of the doctor to change the title of this property. She managed the doctor's financial affairs. She was not a weak child who could be easily coerced.

The reading of the conclusion of the Vice-Chancellor in the divorce case (p. 154 &c.) will indelibly stamp upon the mind the conviction that Mrs. Cropsey was a woman who knew how to exercise her own mind and had perfect control of her own will power.

I have briefly summarized the testimony in the case in order that it may be apparent to this Court that the conclusions reached by the Vice-Chancellor were inevitable. As the Vice-Chancellor well said, this was not an ordinary gift case, but in this case "the husband got from his wife that which in fact belonged to him."

What was her motive in suggesting and consenting to the execution of the deeds at this particular time? The Vice-Chancellor answers this with force. He said (pp. 152, 128:)

"His discovery of a few nights before had brought on a crisis, and to appease, to avoid an open break, to maintain her status publicly as his wife, she relinquished. This was her gain. She was impelled by motives of self-preservation, conscious that she was simply restoring to him his own and discharging the trust he put in her years before when love and affection and confidence ruled."

On page 151, line 35, the Vice-Chancellor said:

"I cannot credit Mrs. Cropsey's story,"
etc.

In view of the testimony of Dr. Cropsey and Mr. Conklin and Mr. Miller, how can her testimony be credited? In this connection *I draw the Court's particular attention to the fact that Mrs.*

Cropsey never made any pretense that there was any fraud in this transaction until long after Dr. Cropsey had instituted divorce proceedings against her; and no mention of the fact was ever made to Dr. Cropsey until the actual filing of his wife's bill of complaint. If there had been the character of fraud in the transaction, later pretended by Mrs. Cropsey, would she have waited this long period of time before asserting it?

The title to the property is now vested jointly in the complainant and the defendant. They are still husband and wife. The right of survivorship applies. How can, under the facts presented, any suspicion attach to Dr. Cropsey's action in the premises. If Dr. Cropsey was endeavoring, as his wife now pretends, to defraud her, and she was willing by virtue of her distraction to go any lengths to satisfy his demands, would he have been satisfied with obtaining a title of the character in question? Would he not, under such circumstances, have secured an absolute title in fee to the premises?

Dr. Cropsey was not a man of means. Apparently, his earnings went into the house and property. The property was not merely a home for the family, but it was a place where he practised his profession and made his livelihood—his business establishment. Whatever surplus earnings he had are reflected in the cash moneys admittedly held by Mrs. Cropsey after their separation.

The Law.

In view of the fact that this case is simply a fact case, and that the principles of law applicable to it are so elementary, I have not attempted to cite authorities.

I have not answered any points raised by the appellant in his brief because he advises me that his brief has not been completed and will not be ready for filing until the last day permitted for the filing of briefs this term. There is no contention made that the wife was acting without independent advice. The cases of *Lister v. Lister* (35 N. J. Eq., 49) and *Beck v. Beck* (78 N. J. Eq., 544) which were cited by the complainant in the court below have no application to the situation here presented.

In the court below the complainant cited the case of *Schultz v. Schultz* (73 N. J. Eq., 597), the case of *Hall v. Otterson* (52 Eq., 523), *Black v. Black* (3 Stewart, 215), and *Curtis v. Crossley* (59 Eq., 358), in support of the contention that the deed should be not set aside as it was not the free and voluntary act of the wife.

In the *Schultz* case the court found as a fact that the conveyance made by the wife was coerced by assaults and abuse so that she was absolutely not a free agent.

In the *Hall v. Otterson* case, the deed was set aside because the donor did not comprehend the force and effect of the paper executed, the proof establishing that fact.

In the case of *Curtis v. Crossley*, it was clearly

established that the execution of the deed was the result of threats and undue and improper influence exercised by the husband.

In the case of *Black v. Black*, it was distinctly held that a voluntary gift by a wife to her husband was good. The *Black* case substantially held that when a husband receives money belonging to his wife the law presumes he receives it for her use.

We have no dispute with the legal principles laid down in the cases cited. The proofs in this case do not bring it within any of those cases. The Vice-Chancellor found it established by the sheer weight of testimony that Mrs. Cropsey's story was incredible. To have determined otherwise, the Vice-Chancellor would have been obliged to have found that Mr. Conklin, Mr. Miller and Dr. Cropsey were all guilty of the most positive perjury.

There can't be any question but that Mrs. Cropsey knew exactly what she was about; she knew exactly what the effect of the transfer was to be. *It was to create a joint tenancy in herself and husband with the right of survivorship. The conveyance had been talked of, according to her testimony, for several years. She was in no sense deceived. She knew exactly what she was doing and why she was doing it. She figured that she was to be the gainer by the transaction.* She entered into it for her own benefit as much as for the doctor's benefit.

There was nothing improvident, ill-advised or contrary to her avowed purpose and intention in the transaction.

Applying the doctrines of law, as laid down in *Fritz v. Roth* (70 N. J. Eq., 764) the defendant was entitled to a dismissal of the bill.

I most respectfully maintain that the decree of the Court of Chancery, predicated upon the conclusions of the Vice-Chancellor, was entirely just and equitable and that the same should be affirmed.

Respectfully submitted,

ROBERT CAREY,

Solicitor and Counsel for
Respondent.

MEMORIAL

WILHELM